Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 242 OF 2018
WITH
INTERIM APPLICATION NO. 2172 OF 2020
IN
WRIT PETITION NO. 242 OF 2018

1. **Reliance Industries Limited,**
A company incorporated under the Companies Act, 1956 having its Registered Office at Maker Chamber IV, 3rd Floor, Nariman Point, Mumbai 400 021

2. **Mr. Rajumal Nahar,**
having his office at having his office at 6th Floor, "B" Wing, Fortune 2000, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.

...Petitioners

~ versus ~

1. **Mumbai Metropolitan Region Development Authority (MMRDA),**
an authority established under the Mumbai Metropolitan Region Development Authority Act, 1974 and having its head Office at Plot C-14 & C-15, 'E' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.

2. **The Metropolitan Commissioner,**
Mumbai Metropolitan Region Development Authority, having office at Plot C-14 & C-15, 'E' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.

3. **The Deputy Metropolitan Commissioner,**
Mumbai Metropolitan Region Development Authority, having office at Plot C-14 & C-15, 'E' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051. **...Respondents**

APPEARANCES

For the Petitioners	**Mr. Vikram Nankani, Senior Advocate**, with Mr. Vikramaditya Deshmukh, Mr. Ashwin Dave, Mr. Ameya Nabar & Ms. Swati Jain, i/b A. S. Dayal & Associates.
For Respondents-MMRDA	**Dr. Birendra Saraf, Senior Advocate**, with Mr. Nishant Chotani, Mr. Nivit Srivastava, Ms. Sneha Patil, Ms. Aditi Sinha, Mr. Hrishikesh Joshi & Ms. Isha Vyas, i/b Maniar Srivastava Associates.

CORAM : SHREE CHANDRASHEKHAR, CJ & SUMAN SHYAM, J.

RESERVED ON : 22nd JANUARY 2026.
PRONOUNCED ON : 8th APRIL 2026.

JUDGMENT *(Per Suman Shyam, J)*:-

1. Rule. Rule is made returnable forthwith.

2. By consent of the parties, the matter is taken up for final hearing.

3. Assailing the demand-cum-show cause notice dated 12th September 2017 (Exhibit "R"), whereby, the Respondent No.1– Mumbai Metropolitan Region Development Authority ("MMRDA") had demanded additional premium/penalty as per statements 'A' and 'B' annexed thereto, for the alleged delay of 7 years and 12 days in completion of construction of a Convention & Exhibition Centre and Commercial Complex on Plot No. C-64, 'G' Block, Bandra-Kurla Complex, Mumbai, the Petitioners have approached this Court by filing this Writ Petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India. During the pendency of the Writ Petition, by the communication dated 13th June 2019 (Exhibit "X") a further amount of Rs.1116,83,10,102/- was demanded from the Petitioner No. 1 as additional premium, along with interest, towards extension of time for completing the construction of the building by using the additional built up area of 72,500 sq mtrs. allotted under the Supplementary Lease Deed dated 13th July 2007. The said Notice is also under challenge in this Writ Petition. The facts and circumstances giving rise to the filing of the present Writ Petition, shorn of unnecessary details, are as hereunder.

4. The Petitioner No.1 is a company incorporated under the provisions of the Companies Act, 1956. As per statements made in the Writ Petition it is engaged *inter alia* in the business of exploration of petroleum products and allied activities. Petitioner No.2 is a shareholder of the Petitioner No.1 company. The expression "Petitioner" shall here-in-after refer to the Petitioner No.1 company. The Respondent No.1, MMRDA, is a statutory authority constituted under Section 3 of the Mumbai Metropolitan Region Development Authority Act, 1974. Respondent Nos.2 and 3 are its officers.

5. In the month of December 2005, Respondent No.1, being the owner of the land, had invited bids for leasing out Plot No. C-64 admeasuring approximately 75,000 sq. mtrs. situated in 'G' Block of Bandra-Kurla Complex (BKC) for the purpose of construction of "Convention and Exhibition Centre and Commercial Complex". The Petitioner had submitted its bid for the said plot and was declared successful bidder. As such, by the letter dated 15th February 2006, the Respondent No.1 had approved the proposal for leasing out the aforesaid plot of land to the Petitioner for a maximum permissible built-up area of 65,000 sq. mtrs. for

the Convention and Exhibition Centre and 50,000 sq. mtrs. for the Commercial Complex, aggregating to 1,15,000 sq. mtrs., for a total premium of Rs.1104 crores. Pursuant thereto, a registered Lease Deed dated 1st September 2006 came to be executed by and in between the Petitioner and Respondent No.1 for leasing out the demised plot for a term of 80 years. Possession of the said plot of land was handed over to the Petitioner on the same day i.e. on 1st September 2006.

6. Article 2(d) of the Lease Deed dated 1st September, 2006 stipulates that the lessee shall, within three months from receipt of approval of plans, commence and within a period of four years from the date of the lease, build and completely finish the construction of the Convention and Exhibition Center and Commercial Complex, fit for occupation. Article 2(e) lays down that in case of failure to adhere to the said time limit, extension of time may be granted upon payment of additional premium at the prescribed rates.

7. On 14th October 2006 the Petitioner had applied for permission to start excavation and removal of earth on site by attaching a report of the Structural Consultants. By the said letter,

the Petitioner had also informed the Respondents that it will not carry out any construction activity on the site without prior intimation to the MMRDA and also without obtaining the required statutory permissions.

8. After the execution of the Leased Deed dated 1st September 2006, the FSI for the plots in block 'G' of BKC was increased from 2.00 to 4.00. As such, in the month of February 2007, the Petitioners had applied for allotment of additional built-up area of 72,500 sq. mtrs.. By the letter dated 7th May 2007, the Respondent No.1 had approved the allotment of additional built up area of 41,000 sq. mtrs. for the Convention Centre and 31,500 sq. mtrs. for the Commercial Complex, aggregating to 72,500 sq mtrs., against payment of premium of a total amount of Rs.696 crores. Upon allotment of the additional built up area, as aforesaid, a Supplementary Lease Deed dated 13th July 2007 was executed by and between the parties in respect of the additional built-up area.

9. It would be pertinent to note herein that after the allotment of the additional built up area, Reliance Communication & Infrastructure Ltd., along with another, had instituted Writ Petition No.1165 of 2007 before this Court challenging the grant of the

additional FSI of 71,500 sq mtrs to the Petitioner for the Convention and Exhibition Centre (41,000 sq mtrs) and Commercial Complex (31,500 sq mtrs). The Petitioner was impleaded as Respondent No. 3 in that writ petition. By the interim order dated 15th October 2007 passed in the said Writ Petition, a Division Bench of this Court had restrained the Petitioner from utilizing the additional FSI of 31,500 sq. mtrs. allocated for the Commercial Complex.

10. On 17/04/2008, the Petitioner submitted revised plans seeking necessary approvals. Based on the same, on 12th June,2008, Commencement Certificate (CC), upto the plinth level, only in respect of the Convention & Exhibition Centre plot "A' of plot C-64 in Block "G" of BKC Complex, with total permissible built up area of 1,06,000sq mtrs. was issued in favour of the Petitioner. However, no CC was issued in respect of the commercial complex.

11. There is no controversy in this case about the fact that the proposed development was composite in nature with common basement and foundation. As such, by the letter dated 28th January 2009, the Petitioner had submitted progress report and

informed the Respondent No.1 that commencement of construction at site was affected due to the interim order passed by the court since the basement and foundation of the Convention & Exhibition Centre (CEC) as well as the Commercial Complex (CC) was common. However, by letter dated 18th February 2009, the Respondent No.1 had replied that since there was no restraint order in respect of the Convention & Exhibition Centre, hence, the Petitioner to continue with the construction of the CEC as per CC (1,06,000 sq mtrs) and also expedite the final hearing of the proceeding pending in the court. The Petitioner was also asked to furnish Bank Guarantee of Rs 20 crores towards liquidated damage and Completion Guarantee for a sum of Rs 20 crores.

12. In response to the above, by the letter dated 16th March 2009, the Petitioner had highlighted the design uncertainty in proceeding with the construction and had sought the guidance of the MMRDA in the matter. Due to the uncertain circumstances arising in view of the pending Court proceedings, the Petitioner had also sought extension of time to complete the project. However, in the meantime, the Commencement Certificate issued earlier on 12th June 2008 had lapsed in June 2009.

13. While the matter was poised as above, in the 129th Meeting of the MMRDA held on 8th September 2011, the Respondent No.1 had resolved to extend the time for allotment of additional FSI in 'G' Block till December 2012. Accordingly, by the letter dated 8th November 2011, the Respondent No.1 had offered additional built-up area to the Petitioner by recording that there would be no time limit for construction of such additional built-up area.

14. However, in view of the pendency of Writ Petition No 1165 of 2007 and the interim order operating therein, on 14th October 2010, the Petitioner had offered to surrender the additional built up area of 72,500 sq.mtrs and sought refund of the amount of Rs 1064 crores being the premium, along with interest, paid for the aforesaid built up area. The said request was followed by the subsequent letters dated 3rd August 2020 and 10th January 2012 rehearing the request. In response to the above request of the Petitioner, by the letter dated 1st February 2012, the Respondent No.1 had informed the Petitioner that its request for refund of lease premium by surrendering the additional built up area cannot be considered as there is no provision in the Leased Deed as well the Supplementary Lease Deed permitting the same. It was,

however, clarified that in so far as the request for extension of time for completion of construction on the plot under reference as per Article 2(d) of the Lease Deed dated 1st September 2006, is concerned, the period during which the stay order of the court was under operation, will not be considered for computing the four years time period, meaning thereby, that the period, during which the interim order passed in Writ Petition No.1165 of 2007 was operative, shall be excluded while computing the four-year period stipulated under Article 2(d) of the Lease Deed dated 1st September, 2006. Be it stated here in that the Writ Petition No 1165 of 2007 was withdrawn on 12th March 2012 as a result of which, the stay order also got vacated on the same day.

15. In the wake of the aforesaid development, the Respondent No.1, by letters dated 20th March 2012 and 3rd April 2012 approved allotment of further additional built-up area of 1,00,000 sq. mtrs. and 25,000 sq. mtrs. against payment of premiums of Rs.1470 crores and Rs.367.50 crores respectively. With the allotment of the additional built up area of 1,25,000 sq mtrs, the total built-up area allotted by the Respondent No.1 to the Petitioner for construction to be carried out on the same plot, was

increased to 3,12,500 sq. mtrs. It is a matter of record that the Petitioner had paid an aggregate premium of Rs.4,005 crores to the Respondent No.1 for the allotment of the entire built up area of 3,12,500 sq. meters.

16. In view of the allotment of additional built-up area, as aforesaid, the Petitioner was required to revise the development plans for a composite structure and also obtain various statutory approvals afresh including the environmental clearance under the EIA Notification dated 14th September 2006, height clearance from Civil Aviation Authorities, approval from the High Rise Committee, permission from the Municipal Corporation of Greater Mumbai and other statutory authorities. Accordingly, various approvals were obtained during the year 2013 and early part of the year 2014.

17. On 26th June 2013, Environment Clearance for the proposed " Convention & Exhibition Centre and Commercial Complex" over plot No. C-64 in Block-G of BKC was granted to the Petitioner for the entire FSI of 3,12,500 Sq. Mtrs. In the said communication also, the CEC & CC was shown as a composite construction.

18. After compliance of the above requisites and submission of the revised plans, the Respondent No.1 had issued Commencement Certificate dated 16th April 2014 for construction upto the 7th floor level of the composite building comprising Convention & Exhibition Centre and Commercial Complex. Thereafter, further Commencement Certificates were issued on 23rd December 2016, 17th April 2017 and 19th May 2017.

19. In the meantime, in its 131st Meeting held on 22nd October 2012, the Respondent No.1 had considered granting extension of time for completion of construction by taking note of the delay caused in obtaining multiple statutory permissions/ clearance form different agencies. After considering the matter, the Respondent No.1, *vide* Resolution No.1283 adopted in the said meeting, had recommended extension of time from four years to six years for completing the construction. The said resolution was, however, kept in abeyance for some. Finally, in its 138th Meeting held on 26th August 2015, the Respondent No.1 had resolved to amend Article 2(d) to provide six years time period for completion of construction in respect of plots leased after the date of the resolution and further resolved to constitute a One Man

Committee to examine the issue of recovery of additional premium in the cases where delay was attributable to time required for obtaining statutory permissions.

20. Notwithstanding the above developments,the Respondent no.1 had insisted on an undertaking from the Petitioner to pay the additional premium for grant of extension of time for completing the construction of the building. As such, on 18th November 2016, the Petitioner had submitted an undertaking to the above effect thus, agreeing to pay the additional premium for extension of time for completing the construction of the building over Plot No- C-64 in Block "G" of the BKC before receipt of Occupation Certificate or decision of the Authority, which ever was earlier, with a further undertaking not to create any third party liability on the project till receipt of the Occupation Certificate.

21. Based on such undertaking, the Respondent No 1 had issue further Commencement Certificate dated 19th May 2017 for the Fire Check floor and the 15th (part) floor.

22. While the above process was under way, the Respondent No. 1 had issued the impugned Notice dated 12th September 2017,

alleging that as per Article 2(d) of the Lease Deed dated 01st September 2006, the Petitioner had the obligation to erect and completely finish the construction, fit for occupation, within four years from the date of execution of the Lease Deed. However, although, there was delay of 7 years and 12 days the Petitioner had failed to pay the penalty for the entire period of delay till completion of the construction, fit for occupation. It was further mentioned that the amount on account of delay in construction, along with interest, has been shown in Annexures "A" and "B". It was alleged that the Petitioner had committed breach of the terms and conditions of the Deed of Lease. As such, the MMRDA had the power to recover the said amount as arrears of land revenue and also resume the land as per Articles 5 & 6 of the Lease Deed. The Petitioner was, therefore, called upon to remedy the situation within 30 days, failing which, the Authority will have the right to determine the lease and enter upon the leased premise and also proceed to recover the amount due as arrears of land revenue.

23. It would be pertinent to mention here-in that the Notice dated 12th September, 2017 does not mention the amount claimed by the Respondent No. 1. The figures projected in the Statements

"A" & "B" annexed to the Writ Petition are also not legible. However, it appears that upon receipt of the Notice dated 12th September 2017, the Petitioner had sent reply dated 11th October 2017 denying its liability to pay the amount claimed with a further request to withdraw the show cause notice dated 12th September, 2017. However, no action was taken by the Respondents on such request made by the Petitioner.

24. Aggrieved by the dated 12th September 2017 the Petitioner had instituted Writ Petition on 30th November, 2017 which was originally registered as Writ Petition (L) No 3395 of 2017. On 8th December 2017, this Court, while issuing notice, had recorded the statement made on behalf of Respondent No.1 that till next date of hearing no coercive steps would be taken pursuant to the impugned notice. Records reveal that the said ad-interim order was extended by the court from time to time. Subsequently, the said writ petition was registered as Writ Petition No.242 of 2018 i.e. the present Writ Petition.

25. On 06th February 2019, the Architect engaged by the Petitioner had applied for part Occupation Certificate for the built up area of 44,621 sq.mtrs. That apart, by the letter dated 18th

February 2019, the Petitioner had deposited a sum of Rs.646,77,68,594 (Rupees Six Hundred and Forty Six Crores Seventy Seven Lakhs Sixty Eight Thousand Five Hundred and Ninety Four) after deducting TDS amount of Rs.21,32,20,676/- and furnished a Bank Guarantee of an amount of Rs.13,12,54,85,287/- (Rupees Thirteen Hundred Twelve Crores Fifty Four Lakhs Eighty Five Thousand Two Hundred and Eighty Seven) based on an alternate computation treating the delay to be for the period from 01st September 2010 to 17th February 2019. It was also mentioned in that letter that the amount was being deposited under protest and without prejudice to the rights and contention of the Petitioner in the pending Writ Petition.

26. Upon receipt of the above amount, on 20th February 2019, the Respondent No.1 had issued part Occupation Certificate for 44,621 sq. mtrs. However, soon thereafter i.e. on 13th June 2019, the Petitioner was served with another communication demanding payment of a further amount of Rs.1116,83,10,102/- as additional premium for the delay in completing the construction of the additional built up area as allotted under the Supplementary Lease Deed dated 13th July 2007.

27. Despite the notice dated 13th June 2019, the Petitioner, through its Architect, had applied for further part Occupation Certificate for the built up area of 1,24,000 sq. mtrs. However, the Respondent No. 1 refused to process the same until the amount of Rs.1116,83,10,102/- was paid. Under such circumstances, the Petitioner had filed Interim Application No.2171 of 2020 arising out of this Writ Petition, seeking a direction upon the Respondent No.1 for issuance of Occupation Certificate without insisting upon payment of the additional premium. By the judgment and order dated 12th July 2021 passed in the Interim Application No. 2171 of 2020, this Court had allowed the prayer made in the Interim Application and directed the Respondent No.1 to process the applications seeking Occupation Certificates including the application dated 3rd February 2020, without insisting on payment of the amount mentioned in the subsequent demand notice dated 13th June 2019. In the said order it was also observed that when the court was in *seisin* of the matter and considering the earlier interim order dated 8th December 2017, the Respondents ought not to have issued the notice dated 13th June 2019. By carrying out amendments in the writ petition, the Petitioner has challenged the letter dated 13th June 2019.

28. The Respondent Nos. 1 and 2 have opposed the Writ Petition by filing joint Reply. The plea taken by the Respondents in their Reply, reduced to their essence, is to effect that that the Writ Petition involves disputed questions of fact, which cannot be adjudicated in a Writ Petition; that the Writ Petitioners have an alternate, efficacious remedy by way of Civil Suit; that the dispute is purely contractual in nature involving interpretation of the terms and conditions of the contract, which cannot be entertained in a Writ Petition; that this is not a case of infringement of any constitutional, statutory or fundamental right of the Petitioner; that the Demand Notice has issued on account of breach of conditions of the Lease Deed and, therefore, the same does not involved violation of any constitutional right; that Articles 2(a) and 2(d) of the Lease Deed, which require completion of the construction within a period of four years from the date of Lease Deed are binding and mandatory clauses in the Lease Deed. Therefore, those are enforceable under the law; even if the delay in construction has occurred due to interim order of Court or on account of force majeure, even than, in view of Article 2(d), any extension of time could only been granted upon payment of additional premium. Since the MMRDA would not have any power

to waive such amount, therefore, payment of additional premium/penalty was inevitable in case of delay; that the restraint order of the Court was limited only to the additional area of 31,500 sq.mtrs. of commercial FSI. Therefore, the same did not prevent commencement and completion of construction of the Convention Centre; that allotment of additional built-up area was optional. Since the Petitioners have opted for the additional built-up area, therefore, the allotment of additional built up area cannot be a justifiable ground for the delay in completion of construction; that the Petitioners have issued an unconditional undertaking on 14th December 2016 agreeing to pay the additional premium/penalty for grant of extension of time. Therefore, they would be bound by such undertaking; that the Writ Petitioner has approached this Court by suppressing material facts and particulars pertaining to the undertaking dated 14th December 2016, therefore, the Writ Petition is liable to be dismissed on such count alone; that the decision of the MMRDA to extend the time period from four years to six years was applicable prospectively, i.e., with effect from August, 2015 and therefore, the same would not cover the case of lessees such as the Petitioner in respect of whom, the Lease Deed was executed prior to August, 2015.

29. By filing Rejoinder, the Writ Petitioner, while denying the assertions made by the Respondents, has reiterated that it is a case of violation of fundamental right of the Petitioner guaranteed under Article 14 of the Constitution of India. It has further been asserted that even in contractual matters, unfair treatment extended by the State or its instrumentality would be amenable to writ jurisdiction of this Court; that due to the allotment of the additional built-up area and the integrated design of the project, it would be impossible to complete the original portion of the building within four years since it included common structures such as common basement and services, etc. The Petitioners have also denied the contention that the restraint order of the Court did not affect the integrated planning and common infrastructure of the project so as to permit bifurcation of the construction; it has also been alleged that the Petitioner being similarly situated Lessee, extension of time from four years to six years would be equally applicable to them as denial of such benefit would amount to unfair discrimination; the Petitioners have further contended that similarly situated entities such as ***Bharat Diamond Bourse & Indian Oil Corporation*** have been granted extension of time without levy of additional premium; it has also been contended

that the undertaking dated 14th December 2016 was obtained under coercion viz. On the threat of withholding Occupation Certificate and, therefore, the same cannot preclude the Petitioner from agitating its grievance as per law; the Petitioner has also denied suppression of material facts.

30. In their additional Reply, the Respondents have controverted the statements made in the Rejoinder Affidavit while maintaining their original stand justifying the demand for the additional premium.

31. This Writ Petition was analogously heard along with three other Writ Petitions being Writ Petition No.864 of 2018, Writ Petition No.2377 of 2018 and Writ Petition No.3209 of 2017, involving similar issues wherein, identical reliefs were sought by the Writ Petitioner(s).

32. We have heard the learned Senior Counsel appearing for the parties and have also perused the pleadings and documents placed on record.

33. Mr. Vikram Nankani, learned Senior Counsel appearing for the Petitioners, has argued that the impugned demand notice

dated 12th September 2017 and the subsequent communication dated 13th June 2019 issued by Respondent No.1 seeking recovery of additional premium on account of alleged delay in completion of construction are arbitrary, illegal and unsustainable in law. According to the learned Senior Counsel, the demand proceeds on an erroneous interpretation of Clauses 2(a), 2(c) and 2(d) of the Lease Deed dated 1st September 2006, in as much as under Clause 2(c), no construction work could commence until the plans and specifications were approved by the planning authority. It is therefore submitted that the timeline for completion of construction cannot be computed independent of such approvals.

34. The learned Senior Counsel further submits that the project contemplated construction of a Convention and Exhibition Centre and Commercial Complex as a composite development. Subsequent to the execution of the Lease Deed, Respondent No.1 had allotted additional built-up area of 72,500 sq. mtrs. under the Supplementary Lease Deed dated 13th July, 2007, and thereafter, further additional built-up area of 1,25,000 sq. mtrs. in the year 2012. The allotment of such additional built-up area required revision of the development plans and fresh statutory approvals

and therefore, the timelines originally contemplated under the Lease Deed dated 1st September 2006 cannot be strictly applied to such construction.

35. The learned Senior Counsel further has submitted that the allotment of additional built-up area was unconditional and Respondent No.1 had itself clarified that there would be no time limit for construction of such additional built-up area. Therefore, by granting such additional development rights during the subsistence of the Lease Deed, Respondent No.1 must be deemed to have waived the condition relating to completion of construction within four years.

36. It is also submitted that the development of the project was affected by the order of injunction passed by this Court in Writ Petition No.1165 of 2007, which restrained utilization of a portion of the additional built-up area until 12th March 2012. The Petitioners had requested Respondent No.1 to exclude the said period while computing the four-year period stipulated under the Lease Deed which was confirmed by the Respondent No. 1 vide communication dated 1st February 2012. As such, such time line cannot be enforced.

37. The Senior Counsel has further submitted that the project required several statutory approvals from various authorities including environmental clearance, aviation height clearance, approval of the High-Rise Committee and permissions from the Municipal Corporation of Greater Mumbai. According to the Petitioner, these approvals were obtained over a period of time and the commencement certificate for the integrated project was eventually issued only in the year 2014. The learned Senior Counsel therefore submits that the period of four years contemplated under Clause 2(d) of the Lease Deed must be construed in a commercially reasonable manner and the same must be computed only after approval of the development plans and issuance of the necessary commencement certificates.

38. The learned Senior Counsel has further argued that the Respondent No.1 had itself recognized the practical difficulties faced by developers in completing construction within four years and at its 138th Meeting held on 26th August 2015, resolved to amend the standard form of lease by extending the period for completion of construction from four years to six years. According to the Petitioner's Counsel, restricting the benefit of the said

decision only to leases executed after 26th August 2015 would be arbitrary and discriminatory, since all developers in Bandra-Kurla Complex are required to obtain similar statutory approvals. It is, therefore, contended that the impugned action of the Respondent No.1 violates Article 14 of the Constitution of India.

39. To sum up his arguments, the learned Senior Counsel has submitted that the present case is squarely covered by the decision of this Court rendered in the case of ***Raghuleela Builders Pvt. Ltd. & Anr vs. MMRDA & Ors.***, whereby in identical fact situation and similar circumstances, this Court, by interpreting similar clauses in the lease deed, has held that the demand of additional premium on account of delay in completing the construction was arbitrary and illegal and, accordingly struck down such demand.

40. Dr. Birendra Saraf, learned Senior Counsel appearing for the Respondent Nos.1 and 2,on the other hand, has opposed the prayer made in the Writ Petition and has also questioned the maintainability of the Writ Petition by contending that the dispute between the parties arise out of contractual obligations contained in the Lease Deed and the Supplementary Lease Deed and the same involves several disputed questions of fact which cannot be

adjudicated in a writ petition in exercise of jurisdiction under Article 226 of the Constitution of India. He has further argued that the Writ Petition is hit by delay and laches and the relief prayed for is also barred by limitation. According to Dr. Saraf, , since the Petitioner had earlier sought extension of time for completion of construction and had not challenged the communications issued by Respondent No.1 at the relevant time, hence, the challenge made to such demand notices is not maintainable at this point of time.

41. The learned Senior Counsel for the Respondents has further argued that the recovery sought by Respondent No.1 is strictly in accordance with the provisions of the MMRDA Act, the MMRDA (Disposal of Land) Regulations, 1977 as well as the terms and conditions of the Lease Deed executed by and between the parties. According to learned counsel, the clauses contained in the Lease Deed are statutory in nature. Therefore, under Article 2(e), extension of time for completion of construction can be granted only upon payment of additional premium at the prescribed rates which cannot be waived even by the MMRDA.

42. Dr. Saraf has further argued that the Petitioner had furnished undertakings promising to pay the amount of additional premium for the delay in completing the construction. Therefore, the Petitioner cannot now *resile* from such promise.

43. The learned Senior Counsel for the Respondents has also argued that the reliance placed by the Petitioner on the judgment in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra) is misplaced in as mush as the said decision was rendered in the peculiar facts of that case.

44. To sum up his arguments, Dr. Saraf has submitted that the Petitioners have approached this Court without disclosing material facts and producing the relevant documents. Since they have approached this court with unclean hands, hence, the Petitioners are not entitled to any relief from the court of equity. As such, the Writ Petition be dismissed.

45. In support of his above arguments, Dr. Saraf, has relied upon the following decisions:-

(a) *State of Punjab and Ors. vs. Dhanjit Singh Sandhu*[1]

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1 (2014) 15 SCC 144.

(b) *Atur Park-4 Co operative Housing Society Ltd. vs State of Maharashtra*[2]

(c) *State of Goa vs. Dr. Alvaro Alberto Mousinho*[3]

Plea regarding Maintainability of the Writ Petition :-

46. Insofar as the plea regarding maintainability of the Writ Petition is concerned, at the very outset, it deserves to be mentioned herein that although the maintainability of the Writ Petition has been questioned *inter-alia* on the ground that several disputed questions of facts are involved there-in, yet, after examining the record, we find that the material assertions made in the Writ Petition are all based on documents annexed thereto, which are admitted documents. Moreover, in view of the plea raised by the Petitioner that the action of the Respondent No. 1 in levying additional premium/penalty for the delay in completion of construction is not only contrary to the terms and conditions of the Lease Deed, but also, arbitrary and illegal and hence, in violation of the fundamental rights guaranteed to the Petitioner under Article 14 of the Constitution, we are of the view that the

2 2023 SCC Online Bom 874.

3 (2019) 10 SCC 465.

issues raised in the Writ Petition have an element of public law character.

47. In the case of ***Joshi Technologies International IBC vs. U.O.I. & Ors.*** , the Hon'ble Supreme Court has observed that there is no absolute bar to the maintainability of a Writ Petition, even in contractual matters or where there are disputed questions of fact or even when monitory claim is raised, provided, the Court is called upon to examine the issue which has a public law character attached to it. Having regard to the core controversy involved in this proceeding and considering the fact that the issues involved in this Writ Petition would call for determination by this Court based on interpretation of the relevant Articles of the Lease Agreement as well as the documents exchanged by and between the parties so as to ascertain fairness in the action of the Respondent No 1, we are unable to agree with the stand of the Respondents that the Writ Petition ought to be dismissed on the ground that it raises disputed questions of facts.

48. Likewise, from a reading of Section 44 of the MMRDA, Act 1974, we find that the provision for Appeal provided thereunder, is available for disputes regarding recovery of money due to the

authority as arrears of land revenue. Since the challenge made to the impugned demand notice is on the ground that the same is contrary to the terms of the Supplementary Lease Deed and hence, illegal and arbitrary as such, we are of the opinion that the said controversy cannot be effectively adjudicated in an Appeal filed under Section 44. Therefore, we reject the contention of the Respondents that the Petitioner has an effective and efficacious alternative remedy.

49. We also find that all material facts necessary for appreciating the controversy have been disclosed in the Writ Petition. Therefore, we are of the view that the Writ Petition cannot also be dismissed on account of suppression of material facts as well.

50. In so far as the grounds of delay and laches as well as the plea of the claim being barred by the Law of Limitations is concerned, save and except making a bald assertion on such count the Respondents have failed to mention as to on which date the cause of action for the petitioner to institute the proceeding had ceased and on what count. There is also no oral argument advanced to that effect.

51. In ***Banda Development Authority, Banda vs. Motilal Agarwal & Ors.***[4] the Hon'ble Supreme Court has observed that no limitation has been prescribed for filing a Writ Petition under Article 226 of the Constitution of India. However, the High Court will treat the delay in filing the Writ Petition as unreasonable, if the same is filed beyond the period of limitation prescribed for filing a Civil Suit for a similar cause. From the above, it would be apparent that although un-explained delay in instituting a Writ Petition could be a valid ground to decline relief to the Petitioner, yet, the law of Limitation would not have strict application in a Writ Petition.

52. There is no dispute in this case about the fact that the Respondent No. 1 is an instrumentality of the State and, therefore, would be an "other authority" within the meaning of Article 12 of the Constitution of India.

53. Law is well settled that arbitrariness in the decision making process of the State or its instrumentality is a facet of Article 14 of the Constitution of India. In ***E.P.Royappa v State of Tamil Nadu***,[5] it was pointed out that Article 14 would strike at arbitrariness in State action and ensure fairness and equality of treatment.

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4 (2011) 5 SCC 394.

5 (1974) 4 SCC 3.

54. The present is not a proceeding *simpliciter* for enforcing a money claim but raises significant questions pertaining to the validity and fairness in the impugned action of the Respondent No 1, which are required to be adjudicated on the touch stone of Article 14. As such, we are of the considered opinion that such plea cannot be brushed aside merely on the ground of delay and laches, more so, since such delay has evidently not given rise to any parallel right of a third party.

55. In view of the foregoing discussions, we are of the view that the Writ Petition is maintainable in law as well as in the facts and circumstances of the case.

56. It would be further pertinent to note herein that in an earlier decision rendered by a co-ordinate Bench of this Court dated 20th November 2019 in ***Raghuleela Builders Pvt. Limited and Anr. vs. The Mumbai Metropolitan Regional Development Authority & Ors.*** (Supra) wherein, identical issues were involved, this Court had entertained the Writ Petition. In that case also the Petitioners had challenged a similar Demand Notice dated 12th September 2017 issued by the Respondent No.1, by invoking similar provisions of the Lease Deed as well as the Supplementary

Lease Deed, demanding payment of a sum of Rs. 432 Crores as penalty for the delay in completion of construction of the building. That was also a case wherein, although the initial built up area was 30550 sq. meters, which was to be consumed by constructing 9 (nine) floors in the building, yet, subsequently, due to the increase in the FSI, the Respondent No.1 had allotted additional built up area of 67000 sq. meters to the Petitioner resulting in construction of 11 additional floors in the same building. Due to the addition in the built up area, the construction of the building could not be completed within four years, as stipulated in Article 2(d) of the original Lease Deed, as a result of which, Demand Notice dated 12th September 2017 was served for recovery of penalty/additional premium along with interest calculated thereon.

57. By the Judgment and Order dated 20th November 2019, in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra), the Division Bench had set aside the impugned Demand Notice dated 12th September 2017 by holding that such a demand was not maintainable in the eyes of law. That apart, it was also observed that in view of the change in policy of the MMRDA increasing the time limit for

completion of the building "Fit for occupation", from four years to six years, the demand for penalty/additional premium for delay in completion of construction within four years was *ex-facie* unreasonable, unjustified and discriminatory.

58. The Special Leave Petition (C) No. 6411 of 2020 preferred by the Respondent No.1 assailing the Judgment and Order dated 20th November 2019 was dismissed by the Hon'ble Supreme Court by the order dated 27th July 2020 after taking note of the findings recorded in paragraphs No. 38 and 40 of the Judgment and Order dated 20th November 2019. However, it was clarified that since the judgment of the Division Bench of the Bombay High Court was rendered in the facts of that case, hence, it cannot influence any other matter in this behalf. With the above observation the Special Leave Petition was dismissed.

59. In the order dated 27th July 2020 the Hon'ble Supreme Court, while dismissing the Special Leave to Appeal (C) No(s) 6411/2020, had observed as follows:-

> *"We are not inclined to exercise our jurisdiction under Article 136 of the Constitution of India in the given facts of the case and more so as reflected from paragraphs 38 and 40 of the impugned judgment.*

Mr. K. K. Venugopal, learned Attorney General for India expresses some apprehension on account of there being other matters pending.

We clarify that the present matter is in the given facts of the case as stated aforesaid and thus, cannot be said to influence any other matter in this behalf.

The special leave petition is dismissed in terms aforesaid.

Pending applications shall also stand disposed of."

60. It appears that the Respondent No. 1 had filed a Review Petition seeking review of the order dated 27th July 2020, which was also dismissed by the Hon'ble Supreme Court *vide* order dated 29th September 2020 passed in Review Petition (Civil) No. 1764 of 2020 arising out of SLP (C) No. 6411 of 2020.

61. From a plain reading of the decision rendered in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra) we are of the opinion that, even if the said decision is treated to have been rendered in the fact situation of that case, even then, we can take note of the legal principles emanating therefrom. In that view of the matter we are unable to agree with the submission of the learned Counsel for the Respondents that the decision in the case of ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra) cannot be looked into by this Court even for the purpose of deciding the question of maintainability of the Writ Petition.

62. It is to be noted herein that the question of maintainability of a Writ Petition is a mixed question of law and facts. Therefore, such question would obviously have to be considered having due regard to the peculiar facts and circumstances of each case. Having regard to the facts and circumstances of this case and considering the fact that a similar Writ Petition, raising similar issues in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra) had earlier been entertained by this Court, for the sake of maintaining uniformity in judicial decisions, we are not inclined to non-suit the Writ Petitioner merely on the plea of maintainability as raised by the Respondents.

On Merits:-

63. During the Course of arguments, the learned Counsel for the Respondents has made it clear that the demand for additional penalty on account of delay in completing the construction had been raised by the Respondent No.1 in deference to Article 2(d) & (e) of the Lease Deed dated 1st September 2006 which is as per Form 'D' of Regulation No 10 of the Mumbai Metropolitan Region

Development Authority (Disposal of Land) Regulations, 1977. Therefore, the question as to whether such a claim /demand of the Respondent No. 1 for payment of additional premium/ penalty on account of delay in completing the construction was maintainable in the eyes of law as well as in the facts and circumstances of the case would undoubtedly have to be answered by this court in the light of materials brought on record and by constructing the relevant clauses of the Lease Agreement. For the above purpose Articles 2 (d) and (e) of the Lease Deed dated 1st September 2006 would be relevant and therefore, the same are being reproduced herein-below for ready reference:-

> "(d) ***Time limits for commencement and completion of construction work:*** That the Lessee shall within three months from the receipt of approval of its plans and specifications of building or buildings intended to be erected on the said plot of land, commence and within a period of four years from the date of this lease at his own expense and in a substantial and workman like manner and with the sound materials and in compliance with the said Development Control Regulations and Building Regulations and all Municipal Rules, bye-laws and Regulations applicable hereto and in strict accordance with the approved plans, elevations, sections, specifications and details as specified in the Section 5, 6 & 8 of the said RFP and the said allotment letter, to the satisfaction of the Metropolitan Commissioner and conforming to the Bandra-Kurla Complex Notified Area, Development Control Regulations, 1979 & all other relevant Rules, Regulations & Acts and further as provided in Section 5 of the said RFP and the said allotment letter, build and completely finish fit for occupation a (i) "Convention & Exhibition Centre" and (ii) "Commercial Complex"to be used as (i) "Convention & Exhibition Centre" and (ii) "Commercial Complex" with all requisite drains and other proper conveniences thereto.

PROVIDED THAT the construction of Convention and Exhibition Centre will be commenced before the commencement of construction of Commercial Complex and Occupation Certificate of Convention and Exhibition Centre (65000 sq. mtr. shall be obtained prior to the request for Occupation Certificate of Commercial Complex (50000 sq. mtr) as set out in the said RFP and the said allotment letter the Lessee shall scrupulously observe the approved Work Execution Plan (copy Whereof is set out in the SIXTH SCHEDULE hereunder written).

PROVIDED FURTHER THAT as set out in the said allotment letter, the Lessee shall submit the periodic progress report of the Convention and Exhibition Center say in the first week of every third month to the Metropolitan Commissioner, Mumbai Metropolitan Region Development Authority. The Evaluation Committee appointed by the Metropolitan Commissioner as referred in the Proviso to clause (a) hereinabove, will review the progress of the development of Convention Center report by the Lessee and submit its report to the Metropolitan Commissioner. The Evaluation Committee as indicated above will satisfy itself regarding the development of the Convention and Exhibition Center which has to be of international standards and if necessary the Evaluation Committee will make suggestions in that respect to the Metropolitan Commissioner and the Lessee shall incorporate changes so directed by the Metropolitan Commissioner.'

(e) ***Extension of time stipulated for construction of building or development of land:***

(i) If the Lessee shall not perform and observe the limitations of the time mentioned in clause 2 (d) above for construction of the intended (i) "Convention & Exhibition Centre" on plot of land admeasuring 55000 sq. mtr. and (ii) "Commercial Complex" on plot of land admeasuring 20000 sq. mtr. or otherwise development of said plot of land leased to him for reasons beyond his control, the Metropolitan Commissioner may permit extension of such time on payment of additional premium at the following rates:

Up to 1 year _____	25 percent of the respective premium paid for "Convention & Exhibition Centre" and "Commercial Complex"

Between 1 and 2 years___	35 percent of the respective premium paid for "Convention & Exhibition Centre" and "Commercial Complex"
Between 2 and 3 years ___	40 percent of the respective premium paid for "Convention Exhibition Centre" and "Commercial Complex"

(ii) If the Metropolitan Commissioner shall refuse to permit such extension of time or shall find the Lessee of having committed breach of any condition or covenant during limitation of time mentioned in clause 2(d) hereto before Metropolitan Commissioner may forfeit and determine the Lease: provided that in the event of such determination of lease 25 percent of the premium paid by the Lessee to the Lessor shall stand forfeited and the the remaining 75 percent of such premium shall be refunded to him; provided further that the power to so determine the Lease shall not be exercised unless and until the Metropolitan Commissioner shall be given to the Lessee or left on some part of the demised premises a nonce in writing of his intention to do so and of specific breach of the covenant or condition in respect of which forfeiture is intended and default shall have been made by the Lessee in remedying such breach within three months from the service of notice on him or the notice being left on the demised premises."

64. Article 2 of the Supplementary Lease Deed dated 13th July 2007 mentions that the incremental premises agreed to be constructed shall be deemed to be integral part of the demised premise defined in Lease Deed dated 1st September 2006. Article 2 reads as follows :-

> "2. It is here by agreed and declared by and between the parties hereto that all the conditions and covenants including the term of the lease as

> contained in the said Deed of Lease shall be deemed to be incorporated herein and shall regulate the lease hereby granted. It is further agreed and declared by the parties hereto that the incremental premises hereby agreed to be constructed and to be leased by the lessor to the lessee shall be deemed to be the integral part of demised premises as defined in the said Deed of Lease dated 1st September 2006 and annexed hereto as **ANNEXURE.**"

65. At the very out set it must be noted here-in that as per Article 2(d) the lessee is required to complete the construction within four years from the date of execution of the lease deed. However, Article 2 (c) of the Lease Deed makes it clear that no work shall commence or be carried out contrary to the Development Control Regulations and the Building Regulations applicable to the plot of land and until the plans, elevations, sections, specifications and details shall have been approved. Therefore, in view of Article 2(c), the construction no construction can commence until all statutory approvals including the approval of building plan etc. are received. Article 2(a) of the Lease Deed mentions that the lessee shall, within three months, submit plans etc. for approval. However, there is no condition in the Lease Deed laying down any time line for granting of such approval by the Respondent No. 1.

66. In a construction of this nature, permission of multiple statutory authorities including the Municipal Corporation, Fire department, Environment clearance, height clearance etc. will be necessary, without which even the Commencement Certificate cannot be issued. Unless the Commencement Certificate is issued, the construction work cannot commence. These statutory authorities are not bound by the terms and conditions of the Lease Agreement. Notwithstanding the same, the Lease Agreement is completely silent as to who will be responsible in case of delay in granting approval by these Statutory Authorities, coming in the way of early commencement and completion of the construction.

67. Not only that, the Lease Deed is also silent as to what would be the effect on the time line of four years for completion of the construction, as laid down in Article 2(d) in case, there is delay in granting of statutory approvals. As such, if there is delay in granting permissions/ approval by the statutory authorities for any reason whatsoever, leading to delay in commencement of construction, then in that event, the Lessee will be left with no scope to complete the construction within the stipulated time, that too, for no fault on its part. Notwithstanding the same, as per

Article 2(d), as interpreted by the Respondent No 1, the lessee would still be liable to pay penalty for the delay in completing the construction beyond the period of four years from the date of execution of the Lease Deed. Viewed from that perspective, Article 2(d) of the Lease Deed appears to be *ex-facie* unfair, unreasonable and hence, unconscionable. However, since the Articles of the Lease Deed are not under challenge, hence, the said aspect of the matter need not detain this Court.

68. As has been noted hereinabove, the initial built-up area, which is the subject matter of Lease Deed dated 1st September 2006, was only 65,000 sq. mtrs. for the Convention & Exhibition Centre and 50,000 sq.mtrs for the Commercial Complex, totaling to 1,15,000 sq.mtrs. Article 2(d) of the Lease Deed providing four years' time limit for completing the construction would, therefore, apply to the 1,15,000 sq. mtrs of built up area.

69. Subsequent to the execution of the Lease Deed dated 1st September 2006, there was increase in the FSI leading to allotment of additional built-up area of 72,500 sq. mtrs to the Petitioner. This 72,500 sq. mtrs was not within the ambit of the original Lease Deed dated 1st September 2006. As such, the

Supplementary Lease Deed 13th July 2007 had to be executed. However, as had been noted above, soon thereafter, i.e. on 15th October 2007, an interim order was passed by this High Court in Writ Petition No. 1165 of 2007 which had affected the construction work, at least in sofar as 31,500 sq. mtrs pertaining to the Commercial Complex is concerned. The aforesaid stay order remained in force until 12th March 2012. Therefore, although a plinth Commencement Certificate (CC) was issued on 12th June 2008 permitting construction upto the plinth level, yet, in view of the composite design of the Convention & Exhibition Centre as well as the Commercial Complex, having common foundation and basement, the Petitioner could not commence construction due to the operation of the stay order. The said fact was also informed to the Respondent No. 1 *vide* communication dated 28th January 2009.

70. From the statements made in the Writ Petition and from the examination of various documents on record, including EIA Certificate dated 26th June 2013 as well as Article 2 of the Supplementary Lease Deed dated 13th July 2007, it is evident that although the area of 72,500 sq. mtrs was allotted subsequently,

yet, it was treated as an integral part of the construction to be carried out with the original built up area.

71. The Writ Petition No. 1165 of 2007 was withdrawn on 12th March 2012. As such, on 20th Mach 2012, i.e., after the withdrawal of the Writ Petition No. 1165 of 2007, the Respondent No. 1 had approved the allotment of additional 1,00,000 sq. mtrs to the Petitioner and, thereafter, on 3rd April 2012, another 25,000 sq. mtrs was allotted thus, increasing the total allotment of built-up area upto 3,12,500 sq. mtrs. The Commencement Certificate upto the seventh floor level pertaining to the 3,12,500 sq. mtrs was issued only on 16th April 2014.

72. In a composite construction of this nature involving complex layouts, warranting multiple Commencement Certificates to be issued by the Respondent No. 1, it is inconceivable that the Lessee would adhered to two different timelines for construction of the original allotment and the additional built-up area, the construction whereof is to be carried out over the same plot and in respect of the same construction. Since the construction in this case was evidently and admittedly not severeable in nature,

therefore, we cannot but hold that there could only be one date of completion of the entire building "fit for occupation".

73. In view of the above discussion, we are also of the opinion that although a plinth Commencement Certificate was issued on 12th June 2008 granting permission to complete the construction only upto the plinth level, yet, in view of the pending Court proceeding, and operation of the interim order dated 15th October 2007 such certificate was not capable of being acted upon and, accordingly, was also not acted upon by the Petitioner. Thereafter, the Commencement Certificate for the entire building came to be issued on 16th April 2014. Therefore, commencement of construction only took place pursuant to the issuance of the Commencement Certificate dated 16th April 2014.

74. We also find from the materials on record that in view of the long continuation of the interim order dated 15th October 2007, the Petitioner wanted to surrender the additional built-up area of 72,500 sq. mtrs under the Supplementary Lease Deed dated 13th July 2007 but the said proposal was declined by the Respondent No. 1. On the contrary, on 8th November 2011, the Respondent No. 1 had issued a communication categorically

representing that there would be "no time-limit" for construction of the additional built-up area.

75. Further, by the communication dated 1st February 2012, the Respondent No. 1 had also confirmed that the period, during which, the stay order passed by the Court was in force, shall not be counted for computing the time-limit of four years.

76. The reflections made in the communication dated 8th November 2011 as well as 1st February 2012, in our opinion, clearly holds out a promise to the Petitioner by the Respondent No 1, based on which, the Petitioner had altered its position. Under such circumstance, the Respondent No. 1 cannot subsequently *resile* from such promise. Therefore, any action on the part of the Respondents to act contrary to the reflection made in the letters dated 8th November 2011 and 1st February 2012 prejudicially affecting the interest of the Petitioner would be hit by the doctrine of promissory estoppel and hence, would be liable to be interfered with by this court. (See ***Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh & Ors).***[6]

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6 (1979) 2 SCC 409.

77. It would be significant to note here-in that it is not a case where the construction was delayed due to negligence on the part of the Lessee. On the contrary, it appears from the materials on record that the construction was delayed due to delay in issuance of statutory approvals including environment clearance. Since even as per the terms and conditions of the Lease Deed, the construction cannot commence without the approval of the plan and issuance of the Commencement Certificate, hence, by a reasonable and harmonious construction of the Articles of the Lease Deed, we hold that, in such a case, the time line of four years for completing the construction under Article 2(d) ought to be computed from the date of issuance of the Commencement Certificate and not from any prior date.

78. Having regard to the facts and circumstances of this case, we find that even the condition precedent for invoking the Article 2(d) of the Lease Deed dated 1st September 2006 was not met in this case in as much as the construction of the original built-up area was evidently completed by the Petitioner within the period of four years from the date of issuance of the Commencement Certificate i.e. 14th April 2014 by the Respondent No. 1 after

excluding the period during which the interim order passed by the High Court was in force. As such, viewed from that angle also, in our opinion, there was no legal justification for the Respondent No.1 to insist on additional premium/penalty from the Petitioner under Article 2(d) on account of alleged delay in completing of the construction beyond the period of four years.

79. In the above context, it would be relevant to note here-in that, even if the provision of Article 2(d) of the Lease Deed dated 1st September 2006 is given full weightage, even then, the four years period for completing the construction reckoned from the date of executions of the Lease Deed would expire on 30th August 2010. The interim order passed by the Court on 15th October 2007 was vacated on 12th March 2012. Therefore, the said order had remained in force for a period of 4 (four) years 4(four) months and 26 (twenty six) days, i.e. 1610 days' in total. If the said period is added to the completion period, then in that event, even under Article 2(d), the Petitioner would be entitled for 8 years, 4 months, 226 days', with effect from 1st September 2006, to complete the construction without seeking extension of time. In view of the determination made here-in above, such period of 8

years 4 months 26 days will have to be counted from 14th April,2014 i.e the date on which the first effective Commencement Certificate facilitating the commencement of construction of the building was issued. If that be so, by such interpretation of the Clauses of the Contract, we are of the view that the time available to the Petitioner to complete the construction of the initial built up area, without seeking extension of time, would be till August 2022. In so far as the additional built up area is concerned, in view of the communication dated 8th November 2011, there would be no time restriction applicable for completing the construction of the additional built up area. As such, the question of seeking time extension for completing the construction of the additional built up area would not at all arise in the eyes of law.

80. After a careful examination of the documents brought on record, we find that there is no clarity as to on which date the construction of the entire built-up area of 3,12,500 sq. mtrs was actually completed by the Petitioner. The impugned Notice dated 12th September 2017 which had imposed additional premium/ penalty upon the Petitioner for delay of 7 years 12 days in completing the construction also does not furnish any relevant

particulars in support of the above allegation. The said notice also appears to be totally vague as regards basis for arriving at the conclusion that there was 7 years 12 days delay. It is also not clear, if the penalty was applied for the alleged delay in completing the construction of the total built-up area including the Additional Built-up Area or any part thereof.

81. Be that as it may, if the projection made by the Respondent No. 1 in the impugned notice dated 12th September 2017 is taken into account on their face value, even then, if such delay has been computed with effect from 30th August 2010 i.e. on expiry of 4 years from the date of execution of the Lease Deed dated 1st September 2006, the question of delay of seven years twelve days by excluding the period during which the interim order of the court was operating, would not arise in this case. We say so because there was substantial delay in granting statutory approvals and Commencement Certificate which period, in our view, would also have to be added to the time available to the Petitioner to complete the construction.

82. It is pertinent to note herein that the Respondent No. 1 had made recovery of substantial amount from the Petitioner as

additional premium/penalty for delay in completion of construction. However, a transparent procedure valid in the eyes of law has not been followed in the matter. This we say so because the Respondent No. 1 had never served any default notice to the Petitioner intimating that it would be liable to pay penalty due to delay and completion of construction. There was also no notice ever served upon the Petitioner indicating as to on which date, the four years period mentioned in Article 2(d) of the Lease Deed dated 1st September 2006, would come to an end. Such prior notice, in our opinion, was *sine- qua- non* in view of the intervening developments in the matter , particularly the operation of the interim order passed by this Court. Before demanding and/or recovering the amount of penalty, no Show Cause Notice was also required to be served upon the Petitioner giving it an opportunity to show cause as to why such penalty should not be recovered by the Respondents. However, no such notice was served. Therefore, the entire process of recovery, in our view, was not only conducted in a completely arbitrary, whimsical and capricious manner but the same was also in violation of the principles of natural justice.

83. It must be borne in mind then that in a matter of this nature where penalty is sought to be levied alleging default committed by a party, unless allegation is admitted, the recovery of penalty cannot be based on mere *ipse dixit* of the authority more so, if the controversy arises out of implementation of terms and conditions of a contract wherein the authority itself is a party. In such matters, the recovery would be permissible only after that controversy is resolved in accordance with the law.

84. In the above context, it would be pertinent to mention herein that even as per Rule 11(A) of the MMRDA (Disposal of Lands) Regulations 1977, no action to determine the lease could be initiated by the Metropolitan Commissioner without serving prior notice as regards specific breach of the covenants and conditions in respect of which, default has been alleged.

85. In so far as the undertaking given by the Petitioner to pay the additional premium/penalty and the consequent deposit of the amount of Rs 646,77,68,594 /- is concerned, it must be noted herein that the Writ Petitioner had not only objected to the demand for payment of additional premium/penalty for the alleged delay in completing the construction but had also

deposited the amount under protest, thereby, categorically conveying that the deposit was not made voluntarily or in discharge of its contractual obligation. Such protest was not only raised contemporaneously but the same was also in writing and unambiguous in nature, thus, putting the Respondent No. 1 on clear notice that the Petitioner has not accepted the decision in principle.

86. It also appears from the materials on record that apparently due to the pressure mounted by the Respondent No. 1 demanding payment of additional premium/penalty, the Petitioner was compelled to deposit the penalty as otherwise the Petitioner would not only be prevented from obtaining the Occupation Certificate thus, causing serious economical prejudice to its interest but the same would also expose the Petitioner to the risk of termination of the Lease. Since the Petitioner had evidently made the deposit of penalty under duress and under compelling circumstances, hence, the principles of waiver, estoppel and acquiescence would not operate against the Petitioner in this case. From the protest raised by the Petitioner, it was apparent that the Petitioner had reserved its right to agitate the matter at an appropriate time, thus, keeping

the cause alive. Therefore, we hold that the claim for refund of the amount made by the Petitioner would not be barred under the law merely on account of the undertaking given by it.

87. Section 72 of the Indian Contract Act provides that a person who receives payment made by the payee under coercion must repay or return the same.

88. In ***Fatima Khatoon Chowdrain vs. Mahmoed Jan Chowdhury*** *(1868) 12 Moo Ind App 65,* the Privy Council has held that payment made not voluntarily but under species of compulsion would be liable to be returned.

89. In ***Valpy vs Manley*** (1845) 1 CP 594, the Court of England & Wales has held that money paid under the constraint of threats to interfere with the legal right is sufficient to make it recoverable.

90. In ***Ram Kishen Singh vs. Dooli Chand*** (1881) 8 IA 93 before the Privy Council, it was held that if a person pays money to save his property which has been wrongly attached in execution, he is entitled to recover it.

91. Relying upon the case of ***Ram Kishen Singh*** (Supra), the Privy Council in the case of ***Kanhaya Lal vs The National Bank of India Limited***[7] has held that if a payment is made under protest and involuntarily, under coercion, the party making such payment would be entitled to claim refund of the same.

92. Materials on record unequivocally go to show that the deposit of penalty was dehors any proper demand raised in writing but was forced under the circumstances created by the Respondent No. 1, as noted above. Hence, by any stretch of reasonable reckoning, the deposit of the penalty as well as the undertaking, cannot be treated as voluntarily so as to prevent the Petitioner to seek refund of the amount in accordance with law.

93. In view of the foregoing discussion, we are of the un-hesitant opinion that the demand for payment of the penalty/additional premium for alleged delay in completing the construction was not maintainable under Article 2(d) & (e) of the Lease Deed. Moreover, such amount was realized by the Respondent No. 1 in a most arbitrary, high handed, unfair, and unreasonable manner by subjecting the Petitioner to undue

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7 1913 SCC Online PC 4.

pressure and threat of termination of the Lease, thus putting its business interest in peril. The Petitioner was made to deposit the amount of penalty under coercion. The imposition of the penalty was also not preceded by proper Show Cause notice thus, acting in clear contravention of the principle of natural justice. Therefore, consequences under the law on such counts must follow.

94. In the case of ***State of Punjab and Ors. vs. Dhanjit Singh Sandhu*** (Supra) relied upon by Dr. Saraf, the allottees of the land had accepted the terms and conditions of the allotment letter and also took possession but they did not raise any construction within the specified time, as a result of which, due to violation of specific condition, the authority wanted to go for resumption of the plot. In that case, the allottees, after availing the benefit of extension, had later on demanded refund. It was in such context that the Apex Court has held that as per the doctrine of "*approbate and reprobate*" a party cannot be permitted to "*blow hot and cold"* at the same time. In ***Atur Park-4 Co operative Housing Society Ltd. vs State of Maharashtra*** (Supra), the core question, as projected in paragraph 30, was as to whether, the Petitioner there-in could be the permitted to seek compensation and seek acquisition under

Fair Compensation Act for the land belonging to it which was affected by an adjoining road.In ***Dr Alvaro Alberto Mousinho De Noronha Ferreira*** (Supra), the controversy was as regards conversion of land from agricultural to non-agricultural land and the applicability of rates there-in. Therefore, the above decisions relied upon by Dr. Saraf in our view, are distinguishable on facts and as such, the same would not be of any assistance to the Respondents in the facts and circumstances of this case.

95. Having held as above, we deem it appropriate to record here-in that although the learned Counsel for the Petitioner has argued that this case is squarely covered by the decision rendered in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra),yet, the said assertion has been strongly contested by the Respondent's Counsel by submitting that in view of the observations made by the Hon'ble Supreme Court in the order dated 27th July 2020, no reliance can be placed on the said judgment on any count for the purpose of deciding the present Writ Petition. On a careful examination of the decision in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra) we also find that the said decision was rendered in the facts of that case. However, it is important to note here-in that

one of the question raised in the said proceedings was pertaining to the question as to whether, the decision of the MMRDA to apply the extension of time from 4 years to 6 years for completing the construction only to the post August 2015 was valid in the eyes of law, is also a question raised in the present proceeding. While answering the said question, it was held in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra), as follows:-

> "38. The MMRDA constituted a single member committee of retired Judge of the Supreme Court to decide whether the MMRDA should give concession in recovery of premium considering the time required for plot owner to obtain permissions from various authorities for construction of building thereon. It is contended that one member committee has concluded that the charging of premium for extension of time for completing construction in Bandra-Kurla Complex area, specifically in case where additional built up area has been allotted by the MMRDA, was illegal. In its 138th meeting held on 26th August 2015, the MMRDA had acknowledged the difficulties faced by the lessees and that the condition of completion of construction within 4 years of the execution of the lease was adversely affecting the tendering process. The MMRDA had appointed an expert one man committee of retired Supreme Court Judge in that regard. The single member committee has advised that the period of 6 to 7 years be granted for completion of construction.
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> 39. The lease deed entered into by the MMRDA with the lessees are as per form D, prescribed under the MMRDA (Disposal of Lands) Regulations 1977. Clause 2(a) of the lease deed provides that for building plans to be submitted to country and town planing division for approval within 3 months from the date of lease. Clause 2(c) of the lease deed provides that no work is to be carried out until all plans, elevations, specifications are approved by the concerned authorities. Clause 2(d) provides that within 3 months of the approval of plans, the lessee is to commence construction which is to be completed within four years of the lease. Clause 2(e) provided for extension of time. Clause 2(e) contemplates a situation when the time for completion of construction can be extended, parties to the

contract contemplated that certain uncertainties or situations may arise which may require more time for completion of the construction. In view of this, time is not essence of the contract between the parties and rightly so since construction of any building in Bandra Kurla Complex, several permissions are required from the various authorities and not only from the MMRDA who is planning authority for the Bandra Kurla area, namely,

(1) The environmental clearance under the Environmental Impact Notification from the Ministry of Environment and Forest.

(2) Building height clearance from the Ministry of Civil Aviation because of the close proximity to Airport.

(3) Clearance from the high rise committee.

(4) Permission from the the MCGM.

(5) Permission from the traffic police.

Each of these authorities is required to be approached separately since there is no single window clearance / nodal agency which would co-ordinate with the aforesaid authorities for granting of all necessary permissions. In view of the delay in obtaining permissions which are beyond the control of lessee, no work could be carried out as per clause 2(d) of the lease deed.

40. The MMRDA had issued a letter of allotment dated 20th March 2012 allotting additional 67,000 sq. meters at consideration of 984 crore. Part payment of Rs.196 crore was received on 20th March 2012. The supplementary lease deed was executed for additional built up area of 67,000 sq. meters. The letter of allotment dated 20th March 2012, the acceptance of part payment of consideration for additional built up area allotted, diluted the time period of four years and there was no question of application of condition of occupation certificate for built up area within 4 years when additional built up area was allotted for raising additional 11 floors on the same building.

41. The resolution passed by MMRDA for extending the time period for completing construction from 4 years to 6 years only for leases executed after 26th August 2015 also appears to be arbitrary, discriminatory, without basis and justification. The said set of circumstances are prevailing for the construction being carried out under the leases executed prior to 26th August 2015. Therefore, not extending this benefit of this extension of time from 4 years to 6 years to the prior leases in respect of other plots in the BKC, is completely arbitrary, discriminatory, capricious and violative of Article 14 of the Constitution of

> India. There is no reasonable basis or justification for this decision. The classification sought to be made between the leases prior and subsequent to 26th August 2015 is not founded on intelligible differentia and neither does this differentia has any logic, rational, nexus to the object sought to be achieved. The MMRDA has sought to treat equals as unequal. The lessees of plots are being discriminated on the basis of their date of execution of their leases. The lessees who are placed in similar circumstances prevailing for construction in Bandra Kurla area are entitled to equal treatment guaranteed under Article 14 of the Constitution of India.".

96. It is not in dispute that the Lease Deed involved in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra) was also in Form 'D' of the Regulations of 1977 wherein the same Articles 2 (d) and (e) were involved. The Writ Petitioner there-in was also a similarly situated lessee, from whom, penalty for delay in completing the construction beyond the period of 4 years was raised by the Respondent No 1. The Petitioner in that case had also raised identical plea as regards the applicability of the time extension Clause. The Lease Deed in that case was also executed prior to 26th August 2015. If that be so there can be no doubt about the fact that the legal principles discussed and the findings & observations recorded in paragraphs 38 and 41 of ***Raghuleela Builders,*** in so far as uniform applicability of the 6 years time extension clause is concerned, would be applicable to the facts of the present case as well. Therefore, we hold that by applying the principles parity, the Respondent No. 1 would be duty-bound to extend the same

benefit of extension of time for completion of construction to six years to the present Petitioner as well.

97. In the facts and circumstances of this case, we are also of the opinion that there is no legal justification for the Respondent No. 1 to confine the benefit of the time extension clause only to those Lease Agreements which were executed after 26th August 2015 as such an approach would be highly arbitrary and discriminatory in nature. Therefore, having regard to the peculiar facts and circumstances of this case, we do not find any justifiable ground to take a different view on the aforesaid issue.

98. Law is well settled that for maintaining judicial discipline and propriety, a decision rendered by a Coordinate Bench on the same issue must be respected and followed by a Coordinate Bench. In the case of ***Mary Pushpam vs. Televi Curusumary & Ors.***[8] the Hon'ble Supreme Court has observed that when a decision of a Coordinate Bench of the same High Court is brought to the notice of the Bench, it is to be respected and would be binding, subject to the right of the Bench of such co-equal forum to take a different view and refer the question to a larger Bench. In other words, any

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8 (2024) 1 SCR 11.

decision of a Coordinate Bench would be binding on a Bench of equal strength subject to the condition that if a different view is sought to be taken in the matter, then the issue would have to be referred to a larger Bench.

99. The above legal principle has taken a firm footing in the Indian Jurisprudence by a long line of judicial pronouncements. We do not deem it necessary to burden this judgment by referring to all those decisions. However, suffice it to mention here-in that unless there are justifiable grounds to take a different view in the matter warranting reference to a larger Bench, the previous decision of a coordinate Bench would be binding on a Bench of equal strength.

100. Consequently, it is held that notwithstanding Article 2(d) of the Lease Deed dated 1st September 2006, in view of the decision taken by the Respondent No 1 to extend the period of construction from four years to six years, the Petitioner, being a similarly situated Lessee, would also be entitled to six years' time for completion of the construction. Since, the Commencement Certificate for the entire built up area of 3,12,500 sq. mtrs. was issued by the Respondent No.1 only on 16th April 2014, as such,

we are of the opinion that the Petitioner would be entitled to six years' time period, with effect from 16th April 2014, for completing the construction for the simple reason that in view of the built-up area subsequently allotted to the Petitioner, there was no scope to commence construction of the composite construction prior to 14th April 2014. Therefore, adding the period of 4 years 4 month and 26 days, during which period, the interim order dated 15th October 2007 was in force, the Petitioner, in our opinion, would be entitled to total time period of 10 years 4 months 26 days with effect from 14th April 2014. Alternately, even if the period of 10 years 4 months 26 days is counted from 1st September 2006, i.e., the date of the Lease Deed, even then, the Petitioner would be entitled to such period of time for completing the construction of the initial built-up area without seeking extension of time. In so far as the additional built up area is concerned, in view of the communication dated 08/11/2011, as noted above, no time limit would at all be applicable for the construction of such built up area.

101. Therefore, we are constrained to hold that the condition precedent so as to invoke Articles 2(d) & (e) of the Lease Deed

Dated 1st September, 2006 was not met in this case. As such, we are also of the view that no additional premium/ penalty was either payable or recoverable from the Petitioner on account of delay in completing the construction.

102. For the reasons stated above, this Writ Petition succeeds and the same is hereby allowed in terms of payer clauses(a),(a)(i),(a)(ii)(a)&(b). The impugned Demand Notices dated 12/09/2017 and 13th June 2019 are accordingly, set aside.

103. Consequently, we hold that the Petitioner would be entitled for refund of the amount of Rs.646,77,68,594 (Rupees Six Hundred and Forty Six Crores Seventy Seven Lakhs Sixty Eight Thousand Five Hundred and Ninety Four) deposited as additional premium/ penalty for the alleged delay in completion of the construction. The Respondent No 1 is, therefore, directed to refund the aforesaid amount to the Petitioner within a period of 90 (ninety) days from the date of receipt of the Certified Copy of this order, failing which, the amount would carry interest at the same rate at which, interest was payable by the Petitioner under the Lease Agreement due to delay in paying premium, to be calculated from the date of this order till the date of the refund.

104. In so far as the Bank Guarantee(s) furnished by the Petitioner including that for an amount of Rs.13,12,54,85,287/- (Rupees Thirteen Hundred Twelve Crores Fifty Four Lakhs Eighty Five Thousand Two Hundred and Eighty Seven) the same shall be kept valid for a period of 90 (Ninety) days from the date of this order.

105. With the above observations, the Rule is made absolute.

106. The Writ Petition stands disposed of.

107. Parties to bear their own cost.

108. In view of disposal of the Writ Petition, nothing survives in the Interim Application and the same is disposed of accordingly.

(SUMAN SHYAM, J) **(CHIEF JUSTICE)**