Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2377 OF 2018

Sunteck Realty Limited,
(Formerly known as Starlight Systems (I) Private Limited and before that known as Starlight Systems (I) LLP) is a public limited company registered under the Companies Act, 1956 having its registered office at INS Building,
Rafi Marg, New Delhi 110 001. **...Petitioner**

~ versus ~

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

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

4. **The Additional Metropolitan Commissioner,**
Mumbai Metropolitan Region

Development Authority having its office at Plot C-14 & C-15 'E' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.

5. **The Land and Estate Manager,** Mumbai Metropolitan Region Development Authority having its office at Plot C-14 & C-15 'E' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.

6. **The Chief T & CP Division, Mumbai,** Mumbai Metropolitan Region Development Authority having its office at Plot C-14 & C-15 'E' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.

…Respondents

APPEARANCES

For the Petitioner	**Mr. Vikram Nankani, Senior Advocate**, with Mr. Karan Bharioke, Dr. Sujay Kantawala, Mr. Viraj Parikh, Mr Parag Kabadi, Ms. Vidhi Porwal & Ms. Anshita Sethi, i/b DSK Legal.
For Respondents-MMRDA	**Mr. Pravin Samdani, 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 Notice dated 9th September 2014 (Exhibit-S), the Petitioner has approached this Court *inter -alia* contending that the levy of penalty/additional premium by Respondent No.1–Mumbai Metropolitan Region Development Authority ("MMRDA") upon the Petitioner on account of delay in completion of construction is contrary to the terms and conditions of the Lease Agreement and, therefore, arbitrary and illegal. The facts and circumstances, giving rise to the filing of the present Writ Petition, shorn of unnecessary details, are as hereunder.

4. It appears from the record that this Writ Petition was originally instituted by M/s. Starlight Systems (I) LLP, which entity subsequently got converted into "Starlight Systems (I) Private Limited". Thereafter, in terms of the order dated 29th July 2024 passed by the National Company Law Tribunal ("NCLT"), Mumbai Bench in CP(CAA)281/MB-III/2023 in CA (CAA) 180/MB-III/ 2023, M/s. Starlight Systems (I) Private Limited was amalgamated

with M/s. Sunteck Realty Limited, i.e., the present Petitioner. In terms of the order dated 5th May 2025, amendments were carried out in the Writ Petition. Accordingly, M/s. Sunteck Realty Limited was substituted as the Writ Petitioner in place of M/s. Starlight Systems (I) LLP.

5. In the month of November 2005, the Respondent No. 1, being the owner of the land, had invited bids to lease out Plot Nos. R-1.2 and R-1.3 admeasuring 3533.40 sq. mtrs. and 3533.27 sq. mtrs., respectively, situated at the Bandra-Kurla Complex (BKC). On 30th December 2005, the original Petitioner had submitted its bid offering Rs.72,40,27,950/- (Rupees Seventy Two Crores Forty Lakhs Twenty Seven Thousand Nine Hundred Fifty only) for the Plot No. R-1.2 admeasuring 3533.40 sq. mtrs. and Rs.64,50,32,700/- (Rupees Sixty Four Crores Fifty Lakhs Thirty Two Thousand Seven Hundred only) for the Plot No. R-1.3 admeasuring 3533.27 sq. mtrs. (7,066.67 sq. mtrs. in total) aggregating to Rs.136,90,60,650/- (Rupees One Hundred and Thirty Six Crores, Ninety Lakhs Sixty Thousand Six Hundred and Fifty). The bid submitted by the Petitioner was accepted by Respondent No.1 in its 115th meeting held on 3rd February 2006

under Resolution No.1070, thereby agreeing to grant Lease in respect of Plot Nos. R-1.2 and R-1.3 admeasuring 7,066.67 sq. mtrs. in total to the Petitioner.

6. The Respondent No. 1, being a body corporate and an independent statutory authority, was competent to enter into contract so as to lease out land received by it by way of grant from the State Government. As such, on 27th July 2006, a registered Lease Deed was executed by and between the Petitioner and Respondent No.1, granting leasehold rights in respect of the aforesaid plots of land, for a period of 80 years, for construction of a building thereon with the permissible built-up area of 14,100 sq. mtrs. (Initial Built-up Area). The entire lease premium of Rs.136,90,60,650/- (Rupees One Hundred and Thirty Six Crores, Ninety Lakhs Sixty Thousand Six Hundred and Fifty only) was paid by the Petitioner prior to the execution of the Lease Deed.

7. Article 2(a) of the Lease Deed dated 27th July 2006 stipulates that no work shall commence till plans are approved by the Authority; Article 2(d) lays down that the construction shall be completed within a period of four years from the date of execution of the Lease Deed; Article 2(e) provides that failure to comply

with Article 2(d) would require extension of time, which may be permitted by the Metropolitan Commissioner on payment of additional premium at the prescribed rates.

8. After the execution of the Lease Deed dated 27th July 2006, possession of the plots were handed over to the Petitioner on 3rd August 2006. At that time, 2.00 FSI was available in 'G' Block of Bandra-Kurla Complex. Accordingly, construction over the land so leased was proposed within the permissible built-up area of 14,100 sq. mtrs. On 19th December 2006, building plans were submitted and application for Commencement Certificate ("CC") up to plinth level was made by the Petitioner. The Commencement Certificate ("CC") was eventually issued on 13th August, 2007 for carrying out construction by utilising the built up area of 14,100 sq. mtrs.

9. Upon commencement of excavation and foundation work, it was discovered that there were pre-existing underground reinforced cement concrete piles and sub-structures across the entire plot. It was further detected that earlier, a textile market building had been proposed on the same plots for which, pile foundation work had also been undertaken but the project was

later abandoned. The Writ Petitioner has alleged that there was no disclosure of the said fact by the Respondent No. 1 in the tender documents or in the Lease Deed.

10. In view of the pre-existing piles and sub-structures, excavation and foundation works undertaken by the Petitioner pursuant to the CC dated 13th August,2007 got materially affected. The Petitioner was, therefore, compelled to alter the structural design from pile foundation to open foundation. That apart, during the course of excavation, the Respondent No.1 had also under taken construction of an internal road abutting the plots. Consequently, the Petitioner had to temporarily back-fill soil to prevent collapse of the structures and thereafter, resume excavation, post-monsoon. In the above process, considerable time was lost for reasons which were not attributable to the Petitioner.

11. Situated thus, on 19th March 2008, the Petitioner had addressed a letter to the Respondent No.1 informing the authorities about the pre-existing piles while requesting for extension of time for completion of the construction without levy of premium. However, despite receipt of such request no decision on the same was communicated to the Petitioner.

12. In the meantime, the Government of Maharashtra had passed a Resolution dated 2nd May, 2008 enhancing the permissible FSI in 'G' Block of Bandra-Kurla Complex from 2.00 to 4.00. In view of the said Resolution, the Respondent No.1 had offered additional built-up area to the existing lessees.

13. With a view to avail the benefit under the Resolution dated 2nd May, 2008, the Petitioner had submitted amended plans on 29th August, 2008 proposing to incorporate two basements so as to consume the additional FSI which had become available in view of the aforesaid Resolution dated 2nd May,2008.

14. In the wake of the Resolution dated 2nd May 2008, on 10th September 2008, the Respondent No.1 had allotted two adjoining plots being R-1.1 and R-1.4 to the Petitioner. As such, by letter dated 4th December 2008, additional built-up area of 14,100 sq. mtrs. was allotted to the Petitioner against payment of Rs.92,07,30,000/- (Ninety Two Crores Seven Lakhs Thirty Thousand only). The amended Commencement Certificate was, thereafter, issued on 11th June 2009. Subsequently, in its 125th Meeting held on 3rd August 2009, the Respondent No.1 had further extended the scheme for allotment of additional built-up

area. Accordingly, by the letter dated 25th November 2009, further additional built-up area of 14,000 sq. mtrs. was allotted to the Petitioner against payment of Rs.91,42,00,000/- (Ninety One Crores Forty Two Lakhs only). In this manner, the total additional built-up area eventually allotted to the Petitioner was 28,100 sq. mtrs., thus, increasing the total permissible built-up area in the same building from 14,100 sq. mtrs to 42,200 sq. mtrs.

15. In the wake of allotment of the additional built-up area, as aforesaid, the Petitioner was required to submit revised plans and also apply for clearance/approval from the other statutory authorities so as to consume the additional built up area on the same plot and within the same building. However, the said process could move ahead only after receipt of Environment Clearance. The revised environmental clearance applied for by the Petitioner was granted on 14th June 2011, revised height clearance from the Airports Authority of India was granted on 7th December 2010 and revised clearance by the High-Rise Committee was granted on 5th March 2014.

16. On 13th April 2010, the Respondent No.1 had granted permission for amalgamation of Plot Nos. R-1.2 and R-1.3 with

the adjoining Plot Nos. R-1.1 and R-1.4 for joint development of the plot as a single larger plot with a common Commencement Certificate.

17. On 25th June 2010, the Petitioner addressed a letter to the Respondent No. 1 seeking extension of time for completion of construction of the Initial Built-up Area, till December 2013. However, on this occasion also, no decision, on such request for extension of time was communicated to the Petitioner.

18. On 29th July 2011, further Commencement Certificate was issued to the Petitioner, permitting construction of the proposed total built-up area of 28,332.04 sq. mtrs. Based on the same, construction up to the 7th floor, corresponding to the Initial Built-up Area of 14,100 sq., mtrs. was completed by the Petitioner on 18th February 2014 which fact is discernible form the architect's certification.

19. Since the Respondent No 1 was demanding payment of additional premium/penalty for granting extension of time, hence, on 21st January 2014, a meeting was held between the Petitioner and the officers of Respondent No.1 to discuss the issue.

Thereafter, an undertaking dated 23rd January 2014 was submitted by the Petitioner agreeing to pay the additional premium as a condition for issuance of further Commencement Certificates. However, by issuing letter dated 6th February 2014, the Petitioner had set out the reasons for the delay in completing the construction which included pre-existing piles and revised approvals.

20. In response to the above, by letter dated 18th February 2014, the Respondent No.1 had called for further particulars, which were also furnished by the Petitioner on 3rd March 2014.

21. On 23rd May 2014, the Respondent No.1 had issued further Commencement Certificate for construction upto 2nd level basement+part silt and part ground+podium+service floor+ 1st to 17th floors above plinth level. However, a condition was imposed in the said Commencement Certificate to the effect that additional lease premium for extension of time shall be paid by the Petitioner before issuance of Part Occupation Certificate as assured in the letter dated 14th April,2014. The Petitioner applied for Part Occupation Certificate on 30th May 2014.

22. It appears that in response to the request made by the Petitioner for extension of time to complete the construction, the Respondent No. 1 had taken a decision to grant extension of time for the delay of 11 months on condition of payment of additional premium of Rs.52,80,98,641/-. Accordingly, the Petitioner had addressed letter dated 4th September 2014 depositing the additional premium of Rs.52,80,98,641/- (Rupees Fifty Two Crores Eighty Lakhs Ninety Eight Thousand Six Hundred and Forty One only) under protest and without prejudice to its right to contest the aforesaid decision as well as for getting the benefit of extension of time from four years to six years. In the said letter, the Petitioner had once again highlighted the reasons for the delay which were not attributable to the Petitioner.

23. By the communication dated 9th September 2014, the Respondent No.1 had informed the Petitioner that extension of time for completion of construction was being granted upto 6th June, 2014 subject to payment of additional premium, calculated at the rate of 10% of the lease premium. The said communication had further clarified that the additional premium payable had been adjusted against the amount of Rs.52,80,98,641/- (Rupees

Fifty Two Crores Eighty Lakhs Ninety Eight Thousand Six Hundred and Forty One only) earlier paid by the Petitioner on 4th September, 2014 towards the said demand, together with interest, after deduction of TDS amounting to Rs.1,24,88,251/- (Rupees One Crore Twenty Four Lakhs Eighty Eight Thousand Two Hundred and Fifty One only) on the interest component.

24. Thereafter, Part Occupation Certificate up to the 7th floor was issued on 17th October 2014. Subsequently, full Occupation Certificate in respect of the building came to be issued on 9th November 2015.

25. Having regard to the nature of controversy involved in this proceeding, we deem it appropriate to reproduce the impugned letter dated 9th September 2014 as hereunder for ready reference:-

EXHIBIT = 'S'
MUMBAI METROPOLITAN REGION DEVELOPMENT AUTHORITY

No.LC/BKC(G)SSILLP/R1.2 & R1.3/1263/2014 Date: 09/09/2014

To,
M/s. Starlight Systems (I) LLP,
5-9th Floor, Housefin Bhavan,
C-21, Bandra-Kurla Complex,
Bandra (East), Mumbai – 400 051.

Sub: Allotment of Plot No. R1.3 in 'G' Block of BKC
-Grant of extension in completing the construction of the building.

Ref.: Your letter addressed to Town & Country Planning Division, dated 25/06/2010.

Sir,

With reference to your letter under reference on the subject mentioned above, I am directed to inform you that the Plot No.R1.2 & R1.3 in 'G' Block of BKC has been allotted to you under the Lease Deed executed on 27/07/2006. The Article 2(d) and 2(e) of the said Lease Deed provides that the Lessee has to commence and complete the construction work of the building on the leased plot within a period of 4 years from the date of lease and if it could not be completed within the said period for the reason beyond control of the Lessee, the Metropolitan Commissioner is empowered to permit extension of such time on payment of additional premium@25% for 1st year, 35% for 2nd year & 40% for 3rd year. The stipulated construction period of 4 years has been expired on 26/07/2010.

2. The Authority vide its Resolution No. 1140 & 1227 passed in its 120th & 126th meeting held on 24/12/2007 & 09/02/2010 respectively has given its approval to revise the rate of additional premium to be charged for extended period in completing the construction on the building as follows:-

a) To revise the rate of additional premium to be charged for extended period in completing the construction as per Article 2(e) of the Lease Deed as follows:-

i)	All the Govt. & Public Sector	- 5% of the lease premium per year till they complete the construction.
ii)	Semi Govt. & Public Sector Organizations and Private Sector Organizations	- i) Upto 3 years - 10% of the lease premium per year. ii) Beyond 3 years till they complete the construction -15% of the lease premium per year.

b) To charge the additional premium in proportion to the built-up area of which construction is incomplete i.e. to exclude the built-up area of which OC is issued.

c) To charge the additional premium proportionately for the extended period of completion of the construction.

3. You are further informed that after due consideration of the issue represented by you about excavation of the Piles exists in the plot under reference & further request made to exclude the period required for excavation of the said Piles, the time lost by virtue of demolition of existing piles, foundation and resorting to open foundation were submitted to Town & Country Planning Division of this Authority and on confirmation by them in consultation with Engineering Division of this Authority & as recommended by them the Hon. Metropolitan Commissioner has given approval to condone the delay in completing the constructions of building on the plot under reference for a period of 11 months from 27/07/2010 to 26/06/2011.

4. The Cliet Town & Country Planning Division of this Authority has informed that the date of completion construction upto 7th floor on the plot under reference within the basic FSI as per Lease Deed is 06/06/2014.

5. Considering the above, the Metropolitan Commissioner is pleased to grant you an extension in completing the construction of the building intended to be constructed on the Plot as stated above for a period from 27/06/2011 to 06/06/2014 by charging additional premium @ 10% of the lease premium p.a. payable in advance in proportion of the extended period.

6. You are also further informed that the payment of Rs.51,56,10,426/- made by you vide Receipt No.847110, dated 04/09/2014 being an amount of additional premium along with interest after deducting TDS on the interest being Rs.1,24,88,215/- has been adjusted as shown in the statement enclosed with this letter & there is an excess amount of Rs.181/- paid by you towards interest.

7. This letter issue with the approval of the Metropolitan Commissioner.

Yours faithfully,
Sd/-
(S. K. Desai)
LANDS & ESTATE MANAGER (I)
MMRDA

26. It would be significant to note here-in that on 5th November 2015, a Supplementary Lease Deed was executed by and in

between the parties, incorporating the stipulation that the additional built-up area was an integral part of the demised premises. Article 5 of the Supplementary Lease Deed had *inter alia* mentioned that there is "no time-limit", for completion of construction of the building by using the additional built-up area.

27. It further appears that in view of delay caused in securing various statutory approvals for carrying out the constructions, the Respondent No 1, in its 131st Meeting held on 22nd October 2012, had considered granting extension of time to the Lessees for completion of the construction from four years to six years, Ultimately, in its 138th Meeting held on 26th August 2015, the Respondent No.1 had adopted Resolution No. 1347 to amend Article 2(d) so as to provide time upto 6 (six) years for completion of construction, but made the same applicable only to the lease deeds executed after 26th August 2015.

28. The Petitioner had submitted a representation dated 20th February 2018 seeking revocation of the Notice dated 9th September 2014 and had also sought refund of sum of Rs.52,80,98,641/- with interest. However, there has been no response to the said request.

29. Under the aforesaid circumstances, the present Writ Petition has been filed assailing the Notice dated 9th September 2014, thus seeking a direction from this Court for refund of the amount of Rs.52,80,98,641/- paid as penalty/additional premium by the Petitioner under protest for granting extension of time for completion of the construction.

30. The Respondents have filed Reply *inter -alia* questioning the maintainability of the Writ Petition. The case of the Respondents, in essence, is that the Writ Petition is barred by delay and laches; that the Petitioner had efficacious alternative remedy as per Section 44 of the MMRDA Act read with Rule 5 of the Rules of 1976; that the Writ Petition is liable to be dismissed on account of suppression of material facts; that the Writ Petition is a "camouflage" challenge to the policy decision of the State without challenging the corresponding statutory provision; that the extension of time for completion of construction can be granted only on payment of additional premium/penalty as per Articles 2(d) and 2(e) and, therefore, the Petitioner cannot claim extension of time without paying the premium; that the provision in the Supplementary Lease Deed would not override the

provisions of Article 2(d) of the original Lease Deed and, therefore, the same would be binding on the Petitioner; the construction of the basic built-up area should and ought to have proceeded independently and completed within a period of four years from the date of signing of the Lease Deed; Since the Petitioner had voluntarily requested for extension of time and had also given an undertaking to pay the additional premium, hence, the Petitioner cannot now question the action of the Respondent No. 1; that the "no time limit" clause in the Supplementary Lease Deed did not vary the terms and conditions of the original lease agreement.

31. This Writ Petition was analogously heard along with three other Writ Petitions being Writ Petition No. 864 of 2018, Writ Petition No. 242 of 2018 and Writ Petition No. 3209 of 2017, involving similar issues whereby, identical reliefs were sought by the Writ Petitioner(s).

32. Mr Vikram Nankani, learned Senior Counsel appearing for the Writ Petitioner has referred to the documents available on record to submit that the demand of additional premium for a sum of Rs.52.80 crores (approx) on account of alleged delay in

completing the construction is wholly arbitrary, illegal and, hence, unsustainable in the eyes of law in as much as such a demand is wholly untenable in view of Article 5 of the Supplementary Lease Deed dated 5th November 2015. The learned Senior Counsel further submits that the Supplementary Lease Deed was executed by and in between the parties for incorporating the additional built-up area (BUA) by integrating the same in the same construction. He submits that Article 5 of the Supplementary Lease Deed unambiguously dispenses with the time limit for completing the construction as provided under Clause 2(d) of the Original Lease Agreement dated 27th July 2006. Therefore, in view of Article 5, the Respondent No. 1 did not have any authority or right under the law to recover any amount as additional premium/ penalty for the delay in completion of the construction.

33. It is also submitted by Mr Nankani, learned Senior Counsel that the delay, if any, in completing the construction is due to factors such as undisclosed existence of old underground RCC piles in the site, delay in approving the building plans and issuance of Commencement Certificate as well as due to significant changes in the construction plan due to the allotment

of additional built-up area. Therefore, the Petitioner cannot be held responsible for the delay in completing the construction on any ground.

34. Mr Nankani, has further argued that the case of the Petitioner is squarely covered by the earlier decision of this Court rendered in the case of ***Raghuleela Builders Pvt. Limited and Anr. vs. The Mumbai Metropolitan Regional Development Authority & Ors.***[1] wherein, in identical fact situation and under similar circumstances, this Court, by interpreting similar clauses in the Lease Deed, has held that the demand for additional premium for time extension on account of delay in completing the construction was arbitrary and illegal and, accordingly, struck down such demand.

35. The learned Senior Counsel for the Petitioner has also submitted that in view of the leave granted by the Hon'ble Supreme Court in order dated 27th July 2020 passed in Special Leave to Appeal (C) No(s) 6411/2020, it was open for the Petitioner to rely upon and refer to the decision in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra) to contend that the said decision

---

1 (2020) (1) ABR 397: 2019 SCC OnLine Bom 4529.

of this Court, which has attained finality in the eyes of law, would be applicable to the facts and circumstances of this case as well. Therefore, the Writ Petition be allowed in terms of prayer clauses (a) and (b).

36. Responding to the above arguments, Mr Samdani, learned Senior Counsel appearing for the Respondents has questioned the maintainability of the Writ Petition by *inter-alia* contending that the Writ Petition involves disputed questions of facts. The same is also hit by delay and lache and barred under the law of limitations. According to Mr. Samdani the amount of additional premium, having been levied in terms of specific clause contained in the Lease Deed, read with the provisions of Mumbai Metropolitan Region Development Authority (Disposal of Land) Regulations, 1977 (hereinafter referred to as "Land Disposal Regulations") as well as the Mumbai Metropolitan Region Development Authority Act, 1974 (hereinafter referred to as "MMRDA Act"), the same was not assailable by filing this Writ Petition.

37. It has been further argued by Mr Samdani that the demand made by the Respondent No.1 is statutory in nature and is in

terms of model form of lease, i.e. form 'D' to the Land Disposal Regulation. Therefore, the same cannot be challenged in a Writ Petition. He, has further argued that by filing the instant Writ Petition, the Petitioner is indirectly assailing the provisions of the MMRDA Act as well as the Regulations framed thereunder, in a manner which is impermissible in the eyes of law.

38. The learned Senior Counsel for the Respondents has further argued that the parties are bound by the terms of the Lease Deed as well as the Supplementary Lease Deed, the terms and conditions of which are, enforceable in the eyes of law. Therefore, the Petitioner cannot be permitted to seek relief which is contrary to the terms and conditions of the Lease Deed, so as to frustrate the claim of the Respondent No.1. Mr Samdani has summed up his arguments by contending that this is not a case where the fundamental rights of the Petitioner under Article 14 of the Constitution has been infringed in any manner. In the absence of any challenge to the specific provision of the Lease Deed, the Petitioner cannot be permitted to go behind the terms and conditions of the Deed and take a stand which is contrary to the express conditions of the Lease Deed.

39. In support of his above arguments, Mr Samdani, learned Senior Counsel, has relied upon he following decisions:-

(a) *Bank of Baroda, Mumbai & Anr vs. Mumbai Metropolitan Regional Development Authority & Ors.*[2]

(b) *Assistant Excise Commissioner & Ors. vs. Issac Peter & Ors.*[3]

(c) *State of UP & Ors. vs. Chaudhari Ran Beer Singh,*[4]

(d) *Goetze (India) Ltd. vs. Employees State Insurance Corporation*[5]

(e) *Transmission Corporation of Andhra Pradesh Ltd. & Anr. Vs. Sai Renewable Power Pvt. Ltd. & Ors.*[6]

(f) *Banda Development Authority, Banda vs. Motilal Agarwal & Ors.*[7]

(g) *Punjab Financial Corporation vs. Surya Auto Industires*[8]

(h) *Joshi Technologies International IBC vs. U.O.I. & Ors.*[9]

(i) *The Godhra Electricity Co. Ltd. & Anr. vs. The State of Gujrat & Anr*[10]

(j) *Dhanraj vs. Vikram Singh & Ors.*[11]

(k) *Dalip Singh vs. State of U.P & Ors.*[12]

---

2 2010 (3) Mh. L.J.

3 (1994) 4 SCC 104.

4 (2008) 5 SCC 550.

5 (2008) 8 SCC 705.

6 (2011) 11 SCC 34.

7 (2011) 5 SCC 394.

8 (2010) 1 SCC 297.

9 (2015) 7 SCC 728.

10 (1975) 1 SCC 199.

11 2023 SCC OnLine SC 724.

12 (2010) 2 SCC 114.

Plea regarding Maintainability of the Writ Petition :-

40. 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, violative of the fundamental rights of the Petitioner under Article 14 of the Constitution, we are of the view that the issues raised in the Writ Petition have an element of public law character.

41. In the case of ***Joshi Technologies International IBC vs. U.O.I. & Ors.*** (Supra), relied upon by Mr Samdani, 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.

42. 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.

43. 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.

44. 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.

45. In ***Banda Development Authority, Banda vs. Motilal Agarwal & Ors.*** (Supra), relied upon by Mr Samdani, 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.

46. 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 "other authority" within the meaning of Article 12 of the Constitution of India.

47. 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***,[13] it was pointed out that Article 14 would strike at arbitrariness in State action and ensure fairness and equality of treatment.

48. The present is not a proceeding *simpliciter* for enforcing a money claim but raises significant questions pertaining to the

13 (1974) 4 SCC 3.

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.

49. 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.

50. 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.

51. 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.

52. 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.

53. 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."

54. 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.

55. 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 different fact situation, 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.

56. It is to be noted herein that the question of maintainability of a Writ Petition is a mixed question of law and facts. Therefore, the question of maintainability of the Petition 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, hence, for the sake of maintaining uniformity in judicial decision, we are not inclined to non-suit the Writ Petitioner merely on the plea of maintainability as raised by the Respondents.

On Merits:-

57. 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 27th July 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 27th July 2006 would be relevant and therefore, the same are being reproduced herein-below for ready reference:-

> "2. *The lessee hereby agrees to observe and perform the following conditions that is to say:*
>
> (d) *Time limits for commencement and completion of construction work:* That the Lessee shall within three months from the receipt of approval of his plans and specifications of building or buildings intended to be erected on the 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, to the satisfactions of the Metropolitan Commissioner and confirming to the building lines marked on the plan hereto annexed, and the Development Control Regulations and Building Regulations, build and completely finish, fit for occupation a building to be used as building with all requisite drains and other proper convenience thereto.
>
> (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 building or otherwise development 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 premium
> Between 1 and 2 years _____ 35 percent of the premium
> Between 2 and 3 years _____ 40 percent of the premium
>
> (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) hereinbefore, the 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 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 have given to the Lessee or left on some part of the demised premises a notice 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 a notice on him on the notice being left on the demised premises."

58. Although, time limit of four years for completion of the construction was imposed by clause 2(d) of the Lease Deed dated 27th July 2006, yet, we find that after the allotment of the additional built-up area, the time limit for carrying out the construction by using such additional built up area had been done away with by inserting Article-5 in the Supplementary Lease Deed dated 5th November 2015, which is reproduced herein-below for ready reference:-

> "5. The Lessee vide its letters dated 21st November, 2008 & 23rd November, 2009 requested the Authority to allot additional built up area of **14100 sq. mtrs. & 14000 sq. mtrs**, respectively on the said land leased to them as stated hereinbefore and the Authority vide its letters dated 4th December 2008 & 25th November 2009 have offered **14100 sq. mtrs. & 14000 sq. mtrs.** additional built up area respectively (hereinafter called as **"the said additional built up area"**), a copy whereof is annexed hereto as **"Annexure-IV/A & IV/B"**, for a premium of Rs. 92,07,30,000/- (Rupees Ninety Two Crore Seven Lakh Thirty Thousand Only) for additional built up area of 14100 sq. mtrs. & Rs.91,42,00,000/- (Rupees Ninety One Crore Forty Two Lakhs Only) for additional built up area of 14000 sq. mtrs. payable in one installment or 20% of the premium as First Installment and balance premium in four equal annual installment with simple interest @ 10% p.a. and delay in payment of installments shall attract penal interest at the prevailing Prime Lending Rate (PLR) decided by the Reserve Bank of India on the total amount due. Further there is no time limit for construction of the said additional built up area and the Lessee herein shall be at liberty to transfer the entire said allotted additional built up area subject to the provisions of the said lease deed, however there is no time limit for construction of the said additional built up area."
>
> *(emphasis supplied)*

59. 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 cannot

commence until receipt of all statutory approvals including the approval of building plan etc. 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 and time line for granting of such approval by the authority.

60. 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 the Commencement Certificate cannot be issued. Unless the Commencement Certificate is issued by the Authority, the construction work also 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.

61. 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 (d) in case, there is delay in granting of statutory approvals. 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 option to complete the construction within the stipulated time. Yet, 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.

62. From the facts alluded to above, it is clear that as per Article 2(d) of the Lease Deed dated 27th July 2006, there was an obligation on the Petitioner to commence and complete the construction within a period of four years form the date of the Lease. However, according to the Petitioner, there was delay in commencement of construction for various reasons, including non-

disclosure by the Respondent No. 1 that there were pre-existing underground piling on the plot of land due to a previous construction, as a result of which, the Petitioner had to abandon the underground piling work and, thereafter, raise open foundational piles, which had resulted not only in substantial change in the construction plan but the same had also consumed extra time for which the Petitioner was not responsible. The assertion made by the Petitioner on the above count have not been denied by the Respondents in their counter Affidavit.

63. It must further be noted herein that the commencement and completion of construction work, as per Article 2(d) of the Lease Deed dated 27th July 2006, would be possible only when the Respondent No. 1 provides the plot of land, which is ready in all respect for commencement of construction to be followed by approval of the building plans etc by the Respondent No 1. As a matter of fact, as mentioned above, Article 2(c) of the Lease Deed itself stipulates that no work shall be commenced or carried on in contravention of any of the Development Control Regulation and Building Regulation or until the plans, elevations, sections, specifications and details have been approved. To the above

extent, it cannot be denied that there was a reciprocal obligation on the Respondent No. 1 not only to provide the plot of land, in a condition which was ready for commencement of construction but the building plan is also sanctioned expeditiously.

64. The Respondent No. 1 was also under an obligation to disclose the fact as regards pre-existing underground pile which would have a material bearing on the timeline of the construction. However, it is not in dispute that the Respondent No. 1 had failed to disclose the same to the Petitioner at the time of execution of the Lease Deed. It is the pleaded case of the Petitioner that because of the pre-existing underground pile, it had become impossible for the Petitioner to commence the construction as per the original timeline stipulated in Article 2(d) since the construction could not move forward without either removing the underground piles or a change in the plan. The first question that would, therefore, arise for consideration of this Court is, as to whether, having failed to discharge its reciprocal obligation in providing the plot in a condition which was ready for commencement of construction, can the Respondent No. 1 seek refuge under Article 2(d) and (e) of the Lease Deed to demand

penalty from the Petitioner for the delay in completing the construction?

65. In order to answer the said question, it would be significant to note herein that the Lease Agreement dated 27th July 2006 is not merely an Agreements for construction of a building but is a Deed of Lease within the meaning of Section 105 of the Transfer of Property Act 1882, thus creating right and interest of the Lessee over the demised property. The relationship between the parties under the Lease Deed would be that of landlord and a tenant. Therefore, as long as the Lessee pays the lease rent and/or premium, as the case may be, and does not violate any of the terms and conditions of the Lease Deed, the right of the Lessee to enjoy the property shall stand protected under Section 108 of the Transfer of Property Act, 1882.

66. Section 108(a) of the Transfer of the Property Act, 1882 dealing with the rights and liabilities of Lessor and Lessee reads as follows:-

> "**108. Rights and liabilities of lessor and lessee.**— In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities

> mentioned in the rules next following, or such of them as are applicable to the property leased:—
>
> *(A) Rights and liabilities of the lessor*
>
> (a) the lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover."

67. From the language employed in Section 108(a) of the Transfer of Property Act, 1882 it is apparent that the Respondent No. 1 was duty-bound to disclose to the Petitioner that there were pre-existing underground piling in the land, which fact was not within the knowledge of the Petitioner at the time of submitting the bids or executing the Lease Agreement. The aforesaid fact was discovered by the Petitioner at a much later stage, i.e., only when the excavation work had commenced. Therefore, it is established beyond doubt that the Respondent No. 1 had failed to discharge its obligation under Section 108(a) of the Transfer of Property Act, 1882. If that be so, consequences under the law would undoubtedly ensue.

68. Law is settled that a party, which is responsible for causing the delay leading to breach of a condition in the contract cannot invoke the penalty clause or terminate the contract on such count. The aforesaid rule is based on the legal maxim *"Nullus*

commodum capere potest de injuria sua propria", which means no man can take advantage of its own wrong [see Ashok Kapil vs Sanaulla (dead) & Ors., reported in (1996) 6 SCC 342]. The said doctrine does not permit a party to the contract responsible for the breach to invoke the penalty clause or to claim liquidated damage against the other party.

69. Under the "doctrine of prevention", if the performance of condition of a contract by one party is unduly prevented by the other, the condition would be deemed to have either been satisfied or waived.

70. Dealing with the question as to whether a promisee would be entitled to liquidated damages, if by his own act or omission, he has prevented the promisor for completing the work within the date of completion, the Hon'ble Supreme Court has made the following observations in paragraph 34 in ***Welspun Specialty Solutions Ltd.*** *(formerly known as Remi Metals Gujarat Limited)* ***vs Oil and Natural Gas Corporation Limited***[14]:-

> "34. In order to consider the relevancy of time conditioned obligations, we may observe some basic principles:

---

14 (2022) 2 SCC 382.

> (a) Subject to the nature of contract, general rule is that promisor is bound to complete the obligation by the date for completion stated in the contract. [Refer to Percy Bilton Ltd. v. Greater London Council, [1982] 1 WLR 794(HL)].
>
> (b) That is subject to the exception that the promisee is not entitled to liquidated damages, if by his act or omissions he has prevented the promisor from completing the work by the completion date. [Refer Holme v. Guppy, (1838) 3 M & W 387]
>
> (c) These general principles may be amended by the express terms of the contract as stipulated in this case."

71. Section 53 of the Indian Contract Act, 1872 provides that in a contract containing reciprocal obligation, when one party prevents the other from performing the same, the contract would become voidable at the option of the party so prevented. The preventing party is also liable to make compensation for any loss.

72. What follows from the above is that even if it is held that demand of additional premium/ penalty for delay in completing the construction beyond fours from the date of execution of the Lease Deed is treated as a component of liquidate damage under Article 2 (d) yet, the Respondent No. 1 would not be entitled to recover the same, if it had, in any manner contributed to the delay.

73. It is no doubt correct that accepting the responsibility on account of failure on the part of the Respondent No 1 to disclose about the pre-existing underground piles affecting the excavation

work and upon consideration of the issues represented by the Petitioner on such count, the Metropolitan Commissioner, by the Notice dated 9th September 2014, had condoned the delay in completing the construction for 11 months i.e. upto 26th June 2011, without levying any penalty. However, the communication dated 09/09/2014 indicates that for granting extension of time for completing the construction from 27th June 2011 to 6th June 2014 additional premium @ 10% of the lease premium had been levied upon the Petitioner.

74. In the above context, it would be significant to note here-in that as per the Certificate dated 18th February,2014 (Exhibit- "O") issued by the Architect engaged by the Petitioner, the construction of 2 basements + stilt+ podium+ service floor+ 7 upper floors were completed on 18th February,2014. Such construction was evidently carried out by utilizing the initial built up area of 14,100 sq mtrs. In the reply affidavit, the Respondents have denied that the construction of initial BUA was completed on 18th February,2014 and has further denied the receipt of the said letter 18th February,2014. However, there is no specific averment in the reply affidavit stating as to, if not on 18th February,2014, on which

date had the Petitioner completed the construction of the initial Built up Area.

75. It is to be noted here-in that Article 2(d) of the Lease Deed dated 27th July 2006 was incorporated keeping the initial built up area of 14,100 sq. mtrs in mind and not the additional built up area allotted subsequently for which the Supplementary Lease Deed was executed. As such, the said article can at best have relevance with regard to the period for completion of construction of the initial built up area and no further. Therefore, in view of Article 5 of the Supplementary Lease Deed dated 5th November, 2015, no time restriction could be enforced by the Respondent No 1 on completion of the construction by using the additional built up area. For the said reason, it was incumbent upon the Metropolitan Commissioner to deal with the issue of delay in the light of Article 5 before imposing any penalty upon the Petitioner. However, there is no reference to Article 5 in the communication dated 9th September 2014 nor is there any mention as to the basis on which relaxation of time was granted only for 11 months without levying any penalty.

76. From the Commencement Certificate dated 29th July,2011 (Exhibit-"J") we find that commencement of construction of 2 level basement+ stilt+ podium+ service floor + 15 upper floors pertaining to total built up area of 28,332.04 sq mtrs as against the total permissible built up area of 42,200 sq mtrs was issued only in the month of July,2011 after considering the 12 amended drawing submitted by the Petitioner. The Commencement Certificate dated 29th July,2011, which was issued beyond the period of four years from the date of execution of the Lease Deed, was evidently for carrying out construction of composite nature on the same building. If that be so, it is not clear as to on what basis, relaxation of time without imposing penalty was granted only for 11 months i.e. till 26th June 2011. In a construction of this nature involving multiple Commencement Certificates issued at different stages due to allotment of additional built up area, it would be wholly impracticable and irrational to expect the Petitioner to complete the construction of the entire building within 26th June 2011 when the Commencement Certificate itself was issued on 29th July 2011.

77. That apart, there is also no determination as to the effect that the pre-existing foundational piles would have on the over-all time -line for competition of the construction, which in our view, ought to have been considered by the Respondent No 1 and reasons recorded in support of the decision to confine the relaxation of time only to 11 months.

78. It would be further significant to note that the Respondent No 1 had demanded and realized the additional premium as a penalty for breach of Article 2(d) of the Lease Deed on account of alleged failure on the part of the Petitioner to complete the construction with-in four years. However, no prior notice was ever served upon the Petitioner before realizing the amount. Not only that, there was also no default notice or notice of termination of the lease deed ever served by the Respondent No 1 as a result of which the Petitioner was denied of a reasonable opportunity to put forth its version before the amount of penalty was realized and/or adjusted. The arbitrary and high handed approach of the Respondents is further evident from the mere fact that the amount of additional premium was not only demanded but even adjusted/ realized from the Petitioner even before issuance of the

communication dated 9th September 2014 by means of which, the decision of the Respondent No.1 on the request for extension of time, without levy of penalty, was formally communicated to the Petitioner.

79. From the materials available on record, it is apparent that the petitioner had never accepted the demand for payment of additional premium made by the Respondent No.1 for the alleged delay in completing the construction but had all along objected to the same by contending that the delay was on account of factors beyond its control. Such plea, in the opinion of this court, deserved due consideration and proper answer by the Respondent No.1 before realizing the amount of penalty.

80. Demand for recovery of penalty on the ground of breach of terms of the lease agreement, which involves legal disputes, cannot be based on mere *ipse dixit* of one of the parties to the contract but such claim can be enforced only upon determination of the controversy in accordance with law. However, in the present case, there was no such determination. Therefore, the recovery/ adjustment of the penalty by the Respondent No 1, in our view,

was in clear violation of the principles of natural justice and administrative fair play.

81. It is also to be noted herein that although the Respondent No. 1 had allotted the additional plots of land being R-1.1 and R-1.4 for carrying out conjoint development of the plots as a singular plot along with Plot No. R-1.2 and R-1.3, yet, the Supplementary Lease Deed dated 5th November 2015 facilitating the construction thereon by dispensing with the time restriction, was executed only on 5th November 2015. From the projections made in the communication dated 9th September 2014, it appears that the construction was completed on 6th June 2014. However, curiously enough, the Supplementary Lease Deed containing Article 5, which removes the time limit for completing the construction, was signed on a date which was subsequent not only to the deposit of the additional premium/penalty by the Petitioner but also to the issuance of the communication/notice dated 9th September 2014, by means of which, such penalty was adjusted, thereby leaving no scope for the Petitioner to avail the benefit under Article 5 of the Supplementary Lease Deed. Therefore, the manner in which the amount of penalty had been recovered from

the Petitioner by circumventing the provisions of Article 5 of the Supplementary Lease Deed raises a serious doubt as to the *bonafide* of the Respondent No.1 in raising such demand.

82. Since the construction of the entire 42,200 sq. mtrs. was required to be carried out on a singular plot and in the same building, therefore, it is evidently a case of composite construction. Article 5 of the Supplementary Lease Deed makes it clear that after the allotment of the additional Built up Area, it was not the intention of the parties to continue with the original time line as contemplated under Article 2 (d) in as much as Article 5 is a specific stipulation completely dispensing with the time restriction for completing the construction of the building. As such, time was no longer the essence of the contract.

83. A Supplementary Contract reflects the subsequent intent of the parties. Therefore, if it was the intention of the parties to still continue with the same time restriction clause for completion of the construction of the building even after allotment of the additional built up area, then in that event, there was nothing preventing the Respondent No. 1 from clarifying the matter by inserting suitable stipulation in the Supplementary Lease Deed.

However, there was no such indication in the Supplementary Lease Deed. Had it been the intention to continue with the original stipulation under Article 2 (d) in that case, the Respondent No 1 would have invariably issued default notice upon the Petitioner immediately on expiry of the period of four years from the date of execution of the Lease Deed. The failure to do so without any just explanation, unequivocally goes to show that even the Respondent No. 1 was conscious of the fact that in view of Article 5 of the Supplementary Lease Deed the time restriction clause envisaged by Article 2 (d) would no longer be enforceable against the Petitioner. Under such circumstances, we are unable to agree with the stand of the Respondents that notwithstanding Article 5 of the Supplementary Lease Deed, the Petitioner was still under an obligation to complete the entire construction including the additional built up area within the time restriction clause envisaged under Article 2 (d) of the Lease Deed.

84. After a careful reading of Article 5 of the Supplementary Lease Deed, we are also of the considered opinion that the construction of the building was not severable in nature so as to apply a different time line to the original allotment and the

additional built up area for the purpose of completing the construction of the entire building in a state which is "fit for occupation". Therefore, we are of the view that Article 5 of the Supplementary Lease Deed dated 5th November, 2015 would obliterate the restriction of time for completion of construction of the building.

85. There is no controversy in this case about the fact that the Lease Deed dated 27th July , 2006 as well as the Supplementary Lease Deed dated 5th November,2015 are contract agreements within the meaning of section 10 of the Indian Contract Act, 1872. Law says that the onus to remove ambiguity in a contract would always be on the party drafting the contract. The legal maxim *"Contra Proferentum"* means, ambiguity to be resolved against the party which had drafted the contract. While dealing with the maxim *"Contra Proferentum"*, the Hon'ble Supreme Court, in case of ***Industrial Promotion and Investments Corporation of Orissa Ltd., vs New India Assurance Co. Ltd. & Anr.***[15] has made the following observations:-

> "We proceed to deal with the submission made by the counsel for the appellant regarding the rule of *contra proferentem*. The

15 (2016) 15 SCC 315

> Common Law rule of construction *"verba chartarum fortius accipiuntur contra proferentem"* means that ambiguity in the wording of the policy is to be resolved against the party who prepared it. *MacGillivray on Insurance Law* deals with the rule of contra proferentem as follows:
>
> > "The *contra proferentem* rule of construction arises only where there is a wording employed by those drafting the clause which leaves the court unable to decide by ordinary principles of interpretation which of two meanings is the right one. 'One must not use the rule to create the ambiguity—one must find the ambiguity first.' The words should receive their ordinary and natural meaning unless that is displaced by a real ambiguity either appearing on the face of the policy or, possibly, by extrinsic evidence of surrounding circumstances."

86. Law is also well settled that while constructing the terms of a contract, the document must be read as a whole so as to ascertain the true intent of the parties. In ***Bank of India & Anr. Vs K. Mohandas***[16], the Hon'ble Supreme Court has held that it is well recognized principle of construction of a contract that it must be read as a whole in order to ascertain the true meaning of its several clauses and the words of each clause should be interpreted so as to bring them into harmony with the other provisions if that interpretation does no violence to the meaning of which they are entirely susceptible. The observations made in paragraph 28 of the said decision would be relevant in the present case and, therefore, are being reproduced herein-below for ready reference:-

---

16 (2009) 5 SCC 313.

> "28. The true construction of a contract must depend upon the import of the words used and not upon what the parties choose to say afterwards. Nor does subsequent conduct of the parties in the performance of the contract affect the true effect of the clear and unambiguous words used in the contract. The intention of the parties must be ascertained from the language they have used, considered in the light of the surrounding circumstances and the object of the contract. The nature and purpose of the contract is an important guide in ascertaining the intention of the parties."

87. In *contra* distinction to novation of contract as contemplated by Section 62 of the Indian contract Act wherein, the original contract is substituted by a new contract such that the original contract need not be performed, in case of a Supplementary Contract, the original contract as well as the Supplementary Contract would both govern the rights and interest of the parties and the clauses of both the contracts would be enforceable in law to the extent those are not in conflict with one another.

88. Article 2(d) of original Lease Deed read with Article 5 of the Supplementary Lase Deed clearly denotes that the time restriction contemplated by the original Lease Deed had been subsequently relaxed. That apart, a conjoint reading of both the Articles projects a scenario which is reasonably susceptible to the conclusion that more than one interpretation of the time restriction clause in plausible, thus giving rise to ambiguity in the contract which is not

only latent but also patent in nature. We, therefore, find force in the submission of the learned counsel for the Petitioner that, having regard to the facts and circumstances of this case, it would be impossible to implement Article 2(d) on a composite project built with with additional built up area.

89. We have taken note of the stand of the Respondents that Clause 2(d) of the Lease Deed dated 27th July 2006 puts in place a policy decision of the authority and, therefore, the same is not amenable to challenge by one of the contracting parties by invoking the jurisdiction of the Writ Court under Article 226 of the Constitution of India. However, we are of the view that such argument of the Respondents cannot be countenanced in view of the law laid down in the case of ***Industrial Promotion and Investments Corporation of Orissa Ltd., vs New India Assurance Co. Ltd. & Anr.*** (Supra), which categorically holds that the principle of *"Contra Proferentum"* would apply even in a case where there is ambiguity in the wording of the policy.

90. In so far as the undertaking given by the Petitioner to pay the additional premium and the consequent deposit of the amount of Rs.52,80,98,641/- 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.

91. 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 Occupancy 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.

92. 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.

93. 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.

94. 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.

95. 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.

96. 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***[17] 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.

97. 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.

98. 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

17 1913 SCC Online PC 4.

Respondent No. 1 from the Petitioner in a most arbitrary, high handed, unfair, and unreasonable manner by subjecting the Petitioner to undue 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 recovery of the penalty was also not preceded by any Show Cause Notice thus, acting in clear contravention of the principle of natural justice. Therefore, consequences under the law on such counts must follow.

99. Mr Samdani has vociferously argued that the Lease Agreement is in the prescribed Form-D of the regulations and, therefore, the same would have the force of a statute. As such, without challenging the statutory provisions, the Petitioner cannot refuse to comply with the terms of the Lease Deed. We are afraid, such argument of the learned Senior Counsel does not commend for acceptance by this Court. This we say so firstly, because the Petitioner has not assailed Article 2(d) of the Lease Deed dated 27th July 2006 but has merely taken a stand that in view of the allotment of additional built-up area, additional time was required to complete the construction of the building. That is the reason

why Article 5 was inserted in the Supplementary Lease Deed dated 5th November 2015, as a result of which Article 2(d) of the original Lease Deed stood automatically displaced. We find sufficient force in such argument of the Petitioner's counsel.

100. Secondly, it is not a case where the construction was delayed due to negligence 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, the time line of four years for completing the construction under Article 2(d) ought to be computed from the date of issuance of Commencement Certificate and not from any prior date. Therefore, 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 27th July 2006 was not met 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 by the Respondent No. 1. 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 even under Article 2(d) on account of alleged delay in completing of the construction beyond the period of four years.

101. In the case of ***Bank of Baroda, Mumbai & Anr*** (Supra), relied upon by Mr Samdani, the primary issue was as to whether the Respondent No. 1 (MMRDA) was bound to charge premium as per the provisions of the regulation as applicable during the relevant period because of the fact that the amendment to the regulations did not show that it had any retrospective effect. In ***Assistant Excise Commissioner & Ors.*** (Supra), it was held that even in a contract between the parties which is governed by statutory provisions, the terms and conditions of the contract would be binding both upon the Government and the Licensee and neither of them can depart therefrom. It was also not be open to any officer of the Government either to modify, amend or alter the terms and conditions. In ***Chaudhari Ran Beer Singh*** (Supra),

the Hon'ble Supreme Court has held that in matters of policy decision, the scope of interference by the Court is extremely limited. In ***Goetze (India) Ltd.*** (Supra), the Hon'ble Supreme Court has held that when the liability to pay the interest is statutory, there is no power of waiver of the same; in ***Transmission Corporation of Andhra Pradesh Ltd.*** (Supra), the Hon'ble Supreme Court has held that when the parties have entered into the field of contract *simpliciter,* their rights are controlled by the terms and conditions of the contracts executed by them. Therefore, in the absence of challenge to the contract, it would not be permissible for the Court to go behind the contact and permit questioning of the statutory jurisdiction vested in the regulatory commission. However, as would be apparent from the facts alluded to herein above, it is apparent that the issues involved in the Writ petition do not involve any challenge to a particular Clause/Article in the Lease Deed or to any statutory provision. On the contrary, the core controversy in this petition is pertaining to the question of application of the terms and conditions of the Lease Deed to the facts and circumstances of this case. Therefore, we are of the opinion that the *ratio* laid down in the abovenoted decisions relied

upon by Mr Samdani would not be of any assistance to the Respondents in the facts and circumstances of the present case.

102. 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.
>
> 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."

103. 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.

104. 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.

105. 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.***[18] 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 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.

---

18 (2024) 1 SCR 11.

106. 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.

107. Consequently, it is held that even as per Article 2(d) & (e) of the Lease Deed dated 27th July 2006, the Writ Petitioner would be entitled to six years time for completion of the construction with effect from 11th July 2009, i.e., the date of issuance of the amended Commencement Certificate. Since, the construction of the initial built-up area was completed in February, 2014, i.e., within six years from 11th June 2009, hence, Articles 2(d) & (e) of the Lease Deed dated 27th July 2006 could not have been invoked by the Respondent No. 1 in the facts and circumstances of the present case.

108. In the above context, it would be further pertinent to note herein that the Writ Petitioner, being aggrieved by the order dated

20th October, 2022 passed by this Court in the present proceeding granting adjournment, had earlier approached the Hon'ble Supreme Court by filing SLP (C) Diary No.(s) 15384/2023, *inter alia* contending that the case of the Writ Petitioner was covered by the judgment of ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra) and, therefore, there was no justification for the High Court to adjourn the Writ Petition, thus keeping the Writ Petition pending as the same could have been disposed of in terms of the judgment rendered in the case of ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra). The aforesaid Special Leave Petition was disposed of by the Hon'ble Supreme Court by order dated 28th April 2023, by making a request to this High Court to finally decide the Writ Petition expeditiously, on its own merit, preferably within a period of two months. In the said order it was also observed that it would be open to the Writ Petitioner to demonstrate, whether their case is also covered by the observations contained in the Judgment and Order dated 20th November 2019 rendered in the case of ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra).

109. For the reasons stated above, this Writ Petition succeeds and the same is hereby allowed in terms of payer clauses (a) and (b).

110. Consequently, we hold that the Petitioner is entitled for the refund of the amount of Rs.52,80,98,641/- (Rupees Fifty Two Crores Eighty Lakhs Ninety Eight Thousand Six Hundred and Forty One only) deposited with the Respondent No.1. The Respondent No 1 is, therefore, directed to refund the aforesaid amount to the Writ 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 rate of 14% per annum, i.e. the same rate which 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.

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

112. The Writ Petition stands disposed of.

113. Parties to bear their own costs.

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