2026:BHC-OS:8910-D

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 864 OF 2018

Indian Newspaper Society,
A company registered under Section 25 of 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,**
   a Body Corporate having its Head Office at MMRDA Office Building, Plot Nos. C-14 & C-15, 'E' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051.
2. **The Metropolitan Commissioner,**
   being the Chief Executive Officer of the Mumbai Metropolitan Region Development Authority, having his office at MMRDA Office Building, Plot Nos. C-14 & C-15, 'E' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051. …Respondents

APPEARANCES

For the Petitioner	**Mr. Ankit Lohia**, with Mr. Firoz Patel, Mr. Prashant Ghelani, Ms. Namrata Vashist & Mr. Darshil Desai, i/b Markand Gandhi & Co.
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 notice dated 12th September 2017 (Exhibit-N) the Writ Petitioner has approached this Court *inter alia* contending that the demand for penalty/additional premium on account of late completion of the construction, raised by the Respondent No. 1, i.e., Mumbai Metropolitan Region Development Authority ("MMRDA"), 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 Writ Petition, shorn of unnecessary details, are as hereunder.

4. The Writ Petitioner is a registered company having its office at INS Building, Rafi Marg, New Delhi 110 001. The Petitioner is a non-profit organization and plays a central role in protecting and promoting the interest of the Press in India. The Respondent No. 1 (MMRDA), is an authority set up under a statute viz. the Mumbai Metropolitan Regional Development Authority Act, 1974 (hereinafter referred to as "MMRDA Act") and the Respondent No. 2 is its Chief Executive Officer.

5. Based on an application made by the Petitioner-Company, the Respondent No. 1 had allotted the Plot No. C-63 in 'G' Block at Bandra-Kurla Complex (BKC) *vide* authority of approval granted in its 120th meeting held on 24th December 2007.

6. On 17th November 2005, the Respondent No. 1 had allotted the aforesaid plot admeasuring 10,450 sq. mtrs. to the Writ Petitioner, on a long term lease of 80 years, for construction of office complex, on payment of lease premium of Rs.88,52,75,000/- (Rupees Eighty Eight crores Fifty Two lakhs and Seventy Five thousand), calculated at the rate of Rs.42,500/- per sq. mtr.

7. On 1st December 2005, the Respondent No. 1 permitted the Petitioner to transfer 40% of the built up area to third party subject to the condition that the same shall be used only for office purpose. Consequently, on 14th February 2008, the Petitioner had entered into a Development Agreement with M/s. Orbit Enterprise ("Developer") for development of the said plot.

8. On 18th February 2008, the Petitioner paid the entire lease premium of Rs.88,52,75,000/- (Rupees Eighty Eight Crores Fifty Two Lakhs and Seventy Five Thousand) to the Respondent No. 1, pursuant whereto, Lease Deed dated 9th April 2008, leasing out the area of 10415 sq. mtrs of land, for a period of 80 years, was executed by and between the Petitioner and the Respondent No. 1. As per the Lease Agreement, the permissible built-up area was 20,830 sq. mtrs.

9. Article 2(c) of the Lease Deed dated 9th April 2008 stipulates that no work shall commence till the plan is approved by the authority; Article 2(d) lays down that the construction will be completed within a period of four years from the date of execution of the Lease Deed; Article 2(e) stipulates that failure to comply with Article 2(d) would require extension of time that may be

permitted by the Metropolitan Commissioner on payment of additional premium, which would be 25% of the premium up to one year; 35% of the premium between one and two years; and 40% of the premium between two and three years.

10. Pursuant to the execution of the Lease Deed dated 9th April 2008, possession of the plot of land was handed over to the Writ Petitioner on 10th April 2008. It would be pertinent to note herein that when the Lease Deed dated 9th April 2008 was executed, 2.00 Floor Space Index (FSI) was available at Bandra-Kurla Complex and, therefore, the permissible built-up area on the said plot of land was 20,830 sq. mtrs only. Accordingly, proposal for construction of commercial office building with two wings, viz., 'A' and 'B' wings with two level basement, constituting Ground+3 floors at 'A' wing (8,006 sq. mtrs.) and Ground+11 floors in 'B' wing (13,650 sq.mtrs) was drawn up by the Petitioner.

11. On 20th April 2008, the construction plan, along with application for shore-piling and excavation, was submitted by the Petitioner before the Respondent No. 1. On 30th May 2008, the Respondent No. 1 granted permission for excavation and shore-piling.

12. On 3rd November 2008, the drawings of the construction was submitted by the Petitioner before the Respondent No. 1 for approval. On 8th December 2008, the Respondent No. 1 had issued deficiency letter asking the Petitioner to obtain 'NOC' for the Environment Impact Assessment (EIA), which was obtained and submitted by the Petitioner on 8th October 2009. Thereafter, the plan upto the plinth level was approved.

13. The FSI in the Bandra-Kurla Complex area was subsequently, enhanced to 4.00. As such, the Respondent No. 1 had offered additional built-up area upto 4.00 FSI to the existing Lessees. In view of the enhancement in the FSI, the Petitioner, *vide* letter dated 22nd September 2009, requested the Respondent No. 1 to allot additional built-up area of 20,830 sq. mtrs. on the same plot. Acting on such request made by the Petitioner, on 10th September 2009, the Respondent No. 1 had allotted additional built-up area of 20,830 sq. mtrs to the Petitioner against payment of Rs.204,02,98,500/- (Rupees Two Hundred Four Crores Two Lakhs Ninety Eight Thousand Five Hundred only), which was payable in five installments. Liberty was also granted to the Petitioner to transfer the entire additional built-up area, subject to

the provision of the Lease Deed. In view of the allotment of the additional built-up area, the total built-up area allotted to the Petitioner stood increased to 41,660 sq. mtrs.

14. On 22nd April 2013, a Supplementary Lease Deed was executed by and between the Petitioner and the Respondent No. 1. Article 2(c) of the Supplementary Lease Deed clearly stipulated that there shall be no time-limit, as stipulated in Article 2(d) of the Lease Deed dated 9th April 2008, for completion of the construction of the building by using the additional built-up area. It was further provided that the incremental premises would be deemed to be the integral part of the demised premise as defined in the Lease Deed dated 9th April 2008.

15. In the wake of the allotment of additional built-up area (BUA), as aforesaid, the Petitioner was required to submit revised building plan so as to consume the new built-up area within the same plot and the same building. According to the revised plan, both the wings, namely, 'A' and 'B' wings would now have G+14 floors. Accordingly, on 29th March 2010, the Petitioner had submitted amended plan which was approved by Respondent No. 1 on 26th August 2011. Thereafter, on 2nd January 2012, the

Respondent No. 1 had issued Commencement Certificate ("CC") for the 4th to 6th floor in Wing 'A' for the built-up area of 5,730.64 sq. mtrs.

16. As per the projection made in the Writ Petition, the Petitioner had completed construction of the two basements as well as Ground+9 floors in wing 'B' and Ground+6 floors in 'A' Wing in the month of April, 2012, thus, substantially consuming the original built-up area of 20,830 sq. mtrs.

17. In view of the allotment of the additional built-up area, the height of the building had to also be raised. Therefore, the Petitioner had applied for height clearance which was granted by the Airports Authority of India by NoC dated 2nd August 2012.

18. On 18th January 2013, the Respondent No. 1 had issued Commencement Certificate ("CC") for 'A' Wing (7th to 12th floors) and 'B' Wing (10th to 12th floors) and, thereafter, on 14th November 2013, the Respondent No. 1 had issued Commencement Certificate for the plinth level basements as well as G+14 floors of 'A' and 'B' wings. Thus, the CC for completing the construction of the entire building, including the basement as well as G+14 floors

in both the wings, was eventually granted by the Respondent No. 1 only on 14th November 2013.

19. Although there was no written demand for any additional premium/penalty for extension of time, yet, in view of Article 2(c) of the Lease Deed dated 9th April 2008 stipulating outer limit of four years for completion of the construction, which period had already expired, on 6th June, 2012, the Petitioner wrote a letter to the Chief Town Planner of Respondent No. 1 seeking extension of time for two years as the height clearance was yet to be received from the Civil Aviation Authorities, New Delhi. The letter dated 6th June 2012 was followed by another letter dated 10th December 2012 renewing the request for extension of time by two years by citing the reasons for the delay. Thereafter, on 10th January 2013, the Petitioner had addressed another letter to the Deputy Metropolitan Commissioner, Land & Estate Department of the Respondent No. 1 stating that the completion of the building would take almost six years due to various reasons and problems.

20. In view of the above request for extension of time made by the Petitioner, the Respondent No.1 i.e. the MMRDA had proposed

to levy penalty upon the Petitioner due to the delay in completion of the construction beyond the time-limit of four years.

21. Although, the Petitioner did not agree with the said decision and had clarified that the decision would be appealed against, yet, in the interest of the project, some more time as well as facility of payment of additional premium under protest, in four quarterly installments, was made by the Petitioner. By the letter dated 10th January 2013, the Petitioner had also assured the Respondent No.1 that the first installment would be paid on or before 31st March 2013 as the project did not have any provision for this additional burden.

22. On 30th September 2013, the Deputy Metropolitan Commissioner of the Respondent No. 1 Authority had issued a letter to the President of the Petitioner-company, granting the request for extension of time for completing the construction of the building on Plot No. C-63 in 'G' Block of Bandra-Kurla Complex (BKC) under Lease Deed dated 9th April 2008 for a period of one year from 9th April 2012 to 8th April 2013, by charging additional premium at the rate of 10% of the lease premium payable in advance. In the said letter, it was also

mentioned that the additional premium payable by the Petitioner, as on that date, works out to Rs.8,85,27,500/- along with interest payable for delayed payment, calculated at the rate of 14% per annum. It was also conveyed that as requested by the Petitioner , the Respondent No. 1 was agreeable to the proposal for payment of the additional premium in four equal quarterly installments along with interest due thereon, at the rate of 14%, of which, the first installment would be due on 31st March 2013. The Petitioner was, therefore, asked to pay the outstanding dues immediately along with interest applicable thereon.

23. Thereafter, on 31st October 2013, the Deputy Town Planner TN & CP Division of Respondent No. 1, had addressed a letter to the representative of the Petitioner calling upon him to deposit the amount of Rs.10,05,449/- as scrutiny fee in respect of the development on Plot No. C-63 in 'G' Block at Bandra-Kurla Complex for "Indian Newspaper Society".

24. Thereafter, on 22nd August 2014, the Respondents issued a notice to the Petitioner to pay up the outstanding dues, failing which, the CC will be revoked and the 'Lease' would also be determined. In the said notice, although reference has been made

to breach of the terms and conditions of the Lease Deed dated 9th April, 2008 as well as the Supplementary Deed of Lease deed dated 22nd April 2013, in so far as completion of the construction as "fit for occupation" was concerned, yet, there is no mention of any specific amount falling due and payable by the Petitioner on account of the alleged breach of the terms of the Lease Agreements nor was any particulars furnished as regards the nature and extent of the breach, so alleged.

25. On 19th September 2014, the Petitioner submitted its reply to the notice dated 22nd August 2014 as well as the letter dated 31st October 2013, forwarding a Pay Order for an amount of Rs.73,78,07,466/- as payment of installment for the additional built-up area. That apart, a separate pay order for an amount of Rs.13,78,59,150/- was also forwarded towards payment of penalty/additional premium for granting extension of time for completion of the construction.

26. The above communication was followed by the letter 22nd September 2014 issued by the Petitioner to the Respondent No. 1 *inter- alia* stating that the payment of premium for the additional built-up area due to delay in completing the construction has been

made under protest. It has further been mentioned therein that at the time of executing the Supplementary Lease Deed allotting the additional built-up area, it was assured that due to the increase in additional built-up area the period of completion of construction would be increased by the MMRDA from four years to six years. Therefore, the additional premium/penalty was paid without prejudice to the right of the Petitioner to claim refund of the entire amount, in case, the period of construction is increased from four years to six years. Accordingly, a request was made to re-validate the NoC etc.

27. On 23rd December 2014, the Respondent No. 1 extended the date of completion of construction of the building to 8th April 2015 and demanded additional penalty of Rs. 8.85 Crores for the year 2014-2015. On such basis, the Respondent No. 1 claimed that an amount of Rs.15,44,36,039/- along with interest for delayed payment, as on 31st October 2014, was due and payable.

28. Eventually, on 12th September 2017, the Respondent No. 1 had issued the impugned Demand Notice calling upon the Petitioner to pay the outstanding dues, failing which, action under Articles 5 and 6 of the Deed of Lease would be initiated for breach

of the Agreement. The said Demand Notice is under challenge in the present proceeding.

29. In the Reply filed on behalf of the Respondents, the maintainability of the Writ Petition has been assailed *inter-alia* on the ground that the same raises several disputed questions of facts which cannot be adjudicated in a Writ Petition. By referring to Section 44 of the MMRDA Act, 1974 read with Rule 5 of the MMRDA Rules,1976, it has been alleged that alternative remedy, in the form of an Appeal under Section 44 was available to the Petitioner. Therefore, the Writ Petition ought to be dismissed on such ground alone.

30. The Respondents have also alleged that the Writ Petitioner has approached this Court by suppressing material facts and particulars; that in the Writ Petition, challenge has been made to the policy decision of the State without challenging the relevant provisions of the statute which permits such action; that the Writ Petition is hit by delay and laches and the same is also barred by the law of limitation.

31. The Respondents have further alleged that by failing to produce the full 'CC' dated 14th November 2013, the Petitioner has suppressed material facts. Since the Petitioner has approached this Court with unclean hands and, hence, the Writ Petition is liable to be dismissed on such count alone.

32. While denying and disputing the assertions made by the Petitioner that the construction of the built-up area as per the initial allotment of 20,830 sq. mtrs. was completed in the month of April 2012, i.e., within the stipulated period of four years, it was contended that such disputed questions of facts cannot be gone into in a Writ Petition.

33. This Writ Petition was analogously heard along with three other Writ Petitions being Writ Petition No. 2377 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).

34. Mr. Ankit Lohia Learned Counsel for the Petitioner has adopted the arguments advanced by Mr Nakani Learned Senior Counsel for the Writ Petitioners in the connected Writ Petitions.

Like wise Dr. Saraf, learned Senior Counsel for the Respondents has also advanced common arguments in this Writ Petition as well in Writ Petition No 242 of 2018, supporting the statements made in the Reply Affidavit.

35. We have considered the pleadings brought on record and have also gone through the documents annexed therein.

36. At the very outset, it deserves to be mentioned herein that although the maintainability of the Writ Petition has been assailed on the ground that several disputed questions of facts are involved there-in, yet, after examining the record, we find that save and except the claim of the Petitioner as regards the date of completion of the first phase of initial built-up area of 20,830 sq. mtrs., all other assertions made in the Writ Petition are based on documents annexed thereto, which are admitted documents. 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 based on interpretation of the relevant clauses of the Lease Agreement(s) as well as the documents exchanged by and between the parties, we are of the considered opinion that the date of completion of the first phase

of the initial built up area would not have much of a material bearing in the out come of the Writ Petition.

37. In the case of ***Joshi Technologies International IBC vs. U.O.I. & Ors.***,[1] 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 monetory 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.

38. Likewise, in ***Banda Development Authority, Banda vs. Motilal Agarwal & Ors.***[2] the Hon'ble Supreme Court has observed

1 (2015) 7 SCC 728.

2 (2011) 5 SCC 394.

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.

39. 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.

40. 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***,[3] 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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3 (1974) 4 SCC 3.

41. 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.

42. In so far as the plea of availability of alternative remedy is concerned, from a reading of Section 44 of the MMRDA, Act 1974, we find that the provision for Appeal provided thereunder, is pertaining to 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, 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 have been stated in the Writ Petition. Therefore, the Writ Petition cannot also be dismissed on account of suppression of facts.

44. In view of the above discussions, we hold that the Writ Petition is maintainable in law as well as in the facts and circumstances of the case.

45. Having held as above, it would be pertinent to mention herein that our attention has been invited to an earlier decision rendered by a co-ordinate Bench of this Court (Coram: Ranjeet More & Bharati Dangre, JJ) dated 20th November 2019 passed in ***Raghuleela Builders Pvt. Limited and Anr. vs. The Mumbai Metropolitan Regional Development Authority & Ors.***[4] wherein issues of similar nature were involved. In that case also the Writ Petitioners had challenged a similar Demand Notice dated 12th September 2017 issued by the Respondent No.1 by invoking identical Articles in the Lease Deed as well as the Supplementary Lease Deed, thus demanding payment of a sum of Rs. 432 Crores as penalty for the delay in completion of construction of the building. In that case also, the initial built up area was 30550 sq.

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4 (2020) (1) ABR 397: 2019 SCC OnLine Bom 4529.

meters, which was to be consumed by constructing 9 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 into construction of 11 additional floors in the same building. Due to addition in the built up area, the construction of the building could not be completed within four years, as a result of which, Demand Notice dated 12th September, 2017 was served on the Lessees for recovery of penalty/additional premium along with interest calculated thereon.

46. By the Judgment and Order dated 20th November 2019, rendered in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra), a Division Bench of this Court 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 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.

47. 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 by taking note of the findings recorded in paragraphs No. 39 and 41 of the Judgment and Order dated 20th November 2019. However, it was clarified that since the judgment of the Division Bench of Bombay High Court in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra) 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 by the following order:-

> *"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."*

48. 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.

49. From the plain reading of order dated 27th July 2020, what transpires is that the Hon'ble Supreme Court had observed that the decision in ***Raghuleela Builders Pvt. Ltd. & Anr.*** (Supra) was passed in the facts of that case. However, in our considered opinion, we can take note of the legal principles, if any, emanating from the said decision. In that view of the matter we are unable to agree with the submission of learned Counsel for the Respondent 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.

50. The question of maintainability of a Writ Petition is mixed question of law and facts. Therefore, such question has to be answered by taking note of the facts and circumstances of each case. Having regard to the peculiar facts and circumstances of this

case and also 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, we are not inclined to non-suit the Petitioner merely on the plea of maintainability raised by the Respondents.

<u>On Merit :-</u>

51. By referring to the materials available on record the learned Counsel for the Petitioner has argued that after the allotment of the additional built-up area of 20,830 sq. meters, which was required to be used on the same plot and the same building, it was impossible to segregate the construction and complete the construction of initial built-up area of 20,830 sq. meters "fit for occupation", inasmuch as, various services, such as, cooling tower, air cool chillers, exhaust fans for toilet exhaust, DG exhaust, pipes, fresh air fans for AHU, pressurization fans for staircase, etc. were common facilities for the entire building and therefore, were required to be located on top of 14th floor of the building, which would not be possible until the entire construction is completed. As a result of the same, the Building cannot be completed "fit for occupation" without such facilities. Likewise,

submits the learned counsel, it would not be possible to obtain fire NOC, storm-water drainage completion certificate, service lift / fire lift approval, etc. from the Statutory Authorities until the construction of the entire building was completed. It is also the submission of learned Counsel for the Petitioner that the demand for penalty for delay in construction was unsustainable in law, as the 'No Time Limit' clause would be applicable to the entire building after the additional built-up area was allotted.

52. By referring to the subsequent decision of the MMRDA to grant six years time for completion of construction of the buildings but keeping it confined only to those leases which were granted after 25th August 2015, the learned counsel has argued that such *differentia* is wholly arbitrary, illegal, discriminatory and devoid of any rational basis. The learned counsel for the Petitioner further submits that the Respondent No.1 has not disclosed any reasonable basis for making a distinction between pre-August 2015 and post-August 2015 lease agreement for granting additional period of time for completion of construction without levying any penalty, notwithstanding the fact that the lessees of both the categories were similarly situated and were facing similar

nature of challenges in completing the construction, which facts were well within the knowledge and understanding of the Respondent No.1. Therefore, he submits that the impugned Demand Notice is illegal and hence, liable to be set aside by this court.

53. Dr. Birendra Saraf, learned Senior Counsel appearing for the Respondents, on the other hand, has submitted that the Petitioners, having executed a Lease Deed which contains a specific stipulation in the form of Article 2(c) permitting levy of penalty due to delay in completion of construction beyond four years, cannot now turn back and question such decision of the authority. It is also his submission that the Petitioner cannot be permitted to question the policy decision of the Respondent No.1, which has the backing of a statute. On such count, the learned senior counsel has submitted that the Writ Petition deserves to be dismissed with cost.

54. 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 all statutory approvals including the approval of building plan etc is received by the Lessee. 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 authority.

55. 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 also the Commencement Certificate cannot be issued. Unless the Commencement Certificate is issued by the Authority, 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.

56. 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. Therefore, if there is delay in granting permissions/ approval by the statutory authorities for any reason whatsoever, leading to delay in commencement of construction, then even in that event, the Lessee will be left with no option but to complete the construction within the stipulated time for no fault on its part. 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.

57. From a plain reading of the documents brought on record, more particularly, the Deed of Lease dated 9th April 2008, it is apparent that in view of the applicability of 2.00 FSI, the Respondent No.1 had initially granted built-up area 20,830 sq. mtrs only to the Petitioner by realizing the agreed premium. However, subsequently, after the FSI was increased for the Bandra-Kurla Complex area to 4.00, additional built-up area of 20,830 sq. meters was allotted to the Petitioner. Consequently, a supplementary Lease Deed dated 22nd April 2013, was executed. In Article 2(c) of the Supplementary Agreement, the time restriction for completion of the building within four years was, however, dispensed with and in its place, the time period for completing the construction was made unlimited. Since the entire controversy in this proceeding revolves around the pertinent clauses of the two Lease Deeds, hence , we deem it appropriate to reproduce the relevant clauses of the lease deeds as hereunder :-

58. Article 2 of the Lease Deed Dated 9th April 2008 reads as follows:-

> "2. The Lessee hereby agrees to observe and perform the following conditions that is to say:

(c) ***No work to begin until plans are approved:*** No work shall be commenced or carried on which infringes any of the Development Control Regulations and Building Regulations set out in the **THIRD SCHEDULE** hereto as also Municipal or any other Regulations so far as the same are applicable to the said land or to the use to which the said land and/or building there upon is going to be put to, being the subject of these presents, or until the said plans, elevations, sections, specifications and details shall have been to approved as aforesaid and thereafter shall not make any alterations or additions there to unless such alternations and additions shall have been previously, in like manner, approved.

(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."

59. Thereafter, a Supplementary Lease Agreement was entered by and between the parties on 22nd April 2013 covering the additional built up area. Articles 2(c), 2(d) and 2(e) of the Supplementary Lease Deed are reproduced as hereunder:-

"2. It is hereby agreed and declared by and between the parties hereto that—

(b) The Lessee shall use the said additional build up area on the plot allotted to them and shall be at liberty to assign the said constructed build up area subject to the terms & conditions and covenants as setout in the said Lease Deed.

(c) All the conditions and covenants including the terms of the lease and except the condition in Article 2(d) 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 permitted to be constructed and to be leased by the Lesor to the Lessee shall be deemed to be the integral part of demised premises as defined in the said Deed of Lease dated 9th April 2008, annexed hereto as **ANNEXURE-I**. There shall be no time limit as contained in the Article 2(d) of the said Deed of Lease for completion of construction of the building by using the said additional built up area.

(d) *The Lessee shall not apply and Lessor shall not grant Occupation Certificate in respect of the premises constructed by using the said additional built up area as required under the Development Control Regulations and Building Regulations as also Municipal or any other regulations so far as the same are applicable to the said plot of land or to the use for which the said plot of land and/or building there upon is going to be put to, unless Lessee pays to the Lessor the balance lease premium of the said additional built up area with interest due thereon or any other amount due to the Lessor*."

60. The use of expressions such as "the incremental premises" which shall be deemed to be "integral part of the demised premises as defined in Deed of Lease dated 9th April 2008," used in Article 2(c) of the Supplementary Lease Deed makes it abundantly clear that it was a case of composite construction meant to be carried out over the same plot of land and in the same building. Article 2(c) of the Supplementary Lease Deed dated 22nd April 2013, also makes it amply clear that there shall be "no time limit" for completion of construction of the building by using the additional built-up area. It is, therefore, evident that after the signing of the Supplementary Lease Deed dated 22nd April 2013, in view of Article 2(c), time was no longer the essence of the contract for development of the land.

61. The unambiguous expressions used in Article 2(c) of the Supplementary Lease Deed had clearly displaced the time

restriction imposed under Article 2(d) of the Lease Deed dated 9th April, 2008 for completing the construction as long as the construction is carried out by using the additional BUA. Had it been the intention of the parties to still continue with time restriction clause, as envisaged in Article 2 (d) of Lease Deed even after allotment of the additional Built up Area and signing of the Supplementary Lease Deed, then in that event, the said aspect of the matter would have been clarified in the subsequent agreement. However, the same was not done. If that be so, the irresistible conclusion that would follow is that in view of Article 2(c) of the Supplementary Lease Deed dated 22nd April 2013, Article 2(d) of the original Lease Deed dated 9th April 2008 imposing the time restriction for completing the construction was no longer enforceable. We are, therefore, of the unhesitant opinion that, in view of Article 2(c) of the Supplementary Lease Deed, the Respondent No.1 did not have any right under the Lease Agreement to insist on the time restriction clause of four years for completing the construction by using the additional built up area.

62. It would be further pertinent to note herein that even assuming that Article 2(d) of the Lease Deed dated 9th April 2008,

had any relevance after the allotment of the additional built-up area, even then, it is apparent after the expiry of the four years time from the Date of execution of the Lease Deed, although the construction of the building was still incomplete, no default notice was served upon the Petitioner. As a matter of fact, until 22nd August 2014, the Respondent No.1 had never raised any demand seeking penalty nor did it threaten to determine the lease for any reason whatsoever. The demand for payment of additional payment/ penalty was also raised, under the circumstances noted above, without calling for any explanation from the Petitioner as to why such demand should not be raised, thus acting in clear violation of the principles of the natural justice and administrative fair play.

63. Although, there is no written communication from the Respondent No. 1 available on record intimating the Petitioner regarding expiry of the time limit for completing the construction, yet, it appears that the Petitioner had, on its own volition, issued communications dated 6th June 2012 (Exh.F) seeking extension of time, which was followed up by the subsequent communications dated 10th December 2012 (Exh.G) and 10th January 2013

(Exh.H), whereby, it had deposited the amount of penalty for delay but under protest. In all probability, such demand was made by the Petitioner on the projection made by the Respondent No.1 threatening to determine the lease, thus, jeopardizing the entire construction. However, since the payment was made under protest and by reserving the right of the Petitioner to seek refund and considering the fact that such demand was in conflict with Article 2(c) of the Supplementary Lease Deed dated 22nd April 2013, hence, we are of the view that the mere fact that the amount had been deposited by the Petitioner would not be prejudicial to its interest in any manner.

64. We also note herein that in the Demand Notice dated 22nd August 2014, although a threat was held out to determine the lease until the outstanding dues were cleared by the Petitioner, the Respondent No.1 did not specify any amount nor referred to the specific articles of the Lease Deed which had allegedly been violated by the Petitioner. Even in the subsequent Notice dated 12th September 2017, there is no mention as to in what manner, the Petitioner had acted in violation of any specific Article of the Lease Deed or for that matter, the exact amount which was found

to be due and recoverable from the Petitioner. Considering the nature of controversy involved in this Writ Petition, we deem it appropriate to reproduce the Demand Notice dated 12th September 2017, as hereinunder:-

EXHIBIT = 'N'
MUMBAI METROPOLITAN REGION DEVELOPMENT AUTHORITY
मुंबई महानगर प्रदेश विकास प्राधिकरण

No.LEC/BKC (G)/INS(C-63)/1792/2017 Date: 12th September 2017

NOTICE

WHEREAS the Mumbai Metropolitan Region Development Authority issued a Show Cause Notice dated 22/08/2014 for non-payment of requisite dues and non-performance of the Lease Deed conditions as stated therein.

WHEREAS you have submitted your say along with explanation vide your letter dated 19/09/2014 & 22/09/2014.

WHEREAS your representation/explanation is examined thoroughly and no merit was found in the submission/ explanation given by you.

AND WHEREAS the explanation submitted vide your letter 19/09/2014 & 22/09/2014 dated with reference to the Show Cause Notice is unsatisfactory and hence was summarily rejected vide our letter dated 23/12/2014.

WHEREAS you were instructed to pay the outstanding dues as stated in the Notice under reference within a period of 30 days. However, till date you did not pay the requisite dues to MMRDA and thus failed to comply with your obligations.

AND WHEREAS the amount due to the Authority along with the interest due thereon is as shown in the statement annexed hereto as **Annexure- A & B**. An amount due to Authority is un-paid till date & thus you have therefore committed breach of the terms and conditions of the said Deed of Lease and therefore, the Authority has power to recover the said due amount as stated hereinbefore as arrears of land revenue and also resume the said land as per the Article 5 and 6 of the said Deed of Lease.

NOW THEREFORE, in exercise of the powers conferred by Articles 5 and 6 of the said Deed of Lease, I, the Dy. Metropolitan Commissioner for and on behalf of the Metropolitan

Commissioner of the Authority hereby call upon you to remedy or cause to be remedied within 30 days from the date of this notice. Please take further notice that in the event of the default to comply with this requisition, the Authority will have the right to determine the Lease and enter upon the premises and proceed further to recover the due amount stated hereinbefore as arrears of land revenue."

Sd/-
(A.R. Wankhade)
Dy. Metropolitan Commissioner,
M.M.R.D.A.

To,
The President,
Indian Newspaper Society,
INS Building,
Rafi Marg, New Delhi -110 001.

65. From a plain reading of the impugned Demand Notice, it is clear that the same is devoid of any specific particulars as to the head on which the amount was sought to be recovered. Rather, it appears to be a completely vague and unsubstantiated notice which did not refer to violation of any specific article of the Lease Deed. Moreover, although the demand was admittedly a penal action, no prior Show Cause was served upon the Petitioner calling for any explanation. As such, impugned demand notice, in the opinion of this Court, is liable to be declared illegal on the ground of violation of the principles of natural justice alone.

66. There is no controversy in this case about the fact that the Lease Deed(s) are contract agreements within the meaning of

Section 10 of the India Contract Act,1872. Law is well settled that while constructing the terms of a contract, the documents must be read as a whole so as to ascertain the true intent of the parties.

67. In the case of ***Bank of India & Anr. Vs K. Mohandas,***[5] the Hon'ble Supreme Court has held that it is well recognized principle of construction of 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 to. The observations made in paragraph 28 would be relevant in the present case and, therefore, are being reproduced herein-below for ready reference:-

> "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."

68. In the present case, if the intent of the parties was to continue with the original time restriction clause as per Article

5 (2009) 5 SCC 313.

2(d) of the Lease Deed dated 9th April 2008 notwithstanding the allotment of the additional built up area, then in that event, there was nothing preventing the Respondent No 1 to clarify the same in the Supplementary Leased Deed. The same was, however, not done. On the contrary, as has been noted above, a specific stipulation in the form of Article 2(c), completely dispensing with the time restriction, was inserted in the Supplementary Lease Deed, thus signifying a clear policy shift as regards the time restriction for completing the construction.

68. Law is well settled that the onus to remove ambiguity in a contract would always be on the party drafting the contract. Therefore, if there is any ambiguity in the contract, the benefit of the same must be resolved in favour of the party which is not responsible for creating the ambiguity.

69. 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.,[6] 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 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."

70. From a careful analysis of Articles 2(d) of the Lease Deed dated 9th April,2008 and Article 2(c) of the Supplementary Lease Deed dated 22nd April,2013, we are of the opinion that both the Articles cannot be simultaneously enforced in the respect of the same construction since the construction is composite in nature. We, therefore, find force in the submission of the learned counsel for the Petitioner that it would be impossible to implement Articles 2(d) of the Lease Deed and 2(c) of the Supplementary Lease Deed referred to above, on the same construction and at the same time.

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6 (2016) 15 SCC 315

71. We have taken note of the stand of the Respondents that Clause 2(d) of the Lease Deed dated 9th April 2008 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 writ jurisdiction of the Writ Court under Article 226 of the Constitution of India. However, we are of the view that such arguments of the Respondents cannot be countenance 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 lays down that the principle of *"Contra Proferentum"* would apply even in a case where there is ambiguity in the wording of the policy.

72. It would be apparent from the observations made above that the Petitioner did not deposit the amount of Penalty voluntarily but the same was done under pressure and on the face of the threat issued by the Respondent No. 1 to terminate the Lease and also cancel the CC. Therefore, it is apparent that the amount of penalty deposited by the Petitioner was obtained under duress and / or coercion.

73. 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.

74. In ***Fatima Khatoon Chowdrain vs. Mahmoed Jan Chowdhury,***[7] the Privy Council has held that payment made not voluntarily but under species of compulsion would be liable to be returned.

75. In ***Valpy vs Manley***,[8] 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.

76. In ***Ram Kishen Singh vs. Dooli Chand***[9] 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.

77. 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***[10] has held that if a payment is made under protest

7 (1868) 12 Moo Ind App 65.

8 (1845) 1 CP 594.

9 (1881) 8 IA 93.

10 1913 SCC Online PC 4.

and involuntarily, under coercion, the party making such payment would be entitled to claim refund of the same.

78. In view of the discussions in the foregoing paragraphs, we are of the considered opinion that the demand for additional premium/penalty raised by the Respondent No. 1 on account of delay in completing the construction was dehors the terms of the Lease Deed and hence, was not authorized under the law. The Respondents have acted in a highly arbitrary and high handed manner by realizing such amount from the Petitioner under duress and coercion.

79. It is to be noted here that in a matter of this nature, where the Authority is seeking to recover penalty for default on grounds which are not admitted, the recovery cannot be based on mere *ipse dixit*, but upon proper resolution of the controversy in accordance with law, more so, when such claim arises out of a contract wherein the Authority itself is a party.

80. 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.
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> 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 same 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.".

81. 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.

82. 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.

83. 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.***[11] 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.

84. 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

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11 (2024) 1 SCR 11.

decision of a coordinate Bench would be binding on a Bench of equal strength.

85. For the reasons stated above we hold that the Demand Notices dated 22nd August 2014 as well as 12th September 2017 are illegal, *dehors* the terms and conditions of the Lease Deeds as well as the authority of law. Therefore, the same are hereby set aside.

86. The Writ Petition stands allowed in terms of prayer clauses **(A) and (B).**

87. From the statements made in the Writ Petition it appears that the Petitioner had deposited an amount of Rs 13,78,59,150/- as penalty by the letter dated 19/09/2014 and thereafter, a further amount of Rs. 8.85 crores on 23/12/2014, totaling to Rs 22,63,59,150/-. In view of the determination made above, the Respondent No. 1 is directed to verify and refund the entire amount paid by the Petitioner on additional premium/penalty, within a period of 90 (ninety) days from the date of receipt of a Certified Copy of this order, failing which, the amount would carry interest at the rate of 14% per annum i.e. the same rate at which,

interest was payable by the Petitioner under the Lease Agreement due to delay in payment of outstanding dues, to be calculated from the date of this order till the amount is refunded.

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

89. The Writ Petition is disposed of accordingly.

90. Parties to bear their own costs.

(SUMAN SHYAM, J) (CHIEF JUSTICE)