(2013) 12 BOM CK 0079

In the Bombay High Court

Case No : Writ Petition No. 702 of 2011

Shishir Realty Private Ltd. and RKW Developers Pvt. Ltd. — APPELLANT

Vs

The Vice Chairman and Managing Director, City and Industrial Development Corporation of Maharashtra Ltd., City and Industrial Development Corporation of Maharashtra Ltd., The Principal Secretary, Urban Development Department, Government of Maharashtra and The State of Maharashtra — RESPONDENT

Date of Decision : 06-12-2013

Acts Referred:

Citation : (2014) 1 ABR 398 : (2014) 1 ALLMR 878 : (2014) 1 BomCR 274

Hon'ble Judges : V.M. Kanade, J;S.C. Gupte, J

Bench : Division Bench

Advocate : R.A. Dada, F. D''vitre, Mr. M.S. Doctor, Mr. N. Engineer, Ms. Misbah Dada, Mr. Ajay Vazirani, Mr. Dinesh Pednekar, Mr. Shailesh Poria, Mr. Swapnil Gupte instructed by Hariani and Co. in Writ Petition No. 702 of 2011, Mr. Aspi Chinoy, Ms. Chandana Salgaonkar in appellate Side Writ Petition No. 5245 of 2011 and Mr. M.J. Bhatt in appellate Side Public Interest Litigation No. 55 of 2011, for the Appellant; V.A. Thorat, in Writ Petition No. 702 of 2011, Mr. G.S. Hegde, C.M. Lokesh for Respondent Nos. 1 and 2 in Writ Petition No. 702 and 5245 of 2011, for Respodent no.2 and 3 in Appellate Side Public Interest Litigation No. 55 of 2011, Mr. D.A. Nalawade, Government Pleader in Writ Petition No. 702 of 2011, Mr. Sameer Patil, AGP for Respondent No. 3 and 4 in Writ Petition No. 5245 of 2011, for Respodent no.1 in Appellate Side Public Interest Litigation No. 55 of 2011, Mr. Aspi Chinoy, Ms. Chandana Salgaonkar for Respondent No. 4, Mr. R.A. Dada, F. D''vitre, Mr. M.S. Doctor, N. Engineer, Ms. Misbah Dada, Ajay Vazirani, Dinesh Pednekar, Shailesh Poria and Mr. Swapnil Gupte instructed by Hariani and Co. for Respondent No. 5. Mr. Sandeep Marne for Respondent No. 6 in Appellate Side Public Interest Litigation No. 55 of 2011, for the Respondent

Judgement

V.M. Kanade, J.—Heard. Rule. Rule is made returnable forthwith. Respondents waive service. By consent of the parties all the three Petitions are taken up for final hearing.

2. These three Petitions can be disposed of by a common judgment since the issue involved in all these Petitions is common. Out of these three Petitions, two Petitions are filed challenging the show-cause notice dated 06/12/2010 issued by the Vice Chairman of CIDCO and final order dated 16/03/2011 of termination of lease by CIDCO and a PIL has been filed challenging the said allotment of plot and subdivision of the said plot and change of user granted by CIDCO and for other consequential reliefs. [Wherever reference is made to the Petitioners, it refers to M/s. Metropolis Hotels and Shishir Realty Private Ltd. & Anr. and wherever reference is made to PIL Petitioner, it would refer to the Petitioners who have filed the PIL].

3. Petitioners-M/s. Metropolis Hotels in Writ Petition No. 5245 of 2011 were allotted Plot No. 5 by the Respondent-CIDCO for being used for the purpose of establishing a Five Star Hotel in pursuance of the Tender in which the Petitioners (hereinafter referred to as "M/s. Metropolis Hotels") in Writ Petition No. 5245/2011 were the highest bidders. Thereafter, they applied for and were granted change of user of the plot from the use of hotel purposes to partly for commercial-cum-residential purposes and partly establishing a Five Star Hotel. They also applied for subdivision of the plot and for assignment of their interest in respect of the plot on which commercial-cum-residential user was permitted. This plot was assigned to Shishir Realty Private Ltd. who are the Petitioners in Writ Petition No. 702 of 2011.

4. CIDCO, thereafter, executed two separate lease deeds in respect of the said two plots viz. Plot No. 5 and Plot No. 5A. Shishir Realty Private Ltd. took further steps for mortgaging their plot with the permission of CIDCO and obtained loan for development of the said plot for commercial-cum-residential user and third party rights were also created.

5. Some complaints were received by State of Maharashtra regarding transfer of plots by CIDCO during the tenure of the then Vice Chairman B.M. Lal and an inquiry was held by the Chief Secretary. Thereafter, new Vice Chairman of CIDCO issued a show-cause notice dated 06/12/2010 to M/s. Metropolis Hotels and Shishir Realty Private Ltd.-Developers, as to why the lease deeds which were executed in their favour should not be cancelled on account of breach of tender conditions by M/s. Metropolis Hotels. An inquiry was held by the new Vice Chairman and he passed the impugned order dated 16/03/2011 cancelling the lease deeds which were executed by M/s. Metropolis Hotels Ltd. and Shishir Realty Private Ltd.-Developers. Being aggrieved by the said order, Petitioners have invoked writ jurisdiction of this Court for quashing and setting aside the said order.

6. PIL has been filed by Social Activists, challenging the allotment of plot No. 5 to M/s. Metropolis Hotels and for cancellation of lease agreements dated 30/03/2010 executed by CIDCO in favour of M/s. Metropolis Hotels and Shishir Realty Private Ltd.-Developers. They also challenged subdivision of plots of land and for consequential reliefs.

7. After the PIL was filed in February, 2011 CIDCO had cancelled the lease deeds which were granted in favour of the two Petitioners by order dated 16/03/2011 and, as such, the said PIL has practically become infructuous. We have, however, heard the learned Counsel appearing on behalf of the PIL Petitioners at great length and have also heard the learned Senior Counsels appearing on behalf of M/s. Metropolis Hotels and Shishir Realty Private Ltd.-Developers and the learned Senior Counsel appearing on behalf of CIDCO and also the learned Counsel appearing on behalf of the State of Maharashtra.

8. During the course of arguments, the learned Counsel appearing on behalf of PIL Petitioners has tendered a compilation of documents which has been taken on record since the learned Senior Counsel appearing on behalf of the Petitioners submitted that they have no objection if the said documents are taken on record. These documents being relevant for the purpose of deciding these Petitions, they were allowed to be placed on record, though during pendency of these Petitions no attempt was made to bring them on record by filing detailed further affidavit.

9. In order to appreciate the rival contentions, it will be necessary to briefly state the facts which are relevant for the purpose of deciding these Petitions.

10. CIDCO issued an advertisement on 11/06/2008 and 15/07/2008 which was published in the news papers inviting tenders for the lease of plot No. 5 admeasuring 47000 sq. meters. The said plot was permitted to be used for Five Star Hotel and allied activities. Several bids were received by CIDCO but, finally, the plot was allotted to M/s. Metropolis Hotels on 07/08/2008, it being the highest bidder and the total lease premium was fixed at Rs. 282,39,99,700/-. On 29/12/2009, M/s. Metropolis Hotels applied to CIDCO for change of user of the said plot and requested CIDCO to convert 34000 sq. meters to commercial-cum-residential use. On 11/02/2010, CIDCO granted permission to Metropolis Hotels for change of user of the plot to the extent of 23000 sq. meters and permitted them to use it for commercial-cum-residential purposes. CIDCO, however, levied charge of Rs. 500/- per sq. meter in accordance with the existing rules. On 11/03/2010, M/s. Metropolis Hotels made a request to CIDCO for subdivision of Plot No. 5 into two plots of 24000 sq. meters and 23000 sq. meters. CIDCO granted permission to divide Plot No. 5 into two plots being plot No. 5 and Plot No. 5A. The request made by M/s. Metropolis Hotels for transfer of Plot No. 5A in favour of Shishir Realty Private Ltd. was accepted by CIDCO on 30/03/2010 and two separate agreements to lease in respect of Plot No. 5 and 5A were executed by CIDCO on 30/03/2010 in favour of M/s. Metropolis Hotels in respect of the area admeasuring 24000 sq. meters and in favour of Shishir Realty Private Ltd. in respect of the area admeasuring 23000 sq. meters. On 31/03/2010, shareholders of Shishir Realty Private Ltd.-Petitioners in Writ Petition No. 702/2011, agreed to purchase the entire share holding of the Company for aggregate consideration of Rs. 265 crores.

11. Thereafter, Shishir Realty Private Ltd. made an application to CIDCO to grant no objection to mortgage Plot No. 5A to secure the loan taken by them from M/s.

Indiabulls Financial Services Ltd. This permission was granted by CIDCO on 28/4/2010 and Plot No. 5A was mortgaged in favour of M/s. Indiabulls Financial Services Ltd. On 12/05/2010, Petitioners-Shishir Realty Private Ltd. applied to Navi Mumbai Municipal Corporation for permission to commence development of Plot No. 5A. All the relevant permissions were obtained and Commencement Certificate was granted by Navi Mumbai Municipal Corporation on 08/06/2010 under the provisions of Bombay Provincial Municipal Corporation Act. It is the case of the Petitioners that on or about 10/06/2010, they commenced development activities on Plot No. 5A. However, on 18/09/2010, Navi Mumbai Municipal Corporation directed the Petitioners not to undertake any further construction on Plot No. 5A.

12. A show-cause notice was issued by CIDCO dated 06/12/2010 asking the Petitioners-Shishir Realty Private Ltd. and M/s. Metropolis Hotels why CIDCO should not cancel and revoke the agreement of allotment of plot dated 07/08/2010 and agreements to lease dated 30/03/2010. Reply was filed by the two Petitioners and hearing was given by the Vice Chairman and Managing Director of CIDCO and, finally, impugned order was passed on 16/03/2011 cancelling the allotment of plot No. 5 in favour of M/s. Metropolis Hotels and also subsequent permission for change of user and subdivision of the plot and lease deeds in respect of Plot No. 5 and Plot No. 5A. Both the Petitioners filed Writ Petitions in this Court and interim relief was granted by this Court and this Court was pleased to observe that Petitions would be disposed of finally at the stage of admission.

13. Before we deal with the rival submissions, it is necessary to take a note of the admitted facts. It is not in dispute that M/s. Metropolis Hotels had offered the highest bid and was allotted Plot No. 5 admeasuring 47000 sq. meters. Their application for change of user was granted by CIDCO to the extent of 23000 sq. meters for commercial-cum-residential use. They were also permitted thereafter to transfer this area to M/s. Shishir Realty Private Ltd. subject to payment of entire lease rent and payment of additional transfer charges to the extent of Rs. 712 lakhs. They had, thereafter, applied for subdivision of the plot; 24000 sq. meters in favour of M/s. Metropolis Hotels and 23000 sq. meters in favour of M/ s. Shishir Realty Private Ltd., which was also granted and, on the very next day, CIDCO executed two separate agreements to lease in respect of the two plots viz. Plot No. 5 and Plot No. 5A. It has also come on record that M/s. Shishir Realty Private Ltd. soon thereafter sought permission to mortgage their plot No. 5A to a Finance Company in order to avail finance from them. This permission was also granted and the plot was accordingly mortgaged. M/s. Shishir Realty Pvt. Ltd. thereafter proceeded to take steps for the development of the plot by making an application for commencement of construction and this permission was also granted and the plans submitted by them were sanctioned and Commencement Certificate was issued. Thereafter, M/s. Shishir Realty Private Ltd. commenced the work of construction and third party rights were also created by sale of plots by accepting deposits to the tune of Rs. 6 crores. It is

only after almost three years, show-cause notice was issued and, thereafter, the impugned order of termination of lease agreements was passed solely on the ground that Petitioners-M/s. Metropolis Hotels and Shishir Realty Private Ltd. had committed breach of the terms and conditions of the tender document.

14. It has been strenuously urged by both the Petitioners that on the well settled principle of promissory estoppel, CIDCO is estopped from contending that its decision was invalid or could be impugned after it had been acted upon. Reliance has been placed on the judgments in the case of Sunil Pannalal Banthia and Others Vs. City and Industrial Development Corpn. of Maharashtra Ltd. and Another, ; Popcorn Entertainment Corporation and Shri Nilesh Gala Vs. The City Industrial Development Corporation and The State of Maharashtra, ; M/s. Shree Ambica Developers Vs. State of Maharashtra, Shri Tanaji V. Satre Vice-Chairman and Managing Director, CIDCO Maharashtra Ltd and CIDCO Maharashtra Ltd., and CIDCO vs. Shree Ambika Developers Civil Appeal No. 7581/2012.

15. On the other hand, it has been submitted by the learned Senior Counsel appearing on behalf of CIDCO and the learned Counsel for PIL Petitioners that the Petitioners have violated statutory condition and the action of CIDCO in granting permission was ultra vires of the Act and, therefore, ratio of the judgments on which reliance has been placed by the Petitioners is not applicable to the facts of the present case. It is contended that the said transfer of the plot in favour of Shishir Realty Private Ltd. is contrary to Regulation 10 and, therefore, the action of CIDCO is ultra vires the Act. Reliance has been placed by the learned Counsel appearing on behalf of CIDCO on the judgment of the Supreme Court in Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay, , more particularly on paras 19, 20 and 23. The learned Counsel appearing on behalf of PIL Petitioners has relied upon the following judgments:-

(i) Mukund Swarup Mishra Vs. Union of India (UOI) and Others,

(ii) Union of India (UOI) and Others Vs. Godfrey Philips India Ltd.,

(iii) Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, It must be mentioned here that it has been argued for the first time across the bar by both the learned Counsel for CIDCO and PIL Petitioners that there was breach of Regulation 10 of the Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008. Both the learned Senior Counsels appearing on behalf of the Petitioners have rightly taken objection that CIDCO or PIL Petitioners cannot for the first time across the bar submit that there is a breach of Regulation 10. It is submitted that had this fact been pleaded in the PIL Petition or in the affidavit-in-reply filed by CIDCO, the Petitioners could have responded by filing their affidavit-in-reply. Secondly, it is submitted that the quasi judicial authority cannot be permitted to supplement reasons given by it in the impugned order by mentioning these additional reasons in the affidavit-in-reply.

16. In our view there is much substance in the said submission made by both the learned Senior Counsels appearing on behalf of the Petitioners. It is a matter of

record that this submission was made for the first time across the bar and it does not find place in the averments which are made in the Petition by PIL Petitioners or in the affidavit-in-reply filed by CIDCO. It is a well settled position in law that a quasi judicial authority cannot be permitted to raise such a plea for the first time. This position is well settled by the Supreme Court in several cases including Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and Commissioner of Police, Bombay Vs. Gordhandas Bhanji, . The Apex Court also has in a similar case of cancellation of Agreement to lease by CIDCO has precluded them from raising the additional grounds which are not mentioned in the impugned order. Apex Court in Ambika Developers vs. State of Maharashtra 1 on pages 6 to 10 has in terms not allowed the CIDCO to raise such plea. Similarly, in Chandra Singh Vs. State of Rajasthan and Another, reaffirmed the principles laid down in the case of Mohinder Singh Gill (supra). Apart from that, perusal of Regulation 10 itself indicates that restriction against transfer of rights derived under the Agreement to lease is subject to satisfaction of the conditions imposed by the Corporation. The said Regulation 10 reads as under:-

10. Restrictions against transfer of rights derived under the Agreement to Lease: The intending Lessee shall not transfer wholly or partly the rights, benefits and interest he derives in respect of the plot agreed to be leased to him, provided that nothing contained herein shall apply if the Intending Lessee, after execution of Agreement to Lease, shall perform to the satisfaction of the Corporation the following conditions:

i. The intending Lessee pay to the Corporation the Transfer Charges at the rate as may be fixed from time to time, subject to a minimum of Rs. 5000.

ii In the instruments by which the intending Lessee transfers his rights, benefits and interest in respect of the plot agreed to be leased to him, he shall impose upon the person to whom such rights are transferred, to perform and observe all the conditions stipulated in the agreement to Lease;

Provided further that in case of plots agreed to be leased under Regulation 4 (iii), transfer of such rights shall not be permitted.

Explanation: (i) the intending Lessee may, with the prior written permission of the Managing Director, mortgage the plot to the Central Government, State Government, Life Insurance Corporation of India, the Maharashtra State Finance Corporation, the Nationalized Bank, Employer of the Intending Lessee or any other Financial Institutions as may be approved by the Corporation from time to time, for obtaining a loan for paying the lease premium to the Corporation in respect of the said plot and for constructing the building/buildings, factory on the said plot in accordance with the plan approved by the Town Planning Officer, provided that such mortgage can only be created after the execution of Agreement to Lease.

(ii) Transfer of rights derived under the Agreement to Lease shall mean and include the transfer of share or shares by the shareholders of a Company registered under the Companies Act, 1956 (I of 1956) or by the members of a Co-operative Housing Society registered under the Maharashtra Cooperative Societies Act, 1960 or by the partners of a Partnership Firm registered under the Indian Partnership Act, 1932, in which case the Transfer Charges as is allocable to the extent of the share or shares so transferred or at the rate as may be determined by the Corporation from time to time, shall be recovered.

17. In the present case, it has been urged that the said conditions could be performed only after application is made for transfer of benefits, after execution of Agreement to lease. In the present case, the plot was subdivided on 29/03/2010 and the agreements to lease were executed on the very next day i.e. 30/03/2010. Perusal of the said Regulation does not indicate that the said condition is mandatory but it appears to be directory. Apart from that, no loss or prejudice has been caused to CIDCO since the entire lease rent and transfer charges have been paid by M/s. Metropolis Hotels and on the very next day the agreements to lease have been executed. From the aforesaid facts, it cannot be said that on that ground, CIDCO which was a party to the entire agreement could invalidate the agreements of lease after a lapse of three years. In this case, therefore, we are satisfied that the change of user or subdivision of plot or execution of agreements to lease is not in violation of any statutory condition or ultra vires of the Act. Once it is held that action of CIDCO is not ultra vires to the provisions of the Act or Rules or Regulations framed thereunder or not in breach of any statutory Rule or Regulation, principle of promissory estoppel would squarely apply and, therefore, ratio of the judgments on which reliance has been placed by the learned Senior Counsel appearing on behalf of the CIDCO and the learned Counsel appearing on behalf of the PIL Petitioners would not apply to the facts of the present case. In all these cases, the Apex Court has held that if an action is illegal, contrary to law or ultra vires of the provisions of the Act or statutory provision then the said principle cannot be evoked. On the other hand, the facts stated in the judgments relied upon by the learned Senior Counsels appearing on behalf of the Petitioners are more or less identical to the facts in the case in hand and in the said cases also the land was allotted to Petitioners by CIDCO and change of user was permitted and, thereafter, the Agreement to lease was cancelled by CIDCO on the subsequent date. The Apex Court in all these cases has held that the said action of CIDCO was barred on the principle of promissory estoppel.

18. In the present case, the Petitioners M/s. Metropolis Hotels have acted pursuant to the permission granted by CIDCO to change the user of land. Thereafter, they had sought permission to transfer and assign their interest in favour of Shishir Realty Private Ltd., which was also granted. Thereafter, they had applied for subdivision of the plot in two plots. The said subdivision was also granted. Agreements to lease were executed with the two Petitioners. M/s. Shishir Realty Pvt. Ltd. was permitted to mortgage the said plot; the loan facilities were availed by them; Commencement Certificate was granted by Navi

Mumbai Corporation; work of construction had commenced and, thereafter, after three years, the change of user, subdivision of plot and agreements to lease were cancelled. Petitioners, therefore, had acted to their detriment on the representation made by the CIDCO and, thereafter, unilaterally, CIDCO had cancelled the said agreements. The impugned order is, therefore, liable to be set aside on this ground alone.

19. The second aspect which also needs to be taken into consideration is that, admittedly, CIDCO was initially acting in duel capacity since it was also a Planning Authority. The State of Maharashtra had decided to develop a twin City known as Navi Mumbai and CIDCO was formed. There was admittedly no development plan for Navi Mumbai Corporation and broadly certain nodes were given to CIDCO. The land in question though was earmarked for Five Star Hotel, it was admittedly in Zone which was fixed for commercial-cum-residential user and, as such, the change of user partly for Five Star Hotel and partly for commercial-cum-residential user by itself was not illegal and contrary to any development plan. It is an admitted position that in countless cases, CIDCO had permitted such change of user. It cannot be said, therefore, that the action of CIDCO in allowing the change of user or subdivision of plot was contrary to the provisions of Maharashtra Regional Town Planning Act or any other law or Regulation. Feeble attempt was made by the learned Counsel appearing on behalf of the PIL Petitioners by contending that CIDCO itself did not have an authority or power to permit the change of user or subdivision of plot since on the date on which the said change of user was allowed, it was no longer the Planning Authority, since, by Notification, the Government had made it clear that from 1997, the said Navi Mumbai Corporation alone was a Planning Authority. The learned Counsel appearing on behalf of the PIL Petitioners has tried to draw our attention to the said Notification in support of his submission. Surprisingly, this submission has not been supported either by the learned Senior Counsel Mr. V.A. Thorat who had appeared on behalf of CIDCO in the case of Shishir Realty Pvt. Ltd. or by the learned Counsel Mr. Marne, who had appeared on behalf of Navi Mumbai Municipal Corporation. It is obvious that the said submission is misconceived and is not supported by any provision.

20. The learned Senior Counsels appearing on behalf of Shishir Realty Private Ltd. and M/s. Metropolis Hotels then challenged the reasons given by CIDCO for passing the impugned order. It has been submitted that three reasons had been given viz. (i) M/s. Metropolis Hotels was not registered in June/July, 2008 when it submitted tender, (ii) change of user in respect of 23000 sq. meters of plot permitted by CIDCO on 11/2/2010 was illegal and (iii) subdivision of plot and execution of two agreements to lease was contrary to the tender condition and the plot was subdivided even before execution of agreements to lease. It has been submitted that the Petitioner Firm had duly disclosed alongwith its application that the Firm had applied for registration and the Registration Form and Partnership Deed were forwarded alongwith the tender and, subsequently, the Firm was duly registered. It has been contended that the CIDCO had

accepted and entertained the tender with full knowledge of the said fact, possibly because the Petitioners'' Tender was higher than the next bid and the difference was about Rs. 23 crores between the Petitioners'' bid and the next bid. It has been then submitted that CIDCO had accepted the tender and, thereafter, allotted the plot and acted on the basis of allotment for a period of three years. It has been further submitted that CIDCO had accepted the lease premium of Rs. 282,39,99,700/- from the Petitioners-M/s. Metropolis Hotels and further transfer fee of Rs. 1,38,56,000/- at the time of change of user and Rs. 8.50 lakhs and Rs. 721 lakhs at the time of subdivision and execution of agreements to lease. It has been therefore submitted that it was not open for CIDCO to contend after a lapse of three years that the Petitioner Firm''s tender was not eligible on the ground of non-registration of the Firm.

21. Mr. Thorat, the learned Senior Counsel appearing on behalf of CIDCO and Mr. Bhatt the learned Counsel appearing on behalf of PIL Petitioners vehemently opposed the said submission and contended that when CIDCO realized after new Chairman was appointed that certain illegal allotment of land had been made, inquiry was held and it was noticed that the tender bid of the Petitioners could never have been accepted and, therefore, in the impugned order it was correctly held that the Petitioners-M/s. Metropolis Hotels being not eligible, the allotment made to them was liable to be cancelled on that ground alone. Mr. Bhatt the learned Counsel for PIL Petitioners submitted that, in fact, there was collusion between the Petitioners and the CIDCO authorities and this could be clearly seen from the acceptance of tender bid of the Petitioners. He submitted that CIDCO authorities had tried to favour the Petitioners and deliberately ignored this lapse on the part of the Petitioners.

22. In our view, there is much substance in the submission made by the learned Senior Counsels appearing on behalf of the Petitioners. It is an admitted position that M/s. Metropolis Hotels had disclosed the fact of non-registration and annexed the Registration Form and the Partnership Deed. It is also admitted that soon thereafter the Firm was registered. CIDCO authorities were aware about this fact and they had accepted the tender, acted on it for a period of three years by allotting the land to M/s. Metropolis Hotels and had further accepted the lease premium of Rs. 282,39,99,700/- from the Petitioners. Thereafter, transfer fee of Rs. 1,38,56,000/- was accepted at the time of change of user and the CIDCO had also accepted an amount of Rs. 8.50 lakhs and Rs. 721 lakhs at the time of subdivision and execution of agreements to lease. Having done that, it is now not open for CIDCO authorities to contend that the tender bid could not have been accepted or that the Petitioners-M/s. Metropolis Hotels were not qualified.

23. The second reason given in the impugned order for cancellation of allotment of land was that change of user which was permitted by CIDCO was illegal. Admitted position is that the Petitioners-M/s. Metropolis Hotels had made an application for change of user of portion of the plot admeasuring 34000 sq. meters on 29/12/2009 and in the said application reasons seeking change of

user were mentioned. This application was considered and approved by the CIDCO after taking into consideration the Board Resolution dated 08/12/2007 which had approved the general policy permitting expansion of certain users. In the said Resolution, Managing Director/Joint Managing Director were authorized to permit change of user on payment of premium and it was specifically mentioned in the said policy that user for hotel could be changed/expanded to hotel-cum-residential on payment of charges of Rs. 500/- per sq. meter. This application for change of user was processed and the opinion from all Departments was called for. Accordingly, Marketing Manager and Chief Town Planner had given their detailed notes in which they had considered various aspects and, thereafter, after taking into consideration all these aspects a decision was taken by the Vice-Chairman and Managing Director of CIDCO. It has to be noted here that M/s. Metropolis Hotels had asked for extension of time for payment of installments of the lease amount on account of financial constraints. While granting permission for change of user, CIDCO authorities had imposed a condition that M/s. Metropolis Hotels should immediately pay the second and final installment of lease premium of Rs. 132.44 crores and they were also asked to pay additional amount of Rs. 115 lakhs and Rs. 23.56 lakhs as administrative/ miscellaneous charges. Petitioners-M/s. Metropolis Hotels paid additional/ miscellaneous charges on 11/2/2010 and on 15/2/2010 they paid CIDCO the second and final installment of the lease premium.

24. It has also been contended by the learned Senior Counsels appearing on behalf of the Petitioners that CIDCO under the said policy had granted such change of user in numerous cases. This fact has not been specifically denied by CIDCO. The examples given by the Petitioners in the affidavit-in-rejoinder have not been specifically denied by CIDCO. It is therefore clear that CIDCO had the authority to grant such change of user under the General Policy Resolution dated 08/12/1997. CIDCO authorities having allowed the application for change of user and acted on it by accepting administrative/miscellaneous charges and the premium paid by M/s. Metropolis Hotels, they are now estopped from contending that their decision was invalid or the said decision could be set aside after it was acted upon by the Petitioners. In our view, therefore, the CIDCO authorities had power and authority to grant change of user in view of the general policy Resolution dated 08/12/1997 since they had allowed the application of the Petitioners and had acted upon it and therefore they could not have impugned the order of allotment on this ground.

25. The third ground which has been given in the impugned order is that the subdivision of the plot and execution of agreements to lease; one in favour of M/ s. Metropolis Hotels and the other in favour of M/s. Shishir Realty Private Ltd. were illegal.

26. So far as subdivision of plot is concerned, it is a matter of record that one month after the change of user was permitted, an application was made for subdivision of the plot in two separate plots and permission was also sought for

separate lease in respect of the two subdivided plots. The learned Senior Counsel appearing on behalf of CIDCO and the learned Counsel appearing on behalf of PIL Petitioners have contended that subdivision and assignment was invalid and in breach of the tender condition, allotment condition and also was in breach of Regulation 10A. It has been firstly contended that subdivision and assignment could have been done only after execution of Agreement to lease. While, on the other hand, the learned Senior Counsels appearing on behalf of Petitioners have submitted that the Petitioners have paid entire premium of Rs. 282 crores before seeking subdivision and the Agreement to lease was executed on the very next day i.e. on 30/03/2010. It is, therefore, submitted that the fact that it was executed on the very next day would not invalidate the permission to subdivide and assign. It has been further submitted by the learned Senior Counsels for the Petitioners that subdivision and assignment had been duly acted upon by CIDCO by executing two separate lease agreements upon payment of Rs. 721 lakhs and the CIDCO had also further granted permission to Shishir Realty Private Ltd. to mortgage the said plot. It is also submitted that in the impugned order subdivision and assignment was held to be invalid because it was in breach of tender/allotment conditions and only during the oral arguments it was contended that it was in breach of Regulation 10A which contention was not pleaded by CIDCO in their reply and by the PIL Petitioners in their Petition.

27. In this context, it would be relevant to take into consideration clause 16 of the general terms of the tender and clause 21 of the conditions stipulated in the allotment letter which are reproduced hereinbelow:-

16. Transfer of assignment of rights

The intending lessees can transfer or assign his rights, interests or benefits which may accrue to him from the Agreement with the prior written permission of the Corporation and on payment of such transfer charges as may be prescribed by the Corporation from time to time. Such permission can however be granted only after the agreed lease premium and any other amount required has been paid in full and after execution of Agreement to lease. In case of transfer of plot, the Transferee should fulfill all eligibility conditions prescribed in condition 4 of the invitation of offer.

21. Transfer or Assignment of Rights:

You can transfer or assign his rights, interests or benefits which may accrue to him from the Agreement with the prior written permission of the Corporation and on payment of such transfer charges as may be prescribed by the Corporation from time to time. Such permission can however be granted only after the agreed lease premium and any other amount required has been paid in full and after execution of Agreement to lease. In case of transfer of plot, the transferee should fulfill all eligibility conditions prescribed in condition 4 of the invitation of offer.

Perusal of clause 16 clearly reveals that allottee was permitted to transfer or assign his rights, interests or benefits with prior written permission of the Corporation and on payment of such transfer charges as may be prescribed by the Corporation. Both the clauses have further stipulated that such permission could be granted only after the agreed lease premium has been paid in full and after execution of Agreement to lease. In the present case, agreed lease premium was paid in full. However, Agreement to lease was made on the very next day i.e. on 30/03/2010. In our view, merely because the Agreement to lease was executed on the very next day, that by itself world not invalidate the assignment and transfer by the Petitioners since prior written permission was obtained and Agreement to lease was in fact executed on the next day.

28. In view of the above, it can be seen that if the impugned order is examined from any angle, all the reasons which have been given for cancelling the allotment will have to be held to be illegal and the Corporation is precluded and estopped on the doctrine of promissory estoppel from cancelling the allotment on the aforesaid grounds.

29. It has been then strenuously urged that financial loss was caused to CIDCO. It has been argued by Mr. Thorat, the learned Senior Counsel appearing on behalf of CIDCO that the fact that CIDCO accepted Rs. 282 crores from Shishir Realty Private Ltd. itself indicated that loss was caused to CIDCO which was to the extent of Rs. 282 crores. It has been vehemently urged that if the CIDCO had invited tenders in respect of the said plot, it would have fetched that much amount. In our view, there is no substance in the said submission. Firstly, perusal of the extract of the Report of the Secretary clearly reveals that in his report he has specifically noted that CIDCO had not suffered any loss of revenue. Moreover, in the year 2008 the bid of the Petitioners-M/s. Metropolis Hotels was highest at Rs. 60,085/- followed by Rs. 55,319/- of M/s. Indian Hotels Co. Ltd. Similarly, it has been placed on record that even in December, 2008 CIDCO had received bid of only Rs. 55,000/- per square meter in respect of the plot for residence-cum-commercial use. It has been rightly argued by the learned Senior Counsels appearing on behalf of the Petitioners that CIDCO had received Rs. 5000/- per sq. meter more from the Petitioners even on the basis of residence-cum-commercial use and thus there is no substance in the allegation of loss of revenue. As rightly submitted by Mr. Chinoy the learned Senior Counsel that reference to the amount received by Shishir Realty Pvt. Ltd. in 2010 i.e. two year later is misleading and could not be the basis for alleged loss which might have been caused to CIDCO in 2008. He has rightly pointed out that the chart of property prices annexed by the PIL Petitioners shows that by mid 2010 prices in the area had doubled over the prices prevailing in 2008. He submitted that rates of 2010 cannot be related back to the rates in 2008 and the submission that the loss was caused to the Corporation is, therefore, without any substance.

30. Both, the learned Senior Counsel appearing on behalf of the Corporation and the learned Counsel appearing on behalf of PIL Petitioners have given list of authorities. In our view, it is not necessary to refer each and every authority

which has been cited since, in our view, ratio of these judgments do not even remotely apply to the facts of the present case.

31. For the aforesaid reasons, Writ Petition No. 702 of 2011 filed by Shishir Realty Private Ltd. is allowed in terms of prayer clauses (a) and (b) and Writ Petition No. 5245 of 2011 filed by M/s. Metropolis Hotels is allowed in terms of prayer clause (a). The impugned order passed by CIDCO is quashed and set aside. Rule in both these Petitions is made absolute accordingly. PIL No. 55 of 2011 is dismissed and the Rule is discharged. However, there shall be no order as to costs. Petitions are disposed of accordingly.

1. Civil Appeal No. 7581/2012