



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1930 OF 2011

Maharashtra Industrial Development Corporation, a statutory Corporation
Constituted under the Maharashtra Industrial Development Corporation
Act, 1961. Head quarter at Andheri, Mumbai-400 093, and having its office
at MIDC, Office Complex Building 1st Floor, Near Wagale Estate Octroi Naka,
Thane-400 604. }..Petitioner

Versus

1. Union Bank of India,
a banking corporation constituted under the provisions of the Banking Companies (Acquisition and Transfer for Undertaking) Act, 1970 and having its Head Office at 239 Vidhan Bhavan Marg, Backbay Reclamation, Mumbai-400 020 and a branch amongst others at 66/80 Mumbai Samachar Marg, Mumbai 400 023 through authorised officer Shri Hari Krishnan K, Senior Manager.
2. M/s. Benelon Industries,
a partnership firm under the Indian Partnership Act, 1932 and having its office at 109 Sir Vithaldas Chambers, Appollo Street, Mumbai-400 023 and having its factory at D/9, 21st Road, Marol Industrial Estate Area, Andheri-400 093, through any authorized officer/partner.
3. Phiroz Horumsjee Patel residing at Flat No.214, 12th Road, Jolly Maker Apartments No.3, Cuffe Parasde, Colaba, Mumbai-400 005

4. Income Tax Recovery Officer,
Range -12 (1), Room No.117,
Aaykar Bhavan, Mumbai-400 020. }
5. Kalindi Properties Private
Limited, a company having its office
at 41 Dashashrimali Nagar,
Narsingh Lane, Malad-West-Mumbai
400 064. }..Respondents

**WITH
CIVIL APPLICATION NO.232 OF 2017
WITH
CIVIL APPLICATION NO.2047 OF 2018
IN
WRIT PETITION NO.1930 OF 2011**

Kalindi Properties Private Limited,
a company having its office
at /41 Dashashrimali Nagar,
Narsingh Lane, Malad (West)
Mumbai 400 064. }

}..Applicant
(Org.Respondent No.5)

IN THE MATTER OF

Maharashtra Industrial Development
Corporation, a statutory Corporation,
Constituted under the Maharashtra
Industrial Development Corporation
Act, 1961. Head quarter at Andheri,
Mumbai-400 093, and having its office
at MIDC, Office Complex Building 1st
Floor, Near Wagale Estate Octroi Naka,
Thane-400 604. }

}..Petitioners

VERSUS

1. Union Bank of India,
a banking corporation constituted
under the provisions of the Banking
Companies (Acquisition and }

- | | |
|---|----------------|
| Transfer for Undertaking) Act, 1970 | } |
| and having its Head Office at 239 | } |
| Vidhan Bhavan Marg, Backbay | } |
| Reclamation, Mumbai-400 020 and | } |
| a branch amongst others at 66/80 | } |
| Mumbai Samachar Marg, Mumbai | } |
| 400 023 through authorised officer | } |
| Shri Hari Krishnan K, Senior Manager. | } |
| | |
| 2. M/s. Benelon Industries, | } |
| a partnership firm under the Indian | } |
| Partnership Act, 1932 and having its | } |
| office at 109 Sir Vithaldas Chambers, | } |
| Appollo Street, Mumbai-400 023 | } |
| and having its factory at D/9, 21 st | } |
| Road, Marol Industrial Estate Area, | } |
| Andheri-400 093, through any | } |
| authorized officer/partner. | } |
| | |
| 3. Phiroz Horumsjee Patel residing at | } |
| Flat No.214, 12 th Road, Jolly Maker | } |
| Apartments No.3, Cuffe Parasde, | } |
| Colaba, Mumbai-400 005 | } |
| | |
| 4. Income Tax Recovery Officer, | } |
| Range -12 (1), Room No.117, | } |
| Aaykar Bhavan, Mumbai-400 020. | } |
| | |
| 5. Kalindi Properties Private | } |
| Limited, a company having its office | } |
| at 41 Dashashrimali Nagar, | } |
| Narsingh Lane, Malad-West-Mumbai | } |
| 400 064. | } |
| | }..Respondents |

CIVIL APPLICATION NO.2546 OF 2018
IN
WRIT PETITION NO.1930 OF 2011

Harvinder Singh Vijan	}
Legal heir of the	}
Jogindersingh Isharsingh	}
Vijan (since deceased)	}
having his address at Plot	}

No.D/9, Road No.21, MIDC, Andheri
(E) Marol Industrial Estate Area,
Andheri 4000093 and residing at 1701,
Kritika Tower, Sion Trombay Road,
Chembur, Mumbai-400071.

Inventor/Applicant

IN THE MATTER OF

Maharashtra Industrial Development Corporation, a statutory Corporation, Constituted under the Maharashtra Industrial Development Corporation Act, 1961. Head quarter at Andheri, Mumbai-400 093, and having its office at MIDC, Office Complex Building 1st Floor, Near Wagale Estate Octroi Naka, Thane-400 604.

}..Petitioners

VERSUS

1. Union Bank of India, a banking corporation constituted under the provisions of the Banking Companies (Acquisition and Transfer for Undertaking) Act, 1970 and having its Head Office at 239 Vidhan Bhavan Marg, Backbay Reclamation, Mumbai-400 020 and a branch amongst others at 66/80 Mumbai Samachar Marg, Mumbai 400 023 through authorised officer Shri Hari Krishnan K, Senior Manager.
2. M/s. Benelon Industries, a partnership firm under the Indian Partnership Act, 1932 and having its office at 109 Sir Vithaldas Chambers, Appollo Street, Mumbai-400 023 and having its factory at D/9, 21st Road, Marol Industrial Estate Area, Andheri-400 093, through any authorized officer/partner.

- | | | |
|----|--|-----------------------|
| 3. | Phiroz Horumsjee Patel residing at
Flat No.214, 12 th Road, Jolly Maker
Apartments No.3, Cuffe Parasde,
Colaba, Mumbai-400 005 | }
}
}
} |
| 4. | Income Tax Recovery Officer,
Range -12 (1), Room No.117,
Aaykar Bhavan, Mumbai-400 020. | }
}
} |
| 5. | Kalindi Properties Private
Limited, a company having its office
at 41 Dashashrimali Nagar,
Narsingh Lane, Malad-West-Mumbai
400 064. | }
}
}
}
} |
- }..Respondents

**INTERIM APPLICATION NO.10133 OF 2022
IN
WRIT PETITION NO.1930 OF 2011**

Maharashtra Industrial Development Corporation, a statutory Corporation, Constituted under the Maharashtra Industrial Development Corporation Act, 1961. Head quarter at Andheri, Mumbai-400 093, and having its office at MIDC, Office Complex Building 1 st Floor, Near Wagale Estate Octroi Naka, Thane-400 604.	} } } } } } } } }
--	---

}..Applicant
(Org. Petitioner)

IN THE MATTER OF

Maharashtra Industrial Development Corporation, a statutory Corporation, Constituted under the Maharashtra Industrial Development Corporation Act, 1961. Head quarter at Andheri, Mumbai-400 093, and having its office at MIDC, Office Complex Building 1 st Floor, Near Wagale Estate Octroi Naka, Thane-400 604.	} } } } } } } }
--	--------------------------------------

}..Petitioner

VERSUS

1. Union Bank of India, }
a banking corporation constituted }
under the provisions of the Banking }
Companies (Acquisition and }
Transfer for Undertaking) Act, 1970 }
and having its Head Office at 239 }
Vidhan Bhavan Marg, Backbay }
Reclamation, Mumbai-400 020 and }
a branch amongst others at 66/80 }
Mumbai Samachar Marg, Mumbai }
400 023 through authorised officer }
Shri Hari Krishnan K, Senior Manager. }
2. M/s. Benelon Industries, }
a partnership firm under the Indian }
Partnership Act, 1932 and having its }
office at 109 Sir Vithaldas Chambers, }
Appollo Street, Mumbai-400 023 }
and having its factory at D/9, 21st }
Road, Marol Industrial Estate Area, }
Andheri-400 093, through any }
authorized officer/partner. }
3. Phiroz Horumsjee Patel residing at }
Flat No.214, 12th Road, Jolly Maker }
Apartments No.3, Cuffe Parasde, }
Colaba, Mumbai-400 005 }
4. Income Tax Recovery Officer, }
Range -12 (1), Room No.117, }
Aaykar Bhavan, Mumbai-400 020. }
5. Kalindi Properties Private }
Limited, a company having its office }
at 41 Dashashrimali Nagar, }
Narsingh Lane, Malad-West-Mumbai }
400 064. }..Respondents

...

Mr. Prashant Chawan, Senior Advocate with Mr. Rajmani Varam,
Mr. Meet Vora i/by Navdeep Vora & Associates for the petitioner-

MIDC.

Mr. Sahil Mahajan with Mr. Saurabh S. Godbole, Advocates for the applicant in CAW No.2546 of 2018.

Mr. A. I. Patel, Additional Government Pleader with Mr. S. P. Kamble, Assistant Government Pleader for the respondent-State.

Mr. Pankaj Sawant, Senior Advocate with Mr. Ziyad Madon, Mr. Amit Mehta, Ms. Nipa Gupte, Mr. Hitesh Mishra i/by Mr. Amit Mehta, Advocates for the respondent no.5.

**CORAM : A.S. CHANDURKAR &
M. M. SATHAYE, JJ**

Date on which the arguments concluded : 16th APRIL 2025

Date on which the judgment is pronounced : 26th MAY 2025

JUDGMENT: (PER : A. S. CHANDURKAR, J)

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties.

2. The challenge raised in this writ petition is to the judgment dated 18/01/2011 passed by the learned Chairperson, Debts Recovery Appellate Tribunal, Mumbai in Miscellaneous Appeal No.25 of 2009. By the said order, the appeal preferred by the petitioner came to be partly allowed and various directions were issued to the parties with a view to put an end to the dispute amongst them.

3. The facts in brief giving rise to the present proceedings can be stated thus: Plot No.D-9 located in Marol Maharashtra Industrial Development Corporation Area was under control of the petitioner-Maharashtra Industrial Development Corporation-(for short, 'MIDC'). On 23/03/1979, the MIDC allotted the said plot to the second respondent-M/s. Benelon Industries (for short, 'BI'). In the lease deed executed between the parties with a duration of ninety five years, various terms and conditions were incorporated including a restriction on the assignment or letting or parting with possession of the leasehold plot without prior consent of the MIDC. There was also a provision for determination of the lease deed with a further right of re-entry in case of breach of any covenant by the lessee. BI had obtained financial assistance from the Maharashtra State Financial Corporation (for short, the "MSFC"). On 01/04/1981, the MSFC issued a No Dues Certificate to BI on receiving its dues. Since BI sought further financial assistance from the respondent no.1- Union Bank of India (for short, "UBI") it approached the MIDC for grant of No Objection for creation of mortgage of the aforesaid plot in its favour. BI was however informed by the UBI that unless all requisite documents were furnished to the MIDC, it would not be able to consider such

request. According to the MIDC, notwithstanding aforesaid, UBI granted financial assistance to BI. Since there was a default on the part of BI in making repayment of the loan amount, UBI filed Suit No.2118 of 1990 against BI for recovery of the outstanding dues. On 09/02/1996 an ex-parte decree was passed by the High Court against BI. After the Recovery Of Debts Due To Banks And Financial Institutions Act, 1993 (for short, the Act of 1993) came into force on 25/06/1993, the execution proceedings stood transferred to the Debts Recovery Tribunal (for short, “the DRT”). A recovery certificate was thereafter issued in favour of UBI in the said proceedings on 28/06/2004.

4. According to the MIDC during inspection of the plot on 18/08/2007, its Officers noticed unauthorised use of the same by third parties without its permission. On 18/10/2007, the MIDC issued a show cause notice to BI stating therein that various violations of the terms of the lease deed had been noticed. In the meanwhile, the DRT issued an order of proclamation for the sale of the plot on 29/10/2007. According to the MIDC, it was informed about the attachment of the said plot on 06/11/2007 and hence on 01/02/2008 it filed an application before the Recovery Officer for raising the attachment. The said application

however was permitted to be withdrawn by the Recovery Officer on 26/02/2008 with liberty to file a fresh application. The MIDC thereafter filed Miscellaneous Application No.37 of 2008 under Section 19(25) of the Act of 1993 for setting aside the recovery proceedings as being illegal. A separate application for condonation of delay was also filed. In the meanwhile, on 10/10/2008 auction of the plot was undertaken wherein the fifth respondent-Kalindi Properties Private Limited (for short, "KPPL") was successful. The learned Presiding Officer, DRT on 01/01/2009 dismissed Miscellaneous Application No.37 of 2008 that was preferred by the MIDC under Section 19(25) of the Act of 1993. Being aggrieved, the MIDC challenged the said order by filing Miscellaneous Appeal No.25 of 2009 before the Debts Recovery Appellate Tribunal (for short, the DRAT). On 02/02/2009, the Recovery Officer proceeded to confirm the sale in favour of KPPL with a direction to handover possession of the plot to it. Thereafter on 05/02/2009, the DRAT passed an interim order staying the recovery proceedings initiated by UBI and steps taken pursuant thereto till the adjudication of the Miscellaneous Appeal. Since KPPL was aggrieved by the order dated 05/02/2009, it challenged the same by filing Writ Petition No.2781 of 2009 (*M/s. Kalindi Properties Private Ltd. Vs. Maharashtra Industrial Development*

Corporation & others). The MIDC also filed Writ Petition No.5928 of 2009 (*Maharashtra Industrial Development Corporation Vs. Union Bank of India & Ors*) raising a challenge to the order passed by the DRAT on 05/02/2009 directing the parties to settle the dispute inter se. On 21/04/2009 while issuing Rule in the writ petition filed by KPPL, it was noted that if KPPL deposited an amount of Rs. 14,51,00,000/-, the said amount would satisfy the claims of all parties. Hence by an interim order the stay granted by the learned Chairperson to the recovery proceedings came to be vacated. The plot was accordingly handed over to KPPL. Being aggrieved, the MIDC approached the Supreme Court for challenging the order dated 21/04/2009 passed by this Court. This Special Leave Petition came to be dismissed by the Supreme Court on 28/08/2009 in view of the fact that Writ Petition No.5928 of 2009 preferred by the MIDC was pending in this Court.

5. The writ petitions preferred by KPPL and the MIDC were heard together and decided by a common order dated 16/08/2010. It was noted that KPPL had deposited an amount of Rs. 14,51,00,000/- as directed. It was observed that if KPPL deposited the amount of differential premium, the lease deed could be executed in its favour. KPPL was thereafter directed to

deposit an amount of Rs.1,71,81,300/- towards differential premium and incidental charges of Rs.52,000/- after which the MIDC was directed to issue a sanction letter indicating allotment of the plot in favour of KPPL treating it as a lessee. Directions were also issued to the DRAT to decide Appeal No.25 of 2009 on its own merits. The MIDC being aggrieved by the aforesaid order approached the Supreme Court. By the order dated 04/01/2011 as modified on 06/01/2011, the Supreme Court noted that the arguments in the appeal pending before the DRAT had been heard and that the order was reserved. It therefore was of the view that the Special Leave Petition need not be entertained on merits and that if the MIDC was aggrieved by the order that would be passed by the DRAT in Miscellaneous Appeal No.25 of 2009, it would be at liberty to challenge that order before an appropriate forum on all grounds. Thereafter, the DRAT on 18/01/2011 decided the aforesaid appeal and held that the mortgage of the plot by BI in favour of UBI was neither illegal nor void. BI had committed breach of Clause 2(t) of the lease deed by creating a charge over the plot. However, the MIDC did not take any steps under Clause 4 of the lease deed so as to determine the lease and re-enter the premises. KPPL was directed to pay subletting charges to the MIDC from 18/08/2007 when the alleged subletting was noticed

till 10/10/2008 which was the date on which auction of the plot was held. The amount available with the Recovery Officer was directed to be paid to the MIDC towards its claim of subletting charges. The further balance amount was to be utilised for satisfying the claim of the Income Tax Department. It is this judgment dated 18/01/2011 passed by the learned Chairperson that is challenged by the MIDC in this writ petition.

6(a) Mr. Prashant Chawan, learned Senior Advocate for the MIDC in support of the prayers made in the writ petition submitted that the DRAT committed an error in not accepting the contentions raised by the MIDC that the mortgage deed executed in favour of UBI being without consent of the MIDC was void in law. Referring to various provisions of the Maharashtra Industrial Development Act, 1961 (for short, “the Act of 1961”) and especially Sections 15, 43-1A, 64 and 67 thereof, it was submitted that the MIDC was empowered to make regulations with regard to the matter of dealing with lands under its control. In exercise of such power, the Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975 (for short, “the Regulations of 1975”) had been framed. Perusal of the same indicated that the MIDC was justified in demanding subletting charges from KPPL as

it was in unlawful possession. It was submitted that admittedly consent of the MIDC had not been obtained prior to executing the mortgage deed in favour of UBI. Despite recording this finding, the DRAT erred in holding that the mortgage deed was not void. Referring to the decision of the Supreme Court in *State of Uttar Pradesh and Others vs. United Bank of India and Others*, 2015 INSC 867, it was submitted that on the basis of such void mortgage no rights were created in favour of UBI. For the same reason, KPPL as an auction purchaser did not get valid title to the mortgaged property and it had merely stepped into the shoes of BI, the original allottee. Moreover, the lease deed dated 23/03/1979 executed in favour of BI had been terminated in July 2007 and hence no rights accrued in favour of the auction purchaser. It was then submitted that in breach of terms of Clause 2(t) of the lease deed, the mortgage deed had been created in favour of UBI. In absence of any consent of the MIDC, any steps taken by BI were invalid and not binding on the MIDC. A reference was also made to the provisions of Sections 58 and 108 (j) of the Transfer of Property Act, 1882. It was thus submitted that if the initial execution of the mortgage in favour of UBI was illegal, all actions/transactions entered into by it thereafter would have no legal effect and the same would fall to the ground.

Reliance was placed on the judgment of the Supreme Court in *State of Punjab vs. Davinder Pal Singh Bhullar and Others, (2011) 14 SCC 770* in that regard. It was thus submitted that the DRAT was not justified in holding that though the mortgage deed had been executed without consent of the MIDC, it was not void.

(b) On the claim for subletting charges made by the MIDC, it was submitted that such demand was made in accordance with the Regulations of 1975. The MIDC was empowered by the said Regulations to demand subletting charges from KPPL in view of the fact that there was no consent whatsoever granted by the MIDC to transfer/sublet the land in its favour. Referring to Regulation 29 of the Regulations of 1975 read with Section 15 of the Act of 1961 it was submitted that the MIDC was legally justified in claiming subletting charges. Further, the DRAT was not justified in limiting the levy of subletting charges till 10/10/2008 on the ground that the sale was effected in favour of KPPL on that day. As the UBI did not get any legal right in the said property, the sale effected by it also had no basis whatsoever. KPPL was therefore liable to pay subletting charges till date. It was also submitted that the DRAT was not justified in holding that the MIDC had made various changes in the demand for subletting charges from time to time. Its stand in that regard

was consistent and in view of the Regulations of 1975, it was entitled to claim subletting charges. Reliance was placed on the judgment of the Division Bench at Aurangabad in Writ Petition No.8499 of 2014 (*Aurangabad Carbon Produces Private Limited vs. The State of Maharashtra and Others*) dated 06/07/2015 in the matter of paying differential charges.

(c) It was then submitted that the decree passed in favour of UBI was on the basis of suppression of material facts and documents. This resulted in vitiating the said decree on the ground of fraud. Moreover, as the MIDC was not a party to the aforesaid suit filed by UBI against BI, the decree passed therein was not binding on the MIDC. It was pointed out that KPPL as an auction purchaser had participated in the auction that was conducted on “as is where is basis” and therefore it was duty bound to satisfy the claim of the MIDC against BI.

d) On these contentions it was submitted that the impugned judgment of the DRAT was liable to be set aside and the recovery proceedings be set aside.

7(a) Mr. Pankaj Sawant, learned Senior Advocate appearing for the fifth respondent-KPPL opposed the writ petition and supported

the judgment passed by the DRAT. According to him, the DRAT rightly found that the mortgage deed in favour of UBI could not be treated to be void. Though it was the stand of the MIDC that there was a breach of the terms of the lease deed by BI and especially Clause 2(t) thereof, no steps whatsoever were taken by the MIDC to exercise its right of re-entry or to terminate the lease. The DRAT rightly found that the MIDC was guilty of inaction without any justifiable reason. Though it was the case of the MIDC that it noticed the subletting of the land on 18/08/2007 after which show cause notice was issued on 16/10/2007, no steps were taken by it for such breach in accordance with the terms of the lease deed. Pursuant to various orders passed by the DRT in the execution proceedings, a public auction was conducted in which KPPL participated and was successful. Having paid the entire consideration as per its bid, KPPL could not be deprived of its rights in that regard. On the contrary, the MIDC failed to safeguard the subject property as a result of which various encroachments were committed therein. As a result, KPPL did not get vacant possession of the said property despite having paid the entire consideration. It was submitted that the DRAT rightly held that the mortgage deed executed in favour of UBI could not be treated to be void. At the highest, it could have been stated to be

irregular on the basis of which the MIDC could have taken action for breach of conditions of the lease. The same was however not done. It was therefore submitted that there was no reason whatsoever to interfere with the finding recorded by the DRAT.

(b) On the aspect of subletting charges imposed by the MIDC, it was submitted that the same were sought to be levied on the basis of the Circular issued by the MIDC on 15/03/2007. Referring to the decision of the Division Bench at Nagpur in *Prakash Fabricators Pvt. Ltd., Nagpur vs. Maharashtra Industrial Development Corporation, Mumbai and another*, 2010(3) Mh.L.J. 413, it was submitted that after considering a similar Circular, it was held that said Circular did not indicate that it had been issued in exercise of any authority of law. Hence there was no legal basis whatsoever to levy subletting charges. It was also pointed out that the DRAT correctly observed that there had been periodical and arbitrary increase in the amount of subletting charges levied by the MIDC. This was without any justification. Despite the absence of power in that regard, the DRAT had maintained levy of sub-letting charges from 18/08/2007 to 10/10/2008.

(c) On the contention raised on behalf of the MIDC that the

decree passed in favour of UBI was vitiated by fraud, it was submitted that there was no material suppression of any relevant fact. Despite the MIDC having knowledge of the said decree, it had not been challenged by the MIDC at any point of time. It was not open for the MIDC to raise this contention in the present writ petition as the same was not raised earlier either before the DRT or the DRAT.

(d) The learned Senior Advocate submitted that pursuant to the order dated 15/08/2010 passed by this Court in the earlier round of litigation, KPPL had deposited an amount of Rs 1,71,81,300/- on 27/08/2010 in compliance with the order dated 16/08/2018. Despite aforesaid, the MIDC had failed to execute the lease deed in its favour. Thus having parted with the entire amount of sale consideration as well as the amount of differential premium, KPPL did not receive vacant possession of the property purchased by it in the public auction.

(e) On these contentions, it was submitted that the challenge raised by the MIDC to the impugned judgment passed by the DRAT had no merits. The writ petition was therefore liable to be dismissed.

8. We have heard the learned counsel for the parties at length and with their assistance we have perused the documentary material on record. Having given due consideration to the respective submissions, in our view, the impugned judgment of the DRAT dated 18/01/2011 does not call for any interference whatsoever. The reasons for arriving at this conclusion are as under:-

8.1 On the legality of the mortgage deed executed by BI in favour of UBI, the DRAT has held that the mortgage could not be held to be illegal, void and non-est. While recording this finding, it has been held that the mortgage of leasehold rights was not prohibited by law and that execution of such mortgage deed by BI could be treated to be in breach of the covenants of the lease deed. It has referred to Clause 2(t) of the lease in that regard.

Undisputedly on 23/03/1979, the lease deed was executed by the MIDC in favour of BI for the period from 01/02/1975 till 31/01/2070. As per Clause 2(t) of the lease deed, the lessee was not permitted to assign, underlet or part with

possession of the demised premises or any part thereof or any interest therein without the previous written consent of the Chief Executive Officer of the MIDC. Clause 4 of the lease deed provides for consequences of breach of any covenant of the lease deed. The said Clause requires initially a notice to be given by the lessor to the lessee of any specific breach of any covenant that would entitle the lessor to the right of re-entry in the leased land. An opportunity of remedying such breach or breaches within three months of issuing such notice has been granted. According to the MIDC, pursuant to an inspection conducted on 18/08/2007, it noticed illegal subletting of the leased property without its consent. It therefore issued a show cause notice to BI on 16/10/2007 but there was no reply to the same. It however appears that thereafter the MIDC did not take any further steps pursuant to its show cause notice dated 16/10/2007 or the right available to it under Clause 4 of the lease deed. This inaction on the part of the MIDC has gone unexplained.

8.2 It thus becomes clear that the action of BI of creating a mortgage of the leased plot in favour of UBI was without the prior consent of the Chief Executive Officer of the MIDC and thus in violation of Clause 2(t) of the lease deed. Though MIDC sought to invoke its right under Clause 4 of the lease deed by issuing a show cause notice on 16/10/2007, it did not take any further steps in that regard. Since the consequence of a breach of any covenant of the lease deed has been provided, the creation of the mortgage in breach thereof cannot be treated to be void. In our view, the DRAT has rightly found that the creation of the mortgage by BI was without the prior permission of the MIDC and it was open for the MIDC to exercise its right of re-entry due to breach of a covenant which it failed to enforce. The said finding recorded by the DRAT is in accordance with the terms of the lease deed dated 23/03/1979. The said finding therefore cannot be said to be perverse for being interfered with in exercise of writ

jurisdiction.

8.3 The MIDC sought to rely upon the decision in *United Bank of India and Others* (supra) to contend that creation of the mortgage in favour of UBI was *void ab initio*. We find that the facts involved in the aforesaid decision are sufficient to hold that ratio of the said decision is not applicable to the case in hand. The subject property in the aforesaid decision was Nazul land and the mortgage was created by lessee without previous sanction in writing of the State Government. In the present case, since the terms of the lease deed itself indicate the consequence of the violation/breach of any covenant thereof, the action provided therein was available for the MIDC to invoke. Hence the ratio of the aforesaid decision does not not further the case of the MIDC.

8.4 On the validity of levy of subletting charges, it would be necessary to briefly refer to the order dated 16/08/2010 passed by this Court in the

earlier round of litigation. While considering the challenge to the interim order passed by the DRAT on 05/02/2009, it was observed in paragraph 3 of the said order that insofar as subletting charges were concerned, the same did not find place in the Regulations of 1975. According to the MIDC, the same have been provided by way of Resolutions passed by the Board of Directors of the MIDC. It was further observed in paragraph 4 of the said order that from the date of issuance of the auction notice in 2008, the MIDC would not be entitled to subletting charges either from UBI or KPPL as the MIDC was aware of the alleged subletting. It was clarified that for the anterior period, the rights of the MIDC to claim subletting charges as well as liability on whom it could be saddled would be adjudicated by the DRAT.

8.5 It is true that the order dated 16/08/2010 passed in Writ Petition No.5928 of 2009 was challenged before the Supreme Court. However, on the ground that the appeal before the DRAT had been heard and the order thereon was reserved,

the Supreme Court did not interfere with the order dated 16/08/2010 passed in the writ petition and kept all grounds of challenge open for the MIDC to raise if it was aggrieved by the adjudication of the appeal by the DRAT. Perusal of the Regulations of 1975 however does not indicate that the same contains any specific power which empowers the MIDC to levy subletting charges. The learned Senior Advocate for the MIDC referred to Regulations 1(c), 4, 16 to 18 and 29 of the Regulations of 1975 in that regard. We however do not find that the said Regulations contain any provision for imposing subletting charges.

Reference was then made to the Circular dated 03/03/2007 in that regard. We may however note that a Co-ordinate Bench of this Court had an occasion to consider the Circular dated 15/03/2007 issued by the MIDC as the basis for demanding subletting charges and penalty. It was held in *Prakash Fabricators Pvt. Ltd.* (supra) that the said Circular was issued by the Chief Executive Officer of the MIDC but it did

not disclose or demonstrate existence of any authority of law to do so. It was more in the nature of an internal communication by the Chief Executive Officer and hence it could not be the basis for demanding subletting charges or penalty of such nature. We therefore find that the observations made in the aforesaid decision are clearly attracted to the present case.

8.6 The DRAT has considered these relevant aspects in the light of the observations made by the Division Bench in its order dated 16/08/2010 referred to earlier. It directed payment of subletting charges from 18/08/2007 when the subletting was noticed by the MIDC till 10/10/2008 which was the date on which the sale was effected in favour of KPPL. We note that this direction issued by the DRAT has not been challenged by KPPL and hence it would bind KPPL. According to the MIDC, it undertook an inspection of the aforesaid property on 18/08/2007 when the alleged subletting was noticed. This date has therefore been rightly taken

as the date from which the subletting charges were to be paid. This finding recorded by the DRAT therefore does not deserve to be interfered with, notwithstanding the finding that there was an absence of power under the Regulations of 1975 to levy subletting charges. Though it was urged on behalf of the MIDC that the DRAT was not justified in holding that the MIDC had been changing its stand in the matter of imposing subletting charges, we do not find any basis whatsoever to uphold this grievance raised by the MIDC. The challenge raised by the MIDC to that extent therefore cannot be accepted.

8.7 We note that pursuant to the order dated 16/08/2010 passed by this Court, KPPL has paid an amount of Rs 1,71,81,300/- towards differential charges and Rs 52,000/- towards incidental charges. These amounts are determined on the basis of the claim made by the MIDC itself. In this backdrop, the ratio of the decision in *Aurangabad Carbon Produces Private Limited* (supra) has no

application.

8.8 Though it was urged on behalf of the MIDC that the decree passed in the suit filed by UBI against BI was vitiated by fraud as all relevant material aspects were not placed on record by UBI, we find that this ground of challenge was not raised by the MIDC either before the DRT or the DRAT. The adjudication of the aspect as to whether a judgment of a competent court is vitiated by fraud on account of alleged non-disclosure of material facts is a mixed question of fact and law. In absence of any such grievance being raised by the MIDC earlier either before the DRT or DRAT, we are not inclined to go into this disputed question in exercise of jurisdiction under Article 226 of the Constitution of India.

9. Thus having considered the challenge to the impugned judgment of the DRAT, we do not find any legal ground whatsoever to interfere with the same. The various directions issued by the DRAT are with a view to enable the claims of the litigating parties to be duly satisfied. The said directions are accordingly upheld.

10. It may be stated that during pendency of the writ petition, various Interim Applications were filed. A grievance was raised with regard to alleged encroachments being made in the said property. A prayer to appoint Court Receiver was made. It is seen that one of the applicants has filed Suit No.1229 of 2017 before the City Civil Court, Mumbai. In the said suit, the MIDC had also preferred Notice of Motion No.3777 of 2017. In our view, since the order passed by the DRAT has been upheld, the parties would be at liberty to have their other rights adjudicated in accordance with law in the proceedings pending before the Civil Court. We clarify that the said proceedings be decided on their own merits and in accordance with law.

11. For aforesaid reasons, we do not find any merit in the writ petition. It is accordingly dismissed. Rule stands discharged with no order as to costs. All pending Interim Applications are also disposed of.

[M. M. SATHAYE , J.]

[A.S. CHANDURKAR, J.]