



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.713 OF 2001

1.Mr.Aspi Chinoy & another. ...Petitioners.

VS.

1.The State of Maharashtra & ors. ...Respondents.

Mr.C.U.Singh, Sr.Advocate with Mr.Bhaven Manek i/b.
M/s.Wadia Gandhi & Co., for Petitioners.

Mr.S.K.Nair, Counsel for Respondent nos.1 to 3.

**CORAM: D.K.DESHMUKH &
R.G.KETKAR, JJ.**

DATED: 29th September, 2009

P.C.:-

1. By this petition, the petitioners challenge letter dated 27.6.2000 addressed to Sub Registrar, Bombay City, Old Custom House, by the Collector. By

that letter, the Collector has directed the Sub Registrar that before registering the transaction in respect of transfer of flats in the buildings situated at B.B.R.Block No.3 & 5, Nariman Point and Cuffe Parade, Bombay, and a person who approaches the Sub Registrar for registering the transaction should be asked to contact the office of the Collector first and obtain necessary certificate from the Collector. It is stated that the Collector has issued this direction pursuant to a letter addressed to him by the Government dated 22.6.2000. The facts that are relevant for deciding this petition are that in June, 1971 a notice was issued by the State Government inviting offers for the lease of plot nos.93,94,99,100 and 121 from Block V Backbay Reclamation Estate. The said notice referred to a Memo of Terms & Conditions for the lease of the said Plots. In July,1971 M/s.Aesthetic Builders Pvt.Ltd. made an offer to the Government for plot no.121(old) or 119(new) with the object of constructing a building thereon in which they proposed to construct and sell flats on ownership basis. The plot was bid for on the basis that the

purchasers of the said flats would form a Co-operative Society to whom the rights of the Company would be transferred. The State Government accepted the bid of M/s.Aesthetic Builders and agreed to grant lease of that plot in favour of M/s.Aesthetic Builders. The Government of Maharashtra granted license to M/s.Aesthetic Builders to enter upon the plot and construct thereon a building in accordance with the plans and specifications sanctioned by the Municipal Corporation of Greater Bombay. A twenty two storey building named Jolly Maker Apartments No.3 was constructed by the Company and the flats were sold to various parties on ownership basis. The occupation certificate in respect of the said building was issued on 12.12.1975. So far as the flat no.211 which is subject matter of this petition is concerned, it was sold by the Company to Mr.A.Madhavan of Electronics & Equipment Corporation by an agreement dated 22.11.1972 between the said Mr.A.Madhavan and the Company. In the year 1977, the flat purchasers in the building formed a Co-operative Society called Varuna Premises Co-operative Society Ltd. . It was duly registered

under the Maharashtra Co-operative Societies Act, 1960. The Society is Respondent no.4 in this petition. It is common ground that a lease deed as contemplated by the terms of allotment has yet not been executed by the Government either in favour of the Company or in favour of the Co-operative Society. By an agreement dated 23.5.1978 the said Mr.A.Madhavan of Electronics & Equipments Corporation sold his rights in the said flat to Mrs.Reshmidevi Agarwal. When this transfer was effected, though the Society was registered, share certificates were not yet issued by the Society. Thereafter, the society issued five fully paid up shares bearing Distinctive Nos.626-630 in favour of Mrs.Reshmidevi Agarwal. On 16.12.2000, the petitioner no.1 entered into an agreement with Mrs.Reshmidevi Agarwal to purchase rights to occupy flat no.211 as also five shares. When the petitioner no.1 approached the sub-Registrar for registration of this agreement on the basis of letter which is impugned in the petition, the Registrar declined to register the document and asked the petitioner no.1 to secure no objection from the Collector. According to the

petitioner no.1, it is not necessary for him to obtain any no objection from the Government or the Collector before acquiring rights in flat no.211. The petitioner no.1, therefore, has filed this petition.

2. The State Government has filed its reply. According to the respondent-State, firstly it is necessary for the petitioner no.1 to obtain previous permission of the State Government for transfer of the flat under Clause 15 and 16 of Memo of Terms and Conditions for lease of plot. Under those terms the Government as a condition for granting previous permission can levy premium. The Government has also relied on the Government Resolution dated 12.5.1983 and the Government Resolution dated 9.7.1999. According to the State Government, under these Government Resolutions, the State Government can claim premium as a condition for grant of permission for transfer of flat.

3. The learned Counsel appearing for petitioners submits that the respondent-State cannot require the

petitioner no.1 to obtain previous permission either of the Government or of the Collector under the Terms and Conditions relied on by the State Government because no interest in the land or the building is being transferred in favour of the petitioner no.1. All that the petitioner no.1 is getting is the shares of the Society and right to occupy the flat. The learned Counsel submits that the land and the building both vest in the Co-operative Society and all that the member has is a right to occupy the flat. He further submits that in any case under clause 15 previous permission will be necessary when the original lessee transfers the property for the first time. Clause 15 will not apply when a flat owner in the building is transferring his flat. So far as the Government Resolution of the year 1983 as well as the Government Resolution dated 9.7.1999 is concerned, the learned Counsel submits that nothing stated in these Government Resolutions apply to this case for two reasons, firstly those Government Resolutions in terms lay down the terms and conditions for grant of land by the Government on lease in favour of either

existing or proposed co-operative housing Societies at concessional rate. So far as the present plot is concerned, it was not allotted in favour of either existing or proposed co-operative housing society, but it was allotted in favour of a Company at competitive rate by inviting bids. He further points out that 1983 s Government Resolution as well as 1999 s Government Resolution refer to allotment of Government land under Section 40 of the Maharashtra Land Revenue Code, 1966 and the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971. So far as the land in question is concerned, it is a foreshore land and for allotment of which a separate and special provision has been made in the Code viz. Section 295. According to the learned Counsel, the Government Resolutions apply to the allotment of lands which are made under Section 40 of the Act in accordance with the Land disposal Rules. The Land Disposal Rules do not apply to the foreshore land and therefore, these Government Resolutions are not applicable.

4. The learned Counsel appearing for respondents

on the other hand submits that Clause 15 of the terms and conditions referred to above applies in case of all transfers including successive transfers of a flat in the building. The learned Counsel submits that when a flat in a building is to be transferred, previous consent of the Government is necessary and as a pre-condition for grant of that consent, the Government can levy premium. The learned Counsel in support of this submission relied on the observations made in a judgment of the Supreme Court in the case

State of Maharashtra and others Vs. Atur India Pvt.Ltd., (1994)2 Supreme Court Cases 497 . The learned Counsel further submits that even the Government Resolutions of 1983 and 1999 apply to the land which is subject matter of this petition because according to the learned Counsel, though the land was initially allotted to a Company and not at concessional rate, ultimately the land has been transferred to the Co-operative Housing Society. The learned Counsel submits that the Government Resolutions deal with the lands which are allotted to the Co-operative Housing Societies and held by the Co-

operative housing Societies. The learned Counsel relied on certain observations made by the Division Bench of this Court in the case Prof.(Dr.) D.R.Bharadwaj Vs. State of Maharashtra & others, AIR 1993 Bombay 366 . He also relied on the observations made by the Supreme Court in its judgment in the case State of Orissa & ors. Vs. Gopinath Dash & ors., AIR 2006 Supreme Court 651 , as also the judgment in the case The Quarry Owners Association Vs. The State of Bihar & ors., AIR 2000 Supreme Court 2870 .

5. Now taking up for consideration, in the light of these rival submissions, the question whether because of the terms and conditions on which the land was granted in favour of the Company, previous permission of the Government is necessary for a flat owner to transfer his interest in the flat , we have first to consider clause 15 and 16, they read as under:-

15. The Licensee will not directly or indirectly transfer, assign encumber or part with his interest under or the

benefit of the Agreement to lease of any part thereof in any manner without the previous consent in writing of the Government. Government will be free to refuse such consent or grant it, subject to such conditions including a condition regarding the payment of premium as Government may in its absolute discretion think fit.

16. The Lessee will not assign or part with possession of the demised premises or any part thereof or underlet or transfer the lessee's interest therein without the previous consent in writing of the lessor. The lessor will be at liberty to refuse such consent or grant it subject to such conditions including a condition requiring payment of premium as the lessor may in his absolute discretion think fit.

Perusal of the above conditions show that it applies to transfer of lessee's interest or assigning or parting with the possession of the demised premises in favour of anybody by the lessee. So far as the present case is concerned, the land was allotted to the

Company. The company pursuant to the permission granted to it constructed a multi-storeyed building on the plot. The company sold, on ownership basis, flats in the building to various persons. The flat purchasers, who it appears were 92 in number, joined to form a co-operative housing society, and formed and registered the Respondent no.4-Society. It appears that at the time when decision to form the Society was taken, some flats were unsold and therefore, the company which had built the building also joined as one of the promoters of the Society and a provision was made in the bye-laws of the Society to permit the Company to sell the unsold flats. As per the Bye-laws of the Respondent no.4-Society, the purpose of formation of the Society was to obtain assignment of the title to the property from the builder-company. To understand as to who is the owner of the property and what are the rights of the members who hold flats in the building, one has to consider following provisions in the Bye-laws of the Respondent no.4-Society:

B.1.1 The purpose of this society

is primarily to constitute³ an organisation of persons who have taken flats in the blocks or buildings of flats known as Jolly Maker Apartment s No.III constructed on the land bearing Plot/s.No.119 admeasuring 3477.88 sq.yards/meter located at Cuffe Parade (referred to in the application for registration) as required by Sec.10 of the Maharashtra Ownership Flats Act,1963 (regulation of the promotion of construction, sale, management and transfer) and in pursuance of which its objects shall be:-

(a) to obtain an assignment of title in the land and building referred to above from its promoter M/s.Aesthetic Builders Pvt.Ltd. and to receive all documents of title relating to the property which may be in his possession or power as required by Sec.11 of the M.O.F.Act 1963 (regulation of the

promotion of construction etc.)).

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D.1.1. (a) Every person having a Residential or non-Residential flat in Bombay City and Suburban area and who has signed the application for registration, is original member. Other members shall be admitted by the General Meeting. Every Person on applying for membership shall deposit Rs.10/- as entrance fee and the value of at least five shares. He shall receive a copy of the By-laws. In case the membership is refused, the deposit shall be refunded.

No person shall be admitted as member unless he has entered into an Agreement for the purchase of flat in the building mentioned in bye-law No.2(a) as per provision of Section 4 of Maharashtra Ownership Flats Act,1963 read with rule no.5 of Maharashtra Ownership Flat Rules,

1964.

Note:- This condition shall not be applicable to the Promoter who builds and who sells the flats in the building.

(a)(i) The original members signing the application for registration shall also include the promoter of the building, who joins in such application in respect of the flats unsold at the time of registration.

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F.1.8. (1) No flats shall be allotted to persons who are not members of the Society. Allotment of flats shall be done by the General Meeting only. No member shall be allotted premise unless:

(a) He is a member holding not less than such number of fully paid up shares as would be equal to ten per cent of the estimated total cost of the flats

to be allotted to him.

(2) Allotment under (1) above would give only the right of occupancy to the member as a right acquired by him by virtue of his holding shares or agreeing to hold shares to the extent of the value of flats and no other relationship like that of a landlord and tenant would be deemed to exist between the Society and the member.

(3) The Society shall retain right of revoking allotment and resuming the flats allotted, in case of misuse and also unauthorised assignments, undertaking vacating, or parting with the possession of the flats allotted and/or any part thereof.

APPENDIX III

Regulations relating to Allotment of Residential and non-Residential flats to be allotted by the Society to Allottee-

Members in respect of flats held by the
Society:-

1. --- --- ---

16. If the payment for capital contribution, compensation for use and other charges for services etc. or any of them or part thereof shall be unpaid for 14 days after becoming payable (whether formally demanded or not) or if any of the agreements on the allottee's parts contained in these regulations shall not be performed or observed or if at any time the flats or any part or any interest therein become occupied by or vested in any person who is not an allottee of the society or the heir or legal representative or the nominee of a member under the Bye-laws of the society, the society may by giving to the allottee or leaving on the flats, one calendar month's previous notice in writing to that effect determine the allotment and

on the expiration of such notice the allotment shall forthwith determine.

Perusal of above quoted provisions show that title to the property vests in the Respondent no.4-Society and a member gets a right to occupy the flat subject to the bye-laws of the society. On the transfer from the Company to the Society taking place, the Society steps into the shoes of the Company and the terms and conditions relied on by the Respondent no.4-Society apply to the Society, and not when a member transfers his flat. So far as the transaction at hand is concerned, the Society is not even a party to that transaction, obviously, therefore, clause 16 will not be attracted as the plain language of Clause 16 clearly indicates. So far as Clause 15 is concerned, again the clause operates on lessee. The lessee within the meaning of this clause will be the Company and thereafter the Society who has stepped into the shoes of the lessee. The members of the Society who only own the shares in the Society and right to occupy the

flats, do not step into the shoes of the lessee i.e. Company, and therefore, Clause 15 will not be attracted. If at all, it will be attracted when the Company transferred its interest in favour of the Society. It will never operate after the interest in the property is conveyed in favour of the Society and the members of the Society transfer their right to occupy the flat and their membership rights in favour of others. Perusal of Bye-laws of the Respondent no. 4-Society shows that, though it has been classified by the Registrar as a general society, it answers to the description of a tenant co-partnership society found in Rule 10(1)(5) of the Rules framed under the Maharashtra Co-operative Societies Act, 1960. Rule 10(1)(5) of the Rules reads as under:-

10. Classification and sub-classification of societies:-

(1) After registration of a society, the Registrar shall classify the society into one or other of the following classes and sub-classes of societies prescribed below according to the

principal object provided in its bye-laws:

| Class | Sub-Class | Examples of societies falling in the class or sub-class, as the case may be |
|--------------------|--|---|
| 1 | 2 | 3 |
| 5. Housing Society | (a) Tenant ownership Housing Society. | Housing Societies where land is held either on lease-hold or free-hold basis by Societies and houses are owned or are to be owned by members. |
| | (b) Tenant Co-partner-ship Housing Society | Housing Societies which hold both land and build-ings either on lease-hold or free-hold basis and allot them to their members. |
| | (c) Other Housing Societies | House Mortgage Societies and House Construction Societies. |

In the case of the Respondent no.4-Society, the land and the building is held by the Society as a lessee and the members who are holding the flats have a right to occupy the flats in accordance with the bye-laws and to transfer their rights in the flats in accordance with the Bye-laws. Therefore, despite the Registrar classifying it as a general society, in law

it is a tenant-Co-partnership Society. What is a status of a member of tenant- Co-partnership society in relation to a flat held by him has been the subject matter of several decisions of the Supreme Court and the last decision on the question is in the case

Anita Enterprises and another Vs. Belfer Co-operative Housing Society Ltd. & others, (2008)¹ Supreme Court Cases 285 . The observations made in paragraph 41 are relevant, they read as under:-

41. It appears to us that the status of a member in a tenant co-partnership housing society is very peculiar. The ownership of the land and building both vests in the society and the member has, for all practical purposes, right of occupation in perpetuity after the full value of the land and building and interest accrued thereon have been paid by him. Although de jure he is not owner of the flat allotted to him, but, in fact, he enjoys almost all the rights which an owner enjoys, which includes right to transfer in case he fulfills the two preconditions, namely, he occupies the property for a period of one year and

the transfer is made in favour of a person who is already a member or a person whose application for membership has been accepted by the society or whose appeal under Section 23 of the Societies Act has been allowed by the Registrar or to a person who is deemed to be a member under sub-section (1-A) of Section 23 of the Societies Act. In case any of these two conditions is not fulfilled, a member cannot be said to have any right of transfer. Thus, we reiterate the law laid down by this Court in Sanwarmal that a member has more than a mere right to occupy the flat, meaning thereby higher than tenant, which is not so in the case of a tenant within the meaning of Section 5(11) of the Rent Act. This being the position, we have no difficulty in coming to the conclusion that the status of a member in the case of tenant co-partnership housing society cannot be said to be that of a tenant within the meaning of Section 5(11) of the Rent Act, as such there was no relationship of landlord and tenant between the Society and the members.

In our opinion, looking to the language of Clause 15

and Clause 16 and the Law laid down by the Supreme Court after considering the provisions of the Maharashtra Co-operative Societies Act in the Judgment in the case Anita Enterprises and another Vs. Belfer Co-operative Housing Society Ltd. & ors. it is absolutely clear that by Clause 15 and 16 of the Terms and Conditions of Lease relied on by the Respondents, no previous consent of the State Government or Collector is necessary when a member of the Respondent no.4- Co-operative Housing Society wants to transfer his rights in the flat to anybody else.

6. The next question that arises for consideration is whether under the 1983 s Government Resolution and 1999 s Government Resolution, the State Government can require the petitioner no.1 to seek Collector s previous consent for transfer. So far as the 1983 s Resolution is concerned, perusal of 1983 s Resolution and 1999 s Resolution shows that 1999 s Resolution is merely a modification of the 1983 s Resolution, and 1999 s Resolution is really a 1983 s Resolution in a modified form. Perusal of first

paragraph of 1983 s Resolution shows that by that Resolution, the Government has laid down principles for grant of Government land under the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 read with Section 40 of the Maharashtra Land Revenue Code, 1966. The first paragraph 1983 s Resolution reads as under:-

Government has had under consideration for sometime past the question of revising the policy regarding grant of Government land to the Co-operative Housing Societies, keeping in view some of the onerous conditions which rendered persons ineligible on one ground or the other in large number of cases and escalation in general level of prices which necessitated change in the existing Income Groups. In supersession of orders mentioned in the preamble, Government is, therefore, pleased to issue the following orders regarding grant of land to the Co-operative Housing Societies, throughout the State of Maharashtra, under Rule 27 of the Maharashtra Land Revenue (Disposal of Government Lands) Rules, 1971 read with provisions of Section 40 of the

Maharashtra Land Revenue Code, 1966.
(emphasis supplied)

The guidelines issued by the Government are contained in Annexure A and B to the 1983 s Government Resolution. The first sentence of Annexure A reads as under:-

Qualifications for approval of members in Co-operative Housing Societies seeking Government lands on payment of concessional occupancy price/lease rent. (Emphasis supplied)

Two things become clear from the above quoted portion that firstly for application of those guidelines, a Co-operative housing society must seek grant of land and secondly that grant of land must be sought at concessional rate. If the allotment of land is not sought by a co-operative housing society and if the allotment is not at concessional rate, the guidelines obviously will not apply. In so far as the present case is concerned, admittedly, the allotment is not made at concessional rate, it was made after calling bids and the land was not allotted to a co-operative

housing society. Annexure B of 1983 s Government Resolution also incorporates guidelines for grant of land. The first sentence reads as under:-

Terms and conditions of grant of Government lands to Co-operative Housing Societies.

It is, thus, clear that the Government Resolution applies when the land is granted in favour of a Co-operative Housing Society at concessional rate. There is no question of this Government Resolution apply in the present case, as the land in question was not allotted in favour of a Co-operative Housing Society nor the allotment was sought by the Respondent no.4-Co-operative housing society. What is further to be noted here is that this Government Resolution incorporate guidelines for allotment of plots under the Maharashtra Land Revenue (Disposal of Government Lands) Rules framed under the Maharashtra Land Revenue Code. The land is to be granted on lease. The power of the Government to grant lease of a land is contained in Section 38 of the Maharashtra Land

Revenue Code which reads as under:-

38. Power to grant leases: It shall be lawful for the Collector at any time to lease under grant or contract any unalienated unoccupied land to any person, for such period, for such purpose and on such conditions as he may, subject to rules made by the State Government in this behalf, determine, and in any such case the land shall, whether a survey settlement has been extended to it or not, be held only for the period and for the purpose and subject to the conditions so determined. The grantee shall be called a Government lessee in respect of the land so granted.

Section 40 of the Code which has been referred in the 1983 s Government Resolution reads as under:-

40. Saving of Powers of Government: Nothing contained in any provision of this Code shall derogate from the right of the State Government to dispose of any land, the property of Government, on such terms and conditions as it deems fit.

The Maharashtra Land Revenue (Disposal of Government Lands) Rules in relation to which the guidelines are laid down by the above quoted Government Resolution, have been framed pursuant to the power given to the State Government to frame Rules by Section 38 of the Code. Grant of lease of Government land by the Collector is in accordance with the Rules framed by the State Government. Section 40 saves power of the Government to dispose of the Government land. It is clear from the Government Resolution that when the Government grants lease under Section 38 of the Code or disposes of the land under Section 40 of the Code, it is done under the Maharashtra Land Revenue (Disposal of Government Lands) Rules. So far as the land in question in this case is concerned, admittedly it is foreshore land in the City of Bombay. Section 295 of the Code which is found in Chapter XIV of the Code heading of which is Special Provisions for Land Revenue in the City of Bombay deals with disposal of foreshore land. Section 295 reads as under:-

295. Such lands and foreshore how disposed of:- It shall be lawful for the Collector, with the sanction of the State Government, to dispose of any lands or foreshore vested in the State Government in such manner and subject to such conditions as he may deem fit; and in any such case, the land or foreshore so disposed of shall be held only in the manner, for the period and subject to the conditions so prescribed.

Perusal of Section 295 shows that it empowers the Collector with the sanction of the State Government, to dispose of any lands or foreshore vested in the State Government in such manner and subject to such conditions as he may deem fit. Therefore, power to frame conditions for allotment of foreshore and other lands in Bombay is given to the Collector who does so with the sanction of the State Government. The Maharashtra Land Revenue (Disposal of Government Lands) Rules, therefore, will not apply to allotment of foreshore under Section 295 of the Code. Section 295 of the Code being a special provision made in Chapter XIV in relation to foreshore in Bombay City,



the general provisions contain in Sections 38 and 40 of the Code may not apply. The learned Counsel for the Government was not able to point out to us a provision in the land disposal Rules dealing with the grant of Government land on lease in the City of Bombay to a Co-operative Housing Society at concessional Rate. In the Rules, there is a provision for grant of land to a co-operative Society in occupancy right, there is also a provision for grant of lease of land under Section 38 of the Code, but there does not appear to be any provision in the Land Disposal Rules regarding grant of the land on lease to a Co-operative Housing Society at concessional rate in the City of Bombay. Therefore, it appears that for this reason also the 1983 s Government Resolution will apply to the grant of lease of the plot in question to the Company after calling bids at competitive rate. In any case, if one goes by the language used in the Government Resolution referred to above, the plain reading of the Government Resolution shows that the guidelines in the Government Resolution apply when the land is granted in favour of a Co-

operative housing society at concessional rate.

7. So far as 1999 s Government Resolution is concerned, it merely revises the earlier Government Resolutions including the Government Resolution of 1983 in some aspects. The opening part of 1999 s Government Resolution is identical to the 1983 s Government Resolution. The titles of Annexure A and B of the 1999 s Government Resolution are also identical. In our opinion, therefore, as 1983 s and 1999 s Government Resolutions do not apply to the grant of lease of the land in question, there is no question of the State Government being competent to require the petitioner no.1 to seek any previous consent under these Government Resolutions.

8. So far as the reliance placed by the learned Counsel appearing for State Government on the observations of the Supreme Court in its judgment in the case of Atur India Pvt.Ltd. , referred to above, is concerned, the question considered in that judgment of the Supreme Court, though was in relation to the

terms and conditions which were identical to the terms and conditions which we are concerned in this petition, was totally different, and therefore, nothing said in that judgment is really relevant for deciding the controversy which is to be decided in this petition. If anything is relevant from that judgment, that is the observations in paragraph 23 of that judgment wherein the Supreme Court has accepted the case of the Respondent before the Supreme Court that the clause 15 of the terms and conditions was not enforced by the Government. By its Judgment, the Supreme Court has approved the Judgment of the Division Bench of this Court in appeal from judgment of the Single Judge. Paragraphs 10 and 11 of the Judgment make controversy considered by the Supreme Court clear. Paragraphs 10 and 12 of the Judgment read as under:-

10. The learned Single Judge by judgment dated August 30, 1990 dismissed the petition in the view that Article 36 of Schedule I of the Bombay Stamp Act, 1958 applied to the case. The demand was

legal. In fact, the respondent was not mere promoter. On the contrary, the respondent was a nominee of the proposed co-operative housing society.

11. Aggrieved by the same, Appeal No.1371 of 1990 was filed before the High Court. The Division Bench by a judgment dated July 23, 1992 reversed the judgment of the learned Single Judge. It was found that the correspondence between the respondent and the Government spelt out an agreement to lease; but that agreement was not for the benefit of the respondent but for the co-operative housing society. It is not open to the State Government (appellant herein) to refuse to execute lease in favour of the cooperative housing society on the ground that the correspondence sets out an agreement between the Government of Maharashtra and the respondent herein. Accordingly, the letter dated February 24, 1983 and the demand contained therein was quashed. The appeal was allowed and a writ of mandamus was issued directing the State Government to execute the lease in favour of Navrang Basant Cooperative Housing Society Ltd.

Perusal of the above paragraphs show that the

Government was directed to execute lease in favour of the society. So far as the judgment of the Division Bench of this Court in the case of Prof.(Dr.) D.R.Bharadwaj Vs. State of Maharashtra & others, AIR 1993 Bombay 366 is concerned, the observations made in that case also are not relevant because in that case 1983 s Government Resolution was attracted because in that case the land was granted on the application made by the Co-operative Housing Society.

9. Taking overall view of the matter, therefore, in our opinion, the petition has to be allowed as the State Government does not have right to ask the petitioner no.1 to seek its previous approval before entering into the transaction. Therefore, it does not have any power to demand any premium before transferring the flat. The petition is allowed. It is held that for transfer of flat no.211 in favour of the petitioner no.1, no permission either of the State Government or of the Collector is necessary either under the terms and conditions or under 1983 s and 1999 s Government Resolutions. Rule is made absolute

accordingly. Pursuant to the interim order dated 9.4.2001, the petitioner no.1 has paid the amount of premium which was demanded. In the interim order it was directed that in case the petition succeeds, the amount of premium would be refunded to the petitioner no.1 with interest at the rate of 8% per annum from the date of deposit till refund and payment was to be made within a period of two weeks from the date of disposal of the writ petition. Pursuant to that order, we direct the Respondent no.2 to refund the amount deposited by the petitioner no.1 in accordance with the interim order dated 9.4.2001. No order as to costs. At the request of the learned Counsel appearing for the Government and Collector, it is directed the respondent no.2 may refund the amount after expiry of period of Sixteen weeks from today.

(D.K.DESHMUKH, J.)

(R.G.KETKAR, J.)