

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.929 OF 2015

Waman Shankarrao Borade
Age: 64 years, occu: Retired & Agricultural,
R/o Plot No.174, N-1, Cidco,
Aurangabad Dist. Aurangabad
Permanent originally R/o Patoda
Tq. Mantha, Dist. Jalna

Petitioner

Versus

- 1 The State of Maharashtra
through: Secretary
Urban Development Department,
Mantralaya, Mumbai 32
- 2 The City & Industrial Development
Corporation, Aurangabad through
Its Administrator
- 3 The Administrator City and
Development Corporation,
Aurangabad
- 4 The Aurangabad Municipal
Corporation, Aurangabad

Respondents

Mr.V.D. Salunke advocate for the petitioner
Mr. S.G. Kadam, AGP for Respondent No.1
Mr. A.S. Bajaj advocate for respondent Nos.2 & 3
Mr. S.N. Pagar advocate for respondent No.4

CORAM : R.M. BORDE &
V.K. JADHAV, JJ

Dated : 7th April, 2015.

ORAL JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule

3 With the consent of the parties, taken up for final disposal, at admission stage.

4 The petitioner is praying for issuance of directions to Cidco i.e. Respondents No.2 and 3 to issue 'no objection certificate' so as to facilitate the petitioner to raise construction over plot bearing No.174 N-1, Cidco allotted in his favour in the year 1975. The petitioner is also praying for issuance of directions to respondents, not to take any adverse action such as cancellation of lease agreement, as proposed in the notice dated 3.12.2014.

5 The petitioner was allotted a plot bearing No.174, N-1, Cidco on consideration of his application, in the year 1975. A lease agreement came to be entered with the Cidco authorities on 8.7.1987. It is worthy to note that the petitioner deposited the price of the lease premium prescribed by Cidco, immediately after allotment of the plot on 11.3.1975. The petitioner, after executing lease agreement, tendered an application for grant of 'no objection certificate' with a view to raise construction & permission was accorded by the Cidco authorities, as requested by

the petitioner on 8.10.1987. The petitioner completed part construction and tendered report to Cidco and in pursuance thereof, respondent – Cidco authorities granted part occupancy certificate on 11.8.1989. The petitioner contends that, since he was in employment of Cotton Federation and was required to stay away from Aurangabad, in connection with his employment, he could not complete the construction, as proposed under the plan. The petitioner retired on attaining age of superannuation, in the year 2008 and thereafter he took steps to collect the finance, with a view to raise further construction. The petitioner approached Cidco authorities, by tendering various applications, for securing 'no objection certificate' to raise further construction. Last of such applications was tendered by the petitioner on 2.4.2014. Cidco authorities instead of considering request of petitioner for issuance of 'no objection certificate' proceeded to issue notice on 3.12.2014, calling upon the petitioner to show cause, as to why lease agreement executed in his favour shall not be cancelled, in view of the directions issued by this Court in Civil Application No. 2565 of 2014 and 11610 of 2012.

6 Learned counsel appearing for the respondents states that, this Court, while entertaining a Public Interest Litigation presented against Cidco authorities, had issued orders thereby directing plot

holders to take steps for completing the construction and to comply with the deficiencies, within the time frame as directed by the High Court. Since the petitioner did not take steps as contemplated under the orders, the Cidco authorities were required to take action and as such proceeded to issue impugned notice on 3.12.2014.

7 There is, no doubt, delay on the part of the petitioner in approaching the Cidco and requesting to grant 'no objection certificate' for raising further construction. The reason set out in the petition for his delayed approach i.e. the petitioner was employed and was required to stay away from Aurangabad, in connection with his employment, does appear to be just and proper. The petitioner is a retired employee and needs residential plot for his own occupation. It is not a matter of dispute that the petitioner or his family members do not possess any other residential accommodation in Cidco area, Aurangabad. In this view of the matter, the genuine need of the petitioner deserves consideration.

8 In view of the facts and circumstances as set out above and for the reasons recorded while disposing of writ Petition No.6859 of 2013 and writ petition No.177 of 2015, we deem it proper to

consider the request made by the petitioner. The fact that the petitioner has approached Cidco belatedly also cannot be overlooked and the request of the petitioner can be considered only on condition of imposition of penalty. The petitioner shall deposit a sum of Rs.1,50,000/- with the respondents i.e. Cidco authorities towards penalty on account of lapses committed by him in approaching the authorities belatedly. On deposit of amount, as directed, within a period of six weeks from today, the respondent Cidco authorities shall issue no objection certificate so as to enable petitioner to raise further construction over the plot. It is also directed that, no action shall be taken on the basis of show cause notice dated 3.12.2015, subject to compliance of directions in respect of payment of penalty as recorded above.

9 The petitioner shall raise construction within a period of 18 months from the date of issuance of permission. Municipal Corporation shall consider the application of the petitioner for grant of construction permission and grant necessary permission within a period of three months from today in accordance with rules.

10 With the directions as above, petition stands disposed of.

11 Rule is made absolute in above terms.

12 In the facts and circumstances, there shall be no order as to costs.

(V.K. JADHAV, J)

(R.M.BORDE, J)

vbd