

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 5590 OF 2015

Smt. Meera w/o Subhash Hajare
age 56 years, occ. Agril & Household,
R/o Watur, Tq. Partur,
Dist. Jalna.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai 32.
2. The City and Industrial
Development Corporation (CIDCO)
Town Centre, Aurangabad
Through its Managing Director.
3. Chief Administrator,
City & Industrial Development
Corporation, Aurangabad.
4. Administrator,
City & Industrial Development
Corporation, Aurangabad.
5. Aurangabad Municipal Corporation
Aurangabad, Dist. Aurangabad
Through its Commissioner

.. RESPONDENTS

Mr. A.M. Karad, advocate holding for Mr. G.N. Kulkarni, advocate for petitioner.

Mr. N.B. Patil, AGP for the State.

Mr. Ajay Deshpande, advocate for respondent no. 4.

Mr. U.K. Patil, advocate for respondent no. 5.

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CORAM : R.M. BORDE &

P. R. BORA, JJ.

DATE : 3rd AUGUST, 2015

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Heard.

2. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final disposal at admission stage.

3. Petitioner, who has acquired lease hold interest in plot no. 1-A admeasuring 296 sq. mtrs. situate at N-1, CIDCO, New Aurangabad, is praying for quashment of the order issued by CIDCO authorities directing cancellation of allotment as well as agreement of lease executed in favour of petitioner. Petitioner is also praying for issuance of directions to respondent CIDCO authorities to issue 'No Objection' certificate with a view to secure building permission for construction over the aforesaid plot.

4. Petitioner has urged to exercise equitable jurisdiction under Article 226 of the Constitution of India as has been exercised in the matter of Manoj Laxminarayan Agrawal Vs. The State of Maharashtra (Writ Petition No. 6859/2013) and Daulatrao Govindrao Thete Vs. The State of Maharashtra (Writ Petition no. 177/2015). Normally, this Court would have exercised the jurisdiction and issued order as requested, however, in the instant matter, we find that the husband of petitioner has already secured benefit for acquisition of residential flat at the prime location at Kala Nagar, Bandra (E), Mumbai. As such, since the family of petitioner has been benefited once, we do not find any reason to concede to the request of the petitioner. It is not a matter of denial that the husband of petitioner was employed in Central services in IAS Cadre and is a member of housing society formed at Mumbai which has been allotted a plot by the Government

of Maharashtra admeasuring 999.2 sq. mtrs. situate at Kala Nagar, Bandra (E), Mumbai and, the petitioner has acquired flat in the building constructed by the Housing Society of IAS Officers. In view of this distinguishable feature, the case put up by petitioner is not comparable with the petitioners who had approached this Court and were granted relief referred to above.

5. Plot bearing no. 1-A situate at N-1, CIDCO, New Aurangabad, admeasuring 296 sq. mtrs. was initially allotted to one Mrs. Jayashree Shripad Jatkar on 01.12.1983. Petitioner entered into agreement and acquired leasehold rights in respect of the plot by way of execution of agreement on 10.03.1999. At the time of acquisition of the lease hold right, the original allottee had raised construction to the extent of 28.04 sq.mtrs. i.e. around 10% of the area and had been issued part occupancy certificate on 07.11.1989. As per the terms of the lease agreement as well as the policy of CIDCO, it was incumbent upon the petitioner to raise construction and obtain completion certificate within the time stipulated. Though the plot was allotted to the original allottee in the year 1983, in breach of the terms of lease agreement as well as policy of CIDCO, neither the original allottee nor the petitioner who has acquired leasehold rights subsequently in the year 1999, raised construction and obtained occupancy certificate.

6. Public Interest Litigation bearing Writ Petition No. 2338/1999 is presented by one Hiralal Desarda and the said petition is still pending before this Court. During the continuance of the petition, this Court issued

several directions consistent with the grievance raised by said litigant before this Court. While dealing with the challenge raised in the petition in respect of bulk allotment of plot and the element of profiteering by CIDCO, this Court issued certain directions on 10.11.2000 which were confirmed by the Supreme Court.

7. The City and Industrial Development has been established for planned development of new Aurangabad under the provisions of Maharashtra Regional and Town Planning Act, 1966. One of the objectives of CIDCO is to provide or make available developed plots at affordable prices to the people to construct residential houses/tenaments. The special planning authority is not a profit making organisation, however, is entrusted with the responsibility of ensuring planned development of new Aurangabad and, while doing so, the planning authority did dispose of the final plot after making necessary infrastructural development on 'no profit' basis by way of executing lease agreement. Petitioner has acquired leasehold right from the original allottee in the plot which was allotted at concessional rate and was developed by CIDCO authorities. As per the policy of CIDCO it was necessary for the allottee to develop the property and obtain completion certificate within the time stipulated under the agreement.

8. It was brought to the notice of this court while dealing with Public Interest Petition No. 2338/1999 that although the possession of plots under the agreement of lease were taken between the period from 1973 to 2001, the allottees did not construct dwelling houses except the skeleton of one

single room. The list consisting of 65 plot holders was submitted to the court and it was brought to the notice of the Court that the allottees have acted in breach of the agreement and they are liable to surrender the concerned plots. While dealing with Civil Application no. 7360/2002 presented in pending Writ Petition No. 2338/1999, this Court issued directions to CIDCO to issue individual notices to all such plot owners calling upon them to take steps to commence construction within a period of three months from the date of the order and to complete the same within one year and, the construction shall be in observance of the rules framed by CIDCO. It was further directed that it shall be made clear in the notice that if the plans for approval of construction are not submitted within four weeks, the CIDCO shall proceed to take over the possession of such plots as provided under the First Schedule of MRTP Act. The notice shall further clarify that failure to comply with the above requirements shall entail surrender of plot and possession of which will be automatically taken over by CIDCO. It was also directed to CIDCO not to permit transfer of any of such plots without leave of the Court. Aforesaid order was issued by the Division Bench of this Court on 13.04.2004. It was brought to the notice of the Court that in spite of issuance of directions in the year 2004, many plot holders have not taken steps and the petitioner is one amongst them. Although it is contended by petitioner that she is not in receipt of individual notice, it has been informed to us that petitioner had furnished her residential address of village Watur, Tq. Partur, Dist. Jalgaon and, did not furnish recent address for communication although she has stated that she was residing at Mumbai at the relevant time. Even the excuse put forth by

petitioner is accepted, still the fact remains that inspite of issuance of order in the year 2004, no steps have been taken by petitioner till the year 2015. During the intervening period, another application bearing Civil Application No. 11610/2010 was presented to this Court in pending Public Interest Litigation / Writ Petition no. 2338/1999 concerning the subject of allotment. It was noticed by this court while dealing with aforesaid application that still few plots have remained to be developed by the allottees and that, the proceedings for eviction have not been initiated though directed vide order dated 13.04.2004 by CIDCO. Division Bench of this Court as such proceeded to direct CIDCO to publish notice in two local newspapers having wide circulation calling upon the allottees/leasees of such vacant plots covered by order dated 22.09.2003 and 19.04.2003 who still did not apply or commence the construction, notifying that their request in further will not be entertained and the allotment/lease will stand cancelled. CIDCO authorities published notice in the local newspapers having wide circulation in the area as directed by this Court however, inspite of publication of notice, petitioner did not approach CIDCO authorities for a period of about three years. It is thus clear that by virtue of order passed by this Court in the aforesaid civil application, the allotment as well as agreement in favour of petitioner stood cancelled. Petitioner has approached CIDCO almost after three years after extending second opportunity by this Court in view of order passed in the year 2012. In the circumstances, according to us, CIDCO authorities are justified in refusing to entertain the application tendered by petitioner and, issuing directions for taking over possession of the plot. Allotment/lease in favour of petitioner

stood cancelled by virtue of non-observance of the directions issued by this Court on two occasions and more specifically, as a result of order passed by this Court on 12.01.2012 in Civil Application No. 11610/2010 in Writ Petition No. 2338/1999.

9. Petitioner has invited our attention to order dated 14.07.2014 issued in Writ Petition No. 6859/2013 in the matter of Manoj Agrawal to which one of us (R.M. Borde, J.) was party. Petitioner in the said petition approached CIDCO authorities some 33 days after lapse of the period prescribed under the notice and as such, his request was not considered. The reason for lapse was stated as health hazard faced by the said petitioner and, evidence in the form of medical certificate issued by doctor has been produced. It was also brought to our notice that the aforesaid petitioner did not take benefit of allotment of plot at concessional rates by either CIDCO authorities or Government and he needs the plot for residential purpose. Considering the aspect of the matter, this Court directed CIDCO authorities to consider the case of petitioner on depositing sum of Rs. 1,00,000/- towards penalty to CIDCO authorities. Petitioner has invited our attention to another order issued in the matter of Daulatrao Thete Vs. State of Maharashtra in Writ Petition No. 177/2015 to which one of us (R.M. Borde, J.) was party, wherein this court granted indulgence by order dated 11.03.2015. In the aforesaid matter, delay in approaching CIDCO occurred as a result of health hazard suffered by said petitioner as well as due to financial constraints. Petitioner therein was in occupation of rented premises and wanted to construct house for his own use. Medical papers concerning his ailment were

produced before us and it was also pointed out by said petitioner that he has not been allotted any plot at concessional rate either by CIDCO authorities or Government and that he has not taken any benefit for acquisition of house at concessional rate any time in past. Considering this aspect, on condition of deposit of Rs. 1,50,000/- towards penalty by petitioner therein, CIDCO authorities were directed to consider his claim. In the instant petition, the case of petitioner is distinguishable for the reason that her husband who is retired IAS Officer has taken benefit of concessional housing and has acquired flat at a very prestigious location of Kala Nagar, Bandra (E), Mumbai. Since the husband of petitioner who has acquired benefit of housing by securing concession from the State, we are of the view that the case of petitioner is not comparable with the aforesaid two petitioners whose cases were cited as precedence. There is no reason to exercise equitable jurisdiction in favour of the petitioner. Writ petition is devoid of substance hence stands dismissed. Rule discharged. In the facts and circumstances of the case, there shall be no order as to costs.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

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