

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

WRIT PETITION NO. 177 OF 2015

Daulatrao s/o Govindrao Thete
age 62 years, occ. Electrical Contractor
r/o Plot No. 277, N-3, CIDCO,
Aurangabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra
Through Secretary
Urban Development Department,
Mantralaya, Mumbai.
2. City and Industrial Development Corporation
of Maharashtra State Ltd.
Udyog Bhavan, Aurangabad.
Through its Administrator.
3. Assistant Engineer (N.O.C. Cell)
CIDCO, Aurangabad.
4. The Aurangabad Municipal Corporation
Through its Commissioner,
Town Hall, Aurangabad.

.. RESPONDENTS

Mr. S.V. Natu, advocate for petitioner.
Mrs. V.A. Shinde, AGP for the State.
Mr. A. S. Bajaj, advocate for respondent no. 3.
Mr. M.A. Deshpande, advocate for respondent no. 4.

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CORAM : R.M. BORDE &

P.R. BORA, JJ.

DATE : 11^h MARCH, 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 is praying for issuance of directions to CIDCO authorities i.e. respondent nos. 2 and 3 to issue 'no objection' certificate so as to facilitate the petitioner to raise further construction over the residential plot bearing no. 277 situate at N-3, CIDCO, Aurangabad. Petitioner also prays for issuance of directions to respondents not to take any adverse action such as cancellation of lease agreement in pursuance to notice dated 03.12.2014. On consideration of the application tendered by petitioner, he was allotted plot to the extent of 300 sq. mtrs. bearing no. 227 situate at N-3, CIDCO, Aurangabad, on 09.03.1982. After executing the lease agreement, petitioner on the basis of construction permission granted on 22.05.1987, raised part construction over the plot. Petitioner also secured occupancy certificate from CIDCO authorities on 30.03.1982. Petitioner contends that he suffered heart attack in the year 1988 and as such, he was not in a position to complete the construction. He further contends that he suffered from attack of paralysis and is facing health hazards since then. It is stated that since his sons have lent a helping hand, he is in a position to complete the remaining construction. With a view to raise further construction over the plot, petitioner applied for no objection certificate to CIDCO authorities. However, his request was rejected. Petitioner has also been issued show cause notice on 03.12.2014 calling upon him to show cause as to why lease agreement executed in his favour shall not be cancelled in view of directives issued by this Court in Civil Application no. 2565/2004 and 11610/2012.

4. Learned counsel for respondents states that this Court while entertaining Public Interest Litigation presented against CIDCO authorities, had issued directions to direct the plot holders to take steps for completing the construction and comply with the deficiencies. It is however stated that the petitioner has not taken any action and as such in view of directions issued by this Court further steps were required to be taken.

5. There is no doubt that there is delay on the part of petitioner in approaching CIDCO authorities with a request to grant 'no objection' certificate for raising further construction. However, delay is occurred as a result of health hazards suffered by petitioner as well as because of the financial constraints. Petitioner contends that none of his family members have been allotted any plot in CIDCO nor the petitioner or any of his family members possess any residential property in Aurangabad. Petitioner is occupying a rented premises and now he intends to complete the construction and occupy the lease hold premises situate at CIDCO.

6. Considering facts and circumstances and for the reasons recorded while disposing of Writ Petition No. 6859/2013, we deem it appropriate to consider the request made by petitioner. Petitioner has approached CIDCO authorities as well as this Court belatedly as such relaxation shall have to be granted on imposition of certain conditions in respect of payment of penalty. Petitioner shall deposit sum of Rs. 1,50,000/- with respondent towards penalty on account of lapses committed in approaching the authorities at belated stage. On deposit of amount of Rs. 1,50,000/- within

a period of six weeks from today, respondents 1 and 2 shall issue no objection certificate so as to enable the petitioner to raise further construction over the plot allotted to him. It is further directed that no adverse action shall be taken on the basis of show cause notice issued on 03.12.2014 subject to compliance of the directions issued by us in respect of payment of penalty. Petitioner undertakes to raise construction over the plot within a period of 18 months from the date of issuance of permission by the Municipal Corporation. The Municipal Corporation shall consider the application of the petitioner and grant necessary permission within a period of three months from today. With the directions as above, writ petition stands disposed of. Rule made absolute in above terms. In the facts and circumstances of the case, there shall be no order as to costs.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

dyb