

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7347 OF 2013

Mrs. Hirabai Narayan Mhatre. .. Petitioner

Vs

The Chairman and Managing Director of
City and Industrial Development Corporation
of Maharashtra Limited. .. Respondent

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Shri H.V. Kumarswami for the Petitioner.

Shri V.P. Malvankar, AGP “A” Panel for the Respondent No.1.

Shri Gopalkrishna Shivram Hegde for the Respondent No.2.

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CORAM : A.S. OKA &
VLACHLIYA, JJ
DATED : 23RD SEPTEMBER 2015

PC.

. Heard the learned counsel appearing for the Petitioner.
The case of the Petitioner (Smt. Hirabai Narayan Mhatre) is that her father Tukaram Joma Mhatre was the owner of a land in the village Karanjade, Taluka – Panvel, District – Raigad which was acquired by the State Government for the New Bombay Project. The Petitioner made an Application for grant of a plot under a Scheme which is known as “12.5% Scheme”. A Letter of Intent dated 7th December 2010 was issued in the name of the Petitioner and others by the City and Industrial Development Corporation of Maharashtra Limited (CIDCO) recording its intention to allot a Plot No.48 in Sector-IV admeasuring 750 sq. feet. The Petitioner is relying upon the heirship certificate issued under the Bombay Regulation of 1827 by the Court of Civil

Judge, Senior Division, Panvel certifying that the Petitioner is the legal heir of one Smt. Bhagirathi Tukaram Mhatre.

2. By a letter dated 11th February 2013 which was addressed to Smt. Hirabai Narayan Mhatre residing at Karanjade, Taluka – Panvel, District – Raigad and Smt. Hirabai Narayan Mhatre residing at Yashwant Nagar, Khopoli, Taluka – Khalapur, District – Raigad, the Chief Land and Survey Officer of the CIDCO stated that in the capacity of the legal representative of Shri Tukaram Joma Mhatre and Smt. Bhagirathi Tukaram Mhatre residing at Karanjade, Smt. Hirabai Narayan Mhatre has been given a Letter of Intent of allotting a plot of land under a 12.5% scheme. It is stated that another person having the same name i.e. Smt. Hirabai Narayan Mhatre residing in Yashwant Nagar, Khopoli, Taluka - Khalapur, District Raigad is claiming to be the allottee under 12.5% scheme. The said Letter records that the two persons having the same name Smt. Hirabai Narayan Mhatre are claiming to be the allottees of the plot under the 12.5% Scheme. Therefore, both the persons having the same name have been informed by the Chief Land and Survey Officer of CIDCO to approach the Civil Court and obtain appropriate declaration.

3. The learned counsel appearing for the Petitioner submitted that the Petitioner Smt. Hirabai Narayan Mhatre residing at Yashwant

Nagar, Khopoli, Taluka- Khalapur, District- Raigad, is the real allottee in whose name the Letter of Intent has been issued. He pointed out that somebody is impersonating herself in the name of Petitioner and in fact, criminal law has been set in motion. He relied upon the documents annexed to the Petition and submitted that the said documents show that the Petitioner herein is the real allottee. He urged that neither the State Government nor the CIDCO has filed any reply disputing the documents annexed to the said Petition. He, therefore, urged that the CIDCO cannot deny allotment of the plot in question to the Petitioner. He pointed out that the Petitioner has taken several steps after the Letter of Intent was issued.

4. We have given careful consideration to the submissions. The Petitioner is relying upon the heirship certificate granted to her by the Civil Court at Panvel under the Bombay Regulation of 1827. It is well settled that the heirship certificate issued under the provisions of the said Regulation is not conclusive as far as the issue of title is concerned. The letter dated 11th February 2013 addressed to the Petitioner by the Chief Land and Survey Officer of the CIDCO clearly records that the two women claiming to be Smt. Hirabai Narayan Mhatre are claiming to be the allottees in respect of the plot subject matter of the Letter of Intent issued by the CIDCO. The Chief Land and Survey Officer of the CIDCO has not denied the Letter of Intent. All

that the said letter records is that since the two persons having the same name are claiming to be the allottees, the CIDCO can act only in terms of the decision of the competent Civil Court. Therefore, by addressing the said letter to both the allottees claiming to be Smt. Hirabai Narayan Mhatre having different addresses, the CIDCO informed them to establish their rights by approaching the Civil Court.

5. We find no error in the approach adopted by the CIDCO. It is the duty of the CIDCO to ensure that actual allotment is made to the real allottee. As the two women having the same name are claiming to be the allottees, the CIDCO is justified in taking a stand that unless the issue of heirship is decided by the competent Civil Court, no action can be taken.

6. In any event, in writ jurisdiction under Article 226 of the Constitution of India, the issue as to whether the Petitioner is the real allottee cannot be decided as it will involve adjudication of the disputed questions of facts. Therefore, we decline to entertain this Petition under Article 226 of the Constitution of India. The Petition is rejected. We grant liberty to the Petitioner to adopt appropriate remedy before the Civil Court.

7. All contentions of the parties on merits are kept open.

Certified to be true and correct copy of the original signed Judgment/Order.