

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 326 OF 2015

- 1] Kamlakar Raosaheb Patil
Age : 48 years, Occu.: Agriculture,
R/o : Plot No. 314, N-3, CIDCO,
Aurangabad,
Dist. : Aurangabad
- 2] Suhas Annarao Mane,
Age : 43 years, Occu.: Agriculture,
R/o : Plot No. 314, N-3, CIDCO,
Aurangabad,
Dist. : Aurangabad .. Petitioners

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32
- 2] City and Industrial Development
Corporation of Maharashtra Ltd.,
Through its Administrator,
Udyog Bhavan, CIDCO,
New Aurangabad
- 3] The Municipal Corporation
Aurangabad through its Commissioner .. Respondents

Mr. S.B. Talekar, Advocate and Mr. U.R. Awate, Advocate for
the petitioners

Mr. N.B. Patil, AGP for the respondent No.1/State

Mr. A.S. Bajaj, Advocate for respondent no.2

Mr. V.P. Latange, Advocate for respondent no.3

**CORAM : S.V. GANGAPURWALA &
K.K. SONAWANE, JJ.**

DATE : 20/07/2016

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally with consent of the parties.

2. Mr. Talekar, learned counsel for the petitioners submits that as per the order passed by this Court in earlier Writ Petition, the petitioners were allowed to file application with CIDCO seeking no objection certificate within four weeks from the order dated 18/11/2009 in Writ Petition No. 6175 of 2009. The petitioners applied within 15 days for No Objection Certificate on 2/12/2009. The petitioners were granted No Objection Certificate on 3/12/2009 and immediately on 17/12/2009, the petitioners applied for commencement certificate. The respondent communicated some deficiencies vide its letter dated 15/1/2010. According to the learned counsel for the petitioners, the petitioners, as per the letter, had submitted all the documents and complied all the necessary aspects but there was total inaction on the part of the Municipal Corporation and the Municipal Corporation, eventually

issued commencement certificate on 26/12/2014. The petitioners have carried out 100% construction as per the plan submitted to the Corporation and as per the commencement certificate dated 26/12/2014. However, abruptly, on 3/12/2014, CIDCO issued the notice to the petitioners with regard to the cancellation of the allotment and the agreement. Learned counsel for the petitioners submits that the petitioners had complied with the orders passed by this Court and each and every step was taken, however, it was only because of the delay on the part of the respondent-Corporation, the commencement certificate was not granted in time. Learned counsel for the petitioners submits that even after filing of the present writ petition, the site is visited by the Officers of the CIDCO for the purpose of processing No Objection Certificate for occupancy certificate. The letter to that effect is also issued by the Assistant Engineer, N.O.C. cell on 11/3/2015. According to learned counsel, 100% compliance as per the commencement certificate has been made, therefore, the impugned order/notice be quashed and set aside.

3. Mr. Bajaj, learned counsel for the respondent - CIDCO submits that the petitioners have not complied the order passed by this Court in Writ Petition No. 6175 of 2009. The petitioners did not carry out the construction as per the terms of the agreement. The petitioners also did not carry out the construction as per the notice issued pursuant to the directions issued by this Court. There was total lethargy on the part of the petitioners to develop the property. Though the petitioners applied to the Municipal Corporation on 17/12/2009, the said application was devoid of necessary particulars, as was required. The petitioners did not comply the deficiencies and the deficiencies were complied after a lapse of more than 4-1/2 years after issuance of notice by CIDCO. This shows that only farce of compliance was made by the petitioners. According to the learned counsel for the respondent, the petitioners are not entitled for any discretionary orders passed of this Court.

4. Mr. Latange, learned counsel for the respondent Municipal Corporation submits that there is no delay on

the part of the Corporation. It is the petitioners, who did not comply with the deficiencies, as were pointed out to the petitioners from time to time. The petitioners are themselves responsible for the delay.

5. We have considered the submissions. Petitioners got the fresh lease of life pursuant to the orders of this Court in Writ Petition No. 6175 of 2009. This Court has laid down the schedule for the petitioners to take steps. No doubt the petitioners applied for the NOC and the commencement certificate within time stipulated by this Court. The respondent Corporation pointed out some deficiencies. Said deficiencies, as per the Corporation are cured on 10/12/2014 and the commencement certificate is issued on 26/12/2014. There is word against word with regard to the compliances being made/not made by the petitioners. We need not go into the said aspect. The CIDCO, was well within its right to issue notice if the construction is not carried or commencement certificate is not obtained within the period as was stipulated in the order passed by this Court dated 18/11/2009 in Writ Petition No. 6175 of 2009.

6. It is submitted by learned counsel for the petitioners that subsequently, the entire construction as per the commencement certificate has been carried out by the petitioners and even the respondent CIDCO, through its officer has visited the site, as can be viewed from the letter dated 11/3/2015 annexed to the rejoinder at Exhibit A-4.

7. CIDCO was only required to be satisfied about the construction as per the commencement certificate for issuance of no objection certificate for the occupancy certificate.

8. Considering the aforesaid conspectus of the matter that now the construction is carried out and part of the construction was carried by the predecessor in title of the petitioners, though there is delay for completion of the construction, we invoke our jurisdiction under Article 226 of the Constitution of India in favour of the petitioners, however, the petitioners also deserve to be mulct with penalty. Considering the above, we pass the following order:-

9. Impugned order/notice dated 3/12/2014 is quashed and set aside. The respondent Corporation has already inspected the site and if satisfied that the construction is as per the commencement certificate, it shall issue no objection certificate for grant of occupancy certificate. The petitioners shall pay penalty of Rs.1,00,000/- (Rs. One Lakh) to the respondent – CIDCO within four (4) weeks.

10. Rule is accordingly made absolute in above terms. No costs.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

arp/