

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1035 OF 2012

- 1) Anil s/o Vinayakrao Jadhav,
Age-35 years, Occu:Business,
R/o-Shop No.16, Rathi Gallexy,
Building No.4-B, Cannought Place,
CIDCO, Aurangabad,
- 2) Pankaj s/o Dhanraj Badhe,
Age-41 years, Occu:Teacher,
R/o-Flat No.3, "Samyak Plaza",
Block No.6-A, Cannought Place,
CIDCO, Aurangabad,
- 3) Sanjay s/o Sakharam Hake,
Age-42 years, Occu:Service,
R/o-Flat No.7, "Samyak Plaza",
Cannought Place, CIDCO,
Aurangabad,
- 4) Lalit s/o Ramgopal Rathi,
Age-54 years, Occu:Business,
R/o-Rathi Towers, Dashmeshnagar,
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 Managing Director,
Mumbai,
- 3) City and Industrial Development Corporation, Aurangabad,
Through its Administrator,
- 4) Aurangabad Municipal Corporation,
Aurangabad, Through its Commissioner,
Aurangabad,
- 5) M/s. Nirmiti Construction,
Through its Prop.
Shri Indrajeet Panditrao Thorat,
Age-50 years, Occu:Business,
R/o-"Sudarshan", Bansilal Nagar,
Aurangabad.

...RESPONDENTS

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Mr.V.J. Dixit, Senior Counsel i/b. Mr. Anand V. Patil Advocate for Petitioners.

Mr.A.B. Girase, Government Pleader for Respondent No.1.

Mr. A.s. Bajaj Advocate for Respondent Nos. 2 and 3.

Mr. A.M. Karad Advocate for Respondent No.4.

Mr. R.N. Dhorde, Senior Counsel with Mr. V.R. Dhorde Advocate for Respondent No.5.

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**CORAM: R.M. BORDE AND
 A.I.S. CHEEMA, JJ.**

DATE : 12TH JANUARY, 2016

ORDER [PER A.I.S. CHEEMA, J.] :

1. This Petition has been filed by the Petitioners claiming that Respondent No.3 - City and Industrial Development Corporation (CIDCO), Aurangabad has entered into lease deed dated 1st January 2008 with Respondent No.5 - M/s. Nirmiti Construction, in respect of so-called Plot No.5 admeasuring 252 sq. meters situated in Survey No.77 (P), Cannaught Place, Town Center, Cidco, Aurangabad. It is claimed that Respondent No.4 - Aurangabad Municipal Corporation has granted construction permission / commencement certificate dated 11th October 2011 in favour of Respondent No.5 for making construction on Plot No.5. The Petition claims and it is argued that Plot No.5 is a non-existing plot and at the concerned spot there is 18 meter wide development plan road as per the town plan scheme. The Petitioners claim that Petitioner Nos. 1 to 3 are possessors of tenements and shops situated in building standing

on Block Nos. 6-A and 6-B and Petitioner No.4 is owner of Plot No.4-A situated in Cannaught Place. It is claimed that the construction is in violation of relevant Building Control Regulations and Rules. It is claimed that in the allotment made to the Petitioners by CIDCO in Block Nos. 4, 6 and 7, no such plot is shown adjacent to Plot Nos. 4, 6 and 7. Respondent Nos. 2 and 3 are special planning authorities and the land was acquired in CIDCO area and allotted to different persons for development by preparing necessary lay-out. The plots, after allotment, have been developed by builders and on constructing the buildings, the same have been sold out to third persons and as such no plot is available in Cannaught Garden, CIDCO, Aurangabad. In spite of this, Respondent No.3 has entered into agreement of lease in favour of Respondent No.5. It is claimed that Respondent No.5 is intending to construct commercial - cum residential building on the said Plot No.5 above 18 meter development plan

road. It appears that pillars of construction of the proposed building on Plot No.5 would be laid on 18 meter development plan road. It appears that the building on Plot No.5 would be erected touching the walls of buildings which are already standing on Block Nos. 6 and 7. It is further argued that Respondent No.5 intends to fix pillars on 18 meter wide road. Respondent No.4 Corporation has granted building permission and Annexure F is copy of the commencement certificate along with map. It is stated that Respondent No.5 intends to construct the stair-case and lift of the proposed building in common area of Plot Nos. 4 and 6, which cannot be permitted and accepted. The said construction would obstruct 18 meter development plan road. The building proposed does not show area of parking for the said building.

2. Respondent No.5 has filed affidavit in reply dated 28th June 2012 and Respondent Nos.2 and 3 have filed affidavit in reply dated 31st

October 2012. The Petitioners have filed rejoinders refuting the claims made in the affidavit in reply by the Respondents.

3. It has been stated on behalf of the Respondents, relying on the affidavits in reply, that what has been executed by Respondent No.3 in favour of Respondent No.5 in respect of Block No.5 is lease deed of F.S.I. to the extent of 252 sq. meters. It is stated that the area of Cannaught Place has been developed as per 'action area plan' and the area admeasuring 6 Hectors has been earmarked as 'action area'.

4. The learned counsel for CIDCO, relied on Para Nos. 2.4 and 2.5 of the General Development Control Regulations for Notified Areas of 'New Towns', copy of which has been tendered. Para Nos.2.4 and 2.5 read as under:

"2.4 ACTION AREA:

Means an area where the Corporation does the building development at its own instance or an area for which the Corporation intends to prepare a detailed layout with Special Development Control Regulation. (If Special Development Control Rules are not prepared, these General Development Control Rules shall prevail).

2.5 ACTION AREA PLAN:

Means the Plan, Special Development Controls for it, if any, and report indicating the detailed layout of proposed development in the Action Area, which may stipulate the land use permitted on each plot and the extent to which the building operations may be undertaken on each plot."

. It is claimed by the learned counsel for CIDCO that in view of such Action Area Plan, the area admeasuring 6 Hectors has been ear-marked as Action Area and it was notified in the development plan proposal sent for approval to the Government.

Accordingly a Book-let was published inviting applications for allotment of F.S.I. in the area to be called Cannaught Place which Book-let embodied proposed scheme. Even the cover of the Book-let indicated its layout along with the prospective building to be constructed over the said area. It has been stated on behalf of the CIDCO that the Petitioners, who also resorted to the same Book-let to apply and occupy the portions allotted to them, are now making grievance regarding lease deed executed of area to be constructed above 18 meter road, which grievance has no basis. It is stated that this very thing was clearly spelt out in the Book-let and it was specifically mentioned as "Special Building" so as to give idea to the public at large and more particularly, persons applying for lease of respective F.S.I. area. Whatever has been done by the CIDCO, has been done in terms of the scheme spelt out in the Book-let published, inviting the applications from the public at large. The

construction to be carried out by Respondent No.5 is in accordance with the permission granted to them and the permission has been granted, following Development Control Rules, which have been approved by the Government.

5. It is further claimed on behalf of the Respondents that CIDCO had called tenders from the public at large for leasing out the plots at Cannaught Place and necessary tender was published in 1998 showing the Blocks and layout of the buildings to be constructed on the said Blocks. As per the brochure, out of 12 Blocks, Block No.5 was shown as Special Building. Special plan of the Special Building was given in Annexure-IV of the Book-let and the Petitioners cannot claim that no such Block exists. Annexure-I of the Book-let specifically shows existence of Block No.5 and gives details as to how the same is to be constructed. The Block No.5 is situated on 18 meter wide road as per the plan/scheme and is to

be constructed at level of 17 feet height through which the road will be passing. Copy of the Booklet has been filed on record as Exhibit R-1.

6. It is stated on behalf of Respondent No.5 that in 1998 when tenders were called, Respondent No.5 had filled in tender for Block No.5 admeasuring 252 sq. meters and his offer was accepted by Respondent No.2 and lease was executed on 23rd August 2001 (Exhibit D). Thereafter registered deed dated 1st January 2008 came to be executed. Respondent No.5 applied to Municipal Corporation (Respondent No.4) and the necessary plan was submitted and construction permission has been received.

7. At the time of arguments, the learned counsel for CIDCO filed copies of commencement certificates issued in favour of the Petitioners along with their plans of constructions. It has been argued that the plans approved clearly show

that the portions allotted are not rectangle but there were niche carved out and common areas left from where the access to the Special Building No.5 was to come up. It has been argued on behalf of the CIDCO, referring to introduction and details in the Book-let, that the area was developed as a commercial complex with special parking places which could accommodate 400 cars. Reference has been made to Para 2 II of the Book-let which reads as under:

"II) Special Buildings:

Out of the above 12 blocks, 5 building are termed as special buildings which provide linkages to other buildings to form an attractive skyline of the project. These buildings are to have 17.0" high stilts through which roads/pathways pass. The buildings are to be constructed with only one floor over the stilts and an area of about 252 M² and 85 M². These buildings are to be used only for Restaurant purpose. The special buildings are 3, 5, 7-A, 8-A.

Buildings	Area in sq. mtr.
3	252 M ²
5	252 M ²
7-A	77.0 M ²
8-A	77.0 M ²

The typical plan of Special building is given in Annexure-IV."

. The counsel for CIDCO pointed out that the Blocks in which the Petitioners have occupancy, have niche in this regard and the Petitioners could have seen from the cover of the Book-let itself also, that such elevated construction on pillars would be coming up.

8. Learned counsel for CIDCO further referred to Agenda Note dated 17th August 1990 with regard to development of this area in which, in Para 2 there was reference to the Special Buildings, as under:

"2. Special Buildings:

Out of the above 35 buildings, 5 buildings are termed as special buildings which provide linkages to other building to form an attractive skyline of the project. These buildings are proposed on stilt levels of sufficient height through which road/pathways pass. The buildings are to be constructed with only one floor over these stilts. (3, 5, 7-A, 8-A, 12-A). The total FSI to be leased out for these buildings is = 751.50 sq. mtr."

9. Thus, according to the Respondents, this elevated building for the purpose of restaurant, on pillars, was the concept which was floated by the CIDCO and which has been approved by the Government and the Cannaught place area in Aurangabad has been developed with such plans. It has been argued that the Petitioners were aware of all the plans and inspite of the same, they have entered into agreements to have their present occupancy. They cannot now raise questions to the

further execution of the plans got approved by the CIDCO.

10. It has been argued by learned senior counsel for the Petitioners that although in the Book-let Special Building is shown only for restaurant purpose, the plan approved for Respondent No.5 includes residential parts. At the time of arguments, the Respondents did not dispute that the proposed building could be only used for restaurant purposes and no part could be used for restaurant purposes.

11. Looking to the submissions made and the fact that CIDCO has got necessary plans approved and the concerned project was taken up as action area plan under the Development Control Regulations, we find that the Petitioners fail to make out a case to stay the development being made by CIDCO. We find that the lease made in favour of Respondent No.5 does not require interference, but

the construction can be permitted only with certain conditions. After discussing with Counsel for both sides, we find them not averse to the Order we propose to pass.

12. We, thus, pass the following order:

O R D E R

(I) The proposed construction to be made by Respondent No.5 shall not rest on any part of existing buildings occupied by the Petitioners.

(II) The building shall rest 18 Feet above the level of the road passing below. This is necessary as relaying raises height of road in course of time. No portion of the pillars or stair-case or lift shall occupy any part of the road or foot-path below.

(III) The Special Building shall be used

only for the purpose of restaurant and no part shall be used for residential purpose.

(IV) Respondent Nos. 2 to 4 - CIDCO and Municipal Corporation, Aurangabad shall ensure that the portions ear-marked for parking, are kept open for parking in the area as per the plans.

(V) Respondents shall, at the time of construction of Special Building No.5, take care and shall ensure that the road passing below is not obstructed for time more than necessary.

. With the above directions, Writ Petition stands disposed of.

[A.I.S. CHEEMA, J.]

asb/JAN16

[R.M. BORDE, J.]