

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1481 OF 2016

KIRAN BALAJI KULKARNI
VERSUS
CITY AND INDUSTRIAL DEVELOPMENT CORPORATION THROUGH ITS
ADMINISTRATOR AURANGABAD

...
Advocate for Petitioner : Mr. Rahul R. Totala h/f. Mr. R.F.Totala
Advocate for Respondents : Mr. S.V. Kurundkar.

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

DATE : 3rd May, 2016.

PER COURT:

1] Heard. Mr. Totala, learned counsel for the petitioner submits that the petitioner was allotted residential plot bearing No.31 admeasuring 172.60 square meters in Sector D, N-2, CIDCO, vide allotment letter dated 18.5.1999. learned counsel for the petitioner submits that vide order dated 11.3.2014, the said allotment is cancelled on the ground that the said plot was not developed within the stipulated period.

2] Learned counsel for petitioner submits that the petitioner is in service of MSCDCL, as Sub-Engineer since 1981. His job is transferable. The petitioner was initially posted at Bidkin. From January, 2006 to September 2006, he was posted at Kannad, thereafter at Phulambri, Parbhani etc. The petitioner was required to spend huge amount towards medical expenses of his mother who was suffering from Cancer. The father of petitioner was also suffering from Paralysis. The petitioner could not construct the residential house on the said plot. Learned counsel for the petitioner submits that the delay caused in making construction was not intentional one but due to aforesaid reasons. He submits that the petitioner still wants to construct a residential house. Petitioner undertakes to construct the house for his own

purpose and would not deal with the said house property with any third party. Learned counsel on instructions further states that petitioner is also ready to deposit the additional lease premium and penalty that would be imposed upon the petitioner. Learned counsel relies upon various orders passed by this Court in W.P. No. 6859 of 2013 dated 14.7.2014 and other writ petitions.

3] Mr. Kurundkar, learned counsel for respondent CIDCO submits that the petitioner has failed to obtain NOC for construction. He has not constructed the house within the stipulated period. The respondent, pursuant to the orders of this Court, had published a paper proclamation and also notices were issued to the individual persons like the petitioner. The notice was not served and returned unserved as the petitioner was not found on the given address. According to learned counsel, the respondent had issued letter dated 26.7.1999 so as to assist the petitioner in availing loan from LIC. The petitioner has flouted the terms and conditions of the agreement. The action has rightly been taken against the petitioner. Plots are required to be allotted to needy citizens.

4] We have considered the submissions canvassed by the respective parties. There is no manner of doubt that the petitioner has violated the terms of the agreement. Petitioner has failed to construct the house as laid down in the agreement. We have considered the reasons stated by the petitioner about his transferable job. We have also gone through the earlier orders passed by this Court, in Public Interest Litigation and other matters. We would not have entertained the petition had the plot been for commercial purpose. Considering the fact that the plot is earmarked for residential house and the petitioner has undertaken to construct the house on said plot immediately, so also, has undertaken that he will use the said house for his own purpose and would not deal with that property in whatsoever manner, we are exercising our discretion. Of course,

the petitioner will have to pay the additional lease premium as calculated by the respondent, so also penalty. Petitioner has also undertaken to pay the penalty which is quantified at Rs. 1 Lakh.

5] In the result, we pass the following order :-

[a] The petitioner shall give an undertaking to the respondent CIDCO, that he will construct the house within a period of two years from the date of this order and further that he would construct the said house for his own personal use and will not deal with the house property in whatsoever manner.

[b] The petitioner shall pay additional lease premium of Rs. 9,41,360/- and shall also pay the penalty of Rs. 1 Lakh, as undertaken by him, to the respondent CIDCO.

[c] The said payment, as stated above, shall be made within a period of four weeks from the date of this order.

[d] On payment of aforesaid amount, the petitioner may apply for No Objection Certificate and on compliance of the aforesaid conditions, the respondent CIDCO may issue the No Objection Certificate for construction of the house.

[e] Writ petition is accordingly disposed of. No costs..

[K.K. SONAWANE,J.]

[S.V.GANGAPURWALA,J]

grt/-