

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 4117 OF 2016
IN
WRIT PETITION NO. 5143 OF 2015**

Patil Constructions and Infrastructure Pvt. Ltd.,
(Through its Authorised Signatory)
Siddhaling s/o Ramling Kore,
Age : 48 yrs., Occ : Business,
R/o Mahalaxmi Chowk,
Mukundwadi, Aurangabad,
Dist. Aurangabad.

...PETITIONER.

VERSUS

- 1] The State of Maharashtra,
(Through its urban development Department)
Mantralaya, Mumbai 32.
- 2] The Municipal Corporation Aurangabad
(Through its Commissioner),
Aurangabad.
- 3] The City Engineer,
Municipal Corporation,
Aurangabad.
- 4] The Assistant Director of Town Planning,
Municipal Corporation,
Aurangabad.
- 5] The Chief, BOLT-Cell,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENTS.

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Mr. S. B. Talekar, Advocate for Applicant.
Mr. P. S. Patil, AGP for Respondent No.1.
Mr. Rajendra Deshmukh, Advocate for Respondent Nos.2 to 5.

**CORAM : A. V. NIRGUDE &
V. L. ACHLIYA, JJ.**

DATE : 31ST MARCH, 2016.

PER COURT:

1] The petitioner has filed this application seeking following reliefs:-

"A. To refer the dispute to the arbitrator who shall be retired High Court Justice from amongst 1. Hon'ble Justice J. N. Patel (retired), 2. Hon'ble Justice Ferdino Inacio Rebello (retired), 3. Hon'ble Justice P. V. Hardas (retired) with a further direction that the fees and other charges of the arbitrator shall be initially borne by both the parties in equal proportion, however subject to final decision of the arbitrator, pending hearing and final disposal of the petition.

B. To direct the respondent Corporation to issue challans to the applicant company so as to pay the amount of development charges pursuant to altered building plan submitted by it, pending hearing and final disposal of the petition.

C. To direct the respondent Corporation to measure the land and handover the vacant possession of the land to the applicant as per the agreement, pending hearing and final disposal of the petition. "

2] So far as relief claimed as per prayer clause 'A' is concerned, Mr. Talekar, learned counsel appearing for the petitioner submits that, the petitioner would make an appropriate application for appointment of Arbitrator before designated Judge appointed by the Hon'ble Chief Justice.

3] In view of above, we are not required to consider the relief claimed as per prayer clause 'A'.

4] In respect of prayer clause 'B', Mr. Deshmukh, learned counsel appearing for Municipal Corporation submits that, challans for payment of development charges in respect of Vasant Bhavan site already issued and the petitioner has deposited the amount. So far as the site at 'Aurangpura Bhaji Mandai' is concerned, the petitioner is required to submit the revised plan for approval. As per instructions, the learned counsel for the petitioner submits, the petitioner has submitted the revised plan on 29.3.2016. In view of this statement, the learned counsel for Corporation submits that, the amount to be payable on account of development charges will be worked out and the challan will be issued. He further submits that, within a period of one week from payment of charges, the revised plan will be approved.

5] Mr. Talekar, learned counsel submits that, within 15 days of receipt of the challans, the petitioner will make payment. In view of statement made across the bar, we are not required to pass any order as to prayer clause 'B'.

6] So far as, prayer clause 'C' is concerned, it is the contention of the petitioner that, the site at 'Aurangpura Bhaji

Mandai' is not handed over to the petitioner as per the agreement, and the area which is given in possession is much less than the area shown in the agreement. Mr. Talekar, learned counsel for the petitioner submits that, there is an encroachment over some portion of plot and therefore the possession of entire area of the plot as shown in the agreement has not been handed over to the petitioner. Mr. Deshmukh, learned counsel for Municipal Corporation disputes this contention and submits that, the area as per the agreement has been handed over to the petitioner and in that respect the possession receipt was also signed and delivered by petitioner, way back in the year 2013. However, Corporation has no objection if petitioner gets the area measured through the office of the Land Records at his costs and further submits that, Corporation will extend full cooperation to get the area of plot measured.

7] In view of above, no specific order is required to be passed in the application. The application is disposed of in terms of statements made.

[V. L. ACHLIYA]
JUDGE

[A. V. NIRGUDE]
JUDGE

Tandale/-