

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5088 OF 2007

Smt. Ashabai w/o. Bhagwanrao Raut
Vs.
City & Industrial Development
Corporation of Maharashtra Ltd.,
and others

-
Mr.P.N. Sonpethkar, Advocate for petitioner
Mr. A.S. Bajaj, Advocate for respondent. No.1.

**CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 7TH JUNE , 2016.**

ORAL ORDER :-

1] Mr. Sonpethkar, learned counsel submits that Plot Nos. 3 and 4 were owned by Shrikant Kawale and Smt. Mrunal Kawale, respectively. Both the plots were amalgamated and commencement certificate was obtained jointly for both plots. Part occupancy was granted by the respondent Corporation for both the plots. Plot No.4 came to be transferred in the name of Mr. Anilkumar Agrawal in 1998 and on 24.5.2000, the present petitioner purchased the said plot No.4 from Mr. Anilkumar Agrawal. Petitioner paid the necessary charges. Petitioner applied for construction permission in the year 2002. Petitioner deposited the amount towards construction permission as per demand. Thereafter, petitioner completed the construction on 16.1.2004. The respondent demanded additional premium. Same is illegal and does not stand to any reason. When Plot Nos.

3 and 4 were amalgamated by orders of the respondent itself and part occupancy was also given for both the plots, respondents are now estopped from contending otherwise. Construction was also carried out. Part occupancy was already granted. As such, the respondents cannot now take a plea that the construction initially was not within the stipulated period. The demand of additional premium is illegal.

2] Mr. Bajaj, learned counsel for the respondent submits that Plot Nos. 3 and 4 were owned by the husband and wife. As such, joint permission was granted. The original owners themselves treated the plots as separate plots. Plot No.3 was sold by the wife independently and Plot No.4 was sold by the husband independently, showing both the plots as separate plots. As such, the theory of amalgamation put forth by the petitioner is erroneous. As the plot was vacant, the construction was not carried out within stipulated time. As such, additional premium was rightly demanded.

3] We have considered the submissions canvassed by the learned counsel for respective parties. The original owners of Plot Nos. 3 and 4 were husband and wife. Joint permission was granted. It appears that construction was done on Plot No.3. Original owners sold plot Nos. 3 and 4 independently by two different transactions. Petitioner purchased Plot No.4 from one Mr. Anilkumar to whom, plot NO.4 was transferred by original owner Shrikang Kawale.

4] It would be clear that the original owners treated the plots to be separate plots. Petitioner also purchased plot No.4 as separate plot and

thereafter has obtained construction permission of plot No.4. All the aforesaid aspects would make it abundantly clear that the predecessor of the petitioners themselves at no material point treated the plots as amalgamated but for all material purposes they have treated both the plots as separate and those have been sold and transferred independently by original owners to different persons.

5] Considering the above, the case put forth by the petitioner cannot be considered. As such, the writ petition is dismissed. Petitioner has already deposited Rs. 50,000/- pursuant to the orders of this Court. The petitioner shall deposit the remaining amount of Rs. 27,000/- within a period of 4 weeks from today. Writ petition is disposed of. No costs. Rule is discharged.

[K.K. SONWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-