

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 4451 OF 2011

1. Sudarshan Nagar Nagrik Sangharsha Samiti, UnRegistered Association of residents of Sudarshan Nagar, Listed members as Exhibit-A
5th Housing Scheme, Sector N -11/A, CIDCO, New Aurangabad,
Through -

Shri Narayan Tamboli,
President, Sudarshan Nagar N.S.
Samiti, Age: 72 years, Occupation -Retired,
R/o : House No. A 96/2, N-11,
Sudarshan Nagar, CIDCO
Aurangabad.

2. Shri Pramod Kedar Sharma,
Age: 56 years, Occupation Service,
R/o : House No. A 97/1, N-11,
Sudarshan Nagar, CIDCO,
New Aurangabad.

3. Shri Narayan Shankar Gaikwad,
Age: 62 years, occupation -Retired,
R/o : House No. A 105/1, N- 11,
Sudarshan Nagar, CIDCO,
Aurangabad.

...PETITIONERS

versus

1. State of Maharashtra,
Through – The Secretary,
Urban Development Department,
Mantralaya, Mumbai 400 032.
2. City & Industrial Development Corporation of Maharashtra Ltd. (Popularly known as "CIDCO"), Having its registered office at "Nirmal" Nariman Point, Mumbai 400 021.
Through
The Administrator,
Having his office at CIDCO Limited,
Udyog Bhavan, New Aurangabad
431 003.

3. Aurangabad Municipal Corporation,
Through The Commissioner,
Having his office at Corporation
Building Town Hall, Aurangabad.
4. Shri Ishwarchanda Chaitanlal Sahuji,
Age 43 years, Occupation – Business,
R/o N -11, B/32, 04 HUDCO T.V.
Centre, Aurangabad.
5. Shri Shyamrao Pardesi,
Age: 65 years, Occupation-
R/o : House No. A 105/4, N -11
Sudarshan Nagar, CIDCO,
New Aurangabad.
6. Shri Ashok Dattatraya Vyas,
Age: 45 yeas, Occupation -
R/o : House No. A 95/1, N-11 Sudarshan
Nagar, CIDCO, New Aurangabad.
7. Shri Machhindra Vishwanath Ugale,
Age: 43 years, Occupation-
R/o: Plot No. 07, N-11 Sudarshan Nagar,
CIDCO, New Aurangabad.
8. Shri Suresh Bhole,
Age: 55 years, occupation -
R/o : House No. A 94/A, N-11, Sudarshan
Nagar, CIDCO, New Aurangabad.
9. Rajesh Ankushrao Tope,
Hon'ble Minister,
Higher and Technical Education
Mantralaya, Mumbai -400 032.

...RESPONDENTS

.....
Mr. Anand Chawre, Advocate for petitioners
Smt. S.S. Raut, AGP for respondent No. 1
Mr. A.S. Bajaj, Advocate for respondent No. 2
Mr. S.S. Tope, Advocate for respondent No. 3
Respondents No. 4 to 9 served
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**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 2nd AUGUST, 2016.

ORAL JUDGMENT :- (PER : S.V. GANGAPURWALA, J.)

1. The petition is filed by association, thereby challenging allotment of demised plot No. 8 Sector N-11, so also making grievance about encroachment being made by respondents No. 5 to 8 on area of nala. The petitioners also have ventilated their grievance with regard to non-removal of encroachment on odd shape plot.

2. Mr. Chawre, learned counsel for petitioners submits that plot No. 8 is allotted to respondent No. 4. In fact, nala used to pass through allotted plot No. 8. Even said nala is shown in lay out plan. Respondent-City & Industrial Development Corporation of Maharashtra Ltd. (for short "CIDCO") to favour respondent No. 4, carved out residential plot over nala and allotted it to respondent No. 4, the same is hazardous to the residents of locality. Even today because of construction being made on plot No. 8, nala overflows, causing nuisance to the persons of the locality. Learned counsel states that while allotting plot No. 8 to respondent No. 4, procedure has not been followed. Learned counsel for petitioners submits that procedure of allotment of plot No. 8 to respondent No. 4 has been finalized in jet speed, within ten days lease had been executed. Even concession is given for paying installment beyond stipulated period. The map issued by office of the respondent itself would clearly show the passing of nala from the place where now plot No. 8 is being shown, which is allotted to respondent No. 4.

3. Learned counsel further submits that respondents No. 5 to 8 have made illegal encroachment on the nala. At the first instance they had made encroachment on open space abutting to their houses. Respondent -CIDCO regularized their encroachment by allotting them odd shape plots. Said procedure itself is illegal. Subsequently respondents No. 5 and 6 have committed encroachment on the portion of nala, such encroachment being disastrous. Neither respondent -CIDCO nor respondent No. 3 - Municipal Corporation Aurangabad (for short "Corporation") had taken any steps to remove encroachment in spite of making representations. The petitioners even objected for formation of plot No. 8 and subsequently allotment to respondent No. 4, however, in spite of the protest from the association and filing representations, CIDCO, leased out said plot No. 8 to respondent No. 4. Respondents had not paid any heed to the hardship being faced by the members of the petitioner-association. Learned counsel submits that development authority cannot exercise statutory powers arbitrarily. It has caused violation of fundamental rights of the petitioners. Road/permanent access cannot be closed down, the same causes grave hardship to the public at large. Respondents -authorities are duty bound to provide basic amenities to the public at large. Learned counsel further submits that because of encroachment by respondent No. 5 so also formation of plot No. 8, one thoroughfare is closed down and the same is illegal. Respondent No. 2- CIDCO and respondent No. 3 Corporation are not taking any steps.

4. Mr. Bajaj, learned counsel for respondent - CIDCO submits that

members of the petitioner association are provided access, nala has been trained in the year 1992. In one of the map issued to the petitioner – association, a mistake was committed, plot No. 8 was formed in the year 1992 and same was allotted to respondent No. 4 in the year 2007. There was delay with regard to payment being made by respondent No. 4 and the same was condoned by the Government. Thereafter, only lease deed was executed. It is not within short span that the whole process was completed. After four years of allotment of plot, lease was executed. Learned counsel submits that it is policy of the CIDCO to allot odd shape plots to the adjacent plot holders. Odd shape plots cannot be allotted independently and under said policy, odd shape plots were allotted to respondents No. 5 to 8. It is the duty of the Corporation to remove the same.

5. Mr. Tope learned counsel for respondent No. 3 -Corporation submits that respondent-Corporation is duty bound to remove any encroachment upon nala. Odd shape plots had been regularized, as such, it cannot be said that there is any encroachment on odd shape plots. Officers of CIDCO may assist officers of the Corporation in conducting survey, to find out encroachment and if any such encroachment is found, respondent - Corporation would take necessary action against erring plot holders for removing encroachment.

6. We have heard learned Assistant Government Pleader.

7. The CIDCO is special planning authority and it is within the domain of CIDCO to prepare lay out plan and revise it in accordance

with statutory provisions, bye-laws and rules. It has been stated on affidavit by the authority of the CIDCO that today also nala is in existence, however, said nala has been trained in 1992. Plot No. 8 was carved out and, thereafter, it was allotted to respondent No. 4. Plot No. 8 was allotted to respondent No. 4 in the year 2007 and for payment of installment, time was sought. Respondent No. 4 did not make payment of installment as stipulated, however, respondent no. 4 thereafter approached the Government. The Government condoned delay in payment of installment, thereafter, lease deed is executed in the year 2011. It would be seen that even after allotment, four years have lapsed for getting lease deed. It would not be possible to consider in writ petition what was the width of the nala and whether the flow has been properly trained. It appears that same has been done in the year 1992. It would be too late today to consider said aspect, as building is already constructed on plot No. 8. It is presumed that CIDCO must have followed proper procedure.

8. It is policy of CIDCO to allot odd shape plots to the adjacent plot holders, abutting to which odd plots exist. The same cannot be said to be beyond their policy. One of the major bone of the contention of the petitioners is that respondents No. 5 to 8 have committed encroachment over nala, certainly nala cannot be allowed to be encroached, if encroachment take place on the nala, the same may have disastrous result, the planning authority is required to take steps to safeguard nala and to see that encroachment does not take place on said nala and, if any, encroachment is found, immediate steps are

required to be taken to remove the same. Assurance is given by respondent -Corporation, that if encroachment is found on the nala, steps would be taken to remove the same. In case, officers of respondent-Corporation at the time of making survey, require assistance of the officers of CIDCO. In that case, CIDCO shall provide necessary assistance to the Officers of respondent-Corporation. Authority of respondent - Corporation shall conduct survey on priority basis of said nala and if it is found that encroachment exists on said nala, it shall take immediate steps to remove the same.

9. Writ petition is allowed in above terms. Rule is made absolute accordingly. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK