

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

WRIT PETITION NO. 5213 OF 2013

Abhay S/o Jayantilal Shah

.. Petitioner

Versus

The State of Maharashtra and others

.. Respondents

Shri V. I. Thole, Advocate for the Petitioner.

Shri V. H. Dighe, A. G. P. for the Respondent No. 1.

Shri S. S. Dande, Advocate for Respondent Nos. 2 to 4.

**CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.**

DATE : 25TH FEBRUARY, 2016.

PER COURT :-

. Mr. Thole, the learned counsel submits that, the petitioner was allotted commercial plot by respondents/M. I. D. C. bearing plot No. P-45 at Chikalthana, Aurangabad. Though the said plot is allotted in December 1998, possession of the said plot was given in November, 2000. The agreement was executed on 16.09.1999. As per the agreement, the petitioner was to make construction within four years. The learned counsel submits that, vide circular dated 16.04.2004 the time to complete the construction was increased to five years. On 19.10.2005 the petitioner applied for construction permission. On 25.10.2005 the permission was accorded. The learned counsel submits that, a mistake was committed by respondents in the name of the petitioner because of which the petitioner did not receive the copy of the construction permission. As the petitioner did not receive the

construction permission, the petitioner issued notice to the respondent No. 2 stating that he has not received the construction permission. It is only on 20th December, 2005 the petitioner received the sanction letter and approved plan. On 26.12.2005 the petitioner requested for extension of time for completion construction, however, the said application was not decided. On the contrary the respondent No. 4 directed the petitioner to approach the department of Regional Office for extension time. On 09.05.2008, the petitioner filed an application for extension of time. Instead of considering the application for extension of time, on 05th June, 2012 the respondent No. 3 issued show cause notice, as to why action as proposed under the relevant clauses of the agreement should not be taken. On 05.07.2012 the petitioner replied the show cause notice and sought for extension of time of one year. On 12.04.2013 instead of extending the time, the respondents cancelled the plot allotted to the petitioner. The learned counsel submits that, on 04.06.2013 circular is issued by the respondent No. 2 which clearly states that, the allottee who had not completed the construction within stipulated period or within the extended period for them, the time is extended upto 31.08.2013 on payment of penalty of 5%. The learned counsel submits that, the petitioner is entitled for the benefit of said circular dated 04th June, 2013. The action of respondents in cancelling the allotment of the plot is much after the issuance of the said circular. The learned counsel submits that, clause 4 of the said circular is not applicable to the present petitioner as the petitioner has taken efforts for construction by applying for construction permission. According to the learned counsel, the plot of the present petitioner is not allotted to any other person. The petitioner be allotted the said plot.

2. Mr. Dande, the learned counsel for respondents submits that, the plot in question is not an industrial plot, but a commercial plot. The commercial plots are required to be allotted by inviting tenders and by auction. The petitioner was allotted the said plot in 1998, agreement was executed in the year, 1999, possession was delivered in the year, 2000. As per the agreement, the petitioner is expected to carry out the construction within four years. Subsequently the time is extended by one year. Even application for construction permission is not filed within extended period i. e. five years from the date of agreement, still the respondent/Corporation sanctioned the said construction permission. The petitioner has not taken any steps for development of the said plot. The purpose for which the plot was allotted is not fructified. The circular relied by the petitioner is not applicable to him, as he had not taken any steps for development of the said plot. The action by respondents is rightly taken. Even subsequently, after filing of writ petition, the petitioner has delivered possession of the said plot to the respondents.

3. We have considered the submissions canvassed by learned counsel for respective parties.

4. We would have entertained the request of the petitioner, had the petitioner shown any steps being taken for development of the property. Just by filing an application for construction permission would not mean that steps are taken for development of the property in its real sense. The construction permission was accorded on 25.10.2005. As per the terms of the construction permission, the petitioner was entitled to complete the construction within one year

from the date of the said commencement certificate. Even assuming that initially there was some mistake in the name as instead of A. J. Shah it was stated as A. T. Shah. However, in December 2005 the said mistake was rectified and the petitioner is communicated, so also the petitioner has received said approved plan and sanction letter on 20th December, 2005. Within one year from the said date the construction should have been completed.

5. There is total inaction on the part of the petitioner in even starting the construction over the said plot. We could have shown our indulgence to the petitioner, had the petitioner taken some steps to construct the said plot. It is not disputed that, no construction activity is carried out on the said plot inspite of sanction of construction permission in the year, 2005. Just by writing letter, the same would not tantamount to taking steps. Even no reason are forthcoming for not carrying out the construction or the part of construction within a period of one year from the date of sanction of construction permission. The plot in question is a commercial plot. Even till date of cancellation of allotment of plot, no construction activity is undertaken by the plaintiff. This itself shows that, the petitioner was not desirous of starting the venture for the purpose of which the plot was allotted. The circular dated 12.04.2013, in fact, goes against the petitioner. The circular very specifically states that, the said scheme of extension of time is not applicable to those persons who have not taken any steps for development of the said plot. As narrated supra, it is not disputed that, the petitioner had not taken any step for development of the said plot except making an application seeking commencement certificate. Clause 4 of the said circular dated 06th March, 2013 goes against the

petitioner.

6. Considering the aforesaid conspectus of the matter, the petitioner would not be entitled for any equitable orders by this Court.

7. In light of the above writ petition is dismissed. No costs.

[A. M. BADAR, J.]

[S. V. GANGAPURWALA, J.]

sam/Feb.16