

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

WRIT PETITION NO. 5082 OF 2015

Shushrusha Heart Care Centre and
Specialty Center Plot No 22/A, Phase-III,
Palm Beach Road, Sector-6
Nerul Navi Mumbai
Through its President
Shri Sanjay Ramchandra Tarlekar
Age: 49 years, Occu. Medical Practitioner,
R/o Plot No. 22/A, Phase -III, Palm beach
Road, Sector -6 Nerul, Navi Mumbai.

...PETITIONER

versus

1. The State of Maharashtra,
Through the Secretary,
Urban Development Department,
Mantralaya, Mumbai – 32.
2. The Administrator,
City and Industrial Development
Corporation (CIDCO) New Aurangabad
Near CIDCO Bus Stand, Aurangabad
Taluka & District Aurangabad

...RESPONDENTS

.....

Mr. P.M. Shah, learned senior counsel instructed by
Mr. S.G. Chapalgaonkar and Mr. Girish Rane, Advocates for petitioner
Mr. N.B. Patil, AGP for respondent No. 1
Mr. A.S. Bajaj, Advocate for respondent No. 2 CIDCO.

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**CORAM : S.V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

**RESERVED ON : 9th AUGUST, 2016.
DELIVERED ON: 6th DECEMBER, 2016.**

JUDEMENT :- [PER: K.K. SONAWANE, J.]

Heard. Rule. Rule made returnable forthwith. Matter is taken up for final hearing at the stage of admission with the consent of both sides.

2] The petitioner preferred the present petition taking recourse to Article 226 of the Constitution of India and assailed the communication dated 9.6.2014, for cancellation of the petitioner's allotment of plot NO. C-5, kept reserved for hospital purpose located in N-11 CIDCO, Aurangabad. It has been alleged that the petitioner did not fulfill the eligibility criteria by producing requisite documents i.e. Registration Certificate under the Bombay Public Trust Act, which resulted into cancellation of allotment of plot assigned in favour of petitioner.

The genesis of the petition, culled out in brief, is as below :-

3] Respondent No.2 - City and Industrial Development Corporation -CIDCO , floated an advertisement inviting applications to lease out various facility plots on certain terms and conditions. The contentious plot NO. C-5, admeasuring 1063.71 sq. meters was kept reserved for hospital purpose. The sale price was determined at Rs. 5380/- per square meter and the earnest money deposit (EMD) of Rs. 1,60,590/- was fixed for lease transaction. The respondent CIDCO in the information brochure has stipulated that the plot is reserved for hospital purpose, preferably to be allotted to a charitable trust and in case no application is received from charitable institution, the

application of rest of the parties would be taken into consideration for its allotment to construct and run a hospital.

4] It has been contended that pursuant to the advertisement, the petitioner a partnership firm, applied for allotment of Plot No. C-5, located in CIDCO area, Aurangabad for hospital purpose. The petitioner also deposited the requisite amount of Earnest Money Deposit for further process. Thereafter, there was letter correspondence exchanged in between the respondent-CIDCO and the petitioner for producing the registration certificate under the Bombay Public Trust Act and Societies Registration Act. The petitioner submits that Authorized committee of the respondent CIDCO appreciated the status, capability and other relevant factors and passed Resolution No. 550 (d) for allotment of contentious plot in favour of petitioner. The respondent No.2 was directed to get verified the registration certificate of the petitioner issued under the Bombay Public Trust Act.

5] Accordingly, petitioner produced the registration certificate of Susrusha Medical Foundation and research Center, which is an allied institution of the petitioner-firm. But, the respondent-CIDCO, did not accept the certificate of allied institution and insisted for certificate of the petitioner/applicant firm itself. The petitioner took efforts to convince the respondents about impropriety of demand of Registration Certificate of the petitioner firm. The efforts did not yield result and ultimately the respondent-CIDCO under the garb of non-production of Registration

Certificate of the Trust, revoked the allotment of the Plot No. C-5, sanctioned in favour the petitioner-firm, vide communication dated 9th June, 2014, which is the subject matter of the present petition.

6] Pursuant to the service of notice, respondent - CIDCO, appeared and filed the affidavit in reply on record. The respondent - CIDCO vociferously opposed the contentions put forth on behalf of petitioner.. It has been submitted that the social facility plot No.C-5, located in N-11 area Aurangabad, admeasuring 1163 square meter, has been kept reserved for hospital purpose preferably to be allotted to the charitable trust. According to respondent - CIDCO, the petitioner applied for allotment of Plot No.5 meant for hospital purpose. The petitioner tendered the application for allotment of the plot being a charitable institution. The competent authority of respondent - CIDCO, verified the documents produced on record and preferred to allocate the hospital plot to the petitioner on condition that the petitioner should produce the registration certificate under the Bombay Public Trust Act and Societies Registration Act. But the petitioner did not fulfill the eligibility criteria and failed to produce requisite documents. The circumstances impelled the respondent - CIDCO to cancel the allotment of plot of the petitioner. The respondent - CIDCO communicated about the cancellation of allotment vide letter dated 9th June, 2014. The amount of lease premium deposited by the petitioner was also refunded to the petitioner through demand draft. According to respondent-CIDCO the contentious plot was kept reserved for hospital purpose to be run by a

charitable institution on no profit no loss basis. The petitioner failed to fulfill the eligibility criteria. Therefore, the respondent-CIDCO has rightly proceeded to take decision for cancellation of allotment of plot of the petitioner. Hence, respondent-CIDCO requested not to nod in favour of petitioner and dismiss the petition.

7] Learned Senior Counsel Mr. Shah appearing for the petitioner raised the objections to the manner in which the decision for cancellation of allotment of the plot, was taken by the respondent CIDCO. He submitted that the said decision is totally arbitrary, unfair and against the principles of natural justice. The respondent did not appreciate circumstances on record in its proper perspective and arrived at incorrect decision of cancellation of allotment. Learned Senior Counsel Shri Shah explained that in the information brochure issued by CIDCO, there is Clause 5(B) which contemplates about preference to be given to charitable trust for allotment of plot to run hospital and in case no applications are received from any charitable trust, other applications would be considered for the same. Shri Shah, learned Senior Counsel, urged that clause 5(B) is not mandatory but it is a mere directive in nature for preference to the charitable trust. It does not prohibit for allotment of plot to any other institution like partnership firm of the petitioner. He added that the petitioner tendered the application form for allotment of hospital plot in the name of partnership firm. The Authorized committee of the respondent CIDCO, after due discussion and deliberation accepted the application of the petitioner and

passed Resolution No. 550 (d) dated 26.6.2010 and bade for allotment of plot in favour of petitioner.

8] Learned counsel Shri Shah, submitted that there was direction to the respondent-CIDCO to verify the registration certificate of the charitable trust. There was no reference in the resolution for seeking Certificate of Registration of the petitioner firm under the Bombay Public Trust Act. The petitioner, for compliance of the directions in Resolution No. 550 (d), produced certificate of Susrusha Medical Foundation and Research Center under the Bombay Public Trust Act, which is the allied institution of the petitioner-firm. But, the respondent CIDCO was insisting for Registration certificate of the petitioner itself under the Bombay Public Trust Act. He harped on the circumstance that there was no propriety to insist the petitioner-firm for producing its Registration Certificate under the Bombay Public Trust Act, and Societies Registration Act. The procedure adopted by the respondent CIDCO to arrive at the conclusion to revoke allotment of the petitioner's plot is totally erroneous, arbitrary and irrational one and as such, the decision deserves to be upset by exercising inherent powers of judicial review. The petitioner seeks interference of this Court to set aside and quash the impugned communication of cancellation of allotment of plot by exercising inherent powers under Article 226 of the Constitution of India. In support of his submission, learned senior counsel relied upon the legal guidelines delineated in the case of ***Maharashtra Public Service Commission Vs. Tejrao Bhagaji Gadekar and another*** 2013(4) Mh.L.J.

791 and in case of *K. Vinodkumar vs. S. Pasnisaya reported in 2003(1) SCC 681*.

9] Learned senior counsel Shri Shah further contends that petitioner filed application for allotment of plot in the name of partnership firm. The Board of Directors of CIDCO has taken conscious decision of allotment of plot after considering the eligibility of the petitioner. The allotment letter was also issued to the petitioner pursuant to which petitioner deposited the EMD for further process. The respondent has given clear and unequivocal promise for allotment of plot in favour of petitioner. In such circumstances, the inference can be drawn that the parties have entered into a concluded contract which created right and interest of the petitioner in the property. Therefore, in view of the principle of Promissory Estoppel, the respondent CIDCO has no locus-standi to revoke allotment of plot assigned in favour of the petitioner. Shri Shah laid much emphasis on the factual aspect that respondent CIDCO, after consideration of documents produced on record, processed the application of petitioner for allotment of the hospital plot in its favour. In such circumstances, there was waiver or abandonment of right and interest by CIDCO, for cancellation of allotment under the garb of non fulfilment of eligibility criteria.

10] According to Shri Shah, the essence of waiver is estoppel and, therefore, once the respondent-CIDCO, waived or abandoned its right and preferred to allot the plot in favour of petitioner-partnership firm, there is

estoppel for the respondent CIDCO. The impugned communication of allotment is arbitrary, unfair and against the principles of natural justice. In support of his argument, Shri Shah relied upon the exposition in the case of *Municipal Corporation of Greater Bombay Vs. Dr. Hakimwadi Tenants Association and others reported in 1988(supp.) SCC 55* and *P. Dasa Muni Reddy Vs. P. Appa Rao, reported in 1974(2) SCC 725*, in which the Honourable Apex Court described the scope of doctrine of waiver and observed that waiver is an intentional relinquishment of a known right or advantage, benefit, claim or privilege which except for such waiver the party would have enjoyed. The essential element of the doctrine of waiver is that there must be a voluntary and intentional relinquishment of a right. According to Shri Shah, the respondent-CIDCO allotted the plot in favour of petitioner after appreciating the entire documents on record and issued the allotment letter. The adverse inference can be drawn that the respondent-CIDCO voluntarily and intentionally relinquished its right and assigned the plot in favour of petitioner. Therefore, the impugned decision of cancellation of allotment is arbitrary and erroneous in nature.

11] Shri Shah, during the course of arguments, also took recourse to the doctrine of legitimate expectation and urged that CIDCO took the decision of allotment of plot in favour of petitioner and issued allotment letter dated 29.10.2012. Parties have entered into a concluded contract for creating right and interest in favour of petitioner. The agreement in the form of allotment order created legal relation between the petitioner and

respondent. There was unequivocal promise to the petitioner for allotment of hospital plot on lease. The petitioner also deposited the EMD amount. Therefore petitioner has a legitimate expectation that the authority like respondent will not cancel or rescind its promise for allotment of plot in favour of petitioner - a partnership firm. He kept reliance on the exposition in the case of *The Gujarat State Financial Corporation Vs. M/s. Lotus Hotels Pvt. Ltd, reported in AIR 1983 SC 8430*.

12] Eventually, learned Senior Counsel Shri Shah vehemently contended that the impugned communication is unreasonable, unfair and against the principles of natural justice. There was no fault on the part of petitioner. The requisite information furnished by petitioner was as per the information booklet of CIDCO. The entire consideration on behalf of respondent-CIDCO is misdirected, resulting into injustice and prejudice to the petitioner. Hence, he requested to allow the petition and upset the communication dated 9.6.2014 in regard to cancellation of allotment of plot in favour of petitioner. He further prayed for direction to the respondent authority to execute agreement of lease of the concerned plot in favour of the petitioner allotted vide allotment letter dated 29.10.2012.

13] Learned counsel Shri Bajaj, appearing for respondent CIDCO, scathingly the contentions propounded on behalf of petitioner. He argued that petitioner filed the application in the name of charitable institution. Therefore, plot came to be allotted to the petitioner, being an institution

registered under the Bombay Public Trust Act. Since beginning respondent-CIDCO insisted the petitioner to produce Registration Certificate being charitable institution. The petitioner attempted to mislead the respondent authority by producing certification of charitable institution which is allied institution of the petitioner firm. Respondent CIDCO dealt with the application of the petitioner being a charitable institution and not as an application form of the partnership firm.

14] Learned counsel Shri Bajaj further contends that petitioner mentioned the Registration No. BPT -052 dated 1.4.2007 of the applicant firm in the document Schedule III, appended with the application form. Pursuant to charitable trust registration No. BPT-052 dated 1.4.2007, respondent-CIDCO dealt with the application of the petitioner and proceeded to allot the plot in favour of petitioner. It was also stipulated that the petitioner shall produce the document of registration on record. But, petitioner failed to produce the said certificate and attempted to furnish registration certificate of another allied institution than the applicant itself. Therefore, respondent-CIDCO was constrained to take decision for cancellation of allotment of plot assigned in favour of petitioner. The decision is just, proper and taken after giving sufficient opportunity to the petitioner to produce requisite document on record. The allotment was sanctioned to the petitioner being a charitable institution. Therefore, it is unreasonable and improper to allocate the plot in favour of partnership firm under the garb of charitable institution. Learned counsel Shri Bajaj

explained the circumstances in detail and submitted that the petitioner is not entitled for equitable relief. He submits that the doctrine of legitimate expectation cannot be made applicable to the matter in hand. There was no waiver or abandonment of right by respondent-CIDCO. The petitioner is not entitled for any relief in the petition. Hence, he requested to dismiss the petition.

15] Before embarking into the merits of the matter, it is essential to be borne in mind that in view of settled rule of law the principles of judicial review is permitted to be applied to the exercise of contractual powers of Government bodies in order to prevent arbitrariness, abuse of process, irrationality, procedural impropriety or unfairness etc. The judicial review is concerned with the manner in which the decision was taken and not related to merits of the matter. In the case of ***Tata Cellular Vs. Union of India, 1994 (6) SCC 651***, the Honourable Apex Court, while describing the scope of judicial review observed in para.94 that the Court does not sit as a court of appeal but merely review the manner in which the decision was taken. It has also noticed that the terms of invitation to tender cannot be open to judicial scrutiny because invitation to tender is in the realm of contract. The Government must have freedom to contract subject to condition that it must be free from arbitrariness, not affected by bias or activated by malafides. In such backdrop, we proceed to explore the factual aspects of the matter, as same would command to us the correct principles. The learned Senior Counsel Shri Shah also placed on record the judgment of

the Division Bench of this Court, in the case of **MPSC Vs. Tejrao** referred (supra) in which there is a reference to the judgment of Honourable Apex Court, in the case of **“State of UP Vs. Zohrimal” reported in 2004 AIR SCW 3888**, wherein the Apex Court in para.30 of said judgment has observed thus :-

“30. *It is well settled that while exercising the power of judicial review the court is more concerned with the decision making process than the merit of the decision itself. In doing so, it is often argued by the defender of an impugned decision that the court is not competent to exercise its power when there are serious disputed question of facts; when the decision of the Tribunal or the decision of the fact finding body or the arbitrator is given finality by the Statue which governs a given situation or which, by nature the activity the decision maker's opinion on facts is final. But while examining and scrutinizing the decision making process it becomes inevitable to also appreciate the facts of a given case as otherwise the decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the Court of judicial review can re appreciate the findings of the facts depends on the ground of judicial review. For example, if a decision is challenged as irrational, it would be well-nigh impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch-stone of the tests laid down by the court with special reference to a given case. This position is well settled in Indian Administrative Law. Therefore, to a limited extent of scrutinizing the decision making process, it is always open to the Court to review the evaluation of the facts by the decision maker.”*

On the touchstone of aforesaid legal guidelines, there is no doubt that while

taking judicial review of administrative action, this court is empowered to some extent, to scrutinize the decision making process to review the evaluation of facts by the respondent-CIDCO. There is no impediment to appreciate the factual score of the matter to test the propriety and genuineness of the decision taken by the respondent-CIDCO for cancellation of allotment of plot.

16] Now, turning to the factual aspects of the matter, parties are ad-idem to the facts that respondent-CIDCO has floated advertisement to lease out the social facility plots on certain terms and conditions. Petitioner submitted proposal for allotment of social facility plot on lease reserved for hospital purpose. The respondent-CIDCO scrutinized the proposal and took the decision to allocate the impugned plot in favour of petitioner vide resolution No. 550 (d) passed on 26.6.2012. It was also directed under resolution that respondent-CIDCO shall get it confirm as to whether the trust is registered with the Charity Commissioner, under the Bombay Public Trusts Act and Societies Registration Act prior to advertisement of the scheme and obtained its certificate. Thereafter, respondent-CIDCO proceeded to issue allotment letter in which it has been stipulated that applicant shall produce its own registration certificate under the Bombay Public Trust Act (Now Maharashtra Public Trust Act). But, the petitioner failed to produce its registration certificate under the BPT Act in compliance of the conditions imposed while allotment of plot. In the aftermath, respondent cancelled the proposal of the petitioner for allotment of hospital plot on lease.

17] We have given anxious consideration to the arguments advanced on behalf of both sides at length. The factual aspect of the matter reflects that the arguments advocated on behalf of petitioner by learned counsel Shri Shah though appears to be attractive is unsustainable one. We are not convinced to grant relief in favour of petitioner for the reasons stated below :-

a] As referred supra, while analyzing the factual aspect of the decision making process for cancellation of allotment of plot of the petitioner, it reveals that the respondent CIDCO, issued booklet containing the terms and conditions, to lease out various social facility plots for the period of 60 years. In the booklet, the clause No.4 (1) denotes the eligibility criteria for application to be submitted to allocate the plot. It has been stipulated in clause 4(1), that the applicant institution should be registered as a public charitable trust under the Societies Registration Act, 1860 and the Bombay Public Trust Act. Clause 4(9-C) contemplates that the hospital should be run on no profit no loss basis. While describing the procedure to make application for allotment of plot, in clause 5(b), it has been mentioned that preference would be given to public charitable trust and in case no applications are received, then, other applications would be considered for allotment of the plot. In the instant case, it is not the fact that there were no applications received from charitable institution for allotment of plot. It is to be noted that the proposal from five institutions were received by respondent for allotment of hospital plot and out of these proposals, three

institutions were having registration under the Bombay Public Trust Act. The petitioner claimed allotment of plot reserved for hospital purpose. The petitioner appended relevant documents with the application form. In the document at Schedule 3 petitioner furnished the information and made a reference of its registration under the Bombay Public Trust Act. The contents of Schedule III are reproduced as under :-

परिशिष्ट - 3

रुग्णालय

अर्जासोबत जोडून दयावयाचा कागदपत्राचा तपशील

- | | | |
|---|--|---|
| 1 | अ) संस्थेचे नाव व पत्ता | : शुश्रूषा हार्ट केअर सेंटर अॅण्ड स्पेशालिटी सेंटर, सेक्टर 6, नेरुळ फेज 3, नवी मुंबई. |
| | ब) बॉम्बे पब्लीक ट्रस्ट ॲक्ट 1950 व सोसायटीज रजिस्ट्रेशन ॲक्ट 1860 नोंदणीची तारीख (सोबत नोंदणी प्रमाणपत्र प्रती जोडाव्यात) | बी.पी.टी - 052 दिनांक 01.04.2007 एस.आर.ए. - नाही सी/1 ते सी/3 सोबत सी/5 |
| 2 | संस्थेचे सभासद - जसे अध्यक्ष, सचिव व सदस्य (सोबत बायोडाटा जोडावा) | : तपशिल सोबत जोडला आहे. |
| 3 | संस्था स्थापनेची तारीख | : दि. जुन 1994 |
| 4 | संस्था ध्येय व उद्दिष्टे (सोबत प्रती जोडावी) मेमोरन्डम असोसिएशन अॅण्ड बाय लॉज) | : सोबत सी/7 ते सी/25 वर जोडली आहे |
| 5 | सध्या संस्थेची स्वतःची इमारत आहे काय ? सविस्तर तपशील दयावा. | : आहे. प्लॉट नं. 22/ए, सेक्टर 6, नेरुळ नवी मुंबई. |
| 6 | सभासदाकरीता आकारण्यात येणार शुल्क
आजीव सभासदाकरीता
इतर सभासदाकरीता | : स्वतःचे मालकीचे रुग्णालय सभासदत्व नाही सी/27 ते सी/39 सोबत जोडले आहे |

7	बँक व्यवस्थापकाने निर्गमित केलेले बँक खाती शिल्लक प्रमाणपत्र	: रु. 1,55,942.22
8	संस्थेची आर्थिक स्थिती (सोबत मागील 03 वर्षांचा लेखापरिक्षण अहवाल जोडावा)	: सोबत जोडला आहे
9	संस्थेवर नियुक्त कर्मचारी वर्ग व त्याचा तपशील (शैक्षणिक पात्रता, वेतन इ.)	: सोबत सी/ ते सी/61
10	मागील 03 वर्षांत राज्य/ केंद्र शासनाकडून निधी प्राप्त झाला असल्यास तपशील	: नाही
11	खर्चाचा तपशील अ) वसुल होणारा ब) न वसुल होणारा	: सोबत सी/63 ते सी/ जोडला आहे
12	संस्थेमार्फत सध्या चालू असलेल्या सोयी/ सवलती / योजना	: सोबत सी/75
13	या व्यतिरिक्त इतर अधिकची माहिती	: जोडली आहे

शिक्का

स्वाक्षरी –अध्यक्ष / सचिव

It has been mentioned in clause 1(B) that the Registration number of applicant is BPT-052 dated 1.4.2007 and there was no registration under the Societies Registration Act. The requisite details were given in the appendix C-1 to C-3 and C-5. The petitioner also appended details about its members i.e. President, Secretary and other members with the applications. In Column No4 of Schedule-3 petitioner mentioned about production of memorandum of Association and by-laws accompanied with application vide appendix C-7 to C-25. The document Schedule-3 clearly reflects that one

Dr. Sanjay Ramchandra Tarlekar presented/tendered the application for allotment of plot in the capacity as President of the Institution. This fact shows that petitioner filed application on behalf of charitable trust and not on behalf of petitioner-firm. There would not be any President or Secretary in the Partnership Firm. The Committee of respondent - CIDCO considered the application of the petitioner being an application on behalf of Charitable trust and issued conditional allotment letter. It was stipulated that petitioner shall produce registration certificate of applicant trust. Since beginning respondent - CIDCO insisted for production of registration certificate of petitioner-Institution under Bombay Public Trust Act or Societies Registration Act. But petitioner did not comply with documentary formalities under one or other pretext. Eventually, circumstances constrained the respondent-CIDCO to revoke allotment of the plot sanctioned in favour of the petitioner.

b] It would be reiterated that in the document Schedule III, referred above, petitioner gave its registration number as BPT-052 of Charitable institution and also mentioned that there was no registration under the Societies Registration Act 1860. In column No.2 of Schedule III, petitioner made reference about names of the President, Secretary and other members of the charitable trust. It transpires that the petitioner applied to the respondent-CIDCO as a charitable institution, registered under the BPT Act, vide No. BPT/052, dated 1.4.2007. These circumstances categorically demonstrate that the petitioner tendered the application for

allotment of plot pretending as charitable institution and not as a partnership firm. Therefore, we do not find merit in the contentions put forth on behalf of petitioner that the application for allotment of plot was filed by the petitioner being a partnership firm and not as a charitable institution.

c] The petitioner further submitted that the Susrusha Medical and Research Foundation, a charitable institution, is the allied body of the petitioner-firm. The petitioner furnished Registration certificate of the allied institution i.e. Susrusha Medical Foundation and Research center. The registration certificate reflects that the said charitable institution came to be registered on 28.9.2000 having its Registration No. E-2263 (Thane). The petitioner made endeavour to put forth the registration certificate of its allied institution for compliance of condition of allotment letter. There is dichotomy in the theory propounded on behalf of petitioner. In one breath, petitioner stated the registration number of its charitable institution in the document Schedule III as BPT/052 dated 1.4.2007, and in another breath it attempted to furnish the requisite certificate of its allied institution having No. E-2263(Thane) dated 28.9.2000. There is no explanation on behalf of petitioner about the discrepancy occurred in regard to registration numbers of charitable institutions relied upon by the petitioner. There are no details available on record about charitable institution bearing number BPT/052 dated 1.4.2007. Definitely the suspicious circumstance devastated the theory propounded on behalf of petitioner for seeking relief in the petition.

Petitioner attempted to mislead the respondent-CIDCO under the garb of charitable institution to procure the allotment of plot. The circumstances are sufficient to draw adverse inference pertaining to the credibility of petitioner, for allotment of plot.

d] Obviously, respondent CIDCO acted upon the documents produced on behalf of petitioner which demonstrate the registration of petitioner/applicant under the BPT Act vide BPT/052 dated 1.4.2007. The petitioner did not produce the registration certificate of the same. Consequently, respondent-CIDCO insisted for registration certificate. The action on the part of the respondent CIDCO appears just, proper and reasonable. The petitioner failed to produce the registration certificate under the BPT Act and attempted to produce the certificate of its allied institution, which has been registered under the BPT Act, in the year 2000. It remains a conundrum that once the petitioner has given the registration number of its charitable institution as BPT-052 dated 1.4.2007, for what reasons the petitioner furnished the registration certificate of its allied institution having Registration No. E-2263 (Thane) dated 28.9.2000. This anomalous situation pointed out need of suspicion towards demeanour of petitioner during the course of forming contractual relations with respondent-CIDCO.

e] The respondent CIDCO since beginning was clamoring that the plot is kept reserved for charitable institution. Respondent CIDCO dealt with the application of the petitioner being an application submitted on behalf of

charitable institution. But, when the respondent came to know that petitioner could not produce registration certificate under the BPT Act; proceeded to cancel the allotment of plot. The decision taken by the respondent itself appears reasonable, genuine, and within the norms prescribed for allotment of plot. Respondent-CIDCO has given ample opportunity to the petitioner to produce required documents to fulfill the eligibility criteria but all efforts found unavailing.

f] It is also evident from the Resolution No. 550(d) that respondent-CIDCO dealt with the application as an application from charitable institution otherwise there would not be any reason for respondent-CIDCO to insist upon petitioner for producing the certificate. The resolution No.550 is reproduced as under :-

RESOLUTION NO. 550

“RESOLVED THAT the SF Committee do hereby approve the proposal for allotment of following 6 various social facility plots 60 years lease basis and re-advertisement of balance 04 plots at New Aurangabad Project.

a)XXXX

b)XXXX

c)XXXX

d) Plot No. N-11/C-5 admeasuring 1163.71 Sq. Mt.
Reserved for Hospital use at Rs. 1380/- per Sq.
M. for a total cost of Rs. 16,05,920/ to Sushrusha
Heart Care Centre & Specially Centre, Nerul for setting up of
Hospital on the condition that the CA (NT) shall
confirm that the Trust is registered with Charity
Commissioner under Societies Registration Act or Bombay
Public Trust Act, 1950 prior to the advertisement of

scheme and obtain the copy of same on record before issue of allotment letter.

e)XXXX

f)XXXX.”

The aforesaid recitals of the Resolution No.550(d) itself indicate that the SF committee of respondent CIDCO approved the proposal of petitioner as a proposal of public charitable institution and not proposal from partnership-firm. In case the application would have been dealt with by CIDCO being application on behalf of partnership firm there would not be any condition to get confirm the registration of the applicant and shall obtain the copy of the same. These attending circumstances are sufficient for drawing an inference that the impugned communication is in regard to the plot allocated to charitable institution and not to a partnership firm. Moreover, the rest of the communications issued to the petitioner were seems to have been addressed to the petitioner in the name of President of the Institution. Had there been any applications from partnership firm; there would not be a position of President in the Partnership Firm for addressing letter by the CIDCO. This factual aspect of assessing letter to President of petitioner-institution also found detrimental to the theory propounded on behalf of petitioner.

g] The learned Senior Counsel Shri Shah further argued on the issue of concluded contract for creating right and interest of petitioner in the property. We are not in agreement with the submissions made by Shri Shah. Admittedly, the dispute raised is in the realm of contract. The

contract to allocate the plot was conditional upon furnishing the document of registration under the Bombay Public Trust Act. The agreement was subject to specific condition. The communication exchanged in between petitioner and respondent-CIDCO exhibits the conduct and demeanor of the petitioner. The allotment letter dated 29.10.2012 imposed the fetter that petitioner shall produce the registration certificate under the Bombay Public Trust Act within six months. The petitioner accepted the offer for allotment of plot in its favour subject to condition that it will produce the registration certificate within six months. Once the petitioner accepted the terms and conditions and acted upon it by depositing the cost of the plot, it is incumbent for the petitioner to comply with the conditions stipulated in the agreement and any violation of such conditions, would give right to the respondent-CIDCO to take appropriate action against the petitioner. The mere acceptance of offer of the petitioner by the respondent-CIDCO is not enough to draw inference of concluded contract. But, the performance of part of petitioner for conditional contract is significant to compel the respondent-CIDCO for its obligations towards contract. It is to be noted that as the petitioner failed to produce its registration certificate, the further course of contract for allotment of plot could not be finalized in favour of petitioner. No document evidencing concluded contract was executed. It could have been executed only after compliance of the terms of allotment order. It can not be said that there was concluded contract. Therefore, the doctrine of promissory estoppel would not come into play in this case. The issue of doctrine of waiver or abandonment of rights by CIDCO could not be

invoked as the respondent-CIDCO did not relinquish its known right and interest in the property. There was conditional contract and petitioner did not fulfill the condition. The attending circumstances do not permit to refrain the respondent-CIDCO from cancellation of allotment under the guise of waiver of interest or abandonment of right in the property. The judicial pronouncement relied upon by Senior Counsel Shri Shah is therefore misplaced.

h] The learned Senior Counsel Shri Shah laid much more emphasis on the doctrine of legitimate expectation. It has been submitted that the petitioner had the legitimate expectation that the impugned plot would be allotted to him after depositing the amount at higher price and public authority like respondent-CIDCO would not turn down the promise favourable to petitioner. He requested to cause interference to fulfill its legitimate expectation. Admittedly, the theory of legitimate expectation is one of the core branch of administrative law. It is not a legal right, it is an expectation of a benefit that may ordinarily flow from a promise or established practice. The expectation should be legitimate and valid. The concept of legitimate expectation is procedural in character and based on requirement of a higher degree of fairness in administrative action. The Court could interfere only if the decision taken by the authority was found arbitrary, unreasonable or in gross abuse of power.

In the matter in hand, it is hard to believe that petitioner has a locus-standi to take recourse of legitimate expectation for allotment of plot

in its favour. as a consequence of promise made on behalf of respondent-CIDCO. It must be established that the denial of that expectation would prove detrimental to petitioner institution. As discussed above, petitioner attempted to mislead the respondent-CIDCO by tendering the application under the guise of charitable trust. The application was signed by Shri Sanjay Ramchandra Tarlekar being President of petitioner institution and not in capacity of partner of petitioner firm. The promise to allocate the plot in favour of petitioner was conditional subject to production of registration certificate. The petitioner failed to discharge the obligation to contract. Therefore, the decision taken by the respondent-CIDCO to rescind the contract appears not arbitrary and unreasonable. The circumstances did not smack any abuse of power and violation of principles of natural justice. In such peculiar circumstances, the doctrine of legitimate expectation would not render any assistance to the petitioner for favourable relief to set aside and quash the communication pertaining to cancellation of allotment of plot. It cannot be considered in favour of petitioner being one of the grounds for judicial review.

I] In the above premise, we are of the considered opinion that the objection raised on behalf of petitioner to the action of the respondent-CIDCO to revoke allotment of plot, is not sustainable and considerable one. We do not find any illegality, impropriety or infirmity in the decision making process on the part of the respondent-CIDCO, for cancellation of allotment of plot assigned to petitioner. There was no concluded contract, nor any

waiver or abandonment of right and interest in the property by the respondent-CIDCO. The attending circumstance do not permit us to exercise the powers under Article 226 of the Constitution of India to quash and set aside the impugned communication dated 9.6.2014 issued for cancellation of allotment of plot assigned in favour of petitioner.

18] In the light of aforesaid discussion, the petition being devoid of any merits deserves to be dismissed. Accordingly, the writ petition is dismissed. Rule is discharged. There shall be no orders as to costs.

[K.K.SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

grt/-