

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9293 OF 2011

PRAKASH BANSILAL AGRAWAL
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. M. K. Goyanka.
AGP for Respondent No.1 : Mr. S. N. Morampalle.
Advocate for Respondent Nos.2 to 5 : Mr. A. S. Bajaj.

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CORAM : S. V. GANGAPURWALA &
A. M. BADAR, JJ.

DATE : 28TH JANUARY, 2016.

PER COURT:

1] Mr. Goyanka, learned counsel for the petitioner submits that though the petitioner was allotted the plot by CIDCO and payment was made in the year 1995, the possession was given in the year 1999. Though the lease is said to have commenced on 17.1.1997, the same is executed on a stamp paper of 1999, which would clearly show that neither agreement was executed nor possession was delivered prior to 17.1.1999.

2] Learned counsel for petitioner submits that petitioner had completed the construction in the year 2004. The construction permission was obtained on 10th February, 2004 and the constructions was completed in September, 2004. If the construction is completed earlier and the application for occupancy is filed subsequently, then, in that case respondent authorities could not charge additional premium, as per their own circular dated 28.2.2005. In view of the said circular, benefit has been given to other persons and the petitioner is denied the said benefit. The petitioner has submitted all the documents which are referred to in the circular dated 28.2.2015, still the case of the petitioner is not considered. Petitioner is discriminated. The action of the respondent in charging

additional lease premium for late completion, as such, is illegal. The construction is made within a period of six years. However, the application for occupancy certificate has been made subsequently. The petitioner be given the benefit of circular dated 28.2.2005.

3] Mr. Bajaj, learned counsel for respondent CIDCO, submits that while giving permission for commencement certificate, the petitioner was charged additional lease premium of Rs. 43,000/- and thereafter permission was granted. Learned counsel submits that the agreement required the petitioner to take possession of the land within 8 days from the date of final payment. The final payment was made in the year 1995. Petitioner was repeatedly sent reminders to execute the documents. The petitioner received possession on 17.1.1997, however, did not bring the stamp paper for executing the necessary lease deed. The petitioner, only in July, 1999, came along with stamp paper and as such, lease deed has been given effect to from the year 1997. According to him, the petitioner is liable to pay additional lease premium for non completion of construction within six years. He further submits that as far as circular dated 28.2.2005 is concerned, same is required to be approved by the higher officer. The benefit on the basis of said circular was granted to persons, referred to in the petition, however, CIDCO has recalled the same.

4] In writ jurisdiction, we are not inclined to entertain the disputed questions of fact. The dispute is with regard to the date when the possession was taken. The petitioner himself has produced document i.e. Possession Slip at page 274, which states that possession has been received by the petitioner on 17.1.1997. The petitioner is denying the same, however, it is the petitioner who has produced the said document. We are not entering into the controversy as to the date when petitioner has received possession. We will be required to go by the documents on record. Considering the said aspect, even if taking the case of the petitioner that the construction is completed in the year 2004, same is not within a period

of six years from the date of taking over possession.

5] Considering the above, case of the petitioner cannot be entertained. Writ petition is dismissed. No costs.

[A.M. BADAR]
JUDGE

[S.V. GANGAPURWALA]
JUDGE

grt/-