

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

WRIT PETITION NO. 9242 OF 2013

Mrs. Neelam W/o Anant Parlikar @
Miss Neelam D/o Murlidhar Jondhale ...PETITIONER

versus

The Chief Administrator,
CIDCO, Aurangabad and others ...RESPONDENTS

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Mr. Vinodkumar R. Mundada, Advocate for petitioner
Mr. A.S. Bajaj, Advocate for respondents No. 1 and 2
Mr. S.P. Sonpawale, Advocate for respondent No. 3

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

DATED : 15th JUNE, 2016.

Order :-

1. Mr. Mundada, learned counsel for petitioner submits that petitioner was allotted tenement bearing No. CL-10-79/01. Lease deed to that effect was executed on 18-07-2006. Respondent No. 3 was allotted tenement bearing No. CL-10-79/06. Area of tenement of the petitioner was admeasuring 87.99 sq. meters and that of respondent No. 3 was admeasuring 80.45 sq. meters. The petitioner had paid amount of Rs.2,63,300/-(Rupees Two Lakhs Sixty Three Thousand Three Hundred) whereas respondent

No. 3 had paid amount of Rs. 2,57,300/- (Rupees Two Lakhs Fifty Seven Thousand Three Hundred).

2. According to learned counsel for the petitioner, though the petitioner was allotted tenement bearing No. CL-10-79/01 she was put in possession of tenement bearing No. CL-10-79/06 and respondent No. 3 was put in possession of tenement allotted to the petitioner. After demolishing tenements, the petitioner and respondent No. 3 had constructed the plots of which possession was given to them. As such, though the petitioner is allotted tenement bearing No. CL-10-79/01, she is occupying tenement bearing No. CL-10-79/06 and respondent No. 3 is occupying tenement allotted to the petitioner. In view of the fact that, the parties have made their respective constructions wrongly on the plots of each other, the documents to that effect are required to be corrected.

3. Learned counsel for petitioner further submits that City and Industrial Development Corporation of Maharashtra Ltd. (for short "CIDCO") be directed to execute correction deed and no further costs be saddled on the petitioner. Learned counsel further submits that petitioner had paid more amount to the CIDCO than respondent No. 3 as area of tenement allotted to the petitioner was more than respondent No. 3 and respondent No. 3 had paid less amount and now because of the mistake while

delivering possession of the tenement, respondent No. 3 is occupying more area than that was allotted to the petitioner and petitioner is in possession of lesser area than was allotted. Moreover, plot allotted to the petitioner was in more advantageous position as it is abutting to the road. Now, plot which is in possession of the petitioner, because of its location, she has to face multiple problems and compensation of Rs. 5,00,000/- (Rupees Five Lakhs) be paid to her.

4. Mr. Bajaj, learned counsel for respondents No. 1 and 2 submits that respondent No. 3 and the petitioner have made constructions on each others plot may be mistake, however, considering the mistake caused, the amount of Rs. 6000/- was refunded to the petitioner, which she has not accepted. Learned counsel further submits that in accordance with law, the documents can be got corrected.

5. We have considered the submissions canvassed by learned counsel for petitioner and respondents No. 1 and 2. None appears for respondent No. 3.

6. Considering the conspectus and factual matrix of the case, it appears to be a case of mutual mistake of fact. On erroneous belief petitioner had taken possession of the plot allotted to respondent No. 3 and respondent No. 3 had taken possession of

the plot allotted to the petitioner. Both of them under the mistaken belief demolished the tenements in respective plots of which possession was handed over to them and made new constructions and they are occupying the same. The petitioner and respondent No. 3 naturally would have been put in possession of the tenements by respondents No. 1 and 2. At the time of placing petitioner and respondent No. 3 in possession, it appears that mistake has been caused and all the parties are parties to said mistake, making it is a case of mutual mistake of fact.

7. In view of the aforesaid premises, equities can be adjusted by directing the respondents No.1 and 2 to correct the papers with regard to allotment of agreement of lease in favour of the parties. So far as possession is concerned, the petitioner has lost approximately 7 meters land. The petitioner had paid amount of Rs. 6000/- more than respondent No. 3.

8. Though, it appears that the amount of Rs. 5,00,000/- (Rupees Five Lakhs) is claimed by the petitioner, in the writ jurisdiction it would not be possible to compute the amount of loss and damage caused to the parties and grant the compensation. It would be debatable question of fact regarding computing damages and granting compensation of the plot etc. In the result, we pass the following order:

:: O R D E R ::

(1) Respondent Nos. 1 and 2 shall execute the necessary corrected documents to create interest of present petitioner in respect of tenement which she is occupying i.e. tenement bearing No. CL-10-79/06 and for doing the same no extra costs/charges shall be charged to her.

(ii) Respondent Nos. 1 and 2 assure to make payment of Rs. 6000/- to the petitioner. Said amount be paid to petitioner.

(iii) The parties concerned shall co-operate in getting the correction of documents.

9. With aforesaid directions, writ petition stands disposed of.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]

MTK