

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.10943 OF 2015

**Shri Suresh Sukhdeo Ahir through power of Attorney Holder
Shri Pavan Hiralal Dongre Vs. The State of Maharashtra
and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.D.V.Soman, advocate holding for Mr.A.D.Soman, advocate for the Petitioner.

Mr.B.A.Shinde, A.G.P. for the State.

Mr.A.S.Bajaj, advocate for Respondent No.2.

**CORAM : S.V.GANGAPURWALA AND
K.L.WADANE, JJ.**

Date : 06.10.2016.

PER COURT :

1. Heard.
2. The petitioner was allotted Plot No.69, H Sector, N-4, Cidco, Aurangabad, admeasuring 236 Sq. Meters. Agreement to lease came to be executed on 11.11.1987. Possession of the land was also delivered on 14.5.1988. The commencement certificate was also issued. According to the petitioner 10% construction was done. On or about 3.12.2014, Cidco issued show cause notice to the petitioner on the ground that as the proposal for development and construction is not submitted within the prescribed period, why

the action should not be taken. The said show cause notice was replied. Thereafter, notice dated 20.10.2015 is issued to the petitioner with regard to cancellation of allotment of the said plot. The same is assailed in the present Writ Petition.

3. Mr.Soman, learned counsel for the petitioner submits that upon receipt of the possession of the plot and the commencement certificate, 10% construction as required by the Rules was carried out. However, subsequently the petitioner because of his profession and avocation had to remain out of the town. He also was required to go abroad and thereafter because of his ill-health, further development on the plot could not be carried out. According to the learned counsel, the petitioner was not aware of any order passed by this Court. The petitioner requires the said plot for constructing his own residential house as petitioner would be residing at the said place. The petitioner be given one more opportunity to carry out the construction of the house for residential purpose.

4. Mr.Bajaj, learned counsel for the Respondent-Cidco submits that the petitioner was allotted the plot in the year 1988. Only 10% construction was carried out. No further development was made. Even as per the general orders passed by this Court in the year 2004, public notice was given. Pursuant thereto, the petitioner did not take any steps and it is only in the year 2014, the petitioner

approached the Respondent-Cidco. The petitioner has lost his right to retain the said plot. The action is rightly taken. The petitioner is not entitled for any discretionary orders of this Court.

5. The allotment of Writ plot to the petitioner is not disputed, so also the agreement of lease. It is also a matter of fact that the petitioner has not developed the property. The commencement certificate was issued to the petitioner on 14.5.1988 and even according to the petitioner only 10% construction is made. There is no occupancy certificate on record to testify the same.

6. The petitioner certainly has committed default in carrying out the development of the plot as per the terms of the lease and the allotment. Reasons are put forth by the petitioner as being required to be out of station on account of his avocation, so also out of the country and subsequently of ill-health. Considering the said grounds which are put forth by the petitioner and also the fact that the plot allotted is not a commercial one but residential plot, we are inclined to give one more opportunity to the petitioner, however, the petitioner also deserves to be mulct with penalty for not carrying out the development of the plot within the stipulated period and for the delay that is caused.

7. In the result, we pass the following order :

a) The impugned notice dated 20.10.2015 (Exh.E) cancelling the allotment of the plot No.69, N-4/H is quashed and set aside

subject to the following conditions :

- (i) The petitioner shall submit the plan for construction within a period of four (4) weeks from receipt of No Objection Certificate from Cidco. Upon grant of commencement certificate, the petitioner shall complete the construction within one year of the grant of the commencement certificate.
- (ii) The petitioner shall not transfer/alienate the said plot and shall construct only residential house for his and his family's occupation.
- (iii) The petitioner shall pay additional premium as may be permissible as per Rules.
- (iv) The petitioner shall pay penalty to Respondent-Cidco of Rs.2,00,000/- (Rupees two lacs) within a period of four (4) weeks from today. The Cidco shall grant necessary No Objection Certificate on payment of penalty and additional lease premium, if any, within a period of four (4) weeks.
- (v) The Corporation shall process the construction permission and pass suitable orders with regard to the commencement certificate within a period of eight (8) weeks from the date of receipt of the application of the petitioner along with plan for construction.

(vi) The Writ Petition is partly allowed in above terms.

(K . L . WADANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.06.10.2016.
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