

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

WRIT PETITION NO. 12115 OF 2015

Janardhan Parshuram Patil

...PETITIONER

versus

The State of Maharashtra and others

...RESPONDENTS

.....
Mr. A.M. Karad, Advocate holding for
Mr. Girish M. Kulkarni, Advocate for petitioner
Mrs. A.V. Gondhalekar, AGP for respondent No. 1
Mr. S.V. Kurundkar, Advocate for respondent No. 2
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**CORAM : S. V. GANGAPURWALA AND
K.K. SONAWANE, JJ.**

DATED : 7th JULY, 2016.

Order :-

1. The petitioner assails the communication dated 30-11-2015 issued by respondent No. 2 - CIDCO thereby directing him to hand over half portion of plot No. 3 at N-9/J, Aurangabad to it.

2. Mr. Karad, learned counsel for petitioner submits that initially plot No. 35 was allotted in the name of Chairman Shivdatta Co-operative Housing Society, Aurangabad by the CIDCO. Thereafter, plot No.35 situated in N-8 area was allotted to the petitioner along with one Mr. Supe. Total area of said plot is 252 Sq. Meters. Thereafter, the petitioner and Mr. Supe jointly applied for construction permission. Approval to the plan for construction was also granted. Subsequently petitioner has given his share in said plot to his wife in gift. Thereafter,

in the year 2001, petitioner was allotted plot No. 3 in the area of N-9/1 Survey No. 18 situated at Aurangabad along with one Mr. Sopan Wani admeasuring 244 Sq. Meter. Share of the petitioner in said plot was 122 Sq. meter, however, bifurcation was not made and said plot is shown as jointly allotted to the petitioner along with one Mr. Sopan Wani. The petitioner along with Mr. Wani applied for construction permission. Accordingly the construction was completed. However, show cause notice was issued by the respondent – CIDCO on 03-12-2014 as to why allotment of plot No. 3 should not be cancelled, as within the period of six years from the date of agreement occupancy certificate was not obtained. Said notice was replied stating that application for occupancy certificate was made on 19-03-2004, however, occupancy certificate could not be issued. According to learned counsel, on 30-11-2015 abruptly respondent No. 2 - CIDCO has issued letter directing the petitioner to surrender half part of plot No. 3. Learned counsel submits that same is required for his residential purpose considering the size of the family, even his daughter is also working with Jawaharlal Nehru Engineer College, Aurangabad. The petitioner has given undertaking to this Court that he would use his share in plot No. 3 for residential purpose and same is to be constructed considering the family size and will not develop the said plot commercially or for profiteering purpose.

3. Mr. Kurundkar, learned counsel for respondent No. 2-CIDCO states that person cannot hold two plots in the area of CIDCO as has been held by this Court. The petitioner is already holding part of Plot

No. 35 in N-8 area of CIDCO and is also owning part of Plot No. 3 in N-9 area of CIDCO, the same is not inconsonance with policy of CIDCO. Thus, the letter dated 30-11-2015 has been rightly issued. Learned counsel further submits that construction is carried out by Mr. Sopan Wani to the extent of his share in said plot and remaining half share which is owned by the petitioner is vacant. No application for occupancy certificate has been filed and the said plot is still vacant. Construction is made by Mr. Wani on the same plot to the extent of his share. As such, on the ground that construction has not been carried out within stipulated period and so also petitioner cannot hold two plots, the impugned communication is rightly issued.

4. We have considered the submissions canvassed by the learned counsel for respective parties. It appears that the petitioner has a daughter, who is working with Jawaharlal Nehru Engineering College Aurangabad and other plot in the Co-operative Society i.e. plot No. 35 is transferred in the name of his wife earlier by way of gift.

5. Plot No. 3 in question is the plot allotted jointly to the petitioner along with Mr. Sopan Wani. The respondent - CIDCO has not made any demarcation of the plot. The partition of said plot does not appear to have taken place. It appears that agreement of lease is executed jointly in the name of petitioner and Mr. Sopan Wani in respect of plot No. 3 without demarcating separate shares of both persons. We have also considered the area which is small in size, it would be difficult to bifurcate and allot the part of the said plot to some third person.

6. Be that as it me, the petitioner has stated about his requirement of said plot and has also given undertaking that he require the same for his residential purpose and he would not sell said plot or use it for commercial purpose. He shall use said plot for his own residence only.

7. Considering peculiar facts of the case and undertaken of the petitioner, we pass the following :

- (I) The impugned communication is quashed and set aside.
- (ii) The petitioner shall apply for construction permission on the said plot within a period of three months from today. Upon grant of commencement certificate, the petitioner shall carry out construction within a period of one year.
- (iii) The petitioner shall be liable to pay additional premium as per rules of CIDCO to CIDCO.
- (iv) The petitioner shall also pay penalty of Rs. 25,000/- to the CIDCO.

8 With aforesaid directions, writ petition stands disposed of. No costs.

Sd/-

[K. K. SONAWANE, J.]

Sd/-

[S. V. GANGAPURWALA, J.]