

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4325 OF 2009

Airoli Co-operative Housing Society Limited
and Others.

.. Petitioners

Vs

The State of Maharashtra and Others.

.. Respondents

—

Shri G.S. Godbole along with Mrs. Jai Kanade i/b Shri Vijay Kumar Aggarwal for the Petitioners.

Shri V.S. Gokhale, AGP for the Respondent No.1.

Shri A.A. Kumbhakoni, Senior Advocate i/b Shri Ashutosh M. Kulkarni for the Respondent No.2.

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CORAM : A.S. OKA & C.V. BHADANG, JJ

DATED : 13TH JANUARY 2016

ORAL JUDGMENT (PER A.S. OKA, J)

. In this Petition under Article 226 of the Constitution of India, the dispute is about Plot No.11 which is described as a plot falling under High Tension Line (HTL). The area of the said Plot No.11 admeasures 13108.35 sq. meters. The said Plot No.11 has been divided into two plots being Plot No.11A admeasuring 7599.03 sq. meters and Plot No.11B admeasuring 5509.32 sq. meters. Plot No.11 is situated at Section 19, Airoli, Navi Mumbai. It is not in dispute that on 26th September 2007, a leave and license agreement was executed by the second Respondent the City and Industrial Development Corporation of Maharashtra Limited (CIDCO) in favour of the first Petitioner Society in

respect of an area of 5509.32 sq. meters which is Plot No.11B. On 25th September 2008, the second Respondent issued allotment letter in respect of an area admeasuring 4313.94 sq. meters out of Plot No.11B to the first Petitioner. The lease premium was fixed at the rate of Rs.11,275/- per sq. meter totally amounting to Rs.4,86,39,673.50. It is not in dispute that on 29th September 2008, the first installment of Rs.2,43,19,836.75 was paid by the first Petitioner to the second Respondent. On the basis of the order dated 5th March 2010 passed by this Court in Civil Application No.206 of 2010 in the present Writ Petition, on 15th March 2010, the first Petitioner deposited the second installment of Rs.2,43,19,836.75. Learned counsel appearing for the Petitioners states that the said amount has been invested in a fixed deposit. It appears from the office remark that the said amount has been invested in a fixed deposit in the Bank of India, Main Branch, Mumbai.

2. Learned counsel appearing for the Petitioners on instructions of the second Petitioner who is personally present in the Court states that the Petitioners are ready and willing to accept the allotment in terms of the aforesaid letter dated 25th September 2008. He states that the Petitioners have no objection if the aforesaid amount deposited by the Petitioners in this Court together with interest accrued thereon is paid to the second Respondent. Learned counsel appearing

for the Petitioners submitted that the policy of allotment of HTL plots to the adjoining plot holders on lease basis which is adopted by the second Respondent by its Board Resolution No.9000 dated 10th May 2004 is still in force. Learned counsel appearing for the Petitioners also pointed out that by a Board Resolution No.10196 dated 25th August 2009, the said policy has been continued. His submission is that the remaining area of 8794.41 sq. meters will have to be allotted in terms of the aforesaid policy. His submission is that in terms of the policy, the first Petitioner is the only party to whom HTL plot can be allotted on lease basis. He pointed out that only other party which can claim eligibility is the fourth Respondent which has filed an affidavit dated 5th April 2010 stating that the said Respondent has difficulties in developing and maintaining the entire Plot No.11A. He submits that the second Respondent be directed to invite applications by public notice or adopt tender process for allotment of the said remaining area of HTL Plot No.11.

3. Learned senior counsel appearing for the second and third Respondents does not dispute that the said policy under the Board Resolution No.9000 dated 10th May 2004 continues to exist. His submission is that according to the second and third Respondents, the first Petitioner has committed breaches of the terms and conditions on which, a part of the Plot No.11 was allotted to the first Petitioner.

However, he states that as of today, no action has been taken on the basis of the breaches. Learned counsel appearing for the Petitioners submits that no such breaches have been committed.

4. It is not in dispute that out of Plot No.11, an area of 8794.41 sq. meters has not been allotted in terms of the Board Resolution No.9000 dated 10th May 2004 and, therefore, the persons who are eligible in terms of the said Resolution are entitled to seek allotment thereof. We have perused the joint affidavit of Shri S. Venkatraman, Chairman and Shri A. Kailasan, Secretary, filed on behalf of the fourth Respondent. The contention in the said affidavit is that the said Respondent requires an area about 2,500 sq. meters out of Plot No.11A and it is stated therein that they have no objection if the remaining part of the HTL is allotted to the Petitioners. Going by the said affidavit, even the fourth Respondent wants to claim benefit of the said Board Resolution No.9000 dated 10th May 2004. To avoid any controversy, it will be appropriate if the second Respondent invites applications for allotment of the remaining portion of Plot No.11A in terms of the policy accepted under the Board Resolution No.9000 dated 10th May 2004 so that all those who are claiming to be eligible as per the said Resolution can apply for allotment. The second Respondent will have to decide the actual process of allotment in the sense whether the second Respondent wants to invite bids from the eligible parties

seeking allotment or whether the second Respondent wants to invite applications.

5. The fact that on 25th September 2008, the allotment of a part of Plot No.11B was made to the Petitioners shows that the second Respondent accepted that the first Petitioner was eligible.

6. As the letter of allotment dated 25th September 2008 has not been revoked, the second Respondent will have to make an allotment in terms of the said letter.

7. In view of the aforesaid statement made by the learned counsel appearing for the Petitioners on instructions of the second Petitioner who is personally present in the Court, the substantial challenge in the Petition does not survive and accordingly, we dispose of the Petition by passing the following order.

ORDER :

- (a) It will be open for the second Respondent to withdraw the sum of Rs.2,43,19,836.75 deposited by the first Petitioner in this Court together with interest accrued thereon. It is not in dispute that the balance

amount payable as per the letter of allotment dated 25th September 2008 has been paid by the first Petitioner to the second Respondent;

- (b) We direct the second Respondent to complete the process of allotment on the basis of the letter dated 25th September 2008 as expeditiously as possible. We direct that the process shall be completed by placing the first Petitioner in possession within a period of three months from today;
- (c) We direct the second Respondent to advertise by a public notice that the area of 8794.41 sq. meters out of Plot No.11 is available for allotment in terms of the Board Resolution No.9000 dated 10th May 2004. The second Respondent shall either invite bids or applications for allotment from the eligible parties. Such advertisement shall be published within a period of two months from today;
- (d) Notice of publication of the advertisement shall be served by the second Respondent to the Petitioners as well as to the fourth Respondent;

- (e) It will be open for the Petitioners and the fourth Respondent to apply for allotment of the area admeasuring 8794.41 sq. meters. If such applications are made, the same shall be considered alongwith other applications, if any, in terms of the said Board Resolution No.9000 dated 10th May 2004;
- (f) We make it clear that as far as the allegations of breach of the terms and conditions in relation to the plot already allotted to the first Petitioner are concerned, no adjudication is made by this Court as the said issue is not the subject matter of this Petition;
- (g) On an application made by the second Respondent, the Registry shall permit withdrawal of the amount of Rs.2,43,19,836.75 with interest accrued thereon, if necessary, by making premature encashment of the fixed deposit;
- (h) If the second Respondent does not want premature encashment of the fixed deposit, it can always make an application for withdrawal of the amount after maturity of the fixed deposit;

- (i) The Rule is accordingly disposed of on above terms with no order as to costs;
- (j) Needless to state that if the applications are made by the Petitioners and the fourth Respondent, it will be open for the second Respondent to consider whether both of them satisfy the eligibility criteria laid down in the Board Resolution No.9000 dated 10th May 2004;
- (k) If the before expiry of the period of three months, as set out in Clause (b) above, if the second Respondent cancels the allotment of the Plot already made to the first Petitioner, it will be open for the second Respondent to apply to this Court for the modification of the Clause (b) above. Needless to state that it will be always open for the Petitioners to challenge the action of termination/cancellation, if any.