

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6473 OF 2012

WITH

CIVIL APPLICATION NO.2688 OF 2014

Viraj Associates Pvt. Ltd.

Through Director, Mr. Vishal Dua

& Ors.

..Petitioners

Versus

State of Maharashtra & Ors.

..Respondents

WITH

WRIT PETITION NO.693 OF 2015

M/s. Vavia and Gajra Builders

..Petitioners.

Versus

City Industrial Development Corporation
Limited and Ors.

..Respondents.

Mr. V.R.Kasle , advocate for the Petitioners in WP No.6473/2012.

Mr. R.D.Soni i/by Meena R. Sharma, Advocates for Petitioners in WP
No.693/2015 and Respondent No.4 in WP No.6473/2012.

Mrs.M.P.Thakur , AGP for the State.

Mr. S.V.Marne, Advocate for Respondent No.5-NMMC.

Mr. G.K.Hegde, Advocate for Respondent No.2-CIDCO.

Mr. R.M.Pethe, Advocate for Respondent No.3.

**Coram : RANJIT MORE & DR. SHALINI
PHANSALKAR-JOSHI, JJ.**

Date : 12th APRIL, 2016.

P. C. :

Heard learned counsel and the learned AGP appearing
for the respective parties.

2 The Writ Petition No.6473 of 2012 is filed by shop purchasers located in Om Shanti Premises Co-operative Society Limited (In short '**Society**'). The Writ Petition No.693 of 2015 is filed by developers of the building of the said society. The Petitions are filed seeking direction to the Respondent-Navi Mumbai Municipal Corporation to issue occupation certificate to the Respondent-Society. It is the case of the Petitioners that in pursuance of the commencement certificate modified from time to time, building of the respondent-society is completed and although all formalities are completed, occupation certificate is denied.

3 Mr. Marne, the learned counsel for the Corporation, makes a statement that occupation certificate to the said society is not granted in view of objection raised by the respondent-City Industrial Development Corporation Limited (In short '**CIDCO**'). He submits that once the CIDCO grants no objection, the Corporation has no difficulty to grant occupation certificate to the said society.

4 Mr. Hegde, the learned counsel for the CIDCO, submits that there were irregularities in allotting plot to the respondent-society and in respect of these irregularities, one F.I.R. bearing C.R.No.003/2014 is also registered and after completion of investigation, charge-sheet is filed before the learned Special Anti Corruption Bureau Court at Thane. He submits that unless this enquiry is completed, the CIDCO will not be in a position to give NOC to the respondent-society.

5 We have considered submissions noted above. In pursuance of the commencement certificate, construction of the building is completed in 2011 itself. Application for occupation certificate is filed as long as back on 24.10.2011. Possession of the respective premises are given to its members for fit out purposes. Though these members have parted with huge amounts, they are not able to utilize the premises allotted to them. Trial in the Special Anti Corruption Bureau Court, Thane will take its own time. At the same time, the members of the Respondent-Society cannot be deprived of their rights to use the premises allotted to them in the said Society. So also interest of the CIDCO will also be required to be protected.

6 In the above circumstances and in the interest of justice, we dispose of these petitions by passing the following order:

(1) The Respondent-CIDCO is directed to grant NOC to the Navi Mumbai Municipal so as to enable latter to grant occupation certificate to the respondent-Om Shanti Premises Co-operative Society Limited.

(2) NOC of the CIDCO as well as occupation certificate of the Navi Mumbai Municipal Corporation would be without prejudice to the rights and contentions of the CIDCO including as regards the legality of the allotment of the

plot in question on which the Respondent-Om Shanti Premises Co-operative Society Limited is constructed, which according to the CIDCO is the subject matter of the criminal trial pending before the learned Special Anti Corruption Bureau Court, Thane.

(3) Occupation Certificate would be subject to the outcome of the said trial and the Petitioners shall not claim any equity on account of grant of occupation certificate.

7 As the Writ Petitions itself are disposed of, nothing survives in the civil application therein and the same is disposed of accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]

