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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9538 OF 2015

Kalpataru Co-operative Housing
Society Limited,
Sector 8B, CBD Belapur,
Navi Mumbai 400 614

.... Petitioner

V/s.

1. The State of Maharashtra
through the Secretary,
Urban Development Department,
Mantralaya, Mumbai 400 032.
2. City and Industrial Development Corporation
of Maharashtra Limited, a company registered
under Companies Act, 1956,
having its office at:
CIDCO Bhavan, C.B.D. Belapur,
Navi Mumbai 400 614.
3. Industrial Development Bank of India,
now known as IDBI Bank,
IDBI Tower, World Trade Centre Complex
Cuffe Parade Mumbai 400 005.

.... Respondents

Mr. C.G. Gavnekar, for the petitioner.
Mrs. M. P. Thakur, A.G.P., for the Respondent-State.
Mr. Ajay Khaire I/by The Law Point for Respondent No.2.

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

DATE : 12th APRIL, 2016.

JUDGMENT: [PER: DR. SHALINI-PHANSALKAR-JOSHI, J.]

1. Rule.
2. Rule made returnable forthwith.
3. With consent of the parties, heard finally at the stage of admission.
4. This petition is preferred under Article 226 of the Constitution of India, for quashing and setting aside the action of respondent No.2 of withholding of grant of no objection certificate to the members of the petitioner society, to transfer their shares, rights and interest to use and occupy the Flats in the building erected by the petitioner society on the plot bearing No.1AB admeasuring 12240 sq. meters, situate in Section 8B, at CBD Belapur, Navi Mumbai.
5. By this petition, the petitioner society is also seeking relief of quashing and setting aside the impugned show cause notice dated 3.9.2015, issued by respondent No.2 annexed as Exhibit "M", to the petition and further direction to respondent No.2 for grant of "No Objection Certificate".
6. Brief facts of the petition are to the effect that, Plot No.1

admeasuring 2.25 hectares i.e. 22500 sq. meters in Sector No.8, CBD Belapur, Navi Mumbai was allotted by respondent No.2 CIDCO to respondent No.3 IDBI Bank for residential purpose on lease premium of Rs.350 per sq. meter, for total premium of Rs.78,75,000/- for 99 years lease, from the date of lease agreement dated 29.4.1985. As respondent No.3 IDBI Bank did not construct on the said plot, on their request, respondent No.2 CIDCO, agreed to transfer an area admeasuring 10260 sq. meters out of the said plot in favour of the Co-operative Society formed by the employees of IDBI Bank, known as Vikasini Co-operative Housing Society. A tripartite agreement came to be executed accordingly between IDBI Bank, Vikasini Co-operative Housing Society and CIDCO, in respect of an area admeasuring 10260 Sq. meter after obtaining Board's approval.

7. Subsequent thereto, pursuant to request made by the employees of IDBI, through its Association, balance land of the said plot also came to be allotted by the CIDCO to the petitioner for construction of residential premises, on the condition that proposed society would have to pay transfer charges at the rate of Rs.490/- per sq. meter i.e. total Rs.59,97,600/- with Rs.1,58,50.800/- for the area of 12240 sq. meter. The period of construction was also extended upto 29.4.1999 and additional premium was also paid accordingly. The period of construction on the

said plot was further extended upto 28.2.2000 on the payment of additional lease premium of Rs.1,37,08,800/- and transfer charges Rs.64,26,000/-.

8. A tripartite agreement came to be executed accordingly between petitioner, respondent No.2 CIDCO and respondent No.3. IDBI Bank on 18.1.2000. The transfer of the said plot was also confirmed in the name of petitioner society by CIDCO on 20.6.2000. Subsequent thereto, respondent No.2 CIDCO, approved commercial use of part of said plot by accepting additional premium of Rs.14,72,289/- on 30.3.2001. Accordingly the construction on the said plot was carried out by the petitioner society, after complying with all the formalities. After obtaining occupancy certificate on 24.5.2004, the flats came to be allotted to respective members of the petitioner society. The list of members of occupying the flats was sent to respondent No.2 CIDCO, for approval. Respondent No.2 accordingly granted approval. A registered Lease Deed was executed was executed by respondent no.2 CIDCO in favour of petitioner society on 31.12.2002.

9. According to petitioners, thereafter several members of the petitioner society applied for "No Object Certificate" from respondent No.2

for transferring their interests in the flats allotted to them, and such permission was granted till 5.6.2010. However, thereafter by communication dated 30.9.2010, the petitioner was informed that the request for permission to transfer shares, interest in the flat of existing members to new members cannot be processed as the permission of the competent authority of CIDCO for the transfer of the plot from respondent No.3 IDBI to the petitioner society was not taken and the matter was pending with the higher authorities. The petitioner, after waiting for substantial time, issued legal notice on 28.7.2015, to respondent No.2 pointing out that there was valid and legal lease deed executed in favour of petitioner society, hence respondent No.2 cannot refuse to consider the applications for transfer of its members.

10. In reply thereto, a show cause notice dated 3.9.2015, was issued to the petitioner by respondent No.2 CIDCO, as to why agreement of lease and tripartite agreement executed in favour of the petitioner society should not be terminated.

11. The submission of the learned counsel for the petitioner is that this action on the part of respondent No.2 is arbitrary, illegal and without any authority. It is submitted that the transfer of the remainder plot

of land in favour of petitioner society was effected after following prescribed procedure and only after execution of the tripartite agreement. The petitioner society has invested substantial amount for construction of the building and the flat purchasers have also, on payment of requisite charges of purchase price, became the owners of the flats purchased by them. In view of the terms and conditions of the lease deed executed in favour of the petitioner on 31.12.2002, they are entitled to transfer their shares, right and interest in the flat. Respondent No.2 had earlier granted such permission. Now all of sudden has respondent No.2 stopped granting permission. The impugned action of respondent No.2 withholding of grant of no objection certificate, is thus, according to learned counsel for petitioner liable to be quashed and set aside.

12. Respondent No.2 CIDCO has resisted this petition, by filing affidavit-in-reply of the Estate Officer Mr. Abhay Vedpathak, contending inter alia that certain irregularities were noticed in the execution of tripartite agreement dated 18.1.2000 and subsequent lease deed. These irregularities prima facie go to the root of the issue and thus render the said agreement and the lease deed bad in law and void-ab-initio. Therefore, pending enquiry into those irregularities, in the interregnum period, respondent No.2 has decided not to grant permission for transfer

of share to new members. It is stated that this action is taken with bonafide intention of protecting the interest of the prospective purchasers.

13. According to learned counsel for respondent No.2, the approval for transfer of the balance land admeasuring 12240 sq. meter to the petitioner society, was granted in clear diversion of the procedure followed by the Corporation of obtaining approval from the Board of Directors. The competent authority for grant of such approval was the Board of Directors and as in the absence of approval from the Board of Directors, the transfer was allowed, the entire allotment process has become illegal and void. It is submitted that as per agreement of lease dated 29.4.1985, under which the plot was allotted to IDBI Bank, the transfer of the plot was not permitted. IDBI should have surrendered the plot to CIDCO, for fresh allotment. Instead of doing that, such transfer of plot was allowed in favour of the petitioner. As a result, respondent No.2 CIDCO has suffered financial loss to the tune of Rs.6,36,23,520 /-. Hence according to learned counsel for respondent No.2, the action of not issuing "No objection certificate", taken by respondent No.2 is perfectly justified. The petition is devoid of any merit and hence deserves to be dismissed.

14. Having heard, learned counsel for the petitioner and respondent No.2 and after going through the entire record and proceeding of this case, we are, however, of the opinion that this petition needs to be allowed.

15. It is undisputed that initially plot admeasuring 22500 Sq. meter was allotted to IDBI bank, after following due procedure of law and by executing lease deed dated 29.4.1985. As respondent No.3 IDBI Bank could not construct on the said plot, out of the same, land admeasuring 10260 Sq. Meters was allowed to be transferred in the name of Vikasini Co-operative Housing Society, by virtue of tripartite agreement dated 30.7.1985. Subsequent thereto, remaining area admeasuring 12240 sq. meter also came to be transferred in favour of the petitioner society by virtue of tripartite agreement dated 18.1.2000 and on payment of transfer charges of Rs.64,20,00/- and additional lease premium of Rs.1,37,08,800/-. It is pertinent to note that commercial use of the part of plot was also permitted by accepting additional payment of Rs.14,72,289/-. Subsequent thereto, even the permission for construction was granted and extended from time to time. The occupancy certificate was also allotted on 19.7.2002. Respondent No.2 CIDCO even executed the lease deed in favour of petitioner society on 31.12.2002. No objection

certificates were also granted by CIDCO to the existing members of the society to transfer their share, right and interest in their respective flats. Now at this belated stage in the year 2015, for the first time, respondent No.2 is raising objections on account of some alleged irregularities in the transfer of plot in the name of the petitioner society by virtue of tripartite agreement and lease.

16. In our considered opinion, hardly any substance can be found in the objections raised by respondent No.2 for issuance of “No Objection Certificate”, for even assuming that the enquiry in respect of the alleged irregularities is in progress, it may take its own course. But when respondent No.2 itself who had executed lease deed and tripartite agreement in favour of the petitioner, now at this stage respondent No.2 cannot refuse to issue no objection certificate for transfer of the said flats by its members to prospective purchasers. Needless to state that, the prospective purchasers are bound to take care of their own interest and respondent No.2 need not, on the pretext of protecting their interests, refuse issuance of no objection certificate. Hence the petition needs to be allowed and allowed accordingly.

Rule is made absolute in terms of prayer clause (a), (b) and

(c) as follows :-

a) The impugned action of respondent No.2 of withholding grant of “No Objection Certificate” to the members of the petitioner society to transfer their shares in the society or to transfer, assign their rights and interest to use and occupy the flat in the building erected by the petitioner society in plot No.1/A/B admeasuring 12240 sq. meters situate in Sector No.8B, CBD Belap0ur, New Mumbai is quashed and set aside.

(b) Respondent No.2 is accordingly directed to grant and continue to grant the applications of members of petitioner society for “No objection Certificate”.

(c) The impugned show cause notice No.CIDCO/M(TS-1)/SF/2015/944 dated 03.09.2015 issued by respondent No.2 and annexed at Exhibit “M” to the petition is quashed and set aside.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]