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

WRIT PETITION NO. 11395 OF 2016

**RAMESH SONAJIRAO JADHAV
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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**Advocate for Petitioner : Mr.A.M.Karad h/f Kulkarni Girish N.
(mardikar)
AGP for Respondents: Mr.S.B.Pulkundwar
Advocate for Respondents : Mr.A.S.Bajaj for R.2 to 4.**

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**CORAM : S.V.GANGAPURWALA &
MANGESH S. PATIL,JJ.**

DATE : 27/09/2017

PER COURT :-

Mr.Karad, learned counsel for the petitioner seeks leave to add one more petitioner co-owner, as a party. Leave granted.

2] The petitioners were allotted plot No.14-A admeasuring 260 Sq.mtrs. at N-4, CIDCO, Aurangabad. Pursuant thereto, agreement was executed.

3] Mr.Karad, learned counsel submits that the petitioners had applied for commencement certificate alongwith plan. Petitioners were issued commencement certificate. Thereafter they had carried out the construction. The petitioners also applied for Occupancy

Certificate. Reminders were also issued but no such Occupancy Certificate was received and eventually a notice came to be issued on 31/12/2015 that the Occupancy Certificate is not obtained nor the deficiencies are removed and as such, the action was sought to be taken. Learned counsel submits that at the relevant time petitioners were required to carry out only 15% of the construction. Though reference is made to the order in the Writ Petition, no details were given. According to learned counsel, subsequently, the Rules were amended by the CIDCO and the persons allotted with the plots were required to carry out 25% of the construction. However, petitioners never received notices. The plot is required by petitioners for the residential purpose. Both petitioners have retired from service. It is further submitted that the petitioners would use the plot for their personal residence and shall not deal with said property with third person.

4] Mr.Bajaj, learned counsel submits that there is a gross violation on the part of the petitioners to comply with the terms and conditions of the agreement, so also the Regulation. The petitioners were issued notice to comply with the deficiencies, however, the petitioners failed to comply deficiencies and as such Occupancy Certificate was never issued to the petitioners. Construction as required was never carried out, the notice is rightly issued.

5] We have considered the submissions. It appears that the plot is allotted jointly to both the petitioners. The plot is for residential purpose only. In the year 2004 this Court in Writ Petition ..asked CIDCO to issue public notice and thereby give opportunity to persons like petitioners to comply with the deficiencies and carry out the necessary construction within stipulated period.

6] According to the petitioners, they had not received such notice and that the petitioners have carried out the construction.

7] The petitioners it appears are retired from service. As contended by them, they require the said plot for residential purpose. It is also submitted that the petitioners would use the said plot for their own use and occupation and will not give it to third persons. Considering the undertaking given and the fact that petitioners had made application to carry out construction as per the commencement certificate, we are not entering into the debate as to whether the construction was completed or not.

8] Considering the aforesaid, we are inclined to grant one more opportunity to the petitioners however, petitioners deserve to be mulct.

9] In the result, impugned notice is quashed and set aside.

10] The petitioners shall obtain No Objection Certificate from the respondent. The petitioners shall pay penalty of Rs.two lakhs to the respondent-CIDCO within four weeks. Upon payment of said penalty, CIDCO shall issue No Objection Certificate to the petitioners upon compliance of other requirements.

11] In case there are some deficiencies, petitioners shall comply with the same.

12] Within four weeks from receipt of N.O.C., petitioners shall submit application with necessary plan to the Municipal Corporation for construction permission and on receipt of the construction permission, the petitioners shall carry out the construction within the time frame as laid down in the construction permission. On receipt of

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the application for construction permission, the Corporation shall take decision upon the same within two months from the date of receipt of construction permission.

13] Writ Petition is accordingly disposed of.

(MANGESH S. PATIL,J.)

(S.V.GANGAPURWALA,J.)

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