

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

WRIT PETITION NO. 2732 OF 2014

1. Ayesha Ahmed d/o Ahmed Mohiuddin,
Age : 41 Years, Occu. : Household,
R/o Jeddah, Saudi Arabia,
(Indian Passport holder No.
L0021035, dated 19/03/2013
issued at Jeddah)
2. Asiya Ahmed d/o Ahmed Mohiuddin,
Age : 38 Years, Occu. : Household,
R/o Jeddah, Saudi Arabia,
(Indian Passport holder No.
F8700691, dated 16/12/2007
issued at Jeddah)

Both Petitioner through their
General Power of Attorney :-

Mr. Mohammed Zafaruddin Farooqui,
Age 62 years, Occu. Retired/Agril.,
R/o Zam Zam, House No. 2-11-83,
Khile Arak, Next to Gaikwad
Hospital, V.I.P. Road,
Aurangabad
Maharashtra State, (India),

.. Petitioners

Versus

1. City Industrial and Development
Corporation of Maharashtra Limited,
Jalgaon Road, Aurangabad,
Through its Administrator.

2. The Aurangabad Municipal Corporation,
Through its Commissioner,
Buddi Line, Narlibhag, Aurangabad. .. Respondents

Shri Gajanan Kadam, Advocate h/f Mrs. S. G. Kadam, Advocate
for Petitioners.

Shri A. S. Bajaj, Advocate for the Respondent No. 1.

Shri V. P. Latange, Advocate for the Respondent No. 2.

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

DATE : 13TH SEPTEMBER, 2017.

ORAL JUDGMENT (Per S. V. Gangapurwala, J.) :-

. The petitioners purchased plot No. 69, N-11/L, CIDCO, New Aurangabad admeasuring 353 square meters on or about October 1990. It is stated that 15% construction was already made by the earlier owner and occupancy certificate to that effect is also issued. The learned counsel for petitioners submits that, on or about 11th October, 2012, the petitioners applied to the respondent authority seeking NOC for construction of plot. Objections were raised by the authority to the said plan. Said objections were also removed. Again in February 2013 a request was made to the authority for grant of construction permission. On the contrary respondent No. 1 issued notice on 24.06.2013 showing it's intention to cancel the allotment. The petitioners replied the said show cause notice through their uncle. It was stated that, petitioners did not receive any notice as they were residing out of India and they would construct the further

construction so as to make it minimum 25% construction of entire plot. However, the impugned order is passed cancelling the allotment and terminating the agreement of lease. The representation made is also not considered.

2. The learned counsel further submits that, the petitioners intend to come back to India by the end of the year 2018 and they have already sent their son who is studying in Maulana Azad College. According to the learned counsel, the petitioners require the said plot for their personal use and occupation and did not intend to dispose of the said plot. According to the learned counsel opportunity be given to the petitioners to carry out the construction of the plot by setting aside the impugned orders.

3. Mr. Bajaj, the learned counsel for the respondent No. 1 submits that, the petitioners were not residing here. The notices were issued from time to time. However, they were returned back unserved as petitioners were not residing in India. As per orders of this Court in Civil Application No. 7360 of 2002, the public notice was given by the respondent No. 1 giving opportunity to defaulters like petitioners to take steps to construct the houses. The petitioners did not pay any heed to the same. The order is rightly passed.

4. We have considered the submissions canvassed by the

learned counsel for respective parties.

5. We are intending to consider the case of petitioners, as the petitioners have undertaken that the petitioners would be returning back to India by the end of the year 2018 and requires the writ plot for their own use and occupation for residential purpose and that the son is already now taking education at Aurangabad.

6. This Court in number of cases has shown indulgence in case of residential plots. In the present matter, it would be worth considering that the petitioners were residing out of India and naturally could not have got the knowledge of the minimum required construction, so also to occupy the premises after construction. However, petitioners also deserve to be mulct with cost for not constructing it within time.

7. In the result, we pass following order.

8. The petitioners shall pay penalty of Rs. 2,00,000/- (Rs. Two Lacs only) to the respondent No. 1/CIDCO within a period of four (04) weeks from today. Upon penalty being paid, the respondent No. 1/CIDCO shall issue no objection certificate to petitioners. Upon receipt of no objection certificate within four weeks, the petitioners shall submit an application for commencement

certificate along with plan to the respondent No. 2/Municipal Corporation, Aurangabad and shall remove the deficiencies, if, any as would be pointed out by the respondent No. 2 and construct the super structure on the writ plot within a period of one year from the date of issuance of commencement certificate.

9. We have passed this order on the basis of undertaking given to this Court that the petitioners shall use the writ plot for their own residence. The respondent No. 2 shall take decision upon the said commencement certificate along with plan within a period of three (03) months from the date of submission. The writ petition accordingly is partly allowed. Rule is made absolute in above terms. No costs.

Sd/-

[MANGESH S. PATIL, J.]

Sd/-

[S. V. GANGAPURWALA, J.]