

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3623 OF 2016

Mahesh Shivappa Patil

.. **Petitioner**

Versus

The State of Maharashtra and others

.. **Respondents**

Shri Anand V. Indrale Patil, Advocate for the Petitioner.

Shri S. W. Mundhe, A. G. P. for Respondent No. 1.

Shri Sunil V. Kurundkar, Advocate for Respondent No. 2.

Shri Sambhaji S. Tope, Advocate for Respondent No. 3.

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

DATE : 21st September, 2017

PER COURT :

1. Mr. Patil, the learned counsel for the petitioner submits that CIDCO is claiming additional lease premium on the count that 'Occupancy Certificate' is not obtained within stipulated period. The learned counsel submits that, the construction was completed as per the 'Commencement Certificate' within the stipulated time. In 2012 itself the construction was completed. The petitioner has annexed the photographs to that effect. Even the documents are filed substantiating that the construction was carried out within the stipulated period. The learned counsel submits that, the respondents cannot charge additional lease premium when the construction has been made within the stipulated period.

2. Mr. Kurundkar, the learned counsel for respondent No. 2 submits that the petitioner applied for the 'No Objection Certificate' from respondent No. 2 only in the year 2014 as the construction was not carried out within the stipulated period, CIDCO was within its right to claim additional lease premium.

3. Mr. Tope, the learned counsel for the Corporation submits that, if, the 'No Objection Certificate' is issued by respondent No. 2 then, only respondent No. 3 can issue 'Occupancy Certificate', if, the construction is in accordance with the 'Commencement Certificate'.

4. The factum of the construction being carried out within stipulated period is the subject matter of debate between the parties. It is not disputed that the petitioner applied for the 'Occupancy Certificate' for the first time in the year 2014. The same was not within the stipulated period. It will not be possible for this court to rely only upon the photographs of some private functions of the petitioner's. In absence of any corroborative evidence about construction being completed within the stipulated period the contention of Mr. Patil, the learned counsel for the petitioner cannot be accepted. Mr. Patil, the learned counsel in alternate submits that petitioner be given a year's time to pay the additional lease premium.

5. Considering the difficulties expressed by the petitioner we are inclined to grant reasonable time to the petitioner to pay the additional lease premium.

6. In light of the above, we pass the following order.

ORDER

I] The prayer of the petitioner for setting aside the communication dated 3.11.2015 is negatived.

II] The petitioner shall pay the additional lease premium as demanded by the respondent No. 2 within 6 months.

III] The first installment of Rs. 50,000/- shall be paid within 1 month .

IV] On payment of the additional lease premium within 6 months as demanded by the respondent No. 2, the respondent No. 2 shall issue 'No Objection Certificate' to the petitioner.

V] On the petitioner furnishing 'No Objection Certificate' to the respondent No. 3, the respondent No. 3 shall consider the application of the petitioner for grant of 'Occupancy Certificate'.

7. The writ petition is accordingly disposed of. No costs.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

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