

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

BENCH AT AURANGABAD.

WRIT PETITION NO.6401 OF 2016

Subhash S/o Pundlik Tangade ... Petitioner.

Versus

The Administrator,
Maharashtra City and
Industrial Development
Corporation Ltd., Udyog
Bhawan, New Aurangabad. ... Respondent.

...
Mr.G.L.Awale, advocate for the petitioner.
Mr.A.S.Bajaj, advocate for Respondent.

...

**CORAM : S.V.GANGAPURWALA AND
S.M.GAVHANE, JJ.**

Date : 20.11.2017.

PER COURT :

1. Mr.Awale, learned counsel submits that pursuant to tender issued for allotment of shop let plots by the Respondent, the petitioner applied. Under letter dated 25.1.2011, the petitioner was allotted shop let No.2 admeasuring 24.28 Sq. Meter situated at N-12/ED, New Aurangabad. The petitioner was to deposit the

amount in two instalments. The petitioner deposited the first instalment of Rs.2,18,428/- (Rupees two lac eighteen thousand four hundred twenty eight) on 28.2.2011. The second instalment was not deposited by the petitioner in time. As such under letter dated 12.12.2013, the Respondent cancelled allotment of shop let plot of the petitioner. The learned counsel submits that due to the accident of the petitioner, the petitioner could not deposit the second instalment in time. However, immediately on lapse of the time, the petitioner requested the Respondent to allow him to deposit the second instalment of the shop let plot. The Respondent did not accede to the same.

2. Mr.Bajaj, learned counsel for the Respondent opposes the petition and submits that non-deposit of second instalment axiomatically results in cancellation of the allotment. No discretion vests with the Respondent to extend the time for depositing the amount of said second instalment. The discretion with the authority is only restricted for extending the time to deposit

the first instalment. The Regulations and Rules also do not permit deposit of the amount of second instalment after the stipulated period. No error has been committed by the authorities while cancelling the allotment. The letters given by the petitioner to deposit second instalment on 6.8.2013 and 4.12.2013 could not have been considered and is rightly rejected.

3. We have considered the submissions. No doubt, no discretion vest with the authority in extending the period for depositing of the second instalment.

4. It is not disputed that the petitioner was a successful bidder and was allotted shop let plot at N-12/ED, New Aurangabad, admeasuring 24.28 Sq. Meters. It was a small area meant to do small time business. It appears from the contentions that the petitioner suffered an accident after depositing the first instalment and was operated. Subsequently, the petitioner on 8.3.2012, 6.8.2013 requested the Respondent to accept the amount of second instalment. However,

the said request appears to have been turned down.

5. In normal circumstance, we would not have considered the case of the petitioner in view of the fact that the petitioner has failed to deposit second instalment within the stipulated period. However, considering the facts involved in the present matter i.e. after depositing of the first instalment, the petitioner undergoing operation because of the accident and further considering that it is a small shop let area meant for small time business, we are inclined to entertain the petition.

6. The petitioner has also shown his willingness to deposit the amount as per the present base rate arrived at by the Cidco/Respondent. According to the Respondent, today's base rate of these shop let is Rs.28,798/- (Rupees twenty eight thousand seven hundred ninety eight) per Sq. Meter. The petitioner shall pay amount of the said shop let

area at the rate of Rs.28,798/- (Rupees twenty eight thousand seven hundred ninety eight) per Sq.Meter after adjusting the amount already paid within a period of one month from today.

7. Payment of the amount within one month is condition precedent.

8. In case the petitioner pays the amount as directed above within the period stipulated then the parties shall further engage in process of completing the allotment of the said shop let to the petitioner.

9. It is made clear that considering the peculiar facts of the present case, we have passed the aforesaid order.

10. The Writ petition is partly allowed.
No costs.

(S.M.GAVHANE, J.)

(S.V.GANGAPURWALA, J.)

