IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9728 OF 2016

Shaikh Sayed Shaikh Eliyas (died) .. Petitioners
through his LRs.

Versus

The State of Maharashtra & Ors. .. Respondents

Mr.R.K. Jadhavar, Advocate for the petitioners.
Mr.P.S. Patil, AGP for respondent/State.
Mr.A.S. Bajaj, Advocate for respondent Nos.2,3 & 4.
Mr.B.S. Shinde h/f. Mr.V.P. Latange, Advocate for respondent No.5.

CORAM : S.V.GANGAPURWALA &
S.M.GAVHANE,JJ.
DATED : 03.10.2017

P.C. :-

1. Mr.Jadhavar, learned Counsel for the petitioners submits that the petitioner was allotted a plot bearing No.34, N-6/E admeasuring 373.37 sq.meters of CIDCO for residential and commercial purpose. Said plot was allotted to deceased Shaikh Sayed. The petitioners are legal heirs of deceased Shaikh Sayed Shaikh Eliyas. Learned Counsel submits that during the lifetime of the deceased, the deceased constructed rooms and temporary shed and was living along with family members in the said premises. Shaikh Sayed expired on 02.08.2013. Within time the construction could not be carried out as per the

rules. The petitioner on 16.01.2013 and 14.02.2014, so also on 26.02.2016 requested the respondents to give No Objection Certificate for construction. The petitioners, in the meantime on 26.08.2013 deposited N.A. Charges and Services Charges so also executed bond in favour of CIDCO. The petitioners did not receive any notice directing petitioners to complete the construction. The learned Counsel submits that the writ plot is the only plot available with the petitioners for their shelter. The delay caused in carrying out construction be condoned and an opportunity be given to the petitioners.

2. Mr. Bajaj, learned Counsel submits that for the same relief the petitioners have also filed Civil Suit, which came to be dismissed. Learned Counsel submits that the plot in question is a residential cum commercial plot. According to learned Counsel, neither the petitioners nor their predecessor at any point of time applied for Commencement Certificate. The petitioners are required to carry out construction within a period of three years. They miserably failed to do so. Even public notice was published in 2012 pursuant to the order of this Court, giving an opportunity to complete the construction, but they failed to do so.

3. The plot in question is s residential cum

commercial plot. The petitioners have given undertaking that they would use the writ plot for their personal residence and commercial purpose and that they would not deal with the said plot in whatsoever manner with the third party. Same is accepted as an undertaking to this Court. The person in whose favour the plot was allotted has died subsequently. The petitioners claim to be heirs of the deceased. Considering the fact that the plot in question is also for residential purpose and considering the difficulties expressed and the reasons given, we are inclined to grant one more opportunity to the petitioners. However, the petitioners also deserve to be mulcted.

4. In the result, we pass following order :-

5. The petitioners shall apply for No Objection Certificate to the respondent/CIDCO within a period of six weeks from today. The petitioner shall pay penalty of Rs.5,00,000/- (Rupees Five Lakhs) to CIDCO within six weeks. Payment of penalty is a condition precedent.

6. The CIDCO after considering application and if the petitioners comply with all other requirements, shall grant No Objection Certificate. On receipt of the No Objection Certificate, the petitioners shall submit

application along with construction plan to the Municipal Corporation, Aurangabad within a period of two months. On receipt of said plan, the Municipal Corporation shall take decision upon it expeditiously. If any shortcomings are pointed out, the petitioner shall comply with the same immediately within one month of the shortcomings being pointed out. The Corporation shall take decision on the application for construction permission of the petitioner within three months and on receipt of Commencement Certificate, the petitioners shall complete the construction within the period stipulated in the application.

7. We have exercised our discretion on the undertaking of the petitioners that the petitioners will use the plot for own residence and commercial purpose and shall not deal with the said plot with third party.

8. The writ petition is allowed in above terms. No costs.

[S.M.GAVHANE,J.] **[S.V.GANGAPURWALA,J.]**

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