

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 12256 OF 2016

Rajendra Mohanrao Deshmukh

.. **Petitioner**

Versus

The State of Maharashtra and another

.. **Respondents**

Shri Vivek Vasantryao Bhavthankar, Advocate for the Petitioner.

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

Shri Ajay S. Deshpande, Advocate for Respondent No. 2.

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

DATE : 21st September, 2017

PER COURT :

1. Mr. Bhavthankar, learned counsel submits that the petitioner was allotted a plot at N-7 CIDCO on 23.7.1990. On 10.06.2004 the petitioner submitted the application for commencement certificate alongwith plan. On 30.6.2004 CIDCO issued letter showing deficiencies in the building plan and the same was returned to the petitioner. According to the learned counsel CIDCO directed the petitioner to pay additional lease premium of Rs.3,09,066/-. The petitioner accordingly paid the said amount and paid the service tax and N.A. charges of the said plot. Thereafter, on 10.3.2005, the petitioner again submitted letter to the CIDCO of having removed the deficiencies

in the building plan. Learned counsel submits that, on 22.6.2005 CIDCO issued letter to the petitioner stating that the said plot is subject matter in the Writ Petition No. 2338 of 1999 and as the required documents for sanction of the building plan are not submitted within the stipulated time the said application would be considered after the decision in the said writ petition. The learned counsel submits that on 10.10.2005 the Architect of petitioner again submitted the documents with CIDCO seeking permission for construction. The learned counsel submits that, the brother in law of the petitioner who was residing at N-5 and his address was given for the purpose of correspondence, the said brother in law of the petitioner also left his house at N-5 CIDCO as such the petitioner could not get the correspondence and subsequent correspondence i.e. the letter issued in the year 2006. The learned counsel submits that, on 11.3.2014 CIDCO issued notice of cancellation of allotment of plot of the petitioner on the ground that petitioner failed to make construction as per the proclamation and also sought forfeiture of 25% lease premium. The learned counsel submits that, petitioner requires the plot for residential purpose. The petitioner has given undertaking that he would construct the residential house and will use it for his own occupation.

2. Mr. Deshpande, the learned counsel submits that as per the agreement the petitioner was required to construct minimum 15% within 3 years. The petitioner has failed to abide by the terms of the agreement giving right to the CIDCO to forfeit the

plot. The learned counsel further submits that callousness on the part of the petitioner is writ large by not responding to the notice issued to him in the year – 2006. No steps were taken by the petitioner. Residential plots are required to be distributed to the needy persons. Considering the above, the notice of cancellation and forfeiture of the plot is rightly issued by CIDCO.

3. We have considered the submissions.

4. The plot admeasures 324.45 Sq. Metres. The same is meant for residential purpose. It appears that petitioner had sought construction permission initially in the year 2004 and thereafter in the year 2005. This court had directed CIDCO in Writ Petition No. 2338 of 1999 to issue public notice to the allottees of the plot who have not made any construction giving them liberty to apply for construction permission and make construction accordingly. It appears that the petitioner had applied in the year 2004-2005, however, subsequently no further steps seems to have been taken by the petitioner.

5. Considering the undertaking given by the petitioner we are inclined to exercise our discretion in favour of the petitioner and grant him one more opportunity to construct the house. However, the petitioner also deserves to be mulct for the laxity and lethargy on his part.

6. In the result we pass the following order:

I] The impugned order is quashed and set aside.

II] The petitioner shall pay penalty of Rs.4,00,000/- to respondent No. 2 within a period of 4 weeks from today. On payment of Rs.4,00,000/-, respondent No. 2 shall issue 'No Objection Certificate' to the petitioner.

III] The petitioner within one month from the receipt of 'No Objection Certificate' shall file an application for 'Commencement Certificate' with plan with the Municipal Corporation and shall comply the deficiencies, if any, in the said application for 'Commencement Certificate'.

IV] On receipt of the 'Commencement Certificate' the petitioner shall complete the construction within the period as stipulated in the 'Commencement Certificate'.

V] The petitioner shall use the suit plot for his own occupation or for the occupation of his children.

VI] The petitioner shall not sale or lease out or deal with the said plot in what so ever manner.

7. The writ petition is accordingly partly allowed.

[MANGESH S. PATIL, J.]

[S. V. GANGAPURWALA, J.]

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