

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

WRIT PETITION NO. 12114 OF 2015

Zilla Parishad Teachers' and Employees .. Petitioner
Co-op. Society Ltd., Aurangabad,
Through its Chairman,
Shri Rajesh Sarangdhar Bhusari,
Age. 40 years, Occ. Teacher,
R/o. Plot No.39, Mohinirajpuram,
Harsul, Aurangabad,
Tq. & Dist. Aurangabad.

Versus

Administrator, .. Respondent
City & Industrial Development
Corporation, Town Center,
Aurangabad, Tq. & Dist.
Aurangabad.

Mr.A.M. Karad h/f. Mr. G.V. Kulkarni, Advocate for the
petitioner.
Mr.S.V. Kurundkar, Advocate for the respondent.

**CORAM : S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATED : 01.02.2017

ORAL JUDGMENT [PER: S.V. GANGAPURWALA,J.] :-

1. Heard.
2. Rule. Rule made returnable forthwith. With the consent of the parties, taken up for final hearing.

3. The petitioner society was allotted plot No.7, Sector 'K', N-11, admeasuring 468.75 sq. mtr. by the respondent-CIDCO. As construction is not made within stipulated period, the respondents have issued notice cancelling the allotment of plot to the petitioner.

4. Mr. Karad, learned Counsel submits that the petitioner society consists of teachers. There are 1100 members. Upon allotment of the plot, the construction was commenced. Even Occupancy Certificate is granted as per the rules existed then on 30.01.2003. Thereafter, an application was filed for Commencement Certificate for further construction. The Commencement Certificate was also issued for further construction on 28.02.2003. Thereafter, No-objection Certificate was also issued. However, in the meantime, an Administrator was appointed over the petitioner-society and further construction could not be proceeded. The petitioner had filed Writ Petition No.2463 of 2007. This Court had allowed the said writ petition by taking lenient view. However, as

during the relevant period the Administrator was appointed, further steps were not taken. Now elected body has assumed the office and as such the petitioner requested for extension of time to complete the construction. The learned Counsel submits that the Occupancy Certificate, as per the relevant rules existing then, has already been issued to the petitioner-society. As such, it cannot be said that no construction has been made by the petitioner. The Court may take sympathetic approach, considering that it is a society of teachers.

5. Mr. Kurundkar, learned Counsel for the respondent submits that the petitioner was required to complete the construction within three years of allotment of plot and even if extension of time is permissible then within six years on payment of additional lease premium. This Court in public interest litigation has passed general orders granting time to construct. The petitioner did not comply with the same. Thereafter, further time was granted to the petitioner vide order dated 31.03.2008 in

Writ Petition No.2463 of 2007. The petitioner even did not comply the said condition. As such, the Corporation is constrained to issue order dated 16.10.2015. No fault can be found in the said order.

6. We have considered the submissions canvassed by the learned Counsel for the respective parties. It appears that after the plot was allotted, the petitioner applied for construction permission and the petitioner constructed part of the plot for which even Occupancy Certificate is granted on 30.01.2003. It appears that subsequently, an application was made for further construction. The Commencement Certificate was also granted to the petitioner on 28.02.2003. The construction was not proceeded further. This Court had also granted some time to the petitioner in Writ petition No. 2463 of 2007 under order dated 31.03.2008. However, the petitioner failed to carry out the construction.

7. The reasons given by the petitioner are that

during the intervening period, the Administrator was appointed for quite some time and now elected body has assumed the office and the construction would be carried out expeditiously.

8. Considering the fact that the petitioner is a society of teachers and there are about 1100 members in the society, we are inclined to grant one more opportunity to the petitioner. However, the petitioner deserves to be mulct with penalty. In the result, we pass following order :-

i) The impugned order is quashed and set aside. The petitioner shall pay penalty of Rs.3,00,000/- (Rupees Three Lakhs) to the respondent-CIDCO within a period of 8 (eight) weeks from today.

ii) Within the period of 8 (eight) weeks from today, the petitioner shall apply for No-objection Certificate to CIDCO.

iii) On payment of penalty as directed

above, the CIDCO shall grant No-objection Certificate.

iv) On receipt of No-objection Certificate, within four weeks the petitioner shall file with the Corporation the plan for construction. The same shall be assessed by the Corporation and on receiving the Commencement Certificate, the petitioner shall complete the construction expeditiously, as per the terms laid down in the Commencement Certificate.

9. The writ petition is accordingly allowed. Rule made absolute in above terms. No costs.

[K.L.WADANE, J.]

[S.V.GANGAPURWALA, J.]