

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13159 OF 2016**

1. Hiranandani Healthcare Private
Limited

2. Dr. S. Narayani

...Petitioners

Versus

The State of Maharashtra & Ors.

...Respondents

**WITH
CIVIL APPLICATION NO.8 OF 2017
IN
WRIT PETITION NO.13159 OF 2016**

1. Hiranandani Healthcare Private
Limited

2. Dr. S. Narayani

...Applicants

Versus

The State of Maharashtra & Ors.

...Respondents

...

Mr. Rafique Dada, Senior Advocate with Mr. Atul Damle, Senior Advocate with Mr. Indranil Deshmukh, Mr. Adarsh Saxena and Ms Rachyeta Shah i/b. Cyril Amarchand Mangaldas for the Petitioners.
Mr. Manish Pabale, AGP for Respondent No.1-State.
Mr. Gopal Krishna Shivram Hegde for Respondent No.2.
Mr. Sandeep V. Marne for Respondent No.3.
Mr. Sandeep Takur, Intervenor in-person, present.

**CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED : 6th JANUARY, 2017.

ORAL JUDGMENT (Per A.S. OKA, J.):

The submissions of the learned counsel appearing for the Parties were heard yesterday.

2. The subject matter of this Writ Petition is the Plot No.28, Sector 10A, Vashi in Navi Mumbai (for short 'the said Plot'). Civil Application No.8 of 2017 has been filed for amendment of the Writ Petition on the basis of the subsequent events. We have heard the parties on the footing that the amendment has been allowed. The amendment is sought essentially for claiming a relief in respect of a Plot of land adjacent to the said Plot. The Plot of land adjacent to the said Plot is referred as "the adjacent Plot". Various averments and prayer clauses are sought to be added by the Civil Application in respect of the said adjacent Plot.

3. As far as the said Plot is concerned, the same was vested in the second Respondent- the City and Industrial Development Corporation Ltd. (for short 'CIDCO'). In respect of the said Plot, the second Respondent-CIDCO executed an agreement dated 23rd September, 1997 in favour of the third Respondent Navi Mumbai Municipal Corporation (for short 'the said Municipal Corporation'). Under the said agreement, the CIDCO agreed to grant lease in respect of the said Plot for construction of general hospital and residential staff

quarters with a further condition that the general hospital shall be conducted for the charitable purpose and not for profit.

4. According to the case of the Petitioners, a tender process was initiated by the said Municipal Corporation for the purpose of developing a super specialty hospital on the said Plot. Reliance is placed on the agreement between the said Municipal Corporation and the first Petitioner dated 20th January, 2006 executed on the basis of the resolutions of the General Body Meeting of the said Municipal Corporation held on 26th July, 2005 and 5th January, 2006. A Supplementary agreement /addendum between the third Respondent-the said Municipal Corporation and the first Petitioner was executed on 24th December, 2008. Another supplementary agreement between the said parties was executed on 20th March, 2015. It is not in dispute that the said three agreements are in respect of the said Plot. However, clause 5.2 of the agreement dated 20th January, 2006 provides for permitting user of another Plot. In the said Agreement, the first Petitioner is described as the Lessee and the said Municipal Corporation is described as the Lessor. Clause 5.2 reads thus:

“The Plot of an area admeasuring 3,500 square meters
will be developed as open parking area. Fifty per cent

of this area will be used by the LESSOR. Remaining fifty per cent will be used by THE LESSEE for their parking.”

5. As far as this clause is concerned, the supplementary agreement dated 24th December, 2008 is relevant and in particular clause (3) thereof, which reads thus:

“LESSEE was to use half of the adjacent open space for open parking. However, if LESSOR provides for parking adjoining to the hospital to LESSEE, LESSEE will not claim any right, title, interest, License etc, on the open space for parking as mentioned in the original Agreement. It is made clear that till such alternate parking space is made available LESSEE will continue to use the open parking space as mentioned in the original Agreement. The LESSOR shall inform LESSEE in writing about the availability of such alternate parking space and on receipt of such intimation, all right, title, interest, license etc. of LESSEE on the open parking space made available as per the original Agreement shall automatically come to an end. The alternative parking area referred to herein above is the area earmarked on the map annexed hereto/demarcated by the following boundary.”

6. On conjoint reading of clause 5.2 in first agreement and clause 3 of the supplementary agreement it is apparent that the

reference to open space for parking is to the adjacent Plot as described above. Clause 3 of the said supplementary agreement makes it very clear that even if the said Municipal Corporation provides for parking on adjacent Plot, the first Petitioner is not entitled to claim any right, title or interest or any license in respect of the same.

7. In the Writ Petition, there is a reference to the various orders passed in the Public Interest Litigation No.89 of 2005 filed by the Intervenor. As far as the said Public Interest Litigation is concerned, several allegations have been made therein including an allegation that two floors on the hospital building on the said Plot have been illegally sublet by the first Petitioner. Paragraph No.6 of the order dated 16th December, 2015 contains a direction to the Managing Director of CIDCO and the said Municipal Corporation as well as the State Government to take appropriate steps in terms of the agreement and provisions of the existing law in the larger public interest. Appropriate decision was ordered to be taken within a period of three months. In the further order dated 17th February, 2016 a reference is made to the order dated 16th December, 2015. The said Public Interest Litigation was disposed of by the order dated 16th November, 2016. The Division Bench while disposing of the said PIL referred to aforesaid

orders passed during the pendency of the Petition. The Division Bench also referred to an order passed by the State Government, under which a direction was issued to the said Municipal Corporation to take action. The reference in the said order dated 16th November, 2016 appears to be to the direction issued by the State Government on 28th September, 2016 (Exh.A to the Writ Petition). The said direction makes a reference to the terms of the agreement dated 23rd September, 1997 executed by and between the CIDCO and said Municipal Corporation, which contains a condition that said Plot could be used only for construction of general hospital on no loss no profit basis. Under the order dated 28th September, 2016 a direction was issued to the said Municipal Corporation to take an action of cancellation of the agreement between the first Petitioner and the third Respondent Corporation as the first Petitioner has committed breaches of the terms and conditions. Even a direction was issued to the second Respondent-CIDCO to consider whether an action can be taken on the basis of the terms and conditions on which the said Plot was allotted to the said Municipal Corporation.

8. In the Petition, reliance is placed on the Government order dated 6th January, 1994 under which in exercise of the powers of the

State Government under the Memorandum of Association and Articles of Association of CIDCO certain directions were issued to CIDCO as regards the Plots reserved for public purpose. A direction was issued by the State Government under the said order that the possession of the Plots reserved for the public purpose like Hospitals, Dispensaries and Community Health Centres should be hand over to the said Municipal Corporation @ 25% reserved price. A direction was issued to work out a proposal in respect of the Plots reserved for Hospitals, Dispensaries, Community Centers and to submit it to the State Government for consideration. There is one more factual aspect as far as the Writ Petition is concerned. A show cause notice has been issued by the said Municipal Corporation to the first Petitioner. The said show cause notice is dated 18th November, 2016. By the said show cause notice, first Petitioner was called upon to show cause as to why the first Petitioner should not be directed to hand over actual physical possession of the premises on the said Plot. By the said notice, aforesaid three agreements executed by and between the Petitioners and the third Respondent were terminated on the ground of breaches allegedly committed by the first Petitioner.

9. Now coming to the prayers in the Writ Petition, there are

three substantive prayers, which read thus:-

“(a) that this Hon'ble Court be pleased to issue a writ of mandamus or in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India directing the Respondents to take all necessary steps for implementing the order dated 6th January 1994 bearing No.NMQ 1092/1045/CR-121/92/UD-20 including directing Respondent No.2 to immediately transfer/hand over all Plots reserved for hospital in Navi Mumbai (including Plot No.28, Section 10A, Vashi) to Respondent No.3 and directing Respondent No.1 to guarantee payment by Respondent No.2 of “25% of the Reserved Price” for the said Plots in terms of the order dated 6th January 1994 bearing no.NMQ 1092/1045/CR-121/92/UD-20;

(b) that this Hon'ble Court be pleased to issue a writ of certiorari or in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India quashing and setting aside the Impugned Order dated 28th September, 2016 bearing no.CID-3316/M.No.15(A)/UD-10 passed by Respondent No.1 and the order dated 18th January, 2016 bearing no. CIDCO/JMD/02 passed by Respondent No.2.

(c) that this Hon'ble Court be pleased to issue a writ of mandamus/certiorari or in the nature of mandamus/certiorari or any other appropriate writ,

order or direction under Article 226 of the Constitution of India quashing and setting aside the Impugned Notice dated 18th November 2016 bearing No.NMMC/Health/7227/2016.”

10. As far as prayer (c) is concerned for quashing and setting aside the impugned notice dated 18th November, 2016, the Division Bench of this Court in this very Petition has passed an order dated 25th November, 2016 directing the first Petitioner to give a reply to the said show cause notice. A direction has been issued to the Municipal Corporation to take a decision on the said show cause notice in accordance with law. The learned counsel appearing for the Respondent No.3 -the said Municipal Corporation states that hearing of the show cause notice is in progress and as of today, no order has been passed.

11. As far as the Civil Application is concerned, reliance is placed by the Petitioners on a sketch annexed at Exhibit 'H-1' to the Civil Application. The learned senior counsel appearing for the Petitioners, on instructions states that on the adjacent Plot, there are three structures apart from the liquid medical oxygen tank installed by the Petitioners on a foundation. He stated that out of the three

structures, the structure shown as “NMMC Utility room” on the said sketch is in possession of the said Municipal Corporation and the other two structures are in possession of the Petitioners. As described in said sketch, one structure is being used for installing diesel generator sets, HT/ LT rooms and transformers. The second structure is being used as bio-medical waste room, MGPS room, medical air and vacuum pump room .

12. The learned counsel appearing for the said Municipal Corporation stated that there is no structure on the adjacent Plot which is in possession of the said Municipal Corporation, which is described as “NMMC utility room”. The learned senior counsel appearing for the Petitioners, on instructions, stated that on the right hand top corner of sketch at Exh.H-1, there is another small structure described as NMMC utility room. In the Civil Application, it is pointed out that a notice has been issued under Section 55 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the MRTP Act') to the first Petitioner in respect of a temporary structure admeasuring 1799.5 sq. feet on the said adjacent Plot. It is pointed out in the Civil Application that by constructing a barricade, CIDCO is trying to obstruct the entry of the Petitioners to the structures in their possession as shown in the sketch

at Exh.H-1. Therefore, substantive prayers have been sought to be added in the main Writ Petition in respect of the said adjacent Plot. A substantive prayer sought to be added as regards the said adjacent Plot is of directing the CIDCO to immediately transfer the adjacent Plot to the said Municipal Corporation in terms of the order dated 6th January, 1994. Consequential interim reliefs are prayed for protecting the structures on the adjacent Plot.

13. The submission of the learned senior counsel for the Petitioners is that order dated 25th November, 2016 at Exh. 'A' has been passed by the State Government without giving an opportunity of being heard to the Petitioners. He pointed out that the Petitioners had no knowledge about the agreement dated 23rd September, 1997 at the relevant time and the Petitioners became aware of the said document during the course of the hearing of the Public Interest Litigation filed by the Intervenor. He invited our attention to the agreement dated 20th January, 2006 executed by and between the first Petitioner and the said Municipal Corporation and in particular clause 5.2 thereof which provides that the said Municipal Corporation will develop a Plot admeasuring 3500 sq meters out of which 50% area of parking is for the use of the Petitioners. He has submitted that the structures of the

Petitioners which are in existence on the adjacent Plot are very important and if a barricade is constructed by CIDCO, the working of the hospital of the first Petitioner will be adversely affected. He pointed out that CIDCO is constructing a wall to prevent the entry of the Petitioners to the structure. He submitted that due to the construction of CIDCO, the entry of the members of the staff of the hospital to liquified medical oxygen tank has been prevented. He has placed reliance on additional compilation filed by the Petitioners. He has submitted that by a letter dated 19th June, 2006 the said Municipal Corporation communicated to the first Petitioner that a permission under the MRTP Act is not required to be obtained for construction of the structures on the adjacent Plot. He has submitted that structures on the adjacent Plot have been constructed with the knowledge of the said Municipal Corporation. He pointed out that No Objection Certificate for Gas Bank was issued by the Fire Brigade department of the said Municipal Corporation. He relied upon a bill of municipal taxes issued by the said Municipal Corporation in respect of the generator room on the adjacent Plot. He has submitted that apart from the fact that the structures on the adjacent Plot have been lawfully constructed, as per the Government order dated 6th January, 1994 the Plots reserved for hospital, community centre, etc. are required to be

handed over by CIDCO to the said Municipal Corporation on payment of 25% of the reserved price in respect of the said Plots. He urged that said direction will have to be implemented by the State Government in relation to the adjacent Plot.

14. The stand taken by the learned counsel for the said Municipal Corporation as well as CIDCO as regards the adjacent Plot is that the same was never allotted to the first Petitioner and the construction carried out thereon is completely illegal. Their submission is that the Petitioners are disentitled to any relief in respect of the adjacent Plot. The Intervenor appearing in person has filed an affidavit contending that there is a gross illegality in the action of allotting premises on said Plot to the first Petitioner. He has submitted that the hospital is not being run by the Petitioners but by a company known as Fortis Healthcare Ltd. He relied upon the several annexures to his affidavit. The learned senior counsel appearing for the Petitioners stated that the hospital is being run by the first Petitioner, which is a subsidiary company of Fortis Healthcare Ltd. On a specific query made by the Court, he stated on instructions that the Fortis Healthcare is not running the hospital but the same is being run by the first Petitioner.

15. We have given careful consideration to the submissions. It

is not disputed that CIDCO is the owner of the said Plot No.28. CIDCO had executed agreement of license in favour of the said Municipal Corporation in respect of the said Plot on 23rd September, 1997. From the annexure 'H' to the Petition, it is apparent that the Intervenor by filing an affidavit dated 3rd April, 2014 placed a copy of the said agreement on record of the Public Interest Litigation No. 89 of 2005. The said agreement provides that a license has been granted in respect of the said Plot to the said Municipal Corporation for the purpose of establishing and constructing general hospital and essential Staff Quarters. There is a recital in the said agreement that the CIDCO has agreed to grant lease in respect of the said Plot to the said Municipal Corporation subject to compliance of the terms and conditions of the said agreement.

Clause 8A of the said agreement reads thus :-

“8-A It is hereby expressly agreed by the Licensee that the Licensee shall not until the grant of the lease of the said land as provided hereinafter, commence conducting General Hospital and essential Staff Quarter agreed hereby to be established on the said land. The licensee shall in conducting such General Hospital and essential staff Quarter subject to the following conditions:-

(a) The General Hospital shall be equipped properly to the satisfaction of the Managing Director of the Corporation.

(b) The said Hospital shall be open to the public without any discrimination on ground of religion, caste, creed, race, sex, place of birth, domicile, language or otherwise. The Hospital shall not have at any time less than ____-____ medical and ____-____ surgical beds.

(c) The Licensee shall employ competent staff.

(d) The General Hospital shall be conducted for charitable purpose and not for profit.”

(underline suggested)

16. Thus, there is a clear stipulation that CIDCO will not grant lease in respect of the said Plot unless the said Corporation commences user as general hospital and staff quarters. There is a specific provision that general hospital shall be conducted for a charitable purpose and not for profit. Clause 2 of the said agreement provides that nothing in the said agreement shall be construed as a demise in law of the said Plot unless a lease as provided in the agreement is executed. Apart from the said condition, various other conditions are also incorporated in the said agreement putting various restraints on the said Municipal Corporation including restraint on transfer. Even assuming that the Petitioners were not aware of the said agreement, as the Petitioners are claiming through the said Municipal Corporation, the Petitioners cannot be claim any better right than what was conferred on the said Municipal Corporation under the agreement

dated 23rd September, 1997. As of today, CIDCO is the owner of the said Plot and the said Municipal Corporation is bound by the terms and conditions of the said agreement and therefore, it is obvious that the said Plot cannot be used for any purpose other than what is specified in clause 8(A) quoted above. The rights claimed by the Petitioners are subject to the terms and conditions of the said agreement between CIDCO and the said Municipal Corporation. In the order dated 28th September, 2016 passed by the State Government, in paragraph No.1 it is precisely noted that under the terms of the agreement dated 23rd September, 1997 between the CIDCO and the said Municipal Corporation, allotment of the said Plot was for general hospital and Staff Quarters and that the general hospital was to be run on no loss no profit basis.

17. There are allegations against the Petitioners as regards the breach of terms and conditions of the agreements by and between the Petitioners and the said Municipal Corporation. We are not adjudicating upon the said issue of the breach in view of the order earlier passed by this Court directing the Municipal Corporation to take appropriate decision on the show cause notice.

18. Now we turn to prayer (a) of the Petition. As stated earlier,

the Petitioners cannot seek any better right than the rights which could have been transferred by the said Municipal Corporation on the basis of the agreement dated 23rd September, 1997. As stated earlier, the said Municipal Corporation is a licensee of CIDCO. The Government order dated 6th January, 1994 directs CIDCO to hand over to the said Corporation the Plots reserved for Hospitals, Dispensaries and Community / Health Centres etc. at 25% of the reserved price. A writ of mandamus cannot be sought by the Petitioners virtually on behalf of the said Municipal Corporation enjoining CIDCO to implement the said order. Moreover, the said Municipal Corporation has entered the possession of the said Plot on the basis of an Agreement executed by CIDCO. The said Corporation is therefore entitled to a lease in respect of the said Plot only if it complies with the terms and conditions of the said Agreement. Hence, even the Municipal Corporation through whom the Petitioners are claiming is not entitled to seek such a writ of mandamus. Therefore, prayer clause (a) cannot be granted in this Petition.

19. As far as the prayer (b) of this Petition is concerned, as stated earlier, we find no fault of order dated 28th September, 2016. Clause (2) of the said order directs the Municipal Corporation to

terminate the agreement on the ground of breaches committed by the first Petitioner. The Issue regarding the breaches allegedly committed by the first Petitioner of the terms and conditions of the agreements is not finally decided under the said Order and the said issue will be decided by the Municipal Corporation while deciding the show cause notice dated 18th November, 2016. Therefore, the issue whether the first Petitioner has committed breaches of the terms and conditions of the agreements, will have to be kept open.

20. As regards the prayer (c), no relief can be granted save and except the relief granted in paragraph No.11 of the order dated 25th November, 2016. Other prayers are for interim relief.

21. Now we turn to the Civil Application and the case made out in relation to the adjacent Plot. As pointed out earlier, clause 5.2 of the agreement dated 20th January, 2006 between the first Petitioner and the Municipal Corporation provides for the Municipal Corporation developing 3500 sq.ft. of the open Plot for parking out of which 50% of the parking was to be allotted for the use by the first Petitioner. However, the first Petitioner has no right in respect of the adjacent plot and in any case no right to construct structures thereon or occupy the structures thereon.

22. Admittedly, on the said adjacent Plot, the first Petitioner constructed at least two structures and installed liquified oxygen tank.

23. The senior counsel appearing for the Petitioners relied upon a letter addressed to the first Petitioner by the said Municipal Corporation, which is dated 19th June, 2006. The submission is that the plan forwarded along with the said letter shows not only the structures on the said Plot No.28 but also the structures on the adjacent Plot.

24. We have perused the letter dated 19th June, 2006. The said letter is specifically issued in respect of the additional construction to be made on the said Plot and not on the adjacent plot. It records that the said construction is to be made by the first Petitioner on the basis of the agreement between the first Petitioner and the said Municipal Corporation. It proceeds on the footing that as the local authority /competent authority wants to construct structures, permission for development of the said Plot under the MRTP Act is not necessary. By no stretch of imagination, the said letter can be applied to the adjacent Plot. The letter is only in respect of the said Plot No.28. Merely because on the plan referred in the said letter, the structures on the

adjacent Plot have been shown, the Petitioners cannot claim that no permission of the Municipal Corporation as the planning authority is required for carrying out construction on the adjacent Plot. The same is the case with the certificate dated 28th January, 2009 issued by the said Municipal Corporation, which is a part of the additional compilation. The said certificate is issued in respect of the said the Plot No.28, which records that Occupancy Certificate is not necessary to be obtained in respect of the structures on the said Plot. The same will not make the structures erected on the adjacent Plot legal when admittedly, without obtaining permission of either the Municipal Corporation or CIDCO, the structures were erected. We have perused the No Objection Certificate issued by the fire brigade of the Municipal Corporation. It specifically relates to said Plot and not to the adjacent Plot. In fact, the application dated 6th January, 2008 made by the Petitioners for the grant of NOC to the said Corporation is only in respect of the said Plot . A copy of a License regarding oxygen tank is placed in the additional compilation. The perusal of the License shows that it is issued by the said Municipal Corporation specifically in respect of the said Plot and not in respect of the adjacent Plot. Even the Property Tax bill relied upon by the Petitioner is specifically in respect of the said Plot.

25. Thus, it is crystal clear that the first Petitioner has not even a semblance of right to erect structures on the adjacent Plot. The Petitioners have illegally constructed the structures on the adjacent Plot. CIDCO which is the owner of the adjacent Plot has not permitted the Petitioners to use the adjacent plot. The Petitioners have illegally and high handedly erected structures thereon. Now they are trying to invoke sympathy of the Court by pointing out that if the structures are removed, the patients in the hospital on the said Plot will be adversely affected. Considering the conduct of the Petitioners, they cannot be allowed to invoke Article 226 of the Constitution of India. As pointed out earlier, though the Petitioners are fully aware that the No Objection Certificate issued by the Fire Brigade and the License granted by the Municipal Corporation in respect of the oxygen tank are specifically in respect of Plot No.28, it is sought to be contended before the Court that said documents are in respect of the adjacent Plot. The same is the case of the Property Tax Bill. Moreover, the Petitioners are trying to justify their action of making illegal construction on the adjacent Plot which is not allotted to them.

26. The writ jurisdiction is discretionary and equitable. Considering the aforesaid conduct of the Petitioners, we cannot allow

them to invoke writ jurisdiction in respect of the adjacent Plot.

27. We are not entering into the controversy whether the first Petitioner is running the hospital or Fortis Healthcare Limited is running it. It is for the said Municipal Corporation to decide the issue while disposing of the show cause notice. Only because the hospital is being run on the said Plot No.28 that we propose to grant a reasonable time to the Petitioners to remove all the structures on the adjacent Plot. There are four structures thereon including a small structure and a liquid Oxygen tank shown on map at Exhibit-H-1 annexed to the Civil Application. The learned counsel appearing for the said Municipal Corporation, at this stage, on instructions accepts that both the structures shown as "NMMC Utility" are in possession of the said Municipal Corporation. He states that the Municipal Corporation will remove the same within a period of two weeks from today. We accept the said statement. As stated earlier, we propose to grant time of three months to the Petitioners to remove the remaining structures and tank on the adjacent Plot. Hence, we pass the following order:

ORDER

- (i) As far as the prayer (c) of the writ petition is concerned, the direction issued in terms of paragraph

11 of the order dated 25th November, 2016 shall continue to operate. We make it clear that we have made no adjudication on the merits of the show cause notice dated 18th November, 2016;

(ii) For the reasons stated earlier, the prayer clause (a) including the amendment thereof in relation to the adjacent Plot is rejected. As far as order dated 28th September, 2016 (Exhibit-A) is concerned, no interference is made with first two clauses thereof. As far as the last clause is concerned, we make it clear that the issue whether the Petitioners have committed breaches of the agreements executed by and between them and the said Municipal Corporation, is kept open which will be decided by the Municipal Corporation while deciding the show cause notice;

(iii) All prayers made as regards the adjacent Plot stand rejected;

(iv) We accept the statement made by the learned counsel appearing for the said Municipal Corporation as regards the removal of the two structures on the

adjacent Plot;

(v) Time of three months is granted to the Petitioners to remove the structures on the adjacent Plot including the Oxygen tank. We direct CIDCO not to interfere with the use of the said structures by the Petitioners for a period of three months from today. Needless to add that access to the said structures to the staff of the Petitioners shall not be prevented for a period of three months from today;

(vi) On failure of the Petitioners to remove the structures on the adjacent Plot within a period of three months from today, it will be open for CIDCO to remove the said structures and to take possession of the adjacent Plot without issuing any notice to the Petitioners;

(vii) The Petition and the Civil Application stand disposed of in above terms.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)