

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11510 OF 2013

Adarsh Sahakari Kukut Vyavasayik Sanstha Maryadit ...Petitioner

Vs.

The State of Maharashtra & Anr.

...Respondents

Mr. N.V. Walawalkar, Senior Counsel i/b. Mr. S.M. Sabrad
for the Petitioner

Ms. R.A. Salunkhe, AGP

Mr. A.M. Kulkarni for Respondent No.2

CORAM : NARESH H. PATIL &

M.S. KARNIK, JJ.

DATED : 6TH MARCH, 2017

P.C. :

The Petitioner Society was carrying on poultry business on certain lands which came to be acquired by the Respondent CIDCO. The Petitioner requested the CIDCO at the relevant time for allotment of suitable land for carrying on their poultry activities. As CIDCO failed to allot the said land the Petitioner had approached this Court by filing Writ Petition No.4578 of 1984. By an order dated 1st March, 1985 the Division Bench of this Court passed following order in Writ Petition No.4578 of 1984:

“Coram: Dharmadhikari & Jamdar, JJ.

Petitioners to file an application to CIDCO for consideration of their case. If such an application is made the CIDCO will consider it, sympathetically; Petitioners at liberty to place all material before CIDCO with these observations writ petition

Rejected”.

2. The Petitioner filed a Special Leave Application No.3929 of 1985 wherein the Apex Court passed following order on 19th March, 1985:

“We are not inclined to grant leave in this matter at this stage. Mr. V.B. Bobde, learned Counsel for the Petitioner shall submit a well drafted representation pointing out various aspects such as the work at present undertaken by the Petitioners, the area reserved and made out a case for allotment in a particular zone and hand over a copy of the representation to Mr. K.G. Bhagat.

Learned Counsel for the State of Maharashtra, who would forward it giving his own opinion for sympathetic consideration with this observation special leave petition is disposed of”.

3. The Petitioner thereafter submitted a representation to the CIDCO for allotment of land. Reference was made to provisions of Section 118(2) of Maharashtra Regional & Town Planning Act,

1966. The Petitioner places reliances on the communication made by their Lawyer who appeared in the Apex Court which is annexed at page No.83 and 84 of the Petition which reads as under:

*"CITY & INDUSTRIAL DEVELOPMENT CORPORATION
LTD. (MAHARASHTRA)*

*Head Office:
CIDCO Bhavan
Solapu C.B.D.
New Bombay 400 614*

*Regd. Office:
'Nirmal' 2nd floor
Nariman Point
Bombay 400 021*

Ref: Land/Four 2222/85 Date: 5/8/85

*To,
The Secretary,
Adarsha Sahakari Kukkut Vyavasayik Sanstha,
Near Shirvane School,
Shirvane, Tal & Dist: Thane.*

Sub: Alternate land for your society.

Sir,

Your land at village Shirvane, Dist. Thane has been acquired for New Bombay project. You had filed a petition in the supreme court for getting as alternate land. While dismissing the petition the Supreme Court issued orders and accordingly your advocate sent a representation to as for alternate land. After consideration our Committee has decided to give you 1 acre land as alternate land at village Khairane, Tal. & Dist. Thane.

This land is situate at north side of the gutter and shall be given as per the arrangement.

This land will be given to you on lease for 10 years with a rent of Rs.3,750/- per annas of whatsoever will be considered from time to time.

Besides service charges, water charges will be recovered separately. As agreement shall be affected with CIDCO and

conditions of the agreement shall be binding on you.

You are asked to select the plot by attending our C.B.D office on 9/8/85 at 11.00 a.m to enable us to take further action.

*Yours faithfully,
Sd/-
Chief Land & Survey Officer*

4. The Petitioner placed reliance on the resolution passed by CIDCO under Resolution No. 9824 which reads thus:

“RESOLUTION NO.:9824

“RESOLVED THAT the proposal to allot land on 60 years lease to M/s. Adarsh Sahakari Kukut Vyavasayik Sanstha Maryadit, admeasuring 3450 sq. mtr. for Residential use with FSI 1.0 on payment of lease premium specified in Board Resolution No. 8848 dated 23.10.2003, further escalated as per the B.R. No.8979 dated 25.3.2004, be and is hereby approved subject to Government approval and their withdrawing of all litigations and accepting this as a full and final settlement”.

“RESOLVED FURTHER THAT the VC&MD, MM-1 and M(TS) be and are hereby empowered to implement the above Resolution”.

5. As Respondent CIDCO failed to allot the land the Petitioner again approached this Court by filing present Petition. By order dated 3rd September, 2014 in Writ Petition No. 11510 of 2013 the Division Bench of this Court issued following directions at para

No.2, which reads thus:

“2. We, accordingly, direct that in the light of the letter dated 20th April, 2010 sent by the State Government, the matter of allotment of the plot to the petitioner in terms of Resolution No.9824 shall be placed before the Board of Directors. The Board of Directors shall take a final decision as to whether the allotment of the plot of land can be made to the petitioner. Various factual aspects set out in paragraph nos. 6 and 7 of the said Affidavit of Shri Marathe shall be placed before the Board of Directors to enable the Board to consider the said aspects. We direct the Board of Directors to take an appropriate decision on or before 30th October, 2014”.

6. Learned Counsel appearing for Respondent CIDCO submit that accordingly the Board considered the proposal and resolved not to allot plot to the Petitioner in view of the new policy adopted by the Board. The Resolution No. 11239 was resolved on 9th December, 2014, which reads thus:

“RESOLUTION NO. 11239:

“RESOLVED THAT the Board do and hereby approve that:
i) *The Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008 has come into force in December, 2008. As per the said Regulation, the Corporation shall dispose off plots by inviting public tenders or by public auction only. Hence the request made by Adarsh Sahakari Kukut Vyavasayik Sanstha Maryadit for the allotment of the plot of land as per B.R. No.9824 cannot be accepted / considered”.*

7. Learned Counsel appearing for the Respondent- CIDCO submits that the Petitioner did not have any vested right to seek allotment of the lands. The High Court had permitted the Petitioner to put forth proposal to CIDCO for consideration. The Petition came to be rejected by the High Court. The Apex Court disposed of the Petition by observing that the proposal of the Petitioner would be forwarded for sympathetic consideration. Learned Counsel, therefore, submits that the High Court and the Apex Court did not direct CIDCO to allot land under the provisions of Section 118 (2) of the MRTP Act or under any scheme available then to the Petitioner. It is also submitted that the CIDCO had proposed alternate land to the Petitioner for leasing out to them for a period of 10 years. The Petitioner did not accept the offer for the reasons best known to them, therefore, now they are not entitled to seek any relief from this Court.

8. Learned Counsel appearing for the CIDCO submits that in accordance with the new regulations of The Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008 and in accordance with Chapter III the Petitioner a co-operative society may apply for

allotment of land for housing purposes and in case such application is made the CIDCO authorities may examine the proposal on its own merits.

9. We have perused the record and the orders passed by this Court and the Apex Court. While dealing with the cases of the petitioners, it was observed by the Court that the application be dealt with sympathetically. In fact the CIDCO had offered the petitioners allotment of land twice on lease basis but for the reasons best known to the petitioners, they did not accept the said offer.

10. In the facts, we do not find that petitioners have vested right to get the allotment of subject land in their favour. In case the petitioners file an application for allotment of land, the same could be looked into in view of the provisions of Section 118 of the MRTP Act and the orders passed by the Courts. To that extent we find some substance in the submissions advanced by the learned Senior Counsel Shri Walawalkar. Learned Counsel appearing for CIDCO submitted that it is not a case where CIDCO outrightly rejected the

request for allotment of land but inspite of offering, the petitioners declined to accept the said offer. The Counsel submits it is open for the petitioners to submit appropriate proposal in accordance with rules framed in the year 2008 for allotment of land for housing purposes. Learned Senior Counsel on instructions submits that petitioners are willing to form co-operative housing Society and file appropriate proposal in accordance with 2008 Rules for allotment of land. The Counsel appearing for CIDCO submits that in case such a proposal is received, the CIDCO would deal with the said proposal on its own merits.

11. In view of the observations made as above, no interference is warranted. The Petition is accordingly disposed of.

(M.S. KARNIK, J.)

(NARESH H. PATIL, J.)

mnmm/lsp.