

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

WRIT PETITION NO. 3178 OF 2017

Smt. Swati Ajit Gandhi
Age : 43 years, Occu. Business,
R/o. Block No. 13, Plot Nos. 43 and 44,
Survodaya Co-operative Housing Society,
N-6, M Sector, CIDCO, Aurangabad. ... Petitioner

VERSUS

City and Industrial Development Corporation Ltd.,
Through its Administrator,
Udyog Bhavan, CIDCO, Aurangabad. ... Respondent

.....
Mr Mohit R. Deshmukh, Advocate for the petitioner
Mr Ajay Deshpande, Advocate for respondent-sole
.....

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.**

DATE : 28TH MARCH, 2018.

ORDER:

1. The petitioner has approached this Court assailing the communication dt. 11.11.2016 refusing to issue N.O.C. to the petitioner for processing proposal of Building Occupancy on the ground that the petitioner has multiple properties in his name.

2. Mr Deshmukh, the learned counsel for the petitioner submits that, the Survodaya Cooperative Housing Society was

allotted Plot Nos. 43 and 44 in Sector M, neighbourhood N-6, CIDCO, Aurangabad. The petitioner is a member of the said Cooperative Housing Society and was allotted Block No. 13, ad-measuring 116.99 sq.mtrs. Adjacent Block No.14 was allotted to one Mr. Shashikant Deshpande. The petitioner and Mr Deshpande constructed a twin bungalow on these plots under permission from CIDCO. Subsequently, Mr. Deshpande sought to transfer his block to the petitioner. The society also granted No-objection to that effect. The CIDCO was intimated about the said fact on 16.01.2001. On 08.02.2001, CIDCO allowed the application of Mr Deshpande for transfer of Block No. 14 in the name of the petitioner. The building was already constructed. As such, fresh construction permission was not required. The petitioner approached CIDCO only for the purpose of Occupancy certificate. According to the learned counsel, the petitioner cannot be said to be owner of multiple plots. A twin bungalow was constructed by the petitioner and the owner of Block No. 14, and subsequently, that has been transferred in the name of the petitioner. The learned counsel submits that, as the bungalow was already constructed, the petitioner did not take any steps for getting the occupancy. The deed of assignment also shows that the constructed portion is transferred.

3. Mr Ajay Deshpande, the learned counsel for CIDCO submits that, as per the policy of the CIDCO, a person cannot hold more than one plot. Two plots are in the name of the petitioner, which is against the policy of CIDCO. The learned counsel submits that, no explanation is given by the petitioner for not approaching the CIDCO for getting the occupancy for such a long period. The order is rightly passed by the CIDCO.

4. We have considered the submissions. The factual matrix as narrated above is not disputed. It appears that, the CIDCO was well aware of the fact that the constructed portion of Block No. 14 is being transferred in the name of petitioner, recital to that effect is found in the communication of CIDCO dt. 08.02.2001 to the Co-operative Society. In the said communication, the application made by the Society and the petitioner is mentioned. The said communication also states that, on the plot, construction of 58.50 sq.mtr is made., and the valuation of the construction is also detailed in the said communication and vide said communication, the petitioner was directed to pay the transfer charges. It is stated that the petitioner has paid the transfer charges also. It cannot be said that, CIDCO was not aware of the fact that the constructed portion on Block No. 14 is being transferred.

5. The CIDCO was well aware of the fact that the Block No. 13 in the name of the petitioner and Block No. 14 also being transferred to him. The Block Nos. 13 and 14 are not independent plots but are part of Plot Nos. 40 and 44 of CIDCO.

6. In view of the above, the reasoning in the impugned order is erroneous.

7. However, the petitioner owes explanation to the CIDCO for not approaching the CIDCO for getting Occupancy certificate in time. It appears that, the construction was carried out in the year 2001 itself as is clear from the order of CIDCO as referred to above. For not approaching the CIDCO, for getting the Occupancy certificate, the petitioner deserves to be mulct.

8. In the result, we pass the following order.

(i) The impugned order is quashed and set aside.

(ii) The respondent-CIDCO shall issue N.O.C. for processing proposal of Building Occupancy for development to the petitioner on condition that the petitioner pays penalty of Rs. 3,00,000/- (Rupees Three Lakhs only) to CIDCO within

a period of four weeks. On receipt of penalty amount, the CIDCO shall issue N.O.C. as claimed, of course if there is no other impediment in that regard, within a period of four weeks thereafter.

9. With these observations, the writ petition stands disposed of.

[A. M. DHAVALA]
JUDGE

[S. V. GANGAPURWALA]
JUDGE

Punde