

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

WRIT PETITION NO.6807 OF 2015

1. Satish s/o. Bhagwanrao Bharati
Age : 40 years, Occu: Agril.
R/o. CIDCO, New Nanded,
Dist. Nanded.
2. Archana Vijay Mohad
Age: 42 years, Occu : Service,
R/o. Yeshwant Nagar, Nanded,
Dist. Nanded.
3. Abhijit Vishwambar Patil
Age : 36 years, Occu : Business,
R/o CIDCO, New Nanded,
Dist. Nanded.

... PETITIONERS

VERSUS

1. City and Industrial Development Corporation
of Maharashtra Ltd.
New Nanded, Through its Administrator
2. City and Industrial Development Corporation
of Maharashtra Ltd.
Through its Managing Director
Nirmal, 2nd Floor, Nariman Point, Mumbai 400 021
3. Marathawada Patra Prabhodini, Nanded,
Through its Executive President,
Sanjiv Kulkarni,
Age : 45 years, Occu :- Press Reporter and
Executive President, Nanded Patrakar Trust
R/o. C/o. Patrakar Bhavan, Mondha Market Complex,
CIDCO, New Nanded.

... RESPONDENTS

Mr. S.B. Ghatol Patil, Advocate for the petitioners
Mr. A.S. Bajaj, Advocate for respondents No.1 and 2.

**CORAM : SUNIL P. DESHMUKH
S.M.GAVHANE,JJ.
DATED : 20.12.2018**

J U D G M E N T (PER :- SUNIL P. DESHMUKH, J.)

1. Rule. Rule made returnable forthwith and heard learned counsel
for the parties finally, by consent.

2. The petition has been moved seeking writ of certiorari to quash resolution dated 10.08.2009 passed by respondents No.1 and 2, granting approval to allotment of plot to respondent No.3 and for mandamus to respondents No.1 and 2 to construct shops over said plot as per allotment orders dated 30.01.2000 by accepting remaining amounts.

3. Learned counsel for the petitioners submits that pursuant to advertisement published by respondent No.1 for sale of shops, departmental stores etc. on lease at proposed Mondha Market, petitioners had applied for allotment. The petitioners in the draw of allotment had been offered shops No. 1,3 and 5 and accordingly letters were issued on 03.01.2000. Certain amount had been collected from petitioners and receipt of payment by petitioners had been duly acknowledged. However, subsequently, while seeking administrative sanction for construction, the matter had been kept pending. It is further being claimed by petitioners that all of a sudden, under resolution dated 10.08.2009, respondent No.2 had purportedly allotted area of 1000 sq.mtr. in favour of respondent No.3 which had been initially allotted to petitioners. Said resolution had not been communicated to petitioners. It is the case of petitioners that it was in January, 2014, respondent No.1 purported to return by demand draft the amounts paid by petitioners in 1999-2000. Said amount had been accepted by petitioners under protest and a representation had been made either to allot original shops or alternate plots at market rates prevailing in 1999. There had been no response to the same and as such the petitioners are before this court seeking aforesaid reliefs.

4. The contentions of on behalf of petitioners are resisted by

respondents No.1 and 2 referring to that while a scheme had been proposed, with reference to the same the offers made by the petitioners were only registered. There had never been any firm commitment nor any promise was given to petitioners. The matter did not proceed after proposing the scheme and the scheme had to be cancelled and decision to refund the amount had been taken and it was communicated to petitioners on 20.07.2005 by registered post. The respondents purported to place on record copy of the communication and the copy of acknowledgment receipt. It is further stated that respondents No.1 and 2 have handed over services to Local Authority i.e. Nanded-Waghala Municipal Corporation since 2006. It is referred to that original idea underlying proposed scheme had been given up and abandoned. Subsequently, it had been resolved to allot land to respondent No.3 in 2009 and possession accordingly had been handed over to respondent No.3 under a lease.

5. Learned counsel Mr. Ghatol Patil for the petitioners submits that after accepting payment of 10% premium there had been no communication whatsoever, even in 2009 about passing of resolution nor abandonment of the scheme. As such, while petitioners approached CIDCO authorities in 2014 they had been purportedly refunded the amount paid in 2000. The petitioners had received return of amount under protest. It has been contended that abandonment of proposed scheme has been causing loss to the petitioners. He further purports to contend that there is open land still available whereon shops can be constructed and requests that the authority may be directed to consider the offer by the petitioners.

6. Learned counsel Mr. Bajaj on the other hand, contends that the scheme as had been floated had been only an invitation to offer and there had been no firm commitment or promise held out by the respondents. Subsequently, as the time went on it had been realized that the proposed scheme would not be viable and a decision had been taken to cancel the same and accordingly the amounts paid by the petitioners had been returned to them through registered post A.D. He submits that the services have been handed over to Local Authority way back in 2006. Thereafter, decision to allot land to respondent No.3 had been taken by passing resolution and possession had also been handed over to respondent No.3. The petition in the circumstances would not be able to have any efficacy to give benefit to the petitioners. He therefore urges not to indulge into the requests made under the writ petition.

7. From aforesaid, it emerges that the petitioners appear to have remained quiet for a long period of almost 12 years, after making payment around 1999-2000. There is nothing placed on record by petitioners that they had ever been in touch with the CIDCO Authorities. It appears that a decision had been taken by CIDCO around 2005 to refund the amounts and communication to that effect is being claimed to have been made and subsequently resolution had been passed in 2009 allotting premises to respondent No.3 and it is being purportedly claimed by petitioners that the amounts have been returned in 2014. The communications by CIDCO returning the amount to petitioners in 2005 though sought to be denied, claiming the same to have been received by petitioner in 2014. The circumstances in the process give rise to disputed questions of fact. This apart,

also approach of the petitioners at least on record is only in 2012/2014. It appears that there are *laches* on the part of petitioners. We are as such in the scenario not inclined to exercise discretionary powers.

8. The petition, thus, is not being entertained and is dismissed.

9. At this stage, learned counsel for the petitioners submits that since land is open and can be used for construction of shops, it be directed that the requests of petitioners be considered. It is upto the petitioners to make such a request/ representation.

10. Rule is discharged. The petition is disposed of.

[S.M.GAVHANE,J.]

[SUNIL P. DESHMUKH,J.]