

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

WRIT PETITION NO.9222 OF 2012

Minatai w/o.Ramprasad Kadam,
Age-Major, Occ.: Agri./Household,
R/o.Jintur, Tq.& Dist.Parbhani **PETITIONER**

VERSUS

The Administrator,
City & Industrial Development
Corporation [CIDCO],
Udgyog Bhavan, New Aurangabad **RESPONDENT**

...

Mr.A.S.Deshmukh, Advocate for the Petitioner
Mr.A.S.Bajaj, Advocate for respondent.

...

**CORAM: S.S.SHINDE &
S.M.GAVHANE, JJ.**

Reserved on : 13.04.2018
Pronounced on : 25.04.2018

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard. Rule. Rule made returnable
forthwith, and heard finally with the consent
of the parties.

2] This Petition is filed praying
therein to quash and set aside the impugned
communication / order issued / passed by the

respondent on 13.06.2012. It is further prayed that, the respondent be directed to grant no objection certificate for construction of building on the subject plot duly allotted in favour of the petitioner.

3] It is the case of the petitioner that, the petitioner acquired residential plot no.122 in survey no.70/2 in Section N-2, CIDCO, Aurangabad, under a tripartite agreement executed by and between CIDCO Limited, New Aurangabad, Smt. Manju Dabral [original allottee] and the petitioner dated 13.12.1999. For the purpose of transfer of the said plot, the petitioner had paid necessary transfer charges and documentation charges as per the Rules then prevailing. Pursuant to the said tripartite agreement, the subject residential open plot was transferred in the name of the petitioner, vide letter dated 29.12.1999. The necessary lease deed has been executed in favour of the

petitioner. Since the subject residential open plot was transferred in her favour, she has been paying all necessary taxes, levies and service charges etc.

4] It is further the case of the petitioner that, on 02.05.2012, she submitted an application for building construction on the subject plot along with all necessary documents i.e. the building construction plan, payment of non agricultural charges, payment of service charges, and the copy of tripartite agreement / lease agreement etc. The petitioner was shocked and surprised to receive the communication dated 13.06.2012 informing her that, No Objection Certificate for building permission cannot be issued in view of the order dated 28.03.2003 passed by the High Court in Civil Application No.7360/2002 [City & Industrial Development Corporation Ltd. & another Vs. Hiralal Motilal Desarda & others], as the allotment

in favour of Smt. Manju Dabral was cancelled vide letter dated 16.02.2004.

5] Learned counsel appearing for the petitioner submits that, the communication dated 13.06.2012 is illegal, arbitrary and unsustainable since it is based on erroneous, incorrect and wrong interpretation of the order passed by this Court dated 28.03.2003 in Civil Application No.7360/2002 [City & Industrial Development Corporation Ltd. & another Vs. Hiralal Motilal Desarda & others], and in disregard to the order passed by this Court dated 12.01.2012 in Civil Application No.11610/2010 [Manish s/o. Dharsibhai Parmar & another Vs. The Administrator, CIDCO & others] & others. It is submitted that, the order of this Court dated 28.03.2003, which has been made a basis of the impugned communication / order dated 13.06.2012, is itself based on incorrect and erroneous factual premise. Neither the

petitioner nor her predecessor in interest was party to the said proceeding, and hence cannot seek review of the said order. It is further submitted that, the subject open residential plot was transferred in favour of the petitioner on 13.12.1999 under tripartite agreement with the original allottee, namely, Smt. Manju Dabral, CIDCO and the petitioner. The said allotment being perfectly legal, valid and in force, the building permission or no objection certificate for the same cannot be refused to the petitioner. The alleged cancellation of allotment in favour of Smt. Manju Dabral, vide letter no.2197 dated 16.02.2004 is redundant and meaningless. The same is illegal, unsustainable and cannot at all have any effect or bearing on the rights of the petitioner, which have already crystallized on 13.12.1999 itself on the basis of the tripartite agreement. Neither the petitioner

was made party, nor any communication was issued to him, or any opportunity of hearing was afforded to him before effecting the alleged cancellation of allotment in favour of Smt. Manju Dabral. Smt. Manju Dabral had already relinquished her rights in respect of subject plot in terms of the tripartite agreement on 13.12.1999 itself.

6] It is further submitted that, although the judgment and order dated 28.03.2003 in Civil Application No.7360/2002 cannot affect the legal rights of the petitioner accrued from the allotment and tripartite agreement dated 13.12.1999; the same has also been erroneously interpreted, to cancel the allotment in favour of Smt. Manju Dabral. Smt. Manju Dabral was not allotted more than one open residential plot / residential tenement in CIDCO area. In this view of the matter, even the original allottee Smt. Manju Dabral cannot be termed

as a person, who has been allotted multiple plots. In this view of the matter, the original allotment in favour of Smt. Manju Dabral also cannot be termed as bad in any manner. It is further submitted that, the High Court in para 9 of the order dated 12.01.2012 has observed thus "keeping this equity principles in mind, this Court had directed that one citizen should not be allotted more than one plot and a citizen, who already has a residential dwelling in CIDCO area should not be considered for regularization of any plot to him / her from the land, which is part of the development plan, sanctioned by the State Government and published in the Government Gazette dated 25.05.2001". Even on strict adherence of this principle, neither the allotment in favour of the original allottee Smt. Manju Dabral nor the transfer in favour of the petitioner can be questioned or held as bad. Neither the

original allottee has more than one plot or residential dwelling in CIDCO area, nor has the petitioner. In this view of the matter, it is not a case of multiple allotments in favour or in the name of one citizen. Thus, the impugned communication / order cannot be sustained, and the petitioner deserves to be granted no objection certificate as prayed for. As per para 14 and 17 of the order dated 12.01.2012, the respondent ought to have considered the request of the petitioner and granted no objection certificate for construction since there are absolutely no legal impediments in grant of the same.

7] On the other hand, learned counsel appearing for respondent relying upon the averments in the affidavit-in-reply filed on behalf of respondent submits that, the plot bearing No.122 in Survey No.70/2, N-2, Cidco in question falls within the area situated at south to Jalna Road, which was marked for

future expansion in the planning proposal in the year 1973. For this area, the planning proposal was prepared and submitted for sanction to the Government in the year 1995. However, the CIDCO allotted the plots from the said area to the various persons and consideration of the said planning proposal by the Government. It is submitted that the Writ Petition came to be filed bearing No.2338/1999 [Heeralal Motilal Desarda Vs. City & Industrial Development Corporation Ltd. & another] by way of Public Interest Litigation wherein the bulk allotment of the land was challenged. While deciding the said Writ Petition, the High Court considered the fact that, the CIDCO had no authority to make any allotment prior to sanction of planning proposal, and as such held that, the allotments made thereunder were *ab initio void*. In the very same judgment, the CIDCO was restrained from making any allotment

directly and was directed to allot the plot only on auction method i.e. drawing a lottery, by inviting applications from public at large and then by way of draw method to take out the names of successful applicants and then to allot the plots. It is submitted that, the planning proposal was sanctioned by the Government in the year 2001. Considering the fact that the allottees have made payment of the lease premium and that in the sanctioned plan, there was no deviation and except for a minor part, which did not affect the allotments made for the residential purpose etc. by the CIDCO, and as such the CIDCO sought permission for regularization of the allotments made to the persons, who had made payment to CIDCO etc. The said request was made by way of filing Civil Application No.7360/2002. The High Court, vide order dated 28.03.2003, directed the CIDCO to offer the allottees of the open plot to pay the

difference charges, and if they agree to do so, then to consider for regularization or else to cancel the allotment and take back the possession.

8] It is further submitted that, the said order was not made applicable to the multiple plot holders in CIDCO area i.e. the allottees having more than one plot. No offer could be given to the allottees in respect of plot no.122, and it could not be taken up for regularization. As such the allotment of plot no.122 was cancelled by communication dated 16.02.2004. The request of the petitioner for regularization and issuing no objection certificate for construction could not be accepted, and accordingly, was communicated vide communication dated 13.06.2012, which is under challenge.

9] We have heard the learned counsel appearing for the petitioner and respondent

at length. We have carefully perused the pleadings and grounds taken in the Petition, annexures thereto, and also the reply filed by the respondent. The issue raised in the present Petition is squarely covered/answered by the pronouncement of the Division Bench [Coram : B.R.Gavai & M.T.Joshi, JJ.] of the Bombay High Court, Bench at Aurangabad in Civil Application No.11610 in Civil Application No.3919/2008 in Writ Petition No.2338/1999 [Manish s/o.Dharsibhai Parmar & another Vs. The Administrator, CIDCO & others] along with connected Civil Applications, and we are of the opinion that, the respondent is guided and bounded by the aforesaid pronouncement. The observations made in paras 14, 17, 27, 29, 30 and 32 of the aforesaid judgment can be considered as guiding factor / binding upon the respondent, so as to consider the case of the petitioner and to take decision keeping in view the

facts of the present case. Paras 14, 17, 27, 29, 30 and 32 of the aforesaid Judgment reads thus:

14. If any allottee/transferee approaches CIDCO for permission to built on a vacant plot, with the request to regularize on payment of the amount, CIDCO would consider the same on accepting, the difference in the market price which is to be calculated on the date of the order i.e. 28.03.2003. The allottee will have to pay additional amount with interest as per the Bank rate as taken into consideration earlier till the date of payment. The restriction of not holding more than one residential plot or tenement will also be applicable to such allottees / transferees. The CIDCO will consider the request of the allottees / transferees on its own merits within a period of four (4) weeks from receipt of the same.

We direct CIDCO to consider the request of such petitioners for regularization and for NOC for construction in light of above directions.

17. We further direct CIDCO that while considering the request for regularization etc of the multiple plot holders, it would take into consideration the principle enumerated in the order passed in W.P. 2078 of 2008, W.P. 5279 of 2008 and W.P. no. 2491 of 2004.

27. As regards serial no.6 i.e. plot no.85, it stands in the name of wife of petitioner namely Smt. Shakuntala. It was allotted on 7.8.1998. It is submitted by the petitioner that it is a small plot of 255 sq.mtr. which is by the side of Pramila's plot side. It is therefore submitted that it would be independently used for residence, as Shakuntala resides in the house of the petitioner

i.e. in the house of husband and the same is not convenient and healthy for both of them as the building in the name of petitioner Hiralal is in a prime commercial location in main Jalna road. It may however be noted that the plot is individually in the name of Shakuntala w/o petitioner which was allotted in the year 1998 and, therefore, it cannot be said that the direction as regards multiple allotment holders would be applicable in case of Shakuntala.

29. As regards serial no.8, 9, 10 and 11 i.e. plot nos.87, 88, 89 and 90 all the plots are transferred with the permission from the CIDCO prior to the passing of the judgment in the original Writ Petition. These plots were allotted to the petitioner or his son and already transferred to the third party.

30. Out of the above plots, plot no.87 at serial no.8 was already transferred by the petitioner and his son to a third party with permission from the respondent-CIDCO prior to the delivery of the judgment in the Writ Petition. In such circumstances, the third party cannot be penalised and the plot cannot be held to be owned by the petitioner.

32. As regards serial no.10 i.e. plot no.89 it was already transferred with prior permission of CIDCO and construction is already undertaken. Therefore, the same rule would apply in this case as is made applicable to plot no.88 at serial no.9.

10] In that view of the matter, the impugned communication / order issued / passed by respondent on 13.06.2012 is quashed and set aside. We direct the respondent to

consider the case of the petitioner and take appropriate decision, keeping in view the aforesaid judgment and in particular paragraphs mentioned herein above, as expeditiously as possible, however, within 6 weeks from today and communicate the said decision to the petitioner.

11] Rule is made absolute in above terms. Writ Petition stands disposed of accordingly.

[S . M . GAVHANE]
JUDGE

[S . S . SHINDE]
JUDGE

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