

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

WRIT PETITION NO. 10232 OF 2017

R K CONSTRO PROJECT PVT LTD THROUGH AUTHORIZED SIGNATORY
VERSUS
CITY INDUSTRIAL CORPORATION LTD AURANGABAD THROUGH
ADMINISTRATOR

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Advocate for the Petitioner : Shri Kasliwal Ajit D..
Advocate for the Respondent : Shri Tekale Nikhil S.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 02nd July, 2018

Per Court:

1 This matter was heard at length on 11.06.2018, 26.06.2018 and again today. On 11.06.2018, when this Court had expressed that it was not inclined to continue the ad-interim relief granted, the learned Advocate for the Petitioner requested for time to take instructions as to whether, the objections mentioned in the notice dated 19.10.2013 at page 39-A could be removed.

2 On instructions, it is submitted that six issues which are found in the notice dated 19.10.2013 have already been addressed by the Petitioner and the CIDCO Authorities did not have any objection with regard to these six issues. Insofar as the consumption of Floor Space Index (FSI) beyond allowable limits is concerned, the learned Advocate for the

Petitioner submits that, it is a matter of adjudication before the Trial Court in RCS No.454/2016.

3 The learned Advocate for the CIDCO Authorities submits that a notice was issued on 23.05.2016 whereby, the Petitioner was specifically made aware of the irregularities committed by it while completing the project of 150 flats. Those details were submitted to the Petitioner to inform it that the irregularities need to be cured and without curing such irregularities, the occupancy certificate would not be processed. It is further informed that this Petitioner has already sold all 150 flats and the purchasers have occupied the said premises and are residing in the said buildings, without any occupancy certificate.

4 It, therefore, appears that on the one hand, the CIDCO Authorities are pointing out the irregularities and the illegal construction consuming excess FSI and on the other hand, the Petitioner is keeping the CIDCO Authorities engaged in litigation as any litigation in the present days before the Trial Court takes years for adjudication.

5 The Trial Court rejected the Exhibit-5 application filed by the Petitioner seeking an injunction against the notice dated 23.05.2016. I find from the said notice that it is purely a communication to the Petitioner informing that it has sold the flats to the purchasers by constructing beyond the permissible FSI limits. Such communication is taken to the Trial Court as a cause of action. By a detailed speaking order,

the Trial Court has concluded that no protection can be granted to the Petitioner as against a prima facie conclusion of indulging in excess construction and selling of such tenements to about 150 purchasers, without occupancy certificate.

6 After the Trial Court rejected the application Exhibit-5 and refused injunction on 21.11.2016, the CIDCO Authorities issued the notice on 06.04.2017 so as to carry out demolition of certain portions of about 40 constructed flats.

7 The Petitioner's Miscellaneous Civil Appeal No.180/2016 was lodged on 06.12.2016. An application Exhibit-8 was filed before the Appellate Court for bringing the demolition notice to the knowledge of the Court. As this was a new development, the Appellate Court directed status-quo to be maintained. By judgment dated 09.08.2017, the Appellate Court has dismissed the appeal filed by this Petitioner after concluding that prima facie, the construction beyond permissible limits was resorted to by the Petitioner.

8 The notice dated 06.04.2017, which is termed as a demolition notice, is shown to the Court. The learned Advocate for the CIDCO Authorities submits that the said notice is issued under Section 53 of the Maharashtra Regional and Town Planning Act, 1966. Out of 150 flats, 10 specific buildings in which particular flats are required to suffer demolition, are set out in the notice. It appears that 140.38 square meters

in each of these 10 buildings on different floors wherever excess construction has occurred, has to be demolished and the total excess construction resorted to by the Petitioner is about 1405.38 square meters. This is the latest version of the CIDCO Authorities as regards excess construction resorted to by the Petitioner.

9 It is pointed out that the said notice can be subjected to the proceedings under Section 44 of the MRTP Act, 1966 by which, an aggrieved person can apply for permission for retention on the land of any building or works or for the continuance of any use of the land, to which the notice relates, and pending the final determination or withdrawal of the application, the mere notice itself shall not affect the retention of buildings or works or the continuance of such use.

10 Keeping the above in view, I called upon the learned Advocate for the Petitioner/ Construction Company to make a statement as to whether, it is willing to deposit Rs.50 lac before the Trial Court and on that condition, the protection against demolition can be granted and the suit can be expedited. The reply of the learned Advocate for the Petitioner was *"where is the question of depositing the said amount in the Court, when the Trial Court will consider the illegalities, if any."*

11 Considering the above and keeping in view that concurrent findings have been delivered by the Courts below considering that prima facie, the Petitioner has resorted to excess construction than the

permissible limits, I do not find that this petition deserves to be entertained. Even the order balancing equities could have been passed as suggested in the foregoing paragraphs and the said suggestion is not acceptable to the Petitioner.

12 As such, this Writ Petition being devoid of merit is, therefore, dismissed.

kps

(RAVINDRA V. GHUGE, J.)