

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7458 OF 2014

The South Indian Education Society. ..Petitioner.

Versus

CIDCO & Others. ..Respondents.

Mr. S. C. Naidu with Mrs. N. V. Sanglikar and Ms. Nandini Menon, Nirav Shah I/b Little & Co., for the Petitioner.

Mrs. R. S. Apte, Senior Advocate with Mr. A. M. Kulkarni for the Respondent-CIDCO.

Mr. S. S. Deshmukh, Estate Officer (HQ), CIDCO is present.

Coram : RANJIT MORE &
SMT. ANUJA PRABHUDESSAI, JJ.

Date : **June 19, 2018.**

P. C. :

1. Heard Mr. Naidu, the learned counsel for the Petitioner and Mr. Apte, the learned senior counsel for the Respondent-CIDCO.

2. The Petitioner is an educational institute. By this petition filed under Article 226 of the Constitution of India, the Petitioner has challenged the communication dated 16th January 2014 issued by the Respondent-CIDCO. By the said communication, the Petitioner's application for grant of additional FSI has been rejected.

3. Admittedly, the CIDCO has allotted to the Petitioner three plots bearing numbers 1C, 1D and 1E admeasuring respectively 10002.500 sq. mtrs., 2834.801 sq.mtrs. and 11958,340 sq. mtrs.,

totalling 24,795.64 sq. mtrs. for educational purpose. As per the earlier policy in force, the Petitioner was entitled for 1 FSI. The plots were amalgamated and the FSI of 1 in these three plots is already consumed.

4. On 12th November 2010, the Government issued notification sanctioning the modification to DCR 16.3(1a)C for CIDCO, Navi Mumbai under which an additional FSI has been granted to the religious, educational and medical institutions. By the subsequent notification dated 14th March 2016 the power to grant additional FSI has been delegated by the CIDCO to its Managing Director.

5. As stated above in pursuance of this policy, the Petitioner made an application for grant of additional FSI. This application came to be rejected by the order impugned in the present writ petition. The Petitioner's request has been rejected essentially on three grounds, namely, (1) the Petitioner has not provided for 5% mandatory reservation for the wards of employees of CIDCO, the State Government and PAPs; (2) the Petitioner has not removed stationery, xerox, etc shops set up in the marginal open space and (3) the Petitioner committed breach of the condition of lease agreement in respect of the Ved-Pathshala.

6. Mr. Apte, the learned senior counsel for the

Respondent–CIDCO fairly conceded that so far the first objection is concerned, [i.e., the objection regarding providing reservation to the wards of employees of CIDCO, the State Government and the PAPs,] the same is not applicable to the Petitioner–institute as they are imparting higher education / technical education. As far as second objection is concerned, the Petitioner has made specific averment that the said structures were temporary kiosks and they have been removed.

7. At this stage, it is required to be mentioned that CIDCO also contended that an area in excess of the sanctioned plan is utilised for the bank. Mr. Apte, the learned senior counsel for the CIDCO submitted that this can be regularised upon payment of additional premium. Mr. Naidu, the learned counsel for the Petitioner submitted that the Petitioner will pay additional premium in the event it is found that additional FSI is utilised for the bank purpose.

8. The third objection is about breach of terms and conditions of the lease agreement in respect of the plot used for Vedh-pathashala. There is no dispute that Vedh-pathashala is constructed on Plot No. 1D, the area of which is 2843.80 sq. mtrs. Mr. Apte, the learned senior counsel for the CIDCO submitted that in terms of the policy, the Petitioner is entitled for the additional FSI. He submits

that the additional FSI in respect of this plot cannot be granted as the said plot is used as a senior citizen home, which is in violation of the terms and conditions of lease agreement.

9. Mr. Naidu, the learned counsel for the Petitioner disputed that the Petitioner has breached the terms and conditions of lease agreement in respect of plot no.1D. He submitted that CIDCO can verify this aspect and in the event it is found that there is breach of the terms and conditions of the lease agreement, CIDCO may take appropriate action in that regard. He contends that change of user or breach of term and condition cannot be a ground to withhold the grant of additional FSI in respect of plot 1D. He also makes a statement that the Petitioner will not construct or consume additional FSI in respect of plot no.1D on which Ved-pathashala is constructed till such time CIDCO verifies and takes appropriate decision as regards breach of terms and conditions of the lease agreement. Statement accepted.

10. In the light of the above statement made on behalf of the Petitioner, Mr. Apte, the learned senior counsel for the Respondent- CIDCO, on instructions states that additional FSI in respect of three plots would be granted to the Petitioner as permissible under the policy of CIDCO, however, subject to the

condition that the Petitioner will not utilise such additional FSI in respect of plot no.1D till such time CIDCO verifies and takes a decision in this regard. Statement accepted.

11. In the light of above, we dispose of this petition by passing following order :

:- O R D E R :-

[1] The impugned communication dated 16th January 2014 [Exhibit-"EE" to the petition] issued by the Respondent-CIDCO is quashed and set aside.

[2] The Respondent-CIDCO shall grant additional FSI and No Objection Certificate to the Petitioner as per the policy in respect of three plots, namely, Plot Nos. 1C, 1D and 1E within the period of three weeks from today.

[3] The CIDCO shall verify as to whether the Petitioner has changed user of Ved-pathashala and has committed breach of the terms and conditions of lease agreement and take appropriate decision within three months.

[4] The Petitioner shall not utilise additional FSI in respect of plot No. 1D which is being used for Ved-pathashala till such time the CIDCO takes appropriate decision. The Petitioner shall not claim any equity of the concession granted by the Respondent-CIDCO.

[5] In the event it is found that the

Petitioner has used area beyond sanctioned area for the purpose of bank, the Petitioner shall be liable to pay additional premium to CIDCO.

[6] All concerned to act upon the authenticated copy issued by the Registry of this Court.

[SMT. ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]