

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO. 2262 OF 2018
IN
WRIT PETITION NO. 8134 OF 2015
WITH
W.P. NO. 8134 OF 2015**

Shamik Co-op. Hsg. Society Ltd., ... Applicant.
Represented by Secretary- M.K.Patel

In the matter between :

Shamik Co-op. Hsg.Society Ltd., ... Petitioner.
V/s.
City and Industrial Development Corporation
of Maharashtra Ltd. & Anr. ... Respondents.

Mr. Vijay M. Vaghela, Advocate for the Applicant/ Petitioner.
Mr. G.K.S.Hegde, Advocate for Respondents.

**CORAM : K.K. TATED & N.J. JAMADAR,JJ.
DATE : DECEMBER 11, 2018.**

PC :

1 Heard learned counsel for the parties.

2 By this civil application, the applicant - original petitioner, seeks leave to bring on record the subsequent events and to make appropriate prayers in the petition on that basis.

3 Learned counsel for the Applicant/ petitioner submits that civil appeal no. 77 of 2016 preferred by the Respondent CIDCO has been rejected by the learned District Judge-1, Thane on 19.03.2018. He submits that by this application, the applicant is seeking to place on record the said order and also to carry out amendment in the petition as well as in the prayer clauses for directions against the CIDCO in order to allot the Applicant/ Petitioner alternate plot of land. He submits that if the present civil application is not allowed, irreparable loss would be caused to the applicant. He submits that the applicant has no choice but to seek amendment in the petition. He submits that, in the interest of justice, this Hon'ble Court, be pleased to allow the present civil application.

4 On the other hand, learned counsel appearing for the Respondent-CIDCO vehemently opposed the present civil application. He submits that by way of present amendment application, the applicant, original petitioner, is seeking to amend the prayers in the pending petition. He submits that by this amendment, the petitioner is seeking direction against the CIDCO to allot them alternate plot of land, in case, if it is not possible for them to allot the earlier plot. He submits that neither the applicant made any application for alternate plot with the CIDCO nor the CIDCO has taken any decision to that effect. Hence, there is no question of allowing the present civil application.

5 We have heard both the sides at length. It is to be noted that in the present writ petition, the petitioner is seeking direction against the Respondent Corporation to perform their duty as per its letter dated 17.07.2001 and to execute the lease deed and hand over peaceful vacant possession of the plot of land bearing Plot No. B-2 in Sector 12 (BUDP) at Kharghar, Navi Mumbai. During the pendency of the present petition, other party has filed the suit before the trial court. In that, the trial court, directed the CIDCO to hand over possession of the said plot of land to the third party.

6 Considering this fact, the applicant is seeking permission to carry out appropriate amendment in the prayer clause for allotment of the alternate plot of land i.e. consistent with the earlier prayer. Therefore, we are of the opinion that the applicant has made out a case for allowing this application. Hence, the following order :

- i. Civil Application is allowed.
- ii. The Applicant/Petitioner is permitted to carry out amendment in writ petition no. 8134 of 2015, as per the Schedule – I to the civil application.

lii. Amendment to be carried out on or before 11.01.2019; failing which the civil application shall stand dismissed without referring back to the court.

iv. If amendment is carried out within stipulated time, the applicant is directed to provide amended copy of the writ petition to the Respondents on or before 18.01.2019.

v. On service of the amended copy of the writ petition in stipulated time, the Respondents is permitted, if they so desire, to file additional affidavit-in-reply on or before 22.02.2019 with copy to the other side.

vi. The matter to appear on board on 01.03.2019 under caption “for direction”.

Vii. Civil Application stands disposed of in the above terms.

(N.J. JAMADAR, J.)

(K. K. TATED, J.)

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