

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 8290 OF 2019

Shirish S/o. Chunilal Choudhary Petitioner

Versus

City and Industrial Development Corporation Ltd.,
through its Administrator,
CIDCO Office, Jalgaon Road, Aurangabad. Respondent

.....
Shri. S. G. Chapalgaonkar, Advocate h/f Shri. S. B. Rajebhosale,
Advocate for the petitioner
Shri. A. S. Bajaj, Advocate for respondent-CIDCO
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CORAM : S. V. GANGAPURWALA
AND
ANIL S. KILOR, JJ.

DATE : 17TH OCTOBER, 2019

PER COURT:-

1. Leave to amend title clause is granted.
2. The petitioner was allotted residential tenement Plot No. 8, H-Sector, CIDCO, N-5, Aurangabad, on 25.02.1980. The said plot was ad-measuring 214 sq.mtrs. It is sated that, 15% construction was made by the petitioner and part completion was also obtained on or about 11.10.1989. The petitioner was residing in the rented premises. On or about 14.06.2019, the respondent cancelled the

allotment of the tenement to the petitioner and also took over the possession.

3. Shri. Chapalgaonkar, the learned advocate for the petitioner submits that, during the interregnum period the petitioner was all throughout out of station and could not complete the minimum 25% construction required. The petitioner has made the representation. The same is not considered. The learned advocate for the petitioner further submits that, the petitioner be given one opportunity to complete the construction. The petitioner undertakes that the petitioner would submit the plan within four weeks and upon receiving the necessary construction permission, shall complete the construction within one year from the date of receipt of the commencement certificate. The learned counsel further submits that, the said tenement will be used for the personal occupation of the petitioner and it will never be alienated nor any third party interest will be created on the said plot by the petitioner or his heirs. The learned counsel for the petitioner submits that, the petitioner is ready to bear the penalty that may be imposed by this Court.

4. Shri. Bajaj, the learned advocate for the respondent - CIDCO submits that, 39 years have lapsed the petitioner has not

taken steps to complete the minimum construction. That shows petitioner is not interested in the plot. As per the order passed by this Court in Civil Application No. 7360 of 2002, the public notices were given by the respondent giving opportunity to the defaulters like the petitioner to take steps to construct the house. The petitioner did not pay any heed to the same. The notices were also issued to the petitioner and the order has been passed.

5. According to the petitioner, the notices were issued on the addresses of the petitioner where the petitioner is not residing.

6. We have considered the submissions canvassed by the learned counsel for the respective parties.

7. Considering the fact that it is a residential tenement, we have entertained the petition. If it would have been a case of commercial tenement, we would not have entertained the petition even for a moment.

8. The petitioner has submitted that, the petitioner does not own any plot or house of his own in the city of Aurangabad and is residing in the rented premises. The petitioner has also undertaken

that he would not alienate or create third party interest in the said premises and shall use the same for his own residential use.

9. This Court in number of cases has shown indulgence in case of residential plots. Considering the difficulty shown by the petitioner, we are inclined to give one more opportunity to the petitioner, however, the petitioner also deserves to be penalized for the same.

10. Hence, we pass the following order.

ORDER

- (i) The petitioner shall file an undertaking to this Court clearly stating that, the petitioner shall use this writ tenement for his personal residence. He shall not alienate or create third party interest of the said tenement. His heirs will also be bound by the same. He will, within four weeks from today, submit the plan for the construction of the tenement. Within four weeks from today, the petitioner shall deposit the penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakhs) with respondent - CIDCO. The deposit of penalty within the time stipulated is a condition precedent, failing which the present order shall axiomatically stand recalled and the petition dismissed.

- (ii) On deposit of the amount as directed above, the CIDCO shall issue No-Objection Certificate (NOC) to the petitioner and the petitioner shall submit the plan within four weeks of receiving the NOC to the Municipal Corporation, Aurangabad. The plan shall be complete in all respects. If there are any defects in the plan as may be pointed out by the Corporation, the same shall be cured within four weeks from the date of receipt of intimation from the Corporation. The construction shall be completed within one month of the commencement certificate issued to the petitioner.
- (iii) In case, any of the aforesaid clauses and conditions are transgressed or violated by the petitioner, CIDCO - respondent will have every right to re-possess the said writ tenement.
- (iv) The impugned order is quashed and set aside on terms and conditions enumerated above.

11. With these observations, the Writ Petition stands disposed of. No costs.

[ANIL S. KILOR]
JUDGE

[S. V. GANGAPURWALA]
JUDGE