

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

WRIT PETITION NO.868 OF 2014

Magan Deuba Tarde,
Age; 50 years, Occ; Business,
Resident of N-2, P/12/08,
Vitthal Nagar, CIDCO,
Aurangabad, Taluka and
District; Aurangabad.

PETITIONER

VERSUS

1. The State of Maharashtra,
2. The Administrator,
City & Industrial Development,
Corporation, Aurangabad,
District; Aurangabad.

RESPONDENT

.....

Shri. A.M. Karad h/f Mr. G.N.Kulkarni, Advocate
for Petitioner

Shri. P.N. Kutti, AGP for Respondent No.1
Shri. A.S. Bajaj, Advocate for respondent No. 2

...

**CORAM : T.V. NALAWADE &
SUNIL K. KOTWAL, JJ.**

Date of Judgment : 15.01.2019.

JUDGMENT : (Per Sunil K. Kotwal, J]

By filing this Writ Petition, the petitioner

has sought direction against respondent No. 2, the City and Industrial Development Corporation, Auangabad, (hereinafter referred to as the 'CIDCO') to execute necessary documents in favour of the petitioner, regarding the allotment of plot No. 41, situated at Survey No. 12, N-2 CIDCO, Aurangabad.

2. Heard Shri A.M. Karad h/f Mr. G.N. Kulkarni, learned counsel for the petitioner, learned AGP for respondent No. 1, State and learned counsel Shri A.S. Bajaj for respondent No. 2.

3. Learned counsel for petitioner submits that in the year 1989, one tenement No. 23/03, N-2/P-2 was allotted to the petitioner by respondent No. 2. However, subsequently, to meet out the expenses of medical treatment of the petitioner, as well as for betterment dues, additional requirement of space, the petitioner transferred said tenement in favour of Smt. Kamal Baburao Mokase on 10.01.2009.

4. By that time, in response to the advertisement published by response No. 2 CIDCO, regarding allotment of plots in CIDCO area, the petitioner filed application for allotment of the plot. During the course of allotment, by lottery system, plot No. 41, situated in N-2 CIDCO, Survey No. 12, was ear marked in the name of the petitioner. Though, the petitioner deposited earnest amount of Rs. 19,200/-, subsequently, on 9.4.2009, respondent No. 2 issued letter to the petitioner and informed that the plot No. 41, cannot be allotted to the petitioner, as the tenement No. 23/03 N-2/P-2, in CIDCO, is recorded in the name of the petitioner.

5. Learned counsel for the petitioner submits that though on the date of allotment of plot No. 41 in favour of the petitioner, the above said second tenement was recorded in the name of the petitioner, it was already transferred in favour of Kamal Baburao Mokase under the agreement dated 10.01.2009. Only the effect of that transfer was not given in the records

of CIDCO. He submits that therefore, the direction given by this Court in **"Hiralal Motilal Desarda vs CIDCO and others"** [2001 (2) Mah. LR 676] that one person can retain only one house and flat or plot in CIDCO, cannot create any legal impediment for allotment of plot No. 41 of the petitioner. He placed reliance on the following judgments of this Court :

1. **"Ramesh Bodhraj Nagpal vs The State of Maharashtra and another"** [WRIT PETITION NO. 6315 OF 2006]
2. **"Janardhan Parshuram Patil vs The State of Maharashtra and others"** [WRIT PETITION NO. 12115 of 2015]
3. **"Jaimalsingh Gurucharansingh Randhawa and Anr. Vs The State of Maharashtra and Ors"** [WRIT PETITION NO. 1276 OF 2007]

6. Learned counsel for respondent No. 2 submits that even in the application for allotment of plot submitted by the petitioner (Exhibit-A), the petitioner has admitted the condition No. 5 that no plot/ tenement was recorded in the name of the petitioner and if the contents of his application are

found to be in correct, the CIDCO Authority would be at liberty to cancel the allotment of plot. The learned counsel for respondent No. 2 has pointed out that on the date of allotment of plot No. 41, tenement No.23/03 N-2/P-2, in CIDCO area was recorded in the name of the petitioner and its transfer is effected only on 16.7.2009. Therefore, as the petitioner has committed breach of condition for allotment of CIDCO plot, the CIDCO Officials have rightly rejected the claim of the petitioner on plot No. 41. The contention of the learned counsel for respondent No. 2 is that the so called agreement of transfer of previous tenement, in favour of Kamal Baburao Mokase is antedated prepared document by the petitioner.

7. We have gone through the above cited authorities, relied on by the learned counsel for the petitioner. It is suffice to say that the ratio of the authorities is not applicable in the case at hand, due to distinguishable following circumstances

of the case in hand.

8. No doubt, while deciding the Public Interest Litigation filed by one **"Hiralal Motilal Desarda vs CIDCO and others"** (supra) the Division Bench of this Court cancelled the bulk allotment of plots by the CIDCO and issued certain guidelines, regarding allotment of CIDCO plots. In accordance with those guidelines, no land in possession of CIDCO, can be disposed of in absence of public proclamation/tender. Those guidelines also make it clear that the land reserved for residential purposes shall also be allotted in favour of individuals/Associations, only for construction of residential house, dwelling tenements and flats for self use or for use of the members on 'No Profit No Loss' basis. The written undertaking to that effect shall be submitted along with the tender. This condition also makes it clear that the tenderer, who proposed to acquire CIDCO land reserved for the residential purpose for building flats and dwelling houses,

tenements for being sold, shall be dis-qualified in such allotment. The directions given by this court in the above said Public Interest Litigation "**Hiralal Motilal Desarda vs CIDCO and others**" (supra) are confirmed by the Apex Court, subject to minor modifications in "**Padma vs Hiralal Motila Desarda and Ors.**" [2002 Supp (2) SCR 179].

9. Thus, the legal position has become clear that if one plot or a tenement is allotted to one citizen, he can use it only for the residence and subsequent sale of that plot disqualifies that person from claiming second CIDCO plot for residence.

10. In the case at hand, though the petitioner tried to convince this Court that on 10.1.2009 the tenement, which was previously allotted to the petitioner, was transferred in favour of Kamal Baburao Mokase, the documents placed on record by the petitioner falsify his own contention. After going through the tenement transfer order (Exh.-D), passed

by the Administrator CIDCO (New), Aurangabad regarding the transfer of tenement, recorded in the name of the petitioner, it emerges that application for transfer was submitted by the petitioner to CIDCO Office on 1.6.2009, i.e. after ear marking plot No. 41 in the name of the petitioner. The order of transfer of tenement of the petitioner was passed on 16.7.2009. The so-called agreement of transfer in favour of Kamal Baburao Mokase dated 10.1.2009, is not conveniently placed on record by the petitioner. Thus, these documents placed on record are sufficient to hold that on the date of allotment i.e. on 10.2.2009 of plot No. 41 by lottery system in favour of the petitioner, the petitioner was holding tenement No. 23/03, N-2/P-2, in CIDCO Housing System. Only after ear marking plot No. 41, in the name of the petitioner, he moved the CIDCO Authority on 1.6.2009 for transfer of tenement No. 23/03, N-2/P-2 in favour of Kamal Baburao Mokase. Even the order regarding transfer of tenement No. 23/03, N-2/P-2 was passed on 16.7.2009 (Exhibit-D). These circumstances

clearly show that only after ear marking of plot No. 41 by the CIDCO authority in favour of the petitioner, the petitioner prepared the so called agreement dated 10/1/2009 of transfer of his tenement in favour of Kamal Baburao Mokase, only to show that on the date of allotment of 10.1.2009, he was not holding any residential tenement.

11. Another important factor to be noted is that in the affidavit the petitioner Magan Deuba Tarde contended that to meet out the expenses of his ailment, in the month of January 2005, he sold out tenement No. 23/03, N-2/P-2 to Kamal Baburao Mokase. It cannot be ignored that the petitioner obtained treatment at Grand Medical College & Sir J.J. Group of Hospitals, Mumbai in between 23.1.2005 to 31.1.2005. Thus, obviously, the petitioner might be in need of money, in the month of January 2005. However, as per the contention of the petitioner, the previously allotted tenement was transferred in favour of Kamal Baburao Mokase, in the year 2009 i.e.

after lapse of four years from the date of need of money. Thus, the so called ailment of the petitioner in the January 2005, cannot be connected with the transfer of tenement in the year 2009. Otherwise also, the petitioner has not placed on record the document of transfer dated 10.1.2009, to show as for what price it was sold out to Kamal Baburao Mokase. Such type of dubious conduct of the petitioner, clearly indicates that the said transfer dated 10.2.2009 is certainly malafide transfer, only to grab the plot No. 41, which was ear marked in the name of the petitioner, in the lottery system. So also as the petitioner has sold out previously allotted tenement for residential purpose to Kamal Mokashe, he is disqualified for allotment of CIDCO plot or tenement, in view of directions issued by this Court in "**Hiralal Motilal Desarda vs CIDCO and others**" (supra).

12. The above discussed circumstances are sufficient to hold that on 10.2.2009 i.e. on the date

of allotment of plot No. 41, the petitioner was the holder of tenement No. 23/03, N-2/P-2 in CIDCO area. Therefore, as per the undertaking given by the petitioner in his application, the respondent No. 2 had every right to cancel the allotment of plot No. 41, in favour of the petitioner. On the other hand, the above discussed circumstances emerging from the documents placed on record by the petitioner himself, it emerges that the petitioner has not come before this Court with clean hand, in whose favour the discretion can be exercised by this court. Thus, considering over all malafide acts of the petitioner, to grab the plot No. 41, in CIDCO area, we hold that the directions as sought by the petitioner cannot be issued. In the result, the Writ Petition No. 868 of 2014 is dismissed. Rule is discharged. Parties to bear their respective costs.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE

mahajansb/