

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

WRIT PETITION NO. 11009 OF 2018

...

M/s. Deziners Home Pvt. Ltd.

Through Its Director

....Petitioner

V/S

The City And Industrial Development
Corporation And Ors.

....Respondents

...

Mr. Akhilesh Dubey a/w Mr. Uttam Dubey & Siddhesh Rajput i/by Law
Counsellors for the Petitioner.Mr. Ashutosh M Kulkarni a/w Mr. Gaurav Sharma for Respondents Nos.1 to
3.

Mr.Y.D. Patil, AGP for the State.

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CORAM : A.A. SAYED &**PRAKASH D. NAIK, JJ.****DATED : 2 AUGUST 2019****P.C.:**

Leave to amend the Petition to add a prayer clause to challenge the communications (Exhibits `M' & `N' to the Petition). Amendment to be carried out forthwith.

2. The Petitioner has challenged the communications (Exhibits M & N to the Petition) of Respondent-CIDCO refusing to grant Occupation Certificate in respect of Plot No.65, Sector-9, Village-Ulve, Navi Mumbai (hereinafter referred to as `the subject Plot No.65'), issued under the

provisions of section 45(1)(ii) of the Mumbai Regional & Town Planning Act, 1966 and has sought mandatory direction against the Respondent-CIDCO to issue the Occupancy Certificate.

3. It is the case of the Petitioner that the ancestors of one Dosu Ardeshir Bhiwandiwalla (predecessor-in-title of the present Petitioner) were owners of certain agricultural lands bearing Survey No.464, 344 Hissa No.5A and Survey No.344 Hissa No.4C, which came to be acquired (hereinafter referred to as 'the acquired lands') by Respondent-CIDCO and an award under section 11 of the Land Acquisition Act, 1894 was made in their favour. Under the 12.5% scheme floated by the Respondent-CIDCO, in addition to the compensation awarded, alternate land was allotted in accordance with the said Scheme to persons whose land came to be acquired by Respondent-CIDCO. The said Dosu A. Bhiwandiwalla being the legal heir was accordingly allotted an alternate Plot being Plot No.52, Sector-9, Village Ulve, Navi Mumbai under the said 12.5% Scheme under an allotment letter dated 28 February 2008.

4. On 18 March 2008, the Respondent-CIDCO executed an Agreement to Lease with the said Dosu A. Bhiwandiwalla and possession of the said Plot No.52 was handed over to him. The said Dosu A.

Bhiwandiwalla agreed to transfer his leasehold rights in respect of the said Plot No.52 to the present Petitioner i.e. M/s.Deziners Home Pvt.Ltd. A tripartite Agreement dated 24 October 2008 was entered into between Respondent-CIDCO, the said Dosu A. Bhiwandiwalla and the Petitioner and the said Plot No.52 came to be transferred in the name of the Petitioner.

5. According to the Petitioner, in view of the modification in the layout and master plan, the Respondent-CIDCO granted a substitute Plot being Plot No.65, Sector-9, Village- Ulve, Navi Mumbai, admeasuring 449.97 sq.mtrs. (i.e. the subject Plot), in place and instead of original Plot No.52 admeasuring 449.68 sq.mtrs. Accordingly, a Deed of Rectification was executed on 20 June 2011. On 19 December 2011, pursuant to an application for development and construction of a building on the subject Plot No.65, Commencement Certificate was issued by the Respondent-CIDCO to the Petitioner. Consequent thereto, the Petitioner has carried out construction of a building on the subject Plot No.65, photographs whereof are annexed at page 211 of the Petition. The photographs show that the construction of the building is complete.

6. It is the case of the Petitioner that it has invested huge amounts in developing the said plot and taken loans from various lenders to complete

the project. According to the Petitioner, it has sold various flats in the constructed building to the 3rd party purchasers, who have also taken loans from various financial institutions. On 15 May 2015, a 'No Dues Certificate' was granted to the Petitioner by the Executive Engineer (WS-I), CIDCO Ltd. with a noting - "This office has 'No Objection' to grant necessary O.C. to plot owners as requested". Since the construction of the building was complete in the year 2015, the Petitioner applied for Occupation Certificate and requested Respondent-CIDCO to take inspection of the building. By the impugned communications, however, the Application for grant of Occupation Certificate came to be rejected citing the following 4 non-compliances viz. 1) Earthquake Stability Certificate by Structural Engineer; 2) extension of time limit from Estate section, 3) Compliance for No Dues Certificate from Estate section and 4) Licence to work the lift from CE(Electric), PWD, if applicable, and for any other reasons. The impugned communications have an endorsement thereon, which reads as follows:

"BP-10828 sent to CVO for further directives for processing OC, as owner is Bhiwandiwalla Trust".

According to the Petitioner, it became aware of the refusal of the Occupation Certificate through the website of the Respondent-CIDCO. Aggrieved thereby, the Petitioner has filed the present Petition.

7. An Affidavit-in-Reply has been filed on behalf of Respondent-CIDCO by the Senior Planner (Building Permission). Paragraphs 6 to 9 of the Affidavit-in-Reply read as follows:

“6. The Petitioner has relied upon certain documents which are annexed to the Petition in support of his claim. In short, the Petitioner has claimed that the predecessor of one Shri.Dosu A.Bhiwandiwalla was the owner in his individual capacity of a parcel of land situated at Gavhan, Taluka Panvel, District Raigad, that the said parcel of land was acquired for Navi Mumbai Project and therefore, he was individually entitled to the benefit of 12.5% scheme. Accordingly, he was initially allotted Plot No.52, Sector 9, Village-Ulve, Navi Mumbai. The Petitioner claims to have purchased the plot No.52, Sector 9, village-Ulve, Navi Mumbai by way of tripartite agreement dated 24-10-2008. However, as per the change in the demarcation by the CIDCO, the Plot No.52 was later on substituted by the suit plot i.e. Plot No.65, Sector 9, Village-Ulve, Navi Mumbai. Thereafter, the Petitioner appears to have applied for development permission, commencement certificate etc. which also came to be granted by the CIDCO. After completion of building, it further appears that the Petitioner applied for OC to the CIDCO.

7. At this juncture, while processing the application for grant of OC, the aspect of fraud and fabrication in respect of very basic allotment of plot under 12.5% scheme was revealed by the Chief Vigilance officer of the CIDCO, who is from the IPS cadre. The entire matter was duly investigated by the Chief Vigilance officer and he submitted a report to the concerned higher authorities of CIDCO. As per his report, the forged Award was used to avail allotment of plot under 12.5% scheme. He also noted that the concerned officials of the CIDCO did not scrutinize that there was a stamp of 'Bhiwandiwalla Trust' on the CC form and possession certificate. He also recorded that the concerned officers have also neglected the report of the Field Officers (Survey) that the land holder i.e. Shri.Dosu A. Bhiwandiwalla was not a resident of the village Gavhan, Taluka Panvel, District Raigad, but stayed in Bandra and that the Grampanchayat documents submitted by him mentioned that he was staying in the village Gavhan. He finally recommended to take departmental action against the concerned officials of the CIDCO and also registering FIR against the beneficiaries of the illegal allotment of land as well as against the Revenue Officers who issued fraudulent award.

8. Upon the report of Chief Vigilance Officer, various other officials/departments of the CIDCO recorded their findings in concurrence with the said report. Finally, the Ld. Managing Director of the CIDCO on 01-04-2016, accepted the report of the Chief Vigilance Officer and approved the action as proposed by him.

9. In short, taking into consideration the aforesaid facts and circumstances, it is a clear case of fraud and fabrication of Government record in seeking allotment of suit plot by the vendor of the Petitioner. On account of such fraud the basis allotment of the suit plot to Shri. Dosu A. Bhiwandiwalla itself is vitiated. He himself was never entitled to any allotment under the 12.5% scheme. As per the 12.5% scheme, the public trust, despite its lands are acquired, is not entitled to the alternate plot and only the individuals whose lands are acquired were entitled to the said benefit. It is important to note the object and purpose of the 12.5% scheme. Basically, the said scheme was floated as an additional and special benefit only to the PAPs of Navi Mumbai Project. The PAPs who were agriculturists lost all their agricultural holdings and they became landless. Their source of livelihood itself was jeopardized due to acquisition of their lands. Therefore, the benefit of developed alternate plot to the extent of 12.5% of the total

acquired land was given to the said PAPs. Such was not the case in respect of the public trusts. Therefore, the public trusts were specifically excluded from the purview of the said scheme. Therefore, Shri. Dosu A. Bhiwandiwalla or his POA holder Shri Sashikant Natwarlal Thakkar appear to have adopted these fraudulent tactics to show the property of the trust as individual property and grab the benefits of the 12.5% Scheme. As per the report Chief Vigilance Officer of CIDCO, the present one is one of such fraudulent cases. Under these circumstances, the Petitioner is not entitled to seek grant of Occupation Certificate, much less by invoking writ jurisdiction of this Hon'ble Court."

8. We have heard learned Counsel for the Petitioner and the learned Counsel for Respondent-CIDCO.

9. The sole contention urged by the learned Counsel for the Respondent-CIDCO is that since the acquired lands belonged to a Public Trust (i.e. Bhiwandiwalla Trust), the allotment of alternate land was impermissible under the said 12.5% Scheme of CIDCO and that a fraud was practiced by the said Dosu A. Bhiwandiwalla (predecessor-in-title of the present Petitioner) by obtaining the allotment of alternate land in his favour.

It is pointed out on behalf of Respondent-CIDCO that Public Trusts have been specifically excluded from the purview of the 12.5% Scheme. It is submitted that since the allotment of alternate land was vitiated on account of fraud, the Petitioner is not entitled to be issued Occupancy Certificate in respect of the subject Plot No. 65. Learned Counsel for the Respondent-CIDCO has pointed out that the endorsement and signature acknowledging payment of compensation in respect of the acquired lands on the Form-CC (pages 43 to 49 of the Petition), discloses that the compensation in respect of the acquired lands has been accepted by one Shashikant Natwarlal Thakar as Constituted Attorney of the Trustee of the Bhiwandiwalla Trust. Learned Counsel for the Respondent-CIDCO has drawn our attention to the rubber stamp on Form-CC which reads thus- "P.A. of the Trustee of the Estate of Late Khan Bahadur H.M.Bhiwandiwalla". In our view, the mere fact that such endorsement has been made on the CC-Form can hardly form the basis for Respondent-CIDCO to contend that the acquired lands belonged to the Bhiwandiwalla Trust.

10. We have perused the relevant 7/12 extracts of the acquired lands. It shows the names of three persons i.e. Ardeshir Horamasji Bhiwandiwalla, Kaikhusru Horamsji and Behramjee Horamsji as owners. From the 7/12 extracts, it is apparent that the acquired lands belonged to individuals and

not to a Public Trust (Bhiwandiwalla Trust). Except for the endorsement on Form-CC mentioned above, which according to the learned Counsel for the Petitioner can at the highest be termed as a mistake, there is nothing brought forward by the Respondent-CIDCO to show that the acquired lands belonged to Bhiwandiwalla Trust or on what basis can it be said that there was any fraud as sought to be contended. However, to satisfy ourselves, we called upon the learned AGP to produce a copy of Extract of Register of Public Trusts (Schedule-1) in respect of the said Bhiwandiwalla Trust (Full name- "Estate of Late Khan Bahadur Homrasji Manekji Bhiwandiwalla"). Such Register in the form of Schedule-1 (of Rule 5 of the Bombay Public Trusts Rules, 1951) in respect of all Public Trusts is maintained by the Office of the Charity Commissioner, which interalia reflects the immoveable properties owned by such Trusts. The learned AGP has accordingly produced a copy of the same. Upon perusal thereof, we find that the Schedule-1 does not reflect that the acquired lands were owned by the said Bhiwandiwalla Trust. Moreover, a perusal of a copy of the Award (Exhibit 'A' to the Petition) shows that the compensation in respect of the acquired lands was awarded to individuals who were the ancestors of Dosu Adhershiri Bhiwandiwalla (the predecessor-in-title of the present Petitioner.). It is not in dispute that Bhiwandiwalla Trust did not lay any claim to the compensation in respect of the acquired lands. Even if we presume that the

said Dosu Adheshir Bhiwandiwalwa was a Trustee of the Bhiwandiwalwa Trust, that would not take the case of Respondent-CIDCO any further. We may at this juncture state that it is not contended by the learned Counsel for Respondent-CIDCO before the Court that under the 12.5% scheme there is a requirement that the owners must reside in the same village where the acquired land is situate to be eligible for alternate land.

11. In the circumstances, the contention on behalf of the Respondent - CIDCO that the acquired lands belonged to Bhiwandiwalwa Trust cannot be countenanced. Learned Counsel for the Respondent-CIDCO has relied upon the judgment of the Supreme Court in Civil Appeal No.6652 of 2008 dated 14 November 2008 to contend that the said Dosu Ardeshir Bhiwandiwalwa, who was Respondent in the said proceedings had raised the similar contentions in respect of some other land which invited adverse observations of the Apex Court while remanding the matter to the High Court. We do not see how that said judgment would have any relevance to the present case, when it is not disputed before the Court that the land in question before the Supreme Court was some other land and not the acquired lands in the present case.

12. It is pertinent to note that Respondent-CIDCO had itself entered into a tripartite Agreement with the said Dosu Ardeshir Bhiwandiwalla and the present Petitioner. As indicated earlier, after the initial allotment of the Plot No.52 under 12.5% Scheme, the Respondent-CIDCO granted a substituted Plot No.65 (i.e. subject Plot) and even executed a Rectification Deed. A Commencement Certificate was also issued to the Petitioner by Respondent-CIDCO for development and construction on the subject Plot No.65. The Petitioner has invested huge amounts in developing the said plot and constructed a building thereon and various flats in the said building have been sold to 3rd parties and some of them, according to the Petitioner, have obtained loans from various financial institutions. As stated earlier, from the photographs on record, it is seen that construction of the building is complete. Learned Counsel for the Petitioner submitted that the Petitioner has even complied with the 4 objections raised in the impugned communications, however, the Respondent-CIDCO has highhandedly refused to issue Occupation Certificate on grounds which are non-existent.

13. In the facts and circumstances of the case, in our view, there was no justification in Respondent-CIDCO refusing to grant the Occupation Certificate to the Petitioner. Nothing is brought on record by the Respondent -CIDCO to show that the plot in question belonged to a Public Trust

(Bhiwandiwala Trust) or that any fraud was practiced by Dosu Ardeshir Bhiwandiwala, (the predecessor-in-title of the Petitioner). There is sufficient material to conclude that the acquired lands were private lands and not lands belonging to Public Trust as sought to be alleged. Nothing is brought on record to show what steps have been taken pursuant to the inquiry conducted by Respondent-CIDCO. It is required to be noted that there is no allegation made against the present Petitioner of having committed any wrongful act. On the contrary, the Respondent- CIDCO had itself executed the tripartite Agreement with the Petitioner and even issued the Commence Certificate, pursuant to which the Petitioner has completed the construction of the building as far back as in the year 2015. In our view, the refusal of issuance of the Occupancy Certificate to the Petitioner for the subject Plot No.65 by the Respondent-CIDCO, on the ground that the acquired lands belonged to a Public Trust (Bhiwandiwala Trust) is without any basis or justification.

14. In the circumstances, the impugned communications refusing to grant Occupation Certificate to the Petitioner are set aside. The Respondent-CIDCO is directed to issue Occupation Certificate to the Petitioner in respect of the subject Plot No.65, subject to the Petitioner making necessary formal compliances, if any, expeditiously and in any event within eight weeks from the date this order is uploaded.

15. The Petition is allowed in the aforesaid terms.

(PRAKASH D. NAIK,J.)

(A.A.SAYED, J.)