

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION(st) NO. 28184 OF 2019

Shri Nitin B. Patil

..Petitioner

Vs.

City and Industrial Development

Corporation of Maharashtra Limited

(CIDCO) and Others

..Respondents

Mr. P. K. Dhakephalkar, Senior Advocate a/w Mr. N. Bhutekar i/b Mr. Rahul S. Kadam, for the Petitioner.

Mr. Rohit P. Sakhadeo, for Respondent Nos.1 to 3.

Mrs. M. P. Thakur, AGP, for Respondent No.4 State.

**CORAM:-S. J. KATHAWALLA &
B. P. COLABAWALLA, JJ.**

DATE :- DECEMBER 5, 2019.

P. C.:

By this Writ Petition, the Petitioner has sought a declaration that the levy of delayed payment charges by the City and Industrial Development Corporation of Maharashtra Limited (for short "CIDCO") is *ultra vires* the Maharashtra Regional and Town Planning Act, 1966. The consequential prayer is that the Respondents be directed to execute the agreement for sale as per the regulations and CIDCO be directed to hand over possession of Flat No. 101 in

Building No. M-12, “Valley Shilp”, Sector-36, Kharghar, Navi Mumbai. A prayer is also sought for quashing and setting aside the demand notice/communication dated 14th November, 2017 demanding delayed payment charges of Rs. 14,61,760/- along with the letter of cancellation dated 8th February, 2018.

2 The brief facts of the present case are that CIDCO implemented a housing scheme by the name “Valley Shilp” situated at Sector-36, Kharghar, Navi Mumbai. The said scheme comprised of two categories, namely, one for the Middle Income Group (M. I. G.) and the other for the High Income Group (H. I. G.). The cost of the flat for the M. I. G. was fixed between Rs. 49 Lacs to Rs. 60 Lacs. The scheme also had reservations for various categories including for handicapped persons.

3 The Petitioner is a handicapped person (partially blind), and therefore, applied under the handicap quota for a flat in the M. I. G. category by depositing earnest money of Rs.5,00,000/- (Rs. Five Lacs Only). Since the allotment of the flats was to be done by a draw of lots, somewhere in the year 2014, the name of the successful purchasers was published on the website of CIDCO and the Petitioner was one of the successful purchasers. Accordingly, Flat No. 101 in Building No.M-12, admeasuring 56.64 Square Meters (609.66

sq.feet carpet area) was allotted to the Petitioner and a declaration letter dated 31st March, 2014 was issued to the Petitioner. The total consideration for the aforesaid flat allotted to the Petitioner was Rs. 49,70,018/- and which was required to be paid in four installments. As per the terms and conditions of the allotment letter, these four installments were to be paid starting from 15th September, 2014 and ending on 30th January, 2015.

4 It is the case of the Petitioner that this allotment letter was received by the Petitioner at a very belated stage and due to the short period granted by CIDCO for payment of the first installment, the Petitioner could not make the necessary arrangements. Be that as it may, it is only on 4th May, 2016 that a loan of Rs. 31,60,000/- was sanctioned to the Petitioner. It is not in dispute that thereafter the Petitioner has paid the entire consideration amount on 30th December, 2016. It is the grievance of the Petitioner that despite this, the possession of the said Flat No. 101 has not been handed over to the Petitioner on the ground that the Petitioner was required to pay the delayed payment charges, and only after paying the same, the Petitioner would get possession.

5 It is the case of the Petitioner that when the Petitioner went to check the details of the amount payable towards delayed payment charges, the

Petitioner found a letter in the file of the concerned department of CIDCO which contained a copy of the demand notice/ Communication dated 14th November, 2017 (impugned herein) wherein the Petitioner was asked to pay a sum of Rs. 14,61,760/- and an additional sum of Rs. 68,187/- as delayed payment charges. Since this payment was not made, the Petitioner was issued a letter of cancellation of allotment dated 8th February, 2018. It is the case of the Petitioner that even this letter was not communicated to the Petitioner and the same was obtained by him only under the Right to Information Act. It is thereafter that the present Petition has been filed assailing the impugned Communication dated 14th November, 2017 (levying delayed payment charges) and the letter of cancellation of allotment dated 8th February, 2018.

6 In this factual backdrop, we have heard Mr. Dhakephalkar, the learned Senior Advocate appearing on behalf of the Petitioner and Mr. Sakhadeo, the learned Advocate appearing on behalf of Respondent Nos.1 to 3. Mr. Sakhadeo brought to our attention the affidavit in reply filed on behalf of Respondent Nos.1 to 3 (CIDCO and its officials) wherein it is stated that the Petitioner is in default of payment of Rs.14,61,760/- towards delayed payment charges and additional service tax of Rs. 68,187/- . It is in these circumstances and since this amount has not been paid, CIDCO was constrained to issue the letter of cancellation of allotment, was the submission.

7 On the other hand, Mr. Dhakephalkar, the learned Senior Advocate appearing on behalf of the Petitioner submitted to this Court that even today and without prejudice to the rights and contentions raised in the petition, the Petitioner is willing to pay the aforesaid sum of Rs. Rs. 14,61,760/- towards delayed payment charges and additional service tax of Rs. 68,187/- to put an end to the matter. The learned Senior Advocate requested the Court to take a sympathetic view considering that the Petitioner is a handicapped person and though a practicing advocate of this Court, is not well to do financially. He, therefore, submitted that to put an end to this matter, the Petitioner will pay the aforesaid amounts within a period of five months from today on such terms and conditions as this Court may deem fit.

8 We have heard the learned Senior Advocate for the Petitioner as well as the advocate for Respondent Nos.1 to 3. Though really speaking, prima facie, we do not find anything wrong with the actions taken by CIDCO, considering that the Petitioner is a handicapped person, we think that it would be in the fitness of things and to do complete justice that one last opportunity be given to the Petitioner to make payment of the delayed payment charges as well as service tax so as to enable him to enjoy the allotment of Flat No. 101 done in his favour by CIDCO. We must make it clear that we are doing this purely on

humanitarian grounds and only because Mr. Dhakephalkar has submitted that the Petitioner is willing to make the payment to put a quietus to the entire matter. This order should not be treated as a precedent.

9 In the aforesaid circumstances, the following order is passed:-

- I. The Petitioner is directed to pay the sum of Rs. 15,29,947/- (Rs.14,61,760/- +Rs. 68,187/-) within a period of five months from today.
- II. Out of the aforesaid amount of Rs. 15,29,947/-, a sum of Rs.7,64,973/- shall be paid on/before 7th February, 2010 and the balance amount of Rs.7,64,974/- shall be paid on/before 8th May, 2020.
- III. Once the entire payment is made as aforesaid without any default, CIDCO shall hand over possession of the aforesaid Flat No. 101 to the Petitioner and the letter dated 8th February, 2018 shall stand quashed and set aside.
- IV. If any default is committed in making payment of any of the aforesaid installments, or any part thereof, the Writ Petition shall stand dismissed and Respondent Nos.1 to 3 shall be entitled to cancel the allotment made in favour of the Petitioner as per their letter of cancellation dated 8th February, 2018.

10 It is clarified that this order has been passed only in the peculiar facts and circumstances of this case, and considering that the Petitioner is a handicapped person and has himself offered to make the aforesaid payments within a time bound schedule. Under no circumstances shall this order be used as a precedent against CIDCO for any purpose whatsoever.

11 The Writ Petition is accordingly disposed of. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B. P. COLABAWALLA, J.)

(S. J. KATHAWALLA, J.)