

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.10754 OF 2016

Smt. Zaheda Ahmed Kazi,
Age-67 years, Occu:Household,
R/o- 1-5-17 Deodi Bazar, Aurangabad,
Through the Authorized Person,
Viz., Mohd. Yusuf Qureshi,
Age-58 years, Occu:Retired,
R/o-Jubilee Park, House No. 5-5-25,
Bhadkal Gate, Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Principal Secretary,
Urban Development Department,
Mantralaya, Mumbai-400032,
- 2) City & Industrial Development
Corporation of Maharashtra Ltd.,
Udyog Bhawan, Aurangabad,
Through its Administrator,
- 3) The Municipal Commissioner,
Aurangabad Municipal Corporation,
Aurangabad.

...RESPONDENTS

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Mr.Atul M. Karad Advocate for Petitioner.
Mr.A.V. Deshmukh, A.G.P. for Respondent No.1.
Mr.A.S. Deshpande Advocate for Respondent No.2.
Mr.S.M. Gunjal Advocate h/f. Mr. Deelip Patil (Bankar)
Advocate for Respondent No.3.

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**CORAM: SUNIL P. DESHMUKH AND
B.U. DEBADWAR, JJ.**

DATE : 11th MARCH, 2020

ORAL JUDGMENT [PER SUNIL P. DESHMUKH, J.] :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the appearing parties finally, by consent.

2. Petition has been preferred by one of the joint allottees of plot No. 20 situated at N-6, CIDCO, Aurangabad. Said plot had been allotted to petitioner along with her mother – Kamrunnisa Begum Osman Qureshi in February, 1987. It is the case of petitioner that after allotment and possession, they have carried out some construction over the plot. They had been paying to City and Industrial Development Corporation (CIDCO) service charges regularly and there is no dispute over the same.

3. On 11th March, 2013, an application had been moved by petitioner seeking no objection certificate for construction of house on aforesaid property, referring to that they have partly constructed the property and have paid service charges and as such no objection certificate be issued for construction over the property. Since the same had not been responded to, one more application had been filed on 20th January, 2014. However, that as well had not been responded to.

4. An order had been issued on 15th March, 2016, cancelling the allotment, referring to order passed in writ petition No. 2338 of 1999 and order dated 12th January, 2012 in civil application No. 7360 of 2002 of the high court, purporting the action to be in accordance with the same. Thus, the petitioner is before us.

5. Learned counsel for petitioner Mr. A. M. Karad, submits that petitioner had been taken by surprise with such a sudden and abrupt communication and, as such, has been before this court. In response, respondent – CIDCO purports to refer to events of which allottees had hardly any idea. He submits that allotment had been to two ladies whose literacy level was rudimentary and were having limited understanding of the world. He submits that after allotment, allottees have carried out construction and this fact is not in dispute. Since 1987 to 2016, there had not been any complaint about there being non compliance of terms and conditions. The purported notice issued in December, 2014 had not been received at the end of the allottees nor any further notices were received at their end. He refers to that while applications were made, the allottees were never notified about further developments and the high court orders having been passed in 2004 or for that matter in 2012. The allottees were

never given to understand that construction carried out by them had been deficient. While there were applications in 2013 and 2014 seeking no objection certificate for the construction, thereafter as well, there had been no communication in respect of any breach of orders of high court.

6. Learned advocate for respondent No. 2 – CIDCO, Mr. A. S. Deshpande, in response, submits that the allottees while were handed over property in 1987, they have only partially constructed the same but have failed to carry out construction as required. The petitioner had been issued notice on 15/19-04-2004 for making construction, which the petitioner claims not to have received. While the petitioner had failed to carry out construction within a period of one year from publication of advertisement dated 15th March, 2012, the allottees were issued show cause notice on 3rd December, 2014, albeit the same had been in the name of mother of petitioner – Smt. Kamrunnisa Begum, and had not been responded to. Thereafter, since the allotment had been in the joint name of the petitioner and her mother, yet another show cause notice had been issued on 5th January, 2016, which had been returned to CIDCO authorities with an endorsement of incomplete address, though the same

had been issued on the address from the record. The petitioner had failed to carry out construction pursuant to orders of the high court in writ petition No. 2338 of 1999 and civil application No. 7360 of 2002, within prescribed period. A communication dated 15th March, 2016, had been issued to the petitioner about cancellation of allotment of plot and in furtherance thereto, possession of the plot has been taken over, subsequently. The petitioner having not complied with the order passed by the high court, inspite of issuance of notice in April, 2004 and yet another notice published in March, 2012, had entailed cancellation of allotment.

7. It is referred to that despite mother of petitioner having died in 2011, applications appear to have been made in joint name and while there is communication by brother of petitioner – Mr. Mohd. Yusuf Qureshi, it would not be that petitioner alone succeeds to interest of deceased Kamrunnisa Begum – mother of petitioner. It is sought to be contended that it was an attempt to pretend that petitioner herself is the only heir of deceased Kamrunnisa Begum. The attempt by her to seek no objection certificate is not proper and legitimate. The approach of the petitioner being not proper, no interference be given to the

petitioner.

8. Learned counsel Mr. A. M. Karad submits that the petitioner was shocked to receive the letter of cancellation of allotment dated 15th March, 2016. He submits, response of respondent No. 2 sufficiently discloses that communications issued to allottees were not being received at the end of petitioner, and had been returned unserved. He further points out that it is not the case of the CIDCO that they had issued any notice for taking over possession. He submits that allottees continue to be in possession of the property. The applications for no objection had been prepared by well wishers of the family, who erroneously believed that the application will have to be in the name of both the allottees. Petitioner with little literacy and understanding, had submitted the applications. Learned counsel for the petitioner submits that the petitioner and other family members are apologetic about the mistake. He submits that there is absolutely no substance in the allegations that the applications have been filed with a view to mislead authorities. He submits that there is no substance in the contention on behalf of respondent – CIDCO that the petitioner purports to grab the property alone, as the title of the petition would reveal that this

petition has been filed through the same person - Mr. Mohd. Yusuf Qureshi, who is referred to by CIDCO authorities having been communicating with them. He submits that to remove the doubt, an affidavit is being tendered referring to legal heirs left behind by petitioner's mother.

9. Learned counsel further contends that going by the date of advertisement of March, 2012, application for no objection certificate, as would be seen, is within one year from the same. He further submits that the high court in quite a few cases had intervened and delay in making application has been appropriately considered directing to issue no objection certificates. He refers to decision of division bench of this court dated 14th July 2014 in writ petition No. 6859 of 2013 : *Manoj Laxminarayan Agrawal vs. the State of Maharashtra and others*, and decision of another division bench of this court dated 27th September 2017 in writ petition No. 11395 of 2016 : *Ramesh Sonajirao Jadhav vs. the State of Maharashtra and others*, and entreats this court to set aside the impugned orders and to direct respondent No. 2 – CIDCO to issue no objection certificate to raise further construction on plot No. 20, N-6, CIDCO, Aurangabad with further directions to respondent No. 3 –

Aurangabad Municipal Corporation to issue necessary commencement certificate for raising construction.

10. Learned advocate for petitioner refers to a decision of the Supreme Court, annexed to the writ petition at Exhibit-L- collectively, referring to that factually in that matter, the erstwhile owner had not been able to carry out minimum construction as required within prescribed period. There, the Supreme Court had taken cognizance of the position that similarly situated persons were given benefit of extension of time to enable them to complete construction, subject to certain penalty and further to that, however, high court had dismissed writ petition of appellant before the Supreme Court and thus, appellant had been before the Supreme Court. The Supreme Court had set aside order of high court granting time to appellant to complete construction, subject to penalty. He submits, that analogy may apply in the present facts and circumstances.

11. The scenario depicts that petitioner and her mother had been allotted plot No. 20, N-6, CIDCO, Aurangabad way back in February, 1987 and that some construction over the same has

been carried out by the allottees. Thereafter, it does not appear that there had been any action by CIDCO on account of non-fulfillment of terms and conditions of allotment. Though it is being said on behalf of CIDCO that after order had been passed by high court in writ petition No. 2338 of 1999, a notice had been issued on 15/19-04-2004, it is the case of the petitioner that the same had not been served on allottees and respondent No. 2 as well is not in position to show it duly served on the allottees. It further appears that while a notice had been published in 2012, the petitioner appears to have made an application for issuing no objection certificate before completion of a year after the publication and even thereafter in January, 2014. However, none of these applications were responded to. In December, 2014, a show cause notice had been issued and it emerges that the same not had been served at the end of petitioner. Thereafter, it appears yet another show cause notice in January, 2016 was issued, which also appears to have been returned to CIDCO authorities unserved. The show cause notice of 2014 appear without any reference to the applications filed by the petitioner in 2013 and 2014 seeking no objection certificate. Same is the case in respect of show cause notice issued in

January, 2016, making reference, however, on this occasion to notice of 15/19-04-2004. This notice as well does not take into account the applications of 2013 and 2014 for no objection certificate by petitioner. The order of cancellation of allotment of plot dated 15th March, 2016, makes reference to that the notice issued on 3rd December, 2014 having been received back by CIDCO. Notice was issued on 5th January, 2016 to the joint allottees. That notice as well had returned to CIDCO authorities. None of these documents make any reference to the applications of petitioner.

12. Till 2014 no movement for cancellation of allotment had been made pursuant to order passed by the high court. Though show cause notice is stated to have been issued in 2014, it emerges that it is almost after lapse of two years thereafter another show cause notice had been issued, which too had been received back to CIDCO authorities.

13. It appears that in the facts and circumstances contention on behalf of the petitioner that her understanding of the world is limited and was guided by beliefs of the well wishers and applications were accordingly submitted in joint names, while it

does not appear that there was any ill-intention on the part of the petitioner in making applications seeking no objection certificate for construction carries some weight. It is not even the case that petitioner has received any unlawful gain from the same.

14. Although it is submitted on behalf of CIDCO that petitioner pretended to have succeed to the interest of deceased mother alone, it does not appear that she intended to grab the property for herself. Her brother had already been making correspondence with CIDCO and the petition as well had been filed by petitioner through her said brother - Mohd. Yusuf Qureshi as the power of attorney. Additionally, the petitioner has tendered an affidavit referring to legal heirs left behind by the deceased mother, and further clarifying that she has no objection for legal heirs of her mother. This, to quite a large extent, takes care of the apprehension expressed on behalf of CIDCO, putting the matter straight. It is not the case that any special benefit has been derived by the petitioner for non reference to the legal heirs left behind by her mother. The mistake does not appear to be intentional or deliberate. It is not the case of any of the family members that petitioner intended

to deceive them. The petitioner and other family members have apologized for the mistake. The plot had been allotted to two ladies and their literacy and understanding level has not been disputed.

15. It is not the case that absolutely no construction had been carried out over the property. It emerges that cognizance of the construction has been taken imputing the same to be minimum. It is also not the case that petitioner had deliberately and/or intentionally delayed the construction and because of the same had gained any benefit. For the claimed lapses, the situation can be met with by imposing penalty.

16. In the facts and circumstances of present case, the course adopted in the two decisions of this court referred to by learned counsel for petitioner and decision of the Supreme Court in the case of *Meera w/o Subhash Hajare vs. the State of Maharashtra and others* dated 5th August, 2016, may be expedient to be adopted here as well.

17. Having regard to the orders passed by this court, referred to above and relied on behalf of the petitioner, as well as order passed by the Supreme Court in the case of

Meera w/o Subhash Hajare vs. the State of Maharashtra and others
dated 5th August, 2016, we deem it appropriate that subject to penalty of Rs.10,00,000/- (rupees ten lakh) to be paid by petitioner to CIDCO, impugned order dated 15th March 2016 issued by CIDCO cancelling the allotment of plot is set aside. Penalty amount be deposited with CIDCO within a period of three (3) months from the date of receipt of writ of this order.

18. The petitioner along with legal heirs of deceased Kamrunnisa Begum shall apply to CIDCO authorities for no objection certificate and upon payment of penalty, the same be issued by CIDCO and petitioner then shall approach Aurangabad municipal corporation seeking permission for construction and construction be completed obtaining the completion certificate.

19. Rule is made absolute in aforesaid terms.

20. Writ petition is accordingly disposed of.

(B.U. DEBADWAR, J.)

[SUNIL P. DESHMUKH, J.]