

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 3350 OF 2015

M/s Om Properties & Developers

..Petitioner.

Vs

The Pimpri Chinchwad Municipal Corporation
& Ors

..Respondents.

Mr. P. K. Dhakephalkar, Senior Counsel a/with Sachin Dhakephalkar and Nilesh Kadam for the petitioner.

Mr. S.P. Thorat, Advocate for Respondent Nos. 1 to 3.

Mr. Shravan Hardikar Municipal Commissioner, P.C.M.C. present.

**CORAM : S.J. KATHAWALLA &
B. P. COLABAWALLA, JJ.**
DATED :- 8th JANUARY, 2020.

P.C. :-

1. The above Writ Petition is filed by the Petitioner seeking a direction for setting aside the order dated 9th October, 2014 passed by the Additional Municipal Commissioner/Respondent No.3 of the Pimpri Chinchawad Municipal Corporation.

2. By resolution dated 29th October, 2001 the Pimpri Chinchawad

Municipal Corporation decided to lease out the plot of land admeasuring 9187 sq.meters situated at village Thergaon in the jurisdiction of Pimpri Chinchawad Municipal Corporation as per the D.P. Reservation. The Municipal Corporation therefore decided to develop the said plot of land and accordingly invited tenders for the purpose of giving the said land on lease. The petitioner gave a bid of Rs.6,10,00,000/-. Except for the bid of the petitioner, no other bids were received. The Corporation therefore accepted the bid of the petitioner on 5th February, 2010 and issued a letter of allotment on 22nd February, 2010 and also accepted an amount of Rs.2,10,00,000/- from the petitioner towards part payment. The petitioner also gave an initial bank guarantee of Rs.4,00,00,000/- and then the Additional Municipal Commissioner also executed a registered agreement dated 13th July, 2010. However, the process of actual possession was suspended by a letter dated 2nd November, 2010 on the ground that some part of plot of the land was encroached.

3. On 6th August, 2011 after encroachment was removed, the petitioner sought possession of the land from Municipal Corporation. The petitioner also deposited the 2nd installment of Rs.2,00,00,000 with the office of the Corporation on 16th August, 2011. However, possession of the subject property was not handed over to the petitioner. The petitioner therefore approached this Court by

filing Writ Petition No. 9317 of 2011 and inter alia sought a direction against the Municipal Corporation to hand over the possession of the said plot of land. This Court by its order dated 5th January, 2012 directed the petitioner to submit his representation (within a period of two weeks) pertaining to handing over of possession of the plot of land and directed the Municipal Corporation to decide the representation of the petitioner in accordance with law and procedure applicable in this regard within a period of four weeks from the date of the receipt of such representation.

4. In view of the said order dated 5th January, 2012 passed in Writ Petition No. 9317 of 2011, the Additional Municipal Commissioner gave a hearing to the petitioner and passed an order dated 9th March, 2012. The Additional Municipal Commissioner observed that handing over of the encroached portion was not the issue before the Corporation because on perusal of the record of the Corporation it appeared that in accordance with the agreement with the petitioner, a possession note was prepared on 14th September, 2010. However, no possession was handed over, as it was stayed by letter of Special Officer of Land & Asset Department of the Municipal Corporation by letter dated 2nd November, 2010. It was also observed by the Additional Municipal Commissioner in his order dated 9th March, 2012 that the Corporation received a number of complaints

from sitting Corporators wherein it was stated that the plot of land which is being handed over to the petitioner on lease is priced/valued, at much lower price than the market price and therefore agreement ought to be cancelled being against the interest of the Municipal Corporation.

5. Being aggrieved by the action on the part of the Municipal Corporation the petitioner preferred another Writ Petition No. 3586 of 2012 before this Court and impugned the order passed by the Additional Municipal Commissioner cancelling the allotment to the petitioner. The order passed by the Additional Municipal Commissioner was set aside by this Court in Writ Petition No. 3586 of 2012 by order dated 16th January, 2013. The petitioner was directed to appear before the Additional Municipal Commissioner on 4th February, 2013 at 11:00 a.m. and the Additional Municipal Commissioner was directed to consider representation of the petitioner dated 8th February, 2012 clarifying that if the Corporation intends to cancel the entire allotment, the Corporation shall serve a show cause notice on the petitioner and give sufficient opportunity to the petitioner to show cause and thereafter take an appropriate decision in the matter in accordance with law. This Court in its order dated 16th January, 2013 did not express any opinion on the merits of the case and accordingly the matter was heard and thereafter decided by the Additional Municipal Commissioner of

respondent No.1 Corporation by his order dated 9th October, 2014. It is this order which is impugned by the petitioner in the above writ petition.

6. It is clear from the order dated 9th October, 2014 that though the Additional Municipal Commissioner framed several issues, he has later concluded that the only question that remained was about the valuation of the plot of land and therefore in order to ascertain the said position and to determine the actual price he was of the view that the said issue is required to be decided by the Appropriate Authority as per the provisions laid down under the agreement. The Additional Municipal Commissioner also recorded in his order that the present market value of the said plot as on date i.e. 9th October, 2014 would come to Rs.10.24 Crores whereas the agreement with the petitioner was only for Rs.6.10 Crores. The Additional Municipal Commissioner therefore by his impugned order referred the dispute between the parties to an Arbitrator as provided for under clause 12 of the Agreement.

7. After the filing of this Writ Petition and since in the impugned order itself the Additional Municipal Commissioner has recorded that the market value of the said plot as on 9th October, 2014 was Rs.10.24 Crores, on 18th October, 2016 a statement was made on behalf of the petitioner stating that to put an end to

the matter the petitioner was willing to pay an additional amount of Rs. 4 crores, which is over and above the amount of Rs. 6.10 crores. This statement was recorded by this Court in its order dated 18th October, 2016.

8. In these circumstances, we asked the Commissioner of Pimpri Chinchawad Municipal Corporation to remain present before us. Accordingly, he is present before us. We have enquired from him as to what would be the market price of the said plot to be given on lease for a period of 90 years. He has informed the Court that as on date i.e. 8th January, 2020, the amount that the plot would fetch if given on lease would be Rs.12.46 crores. The learned Senior Advocate appearing for the petitioner has on instructions disputed the said figure and informed the Court that according to his client the value would be approximately Rs.11.10 crores. He however stated that his client is willing to pay any amount between Rs.11.10 crores and Rs.12.46 crores as decided by the Court and left the figure to us. The Advocate for the Corporation on instructions from the Commissioner of the Corporation along with the Law Officer Mr Indulkar, who are both present in Court also agreed to leave the final figure to the Court and informed the Court that they are willing to accept the figure which the Court would decide as payable by the petitioner to the Corporation to enable the Corporation to execute the lease deed for a period of 90 years in favour of the

petitioner qua the said land. Accordingly, this Court has suggested that the amount of Rs. 12 crores be paid by the petitioner to respondent No.1 which figure is agreed and accepted by both the parties. It is also agreed that the payments shall be made as follows :-

SCHEDULE OF PAYMENTS

- (i) The Petitioner has already paid to the Pimpri Chinchwad Municipal Corporation an amount of Rs.2,10,00,000/- (Rupees Two Crores Ten Lacs Only) vide Demand Draft dated 08/07/2010 bearing No.882356 drawn on Bank of Maharashtra.
- (ii) The Petitioner will pay to the Pimpri Chinchwad Municipal Corporation an amount of Rs. 2,90,00,000/- (Rupees Two Crores Ninety Lacs Only) on or before 28th February 2020.
- (iii) The Petitioner will pay to the Pimpri Chinchwad Municipal Corporation an amount of Rs. 2,00,00,000/- (Rupees Two Crores Only) on or before 15th April 2020.
- (iv) In addition to this payment of Rs. 2,00,00,000/- mentioned in clause (3) above, the petitioner will also give Bank Guarantee of a Nationalized Bank for the balance amount of Rs. 5,00,00,000 (Rupees Five Crores Only) on or before 15th April 2020.
- (v) On paying the aforesaid amounts and submitting the aforesaid Bank Guarantee, the Respondent i.e. Pimpri Chinchwad Municipal Corporation shall hand over the possession of the subject land to the Petitioner.
- (vi) The Petitioner will pay remaining balance amount of Rs. 5,00,00,000/- (Rupees Five Crores Only) on or before 15th July 2020 to the Pimpri Chinchwad Municipal Corporation.

9. In the event of any default in making payment as agreed or in the event of the petitioner failing to provide the bank guarantee as agreed, the agreement between the parties qua the subject land, shall stand cancelled and the Corporation shall be free to deal with the subject land as it deems fit, but in accordance with law.

10. In the event of the petitioner failing to pay the balance amount of Rs.5,00,00,000/- on or before 15th July,2020 to the Corporation, the Corporation shall be free to invoke the bank guarantee issued on behalf of the petitioner in favour of the Corporation and recover the balance amount of Rs. 5,00,00,000/-.

11. After getting possession of the subject land, the petitioner shall also submit the plans for development of the same to Respondent No.1 Corporation which the Corporation after going through the same and if found in accordance with law, shall within a period of six months from the date of the submission, sanction the same.

12. In view of this order, the grievances of the petitioner stand redressed and the Writ Petition is accordingly disposed of.

(B.P. COLABAWALLA, J.)

(S.J. KATHAWALLA, J.)