

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3234 OF 2021

Shri Vitthal Shikshan Prasarak Mandal,
Omerga, District Osmanabad
Through it's Secretary
Gopalrao S/o Tukaram Birajdar
Age : 65 years, Occ : Retired

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through it's Chief Secretary,
Department of Urban Development
Mantralaya, Mumbai – 400 032
2. City and Industrial Development
Corporation, Maharashtra Ltd., (CIDCO),
New Aurangabad Office, Udyog Bhavan,
New Aurangabad – 431 003.

..RESPONDENTS

...
Mr.V.D. Sapkal, senior counsel i/b Mr.V.V.
Deshmukh, counsel for the petitioner.
Mr.S.G. Sangale, A.G.P. for respondent No.1.
Mr.Nikhil S. Tekale, counsel for respondent no.2.
...

CORAM : RAVINDRA V. GHUGE
AND
S.G. DIGE, JJ.

RESERVED ON : 5th MAY, 2022
PRONOUNCED ON : 21st JUNE, 2022

JUDGMENT (PER S.G. DIGE, J) :

1. Rule. Rule made returnable forthwith.
With consent of the parties taken up for final

hearing.

2. By this petition, the petitioner is praying to quash and set aside the impugned communications dated 18th March, 2020 and 12th May, 2020 issued by the Assistant Marketing Officer, CIDCO, Aurangabad with a further direction to grant No Objection Certificate permitting sub-lease to the extent of 15% of commercial user of suit plot in accordance with the commencement certificate dated 7th June, 2019. By way of amendment, the petitioner is also praying to quash and set aside the impugned communication dated 8th October, 2020 issued by respondent no.2 – CIDCO [hereinafter referred to as impugned communications, collectively].

3. Brief facts of the case are as under :-

a) The petitioner is a public charitable trust registered under the Maharashtra Public Trust Act as well as Societies Registration Act. Subject plot is allotted to the petitioner institution along with the structure thereon for running a school in the year 1989 by executing a lease deed by respondent no.2. As the allotted building became dilapidated, the petitioner prayed to the CIDCO (Respondent no.2) for grant of permission of new construction along with 15% commercial use of suit plot.

b) On 20th September, 2016, amended Development Control Regulations (For short "DCR") were published by the State Government for the commercial use to the extent of 15%. On 13th January, 2017, the building construction permission/NOC was granted in favour of the petitioner permitting commercial use to the extent of 15% as per the DCR, 2016 by the Assistant Engineer, Building permission/NOC Cell, CIDCO, Aurangabad, who is competent authority to deal with the aspect of the building permission vis-a-vis the necessary no objection.

c) Thereafter, the petitioner has received commencement certificate from the Municipal Corporation, Aurangabad (For short, "Corporation"). The petitioner carried out substantial construction on the suit plot. The petitioner thereafter sought permission from the CIDCO (respondent no.2) to sub-lease the shops as per No Objection Certificate dated 13.01.2017. The respondent no.2 has directed the petitioner to deposit an amount of Rs.132 Lakh as a premium for change of user i.e. commercial use to the extent of 15%. The petitioner has challenged the said communication by filing the present writ petition.

4. It is contention of the learned senior counsel for the petitioner that the petitioner

trust is a charitable trust. The suit plot was allotted to the petitioner as a social facility. No Objection Certificate is already issued by the CIDCO in favour of the petitioner for 15% commercial use of suit plot, and accordingly, the petitioner has carried out substantial construction on the said plot by securing commencement certificate from the Corporation. Thus, the CIDCO is now estopped from claiming any premium as per the principle of Estoppel.

5. The learned counsel further submits that the suit plot is allotted to the petitioner in the year 1989. The first resolution of the CIDCO in respect of payment of premium for commercial use is of 1996. The said resolution is applicable to the plots allotted subsequent to the said resolution. Thus, the petitioner cannot be directed to deposit premium as per resolution of 1996.

6. The learned senior counsel further submits that the NOC is issued by Officer of the CIDCO in January, 2017. Thus, neither the resolution of 2017 nor the resolution of 2021 passed by respondent no.2 can be made applicable to the petitioner. The petitioner, therefore, is not under obligation to pay premium under any of the referred resolutions. The learned counsel, therefore, requested to allow the petition.

7. He has relied upon the judgments in the cases of **Shishir Realty Private Ltd., V/s Vice Chairman & Managing Director, City and Industrial Development Corporation of Maharashtra ltd., and others** reported in 2014(1) BCR 274, **M/s Shree Ambica Developers Vs State of Maharashtra** reported in 2012(2) BCR 729, **Popcorn Entertainment Corporation and another V/s the City Industrial Development and another** reported in 2009(6) BCR 52, **Sunil Pannalal Banthia and others Vs. City and Industrial Development Corporation of Maharashtra Ltd., and another** reported in (2007) 10 SCC 674 and **New India Industries Ltd., and another Vs. New India Industries Ltd and another Vs. Union of India and another** reported in AIR 1990 Bombay 239.

8. It is the contention of the learned counsel for respondent no.2 that the contentions of the petitioner are totally misconceived. The petitioner cannot run away or avoid it's responsibility of paying premium for change of user. If it wants change of user of certain portion of the plot then the petitioner has to pay premium for it. The plot is allotted to the petitioner as a social facility for the purpose of running a school only. The petitioner is not permitted to use the said plot except for school unless the permission is granted by the CIDCO.

9. The learned counsel further submits that NOC was issued by the officer of the CIDCO for 15% commercial use. At that time, the policy of 1996 was in operation. As per the said policy, the petitioner was required to pay an amount of Rs.54,69,161.40 for 15% commercial use. However, due to the mistake of the officer of the CIDCO, directions were remained to be issued to deposit the said amount. But, the petitioner is under legal obligation to pay the said statutory amount. The learned counsel further submits that subsequently, the policy of February, 2017 had come in operation. The petitioner sought permission to sub-let the shops. Thus, as per the existing policy at the relevant time, the petitioner was directed to deposit Rs.132 Lakh.

10. The learned counsel submits that in the meanwhile, UDCPR of State Government had come and accordingly, the resolution was issued by the CIDCO in April, 2021. As the petitioner had not yet paid the premium amount, the petitioner is therefore, liable to pay the amount as per the resolution of April, 2021 towards 15% commercial use. Accordingly, the petitioner is liable to pay an amount of Rs.69,29,085/-. Thus, the contention of the petitioner regarding it's non-liability to pay premium is baseless and without merit.

11. The learned counsel further submits

that the contention of the petitioner that the policy of 1996 is not related to the petitioner, as the plot has been allotted prior to the said resolution, is absolutely incorrect and based on wrong interpretation. The learned counsel submits that if the subject of the said resolution is perused, it specifically provides for allowing 10% ancillary commercial use to social facility plots in new towns. Thus, nowhere it states that the policy will be applicable only to the plots allotted after the resolution. Furthermore, the premium to be charged is also provided in the said Base rates (BR), which is permitted commercial area X reserve price. Therefore, it cannot be said that the BR is not applicable to petitioner, or that it does not provide any mechanism to charge the premium.

12. The learned counsel submits that the principle of estoppel sought to be invoked by the petitioner is misconceived and not proper, as the NOC issued cannot be construed as promise given by the CIDCO regarding waiver or non applicability of payment of premium by the petitioner for commercial use of 15% of plot. Principle of estoppel has no application in the present case, where the officer or authority has done something outside it's power. The officer had no authority to issue NOC without demanding/accepting premium amount as per

relevant resolution of 1996. Moreover, as per policy at the relevant time, only 10% commercial use was permissible and not 15%. Thus, the principle of estoppel cannot be applied for the actions of the authority.

13. The learned counsel further submits that admittedly, plot was given on concessional basis being social facility plot. Petitioner was required to run only school on the said plot. However, the commercial use of certain portion was sought to be permitted. As per policy of the CIDCO by accepting premium from petitioner permission was required to be granted. Now, if the contentions of petitioner are accepted, it will amount to discrimination between plot holders to whom plots were allotted at higher rates for commercial use and the petitioner to whom plot was allotted on concessional rates. Thus, even there is no equity in favour of the petitioner.

14. The learned counsel submits that even if the NOC issued is accepted as a promise, the same cannot be invoked, if it is against public interest/good at large. The CIDCO is a public exchequer and works on no profit no loss basis. The amount is a public money used for the benefit of public at large. Therefore, if the amount is not directed to be deposited by petitioner for

commercial use of social plot, the same will amount to loss of public money. Principle of Estoppel cannot be applied where private interest blocks the public interest. If the amount is not deposited by petitioner for commercial use, the same will amount to loss of public money, which ultimately is against the public interest. Even the departmental action / proceeding is initiated against the Officer, who issued NOC without charging premium. This shows bonafides on behalf of the CIDCO. The petitioner cannot take undue advantage of the said NOC to avoid payment of statutory and legal amount as premium.

15. The learned counsel for respondent no.2 relies upon the judgment of the Hon'ble Apex Court in the case of **Monnet Ispat and Energy Ltd Vs. Union of India** reported in (2012) 11 SCC 1.

16. The learned A.G.P. supported the arguments of the learned counsel for respondent no.2.

17. We have heard the learned counsel for both the sides. We have gone through the papers produced on record. The issues involved in this petition are (i) Whether, the principle of Promissory Estoppel is applicable, as No Objection Certificate dated 13.01.2017 is issued by respondent no.2 - CIDCO in favour of

petitioner ? and (ii) Whether, the petitioner is liable to pay premium for change of user for 15% commercial use of suit plot ?

18. Before dealing with issues involved in the present case, we would consider admitted facts of this case.

Admitted facts :-

- (a) Plot is allotted to the petitioner by respondent no.2 as social facility on concessional rate for running school.
- (b) The existing building was in dilapidated condition, hence the permission was sought by the petitioner by letter dated 29.11.2013 to respondent no.2 for construction of building along with 15% use for commercial purpose.
- (c) Letter was sent by the Officer of respondent no.2 dated 10.03.2015 to the Commissioner, Municipal Corporation, Aurangabad seeking guidance about 15% commercial use (as per the letter of the petitioner dated 29.11.2013).
- (d) The Joint Director, City Survey of Municipal Corporation replied to letter dated 10.03.2015 sent by respondent no.2 vide letter dated 01.06.2015 stating that under development regulation scheme,

there is no provision to use 15% for commercial purpose i.e. for education purpose.

- (e) The Government of Maharashtra published Development Control and Promotion Regulations for "D" Class Municipal Corporations in Maharashtra, which includes Aurangabad Municipal Corporation (for short, "DCR").

Rule 25.5 of this regulation reads as under :-

"25.5 Public Semi-Public Zone-

The following uses shall be permissible in Public Semi-Public Zone-

- i) Pre-primary, Primary Schools, High Schools, Technical/Trade Schools, Colleges, Educational Complex, Hostel for students and essential staff quarters.
- ii) Hospital, Sanatoria, Dispensary, Maternity Homes, Health Centre, Dharmashala for the visitors of the patients, pilgrims and like, essential staff quarters, veterinary hospital, auditorium, exhibition ball and gallery.
- iii) Training institutions, Home for aged, essential quarters.

- iv) Government/Semi-Government/Local self-Government offices, Court buildings, essential staff quarters.
- v) Post Office, Telegraph office, Telephone Exchange, Radio Station, Staff quarters and similar Govt./Semi-Govt. Offices and quarters.
- vi) Library, Mangal Karyalaya, Gymnasium, Gymkhana, Water tanks, Stadium, Community hall, Religious Structures, etc
- vii) Besides above, the commercial user utp 15% of basic permissible FSI shall be permissible subject to following conditions :

Area of Plot	Percentage of Permissible retail Commercial Use
Upto 1000 Sq.mt.	7.50%
More than 1000 to 2500 Sq. mt.	10%
More than 2500 to 4000 Sq. mt.	12%
Above 4000 Sq.mt.	15%

- (f) No objection certificate issued to the petitioner dated 13.01.2017 by respondent no.2, is the basis on which the petitioner applied for construction permission to the Municipal Corporation. After depositing requisite amount, the petitioner got

construction permission from the Corporation by letter dated 07.06.2019.

- (g) The petitioner made construction on some part of suit plot and by letter dated 16.03.2020 requested respondent no.2 to allow the petitioner to sub-lease the shops.
- (h) Respondent no.2 replied to the letter dated 16.03.2020 of petitioner by letter dated 18.03.2020 informing the petitioner that for 15% commercial use, the petitioner has to deposit Rs.1.32 crores with respondent no.2. In this letter, it is also stated that the original file is sent to main office of respondent no.2, as soon as main office passes an order, it will be communicated to petitioner. Hence the petitioner's request made through letter dated 16.03.2020 cannot be considered.

19. On 23rd March, 2020, the petitioner again sent letter to respondent no.2. In the said letter, the petitioner has mentioned about Development Control Regulations dated 20th September, 2016 issued by the Government of Maharashtra. It has been mentioned in this letter that no amount was demanded for giving No Objection Certificate.

20. Respondent no.2 by letter dated 12th May, 2020 informed the petitioner that the

petitioner has objected to deposit the amount of Rs.1.32 crores for 15% commercial use, hence the original file is moved to main office of respondent no.2 and after getting decision from main office, the petitioner will be informed accordingly.

21. The petitioner sent letter dated 16th June, 2020 to respondent no.2 for granting No Objection Certificate. Respondent no.2 issued letter dated 08th October, 2020 to the petitioner. By this letter, respondent no.2 communicated to the petitioner that the petitioner was communicated by letter dated 12th May, 2020 to deposit the amount for 15% commercial use. Unless the said amount is deposited, No Objection certificate as requested by the petitioner cannot be granted.

22. From these admitted facts, it reveals that the petitioner's case is based on No Objection Certificate dated 13.01.2017 issued by respondent no.2, whereas respondent no.2 has come with a case that permission was granted to the petitioner for running school and if the petitioner wants change of user of plot for 15% commercial purpose, the petitioner has to pay premium for it. The No Objection Certificate is wrongly issued to the petitioner by the Officer of respondent no.2. The departmental enquiry is

started against him. The wrong done by the Officer of respondent no.2 cannot give right to the petitioner to avoid depositing of requisite amount for change of user of suit plot.

23. The letter dated 13.01.2017 is issued by respondent no.2 on the basis of Development Control Regulations, 1996. It is the contention of the learned counsel for respondent no.2 that DCR Rules, 2016 is not applicable to respondent no.2. It appears from the record that after receipt of first letter dated 29.11.2013 from petitioner seeking permission to 15% commercial use of plot, respondent no.2's Officer had sought guidance from the Commissioner, Municipal Corporation on letter of the petitioner. The Commissioner by letter dated 10th March, 2015 replied to it, stating that there is no provision in Municipal Corporation area for 15% commercial use i.e. for education purpose. Thereafter, the Development Control Regulations dated 26.09.2016 are published by the Government of Maharashtra. By the said DCR, 15% commercial use of plot was allowed in public semi-public zone. On that basis, no objection is given to the petitioner. The letter dated 13.01.2017 would show that it is in respect of no objection for construction on suit plot, subject to filing appropriate proceeding before Municipal Corporation, Aurangabad. In the bottom of this letter, it is

mentioned in handwriting that "permissible commercial use upto 15% vide notification vide TPS-1812/CR-112/12/DCR D Class/UD-13, Dt. 20.9.16 CLAUSE NO.25.5". Though learned counsel for respondent no.2 submits about non-applicability of DCR to respondent no.2, then the question remains as to why guidance was sought from Corporation by the letter dated 10.03.2015 about petitioner's 15% commercial use. Respondent no.2 has not mentioned about applicability of DCR in their impugned letter dated 08.10.2020.

24. It is contention of the learned counsel for respondent no.2 that the petitioner has to pay premium for change of user of plot i.e. for 15% commercial purpose. There is no mention of fees for change of user with reasons in the impugned letter dated 08.10.2020 issued by respondent no.2. In the said letter, it is mentioned that for commercial use, the petitioner has to deposit the amount. It would show that the officers of respondent no.2 have issued letters to the petitioner directing to deposit the amount without mentioning any valid reasons. In the letters dated 17.03.2020 and 12.05.2020, it is mentioned that the petitioner has objected to deposit an amount of Rs.132 Lakhs, hence file has been sent to main office of respondent no.2 and that, after getting decision from main office on it, petitioner will be informed. But in the

letter dated 08.10.2020, direction is given to the petitioner to deposit the amount for commercial use without giving any reason.

25. The facts put-forth by the petitioner are not considered and the order about direction to deposit the premium is passed without giving any reasons. There should be proper explanation about applicability of DCR, 1996 as well as respondent no.2's rule regarding policy of change of user. But in the impugned letters no reasons are mentioned. Hence, we find it to be a fit case to relegate it to respondent no.2 for consideration of all above facts and for passing reasoned order by giving opportunity of hearing to the petitioner, if provided under the rules/policy applicable.

26. Accordingly, we pass the following order :-

ORDER

- (I) The Writ petition is partly allowed. The impugned communications shall remain in abeyance subject to the further direction set out hereunder.
- (ii) The petitioner to file a fresh application seeking No Objection for 15% commercial use of the suit plot, before respondent no.2, within one week.
- (iii) Respondent no.2 shall decide the said

application after giving opportunity of hearing to the petitioner, as may be permissible and pass reasoned order on it's own merits, within one month after receipt of such application.

- (iv) If the petitioner fails to file an application within one week from today, the impugned communications shall be enforceable.

27. Rule is made absolute in the above terms.

(S.G.DIGE, J.)

(RAVINDRA V. GHUGE, J.)

SGA