

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**REVIEW APPLICATION NO. 26 OF 2021
IN
WRIT PETITION NO. 10085 OF 2019**

1. City and Industrial Development Corporation Ltd. (CIDCO),
Through its Chief Administrator,
New Towns, Aurangabad
2. City and Industrial Development Corporation Ltd. (CIDCO),
Through its Administrator,
Aurangabad

.. Review Petitioners
(Ori. Resp.No.5 and 6)

VERSUS

1. Vijaysingh Vithalsingh Pardeshi,
Age : 55 years, Occu. : Agri.,
R/o : At Golwadi, Tal and
District : Aurangabad
2. Rajendrasingh Vithalsingh Pardeshi,
Age : 52 years, Occu. : Agri.,
R/o : At Golwadi, Tal and
District : Aurangabad
3. Sanjaysingh Vithalsingh Pardeshi,
Age : 49 years, Occu : Agri.,
R/o : At Golwadi, Tal and
District : Aurangabad
4. Ashwini W/o Deepaksing Pardeshi,
Age : 40 years, Occu : Household,
R/o : At Golwadi, Tal and
District : Aurangabad
5. Khushbu D/o Deepaksing Pardeshi,
Age : Minor; Occu : Household,
R/o : At Golwadi, Tal and
District : Aurangabad
6. Eshita D/o Deepaksingh Pardeshi,
Age : Minor; Occu : Household,
R/o : At Golwadi, Tal and
District : Aurangabad

(Respondent Nos. 5 and 6 are minor u/g.
of their mother i.e. Respondent no. 4)
(Orig. Petitioners)

7. The State of Maharashtra,
Through Department
of Urban Development,
Mantralaya, Mumbai – 32
8. The Principal Secretary,
Department of Urban Development,
Mantralaya, Mumbai – 32
9. The District Collector,
Aurangabad
10. The Special Land Acquisition Officer,
(Special Unit), Aurangabad
(Ori. Resp.No.1 to 5)

.. Respondents

WITH

CIVIL APPLICATION NO. 2005 OF 2021 IN RA/26/2021
(CIDCO and another Vs. Vijaysingh Vithalsingh Pardeshi and others)

AND

CIVIL APPLICATION NO. 8673 OF 2020 IN RA/26/2021
(CIDCO and another Vs. Vijaysingh Vithalsingh Pardeshi and others)

AND

CIVIL APPLICATION NO. 13897 OF 2022 IN RA/26/2021
(CIDCO and another Vs. Vijaysingh Vithalsingh Pardeshi and others)

...

Advocate for review petitioner : Mr. Shekhar Naphade i/b. Mr. Jiwan J. Patil
Advocate for the respondents nos. 1 to 6 : Mr. D.P. Palodkar
AGP for the respondents nos. 7 to 10 : Mr. S.B. Yawalkar

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**CORAM : MANGESH S. PATIL &
Y.G. KHOBRAGADE, JJ.**

**RESERVED ON : 21 NOVEMBER 2022
PRONOUNCED ON : 02 DECEMBER 2022**

JUDGMENT (MANGESH S. PATIL, J.) :

We have heard Senior Advocate Mr. Shekhar Naphade for the review petitioner, Mr. Palodkar for the respondents nos. 1 to 6 and learned AGP Mr. Yawalkar for the respondents nos. 7 to 10.

2. The review petitioner - City Industrial and Development Corporation (CIDCO) is seeking review of the order dated 13-08-2019 passed in writ petition no. 10085 of 2019 preferred by the respondents nos. 1 to 6 herein against it and the State whereby this Court directed a consent award pursuant to an agreement to be passed in respect of their land acquired under the Maharashtra Regional and Town Planning Act (**MRTP Act**). The order reads as under:-

“1. Mr. Palodkar, the learned counsel for the petitioners submits that the petitioners have already given consent for passing the consent award. The possession is also taken by the CIDCO, however, the Special Land Acquisition Officer is not passing the Award.

2. Mr. Tekale, learned counsel for respondents No. 5 and 6 accepts that the CIDCO has taken the possession of the petitioner's land, agreement is also executed and terms and also settled between the parties. It is for the Special Land Acquisition Officer to pass the award.

3. Learned A.G.P. accepts notice for respondents No. 1 to 4.

4. It appears that the petitioner and respondents No.5 and 6 have arrived at a consensus to pass the consent award, agreement is also executed and price is fixed.

5. In the light of that the respondents No.4 shall pass award within two months from today.”

3. The CIDCO is seeking review of the order on the ground, in substance, that its Chief Administrator and Officers at Aurangabad had exceeded their powers delegated to them by the board at Mumbai and had acted hand-in-glove in agreeing to pay exorbitant compensation without knowledge and consent of the head office.

4. Mr. Naphade would start his arguments by submitting that the writ petition itself was not maintainable inasmuch as the development plan in respect of the writ petitioners' property was passed way back in the year 1992. No declaration was made or award was passed for acquiring their property, as was contemplated under Chapter 7 of the MRTP Act and the Land Acquisition Act, 1894 and by virtue of section 11-A of the latter Act, the acquisition would lapse. He would also refer to the Constitution Bench decision in the matter of ***Girnar Traders (3) Vs. State of Maharashtra and others; (2011) 3 SCC 1.***

5. Mr. Naphade would then submit that the board had resolved to undertake acquisition in respect of a total land admeasuring 181 Hectares and had conspicuously earmarked an amount of Rs.372.59 Crores. In spite of the fact that the officers at Aurangabad were aware about it, they have purposely agreed to pay compensation which would constitute chunk of this earmarked money only for

compensating the land owners which are 35 in number whose collective land holdings are barely 14 Hectare and odd. This very fact would indicate that the officers of CIDCO at Aurangabad had connived in agreeing to pay an exorbitant compensation. An independent enquiry was conducted by it comprising of a vigilance officer and two officers of the rank of the Directors. Consequently, the order under review having been obtained in collusion and by practicing fraud on the CIDCO and even on the Court, it is a matter which would constitute a formal defect and error apparent on the face of the record and would empower this Court to undertake the review.

6. Mr. Naphade would submit that in view of such state-of-affairs, by moving a separate civil application no. 2005 of 2021, these officers of CIDCO at Aurangabad and the members of the committee which had resolved to enter into the agreement with the writ petitioners have been sought to be arrayed as respondents.

7. Mr. Naphade would also point out that in view of the response received from the writ petitioners in the form of reply, by a separate application no. 8673 of 2020, detailed amendment is sought to be incorporated in the review petition indicating all the aforementioned aspects and even touching the feasibility of acquiring writ petitioners' property with such an exorbitant rate.

8. Mr. Palodkar for the writ petitioners would submit that it is only some of the office bearers of the CIDCO who had, in spite of knowledge regarding its decision of the consent award, have been acting behind the curtains and have engineered a cause for not obeying the writ of this Court on the basis of the consent terms. He would submit that though initially the CIDCO had barely attributed the allegations against its Chief Administrator at Aurangabad, it is only after the writ petitioners filed a detailed reply indicating as to how the consent in respect of order under review was preceded by the board directives and within the purview of the powers conferred upon the committee comprising of not only the Chief Administrator but even the Government officials of the rank of the Deputy Collector, a legal advisor and several other officers of CIDCO and it was not the decision solely taken by the Chief Administrator, the CIDCO now has come out with couple of civil applications; one for impleadment of all those committee members and has sought to add several other circumstances to indicate as to how the acquisition of writ petitioners' properties is not feasible at the rate at which it has been agreed to. He would submit that all the grounds and circumstances have been further sought to be responded to by filing rejoinder and the CIDCO is now seeking to change the stand and is now alleging that all the members of the committee had acted without authority.

9. Mr. Palodkar would further submit that as can be discerned from the resolutions of the board of CIDCO, the committee was authorized to negotiate and agree to pay compensation upto an outer limit of rate prescribed in the ready reckoner. He would take us through the papers to demonstrate as to how the compensation that was agreed to be paid to the petitioners was less than the ready reckoner rate. He would, therefore, submit that there are no sufficient and cogent grounds which would enable this Court to undertake a review. There is no formal defect or fraud.

10. We have carefully considered the submissions and perused the papers. At the outset, it is necessary to reiterate that the CIDCO is seeking review of the order passed by this Court solely on the ground of alleged fraud or misrepresentation. It is not seeking to demonstrate any formal defect or error apparent on the face of the record. It is trite that even fraud vitiates everything and apart from the grounds which are normally to be taken note of and empower the Courts to undertake a review, the allegations of fraud or misrepresentation in obtaining the order from the Court is also a well accepted ground to go into and examine all the aspects touching the alleged fraud.

11. As can be discerned, initially the review petition was preferred with the sole allegation that the Chief Administrator at

Aurangabad had kept the head office at Mumbai in dark and had connived with the writ petitioners in agreeing to pay exorbitant compensation which was beyond the purview of the powers delegated to him. It is only after the writ petitioners in their reply demonstrated that the decision to arrive at a consent has to be initiated and was accordingly taken by the committee of several officers apart from the Chief Administrator which not only included the officers of CIDCO but even the officers of the State Government of the rank of Deputy Collector and a legal advisor, that the CIDCO has made an attempt to improvise and is seeking to implead these members of the committee by moving civil application no. 2005 of 2021. However, conspicuously, the portion to be added in their respect only seeks to allege that they have acted without any authorization from the board of directors of the CIDCO. Conspicuously, no attempt has been made to attribute any malice on any of the other members of the committee. This very circumstance is clearly indicative of the fact that the allegations regarding fraud which the CIDCO initially made against the Chief Administrator at Aurangabad, have got diluted.

12. We are emboldened to make such observation for one more reason. According to CIDCO, a committee comprising of vigilance officer and couple of high ranked officials of CIDCO was constituted to undertake an enquiry pursuant to which the committee

has taken a decision which is also available on the record. However, conspicuously, that committee in its decision (page 57) though has examined all the aspects, has conspicuously omitted to reach any conclusion regarding the alleged fraud *albeit* it has expressed some doubt and has also expressed that it would not be viable to acquire the properties at such a huge rate.

13. Again, the committee constituted under resolution no. 11575 of the board of directors dated 15-03-2016 had again convened its meeting on 20-01-2020 and its minutes have been produced on the record (page 206) of the review petition. It is quite conspicuous that the committee seems to have reconsidered all the aspects and has indicated and resolved that the rate agreed by the committee for the consent award was justified. Even the committee went to the extent of examining the resolutions of the board of directors and has laboured to demonstrate that it was clearly within their powers and ambit to reach at the conclusion regarding the rate to be granted in respect of compensation to be paid to the writ petitioners. It is quite pertinent to note that all the members of the committee were present at the meeting and have passed this resolution unanimously. One wonders as to how in view of such state-of-affairs, the CIDCO is still justifying its decision to persist with the review when the same committee which had given consent for passing the consent award, has reconsidered

everything and has tried to justify its decision. It cannot be said that it is a matter of fraud much less involving its Chief Administrator at Aurangabad.

14. Interestingly, when we put a query to Mr. Naphade, as to if the CIDCO has taken at any disciplinary proceeding against any of its erring officials, on instructions, he replied in the negative. If on the one hand, the CIDCO is seeking review on the sole ground of its the then Chief Administrator having indulged in some misdeeds in enabling the writ petitioners to obtain the order of this Court for passing of consent award, still, it has for last more than 3 years, in spite of having undertaken an independent scrutiny and had constituted the committee but has conspicuously omitted to take any decision commensurate with its stand of alleged fraud and to proceed against the erring officials. If such is the scenario, the only ground being relied upon by the CIDCO to demonstrate that this Court should undertake a review of its order, falls to the ground.

15. The submission of Mr. Naphade that the writ petition itself was not maintainable, in our considered view, cannot be a ground to exercise the power of review, more so, when admittedly, the order under review was passed on the basis of the concession or on the basis of a mutual understanding regarding passing of the consent award.

16. There is no substance in the review petition. It is dismissed.

17. Civil applications are disposed of.

[Y.G. KHOBRAGADE]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/