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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2201 OF 2020

1. Kashinath Kisan Gosavi
(Since deceased through legal heir

1A. Smt.Dwarka Kashinath Gosavi
Age: 45 Years, Occ: Housewife
R/O. N-32/N/1/2-6,
Sector – Margshirsh CIDCI, Nashik Petitioner

Versus

1. The Administrator
CIDCI, Old Agra Road,
New Nashik 422 009

2. State of Maharashtra
(Served through Government
pleader) Respondents

Mr. Tushar N. Sonawane for the Petitioner

Mr.Ashutosh Kulkarni for Respondent no.1 CIDCO

Mr.S.B.Kalel, A.G.P. for the State / Respondent no.2

**CORAM: S.V.GANGAPURWALA &
R.N.LADDHA, JJ.**

DATED : SEPTEMBER 21, 2022

JUDGEMENT : (PER : S.V.GANGAPURWALA, J.)

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

2 The Petitioner was allotted a plot by Respondent CIDCO bearing Plot No.N-32/N-1/2/6A at Sector Margashirsh, CIDCO Nashik admeasuring 59.750 sq.mtrs. The same it appears, was allotted on or about 21.07.2003. The Petitioner deposited the premium amount on or about 19.01.2005. The impugned communication is issued to the Petitioner thereby cancelling the allotment in favour of the Petitioner. The same is assailed in the present Writ Petition.

3 We have heard the learned Counsel for the Petitioner.

4 The learned Counsel submits that the Petitioner has deposited the entire premium amount as directed. Respondent issued letter to the Petitioner on 07.02.2008 to deposit delayed payment charges. Delayed payment charges are also deposited in the year 2010. The Petitioner was after the Respondents to execute necessary documents. The Petitioner gave letters dated 19.11.2009, 01.12.2009, 02.08.2011, 21.06.2013 and 08.08.2016, but no cognizance was taken and instead in the year 2017, termination letter is issued after filing the present Writ Petition. According to him, as the Respondents have accepted the premium amount and

also delayed payment charges, it is not open for the Respondents now to terminate the contract.

5 Mr.Kulkarni, the learned Counsel for the Respondents submits that the allotment of plot to the Petitioner is governed by the Regulations of CIDCO. As per regulation No.5 of the New Towns Disposal of Lands Regulations, 1992, the Petitioner was required to pay the premium in two equal installments. First installment is to be paid within one month from the receipt of acceptance from the Corporation. Second installment is to be paid within two months from such receipt of acceptance. Managing Director in deserving case may extend the period on payment of interest by the intending lessee. The learned Counsel submits that the Petitioner paid the premium only on 19.01.2005. In view of Regulations 5, default was committed by the Petitioner. As such Corporation, possesses the right to cancel the allotment.

6 The learned counsel further submits that taking a humanitarian approach, the Respondent in the year 2008 issued a letter to the Petitioner to pay delayed payment charges. However, the Petitioner did not pay the same within reasonable time and it is only in the year 2010, the Respondents paid the delayed payment

charges. Delay/default on the part of the Petitioner was not accepted by the Corporation. Only because the Petitioner deposited the delayed payment charges in the office of the CIDCO would not mean CIDCO has accepted default on the part of the Petitioner. Petitioner has not performed his part of the promise within the period stipulated and prescribed. In light of that, Petitioner would not possess any right to seek enforcement against the CIDCO and or seek directions against CIDCO to execute the documents.

7 According to the learned counsel, the parties are governed by the regulations. As the Petitioner has flouted the regulation, no right can be claimed by the Petitioner.

8 We have considered the submissions canvassed by the learned Counsel for the parties.

9 The factual matrix as narrated above does not seem to be a matter of debate. Allotment of plot to the Petitioner, non payment of installment within stipulated period and the deposit of installment by the Petitioner on 19.01.2005 is not disputed.

10 We would have accepted the contention of the Respondents, had the Respondents cancelled the allotment in the year 2004-05

upon non compliance on the part of the Petitioner. However, it would appear that the Petitioner paid both the installments purportedly on 19.01.2005. Respondent CIDCO accepted the said installment without demur on 19.01.2005.

11 The Respondents thereafter in the year 2008 i.e. 07.02.2008 issued a communication to the Petitioner that Petitioner has deposited the installment late and as such the Petitioner is required to deposit the delayed payment charges by way of interest. The Respondent claimed the amount of interest from the Petitioner in February, 2008. The Petitioner deposited the said amount of interest in the year 2010. The said factum is not disputed. In spite of deposit of the amount late, the Respondents did not take any objection to the same. The Petitioner, it appears was after the Respondents to execute the documents. Various letters are issued. Same is not executed and eventually in the year 2016 filed the Writ Petition. During the pendency of the Writ Petition, Respondents cancelled the allotment.

12 Reliance of the Respondents on Regulation 5 of the Regulations as referred to above would have been justifiable in case the Respondents would have cancelled the allotment on the default

being committed immediately. However, the Respondents acquiesced the default committed by the Petitioner and accepted the performance from the Petitioner in the year 2005. Respondents by its conduct in the year 2008 by issuing letter to the Petitioner to pay the delayed payment charges by way of interest also acquiesced the late payment of the installment. Subsequently, even delayed payment charges were accepted in the year 2010. All these acts would show that the Respondents allowed the Petitioner to deposit the amount of installment at a subsequent date. The Respondents had the right to cancel the contract in case time was an essence of contract under section 55 of the Indian Contract Act but the Respondents did not do so and on the contrary accepted the performance at a later date.

13 Once having accepted the performance at a later date and further by its conduct having acquiesced, it will not be open now to say that the default was committed in the year 2003 and as such in 2017, Respondents would get right to terminate the contract after accepting deposit in 2005 and DPC in 2010.

14 The Respondents accepted the performance from the Petitioner even after stipulated dates. In light of that, now it will not

be open for the Respondents to turn around and contend otherwise.

15 In view of above, impugned communication cancelling allotment is quashed and set aside. Respondents may execute necessary documents in accordance with law and in case the Petitioner is required to pay charges for execution of documents, the Petitioner shall comply the same within the time stipulated by the Respondents.

16 Rule is made absolute accordingly.

17 Writ Petition is allowed. No costs.

(R.N.LADDHA, J.)

(S.V. GANGAPURWALA, J.)