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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13260 OF 2018

Shanti Vaibhav Cooperative Housing Society ...Petitioner
Versus
State of Maharashtra & Ors ...Respondents

Mr C G Gavnekar, *with Ashutosh Gavnekar for the Petitioner.*
Mrs Shruti Vyas, *"B" Panel Counsel for State/Respondent No 1.*
Mr B B Sharma, *for Respondent No 2.*

CORAM **G.S. Patel &**
Madhav J. Jamdar, JJ.
DATED: **31st March 2022**

PC:-

1. We have heard Mr Gavnekar for the Petitioner and Mr Sharma for Respondent No 2. There is an Affidavit in Reply.

2. Rule. Rule is made returnable forthwith and the matter is taken up for final disposal.

3. The Petitioner is a co-operative society. It assails an impugned notice or order dated 26th October 2015 (Exhibit-N at page 91) issued by the 2nd Respondent, the City and Industrial Corporation of Maharashtra Ltd or CIDCO demanding an amount of Rs 1,07,69,067/- as a condition to grant a no objection certificate to the Petitioner. This NOC is required so that the members of the Petitioner can transfer their shares in the society to incoming members.

4. The dispute arises this way. The society's building is on Plot No 11A at Sector 42A at Seawood, Nerul, Navi Mumbai. The plot is about 4840.03 sq. mtrs. It falls within the command area of CIDCO, a statutory body and a development authority and planning authority under the Maharashtra Regional and Town Planning Act, 1966. Pursuant to 1975 Regulations, CIDCO offered lands to various institutions, public and individuals. IDBI Bank, Respondent No 3, made an application to CIDCO on 27th May 1998 and another one on 12th June 1998 to take some of this land on lease. CIDCO offered IDBI an area of 12,100 sq. mtrs., land No 4 in Sector 42A, Nerul, Navi Mumbai. IDBI accepted the offer on payment of a sum Rs 4,87,02,500/-. This was a premium computed at Rs 4025/- per sq. mtr. Then the members of the Petitioner all Class-III and Class-IV employees of IDBI by their letters of 13th March 2002 and 3rd July 2002 approached IDBI for allotment of the subject plot No 11A in Sector 42 at Nerul to them. IDBI agreed, and co-promoters of the Petitioner society were told that IDBI would allot to them an area of 4840.03 sq. mtrs. (about 40% of the total land allotted by CIDCO) on an as-is-where-as basis and subject to other conditions regarding eligibility of membership.

5. IDBI did not construct on the plot for quite a long time. Its employees formed a co-operative society and requested IDBI to transfer part of the larger plot in its favour. IDBI requested CIDCO by a letter of 16th September 2002 to transfer the plot of land i.e.

Plot 11A to the proposed Employees' Co-Operative Housing Society Limited. IDBI reminded CIDCO that it had been allotted land of 12,100 sq mtrs in sector 42A long back on 9th November 1998 for construction of staff quarters. The bank had then purchased from CIDCO 67 flats in the NRI complex at Nerul and therefore did not propose to construct flats on this plot of land. IDBI had agreed to get the plot sub-divided in a 60:40 ratio and allot the divided plots to the bank employees CHS promoted separately by officers and separately by Class-III and Class-IV staff. Therefore the request by IDBI to sub-divide the plot in this ratio.

6. Pausing here for a moment, it was open to CIDCO at this very stage to reject IDBI's request or to say then, i.e. in 2002, that this proposal could not have been accepted. It could have said that the land had been given to IDBI at a concessional rate for the staff quarters. If the proposal was to allow individual employees to construct flats for their own use and of their own ownership then a differential or higher lease premium would be applicable. CIDCO gave no such response either to IDBI or to the proposed society. Instead the CIDCO went ahead and sub-divided the larger 12100 sq. mtrs. into two plots, now numbered as Plot No 11 and Plot No 11A. It accepted transfer charges to Rs 1,00,000/- and intimated its acceptance to transfer Plot No 11 and Plot No 11A (in the 60:40 roughtly 7260.182 sq mtrs. and 4840.03 sq.mtrs. respectively) in the name of: (i) IDBI Officers' Society and (ii) IDBI Employees Class-III and Class-IV Co-operative Society (the present Society).

7. This letter from CIDCO of 11th March 2003 was endorsed to both societies with request to submit individual member applications with relevant documents and payment of scrutiny fee.

8. On receiving this letter, IDBI intimated the co-promoters of the Petitioner by its letter of 26th March 2003 and granted permission to perform the ground breaking ceremony or bhoomi pooja on both plots of land. It enclosed the letter of allotment received from CIDCO showing the sub-division.

9. The promoters of the Petitioners were then directed to register their proposed society within a month. This is how the Petitioner society came to be formed and registered. By a letter of 29th April 2003 CIDCO approved a list of members mentioned in Annexure-A. It requested the promoters to execute an Agreement to Lease with the Corporation within 15 days.

10. The Petitioner's promoters approached the office of the Joint Registrar, Co-operative Society, CIDCO at Raigad Bhavan. They also obtained an NOC from IDBI and CIDCO pursuant to application of 9th April 2003.

11. IDBI informed the Petitioners that it had incurred a cost of Rs 1,99,23,175/- in respect of the plot allotted to the Petitioners (4840.03 sq.mtrs.) and asked the Petitioners to make payment of the same. This amount was re-calculated to Rs 1,92,03,175/-. The Petitioner society paid this to IDBI, which then relinquished and released its right, title and interest and benefit the same in favour of the society in regard to Plot No 11A.

12. IDBI thus conveyed its no objection to CIDCO. It is at this point that the stand of CIDCO becomes crystalised: CIDCO then executed a formal agreement of 19th November 2004 with the Petitioners on acceptance of the consideration mentioned in that agreement and stated to be the full premium to be paid by the licensee to the Corporation. This agreement, a copy of which is at Exhibit-H. was duly registered with the office of the Sub-Registrar, Thane. Now a photocopy of this agreement is annexed from page 47 onwards. It is clearly registered. Full stamp has been paid. Recital (e) at page 54 read thus:

> "(e) The Licensee has, before the execution of this Agreement, paid on 13/01/2003 to the Managing Director of the Corporation, hereinafter referred to as the Managing Director, (which expression shall include any other officer of the Corporation as may be notified by the Corporation from time to time by a general or special order) a sum of Rs 1,94,81,207/- (Rupees One Crore Ninety Four Lacs Eighty One Thousand Two Hundred Seven only) being the full premium agreed to be paid by the Licensee to the Corporation."

13. Then follows the various terms and conditions. The agreement says this is a license as a pre-cursor to lease or demise that is to follow. That this was executed by a responsible and authorised officer of CIDCO cannot be questioned. The officer is named. His rubber stamp and initial/signature appears on every page including execution page. The names of all members of the society are listed to the agreement and this list also has signature of the CIDCO officer.

14. The Provisional Committee of the Petitioner then entered into a Development Agreement of 9th January 2003. This was modified by later agreements of 14th July 2003 and 13th July 2006. Ultimately, a building was constructed on the plot. That construction was complete by 27th June 2013. On that construction being completed, several members applied to the CIDCO for an NOC pursuant to the terms and conditions of the agreement of lease of 19th November 2004. CIDCO rejected these applications claiming that the transfer of plot itself was under scrutiny and permission could not be granted. Strangely, one particular member was indeed granted permission by CIDCO but that transfer could not be completed since CIDCO maintained that it was considering the question of the transfer of plot.

15. This then takes us to impugned communication at Exhibit-N of 26th October 2015 which is under the caption of 'recovery of loss revenue to the corporation' in respect of Plot No 11A section 42A, Nerul, Navi Mumbai. The letter is not long and is perhaps best reproduced in full. This is how it reads:

> "Plot No 11, admeasuring 12,100 sq. mtrs in Sector 42A, at Nerul, Navi Mumbai, our Corporation has agreed to be leased to IDBI vide Board Resolution No 7826, dated 23.09.1998 at the rate of Rs 4025/- per sq. mtrs. However, as requested by IDBI to the Corporation to subdivide and transfer the plot in the name of two different Societies fo IDBI Employees, the plot was subdivided into Plot No 11, admeasuring 7260.182 sq.mtrs. & Plot No 11A,

> admeasuring 4840.03 sq. mtrs. and these plots were allotted in the name M/s Palm Tower CHS Ltd & M/s Shanti Vaibhav CHS Ltd respectively, on payment of transfer charges Rs 50,000/-each vide allotment letters dated 19.05.2003 & 29.04.2003. The Agreement to lease in respect of Plot No 11A was executed on 19.11.2004.
>
> It has been observed that, the subdivision & transfer of plot has been without due approval of Competent Authority of the Corporation. The quantum of loss has been calculated by our Financial Advisor, and the same is worked out Rs 1,07,69,067/- as the principal loss to the Corporation. Further the DPC on the principal amount w.e.f. 29.04.2003 to 30.09.2015 has been worked out by our Accounts Department and comes to Rs 2,14,16,600/-.
>
> In view of the above, you are directed to pay the Corporation as amount of Rs 1,07,69,067/- (Rupees One Crore Seven Lacs Sixty Nine Thousand Sixty Seven only) towards principal amount & applicable DPC. You are requested to pay total amount Rs 3,21,85,667/- (Rupees Three Crore Twenty One Lacs Eight Five Thousand Six Hundred Sixty Seven only) towards principal amount Rs 1,07,69,067/- & Rs 2,14,16,600/- towards DPC worked out till 30.09.2015 failing which, necessary action as per the provisions of Agreement to Lease dated 19.11.2004, shall be initiated which may please be noted."

16. From this it is not clear what is the 'loss' that CIDCO speaks of and why it should raise this demand at this late stage. Mr Sharma draws our attention to the Affidavit in Reply filed by one Abhay V Vedpathak, Estate Officer (HQ) of CIDCO. The Affidavit seems to suggest that IDBI obtained the lands at concessional rate for staff quarters and staff housing. That rate is inapplicable if individual members are to privately own apartments in a building on that land.

The difference is between 175% of reserved price and 250% of the reserved price. But the letter fails to note that IDBI itself pointed out to CIDCO as far back as 2002 that it was not going to build staff quarters here, and asking instead for a sub-division and an agreement between CIDCO and the proposed societies. What is worse is that CIDCO then executed an agreement, said to be for consideration, which was paid.

17. CIDCO now claims that this is loss of revenue to the government. But then the Affidavit in Reply says some very strange things. It claims that the allotment of the plot was with the approval of CIDCO's Board but sub-division was without approval of the CIDCO's Competent Authority. We do not pretend to understand what this suppose to mean because CIDCO approved both the sub-division and the allotment of the plot. At page 116 as part of paragraph 9, CIDCO admits that it has entered into the agreement of lease at Exhibit-H dated 19th November 2004. It, however, claims that the society has only a license and an authority to enter upon the land to erect a building or buildings to provide residential accommodation for self occupation and for use of members whose names are particularly mentioned in the scheduled annexed. It then claims that under clause 3(n) CIDCO can recover any amount payable to the Corporation by the licensee. This explanation is inadequate. The society was never put to any notice at the time of execution of Exhibit-H on 19th November 2004 that it had to pay any higher premium. That is something that CIDCO ought to have mentioned and it should have put the Petitioner to notice of this. That was never done. There was a solemn assurance that the allotment to the Petitioners of the sub-divided Plot 11A and the license to construct building was being granted for self occupation and occupation by the members whose names are listed in the schedule. We do not see how CIDCO can resile from this position. It cannot claim revenue loss being caused by the society because it is not even case of the CIDCO that the society or any of its members defrauded or cheated CIDCO. We do not know if CIDCO has any specific case against any of its officers. Even that information is no where stated on an Affidavit.

18. On behalf of CIDCO our attention is drawn to the decision in *Abhimanyu Hunkur Bhosale & Ors v State of Maharashtra & Ors*. That related to a welfare association on behalf of the employees of Air India. But in that case CIDCO was found to have clearly stated total premium that was payable. The Court granted time to CIDCO to place its stand on Affidavit to work out the exact price. CIDCO was not permitted to claim a higher price then that which it had earlier communicated to the Court. The Abhimanyu Bhosale decision was considered by a Division Bench of this court in *Ajay Gupta & Ors v State of Maharashtra & Ors*.[1] The *Ajay Gupta* court analysed the *Abhimanyu Bhosale* case thus:

> 8. Eventually, the dispute between Air India, CIDCO and the employees to whom an allotment had been made by Air India came before this Court for its decision in a writ proceeding under Article 226 of the Constitution. *Abhimanyu Hunkar Bhosale v. State of Maharashtra*, Writ Petition 336 of 2010. The dispute was resolved on the basis of a consensus on 30 January, 2010. The judgment of the Court records that CIDCO was agreeable to issue an NOC for an outright sale of the residential flats by Air India to

1 2012 SCC OnLine Bom 1026 : (2012) 6 Mah LJ 331.

Co-operative Societies of its employees, subject to the payment of additional premium for the conferment of outright ownership rights on the employees of Air India instead of the original proposal for the allotment of flats as staff quarters. This was subject to the payment by Air India to CIDCO of a total premium of Rs. 17,500/- per sq.mtr. for the entire land. The Division Bench noted that the Board of Directors of Air India resolved on 24 June, 2010 to pay to CIDCO the demand for additional premium, in addition to which the employees would be required to make payment to the successor-in-interest of Air India for the sale of the respective flats. CIDCO filed an affidavit before the Court to the effect that the rate of lease premium for allotment of land to a co-operative housing society was Rs. 17,500/- per sq. mtrs. It was stated before the Court that at a meeting held with the Chief Secretary of the State Government CIDCO had called for the payment of a lease premium of Rs. 17,500/- per. sq. mtr. for allowing Air India to allot the apartments constructed on the plot to its employees. CIDCO stated on affidavit that thereupon it may issue necessary permissions, approvals, or as the case may be, NOCs for the transfer of the residential units to co-operative housing societies to be formed by the employees. The Division Bench noted that a signed statement was placed on the record on behalf of Air India containing the rates at which the flats would be allotted by Air India to its employees. The Petitioners before the Court agreed to pay the price to Air India in accordance with a chart provided to the Court. **The Division Bench rejected the demand of CIDCO for the payment of premium over and above the amount of Rs. 17,500/- per sq. mtr., noting that as recently as April, 2010 CIDCO had agreed to grant land to Air India for the purpose of allotment of flats to its employees through Co-operative Housing Societies on an outright sale basis.**

(*Emphasis added*)

This decision does not assist CIDCO. In fact, it is against CIDCO.

19. Mr Gavnekar relies on a decision of a Division Bench of this Court in *Kalpataru CHS Ltd v State of Maharashtra & Ors*[2] where CIDCO was the 2nd Respondent and IDBI was the 3rd Respondent. That seems to have been in very similar circumstances. There also CIDCO declined to issue a no objection certificate. There again CIDCO claim there were irregularities in the grant of permission to the Petitioner society. Ultimately, in paragraph 16 of the judgment the Division Bench said:

> "16. In our considered opinion, hardly any substance can be found in the objections raised by respondent No 2 for issuance of "No Objection Certificate", for even assuming that the enquiry in respect of the alleged irregularities is in progress, it may take its own course. But when respondent No 2 itself who had executed lease deed and tripartite agreement in favour of the Petitioner, now at this stage respondent No 2 cannot refuse to issue no objection for transfer of the said flats by its members to prospective purchasers. Needless to state that, the prospective purchasers are bound to take care of their own interest and respondent No 2 need not, on the pretext of protecting their interests, refuse issuance of no objection certificate. Hence the Petition needs to be allowed and allowed accordingly."

20. We are exactly on the same footing. The decision of the Division Bench in *Kalpataru's* case is binding on us. We see no

2 2016 SCC OnLine Bom 5004.

reason to depart from that position in law. The action of CIDCO is clearly arbitrary and falls afoul of Article 14 of the Constitution of India. There may also be an argument to be raised invoking the doctrine of promissory estoppel, but no submission has been seriously canvassed before us on either side and so we do not examine that aspect of that matter further, except to note that the document of 19th November 2004 at Exhibit-H undoubtedly constituted a specific representation by CIDCO and relying on that representation the Petitioner society was induced to act in a certain manner and did in fact act to its very considerable prejudice including financial prejudice. Even if we do not take it at the level of a doctrine of promissory estoppel, we do not see how CIDCO can on the one hand be permitted to made a specific representation in a signed, executed, stamped and registered document and then, years later, take a contrary stand by claiming that there was mistake or irregularity internally by one of the officers of CIDCO. Even if there was, as the Division Bench in *Kalpataru* said that consequence cannot be visited upon the Petitioner.

21. Rule is accordingly made absolute in terms of prayer clauses (a) and (b), which read thus:

> "(a) That by Writ of Mandamus or by appropriate Writ, Direction and Order, Your Lordships be pleased to quash and set aside the impugned Notice/Order dated 26/10/2015 (annexed at Exh. N) and Impugned action of Respondent No 2 withholding grant of No Objection Certificate to the Members of the Petitioner to transfer their shares in the Society or transfer, assign his/her rights and interest to use and occupy the Flat in the Building erected by the Petitioner Society on the Plot situated on the

Plot No 11A, admg. 4840.03 sq.mtrs. situated in Sector 42A, at Seawood Nerul, Navi Mumbai.

(b) That by Writ of mandamus or by appropriate Writ, Direction and Order, Your Lordship be pleased direct the Respondent No 2 to grant the Applications of the members of the Petitioner for No Objection pending with the Respondent No 2 from 03/07/2015 and continue to grant No Objection Certificate to the members of the Petitioner in future."

22. In the facts and circumstances of the case there will be no order as to costs.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**