

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO.2748 OF 2015
WITH
CIVIL APPLICATION NO. 12140 OF 2022
IN WP/2748/2015
(FOR INTERVENTION)
WITH
CIVIL APPLICATION NO.410 OF 2008
IN WP/1212/2005
(FOR RECALL ORDER)
WITH
CIVIL APPLICATION NO.1346/2020
IN CA NO.410/2008 IN WP NO.1212/2005
(FOR VACATING I.R.)**

**MADHULIKA W/O DEORAJ KAPUR
VERSUS
THE ADMNINSTRATOR (NEW TOWN) & ANOTHER**

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Advocate for Petitioner : Mr. Jain Vishwajit R. (Kamboj)
Advocate for Applicant in CA No.12140/2022: Smt. A. A. Nimbalkar
AGP for Respondents/State: Mrs. M. A. Deshpande
Advocate for Applicant in CA No.410/2008: Mr. Milind Deshapnde
Advocate for Respondent No.1 in CA No.1346/2020: Mr. A. V. Sakolkar
h/f Mr. V. S. Sakolkar

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**CORAM : MANGESH S. PATIL &
S. G. CHAPALGAONKAR, JJ.**

DATE : 07.02.2023

PER COURT :

. Heard both the sides.

2. It appears that the CIDCO had leased out the writ plot to one Madhulika w/o Deoraj Kapur.

3. The petitioner who has filed Writ Petition No.2748/2015 claims to be the same lady and the lease holder. The CIDCO is disputing her identity.

4. The same petitioner had earlier filed Writ Petition No.1212/2005 questioning the legality of the communication received from the CIDCO on 05.10.2004 refusing her the building permission. This Court had allowed that writ petition and directed the CIDCO to consider her proposal afresh by imposing a condition that she would commence the construction within one year and would personally occupy it.

5. The CIDCO claims that pursuant to the order passed in Writ Petition No.1212/2005 when the petitioner submitted an application seeking building permission along with photocopies of the documents, it was realized that there was a difference between her signature and the signature that was appearing on the agreement to lease. It also alleges that although the permission was granted to her to carry out the construction and had undertaken to herself reside in the building but in breach of such undertaking, she attempted to sell out the plot and even issued a public notification to which it objected.

6. It is the stand of the CIDCO that subsequently even it received a communication from the United State of America purportedly from one Madhulika Kapur. She informed that she had obtained divorce from her husband and in that proceeding for divorce this plot was allotted to her although she was residing in USA. Along with that communication she had also annexed various documents, which according to the learned advocate for the CIDCO were indicating that she was the lady to whom the plot was leased out.

7. Putting up all such grievance, the CIDCO has filed Civil Application No.410/2008 in Writ Petition No.1212/2005 for recalling the order whereby the writ petition was allowed.

8. Apart from such checkered history, it is also admitted fact that even a first information was lodged against the petitioner for cheating but it has resulted in acquittal.

9. Considering such checkered history and the complected issues on facts, this Court will have inherent limitations in entering into and deciding the disputed question of facts in exercise of writ jurisdiction under Article 226 of the Constitution of India. Even recording of evidence seems inevitable.

10. In view of such peculiar state of affairs, we indeed wonder as to why neither of the parties were keen in approaching the civil court with a substantive proceeding and getting the disputed questions sorted out once for all. Needless to say that the civil court would have allowed both the parties to lead evidence and based on that could have returned findings of facts which could have been further challenged by the parties. This would have enabled even both the sides to lead concrete evidence to substantiate their stand regarding identity of the petitioner as the original lease holder.

11. We dispose of this writ petition as well as civil application nos.12140/2022, 410/2008 and 1346/2020 by directing the petitioner who has filed Writ Petition No.2748/2015 and Writ Petition No.1212/2005 to file a suit seeking a declaration and consequential reliefs which would once for all conclusively determine the disputed questions. She shall implead the CIDCO and even the lady who has been sending the letters to the CIDCO on the address mentioned therein.

12. All the issues are kept open. Considering the peculiar nature of dispute, the civil court shall decide the suit without going into the aspect of limitation provided the petitioner files that suit within a period of four weeks.

(S. G. CHAPALGAONKAR, J.)

(MANGESH S. PATIL, J.)

Sameer