

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13583 OF 2017

Sanjay S/o. Mohan Rathod,
Age 45 years,
R/o. Plot No. 15, N-4, F-1 Sector,
CIDCO, New Aurangabad,
District Aurangabad

.. PETITIONER

Versus

1] City & Industrial Development Corporation Ltd.,
"Nirmal Towers:", IInd Floor, Nariman Point,
Mumbai through its Managing Director

2] The Chief Administrator (CIDCO),
New Towns, Aurangabad

3] Administrator, CIDCO,
"Udyog Bhavan", New Aurangabad

.. RESPONDENTS

...

Advocate for petitioner : Mr. Y.P. Deshmukh
AGP for the respondent – State : Mr. P.K. Lakhotiya
Advocate for the respondents nos. 2 and 3 : Mr. N.S. Tekale

...

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

DATE : 10 JANUARY 2023

JUDGMENT (MANGESH S. PATIL, J.) :

Heard.

2. Rule. Rule is made returnable forthwith. At the joint request of the parties, the matter is being disposed of finally at the stage of admission.

3. A plot was earmarked in the plan of the respondent - CIDCO which is constituted as a special planning authority under the provisions of the Maharashtra Regional and Town Planning Act, 1966 (**MRTP Act**) was initially leased out to the brother of the petitioner in the year 1993. The petitioner succeeded to it on the basis of the probate in the year 2005. The plot was admeasuring 313 square meters and on the basis of a building permission construction admeasuring 131.35 square meters was carried out. In 2012, the petitioner pursuant to the building permission applied to the respondent - CIDCO for no objection certificate. The petitioner was made to pay an additional lease premium of Rs.3,71,703/- for obtaining the no-objection certificate which he paid on 23-04-2013.

4. As per the policy of the CIDCO, the lease holders were mandated to consume the entire FSI within a stipulated time. By resolution of the board no. 10822, dated 17-05-2013 the CIDCO resolved that in respect of all the allottees prior to 26-06-2012, the time to consume the FSI be extended on payment of additional lease premium. Pursuant to such decision, the petitioner paid the additional lease premium. However, by the resolution dated 26-06-2012 it was resolved to not to charge such additional lease premium if 25% of permissible FSI was consumed. By a separate resolution dated 04-02-2014, however, it was *inter alia* resolved that the amount of

additional lease premium recovered from the plot holders in accordance with the then policy shall not be refunded. Aggrieved thereby, the petitioner is seeking refund.

5. The learned advocate Mr. Deshmukh would vehemently submit that the decision not to refund the additional lease premium is arbitrary and discriminatory and in violation of Article 14 of the Constitution of India inasmuch as there is no reasonable classification between the plot holders like the petitioner who have paid the additional lease premium for allotment of occupancy certificate / no-objection certificate during the short period between 26-06-2012 and 17-05-2013 and the plot holders who were similarly situated but had not applied for such NOC / occupancy certificate during that period. This decision has also nothing to do with the object that was sought to be achieved. It fails to meet the two tests regarding reasonable classification and the object sought to be achieved. He would place reliance on the following decision to buttress his this submission :-

i) ***B. Prabhakar Rao and others Vs. State of Andhra Pradesh and others; 1985 Supp Supreme Court Cases 432.***

6. The learned advocate Mr. Tekale for the respondent - CIDCO submits that there is no dispute that considering the then existing policy, the petitioner was liable to pay the additional lease premium. He has never challenged that order. It is only by way of a subsequent policy it was resolved that no such additional lease

premium be charged. The legality and validity of none of these policy decisions of the CIDCO has been subjected to any challenge and in the absence of any such challenge the petitioner is not entitled to refund.

7. Mr. Tekale would further submit that the petitioner's claim even suffers from acquiescence, delay and laches. He would submit that the petitioner had paid the additional lease premium on 22-04-2013 but has filed this petition may be after approaching the respondents on 20-04-2017, after a lapse of 4 years. Therefore, even on this count, his claim for refund is liable to be discarded.

8. He would place reliance on the decisions in the matter of ***State of Maharashtra Vs. Digambar; (1995) 4 SCC 683, Prabhakar Vs. Joint Director Sericulture Department and others; (2015) 15 SCC 1*** and ***Hindustan Lever Ltd. Vs. Hindustan Lever Mazdoor Sabha and others; 1996(5) BomCR 140.***

9. We have carefully considered the rival submission and perused the papers.

10. There is no dispute on facts. Admittedly, as per the decisions taken from time to time in order to compel the lease holders, the lessees were expected to consume the complete FSI within a stipulated time. By office order dated 04-04-1990, the plot holders who

consumed 25% of the plot area were to be issued occupancy certificate. By office order dated 26-06-2012 it was directed that the plot holders will have to consume the entire FSI mentioned in the agreement to lease within six years. The petitioner applied for completion certificate on 17-12-2012 prior to the order dated 26-06-2012. In accordance with that he was directed to pay the additional lease premium which he paid on 22-04-2013.

11. It is thus abundantly clear that there was a policy of recovering the additional lease premium in case the entire FSI was not consumed and NOC was applied for. Admittedly, the petitioner paid such additional lease premium without any demur. Admittedly, there has been no challenge to the right of the CIDCO to recover such additional lease premium which therefore cannot put to any scrutiny at this stage. Though the CIDCO subsequently by resolution dated 17-05-2013 resolved not to charge additional lease premium in respect of the plots allotted before 26-06-2012, since the petitioner according to the prevalent policy had already deposited the additional lease premium, he is now seeking a refund.

12. True it is that by a subsequent resolution dated 29-01-2014 it has been resolved that the additional lease premium recovered from the plot holders shall not be refunded. However, apparently, we see no discrimination. The plot holders who were intended to obtain a NOC or

completion certificate between 26-06-2012 and 17-05-2013 were bound by the uniform policy and those who intending to have it were required to pay additional lease premium.

13. Though the submission of Mr. Deshmukh regarding discrimination and non-compliance of the two tests applicable under Article 14 of the Constitution of India is attractive, we see that there is no discrimination between the persons who were wanting to have a completion certificate or no-objection certificate during the period 26-06-2012 and 17-05-2013 and the persons who were not so intending to have it during that period.

14. Apart from the above state-of-affairs, in the absence of any challenge to the policy decision of the respondent - CIDCO at any point of time, merely putting up a claim for refund suffers from delay and laches as well inasmuch as the petitioner is seeking refund after many years.

15. The petition is dismissed.

16. Rule is discharged.

[S. G. CHAPALGAONKAR]
JUDGE

arp/

[MANGESH S. PATIL]
JUDGE