

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

46 WRIT PETITION NO.10981 OF 2019

PANDIT FAKKAD SHINDE AND OTHERS
VERSUS
CITY AND INDUSTRIAL DEVELOPMENT CORPORATION
OF MAHRASHTRA LIMITED AND OTHERS

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Advocate for Petitioners : Mr. Madhav R. Mundhe
and Mr. M.S. Lokre

AGP for Respondent - State : Mr. S.G. Sangle

Advocate for Respondent No.1 : Mr. V.S. Undre h/f.
Mr. S.V. Deshmukh

Advocate for Respondent No.3 : Mr. R.R. Sancheti a/w.
Mr. M.S. Kulkarni

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CORAM : NITIN W. SAMBRE AND
S.G. CHAPALGAONKAR, JJ.

DATE : 27-03-2023

PER COURT :

. The challenge in the petition is by the petitioners / plot holders from land Gut No.48 to the refusal of respondent no.1- CIDCO to grant completion certificate to their structures.

The facts necessary for deciding the petition are as under:

2. The land Gut No. 48 of Village Wadgaon (Kolhati), Tal. & Dist. Aurangabad was acquired by respondent no.5 – MIDC vide award dated September 8, 1983. It is the case of the MIDC that it has acquired entire 10.96 Hectors of land, however the mutation in the

name of Respondent no. 5 - MIDC shown to the extent of 6-Hector 49-R.

3. As a sequel of above, of the balance land in relation to which mutation was effected in favour of Respondent no. 5 – MIDC, land to the extent of 1-Hector 11-R came to be acquired by the respondent – CIDCO in two phases.

4. After adjusting aforesaid 1-Hector, 11-R land from total 10.96 Hectors out of Gut No.48, the remaining land to the extent of 3.8 Hectors was converted to non-agricultural use after having permission from the revenue authorities. Aforesaid land to the extent of 3.8 hectors was transferred to various hands and petitioners, who appear to be plot owners started construction.

5. Having realized that the mutation should have been of the entire land i.e. 10.96 Hectors at the behest of the MIDC, an objection was raised with the CIDCO so also with the revenue authorities. We are informed that the proceedings are already pending before the revenue authorities so as to effect mutation entry in the name of respondent - MIDC based on the acquisition award dated September 8, 1983.

6. In this background, learned counsel for petitioners would urge that it is because of the mistakes committed by the revenue authorities and respondent - MIDC Officers, the land to the extent of 3.8 hectors was not shown to be subjected to acquisition and as such was plotted after non-agricultural use permission was granted by revenue authorities. According to learned counsel for petitioners, a lay out was sanctioned in 12100 square meters of area whereas respondent - CIDCO has developed the area i.e. area to the extent of 1-Hector, 11-R which was acquired by them. It is further claimed that the development permission to the extent of 12100 square meters was also granted by respondent no.1 – CIDCO. That being so, petitioners cannot be faulted with or blamed for carrying out any illegal development or construction. Learned counsel for petitioners would urge that since the conflict / confusion is created because of wrong / erroneous actions on the part of the respondent authorities, it is for the respondent authorities to resolve the same in accordance with the law.

7. Learned counsel for respondent - CIDCO would urge that the acquisition of the property by the CIDCO and the refusal of grant of completion certificate is in tune with the rules and regulations.

8. According to learned counsel for respondent - CIDCO, so also learned counsel for respondent – MIDC, petition involves disputed question of facts and as such petitioners should be relegated to the remedy of filing civil suit before the competent civil court.

9. We have appreciated the aforesaid submissions.

10. The fact remains that in spite of there being acquisition by respondent – M.I.D.C., it appears that not only part of the same land appears to have been reacquired by CIDCO balance land was permitted to be developed by the developing authority as could be noticed from the material made available. In this background, petitioners appear to have carried out development on the land in question based on their claim of ownership of plots out of sanctioned lay out. Petitioners based on above has approached respondent - CIDCO / planning authority for grant of completion certificate, so that their structures become legalized.

11. The fact remains that at the behest of respondent - MIDC the revenue appeal questioning the incorrect mutation is pending consideration. In addition, respondent no.5 - MIDC has also raised

an objection to the prayer of petitioners moved before respondent no.1 - CIDCO for regularization / grant of completion certificate.

12. In the aforesaid background, what can be noticed is respondent no.1 – CIDCO so also respondent no.5 - MIDC are lodging their claim on same set of land, part of which was independently permitted to be developed. Petitioners appear to be purchaser of the developed property / plots and have carried out further construction.

13. In view of above, in our opinion, it will be appropriate to direct petitioners to approach before the Divisional Commissioner Aurangabad, Division Aurangabad with the aforesaid copy of petition and the replies tendered by the respective parties i.e. CIDCO - planning authority and the MIDC, who claims to have acquired the land in question.

14. We are not inclined to go into the title of petitioners, whether it is genuine or not. However, what can be noticed from the factual matrix referred above viz. the failure on the part of the original owner to disclose the acquisition of the property not only to CIDCO, but also to private individuals, failure of the MIDC to get the entire land mutated in its favour immediately after the award was

passed, failure of the planning authority and the revenue authorities to consider the same at the time of grant N.A. permission and thereafter sanctioning of lay out sufficiently prompts this Court to *prima facie* believe that petitioners are purchasers of the plots without notice of the acquisition proceedings. We are unable to locate any such material on record including from the affidavit of respondents that petitioners were aware about any such issue including that of acquisition by MIDC.

15. In this view of the matter, we deem it appropriate to direct the Divisional Commissioner to look into the matter and make his recommendations to CIDCO, if so required make its recommendations to respondents as to the mode and manner in which the issue put forth by petitioners in the petition of regularization of their structure can be resolved in accordance with law.

16. We expect the Divisional Commissioner to take the decision by inviting meeting of all the stake holders and Divisional Commissioner is at liberty to make recommendations as he deems appropriate and if so required, to the State Government. Any recommendations of the Divisional Commissioner, Aurangabad to the

State Government in the matter be decided expeditiously and in any case within a period of four months from the date of forwarding of such recommendations by the Divisional Commissioner to the State Government.

17. However, the aforesaid observations may not lead to the inference that petitioners have absolute title in the suit property as said issue as regards the title of petitioners can be resolved only before the competent Civil Court.

18. The petition accordingly stands disposed of.

(S.G. CHAPALGAONKAR, J.)

(NITIN W. SAMBRE , J.)

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