

Vidya Amin

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

**WRIT PETITION NO. 3284 OF 2023**

Ramchandra Joma Gharat & Ors. ... Petitioners

*Versus*

Chief Controller of Unauthorized Development & ... Respondents  
Ors.

Mr. Rahul Thakur a/w. Mr. Sanket Thakur for the petitioners.

Mr. B.B. Sharma for respondent nos. 1 and 2/CIDCO.

Mrs. M.P. Thakur, AGP for respondent nos. 3 to 6/State.

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**CORAM: G. S. KULKARNI  
& R.N. LADDHA, JJ.**  
**DATED: 13 April, 2023**

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**P.C.**

1. Heard Mr. Thakur, learned counsel for the petitioners, Mr. Sharma, learned counsel for respondent nos. 1 and 2/CIDCO and Mrs. Thakur, learned AGP for respondent nos. 3 to 6.

2. The petitioners claim to be the owners of plot of land bearing Survey no. 185/1 situated at Village Jasai, Taluka Uran, District Raigad. It is stated that the land is a freehold Class-I land. The land is in use and occupation, inasmuch as a petrol pump business is being undertaken on the same under a licence granted by Bharat Petroleum Corporation.

3. The grievance of the petitioners is that a notice dated 20 October, 2022 under section 53(1) (a) of the MRTP Act came to be issued to the petitioners by CIDCO recording that the petitioners have not obtained any permission to undertake the construction and/or conduct the petroleum business. The petitioners, on receipt of such notice, appear to have applied for retention of the structure by making a regularization application permissible under section 53(3) of the MRTP Act r/w. Section 44. Such application came to be considered and rejected by CIDCO, as informed to the petitioners by CIDCO's communication dated 14 November, 2022. The said communication reads thus:

Ref. No. CIDCO/BP/TPO(NM)/2022/4509

Date: 14.11.2022

To,  
Shri.Gurunath Ramchandra Gharat  
At – Jasai,  
Tal Uran, Dist. Raigad.

Sub: Construction of Petrol Pump on Gut No.185/1,  
At Jasai, Talu Uran, Dist-Raigad.

Ref:- Your application received to this office on 5/1/2022.

Sir,

This has reference to your application cited above regarding subject matter. In this regard, it is to inform you that, CIDCO is appointed as New Town Development Authority for a New Town of New Bombay by Government of Maharashtra vide GR dated 20/8/1971 & 16/8/1973. As per section 113 A, 117 of MR & TP Act 1966 read with section 125 states that the lands included under the New town Navi Mumbai project are for public purposes. The notified lands after acquisition are developed and disposed as per The Navi Mumbai Disposal of Lands Regulations 2008. Development permission on the lands leased by CIDCO are granted as per the prevailing regulations.

As per the submitted documents, it appears that the land is privately owned, but is situated in notified area of Navi Mumbai New Town. Since, the application is submitted without agreement to lease, and is not accompanied with necessary charges, the same is incomplete and cannot be considered valid application under section 44 of the MR&TP Act, 1966 for seeking development permission.

The land under reference is not disposed as per The New Bombay Disposal of Lands Regulations 2008 and does not have a Lease Agreement. Hence the proposal cannot be processed further.

Thanking you,

Yours faithfully,

(Bhushan R. Chaudhari)  
Associate Planner (BP)”

4. Mr. Thakur, learned counsel for the petitioners would submit that the reasons which are set out in the rejection are totally untenable, as the land of the petitioners is a freehold land and not an acquired land, hence, there is no obligation for the petitioners to enter into any lease agreement with CIDCO. It is, thus, submitted that the reasons which are set out in the impugned communication are applicable only to the land acquired by CIDCO and not to the freehold land as held by the petitioners. Mr. Thakur has also contended that against such rejection of regularization proposal as made by the petitioners, the petitioners have already filed an appeal before the State Government, which is also pointed out by Mr. Sharma by drawing our attention to paragraph 3(h) (page 13) of the petition.

5. As such appeal is pending, we do not intend to express any opinion on the communication dated 14 November, 2022 issued by CIDCO. It would be appropriate that the Appellate Authority itself considers all such issues in the pending appeal.

6. In the aforesaid circumstances, we are inclined to dispose of the petition permitting the petitioners to pursue the appeal, which be decided as expeditiously as possible by the Appellate Authority and in any event within six months from today. All contentions of the parties in the pending appeal are expressly kept open.

7. Till the decision of the appeal, we direct the CIDCO not to take any coercive action under the impugned notice dated 20 October, 2022 under section 53(1) issued to the petitioners.

8. In the event, any order adverse to the petitioner is passed on the petitioners' appeal, the same shall not be effected for a period of four weeks, from the date of communication of said order to the petitioners.

9. The petition is disposed of in the above terms. No costs.

(R.N. LADDHA, J.)

(G. S. KULKARNI, J.)