

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5418 OF 2023

Sai Shivam Developers & Anr ...Petitioners
Versus
The City and Industrial Development ...Respondents
Corporation & Ors

Mr Nayan Talwar, *i/b Onkar Gupte, for the Petitioner in both WPs.*
Mr Sameer Patil, *for Respondent No. 1 in both WPs.*
Mrs AA Purav, AGP, *for Respondent No. 4-State.*

CORAM G.S. Patel &
Neela Gokhale, JJ.
DATED: 12th June 2023

PC:-

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1. **Rule.** Returnable forthwith.
2. The Petition is entirely unnecessary. It has had to be filed only because CIDCO persists in refusing to issue an Occupancy Certificate on the ground of pendency of a Public Interest Litigation.
3. We have lost count of the number of orders that we have had to pass in identical situations. Our order of 6th February 2023 in a group of matters reads thus:-

“1. In all these matters, the Petitioners seek an order

against CIDCO to issue an Occupancy Certificate. We are told that these Occupancy Certificates have been delayed (not refused) because of the pendency of some PILs. Our attention is drawn to a previous order dated 8th December 2022. A copy of that order is at page 68 of Writ Petition No. 12452 of 2022. We reproduce that from pages 68 to 69.

“The Petitioner seeks occupancy certificate.

2 We have heard learned Counsel for the Petitioner and Respondents.

3 Reference is made to the ord3r dated 20th January, 2019 in Writ Petition (St.) No.251 of 2020 passed by the coordinate Bench of this Court in similar matter.

4 In light of that, we adopt the same course and pass the similar order.

5 The Respondent Nos. 1 and 2 shall consider the application of the Petitioner and grant of occupancy certificate in respect of construction of Plot No.100, Sector No.18, Ulwe Node (12.5% scheme), Navi Mumbai on its own merit. The said decision shall be taken preferably within two months from today.

6 In case of Occupancy Certificate is granted in favour of the Petitioner by CIDCO, then the same shall be subject to final outcome of PIL No. 154 of 2016 and PIL No.121 and 122 of 2019. It is further made clear that the Petitioner herein or any other person claiming through the Petitioner shall not be entitled to claim any equity in the event the orders in PIL No.154 of 2016 and/or PIL No.121 and 122 of 2019 are adverse to the interest of the Petitioner herein or the person

claiming through the Petitioner.

7 We have passed the order in view of the fact that the coordinate Bench has already taken the similar view and decide the matter.

8 Writ Petition is disposed of. No costs.”

2. There is a similar order of 2nd January 2023 at page 70 which reads thus:

“Rule. Shri.Hegde, waives service for Respondent Nos.1 and 2-CIDCO. Ms.K.N. Solunke, AGP for State-Respondent No.3. Rule is made returnable forthwith.

2 By this Petition filed under Article 226 of the Constitution of India, the Petitioner seeks a writ of Mandamus directing the Respondent Nos. 1 and 2 to grant Occupancy Certificate for the building situate at Plot No. 97, admeasuring 1949.64 sq. meters at Section 18 Pt., Ulwe Node Tal. Panvel, Dist. Raigad.

3 It is not in dispute that the application for Occupancy Certificate is pending on the ground that Public Interest Litigation relating to the subject matter is still pending before this Court.

4 We have perused the judgment delivered by this Court on 29.01.2020 in Writ Petition (St.) No.251 of 2020 in case of **Pankaj Shankarlal Bhanushali & Ors. Vs. The Municipal Commissioner, Municipal Corporation of City of Panvel & Ors.** And also order dated 21.10.2022 passed by Division Bench of this Court in Writ Petition No.11359 of 2022 in case of **Reddy's Infrastructure Pvt. Ltd. & Anr. Vs. The**

City and Industrial Development Corporation of Maharashtra Limited & Ors. Directing the authority to grant Occupancy Certificate in respect of the subject property on its own merits within a period of two months from the date of order subject to the final out come of PIL No.154 of 2016 and PIL Nos.121 and 122 of 2019.

5 We adopt the same course and pass the following order:

a) CIDCO shall consider the application of the Petitioner for grant of Occupancy Certificate on its own merits, in respect of property described in prayer Clause (a) of the petition within two months from today.

b) In case, the Occupancy Certificate is granted in favour of the Petitioner by the CIDCO, the same shall be subject to final out come of PIL No.154 of 2016 and PIL Nos.121 and 122 of 2019.

c) It is made clear that the Petitioner or any other persons claiming through petitioner shall not be entitled to claim any equity in the event the order or proceedings are adverse to the interest of the Petitioner or a person claiming through the Petitioner.

d) We have passed this order in view of the fact that our co-ordinate bench has also already taken similar view and decided the matter more

particularly in Writ Petition (St.)
No.251 of 2020.

e) Rule is made absolute in the
aforesaid terms. Writ Petition is
disposed of. No order as to costs.

Parties to act on the authenticated copy of this
order.”

3. In all four Petitions, we adopt the same course. We
issue Rule. Rule is made returnable forthwith. Rule is made
absolute to the following terms:

(a) CIDCO shall consider the application of the
Petitioners for an Occupancy Certificate on merits in
respect of the properties described in the respective
Petitions within sixty days from today.

(b) If the Occupancy Certificate is granted to the
Petitioner by CIDCO, this will be subject to the final
outcome of PIL No. 154 of 2016, PIL No. 121 of 2019
and PIL No. 122 of 2019.

(c) The grant of an Occupancy Certificate will
not entitle the Petitioners to claim any equities if the
order in the PILs is adverse to the interest of the
Petitioners.

4. This order is passed since coordinate Benches of our
Court have taken an identical view.

5. The Writ Petitions are disposed of in these terms.

6. There will be no order as to costs.”

4. As an example there is another order of 28th February 2023
in Writ Petition 2014 of 2023. It reads thus:

1. **Rule.** Returnable forthwith. Respondents waive
service.

2. An Occupancy Certificate (“OC”) is refused because there is a Public Interest Litigation (“PIL”) pending. Previously the Court had granted conditional protective orders. One such order is to be found at page 100. It is of 29th January 2020. A similar order, more recently passed, is of 22nd December 2022, a copy of which is at page 112. This is in Writ Petition No. 15781 of 2022. Paragraph 3 sets out that the reason for the refusal of the OC is the same. Previous Courts have directed the authorities to grant the OC on merits within two months subject to the final outcome of PIL Nos. 154 of 2016, 121 of 2019 and 122 of 2019.

3. We pass the same order in this Petition.

4. The City and Industrial Development Corporation is to consider the application of the Petitioners for an OC in respect of the property that is the subject matter of the Writ Petition within two months from today. The Commencement Certificate as amended periodically is the one that will be taken into account for this purpose (i.e., not the original CC).

5. If the OC is granted in favour of the Petitioners, it will be subject to the final outcome of these PILs. Neither the Petitioners nor any persons claiming through them will claim any equities if the orders in PIL are adverse to the interests of the Petitioners or any person(s) claiming through the Petitioners. This order is necessary because Benches of co-ordinate strength have taken similar views.

6. The Writ Petition is disposed of in these terms with no orders as to cost. Rule is made absolute in these terms.

5. We fail to understand why CIDCO believes that the High Court must mechanically, and almost as if it is some clerical department of CIDCO, issue the same orders in successive Petitions and why CIDCO refuses to understand that once there is an order where Rule is made absolute on a certain basis it must conduct itself accordingly for all other matters.

6. We now make this abundantly clear the pendency of the PIL will not stop CIDCO from issuing an Occupancy Certificate. In every single case that application for an Occupancy Certificate is to be considered on merits and every Occupancy Certificate is explicitly made subject to the outcome of PIL No. 154 of 2016 PIL No. 121 of 2019 and PIL No. 122 of 2019. The issuance of an Occupancy Certificate will not entitle the applicant to claim any equities if the final orders in PILs are contrary to the interest of the Petitioners.

7. It is open to CIDCO to endorse these conditions on every single Occupancy Certificate. We will not permit CIDCO to refuse an Occupancy Certificate saying that the applicant should obtain an identical order of this Court. If CIDCO does so, we will proceed to impose costs on CIDCO.

8. In the meantime the registry is requested to obtain directions on the administrative side for a priority listing of these PILs. We indicate our willingness to take these PILs, noting that the earliest of them is of 2016.

9. Vakalatnama is to be filed by 19th June 2023.

10. Rule absolute in these terms. No costs.

(Neela Gokhale, J)

(G. S. Patel, J)