



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2229 OF 2022

Bhiwandi Powerloom Co-operative Society Ltd.
(Formerly Known as Bhiwandi Co-operative
Spinning Mills Ltd.), having its office at 3,
Bengalpura, Bhiwandi, Thane-421 203
Through its Chairman Iqbal Ahmed Abdul Rauf
Punjabi.

... Petitioner

Versus

1. The State of Maharashtra, Through its
Principal Secretary, Revenue and Forest
Department, Mantralaya, Mumbai.
2. The Collector, Thane.
3. The Tahsildar (Revenue), Having its office
at Collector Office, Thane.

... Respondents

Mr. Raju D. Suryawanshi for Petitioner.
Ms. S. S. Bhende, AGP for Respondents-State.

CORAM K. R. SHRIRAM &
DR. N. K. GOKHALE, JJ.
DATED: 31st August 2023

JUDGMENT:- (PER Dr. N. K. Gokhale, J.)

1. **Rule.** Rule is made returnable forthwith. Heard finally by
consent of parties.

2. The Petitioner assails letter/order dated 29th March 2019
issued by the Respondent No.3 directing the Petitioner to pay an

amount of Rs.87,04,480/- and for a declaration that the Petitioner is not liable to pay the said amount towards extension of building permission in respect of implementation of the project. The Petitioner also seeks a declaration that the Government Resolution (“**GR**”) dated 1st March 2019 is not applicable to it.

3. The Petitioner is a specified co-operative society registered under the Maharashtra Co-operative Societies Act, 1960, with an object of constructing spinning mills for the power loom sector in Bhiwandi. The Respondents No.2 and 3 are the Collector, Thane and Tahsildar (Revenue), Thane, respectively, of the Respondent No.1-State of Maharashtra.

4. Shorn of unnecessary details, the brief facts are that by order dated 9th September 1977, the Petitioner was allotted land admeasuring approximately 10 acres and 5 gunthas of Survey No. 60 of Village Savande, Taluka Bhiwandi. In terms of the allotment, the Petitioner was required to complete the construction of the building and implement the project within three years from the date of

handing over the possession of the said land. The possession of the land was handed over to the Society on 18th October 1977.

5. Accordingly, the Petitioner procured non-agricultural use (“NA”) permission on 28th October 1983. By letter dated 31st January 1994, the Petitioner requested the collector to change the NA permission and permit the use of land for power loom shed. By letter dated 14th September 1994, the Collector issued a notice to the Petitioner to show cause as to why the land should not be resumed by the Government for non-compliance of the conditions of allotment. The Petitioner replied to the notice, however, the land came to be resumed by the State. An appeal preferred by the Petitioner was dismissed by the Competent Authority, however, by order dated 28th February 2002, the Revenue Minister of the State set aside the resumption order in appeal.

6. It is the case of the Petitioner that he was unable to complete the construction and implement the project within the stipulated period on account of obstructions caused by various departments of the State. By GR dated 11th January 2017, the State decided to grant

extension for a further period of three years to allottees such as the Petitioner-Society on payment of 2% of the value of land as published in the Ready reckoner. A subsequent GR dated 1st March 2019 modified the amount to be paid for such extension of time. The Petitioner made an application to the Collector for extension of time on 8th March 2019. By letter dated 29th March 2019, the Tahsildar directed the Petitioner to deposit an amount of Rs.87,04,182/- calculated as per applicable rate for grant of extension of time. This is the communication that is impugned in the Petition.

7. Mr. Suryawanshi, learned Counsel for the Petitioner draws our attention to the letter of 29th March 2019 addressed by the Respondent No.3 to the Tahsildar of Bhiwandi by which the latter has been directed to grant extension of time to the Petitioner-Society as per its request subject to deposit of the aforesaid amount. The said communication refers to the GRs dated 11th January 2017 and 1st March 2019. He states that the Respondents failed to appreciate the best efforts made by the Petitioner-Society to start

the project as it faced obstacles in seeking permission from various government departments and it is only on 21st February 2021 that the Mumbai Metropolitan Regional Development Authority (“**MMRDA**”), the special planning authority, granted Commencement Certificate for the construction. He has also put forth a ground that 25th March 2020 onwards the Petitioner was unable to move appropriate government departments on account of the COVID-19 pandemic. He thus urges us to allow the Petition.

8. Ms Bhende, learned AGP points out a letter of 14th August 2019 at Exhibit “G” (page 46) addressed by the Petitioner to the Respondent No.2-Collector, clearly conveying that the Petitioner-Society has abided by the directions of the Collector in respect of deposit of an amount of Rs.15,63,702/- and furnishing a bank guarantee of Rs.71,40,480/- issued by the Greater Bombay Co-operative Bank Ltd., Thane. She also points to a government order (“**GO**”) of 11th September 2019 at Exhibit “H” (page 47) granting extension of time to the Petitioner-Society up to 1st March 2021 upon the deposit of the aforesaid amount and furnishing of the

required bank guarantee. She thus submits that the Petitioner has already complied with the conditions of the deposit of the charges and furnishing of bank guarantee on the basis of which time for implementation of project was extended and therefore, this Petition is misconceived.

9. We have considered the submissions of both the parties and have perused the documents on record. Undoubtedly, the Petitioner was allotted the said land pursuant to GO dated 4th September 1977. The idea behind allotment of government land to deserving persons, societies, corporate entities, etc. was to act as a catalyst to promote economic growth and accelerate pace of development. The order itself was passed by virtue of the powers vested in the government under the provisions of the Maharashtra Land Revenue (Disposal of Government land) Rules, 1971 (“**Rules 1971**”). Rule 41 of the Rules 1971 vests in the Collector the power to annex additional conditions for the grant of land. It is in the exercise of this power vested in the Collector by the statutory

provision as well as respective GRs, that the conditions have been imposed on the Petitioner-Society.

10. Admittedly, the land was allotted to the Petitioner-Society on 9th September 1977 and possession was handed on 18th October 1977. There was a specific condition No. (xiii) of the allotment order that non-construction of building would lead to resumption of the said land under the provisions of the Act and the Rules. As noticed above, the Petitioner-Society failed to raise construction on the plot and the land was resumed by the Collector. For the past 46 years, the Petitioner-Society has failed to complete the construction and implement the project, the purpose for which the land was allotted. There is nothing on record to remotely indicate attempts made by the Petitioner-Society to procure required permissions from government department and obstacles allegedly created by such departments to complete the project. On the contrary, the record itself shows that the Collector has once already resumed the land in the year 1995 itself for the Petitioner's failure to comply with the conditions of allotment and it was only on the order of the Revenue

Minister as an appellate authority that the resumption order was set aside and the Petitioner was afforded another opportunity to complete the project. Despite this respite, the project has yet not taken of and the object of allotting the said land has been frustrated by the lackadaisical approach of the Petitioner-Society.

11. The record further shows that the Petitioner-Society has availed the benefits of extension of time on payment of the extension fee as prescribed and is now trying to assail the very same condition. In our considered opinion, defaulting allottees of valuable plots cannot be allowed to approbate and reprobate by first agreeing to abide by the terms and conditions of allotment and enjoying the benefits of extended period and later seek to deny their liability as per the agreed terms. The impugned letter is nothing but a communication between the competent authorities *inter se* directing extension of period subject to payment of the required fee. Similarly, the assailed GR is applicable to the case of the Petitioner since it is by virtue of the government decisions itself that the land came to be initially allotted to it. Having deposited the amount and

furnishing the bank guarantee, it is now the duty of the Petitioner-Society to keep the bank guarantee alive as a condition to continued enjoyment of the benefits of the land. It does not lie in its mouth to assail at such a belated stage the applicability of the GR of 1st March 2019 to it.

12. In view of the above discussion, the Writ Petition fails. Rule is thus discharged. There will be no order as to costs.

(DR. N. K. GOKHALE, J.)

(K. R. SHRIRAM, J.)