

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1476 OF 2023**

Infinity Infra, Through its partner

Mr. Ajit Achyut Kandpile

... Petitioner

V/s.

State of Maharashtra,

Through Principal Secretary,

Urban Development Department & Ors.

... Respondents

**WITH
INTERIM APPLICATION NO.13241 OF 2023
WITH
INTERIM APPLICATION NO.13239 OF 2023
WITH
INTERIM APPLICATION (ST) NO.17883 OF 2023**

Mr. Girish Godbole, Senior Advocate a/w Ms. Ketaki Gadkari a/w
Ms. Aishwarya Shinde for the Petitioner.

Mr. P. P. Kakade, GP a/w Mr. M. M. Pabale, AGP for Respondent No.1.

Mr. G. S. Hegde, Senior Advocate a/w Ms. P. M. Bhansali for
Respondent Nos.2, 3 and 4.

**CORAM : NITIN JAMDAR, ACJ. AND
ARIF S. DOCTOR, J.**

DATED : 07 JULY 2023.

P.C. :

The Petitioner, by way of the present Writ Petition, seeks
the following reliefs :-

*“a. That this Hon’ble Court be pleased to issue a Writ
of Mandamus or a Writ, Order or direction in the*

nature of Mandamus thereby directing the Respondent No. 3 and 4 to decide the representation dated 04.11.2022 of the Petitioner (annexed as Exhibit-“R” to the present Petition) forthwith;

- b. That this Hon’ble Court be pleased to issue a Writ of Mandamus or a Writ, Order or direction in the nature of Mandamus thereby directing/calling upon the Respondent No.2 to 4 to consider the request made in the representation dated 04.11.2022 of the Petitioner (annexed as Exhibit-“R” to the present Petition) and allot the subject plots to the Petitioner;”*

2. The facts stated in the Petition are really not disputed and broadly are as follows: -

- i. Respondent No. 2 had issued E-Tender and E-Auction notices for lease of several plots of land in Sector 11 at Kharghar, Navi Mumbai. The Plots were stated to be for residential-cum-commercial purposes, the FSI in respect of which was 1.5 as per the Unified Development Control and Promotion Regulations (UDPCR).
- ii. Pursuant to the E-Auction held, the Petitioner had bid for Plot Nos.103, 108 and 109 (the said plots) and had at the time of submission of the bids in compliance with the

terms and conditions of the said auction paid/deposited the requisite Earnest Money Deposit (EMD) in respect of the said plots. The Petitioner was subsequently declared the successful bidder in respect of the said Plots.

- iii. Thereafter, it appears that there was some confusion/lack of clarity regarding the applicable FSI to the said plots in view of the letter dated 13 December 2021, addressed by Respondent No. 2 to Respondent No. 1.
- iv. In the interregnum, the validity of the bids having expired and the fact that there was lack of clarity as to the applicable FSI on the said Plots, the Petitioner addressed representations to Respondent No.2 seeking a refund of the EMD. Despite repeated requests however, Respondent No. 2 failed and neglected to refund the same but instead on 27 April 2022 issued to the Petitioner an allotment letter as also demanded the balance amount which the Petitioner was required to pay in respect of the said Plots.
- v. It was in these circumstances that the Petitioner filed a Writ Petition in this Court, (being Writ Petition No. 6843 of 2022) in which the Petitioner sought the following

reliefs, viz.

- a. *This Hon'ble Court may issue a Writ of Mandamus or any other appropriate Writ, order or direction in the nature of writ of Mandamus, directing Respondent No.1, 2 and 3 to forthwith refund to the Petitioners the Earnest Money Deposit (EMD) for Plot Nos.103, 108 and 109 with their bid offers in the Scheme No.MM/SCH-21/2021-2022, tender floated by the Respondent No.1 CIDCO for allotment of plots in Sector 11, Kharghar, Navi Mumbai.*
- b. *This Hon'ble Court may issue a Writ of Mandamus or any other appropriate Writ, order or direction in the nature of writ of Mandamus directing the Respondent Nos.1, 2 and 3 to treat the Petitioners offer for the aforesaid three plots Nos.103, 108 and 109 in Sector 11, Kharghar as withdrawn due to the option of withdrawal exercised by the Petitioners as available to them under clause 5 and 25 of the Part A of the tender conditions in respect of Scheme No. MM/SCH-21/2021-2022 and further direct the Respondent Nos.1, 2 and 3 to withdraw and/or treat the letters of allotment all dated 27/4/2022 issued by the Respondent No.1 CIDCO to the Petitioners in respect of the said plots being Plot Nos.103, 108 and 109 as cancelled.*
- c. *That pending the hearing and final disposal of the present petition, the Respondent No.1 to 3 be restrained by an order and injunction of this Hon'ble Court from forfeiting the amount of Earnest Money Deposit paid by the Petitioners in respect of aforesaid three plots bearing Nos.103,*

108 and 109 in Section 11, Kharghar as more particularly described in the Schedule annexed as Exhibit ---- hereinabove.

- d. Ad-interim reliefs in terms of prayer clause (c) above be granted;*
- e. Costs of this petition be provided for.*
- f. Such further and other reliefs as the nature and circumstances of the case may require be granted to the Petitioners.”*

This Court, by an order dated 11 August 2022 *inter alia* directed Respondent No. 2 to refund the said EMD.

- vi. Respondent No.2, however, continued to hold the said EMD.
- vii. Thereafter on 21 October 2020, Respondent No.1 published a notification dated 12 October 2022 restoring/clarifying that the FSI in respect of the said Plots would be 1.5. Since even on this date, the EMI had not been refunded the Petitioner addressed a letter dated 4 November 2022 (the said representation) to Respondent Nos. 3 and 4 *inter alia* requesting them to consider the re-issue of the allotment letter to the Petitioner on the basis that the Petitioner was the highest bidder and the

Petitioner also expressed its desire to withdraw the request for cancellation of the allotment as also as refund of the EMD.

viii. It is for a direction to consider this representation that the present Writ Petition is filed.

ix. During the pendency of the present Writ Petition, Respondent No. 2, on 27 June 2023 issued a fresh E-Tender and E-Auction in respect of the said Plots without considering the Petitioners representation. The Petitioner thus took out an Interim Application (being Interim Application (L) No. 17883 of 2023) in which the Petitioner now sought the following reliefs, viz.

“a) This Hon’ble Court may be pleased stay the E-Tender Cum E-Auction published on 27.06.2023 for the lease of 38 Plots at Kharghar, New Panvel, Kamothe, Kalamboli and Dronagiri bearing Scheme No.MM/SCH-35/2023-2024 until the final disposal of the present Writ Petition.

b) In the alternative this Hon’ble Court, be pleased to direct the Respondent No.2 to delete the plot No.103, 108 and 109 in Sector 11 at Kharghar, Navi Mumbai from the E-Tender Cum E-Auction published on 27.06.2023 for the lease of 38 Plots at Kharghar, New Panvel, Kamothe, Kalamboli and Dronagiri bearing Scheme No. MM/SCH-35/2023-2024 until the final disposal of the Writ Petition.

c) Any other just and equitable orders as this Hon'ble Court deems fit be granted;"

3. Mr. Godbole, learned Senior Counsel submitted that the reserve price for the said plots in the new E-Tender and E-Auction notice issued by Respondent No. 2 was far less than the bid submitted by the Petitioner which was accepted by Respondent No. 2. He submitted that therefore there was a possibility of a loss to the exchequer since the reserve price had now been drastically reduced.

4. He submitted that the Petitioner had withdrawn its bid only in view of the lack of clarity/uncertainty with respect to the FSI that would be applicable to the said plots. He submitted that since Respondent No. 1 had since clarified the FSI applicable to the said plots and the fact that the EMD submitted by the Petitioner had not been returned, that the Petitioner's representation ought to be considered by Respondent No. 2. He submitted that no prejudice could be caused to anyone if the Petitioner's representation was considered and that Respondent No.2 would benefit since the Petitioner's bid was higher than the reserve price fixed.

5. *Per contra*, Mr. Hegde, learned Senior Counsel appearing on behalf of Respondent Nos. 2 to 4 submitted that the question of

now considering the Petitioner's representation did not arise, since Respondent No.2 had now issued notice for fresh E-Tender and E-Auction in respect of the said plots. He submitted that the only relief sought for in Writ Petition was to consider the representation of the Petitioner, which he submitted that Respondent No.2 was not willing to do for the reasons more particularly set out in the Affidavit-in-Reply filed by the Respondents. He then pointed out that the Petitioner had unconditionally sought a refund of the Earnest Money that had been deposited by the Petitioner and had in fact filed a Writ Petition seeking such a relief. He, therefore, submitted that the question of the Petitioner's representation now being considered did not arise, especially Respondent No.2 had now put up the said plots for re-auction. He submitted that the said auction process is therefore required to proceed in accordance with law and the Petitioner may participate in the said auction, if it so desire.

6. We have heard learned Counsel for the parties and find that we are unable to accede to the request made by the learned Senior Counsel for the Petitioner. The Petitioner, having expressly sought cancellation of the said letter of allotment as also a refund of the EMD, cannot now seek to be restored to a position from which the Petitioner had unconditionally resile. Additionally, we find that the Petitioner's contention that there will be a loss to the exchequer since the reserve

price fixed is lower than the Petitioner's bid that was accepted also to be misconceived. Presently, Respondent No.2 has only indicated a reserve price pursuant to which bids shall be called. The reserve price therefore does not mean that the same is presently being confirmed at that price. We also note the categorical assertion made by learned Senior Counsel for Respondents that Respondent No.2 is not now open to granting the Petitioner a hearing or considering the Petitioner's representation. Given this, nothing survives in the present Writ Petition. The Writ Petition is therefore dismissed. We make it clear that nothing preclude the Petitioner from participating in the E-Auction of the said plots.

7. With these observations, we dispose of the present Writ Petition. In view of the fact that the Writ Petition is being disposed of, the Interim Applications do not survive and the same are accordingly disposed of.

(ARIF S. DOCTOR, J.)

(ACTING CHIEF JUSTICE)