

Amol

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 699 OF 2024

1. SHIRISH NARAYAN GHARAT,
Age 63, Indian Inhabitant,
residing at A-902, Seth Narayan Park
Sector-3, Belpada, Kharghar,
Navi Mumbai, 410 210.

...PETITIONER

~ VERSUS ~

- 1. THE CITY & INDUSTRIAL
DEVELOPMENT CORPORATION
OF MAHARASHTRA LTD,**
A Company duly incorporated under
the provisions of the Companies Act,
1956, having its registered office at
'Nirmal', 2nd Floor, Nariman Point,
Mumbai – 400 021
and administrative office at CIDCO
Bhawan,
CBD-Belapur, Navi Mumbai – 400 614.
- 2. THE MANAGING DIRECTOR,**
- 3. THE CHIEF LANDS & SURVEY
OFFICER,**
- 4. THE MANAGER (TOWN
SERVICES - III), BOTH THE
OFFICE AT,
The CIDCO of Maharashtra Ltd.,**

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CIDCO Bhawan CBD-Belapur,
Navi Mumbai-400 614.

5. **STATE OF MAHARASHTRA,**
Ministry of Urban Development,
Mantralaya,
Mumbai – 400 032.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER	Mr Atul Rajadhyaksha, Senior Advocate, with Nishant Tripathi & Pranav Vaidya i/b M Tripathi & Co.
FOR RESPONDENT- CIDCO.	Mr GS Hegde, Senior Advocate, i/b PM Bhansali.
FOR RESPONDENT- STATE	Mr KB Dighe, Addl GP, with SR Crasto, AGP.

**CORAM : G.S.Patel &
M.M. Sathaye, JJ.**

DATED : 18th March 2024

ORAL JUDGMENT (Per GS Patel J):-

1. **Rule.**

2. There is a further Affidavit of the Petitioner and an Affidavit in Reply on behalf of the City and Industrial Development Corporation of Maharashtra (“CIDCO”), Respondents Nos 1 to 4.

Rule returnable forthwith by consent. All Respondents have waived service.

3. The Petition assails an order of 5th September 2023 at Exhibit “H” to the Petition at page 131. The effect of this order is to terminate an Agreement to Lease, thus enabling CIDCO to resume possession of Plot No 19A, Sector 7, Kharghar, Navi Mumbai. CIDCO has by the impugned letter cancelled an earlier allotment of 21st April 2022.

4. How did this come to pass? CIDCO acquired large tracts of land in 1971-72 when it was then the New Town Development Authority constituted under Section 113A of the amended Maharashtra Regional and Town Planning Act, 1966. At that time, the Petitioner, Gharat, and his family lived in Belpada Village and in the adjoining villages where they held land of about 27 gunthas. These lands are said to have been exempted from the acquisition for CIDCO since there were residential structures on the lands. In exchange of a surrender of these lands, CIDCO allotted Gharat Plot No 19A at Sector 7, Kharghar, Navi Mumbai. This is the alternate land. It was allotted in exchange for the original holding. None of this is contentious.

5. It seems that at some point Gharat entered into a transaction of 24th January 2022 with K S Shreya Infrabuild Pvt Ltd and one Vidarbha Infrastructure Pvt Ltd. This was an Agreement of Sale. It was not a sale deed nor a conveyance. It is, however, registered. It

pertained to the sale of the original land or a part of the original land, Ghat No 474, about 0.25 gunthas in area, situated at Kharghar.

6. It seems that CIDCO received a complaint from KS Shreya and Vidarbh Infrastructure saying that the alternate plot could not have been allotted to the Petitioner in view of this Agreement for Sale (which was prior in time). CIDCO wrote on 28th August 2023 to the Petitioner demanding an explanation. A copy of this communication is at Exhibit “G” to the Petition. The Petitioner replied on 3rd September 2023. He said that he had cancelled the Agreement of Sale and the accompanying Power of Attorney. He said that both KS Shreya and Vidarbh Infrastructure were in breach of their obligations.

7. It seems that in the meantime, concerned principally about being caught in this battle between Gharat and KS Shreya /Vidarbh Infrastructure, CIDCO had already replied to the complainants. Gharat learnt that CIDCO had received a request from KS Shreya and Vidarbh Infrastructure for the execution of a ‘tripartite agreement’, and this is important, to transfer not the original plot but the alternate plot to those two complainants.

8. There is also some attempt in the Petition at elevated literary endeavour. For instance, we are given a “*snapshot of the impugnement*” right at the beginning at page 6. Then at page 24, having dutifully ploughed through the intervening pages, we are confronted with this: that CIDCO sought to illegally and unlawfully terminate the instrument “*rubricated as a Deed of Exchange*”. We

cannot forbear from the tantalization of an apposite riposte, to wit, that such sedulous lucubrations assaying sesquipedalian forensic periphrases, not to say logorrhea, seldom adumbrate the requisite perspicuity or pellucidity. Our advice to the enthusiastic draftsman: Keep it short. Keep it simple. Less is more. Always. And never forget: judges are forced to read. A lot. Too much, in fact. Do not add to that burden.

9. To return to the matter at hand. CIDCO does not know what it is headed for and in what litigation soup or stew it will find itself in the time ahead. CIDCO itself is not much concerned one way or the other whether the allotted plot is with Gharat or with KS Shreya /Vidarbh Infrastructure. All that CIDCO wants is that it should not be held liable in any shape, fashion or form for the allotment of the plot and a consequent lease.

10. As we noted, Gharat says he has terminated his Sale Agreement with KS Shreya /Vidarbh Infrastructure. That might not be the end of the story, and, therefore, we asked Mr Rajadhyaksha for the Petitioner to file a short Affidavit about whether there was indeed any litigation so far about the Agreement for Sale. That Affidavit is with us now. In this, Gharat says categorically that he has never been served with any proceeding relating to the original plot, the alternate plot or the Agreement for Sale. He has searched the online database that CIDCO maintains for plots and litigations and has not found any material of KS Shreya or Vidarbh Infrastructure having made a claim against the Petitioner in any proceeding. All they have done is complain to CIDCO.

11. The concern from the public law perspective is slightly different from CIDCO's apprehension. We understand that apprehension. It is justified. CIDCO should not find itself in a crossfire between Gharat and these entities with whom he once trucked. But there is another element of which CIDCO must be equally mindful: That CIDCO cannot possibly purport to function — even implicitly — as a civil court to decide civil disputes between private entities. That is not its function. It does not have that authority. If KS Shreya and Vidarbha Infrastructure have not instituted proceedings, CIDCO cannot possibly proceed on the basis that there *might* in future be *some form of litigation* and speculate as to the possible outcome. The impugned cancellation rests on that speculation alone. It is therefore not possible to say that CIDCO was justified in cancelling the allotment of the alternate plot.

12. It really should end at that. But we do understand CIDCO's concerns and those are equally valid from different perspectives. If there is indeed a litigation, there is no reason why CIDCO, not a party to any agreement of sale, should have to bear litigation expenses or should have to face a claim against it, whether this claim is in the form of a rupee demand or for an injunction or something else. We understand that in a litigation CIDCO may well be seen as a proper or perhaps even a necessary party. But having regard to these circumstances, we are satisfied that CIDCO is not responsible for this state of affairs. CIDCO cannot possibly be held liable and none of its officers will be held liable either in civil or any other proceedings because there is in future some possibility of a litigation between KS Shreya and Vidarbha Infrastructure against Gharat. . We accept Mr Rajadhyaksha's statement that Gharat fully indemnifies

CIDCO against any such claim or demand. If required, Gharat is prepared to execute the necessary document of indemnity in favour of CIDCO to this extent. We go a step further and hold that, as a matter of law, CIDCO cannot in these circumstances be held liable for allotting the alternate plot at Kharghar to the Petitioner Gharat.

13. Indeed, now that there is no proceeding, no injunction and no restraint, CIDCO must follow through on that letter of allotment and the agreement to lease by executing a lease agreement and confirming possession of the plot in favour of the Petitioner. If thought fit, explicit reference may be made by CIDCO in any of these documents yet to be executed to this order and a copy of it may even be appended for completeness.

14. If the Petitioner applies for any development permissions, these will be processed in the normal course, but the Petitioner will not claim any equities against CIDCO in regard to such development.

15. Finally, as to the question of KS Shreya/Vidarbh not being parties to this Petition: we have not examined the disputes between those entities and Gharat. All contentions between KS Shreya/Vidarbh are kept open for appropriate proceedings. In any case, Gharat's indemnification of CIDCO is a sufficient balance.

16. We believe this satisfies the requirements of the Petition. Rule is made absolute in these terms. The impugned cancellation is

therefore quashed and set aside in these circumstances. There will be no order as to costs.

(M.M. Sathaye, J)

(G. S. Patel, J)