

Ganesh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9545 OF 2022

Digitally
signed by
GANESH
SUBHASH
LOKHANDE
Date:
2024.03.14
16:45:48
+0530

1. **GURUDATTA SAHAKARI
GRUHANIRMAN SANSTHA
MARYADIT,**
E-201, New Satar Co-Op-Hsg., Soc.,
Plot No.2/3, Sector 14, Kopar
Khairane, New Bombay 400 709.

...PETITIONER

~ VERSUS ~

1. **CITY AND INDUSTRIAL
DEVELOPMENT CORPORATION
OF MAHARASHTRA (CIDCO),**
A Corporation responsible for proper
planning and Development in New
Bombay and having its office At
22FQ+6J8, Sakharam Patil Marg,
Sector-10, CBD Belapur, Navi Mumbai
400 614.

...RESPONDENT

APPEARANCES

FOR THE PETITIONER	Mr Ajit Tamhane, with Rohan Tamhane, Ashish Ghadge, i/b Tamhane & Co.
FOR THE RESPONDENT - CIDCO	Mr GS Hegde, Senior Advocate, i/b PM Bhansali.

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

DATED : 1st March 2024

PRONOUNCED ON : 14th March 2024

JUDGMENT (Per Kamal Khata, J.):-

1. **Rule.** Rule returnable forthwith and heard finally, with the consent of the parties.
2. The Petitioner is challenging the inaction on the part of the City and Industrial Development Corporation of Maharashtra Limited (“CIDCO”) (“Respondent”) for not completing the process of allotment that is by executing an agreement in their favour.
3. The Petitioner is Cooperative Housing Society with fifteen approved Members who are traders and workmen in the Agricultural Produce Market Committee (“APMC”) situate at Sanpada, Navi Mumbai.
4. Respondent is the City Planning Authority and inter alia responsible for the allotment of land for development in Navi Mumbai.
5. In the year 1992, the proposed society of the Petitioner applied for reservation of plot to construct residential building for its members. For such an application for reservation of the plot the

Petitioner made payment of Rs 1,00,000/- to CIDCO. Then, on 21st September 1992, a registration charge of Rs 3,00,000/- was deposited by the Petitioner. On 9th November 1992, a Letter of Intent (“**LoI**”) was issued. It stated that the 1st instalment was due on 10th December 1992 and second instalment was due on 10th June 1993. The Petitioner delayed the payments. Whilst the 1st instalment of Rs 13,50,000/- was paid by the Petitioner on 10th February 1993, the 2nd and final instalment of Rs 13,50,000/- was paid on 12th October 1993. Thus, a total consideration of Rs 30,00,000/- was paid for the allotment of the plot by the Petitioner. The Petitioner was allotted plot admeasuring 1,875 sq mts bearing No. 22 at Sector-11, Kopar Khairane, Navi Mumbai – 400 709. On 1st December 1994,, the Respondent issued No Objection Certificate (“**NOC**”) for the registration of the society. Then on 22nd December 1994, the Petitioner paid the Water Resource Development Charge (“**WRDC**”), the land rent and other documentation charges to the Respondents. Subsequently, on 28th February 1996, the Petitioner Society was duly registered.

6. It is stated in the Petition that the Respondents claimed delayed payment fees from the Petitioner and sent various communications which though received, were not brought to the notice of the other members and consequently the payment of these delayed fees was not made.

7. On 15th October 2001, the Petitioner informed the Respondents about the change in the communication address.

8. On 1st April 2003, the Petitioner was apparently informed about the cancellation of the allotment of the plot. Aggrieved by this communication, they approached the Chief Minister of State of Maharashtra and requested him to look into the matter. This representation was made by a letter dated 9th April 2003. There was a meeting and thereafter by a letter dated 5th September 2003 CIDCO fixed a meeting with the Secretary of the Petitioner. In furtherance to this meeting, the Respondents by the letter dated 25th September 2003 called upon the Petitioner to pay various charges as more particularly mentioned in the letter amounting to Rs 3,87,462/-. The Petition states that in view of this meeting, the cancellation of allotment of the plot was revoked by the Respondent.

9. By its letter dated 6th April 2004 the Petitioner was once again called upon to pay the outstanding dues by the Respondents.

10. The Petition states that the Petitioner has paid most of the dues of the Respondents and there may be some dues remaining but for which there is no demand made. It is further stated that the Petitioner made various correspondences with the Respondents but since they were unresponsive they filed this Petition on 21st June 2022.

11. Mr Tamhane for the Petitioner submitted that soon after the Petition was filed, the Petitioner came across an advertisement dated 15th August 2022 for E-Tender cum E-Auction of their plot. Mr Tamhane submits that pertinently the advertisement was

published one month after the Respondents had served the Petition on the Respondents. The Petitioner then moved the Court and requested to take up the matter urgently but the Court gave CMIS date of 5th September 2022. Then he submitted the E-Auction ended on 6th September 2022.

12. Mr Tamhane submitted that inspite of serving the Petition, the Respondents proceeded with the E-Auction and also failed to provide the Petitioner the name of the proposed allottee, who presumably has already been allotted the plot. The Petitioner then amended the Petition on 14th February 2024 and sought an additional prayer to cancel the said allotment of their plot.

13. Mr Hegde learned Senior Advocate submits that the Petitioner is guilty of suppressing material particulars and facts. He submitted that at least two members of the Petitioner's Society were not part of the Agricultural Produce Market Committee ("APMC") but were involved in some medical business. This, he submits by itself would be sufficient to disentitle the Petitioner from allotment of this plot which were specifically for the members of the APMC. Moreover, the president and secretary of the society were also accused and were arrested by the CBD Police Station, CBD-Belapur, Navi Mumbai in some case.

14. In this background, he submitted that CIDCO had rightly forfeited the Earnest Money Deposit and 25% of the leased premium on the ground of default in payment of the balance amount and for submitting false documents to CIDCO. According to him the

refund of the remaining amount could not be processed since the Petitioner had not submitted the original receipts.

15. With regard to the tenders, he submitted that they were opened on 8th September 2022 and CIDCO was likely to receive a whopping sum of Rs 60,29,77,889/- from the sale of this plot @ Rs 3,25,080 per sq mts.

16. He submitted that the delayed payment charges were amounting to Rs 2,86,212/- and the WRDC of Rs 93,750/-. For these charges, the CIDCO has written various letters since 26th February 1997 upto 8th November 2000.

17. Mr Hegde submitted that the Petitioner suppressed the letter dated 25th September 2003, which categorically informed the Petitioner about the outstanding dues of Rs.3,87,462/- payable by the Petitioner. By the said communication, CIDCO had communicated to the Petitioner that only after they made this payment and also explained the delay for making the payment that they would place the matter before the State Government for its decision and consider allotting the plot. He submitted that inspite of this communication, the Petitioner failed to pay the amounts. The Respondents followed up by their letters dated 6th April 2004 and 28th April 2004. He submitted that all these communications have been suppressed by the Petitioner.

18. Mr Hegde pointed out that sometime in August 2011, an issue was raised in the Legislative Assembly that the subject plot

was given away at a throwaway price to the members of the society who were not even eligible for getting the plot and had requested the cancellation of such allotment. Pursuant to this, there was an investigation, which was conducted. A detailed report was submitted on 24th November 2011. It was pursuant to this enquiry, that it was found that two members of the Petitioner by name Suresh and Sunil Varhadi were involved in medical business at Pune and were not working in the APMC. In view of these enquiries, CIDCO maintained its cancellation for allotment to the Petitioner. Consequently, he submitted that the Petition deserves to be dismissed.

19. We heard both counsel and have perused the papers and proceedings. In our view, the Petition is clearly an abuse of the process of this Court and deserves to be dismissed on the ground of suppression itself. There is false statement made by the Petitioner on oath, as can be seen from the averment in paragraph 18 of the Petition which states thus:

“18. The Petitioners state that the cancellation of allotment of plot to the Petitioners society was revoked by the Respondents. The Petitioners crave leave to refer to and rely upon the correspondence regarding the same. The Petitioners state that the Respondents by their letter dated 25/09/2003, called upon the Petitioners to pay the outstanding dues alongwith intimation of their proposal to revoke the termination.”

20. Now compare this with the communication dated 28th September 2003. The relevant paragraph of the letter read thus:

“You are requested to explain the abnormal delay caused by you for making these payments. You are also requested to submit us the original certificate of registration of the society, original receipts of payments and original allotment letter for verification.

You are requested to note that the proposal to revoke the termination order already issued to you will be submitted to the competent authority for the approval after you have paid the outstanding amount as above which will be accepted by us provisionally without any commitment.”

21. On comparing the averments in the Petition to the communication dated 28th September 2003 annexed at page 39 of the Petition, it is evident that CIDCO never revoked the cancellation of allotment to the Petitioner. The Petitioner has clearly attempted to mislead the Court into believing that pursuant to the meeting or indulgence by the Hon’ble Chief Minister of the State of Maharashtra, CIDCO had revoked the cancellation of allotment. However, letter dated 25th September 2003, which was relied upon by the Petitioner is clearly contrary to the assertion. This is nothing short of playing a fraud on the Court.

22. Mr Hegde has rightly pointed out that the Petitioner suppressed other communications as well. The Petitioner has mischievously sought to mention that they have paid most dues but have failed to produce any evidence in that regard. There is also stoic silence for the period 2004 to 2021 for non-payment of balance amounts due. In our view the Petitioner cannot submit that they did not pay as there was no demand. It is not their case that they were

unaware of any balance due. There is apparently a deliberate and wilful default and there is evidently no explanation for non-payment of the balance dues. The Petitioner has also not disputed the amount of delayed payment of charges of Rs 2,80,212.

23. The only response to the allegation about the two members Suresh Varhadi and Sunil Varhadi being in medical business is that they had submitted their resignation as members of the society sometime and moved out to the native village in 2013. This necessarily means that there were at least 2 members of the 15 members committee that were not entitled to the allotment as they were not bonafide traders / employees etc. who shifted their wholesale Fruit & Vegetable trade to New Bombay.

24. Now with regard to the cancellation by CIDCO, the Letter of Intent annexed at page 18 enlisted terms and conditions. Paragraph 3 therein read are as under:

“3. You shall register the society, before execution of agreement to lease with CIDCO, **with the list of approved members and submit proof thereof from the Registrar Co-Operative Housing Societies.**

The condition of providing a bye-law as mentioned in para 2 & 3 above and the condition of registering the society with approved list of members shall be complied with simultaneously or within one month after making the payment of both the instalments. The firm allotment letter will be issued only after compliance of these conditions. **You are also requested to produce a certificate from Bombay APMC that the list of members as supplied by you along with your letter dated 20th Jan. 1992 is a list**

of bonafide traders/ employees etc. who have shifted their wholesale Fruit & Vegetable trade to New Bombay.”

(Emphasis added)

25. Then further requisitions along with the bye-laws were communicated to the Petitioner by the letter dated 1st December 1994 at page 25 (typed copy at page 25A). The relevant portion of the bye-laws read as under:

“LIABILITY FOR BREACH OF CONDITIONS

The Society and/or the individual member shall be liable to be evicted and the land with building or the flat of the individual member be resumed to the CIDCO without payment of any compensation in case there is a breach of any of the conditions of grant of land and failure on the part of the Society/member to remedy the said breach within a period of 6 months from the date of issue of notice communicating the said breach.

The Society shall be bound to take all necessary steps to compel the member, who has committed breach of any of the conditions of grant of land, to remedy the said breach immediately and failure on the part of the said member to remedy the breach within a period of 6 months from the date of issue of notice communicating the said breach.

The Society shall be bound to take all necessary steps to compel the member, who has committed breach of any of the conditions of grant of land, to remedy the said breach immediately and failure on the part of the said member to remedy the breach within a period of 6 months from the

date of notice, the Society shall render itself liable to be dealt with under condition (6) above.

CIDCO will have the power to determine the lease and summarily evict persons occupying the land and resuming the land belonging to Co-operative Housing Society in case of the breach mentioned above. CIDCO shall also have the power to resume the flat of a member in the Co-operative Housing Society if there is a breach of any of the conditions mentioned above.”

26. In view of the aforesaid conditions and bye-laws, it is apparent that CIDCO has the power vested in it to cancel the allotment. Their actions are supported by the report that was made pursuant to an enquiry. It has been discovered that two members were not entitled. Further, as is evident from the record that the Petitioner has not taken any steps to remove the two non-eligible persons from their membership for almost period of 20 years i.e. from 1994 to 2013 although they were aware that the 2 members were not eligible.

27. In addition to the above, by their letter dated 25th September 2013, CIDCO had also pointed out that three members belonging to the Varhadi family had failed to prove that they do not have dwelling unit in Navi Mumbai. Further, they have submitted an employment certificate of Shri Maruti Vithoba Varhadi which is a company operated by their own family members, being a medical store at Narayangaon, Taluka - Junnar, District - Pune.

28. Thus, 3 of the members were not in the business of vegetable or agricultural produce. The Petitioner was also unable to point out as to why five members who had submitted employment certificates working as Sales Manager in the same company were not traceable inspite of efforts made. This information in our view is clearly suppression of material facts and submission of false information and documents to CIDCO of fictitious and ineligible members. Thus, the Respondent rightly cancelled the allotment.

29. In our view, the Petitioner has no merit in its case. The Petition is thus dismissed. No order as to costs.

30. At this stage, there is an application to stay the order of CIDCO for a period of four weeks. The Application is rejected.

(Kamal Khata, J)

(G. S. Patel, J)