

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 688 OF 2023

M/s. DKB Builders Pvt. Ltd. & Anr.	}	Petitioners
Versus		
The City and Industrial Development	}	
Corporation of Maharashtra Limited	}	
& Ors.	}	Respondents

Mr. R. D. Soni with Mr. Tushar R. Momaiyah
i/b. Ram & Co. for petitioners.

Mr. G. S. Hegde, Senior Advocate i/b. Ms. P.
M. Bhansali for respondents 1 to 3 (CIDCO).

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 10th MAY 2024

P.C.:

1. Heard Mr. Soni, learned counsel for the petitioners and Mr. Hegde, learned senior counsel representing the respondents- City and Industrial Development Corporation of Maharashtra Limited (CIDCO) and perused the records available before us on this writ petition.

2. By instituting the proceedings of this petition under Article 226 of the Constitution of India, the petitioners had initially challenged the orders dated 5th December 2022 passed by the Marketing Manager (Commercial) of CIDCO whereby the allotment letter issued in favour of the petitioner no. 1 in respect of two plots, namely, Plot No. 98 and Plot No. 99

situated at Sector 11, Kharghar, Navi Mumbai, admeasuring 323.00 sqm. and 389.26 sqm respectively, was cancelled.

3. This Court passed an order on 6th July 2023 observing therein that before the matter is proceeded with on merits, it would be appropriate that an attempt is made to resolve the issue through interaction between the petitioners and the officers of the respondent-CIDCO and further that if there is only a clerical and technical issue, the same can always be resolved by enabling the interaction.

4. Pursuant to the said observations made by this Court in its order dated 6th July 2023, the petitioners-company was called for submission of the representation and the matter was considered by the respondent-CIDCO, whereupon, the Joint Managing Director-III passed an order on 12th October 2023 confirming the orders dated 5th December 2022, whereby the allotment of the aforesaid two plots was terminated.

5. The order dated 12th October 2023 has also been challenged by the petitioners by way of an amendment. It has been argued by learned counsel for the petitioners-company that the reasons given in the said order dated 12th October 2023 are absolutely not tenable as the delay in payment, if any, cannot, in the facts and circumstances of the case, be attributed to the petitioner at all. He has further argued that it is only on account of the fact that no corresponding change in the official portal of the CIDCO was made that the petitioners-company could not make the deposit of the amount of lease premium within time and hence, in absence of any fault on the part of the petitioners, the petitioners-company cannot be penalized.

6. On the other hand, learned senior counsel representing the CIDCO Mr. Hegde has argued that pending consideration of the change of name of the petitioners-company did not come in the way of the petitioners depositing the lease premium and since even after extension of time granted by the respondent-CIDCO, the petitioners-company failed to make deposit of the lease premium within the extended time, the allotment orders have been cancelled, which do not suffer from any illegality.

7. Drawing our attention to clause (6) of the Regulations framed by CIDCO, which are known as "the Nav Mumbai Disposal of Lands (Amendment) Regulations, 2008, it has been argued by Mr. Hegde that the said clause clearly provides that in case any allottee fails to make the deposit of the lease premium within the time or within extended time, the natural consequence is termination of allotment letter. He has also drawn our attention to the request made by the petitioner vide their letter dated 10th June 2022 and has submitted that through the said letter, it was clearly prayed by the petitioners that time for making payment of first installment be extended till the name change happens at the end of the CIDCO or three months, whichever is later. He states that pursuant to the said letter, an order was passed by the Marketing Manager (Commercial) of the respondent-CIDCO on 15th June 2022 extending the time of payment of first installment by one month. It is, thus, the submission of Mr. Hegde that since during the extended time in terms of the order-letter dated 15th June 2022 the petitioners-company could not make the said deposit, the orders terminating the allotment have been passed, which do not suffer from any irregularity or any illegality.

8. We have given our anxious consideration to the rival submissions made by learned counsel representing the parties.

9. The reasons given by the respondent-CIDCO for cancelling the allotment orders in respect of the plots in question have been summarized in the impugned order dated 12th October 2023 passed by the Joint Managing Director-III, CIDCO. The relevant portion of the order dated 12th October 2023, where the reasons have been summarized, is extracted hereinbelow: -

"Observations:

1. The allotment letter for both plots, i.e., Plot No. 98 & 99, Sector-11, Kharghar is issued on 29.04.2022 in the name of M/s. Ahun Tours and Travels.

2. As per the payment schedule of allotment letter, the allottee was required to pay 1st instalment on or before 12.06.2022 which could be extended up to 12.09.2022.

3. In response to the request of Allottee for 3 months extension for payment, allottee was granted extension of 1 month i.e. up to 12.07.2022.

4. M/s. Ahun Tours and Travels have requested for change in Name from M/s. Ahun Tours and Travels to M/s. DKB Builders and Developers on 10.05.2022. As to ascertain whether it is transfer or merely name change, as the issue has also has Legal & financial implications, the proposal was forwarded to Legal Section for verification and their comments. The issue was resolved and approval for the change in name was received on 12.09.2022.

5. The claim of allottee that, they could not make payment due to pending name change issue is not maintainable, since the payment of Lease Premium and Name change are two different issues and cannot be co-related or ground for non-payment of Lease Premium.

6. Due to non-payment of Lease Premium within stipulated time, the Corporation cancelled the allotment letter on 05.12.2022 as per the approval of Management and EMD amount is forfeited.

7. Hon. Court vide order dated 06.07.2023 has directed to decide the issue of name change if there is only a clerical and technical issue. However, as the issue has financial angle of transfer charges and tender

provisions not allowing to transfer prior to Agreement to Lease, the issue is not mere a clerical and technical issue and needed detailed verification.

Hence, I proceed to pass following order:

1. The issue of name change has financial angle of transfer charges and ender provisions not allowing to transfer prior to Agreement to Lease. Hence, the issue is not mere a clerical and technical issue and needed detailed verification, after due verification the issue was resolved on 12.09.2022.

2. The claim of allottee that, they could not make payment due to pending name change issue is not maintainable, since the payment of Lease Premium and name change are two different issues and cannot be co-related or ground for non-payment of Lease Premium, the termination letter dated 05.12.2022 issued by Marketing Manager (Comm.) is hereby reconfirmed."

10. When we peruse the afore-extracted portion of the impugned order dated 12th October 2023, what we find is that there are certain facts which have not been disputed by the respondent-CIDCO. Admittedly, the allotment letters for both the plots were issued on 29th April 2022 in the name of M/s. Ahun Tours and Travels and as per the payment schedule contained in the said letters, the allottee was required to pay the first installment on or before 12th June 2022, which could be extended up to 12th September 2022. It is also not in dispute that in response to the prayer made by the petitioners for extension of time, the allottee was granted extension of one month, i.e., up to 12th July 2022. From the afore-quoted portion of the order dated 12th October 2023, it is also clear that the respondent-CIDCO does not dispute the fact that the prayer for change in name of the earlier entity, namely Ahun Tours and Travels to M/s. DKB Builders Pvt. Ltd. was made on 10th May 2022. The respondent -CIDCO admits that to ascertain the issue

as to whether it was a transfer or merely change in name, it took some time, however, the issue could finally be resolved and approved by CIDCO only on 12th September 2022.

11. Thus, in view of the aforesaid admitted facts, before the prayer for change of name was approved on 12th September 2022, the petitioner, in our opinion, could not have made the deposit for the reason that change in name of the earlier entity would have required corresponding change in the portal of the respondent-CIDCO, through which the lease premium was to be paid.

12. We also find that the respondent-CIDCO, while passing the said order dated 12th October 2023, has assigned reasons for rejecting the claim of the petitioners and the reasons assigned are that the petitioner could have made the payment pending the name change issue and since payment of lease premium and name change are two different issues and are not correlated, as such the contention of the petitioners cannot be accepted.

13. It is difficult for us to approve the said decision dated 12th October 2023. Admittedly, the entity which had participated in the tender process for allotment of the subject plots was M/s. Ahun Tours and Travels. The name change took place in the meantime and accordingly, on 10th May 2022 itself a request was made for accepting the change of name. It is to be noticed that the date on which the request for accepting change of name was made was after the date of allotment and before the last date of deposit of the first installment, i.e. before 12th June 2022.

14. Any deposit through e-mode is dependent on the portal accepting such deposit and since the petitioners with the changed entity as M/s. DKB Builders Pvt. Ltd. had not participated in the tender process, as such, unless such corresponding changes were incorporated by the respondent-CIDCO in their portal, it was absolutely impossible to make such payment. It is also to be noticed that making any deposit of any kind with the respondent-CIDCO by a business entity requires certain information to be uploaded, such as GST registration number etc. and obviously, the GST registration number and other relevant information pertaining to the petitioners with changed entity would be different than those associated with the earlier entity.

15. So far as the submission made by Mr. Hegde based on clause (6) of the Regulations is concerned, we find it apposite to extract the same, which reads as under: -

6. Payment of lease premium and execution of Agreement to Lease:

i. The lease premium agreed to be paid by the Intending Lessee, after adjusting therefrom the Earnest Money Deposit, shall be paid in two equal installments. The first installment shall be paid within Forty-Five days from the date of receipt of the Allotment Letter issued by the Corporation and the second installment shall be paid within Seventy-Five days from such date of receipt of Allotment Letter.

ii. The Managing Director may, in a deserving case, extend either of the foregoing period on the condition that the Intending Lessee shall pay the Delayed payment charges for such extension at the rates as may be prescribed by the Corporation from time to time:

Provided that the period of extension for the payment of the first installment of the lease premium shall not exceed Three Months:

Provided further that the period of extension for the payment of the second installment shall not exceed Ten Months:

Provided further that if there shall be default by the Intending Lessee in the payment of first installment or the payment of second installment of the lease premium, the agreement concluded between the Corporation and the Intending Lessee shall stand determined and the earnest money deposited by the Intending Lessee shall stand forfeited in full. In addition to the Earnest Money Deposit, 25% of the installment or installments of lease premium paid by the Intending Lessee shall also stand forfeited to the Corporation, without prejudice to the rights of the Corporation to recover compensation for loss or damage, if any, suffered in consequence of such default.

iii Before execution of Agreement to Lease, if the area of a plot is found in excess by 10 per cent of the area represented in the Allotment Letter or by 250 sq.mtr., whichever is higher, the Managing Director may allot this excess area at the base rate suggested in the Land Pricing and Land Disposal Policy prevailing at the time of allotment of this excess area or at the rate at which the original plot is allotted, whichever is higher.

iv Immediately after full and final payment of agreed amount of lease premium and other charges, the Corporation shall call the Intending Lessee for execution of Agreement to Lease. The Intending Lessee shall, within a period of Thirty days from the date of issue of letter thereto, execute with the Corporation the Agreement to Lease and shall obtain the license and authority to enter upon the plot for the purpose of erecting a building or buildings thereon.

The Managing Director may, on request of the Intending Lessee, extend the foregoing period by Three months, on the condition that the Intending Lessee shall pay to the Corporation the Watch and Ward Charges at the rate of Rs. 5/- per sq.mtr. per calendar month or part thereof.

Provided that if the Agreement to Lease is not executed and the possession of the plot is not taken within specified period, the agreement concluded

between the Corporation and Intending Lessee shall stand terminated. In the event of termination of the concluded agreement, the Earnest Money Deposit alongwith the 25% of the installments of lease premium paid, shall be forfeited without prejudice to the rights of the Corporation to recover compensation for loss or damage, if any, suffered in consequence of such default.

Explanation: *a) Provision made at (v) & (vi) above is not applicable to the plots allotted under Regulation 4 (i).*

b) In special circumstances, the Managing Director may grant further extension of two months on payment of Watch and Ward Charges.

16. The afore-quoted clause (6) of the Regulations provides that the lease premium is to be paid in two equal installments. It further provides that the first installment shall be paid within forty-five days from the date of receipt of the allotment letter issued by the Corporation and the second installment shall be paid within seventy-five days from such date of receipt of allotment letter.

17. Sub-clause (ii) of clause (6) of the aforesaid Regulations further vests in the Managing Director the authority to extend the time in deserving cases with the condition that the lessee shall pay delayed payment charges. It also provides that period of extension for payment of the first installment of the lease premium shall not exceed three months. It also makes a provision that the period of extension for payment of second installment shall not exceed ten months.

18. Thus, the Regulation (6) itself permits the Managing Director to extend the period for depositing both, the first and second installments. The extension of period for depositing the

first installment is to start from the date of receipt of allotment letter. In the instant case, though the allotment letter was issued on 29th April 2022 and the last date of making deposit of the first installment was 12th June 2022, however, before expiry of the said period on 12th June 2022, the petitioners, on 10th May 2022 itself had made the request for accepting change of name, which process took time at the end of respondent-CIDCO and ultimately, the same could be approved only on 12th September 2022. Thus, in the peculiar facts and circumstances of the case, treating the date of allotment to be 29th April 2022 itself cannot be appropriate. Regulation (6), in our opinion, ought to have been accordingly applied to permit the petitioners to make deposit from the date CIDCO approved change of name.

19. From the discussion made above, we come to the conclusion that the delay in making payment of the lease premium is not attributable to the petitioners; rather it has occurred at the end of the respondent-Corporation on account of the fact that (i) the application made by the petitioners for change of name on 10th May 2022 could be finalized by the respondent-Corporation only on 12th September 2022; and (ii) before the orders cancelling the allotment were passed on 5th December 2022, no corresponding change in the portal of the CIDCO, to facilitate the petitioners to make deposit of the lease premium, was made.

20. Thus, the writ petition is allowed and the impugned orders dated 5th December 2022 and 12th October 2023 are hereby quashed.

21. The respondent-CIDCO is directed to accept the first installment of the lease premium from the petitioner-company within 45 days from today. The said amount shall be accepted by the respondent-CIDCO through e-mode or through Demand Draft/Pay Order. We also direct that the second installment shall be paid within 75 days from today.

22. On such deposit, the possession of the plots shall be delivered to the petitioners after completing all other requisite formalities and if there is no other legal impediment.

23. We categorically provide that in case the petitioners fail to abide by the terms of this order, they shall not be entitled to any allotment of the plots in question.

24. There shall be no order as to costs.

JAYANT
VISHWANATH
SALUNKE

Digitally signed by
JAYANT VISHWANATH
SALUNKE
Date: 2024.05.10
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(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)