



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5136 OF 2025

Mahatma Gandhi Mission

VERSUS

City and Industrial Development Corporation of Maharashtra Ltd. & Anr.

Mr. R.N. Dhorde, Sr. Advocate Mr. V.S. Kadam, Advocate for the petitioner.
Mr. Sachin Deshmukh a/w. Mr. Suyash S. Jangada, Advocate for the respondents.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 23.04.2025
PRONOUNCED ON : 06.05.2025

ORDER :-

01. Heard learned Advocates for the parties. This petition is taken up for final disposal by consent of the parties.

02. Challenging the judgment and order passed by the learned District Judge-2, Chhatrapati Sambhajinagar in Misc. Civil Appeal No. 155 of 2019, the petitioner / original plaintiff has approached this Court. By way of the impugned judgment and order, the learned District Judge-2 has dismissed the Misc. Civil Appeal filed by the petitioner with costs by its order dated 04.02.2025. The appeal was preferred challenging the

order of rejection of Exh.5 application seeking injunction against the respondents passed by the learned 12th Jt. CJSD, Aurangabad in Special Civil Suit No. 179 of 2017.

03. The petitioner is a trust running educational institutions and is allottee of the lands by the respondents. Respondent No.1 is the City and Industrial Development Corporation [for short "CIDCO"], a planning authority established under the Act. Respondent No.2 is an Administrator of respondent No.1.

04. The facts giving rise, in short, to the present petition are that the petitioner runs an Educational Institution in Chh. Sambhajinagar. The petitioner also runs charitable hospitals at various places. For the purpose of establishing educational institutions and hospitals, the petitioner applied for allotment of land. The land was allotted for engineering college, hospital, staff quarters, club and stadium at Town Centre, CIDCO, Chh. Sambhajinagar. Respondent No.1 passed resolution allotting land in Town Center for development as requested by the petitioner by passing resolution dated 27.12.1985 in respect of (i) land from Survey No. 7, 8 and 12 of village Baijipura for housing scheme for employees of Jawaharlal Nehru Engineering college (ii) land for Charity

Hospital adjoining to the land previously allotted to Jawaharlal Nehru Engineering College quarters adm. 2 hectare and (iii) land for stadium and club adm. 9.74 hectare. This land was already reserved for the same purpose in the plan. The first land was admeasuring 2.47 Hectare (was to be allotted subject to demarcation) in Survey Nos. 7,8 and 12. Second land was was admeasuring 2 Hectare (again subject to demarcation) and third land was admeasuring 9.74 Hectare excluding the part of stadium site at certain rate. Thus, these three lands were decided to be allotted by Resolution No. 3569.

05. It is the case that while handing over the possession of the land, the actual land available was only handed over without carrying proper measurement. Therefore, the lease deed came to be executed in respect of 6.2 hectare land allotted for the educational purpose by executing an agreement on 16.12.1985. Thereafter, the land of 2 hectare was given for hospital purpose by executing agreement to lease on 24.01.1990 for hospital purpose. This was also given without measurement. On 05.10.1990 third lease deed came to be executed for 2 hectare land allotted for hospital purpose. Then again land admeasuring 9.74 hectare came to be allotted for the club and stadium by executing agreement to lease on 14.08.1987. When the lands were

handed over, there was threat of encroachment over the land by slum-dwellers and land mafiyas. It was case of the petitioners that though the lands were handed over, since there was no proper measurements of the lands, the land that was 2.47 hectare was less than the actual size and therefore request was made to measure the entire land of 2.47 Hectare. Said application was made on 11.02.1991. In 1999, CIDCO had issued notice. In the meantime, there was litigation in between the petitioner and CIDCO in respect of other two lands. The writ petition was, therefore, filed in this Court. Same came to be dismissed. The SLP filed against the said judgment also came to be dismissed.

06. So far as present suit land is concerned, the petitioner prayed for measurement by letter dated 04.05.2007. It was the case of the petitioner that the land is lesser by 1.45 Acres than the area actually allotted by the CIDCO. On request, a measurement was carried on 04.05.2007. The then Joint Managing Director of respondent No.1 communicated that the land is found to be deficit on the site. It was informed that the said measurement would be worked out and deficit area will be carved out and will be allotted. Thereafter, pursuant to letter dated 08.05.2007 the land was measured. It was then decided to give deficit land on the basis of report dated 22.05.2007. The Administrator

thereafter proposed to give 4827 sq. mtr. land to the petitioner. By communication dated 05.02.2008, the Administrator informed the Trust/Petitioner and allotted the land and closed the file. However, it was made clear that in the said land, there is Vipashyana Center and said land is to be used for the said purpose. The resolution was thereafter passed and was forwarded to the Government for approval. Said resolution was however, not accepted. The Government directed the Administrator that the said resolution is cancelled. It was stated that on the said land, there is encroachment made by the petitioner. It was directed to remove said encroachment and to put the land for auction by CIDCO. This was challenged in Writ Petition No. 6310 of 2010. As already stated, said Writ Petition came to be dismissed and SLP against the said decision also came to be dismissed.

07. Present dispute as per the petitioner is not in respect of the subject matter of Writ Petition No. 6310 of 2010. It is only about 4287 sq. mtr. land. Present dispute started in view of notice given by the respondents dated 23.09.2016 in respect of the land given to stadium and club admesuring 7641 sq. mtr. It is stated that there is provision that if the land is found to be lesser than the actual allotment, the amount charged for the same is to be refunded without interest. If the

land is found to be in excess, then the amount would be charged as per the rate at the time of allotment. However, there is no policy of giving alternative land if the land is found to be lesser than the actual allotment. It was stated that the resolution of granting and allotting land of 4827 sq. mtr. is sought to be cancelled. By notice, explanation was called. Said notice was replied on 01.10.2016. It was the case of the petitioner that the land is given in possession of the society after following due process. Once resolution was passed, same could not have been reviewed. It was stated that the resolution be not sent for approval. Thereafter, CIDCO issued a letter directing to hand over possession of the land that was wrongly allotted of 4827 sq.mtr. and further it was directed to pay amount for the land, which is found to be allotted in excess with interest.

08. On this, the petitioner approached Civil Court by filing Special Civil Suit, with prayer that the notice dated 17.04.2017 and the resolution dated 23.02.2017 be cancelled. It prayed for declaration that notice dated 23.09.2016 is void ab-initio, illegal and not binding on the plaintiff. Further injunction was prayed. The petitioner also prayed for temporary injunction by filing application under Order 39 Rule 1 and 2 under Exh.5. It is the case of the respondent in the suit that though

letter dated 05.02.2008 by CIDCO was given to the petitioner, it was erroneously issued by the then Authorized Officer of the CIDCO. Said latter was in violation off its own regulations. In any case, said allotment was subject to approval of the State Government. The Government by communication dated 05.04.2010 had specifically refused to approve the resolution. Same was challenged in the Writ Petition No. 6310 of 2010 in which the petitioners lost, in this Court as well as in the Hon'ble Apex Court. Except this letter, there is no other document like allotment letter, agreement to lease etc. filed on record by the plaintiff. It is further case that all the lands allotted to the petitioner were subject matter of Writ Petition No. 6310 of 2010.

09. The learned Trial Judge accepted this case and for this reason rejected the application against which Misc. Civil Appeal came to be filed. The learned District Judge also concurred with the reasoning given by the Trial Court and dismissed the appeal. The petitioners are thus, before this Court.

10. Mr. Dhorde, learned Sr. Advocate for the petitioner vehemently argued that three pieces of lands were allotted to the petitioner by duly passing resolutions. The lease deeds are executed

between the parties. Since it was found that lesser area is given in possession of the petitioner, the then Authorities of the CIDCO verified this fact and thereafter land to the extent of 4782 sq. mtr. was given. On the said land already Vipashyana Center was there. As per the condition, the petitioner did not change user of the said land and is running Vipashyana Center. The land given in possession of the petitioner is the land which was found to be lesser. No illegality is committed in granting land. In view of principles of estoppel, it is not open for the respondent Authorities to take back possession. It is wrongly held by both the Courts that the subject matter of the present petition was also the subject matter of earlier writ petition. Both the Courts have misinterpreted order passed in earlier writ petition and have held against the petitioner. He submits that during pendency of Exh.5 application and Misc. Civil Appeal, there was temporary injunction order in operation and same be continued by directing the Trial Court to expedite the suit. Learned Sr. Advocate submits that there were three letters issued for allotment of three lands in the said writ petition and therefore confusion is created. However, resolutions were different of allotment of all the three plots. The resolution under challenge is only in respect of Resolution No. 9841 which was sent to the Government and not resolution in respect of present land.

11. Learned Advocate Mr. Sachin Deshmukh vehemently opposed the writ petition. He submits that the subject matter of earlier writ petition and the present suit is the same. The land was falling short is not disputed. The question was only as to whether to compensate the same, another piece of land could have been given? Second question as to whether the Officer who allotted land was empowered to do so? He submits that though resolution was passed, the same was not approved by the Government. Thus, the Government's order is final. The basis of claiming allotment by the Petitioner itself is now not available in view of the communication by the Government. By way of present suit, the petitioner is trying to re-open the issue. The attempt is to continue with the possession. He prays for dismissal of the writ petition with costs. Mr. Deshmukh further submits that the identity of the plot is very clear as in the writ petition it is clearly mentioned that on the said land there was Vipashyana Center.

12. The main issue for consideration of this Court is thus, whether the petitioner has any right to continue with the possession of the land involved in the suit? Secondly as to whether both the Courts have rightly concluded that the present suit land was the subject matter

of earlier writ petition.

13. The learned Trial Judge had considered that there is no dispute that Vipashyana Center is being run on the said disputed land. It is rightly considered that though the resolution was passed to give land that was found deficit, same was without any Authority with the officer. In any case, said resolution was not accepted by the Government and the Government specifically directed to take back the land, by considering the relevant paragraph of the judgment in the earlier writ petition.

14. The learned Appellate Court also further observed that the learned Trial Court has applied its mind and has considered the principles governing grant of interim prayers i.e. prima facie case, balance of convenience and irreparable loss. The Court did not find any perversity in the order. The Court considered the allotment of that land as an encroachment in view of directions of the State Government. It is further held that the plaintiff failed to establish legal right over the suit property and the possession of the plaintiff itself is illegal.

15. This Court has gone through the reasoning of both the

Courts. This Court finds that both the Courts have considered prima facie case. It is correctly held that there is no any document executed between the parties, so far as present land is concerned. Only letter was issued by the then Administrator of CIDCO to allot the land. Pursuant thereto resolution was also passed. However, the Government in specific words refused to accept the resolution and directed to take back the possession. As there is no legal allotment in favour of the petitioner, possession of the petitioner needs to be taken as encroachment. It is a matter of record that there is no lease deed executed in respect of this land. Mere resolution, assuming if any, will not confer any title on the petitioner. It is trite law that to confer title, there has to be valid document executed between the parties. No such document is placed on record by the plaintiff. When the plaintiff has failed to prove the prima facie case itself, the Court need not go into further question of balance of convenience and irreparable loss. For considering the two aspects of balance of convenience and irreparable loss, it is necessary that a prima facie case is made out. Unless person shows any legal right, he cannot proceed further to show balance of convenience or irreparable loss as there is no right itself vested in such person and secondly there is no question of irreparable loss.

16. So far as submission as to whether this very land was subject matter of earlier writ petition is concerned, this Court finds that both the Courts below by going through the judgment in the writ petition have held that this land was also a subject matter of the writ petition. In Para No. 2 (d), this Court in the judgment has clearly held that the land which was allotted, there is Vipashyana Centre in it. There is also reference of the area of the plot i.e. 4827 sq. mtr. which was found to be less than the actual allotted land. Said para is reproduced below :-

"(d) It is contended by the petitioners, that since the petitioner was in possession of the aforesaid land admeasuring 2.47 hectares, the petitioner has constructed temporary shed to run Dhamma Ajanta Aurangabad, and Vipashyana Meditation Centre. It is contended that in the meanwhile, the respondent /CIDCO agreed to measure the total land to solve the dispute and it was accordingly found that the area in possession of the petitioner was less by 4,827 Square Metre than the land which was actually allotted. It is contended that accordingly the respondent no.2 has allotted 4,827 Square Metre land which was found to be less than actually allotted."

. Para Nos.14 and 15 of the said judgment read as under :-

"14. We are, therefore of the considered view that it was not at all permissible for the officers of the CIDCO to have offered the aforesaid land to the present petitioner, in view of judgment of this Court and the Apex Court, in case of the petitioner itself, and in view of the directions issued by this Court in the PIL, which are affirmed by the Apex Court. We have no hesitation to observe that the officers of the CIDCO, in collusion with the petitioner, have made an attempt to allot the aforesaid land of 2.47 hectares to the petitioner, which claim of the petitioner has been specifically turned down by this Court and the Apex Court, in the earlier round of litigation. We further find that the offer and acceptance are totally in breach of directions issued in the PIL. It is clear that no land in possession of CIDCO could have been disposed of, in the absence of public proclamation / tender. An attempt was made to clandestinely allot

the land to the petitioner, in breach of the directions issued by this Court in the PIL.

15. It is further to be noted that vide communication dated 5th February 2008, what was stated, was only an offer made to the petitioner. The resolutions in the meeting dated 2nd April 2008 would also show that the resolution to allot the land was subject to approval of the State Government. It can, thus, be seen that there was no right accrued in favour of the petitioner. Unless the resolution of the the Board of Directors of CIDCO was approved by the State Government, the land could not have been allotted to the petitioner. We, therefore, find that the ground raised by the petitioner, regarding estoppel, is without any substance."

17. Reading the above paragraphs, there is no doubt that this very land was subject matter of the earlier writ petition. This Court in the said judgment had even issued notices as to why proceeding should not be initiated of committing contempt against the then Administrative Officer of respondent No.1. When these are the facts, still the petitioner has ventured to file suit contending that they have legally occupied the said plot.

18. The Hon'ble Supreme Court in the judgment in the case of **Sopan Sukhdeo Sable & Ors. Vs. Assistant Charity Commissioner & Ors., reported in (2004) 3 SCC 137**, by relying on judgment in the case of **Dalpat Kumar Vs. Prahlad Singh, (1992) 1 SCC 719**, considered that it is settled position that no injunction could be granted against true owner at the instance of person in unlawful possession. In

the present case, there is no doubt that the CIDCO is owner of the land. Merely, by issuing letter by Administrative Officer, the petitioner cannot become lawful owner of the plot.

19. Hon'ble Apex Court in the case of **Premji Ratansey Shah & Ors. Vs. Union of India & Ors., (1994) 5 SCC 547** considered as to whether injunction be refused. It is held that no injunction would be issued in favour of trespassers. It is held that the Trial Court and the Apex Court rightly rejected the relief of injunction in favour of the petitioners, who were not having any interest in the property.

20. In the judgment in the case of **Mohd. Mehtab Khan & Ors. Vs. Khushnuma Ibrahim Khan & Ors., reported in 2013 (9) SCC 221**, the Trial Court had taken a view that the entitlement of the plaintiff to get order of interim mandatory injunction was in serious doubt. The Appellate Court interfered with the exercise of discretion by the Trial Judge. It is held by the Hon'ble Apex Court that said exercise was found to be palpably incorrect or untenable.

21. In the present case, this Court has seen that both the Courts have given cogent reasoning. The Trial Court has used discretion based

on some principles. This Court finds that no case is made out calling for interference at the hands of this Court. There is no merit in the Writ Petition. The Writ Petition, therefore, stands dismissed with no order as to costs.

[KISHORE C. SANT, J.]