

CASE NO.:
Appeal (civil) 1466 of 2005

PETITIONER:
Mahatma Gandhi Mission

RESPONDENT:
City & Industrial Development Corporation Ltd. & Ors.

DATE OF JUDGMENT: 16/09/2005

BENCH:
S. B. SINHA & C. K. THAKKER

JUDGMENT:
J U D G M E N T

C.K. Thakker, J.

The present appeal is directed against the Judgment and order passed by the High Court of Judicature at Bombay, Bench at Aurangabad on October 31, 2002 in Writ Petition No. 4952 of 1999.

To appreciate the controversy raised in the appeal, few relevant facts may be stated;

The appellant (Mahatma Gandhi Mission) is a charitable trust and is registered under the Bombay Public Trusts, Act, 1950. It is established with the aim and object of providing higher educational facilities in rural and backward areas of the State of Maharashtra. The appellant trust is running Medical and Engineering Colleges at New Mumbai, Aurangabad and Nanded in Maharashtra and at Noida in Uttar Pradesh. The trust is also running other educational courses, such as, Master of Business Administration, Bachelor of Journalism, Nursing, etc. It is one of the reputed educational institutions in the State of Maharashtra. According to the appellant - trust, Respondent No. 1 City & Industrial Development Corporation Ltd. ('CIDCO' for short) is a statutory authority constituted under the Maharashtra Regional Town Planning Act, 1966 (hereinafter referred to as the 'Act') for the planned development of the city of Aurangabad and for allotment of land to individuals as well as institutions for housing, commercial and charitable purposes.

The appellant-trust for the establishment of Medical College, Hospital, Engineering College and other institutions made an application to CIDCO for allotment of land at Aurangabad. According to the appellant, after considering the requirement of land by the Trust, CIDCO was pleased to make allotment from the plot of land available with CIDCO known as 'Town Centre' (N-6 CIDCO) by passing resolutions. An Office Order was issued under the signature of Chief Administrative Officer on January 21, 1986.

The land was allotted for the following purposes;

- 1) Housing scheme for employees of Jawaharlal Nehru Engineering College : 2.47 Hectres : Rs. 90/- per sq. mtr.;
- 2) Charitable Hospital : 2 Hectres : Rs. 45/- per sq. mtr.;
- 3) Stadium and Club site : 9.74 Hectres : Rs. 9/- per sq. mtr.

It is asserted by the appellant that consequent upon allotment of land, the trust was put into possession of the land allotted for the purpose of housing scheme for employees of Jawaharlal Nehru Engineering College. It is also the case of the appellant-trust that the land was barren and hilly and

there was no specific marking on the spot nor demarcation of boundaries made by CIDCO. In respect of lands allotted for Charitable Hospital, Engineering College and Club and Stadium, agreements were executed in favour of the trust but no such agreement was executed for the land allotted for housing scheme of employees. Actual measurement was not made though the land admeasuring 2.47 H. had been allotted for housing purposes. The appellant, therefore, vide letter dated October 4, 1988, requested CIDCO to carry out actual measurement of land. CIDCO instead of carrying out measurement, issued a notice on 3rd December, 1988 asking the appellant-trust to pay the amount to CIDCO. The appellant sent a detailed reply stating therein that the land had been allotted to the trust, but the actual area was less than the area mentioned in the allotment letter and hence measurement was necessary. CIDCO was, therefore, requested to carry out measurement of the land. It is also the case of the appellant-trust that payment was made for the land allotted for construction of houses of employees and in spite of such payment, no action was taken by CIDCO. Ultimately, by a communication dated November 15, 1996, CIDCO cancelled the allotment and directed the appellant-trust to remove construction made on the said land and hand over possession to CIDCO. The trust informed CIDCO that the land had already been granted and the trust was in legal and lawful possession of the land. CIDCO, however, insisted for actual and vacant physical possession of the land from the trust and vide an order dated October 11, 1999 asked the Secretary of the appellant-trust to hand over possession of the land to CIDCO within three days from the receipt of the letter failing which necessary actions would be taken by CIDCO for taking possession.

The appellant-trust, in the light of the stand taken by CIDCO and direction to hand over possession of land which had been legally and lawfully allotted to the trust, instituted a petition in the High Court of Bombay at Aurangabad Bench for quashing and setting aside letter dated October 11, 1999 and directing CIDCO to take measurement of all the lands allotted to the trust through the office of the District Inspector of Land Records, Aurangabad and to decide whether any amount is due and payable by the appellant-trust in respect of land allotted to the trust for residential purposes of Jawaharlal Nehru Engineering College employees. Interim relief was also sought. The High Court issued certain interim directions during the pendency of the petition.

An affidavit in reply was filed on behalf of CIDCO inter alia contending that the petition filed under Article 226 of the Constitution was not maintainable. The appellant was trying to seek specific performance of the contract. It was also contended that there was gross delay and laches on the part of the petitioner in approaching the court inasmuch as the order of cancellation was passed in November, 1996 whereas the petition was filed in 1999. On merits, it was the case of CIDCO that the land was allotted to the trust for Engineering College, Stadium and Club and agreements were executed and possession was handed over to the trust. Allotment relating to housing scheme of Jawaharlal Nehru Engineering College was, however, totally an independent issue. Whereas for other purposes allotment had been made, in respect of housing scheme for employees, neither a deed was executed nor possession was handed over to the trust. By taking law in its hand, illegal and unlawful possession of land belonging to CIDCO had been taken by the trust which action was highly objectionable. CIDCO, therefore, asked the trust to restore possession but it was not acceded by the trust and, hence, the impugned action was taken of cancellation of allotment. It was also alleged by CIDCO that no full and final payment was made by the trust even for the land allotted and possession handed over to the trust. The trust, therefore, was not entitled to any relief from the court.

The Division Bench of the High Court, in the light of rival contentions of the parties, considered the facts of the case keeping in view documentary evidence produced before it. The court on the basis of materials available held that at no point of time possession of land was handed over by CIDCO to the trust for construction of houses of employees

of Jawaharlal Nehru Engineering College. No agreement and/or deed was executed by CIDCO in favour of trust. It was, therefore, clear that the trust was in illegal and unlawful possession of the property belonged to CIDCO. The trust was unable to produce any document, panchnama or communication regarding handing over possession of land by CIDCO. The case put forward by CIDCO appeared to the High Court to be more probable that the trust unlawfully occupied the land. It was, therefore, open to CIDCO to ask the trust to restore possession to CIDCO, observed the High Court. The court noted that no full payment was made by trust even for the land allotted to the trust by CIDCO and substantial amount remained to be paid. The High Court held that CIDCO was right in appropriating Rs. five lakhs for the land allotted to the trust and it could not be said that the payment was made by the trust to CIDCO for allotment of land for the purpose of construction of quarters for employees. The High Court accordingly dismissed the petition.

When Special Leave Petition was filed in this Court, the learned counsel for the petitioner/appellant stated that forgetting the controversy raised about the area of land, the trust would accept that the area of land was 2.47 H. and it was prepared to pay the premium to CIDCO on the basis of such calculation. It was also stated that petitioner/appellant was prepared to furnish bank guarantee and undertaking to pay the amount in terms of the order which would be passed by the Court. This Court, therefore, in the order dated December 16, 2002 asked the appellant to make such statement on affidavit without prejudice to the respondent's rights. The matter was thereafter adjourned from time to time. On 25th February, 2005, leave was granted and office was directed to place the matter for final hearing after summer vacation. Thus, the matter is placed before us.

We have heard the learned counsel for the parties. Mr. Nafde, Senior Advocate, appearing for the appellant trust contended that CIDCO is a statutory authority and an instrumentality of the 'State'. Every action of CIDCO must, therefore, be in conformity with Article 14 of the Constitution. It is also submitted that the land had been allotted to the trust for educational purposes and disputed land was allotted for construction of quarters for employees of Jawaharlal Nehru Engineering College and possession was handed over to the trust. Since no actual measurement was carried out, the appellant trust requested CIDCO to measure the area through its officers. It was legal and reasonable demand of the trust. Instead of complying with the request, CIDCO took undue advantage of the situation. It is contended that there was no allotment for residential quarters and the appellant had 'entered the land illegally and unlawfully.' The counsel submitted that apart from the allotment letters, lease deed and conduct of the parties, it is clear that land had been allotted for specific purpose of construction of staff quarters and it was clear from payment of Rs. five lakhs by appellant to CIDCO. It was, therefore, not open to CIDCO to contend that no such allotment was made to the appellant-trust. In any case, at the time of admission and hearing of Special Leave Petition in this Court, the trust had shown its readiness and willingness to pay the price of land admeasuring 2.47 H. allotted to the trust and furnished even bank guarantee alongwith the undertaking in due compliance with the statement made at the time of hearing. It was, therefore, submitted that this is a fit case for grant of prayer and the appeal, therefore, may be allowed.

Mr. Bhasme, learned counsel for the Respondents, on the other hand, supported the order passed by the High Court. It is submitted that no doubt some land was allotted to the trust for specific purposes. Appropriate decisions were taken and agreements/deeds were executed in respect of the said land. So far as the allotment of land for construction of staff quarters is concerned, neither an agreement nor deed was executed. No possession at any point of time was given to the trust. The trust unauthorisedly and illegally, by taking law in its hands, entered into possession of some land belonged to CIDCO which was clearly improper and illegal. CIDCO therefore, was constrained to issue letter of cancellation which action was legal and lawful. In 1996, the appellant was aware of the fact that no such

allotment was made and hence did not take any action immediately. It was only after two years that a petition was filed in the High Court. The counsel stated that even in respect of lands which have been legally allotted to the trust, full payment has not been made so far. Even today, certain amounts are due and payable to CIDCO. The trust in the circumstances cannot ask for any equitable relief.

Having heard the learned counsel for the parties, in our opinion, it cannot be said that by dismissing the petition, the High Court has committed any error of law or of jurisdiction which deserves interference by us. Submission of the learned counsel for CIDCO deserves acceptance that CIDCO is a statutory authority and when such authority makes allotment and hands over possession of immovable property, such an action would be in writing. There would be an agreement, allotment letter, deed, panchnama of taking over and handing over possession of the land to parties showing in measurement etc.. The High Court, in our opinion, rightly observed that the trust was not in a position to show any document whatsoever as to on what basis it was claiming right over the land admeasuring 2.47 H. said to have been granted by CIDCO for construction of staff quarters. The High Court noted that though it was the case of the trust that possession of the disputed land was handed over by the officers of CIDCO, no material in support of such assertion had been produced in the Court. On the contrary, all throughout the case of CIDCO was that though for other purposes, land was allotted and possession was handed over to the trust, for construction of staff quarters no such agreement was made. Obviously, in such a situation, there would not be any deed between the parties, or panchnama for handing over possession by CIDCO and taking over possession by trust. In the affidavit in reply filed before the High Court, it was specifically contended by CIDCO that no possession of land was given by CIDCO to trust.

In this Court also, the contentions raised by CIDCO before the High Court were reiterated. Regarding the offer and willingness of the trust to pay the amount for the land and statement and undertaking given before this Court and furnishing of bank guarantee, the Administrative Officer of CIDCO has filed an affidavit. In the said affidavit, it was stated that CIDCO is not in a position to accept the offer made by the appellant. The deponent has given several grounds to justify refusal to grant land to the trust.

It is stated :

"I say that now accepting the premium will not only be against the policy adopted by the CIDCO but also suffer a huge financial loss, and also the residents of the New Town Aurangabad will be sufferer as the said amount will be utilized for the development of the New Town and to provide various facility.

I say that the fact that the land in question was worth Rs.3,27,27,500/- in the year 1996, as the CIDCO charged premium for residential purposes i.e. at the rate of Rs.1325/- per square meter."

I say that by the time when the affidavit-in-reply was filed in the writ petition before the Honourable High Court, the base rate was Rs. 2300/- per square meter and the total value of the land was worth Rs. 5,68,10,000/-. I say that at present the base rate is Rs. 3450/- per square meter and the land is now worth Rs. 8,52,15,000/-."

From the facts and circumstances and from the affidavit filed in the High Court, findings recorded by the High Court and also the counter affidavit filed in this Court, it is clear that the possession of land was never given to the trust. No agreement was entered into between the parties, no deed was executed, no possession was given by CIDCO to the appellant and the appellant illegally and unlawfully and in high handed manner entered

into the land belonged to CIDCO. After such illegal act and entering into unlawful possession of the property, it asked CIDCO to get the measurement of land done for which no payment was made by the trust. Such an action by a charitable trust would be simply improper as also unlawful. When called upon to produce evidence or material to show as to on what basis the trust contended that the land was allotted by CIDCO and as to how the trust came into possession of the disputed land, except a bald statement by the trust that the officers of CIDCO handed over possession to the trust, no material whatsoever had been produced in the Court on the basis of which possession of trust could be said to be lawful. The High Court, in the circumstances, was wholly justified in not proceeding on unfounded assertion of the trust and in dismissing the petition.

So far the willingness and readiness of the trust to purchase the land is concerned, in our opinion CIDCO is right in objecting such prayer on the grounds mentioned in the counter affidavit filed in this Court. CIDCO is a statutory public authority. It cannot be asked to dispose of land otherwise than in accordance with statutory provisions and guidelines/norms adopted by such authority and at the cost of public exchequer.

The deponent has stated in the said affidavit that if the land is disposed of as per the practice of CIDCO, it would fetch substantially high amount. It is also the case of CIDCO that full and final payment of land allotted to the appellant before about twenty years has not been made so far. Keeping in view the facts and circumstances, legal position and also equitable aspect of the matter, in our opinion, this is not a fit case to exercise equitable jurisdiction under Article 136 of the Constitution in favour of the appellant.

For the forgoing reasons, no case has been made out by the appellant for interference with the order passed by the High Court and appeal deserves to be dismissed, and is dismissed accordingly. In the facts and circumstances of the case, however, there is no order as to costs.

The learned counsel for the appellant stated that the appellant trust is still ready and willing to apply to CIDCO for grant of land. The learned counsel for CIDCO stated that his client is not willing to accept the prayer of the appellant. We make it clear that we are not expressing any opinion on that point. In our view, the order passed by the High Court does not suffer from infirmity or illegality and hence, the appeal is dismissed.