CASE NO.:
Appeal (civil) 1219 of 2007

PETITIONER:
SUNIL PANNALAL BANTHIA & ORS

RESPONDENT:
CITY AND INDUSTRIAL DEVELOPMENT CORPN. OF MAHARASHTRA LTD. & ANR

DATE OF JUDGMENT: 08/03/2007

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:
J U D G M E N T
(Arising out of SLP (C) No.14300/2006)

ALTAMAS KABIR, J.

Leave granted.

This appeal is directed against the order passed by the Division Bench of the Bombay High Court dismissing the writ petition filed by the appellants herein challenging the action of the respondent, City and Industrial Development Corporation of Maharashtra Ltd. (for short 'CIDCO') in cancelling the allotment made in favour of the appellants. The Division Bench indicated in its impugned order that in identical matters other writ petitions filed at different points of time had been dismissed on the ground of alternative remedy available.

The facts as can be garnered from the materials on record, indicate that the CIDCO had issued a letter of allotment of a commercial plot measuring 1453.75 sq. mts. on lease in plot No.1 in Sector 9, Panvel (West), Navi Mumbai, for a period of 60 years for a premium of Rs.2,12,24,750/- in favour of Mrs. Meera Balkrishna Dhumale and Mrs. Neeta Hemant Patankar jointly. The original allottees applied for transfer of the said plot to the appellants herein. Upon accepting the transfer charges of Rs.2 lacs, CIDCO issued a corrigendum to the original allotment letter dated 5th February, 2004 and executed a Deed of Lease in favour of the appellants on receipt of the full lease premium of Rs. 2,12,24,750/-. CIDCO also executed a Deed of Confirmation in favour of the appellants and issued the Development Permission and Commencement Certificate in terms of Section 45 of the Maharashtra Regional Town Planning Act, 1966 (for short 'the MRTP Act').

On the basis of the above, the appellants commenced the construction work and proceeded up to the 1st floor and also completed the construction of the underground water tank. However, on 19th July, 2005, CIDCO issued a Show Cause Notice to the appellants to show cause why the agreement to lease should not be terminated as being void under Section 23 of the Contract Act. The appellants duly replied to the show cause notice through their learned advocate, but despite the above, on 29th March, 2006, CIDCO passed an order terminating the Agreement of Lease and demanded return of possession of the allotted plot with a threat of forcible resumption unless the demand was complied with.

The appellants filed a writ petition against CIDCO

challenging the show cause notice dated 19th July, 2005, and the order dated 29th March, 2006, terminating the Agreement of Lease and demanding possession of the allotted plot on 13th April, 2006. The matter was hotly contested before the Bombay High Court and all the aforesaid facts were brought to its notice. On behalf of the respondents, it was sought to be highlighted that the allotment had been made by it in contravention of the provisions of Section 23 of the Contract Act by not calling for tenders and such action on its part was void as being opposed to public policy.

Without going into the aforesaid questions, the Bombay High Court simply dismissed the writ petition on the ground of alternative remedy available.

On behalf of the appellants, it was sought to be urged by Mr. J.P. Cama, learned senior advocate, that two similar matters, being Civil Appeal No. 408/07 (Amey Co-operative Housing Societies Limited vs. Public Concern for Governance Trust & Ors) and Civil Appeal No.410/07 filed by M/s. Vijay Associates (Wadhwa) Developers, had been considered in detail by this Court and the said appeals had been disposed of on 1st February, 2007 by a judgment in which most of the points raised in the instant appeal had also been raised and decided. Mr. Cama submitted that on the issues as already decided, nothing further was needed to be added, but there was a basic difference between the reliefs sought for in the said appeals and the instant appeal. Mr. Cama pointed out that the said two appeals had arisen out of two writ petitions filed by way of Public Interest Litigation and one of the grievances of the writ petitioners was that the properties which had been allotted had been undervalued, thereby causing huge loss to CIDCO. Besides asking for cancellation of the allotments, the writ petitioners had made an alternate prayer for the appointment of an independent valuer to revalue the plots allotted and in the event the valuation was found to be higher, for a direction upon the allottees to pay the balance to CIDCO on account of the fact that the construction work had reached an irreversible stage.

Mr. Cama submitted that in the instant case, there was no such prayer and it was the appellants herein who had challenged the cancellation of their allotment by CIDCO in terms of its order dated 29th March, 2006 purportedly on account of violation of the provisions of Section 23 of the Contract Act. According to Mr. Cama, the only question to be decided in this appeal is whether having accepted the entire premium lease from the appellants as also the transfer fees from the original allottees and having issued Sanction and Commencement Certificate, CIDCO was entitled to resile from its original actions and to cancel the allotment unilaterally on the ground of violation by CIDCO itself of its own Regulations which attracted the provisions of Section 23 of the Contract Act. It was urged that since the appellants had substantially altered their position to their prejudice on the assurances held out by CIDCO by investing huge amounts on the development of the allotted plot, CIDCO was estopped in law from resiling from its earlier assurances and seeking eviction of the appellants on the ground that the allotment had not been made in accordance with the Regulations.

Referring to the decision of the Court of Appeal in the case of Falmouth Boat Construction Limited vs. Howell, reported in (1950) 1 All.E.R. 538, Mr. Cama referred to the observations made by Lord Denning with regard to the steps taken on the basis of an oral assurance. While dealing with the situation where a Ship Builder had proceeded to effect repairs on the basis of an oral direction, Lord Denning held

that whenever government officers, in their dealings with a subject, take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know and cannot be expected to know, the limits of their authority and he ought not to suffer if they exceed it.

Mr. Cama submitted that the defence being taken on behalf of the CIDCO that it had acted arbitrarily and in contravention of its own rules, was not available to CIDCO since the appellants had acted and altered their position on the basis of such assurance and the appellants were not required to know whether CIDCO had acted in conformity with its rules or not.

In this connection, Mr. Cama also referred to the decision of this Court in the case of Century Spinning and Manufacturing Company Ltd.and Anr. vs. The Ulhasnagar Municipal Council and Anr., reported in (1970) 1 SCC 582, wherein it was observed as under:-

"Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contractu by a person who acts upon the promise: when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may be enforced against it in appropriate cases in equity. In Union of India and Ors. vs. M/s. Indo-Afghan Agencies Ltd., (1968) 2 SCR 366, this Court as held that the Government is not exempt from the equity arising out of the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government. This Court held that the following observations made by Denning, J., in Robertson v. Minister of Pensions, (1949) 1 KB 227, applied in India:

"The Crown cannot escape by saying that estoppels do not bind the Crown for that doctrine has long been exploded. Nor can the Crown escape by praying in aid the doctrine of executive necessity, that is, the doctrine that the Crown cannot bind itself so as to fetter its future executive action."

We are in this case not concerned to deal with the question whether Denning L.J., was right in extending the rule to a different class of cases as in Falmouth Boat Construction Co. Ltd. v. Howell, (1950) 1 All ER 538 where he observed at p.542:

"Whenever Government officers in their dealings with a subject take on themselves to assume authority in a matter with which the subject is concerned, he is entitled to rely on their having the authority which they assume. He does not know, and cannot be expected to know, the limits of their authority, and he ought not to suffer if they exceed it."

It may be sufficient to observe that in appeal from that judgment (Howell v. Falmouth Boat Construction Co.Ltd.) (supra) Lord Simonds observed after referring to the observations of Denning, L.J.:

"The illegality of an act is the same whether the action has been misled by an assumption of authority on the part of a Government officer however high or low in the hierachy.

The question is whether the character of an act done in force of a statutory prohibition is affected by the fact that it had been induced by a misleading assumption of authority. In my opinion the answer is clearly: No."

It was further observed that different standards of contract for the people and the public bodies could not ordinarily be permitted and the public body was not exempt from the liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.

The same sentiments have also been expressed by this Court in another decision in the case of U.P. Rajkiya Nirman Nigam Ltd. vs. Indure Private Limited & Ors., (1996) 2 SCC 667, where the concept of indoor management was argued on behalf of the appellant. Repelling such argument, this Court held that when the negotiations were undertaken on behalf of the appellant, the respondent was led to believe that the officer was competent to enter into the contract on behalf of the appellant. When the counter proposal was sent, the appellant had not returned the proposal. It, therefore, amounted to acceptance and hence a concluded contract came into existence.

On the strength of the above, Mr. Cama submitted that having allotted the plot in question to the appellants, it was not open to CIDCO to unilaterally claim that such allotment was void since it had no authority to make such allotment in the manner in which it had been done.

Mr. Cama submitted that even such a stand was untenable in view of Regulation 4 of the New Bombay Disposal of Land Regulations, 1975, which had been framed under Section 159 of the MRTP Act and provides as follows:-

Manner of disposal of land: "The Corporation may dispose plot of land by public auction or tender or by considering individual applications as the Corporation may determine from time to time."

Mr. Cama submitted that CIDCO had also adopted Resolutions on the aforesaid basis, which issue had been dealt with by this Court in the case of Amey Co-operative Housing Society Limited (supra). It was not, therefore, available to CIDCO to contend that the allotment could not have been made on the basis of an individual application and that the same was void on account of the fact that no public auction had been held in connection with such allotment.

Mr. Cama also submitted that the availability of an alternate remedy which was less efficacious than a writ petition, did not absolutely bar the filing of a writ petition and even on such ground the impugned order of the High Court was liable to be set aside, particularly when the writ petition had been admitted and the parties had completed their pleadings. Mr. Cama submitted that the subject-matter of the instant appeal being different from those decided earlier by this Court, there was no reason for the appeal to be remitted back to the High Court since the only question involved in the instant appeal was whether the allotment made was at all void in terms of Section 23 of the Contract Act, 1872 and also whether CIDCO acted within its jurisdiction in cancelling such allotment unilaterally.

Appearing for CIDCO, Mr. Altaf Ahmed, learned Senior Advocate, submitted that certain other similar appeals which had been disposed of by the High Court without going into merits, had been remitted to the High Court for fresh determination and there was no difference in the instant case where also the High Court had adopted a similar procedure. Mr. Ahmed contended that since the merits of the matter had not been gone into by the High Court, it was not available to the appellants to argue the merits which the High Court had no occasion to consider. The question of valuation or the mode of allotment was yet to be adjudicated upon and the matter was, therefore, required to be remitted to the High Court for a full adjudication thereupon.

Mr. Ahmed tried to urge that having regard to Section 23 of the Contract Act, an agreement would not be lawful if it was found to be immoral or opposed to public policy. He urged that since CIDCO had made the allotment in violation and/or contravention of its own rules regarding such allotment, the allotment must be held to be opposed to public policy and was therefore unlawful and void in terms of Section 23 of the Contract Act, 1872.

Mr. Ahmed submitted that the decisions cited by Mr. Cama were not applicable to the facts of this case since the High Court did not go into the facts to determine as to whether the allotment was, in fact, opposed to public policy and was, therefore, illegal and void.

Although, we were at one stage inclined to remit the matter to the High Court since the writ petition had not been considered on merits and had been dismissed on the existence of an alternate remedy by way of suit, after considering the submissions made on behalf of the respective parties, we have decided otherwise. We are inclined to accept Mr. Cama's submission that the facts of this appeal are different from those which have been earlier remitted to the High Court for re-consideration on merits and also for making a re-valuation. In the present appeal, we are only concerned with the question of law as to whether CIDCO had acted in excess of its jurisdiction and authority in cancelling the allotment made to the appellants on a unilaterally consideration that the allotment had been made in contravention of its rules and regulations and was thereby opposed to public policy and was illegal and void in terms of

Section 23 of the Contract Act, 1872. No decision is required to be taken in the matter on facts, which could have merited an order of remand.

On the legal question, it is quite obvious that having acted and held out assurances to the appellants which caused the appellants to alter their position to their prejudice, it was not open to CIDCO to take a unilateral decision to cancel the allotment on the ground that it had acted without jurisdiction and/or in excess of jurisdiction and in violation of its rules and regulations. Even on that score, the argument advanced on behalf of CIDCO is unacceptable having regard to Regulation 4 of the New Bombay Disposal of Land Regulations, 1975 extracted hereinabove which empowered CIDCO to dispose of plots of land even on the basis of individual applications. The said aspect of the matter has been dealt with in detail in Civil Appeal Nos. 408/07 and 410/07 referred to hereinabove.

On the question of the allotment being opposed to public policy, we failed to see how CIDCO can raise such an issue. On the other hand, the stand taken by CIDCO is, in our view, opposed to public policy since CIDCO was not entitled to take a unilateral decision to cancel the allotment after the appellants had acted on the basis thereof and had expended large sums of money towards the construction which has progressed to some extent. The Regulations allowed CIDCO to entertain individual applications for allotment, as has been done in the instant case. Merely by indicating that the law declared by this Court was universally binding under Article 141 of the Constitution, it could not contend that such allotment was contrary to public policy on a fresh consideration made by the Board of Directors of the Corporation upon considering the recommendations made by Dr. D.K. Shanakran, the then Addl. Secretary (Planning) of the State of Maharashtra. It may be mentioned that Dr. Shankaran had been appointed by the State Government in January 2005 to conduct a discreet inquiry into allotments of certain plots of land made by the Corporation during the tenure of Shri V.M. Lal, the then Vice-Chairman and Managing Director allegedly in contravention of the established Rules, Regulations and Conventions.

That consideration, in our view, was not sufficient in the instant case to cancel the allotment which had been made in accordance with the Regulations and the appellants had made payments as directed by the Corporation, which, in fact, was higher than the price recommended by the Shankaran Committee.

For the reasons aforesaid, we allow the appeal, set aside the order of the High Court impugned in this appeal and quash the order dated 29th March, 2006 passed by CIDCO as also the Show Cause Notice dated 19th July, 2005 on the basis of which the aforesaid order of cancellation of allotment was made.

There will, however, be no order as to costs.