

CASE NO.:
Appeal (civil) 4309 of 2007

PETITIONER:
City and Industrial Development Corporation of Maharashtra & Anr

RESPONDENT:
Ekta Mahila Mandal & Anr

DATE OF JUDGMENT: 17/09/2007

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO. 4309 OF 2007
(Arising out of S.L.P. (C) No.842 of 2005)

Dr. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Bombay High Court at Aurangabad directing appellant-City and Industrial Development Corporation of Maharashtra (in short the 'CIDCO') to consider respondent No.1's case for regularization of the existing plot admeasuring 770 Sq. mtrs., located at N-7 Sector and on regularization to accept the consideration at the rates prevailing in 1981 for the plots reserved for educational facilities. It was held that CIDCO's stand that the said plot is a green belt cannot be accepted.

3. Factual background in nutshell is as follows:

A writ petition was filed by the respondent No. 1 for a direction to the appellants to regularize a plot of land which was claimed to be under its possession. In the writ petition it was stated that a group of house wives interested in social service particularly for creating opportunities for children from lower income groups formed a society called "Ektha Mahila Mandal" in the N-7 Sector of CIDCO. Subsequently, it was registered under the Bombay Public Trust Act, 1950 (in short the 'Trust Act') as a charitable trust and they started a Balakwadi for the children coming from the lowest income groups. Adjacent to the balakwadi of respondent no.1, there was an open plot and the respondent no.1 constructed two rooms along with one toilet block and the remaining land was used as a playground for the students. Prayer in the writ petition as noted above was for a direction to allot the same plot in favour of respondent no.1 for educational purposes. Appellants filed its reply and submitted that the plot admeasuring 770 Sq. mtrs. located in N-7 Sector and on the portion of which the constructions have been made is reserved as a green belt and it cannot be allotted to the writ petitioner. It was pointed out that another plot in N-7 Sector-1 was available which admeasures about 2186 Sq. mtrs. and was reserved for primary school and the writ petitioner was informed about these factors. However, before CIDCO

proceeded to invite application for allotment of this plot, a section of the society resorted to agitations, demonstrations, hunger strike and demanded that the portion of the plot was reserved for Budha Vihar, it could not be allotted to any one else. Under these circumstances, CIDCO could not proceed further to consider the application for alternative plot.

4. Stand of the writ petitioner was that though in records the plot in question was stated to be reserved for green belt, in reality only a few trees existed. It was, therefore, stated that the High Court should direct allotment of the plot to the writ petitioner. The High Court appointed a Court Commissioner to visit the land and submit a report. According to the report, the area fenced by the writ petitioner measured 770 Sq. Mtrs. The High Court felt that it was not sufficient to treat it as a green belt. In the two rooms constructed, students were being taught in shift basis and the atmosphere was very clumsy and unhygienic. The sections were being run at three different places. One section of the school was running in House No.68, Sector G-7 in N-7 and the third section was being run in the nearby hall called "Comrade Deshpande Social Facility Hall". The High Court felt that after insertion of Article 21A of the Constitution of India, 1950 (in short the 'Constitution'), primary education to the children is a matter of fundamental right. Since the writ petitioner was running a school, it is necessary that CIDCO should regularize the entrusted plot. Writ petitioner stated that it needed to construct about 8 to 12 class rooms, a toilet block separately for the male and female children, Office for the Head Mistress, staff room, a laboratory and Library and it proposes to build up a multi-storeyed structure so that the major portion of the land would remain open for plantation of trees on the boundary and for being used as playground. Therefore, the direction as noted above was given.

5. According to learned counsel for the appellants the High Court could not have given direction for regularization of encroachment of a part of the land which was notified as a green belt area under the development plan. CIDCO is the Special Planning Authority under Section 40 of the Maharashtra Regional Town Planning Act, 1966 (in short the 'Act'). The subject area has been notified as a green belt under the development plan. Sweeping directions have been given not only to regularize the encroachment in the green belt but also to allot the said plot of land at concessional rate at the rate prevailing in 1981. It is pointed out that CIDCO has no policy to regularize encroachments, more particularly, in areas earmarked for a green belt. The reservation for green belt notified under the development plan has statutory force. Though in connected proceedings the High Court itself had directed the authorities to remove encroachment on public roads and open plots also included the encroachment in garden tracks, pathway and service lines etc., a departure was made in this case. There is no scope for the writ petitioners taking shelter under Article 21A of the Constitution.

6. There is no appearance on behalf of the respondent No.1.

7. It is to be noted that Local Commissioner's report pointed out that the land in question was earmarked as a green belt. It is the stand of the CIDCO that lower level tree plantation has already been done and the balance work is being carried on in a systematic manner. There is no policy for regularization and as such any change in the reserved area and earmarked areas under the development plan has to be

under the Act. Article 21A of the Constitution cannot come to aid to respondent No.1. What was essentially sought for by the direction was regularization of unauthorized construction. In essence what the High Court has directed is to regularize an unauthorised occupation and regularization of unauthorised encroachment. Merely because Article 21A of the Constitution has treated primary education as a fundamental right, that does not confer any right on an encroacher to seek regularization of encroachment on the ground that ultimately some children of the particular age group would be taught in the school. In *Dr. G.N. Khajuria & Ors. v. Delhi Development Authority & Ors.* (1995 (5) SCC 762) it was held that merely because some structures of permanent nature had been constructed is not relevant as the construction was made in a land reserved for park in residential colonies. The allotment of the land of the Delhi Development Authority was held to be illegal and the same was considered to be misuse of power and was illegal. The High Court has also not indicated any reasons as to why the allotment was to be done at concessional rate at the rate prevailing in the year 1981. Though this aspect loses relevance in view of the conclusion that the High Court's view is not sustainable, yet this adds to the vulnerability of the High Court's order.

8. Looked at from any angle, the High Court's order is unsustainable and is set aside.

9. The appeal is allowed, but without any order as to costs.