

ITEM NO.51

COURT NO.6

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).19463/2009

(From the judgement and order dated 14/07/2009 in WP No.1276/2007 of The HIGH COURT OF BOMBAY AT AURANGABAD)

SURINDER SINGH

Petitioner(s)

VERSUS

STATE OF MAHARASHTRA &amp; ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T. and permission to file additional documents and with prayer for interim relief and office report)

WITH SLP(C) NO. 20380 of 2009

(With prayer for interim relief and office report)

Date: 21/02/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Mr.Arvind V.Savant, Sr.Adv.  
(In SLP(C)19463/09) Mr.M.Y.Deshmukh, Adv.  
Mr.Shrikant R.Deshmukh, Adv.

(In SLP(C)20380/09) Mr.Sushil Karanjkar, Adv.  
Mr. K.N. Rai, Adv.

For Respondent(s) Mr.Pankaj Singh, Adv.  
For RR No.2 Mr.Devendra Upadhyia, Adv.  
Mr. A.S. Bhasme,Adv.

(In SLP(C)20380/09) Mr.Dushyant Parashar, Adv.  
Ms.Asha G.Nair, A.O.R.(Not Present)

UPON hearing counsel the Court made the following  
O R D E R

These petitions are directed against order dated 14.07.2009 passed by the Division Bench of the Bombay High Court, Aurangabad Bench whereby cancellation of plot No.207/B, N-3 jointly

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allotted to petitioners Surindersingh son of Pritamsingh Randhawa and Jaimalsingh son of Gurucharansingh Randhawa was upheld.

One of the petitioners, namely, Jaimalsingh was allotted residential-cum-commercial plot No.76, N2/A in 1994.

In 2006, the

petitioners jointly applied for residential plot in the Lucky Draw

Scheme floated by respondent No.2 in N3 Sector.

While doing so,

they made a declaration that no other plot had been allotted to

either of them. In the draw held on 11.12.2006, the petitioners were declared successful and plot No.207/B, N3 was allotted to them. After one month, show cause notice dated 18.1.2007 was issued to the petitioners proposing cancellation of the allotment on the ground that they had suppressed the fact that on the date of application one of them had already got a plot meant for residential and commercial purpose. After considering the reply of the petitioners, the competent authority passed order dated 9.2.2007 for cancellation of the allotment.

The petitioners challenged the order of cancellation in Writ Petition No.1276/2007 but could not persuade the High Court to nullify the decision taken by respondent No.2.

We have heard learned counsel for the parties and carefully perused the record.

In our opinion, the special leave petitions are liable to be dismissed on the ground that the petitioners have deliberately withheld the documents which were part of the record of the High Court and to which specific reference was made in the pleadings of the parties. In paragraphs 4, 5 (two paragraphs have been marked

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as No.5) and 6 of the affidavit filed on behalf of respondent No.2, the following averments were made:

"4. I say CIDCO has adopted a policy not to allot a residential plot to a person who is already having a plot residential, residential-cum-commercial or, flat etc. in the CIDCO area. This policy is adopted keeping in mind the order passed by this Hon'ble Court from time to time, and more particularly in the matter of Civil Application No. 7360/2002 in Writ Petition No. 2338/1999, a public interest litigation. I say that in the book let the form of undertaking is annexed which is required to be submitted alongwith the application. The Hamipatra contains a declaration that the person applying is not having a residential or residential-cum-commercial plot/flat in CIDCO area. Similarly, in case of joint applicants, none of the applicant should hold a plot/flat in CIDCO Area. This condition goes to the root of the matter.

5.I say that the Petitioners have submitted the Hamipatra. The copy of the Hamipatra is annexed and marked as Exhibit "R-1". The Petitioner No. 1 had made a statement that he is not holding any plot residential or residential-cum-commercial in CIDCO Area. I say that the Petitioner No. 1 when confirmed with the situation of his hold Residential Cum Commercial plot made a wrong statement that there is plot bearing No. 76, N-2/A,

Adm. 593.50 sqm. in his name, which is a commercial plot. As the Petitioners were not eligible as per the specific condition, though in the draw, Petitioners were successful, finding above fact, a letter was issued to the Petitioner wherein it was specifically mentioned that if any information is found wrong, the answering Respondent has a right to cancel allotment made, etc. I say that the Petitioners, in order to come out of this, have contended that the plot allotted to them is not residential-cum-commercial plot but is a commercial plot. I say that the Petitioners have made this incorrect statement to their own knowledge and have thus made an attempt to mislead this Honourable Court with ulterior motive to take benefits to which they are not entitled to. This attempt on the part of the Petitioners amounts to perjury.

5. I say that the plot which is claimed to be commercial is not a commercial plot. In fact allotment of the said plot, as mentioned in agreement to lease is "residential-cum-commercial"

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plot. I say that as per the norms, the allottee is entitled to use some part of the plot as commercial and rest of the part as residential. I say that the Petitioners have referred to the permission of construction made in the year 1996 and that they have obtained permission for commercial purpose. I say that as the Petitioner was entitled to commercial use on the ground floor and as such permission was accordingly granted. The Map annexed by the Petitioner at Exhibit "B", under which occupancy is granted, reveals this aspect which the Petitioner has suppressed and tried to mislead this Honourable Court.

6. I say that the Petitioner has also not annexed the copy of the Map which he submitted for permission in the year 2004 and the permission was granted to the Petitioner in which the Petitioner has specifically shown ground floor for the purpose of commercial use and rest of the part for residential use. The copy of the Maps are annexed and marked as Exhibit "II". Apart from this, the Petitioners time and again for purposes of mortgage of the property to the bank sought permission from the answering Respondents and also for transfer of the flats. Copies of the correspondence are annexed herewith and marked as Exhibit "R-III" collectively.

I say that accordingly permission was also granted by the answering Respondent for transfer of the flats. The copy of the same is annexed herewith and is mutated as Exh. I say that the lease, which is executed in favour of the Petitioner No. 1 and the lease deed specifically mentions that the plot, which is leased out is residential-cum-commercial. I say that the Petitioners, with malafide intention has not annexed all these documents. I say that the Petitioners have also executed some documents in which it is mentioned that the plot is residential-cum-commercial, copies of which are annexed herewith and marked as Exhibit "R-IV" Collectively."

Although, along with the special leave petition, the petitioners annexed copy of the affidavit filed on behalf of

respondent No.2, they conveniently omitted to file the documents referred to in the above noted paragraphs. This conduct of the petitioners disentitle them from claiming any relief under Article

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136 of the Constitution. We have no doubt that if true facts had been disclosed, the Court would not have issued notice of the special leave petition and, in any case, no interim order would have been passed against re-allotment of the plot in question.

We are further of the view that the reasons assigned by the High Court for sustaining the action taken by CIDCO for cancellation of the plot do not suffer from any legal infirmity because it is not in dispute that at the time of making application one of the petitioners had already got a residential-cum-commercial plot from respondent No.2 and this fact was not disclosed in Hamipatra.

The special leave petitions are accordingly dismissed.

(Satish K.Yadav)  
Court Master

(Phoolan Wati Arora)  
Court Master