

Dolphin Co. Op. Hsg. Soc. Ltd. Thr. Its Chairman & Anr Vs State Of Maharashtra Thr. Its Secretary & Ors

Court: Bombay High Court

Date of Decision: Feb. 4, 2025

Acts Referred: Constitution of India, 1950 " Article 21, 226, 300A
Maharashtra Regional and Town Planning Act, 1966 " Section 45(1)(iii)

Hon'ble Judges: G. S. Kulkarni, J; Advait M. Sethna, J

Bench: Division Bench

Advocate: Avinash Fatangare, Archana Shelar, Vishakha Pandit, A. I. Patel, P. J. Gaavhne, B. B. Sharma, P. B. Rajput

Final Decision: Allowed

Judgement

G. S. Kulkarni, J

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

2. This petition under Article 226 of the Constitution of India, in our opinion, is a gross case, of not only a glaringly unreasonable and arbitrary

approach on the part of respondent No.2, City and Development Corporation of Maharashtra Limited (for short ""CIDCO"") but also quite high-handed,

when it withheld for almost six years an "Occupancy Certificate" to the building constructed for the benefit of the members of petitioner No. 1/

the Dolphin Co-operative Housing Society Limited. The construction of such building as per the certificate of the Architect was completed on 11 July

2018 and till date, the Occupancy Certificate has been withheld, keeping away, the eighteen members of the society, who are persons of limited

means, from their abode / residential units from being occupied. The ordeal of the petitioners as set out in the petition and the mechanical approach of

the officers of the CIDCO would in fact shock the conscience of the Court.

3. Seventeen persons (member of the petitioner No.1 / Society) on 10 August 2001 applied to the CIDCO for allotment of a plot on a long term lease

as per the policy of the CIDCO for construction of a residential building. Their application was successful. An allotment letter dated 14 May 2015 was

issued in favour of the Chief Promoter of the petitioner No.1 (then a proposed society), allotting plot No. 59/C, situated at Sector 21, Kharghar, New

Mumbai, admeasuring 499.87 sq. meter. An Agreement to Lease was to be entered, as per the terms and conditions after the amount of lease

premium was paid to the CIDCO and after a co-operative housing society of these persons registered under the provisions of Maharashtra Co-

operative Societies Act, 1960, (for short "the MCS Act"). Also a list of seventeen members duly approved by the CIDCO was annexed to the

allotment letter as "Annexure -A". The relevant contents of the allotment letter are required to be noted which reads thus:

4. A list of members duly approved by the Corporation is annexed hereto as Annexure -A. These promoters will be the applicants for getting the Society registered.

5. On getting the society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 with members whose names are mentioned in Annexure -A,

the Society will execute an Agreement to lease with Corporation within a period of 15 days from the date of such registration.

4. Accordingly, petitioner No.1 / society was registered on 2 June 2015, and to that effect a Certificate of Registration was issued by the Assistant

Registrar, Co-operative Housing Societies. As per the terms and conditions of the allotment letter, an Agreement to Lease (not a final lease deed) was

entered between the CIDCO and the petitioner on 9 June 2015. Under the Agreement to Lease, the petitioner was entitled to use "One FSI",

equivalent to permissible construction of 499.506 sq. mtr.

5. It appears to be not in dispute that the FSI which was available was commensurate to construct tenements, not only for the existing seventeen

members, but for one additional tenement, that is total eighteen tenements/units each measuring 355 sq. ft. carpet. To undertake construction,

petitioner No.1 appointed petitioner No.2 / Developer. The construction plans were submitted to the CIDCO, it being the Planning Authority. On 15

January 2016, the Senior Planner (Building Permission) of the CIDCO issued a Commencement Certificate for construction of "eighteen residential

units" of a building consisting of stilt plus six floors with FSI of 499.506 sq. mtr. Accordingly, the building which was approved to be constructed was

to house eighteen residential units as per the said Commencement Certificate issued by the CIDCO.

6. The case of the petitioner is that as eighteen residential units were permitted to be constructed, considering the financial constraints on the

seventeen members in undertaking the construction, it was thought appropriate and proposed that one additional member to the existing seventeen

members be admitted. The petitioner / Society accordingly called for a General Body Meeting on 1 December 2017. In such meeting, by a unanimous

decision, taken by all the members, it was resolved to admit an additional member Smt. Smita Laxman Suravase. Such resolution was also

commensurate to the proposed construction, which was to accommodate eighteen residential units, as also intended for proportionate / distribution of

the expenditure / financial liability, in the proposed construction.

7. In pursuance of such General Body Resolution of admitting an additional member on 2 December 2017, the petitioner / society submitted a proposal

to the Estate officer of the CIDCO for approval of the enrollment of an additional member into the society. However, such representation was not

replied nor any action thereon was taken on behalf of the CIDCO.

8. In the meantime, qua the proposed construction, a "Commencement Certificate" was issued by the CIDCO on 15 January 2016. The

construction of the building was accordingly taken up which was completed in July 2018, as per the sanctioned plans. The petitioners' architect

certified completion of the construction of the building by issuing a certificate dated 11 July 2018. As a part of such completion, a license for working

of the lift was issued to the petitioner by the Chief Electrical Inspector of Government of Maharashtra under a certificate dated 30 May 2018, also the

Executive Engineer of the CIDCO issued a "Drainage Connection Certificate" on 14 June 2018. On 25 June 2018, CIDCO issued a Health

NOC for grant of Occupation Certificate to the building.

9. It is on the aforesaid premise, on 24 August 2018, the petitioner / society addressed a letter to the Chairman and Managing Director of CIDCO

requesting that the petitioner had already made an application on 1 December 2017 along with all the documents for enrollment of an additional

member Ms. Smita Laxman Survase, on which an approval be granted by the Managing Director for enrollment of such 18th member, so as to occupy

the additional unit. Such representation / application of the petitioner was not replied by the CIDCO. Again, a representation was made by the

petitioners to the CIDCO on 24 September 2018 which was also not replied.

10. In such circumstances, as the CIDCO was neither responding nor taking any action on the petitioners' application, the petitioners were

constrained to move the State Government by making a representation to the Hon'ble Minister for Housing, pointing out all the details of CIDCO's

inaction, requesting that the CIDCO be directed to approve the inclusion of an additional member, so that the Occupancy Certificate can be granted.

The Hon'ble Minister, in response to the petitioners' representation, addressed a letter dated 23 October 2018 to the Chairman and Managing

Director of the CIDCO in which he stated that the petitioner was permitted to construct eighteen units, and that by a unanimous decision of the

petitioner-society, one additional member was admitted. It was stated that considering the financial condition of the members of the petitioner-society

and considering the fact that they had availed loans, it was imperative that at the earliest they should occupy their respective tenements, which were

ready for occupation. The Hon'ble Minister hence requested the Chairman and Managing Director to consider the petitioners' case for enrolling

an additional member, and not to withhold the Occupation Certificate. Although the Managing Director himself did not respond to the letter of the

Hon'ble Minister, the Estate Officer of CIDCO addressed a letter dated 23 July 2019 to the Private Secretary of the Hon'ble Minister, the contents of

which are quite surprising as also self-contradictory, which reads thus:

(Translation of a photocopy of a LETTER, typewritten in Marathi on a letterhead, printed in Marathi)

EXHIBIT " U

CITY AND INDUSTRIAL DEVELOPMENT CORPORATION

(MAHARASHTRA) LIMITED.

(C.R.S. Pu. 99999 MH 1970 MGC 014504)

Registered Office : Head Office:

Second Floor, Nariman Point, CIDCO Bhavan,

Mumbai 400 021. C. B. D., Belapur

Tele. No. 00-91-22-66500900 Navi Mumbai 400 614.

Fax : 00-91-22-22022509 Tele. No. 00-91-22-6791 8166.

Reference No. : No. CIDCO/Town Services-III/2022/942

Date : 09.02.2022

To,

The Chairman/Secretary,

Dolphin Co-operative Housing Society,

Plot No. 59/C, Sector 21,

Kharghar, Navi Mumbai.

Subject :- Regarding granting permission to admit one additional member in Dolphin Co-operative Housing Society.

Reference :- Letter from Dolphin Co-operative Housing Society received by this Office on the date 11.01.2022.

Sir,

The Dolphin Co-operative Housing Society, under the above-referred letter, has requested the CIDCO to grant permission to admit one additional member. However,

in this regard, it is informed that at present, there is no provision in the New Bombay Disposal of Lands Act to grant permission to admit additional member and

that therefore, the issue to take steps to formulate a policy in respect thereof is under consideration of the CIDCO Corporation and hence, the request made by

your society will be considered after the policy in respect thereof is formulated.

Yours faithfully,

Manager (Town Services " III)

(emphasis supplied)

11. Thus, by the aforesaid letter of the Manager (Town Services) of the CIDCO addressed to the Hon'ble Minister the construction undertaken by the

petitioners being of eighteen units was not disputed. It was also not the case, that the construction was in any manner illegal, however, what was

stated was that under the rules, there was no provision for admission of an additional member and that till the policy in that regard is finalized and

approved, the petitioners request to permit enrollment of the additional member could not be considered and for such reason an occupancy certificate

cannot be granted.

12. The petitioners thereafter again made a representation dated 4 January 2021 to the CIDCO that the members of the petitioner for want of an

occupancy certificate were deprived of their legitimate entitlement to occupy their tenements. It was pointed out that they were staying in rented

premises, as also were paying monthly installments, on the loan availed by them in the construction of the units. It was also stated that due to Covid-

19, many of the members had lost their employment and were practically on road, resultantly they were also unable to pay the rent, as also take the

burden of the loan EMI's. In these circumstances, the petitioners requested that the petitioners' request be sympathetically considered and an

Occupation Certificate be issued to the petitioner / society for the construction undertaken and completed in July 2018. However, despite repeated

efforts to persuade the officers of the CIDCO for almost three years there was no response from the CIDCO.

13. The petitioner, hence made a further representations to the CIDCO dated 26 June 2021 and 27 October 2021. Some of the members in the

meantime also approached the Maharashtra Real Estate Regulatory Authority ("RERA") seeking directions against the developer invoking the

provisions of the Real Estate Regulation and Development Act, 2016 on which the learned member of the Maharashtra RERA passed orders against

petitioner No.2 dated 20 January 2020.

14. It is on the aforesaid backdrop on 5 January 2021, the Associate Planner of CIDCO addressed to the petitioners an "Occupancy Refusal

Letter" on the ground that "final number of members for society allotted plots from the Estate Section was not furnished by the petitioner. The

contents of the said letter are required to be noted which reads thus:

"No. : BP " 13461/0010 Date : 5/1/2021

To

M/s. Dolphine Co.op. Hsg, Society Ltd.,

through its Partner. Shri Balasaheb Dashrath Dhobale.

101, Shalimar Building, Sector No.11, Opp.

Mahatma Gandhi Complex,

Vashi, Nave Mumbai. 400703

Sub-Plan, Grant, of, Occupancy Certificate, for, proposed, Residential

[Residential Bldg/Apartment] building on Plot No. 59-C, Sector 21, at Kharghar, Navi Mumbai.

Ref. : 1) Development Permission granted by this office vide letter No. CIDCO/BP-13641/TPO/(NM&K)/2015/1523, 15 January, 2016.

2) Your Architect's application for Occupancy received in this office on 21 December, 2020.

Sir,

With reference to above, this is to inform you that the Occupancy Certificate as sought by you is hereby refused under Section-45 (1) (iii) of Maharashtra Regional

and Town Planning Act 1966 for the following reasons:

Documents Objections :

1. Final number of members from Estate Section for Society allotted plots, if applicable

Remark: Documents Refusal.

Site Visit Objections :

Site Visit Date : 04 January, 2021

1. Any Other Reason

: Estate, NOC, for, 18

units is not submitted

Thanking you,

Yours faithfully,

Bhushan R. Chaudhari

ASSOCIATE PLANNER (BP)'s

(emphasis supplied)

15. As the members of the petitioner / society were immensely suffering, the petitioner addressed another representation dated 2 September 2021

requesting the Assistant Town Planner, CIDCO to grant an Occupation Certificate, at least considering the indisputed seventeen members of the

petitioner / society. Such application was also not considered by the Assistant Town Planner.

16. A further representation was made by the petitioners on 5 January 2021 to the Estate Officer, again pointing out that the construction of the

petitioner's building was undertaken as per the sanctioned plans, for eighteen units and as one member had resigned, another member Ms. Kavita

Rammohan Jogi be approved as a member and that the Occupation Certificate also be granted in respect of the eighteen units. Such representation of

the petitioner for grant of Occupancy Certificate was rejected by the Manager (City Service-3) by its communication dated 9 February 2022 which

reads as follows:

Ã¢â‚¬Å“(Translation of a photocopy of a LETTER, typewritten on a Letterhead in Marathi).

(Exhibit Ã¢â‚¬Å“OÃ¢â‚¬Å“)

CITY AND INDUSTRIAL DEVELOPMENT CORPORATION

(MAHARASHTRA) LIMITED

(C.R.S. Pu. 99999 MH 1970 MGC 014504)

Registered Office : Head Office:

Second Floor, Nariman Point, CIDCO Bhavan,

Mumbai Ã¢â‚¬Å“ 400 021. C. B. D., Belapur

Tele. No. 00-91-22-66500900 Navi Mumbai Ã¢â‚¬Å“ 400 614.

Fax : 00-91-22-22022509 Tele. No. 00-91-22-6791

8166.

Ref. No. CIDCO Town Services-III/2011/7113. Date: 23.07.2019

To,

The Assistant,

(Attached to)

The HonÃ¢â‚¬Å“ble Minister of State (Housing),

Government of Maharashtra,

Mantralaya, Mumbai Ã¢â‚¬Å“ 400 032.

Subject : Regarding granting permission to add one additional Flat in the Dolphin Co-operative Housing Society.

Reference : Your Letter bearing No. Minister /

Housing / General / 336 / 2018, dated 23.10.2018.

Sir,

The CIDCO Corporation had allotted a plot of land bearing No. 59/C, admeasuring 499.87 Sq. Mtrs. in Sector No.21 at Kharghar for 10 members of a Society viz.

Messrs Dolphin Co-operative Housing Society and had granted permission to construct 18 units on the said plot. Accordingly, the society has constructed 18 units

on the said plot of land. Further, the Society had requested to grant permission to construct one additional unit and to admit one additional member. However, at

present, there is no provision in the New Bombay Disposal of Lands Act to grant permission for admitting additional member and therefore, the issue to take steps

to formulate a policy in respect thereof is under consideration of the CIDCO Corporation and hence, the request made by the said society will be considered after

the policy in respect thereof is formulated.

May this be known.

Yours faithfully,

Manager (Town Services " III)

Estate Officer (TS " III)

CIDCO LTD.

(emphasis supplied)

17. It is in the aforesaid circumstances, having miserably failed before the respondents in their effort to obtain an Occupancy Certificate, the

petitioners being aggrieved by the actions of the CIDCO refusing to grant Occupation Certificate, as also refusing to approve the addition of a

member, has filed the present petition praying for the following substantive reliefs which reads thus:

"a. That this Hon'ble Court be pleased to issue a writ order, direction or a writ in the nature of Mandamus or any other appropriate writ directing the

Respondent No.2 to grant permission to the Petitioner No.1 to enroll one additional member.

b. That this Hon'ble Court be pleased to issue a writ order, direction or a writ in the nature of Mandamus or any other appropriate writ directing the Respondent

No.2 to issue Occupancy Certificate to the Petitioner No.1.

18. Reply affidavit on behalf of CIDCO is filed of Shri. Prashant Bhaurao Bhangare, Additional Estate Officer, Kharghar CIDCO who has justified

the impugned actions of the CIDCO in not permitting the addition of one member, as also refusing to grant Occupation Certificate primarily on the

ground that the admission of the additional member was not approved by the "Estate Officer". There are several contentions raised in the reply

affidavit, inter alia that the petitioner was required, as per the terms and conditions of the allotment letter, the Agreement to Lease and that the Navi

Mumbai Dispose of Land Regulations, 2008 to construct only 17 flats for the 17 said approved members, hence, CIDCO could not have granted an

approval to the additional member as admitted by the petitioner - society. It is contended that also on 17 December 2018, a show cause notice was

issued to the petitioners as to why action should not be taken against the petitioners for non-submission of Estate NOC permitting the addition of one

member and for constructing one additional unit, in the absence of Estate Officer's permission. It is, however, significant that the reply affidavit in no

manner whatsoever has questioned the sanction of the plans which were for the construction of eighteen units and that the construction of the building

was undertaken strictly in accordance with the plans.

19. Mr. Sharma, learned counsel for the CIDCO has made extensive submissions which are not different from the stand taken by the CIDCO in the

reply affidavit.

Reasons and Conclusions

20. We have heard learned counsel for the parties. With their assistance, we have also perused the record.

21. At the outset, we may observe that although the petitioner had applied for allotment of a Co-operative Society plot for construction of residential

tenements with "seventeen members" whose names were approved in the allotment letter dated 14 May 2015 issued to the petitioner-Society,

certainly such allotment letter qua the number of members and their names cannot be sacrosanct and/or incapable of any alteration / modification by

having one additional member, in the facts and circumstances of the present case. This can also be for many reasons. Illustratively, in the event, one

of the members resigning and not intending to continue as member; or there is a likelihood of more FSI being available, whereby additional units could

be constructed for more than seventeen members, which is what happened in the present case. There can be other reasons also requiring additional

members to be admitted by a cooperative housing society.

22. This position as stated by us, is also clearly recognized in the CIDCO Lease of Land to Co-operative Housing Society (Amendment Regulations)

2008, wherein, Regulation 27 confers a power on the Managing Director of the CIDCO, to give permissions to enroll additional members. Regulation

27 and 28 are the relevant regulations which reads thus :

"27. On request of the Society, the Managing Director may give permission to enroll additional members for the consumption of the additional FSI, which the

Society may get under Regulation 21 and / or in the event of additional area which may become available to the Society by operation of various provisions of the

Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008 or the New Towns Disposal of Lands Regulations 1993, as the case may be.

Explanation.-(i) The members, to be enrolled as additional members, shall fulfill eligibility conditions specified in Regulation 6.

(ii) The permission to enroll additional members shall be on payment of same charges, as were applicable to original members.

28. The Society shall construct apartments on the plot agreed to be leased by the Corporation and the number of apartments to be constructed shall not be in excess

of the number of its members approved by the Corporation.

23. As Regulation 27 refers to Regulation 21, it would be also relevant to note Regulation 21 which reads thus:

21. The Society shall not use or permit its members to use the plot or a building constructed thereon, wholly or partly, for the purpose other than the residence of its

members.

Provided that, if additional FSI is permissible to the plot as per the prevailing Development Control Regulations, then on application of the Society, the same shall be

granted to it, subject to the condition that maximum 50% of the additional FSI will be used for the Commercial purpose.

24. It is thus clear that there was no legal embargo and/or it was permissible for the petitioner / Society to make a request to the CIDCO/ Managing

Director to enroll an additional member, for the consumption of the additional FSI, which may become available to the Society under Regulation 21 and

/ or in the event of additional area otherwise being available to the society, as provided for in Regulation 26. In such event, there was an obligation on

the society to construct apartments on the plot not in excess of number of members as may be approved by the Corporation.

25. In the present case, the FSI to be consumed was 499.506 sq. meters, of construction was permissible, which was to

accommodate construction of 18 units instead of 17 units. Considering the economic condition of the members, it was beneficial for the members to

reduce the financial burden on the members, by having an additional member, as construction of 18 units as per the sanctioned FSI, was permissible

instead of construction of 17 units. Accordingly, plans were put up with the CIDCO for construction of a building to house 18 tenements. A

Commencement Certificate was accordingly granted by the CIDCO for construction of eighteen residential units being Commencement Certificate

dated 15 January 2016. It is only after the Commencement Certificate was issued by the CIDCO, a General Body Meeting was called on 1

December 2017 wherein unanimously a decision was taken to admit additional member. Such admission of additional member was immediately

informed to the CIDCO the very next day i.e. 2 December 2017, for approval of the Estate Officer. The Estate Officer however did not take a

decision on such application and it is due to his inaction, in our opinion, all such issues causing harm and injury to the petitioner have taken place. The

Estate officer appears to be the major source of all the problems and harassment faced by the petitioner.

26. It is not in dispute that the construction of the building was completed strictly as per the plans, and it is not the case of the CIDCO that the

construction was in excess of eighteen units as lawfully sanctioned. Further, all other necessary permissions such as certificate of the working of lift,

drainage and health certificate etc. have been already issued by the CIDCO in favour of the petitioners, so that the Occupation Certificate can

accordingly be granted. It is at such juncture, the petitioner has been told by the impugned communications as noted by us, that for the reason the

Estate Officer's NOC for eighteen units was not submitted by the petitioners, grant of Occupancy Certificate to the petitioner's building is

being rejected. Such communication of the CIDCO is dated 5 January 2021 which is preceded by a communication rejecting the occupancy certificate

for a different reason namely, that there is no provision to grant approval to an additional member.

27. Thus, on one hand, it was being informed by the CIDCO to the petitioner as also to the Hon'ble Minister that there was no provision to grant

approval to enroll an additional member, whereas in the impugned communication, it was stated that as the Estate NOC for eighteen units was not

submitted by the petitioner, hence, grant of an occupancy certificate was being rejected. Both such reasons as furnished by the CIDCO were without

any basis.

28. On such untenable reasons, the petitioners were put in a miserable position by the officers of the CIDCO. On one hand, lawful construction of 18

tenements as per the plans sanctioned by CIDCO was undertaken and on the other hand, the petitioner-Society merely accepting an additional

member, the entire occupancy of the building is being held up. In our opinion, this is a classic case reaching pinnacle of an illegality and arbitrariness on

the part of concerned officers of CIDCO, who had little sensitivity to human needs and concerns.

29. As noted hereinabove, clearly the Managing Director under Regulation 27 of the 2008 Rules (for short "2008 Rules") had the authority and

power to grant approval/permission to enroll additional member(s). Such application of the petitioner was already made to the Estate Officer as far

back as on 2 December 2017, who also did not consider the application and kept the same pending. Later on, on patently arbitrary and unreasonable

approach and contrary to the record, on the ground that such power to admit additional member was not available, a communication was addressed on

behalf of the CIDCO to the Secretary of the Hon'ble Minister that there is no provision to permit addition of a member by the Society.

30. In our opinion, the rejection of the grant of occupancy certificate by the impugned communication dated 5 January 2021, on the ground that the

Estate NOC for eighteen units was not submitted by the petitioner, is wholly illegal, as the NOC was not being granted purely for the reason of an

arbitrary and/or deliberate inaction on the part of the Estate Officer. No fault whatsoever could be attributed to the petitioner.

31. In our opinion, such arbitrary approach on the part of the Officers of CIDCO and that too, depriving the members of the petitioner - society, who

belongs to the economically weaker class and who are already in deep financial stress are being kept away from occupying their tenements, which

were ready for occupation in the year 2018. It is now almost six years that the tenements are lying vacant which the petitioners are not permitted to

occupy on account of such high-handed and unreasonable approach on the part of the Officials of the CIDCO.

32. We thus cannot be oblivious to the fact that the members of the society are persons of legitimate means, who cannot be deprived of the benefit of

an abode which is a fundamental right guaranteed under Article 21 of the Constitution. Further, the petitioners right guaranteed under Article 300A

read with Article 14 of the Constitution also stand breached, and for no rhyme and reason, the petitioners are made to litigate.

33. This apart, the present proceedings were being contested, and in our opinion, on an untenable stand being taken by the deponent of the affidavit.

We say so quite consciously, in as much as, it is beyond our imagination that any reasonable body of persons can withhold an Occupation Certificate,

which is essentially a building document, when construction in the present case is undertaken as per the sanctioned plans and in accordance with law.

As noted by us, it is not the CIDCO's case that the petitioners have violated any building norms and/or in undertaking the construction in order to

accommodate eighteen members, construction contrary to, or in excess of the sanctioned plan was undertaken by the petitioners. If this be so, there

was no reason whatsoever that merely on the ground that the addition of one additional member has not been approved by the Estate Officer,

the Occupation Certificate itself could be withheld. The consequence of such mindless action on the part of the CIDCO officials is too drastic for

the members of the petitioner's society, which in our opinion crosses all norms of reasonableness, fairness and the legitimate expectation of the

petitioners from a statutory body.

34. We also fail to understand as to how and in what manner and under what provisions of the Maharashtra Regional Town Planning Act read with

the Maharashtra Co-operative Societies Act, 1960, the CIDCO could exercise any control on the enrollment of members of a cooperative Society,

even assuming that the allotment was granted for the benefit of seventeen members. We are not given any convincing reason in this regard, when

matters in relation to the formation of cooperative society, admission of members, deletion of members, are issues falling within the provisions of the

Maharashtra Co-operative Societies Act, as to how addition of one member in a co-operative society and things in relation thereto can be any subject

which could be controlled by the CIDCO, and more particularly when the context is completely, within the four corners of the conditions of allotment

and the powers in that regard. The approval of the list of seventeen members in the allotment letter as noted by us can by no stretch of imagination be

final, so as to prohibit the petitioner from admitting additional member, as this would be directly contrary to what has been provided for in Regulation

27 of the 2008 Regulations, which confers specific power on the Managing Director to approve addition of the members in a cooperative society.

Thus, in the facts of the case, only one additional member being legitimately admitted by the petitioner-society, was in no manner illegal or not

permissible in law.

35. In our opinion, in any event, the intention for the CIDCO to prescribe fixed number of members in making allotment of a plot to a co-operative

society, was aimed to prevent a co-operative society from profiteering by undertaking any additional construction, and in some manner deal with such

construction, over and above the requirements of its members. The intention would be to maintain the sanctity of CIDCO's policy to allot land to a

co-operative society. However, in the present case, the Estate Officer or any other officer of the CIDCO, remotely could not have had any

apprehension, that the petitioner-society was intending any undue gain from the allotment of the plot in question. The record was replete of the

bonafides of the petitioner, that only one additional member was being admitted and for which construction permission was already granted by the

CIDCO for construction of 18 tenements.

36. However, the manner in which the Estate Officer as also the other officers have dealt with the petitioners' case, is what has shocked our

conscience. In this context, we may observe that merely for the reason that a power and authority of allotment of land is vested with the CIDCO and

its officers, it would not mean that they have a carte blanche to deviate from their legal obligation, duty and responsibility so to breach the legitimate

expectation and above all the constitutional rights guaranteed to the citizens, and more particularly, of the citizens who belong to economically weaker

sections of the society as in the present proceedings. The approach of the CIDCO officials ought to have mitigated the hardship being caused to the

petitioners and certainly not to aggravate the same. The petitioners were required to face an immense ordeal, suffering and pain due to such drastic

and unreasonable actions of such Officers of the CIDCO, in not granting Occupation Certificate.

37. The contentions as urged on behalf of the CIDCO by Mr. Sharma in justifying the actions of the CIDCO officials, in the aforesaid circumstances

cannot be accepted and deserve to be rejected. The submission of Mr. Sharma being that the issues as raised by the petitioners are contractual, hence

the conditions in the allotment letter as also Agreement to Lease were required to be adhered by the petitioners, and unless the addition of one

member was to be approved by the Estate Officer, the petitioner could not have proceeded with the construction. Such contention as urged on behalf

of CIDCO militates against the position taken by the CIDCO, when it granted Commencement Certificate to the petitioners to construct eighteen units

and accordingly the petitioners undertook the construction. Such stand also nullifies the powers of the Managing Director as conferred under

Regulation 27 read with Regulation 21. Hence, Mr. Sharma's submission that the petitioners contention would amount to an amendment of the terms

of Agreement to Lease is also wholly untenable.

38. We have perused the terms and conditions of the Agreement to Lease which is only a license for the petitioner to enter on the plot of land to

undertake construction. The petitioner was accordingly permitted to undertake construction which was completed, which the CIDCO does not

question, much less on its legality. It is also not the case that after the completion of the entire construction, the petitioner had approached CIDCO

with an application that an additional member be admitted, as clear from the dates which we have noted hereinabove. It is the Estate Officer who did

not bother to do anything on the petitioner's application dated 2 December 2017 to include an additional member, by which the petitioners sought a

specific approval to permit enrollment of an additional member. Insofar as the legal position is concerned, Mr. Sharma's contentions relying on

clause 5.5 of the Agreement to Lease also needs to be rejected. Clause 5.5 clearly recognizes the authority of the Managing Director to admit a new

member and such authority, in such reasonable and bonafide case of the petitioners was refused to be exercised by the Managing Director, as the

facts clearly demonstrate. This possibly because the Managing Director believed the Estate Officer instead of the Managing Director himself

examining the petitioners case.

39. We are in agreement with the learned counsel for the petitioner when he places reliance on the decision of the Division Bench of this Court in the

case of Prasad Mhatre Vs. Municipal Corporation of Greater Mumbai & Ors. 2018 SCC OnLine Bom 578 in which, in a situation akin to the facts of

the case, the Court observed that when there was no violation of the FSI and when permissible FSI was granted as per NOC, which in the said case

was granted by MHADA, and when the construction which was carried out was in accordance with sanctioned plans, the Occupation Certificate,

could not have been withheld, on the ground that building completion certificate along with NOC of the MHADA for non-residential user was not

submitted. The Court held that such stand on behalf of the Municipal Corporation not to grant Occupation Certificate, was illegal. The Court observed

that the Occupation/Completion Certificate was required to be granted by the Municipal Corporation to the petitioner-society therein, and that it could

not have been withheld on the ground of failure of the petitioner to produce NOC of MHADA.

40. In so far as the present case is concerned, there was neither a reason nor any logic for the CIDCO and its officials to withhold the Occupancy

Certificate, except for extraneous reasons and / or for reasons, which were far from bonafide more particularly when the petitioner-society admitting

an additional member, did not have any nexus to the legality of the construction undertaken by the petitioners, and to deprive the members of the

society of the legitimate benefit of their tenements, for more than six years, crossing all boundaries of legitimacy and reasonableness.

41. In the light of the aforesaid discussion, eminently the petition would be required to be allowed. It is accordingly allowed in terms of prayer clause

(a) & (b) of the petition.

42. Before parting, as a Constitutional Court we cannot be oblivious to the high-handed and arbitrary approach on the part of the Estate Officer, who

primarily appears to be responsible for the present state of affairs and suffering of the petitioners. Unfortunately, even the Managing Director was

completely oblivious to the actions being taken by the subordinate Officers. We also do not find that the affidavit filed on behalf of the CIDCO was

approved by the Managing Director, and if it is so approved, we have very serious doubt on the application of mind to the facts of the case. However,

as noted above, the root cause, however, is the illegality of the Estate Officer. We will be thus failing in our duty, if we do not impose exemplary cost

of Rs. 5,00,000/- to be paid by the CIDCO or collectively by the concerned Officers as the Managing Director may decide in the facts and

circumstances of the case, to paid to the petitioner / Society within a period of two weeks from the date of the order being made available. This in our

opinion, would hardly be any compensation for the agony and suffering of the members of the petitioners society and above all the breach of their

Constitutional rights.

43. At this stage, Mr. Sharma on instructions of Mr. P. B. Rajput, Divisional Officer (Kharghar & Kamothe) CIDCO who is present in Court states

that the Occupation Certificate shall be issued within one week from the date a copy of the order is available. Considering such stand as taken on

behalf of the CIDCO and accepting the persuasion and perseverance of Mr. Sharma, and the fair stand in this regard as taken on behalf of the

petitioner, we reduce the cost to Rs.50,000/-.

44. Except for what has been examined hereinabove, we have not examined any other issues.

45. Rule is made absolute in the aforesaid terms. No costs.