

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

WRIT PETITION NO. 5332 OF 2015

Lokvikas Udyog Sankul Audyogik Sahakari
Sanstha Ltd. Shendra MIDC Area,
Aurangabad.

..PETITIONER

VERSUS

The State of Maharashtra
& others

.. RESPONDENT

Mr. A.B. Dhongde and Mr. P.R. Katneshwarkar, advocates for petitioner.
Mr. A.R. Borulkar, AGP for the State.
Mr. S.S. Deve, advocate for respondent no. 2.
Mr. S.S. Dande, advocate for respondent no. 3.

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CORAM : R.M. BORDE &

A.I.S. CHEEMA, JJ.

DATE : 19th NOVEMBER, 2015.

PER COURT :

1. Petitioner, an industrial production society, is praying for quashment of the allotment of plot bearing no. A-1/6 in favour of respondent no. 4 – M/s Liebherr Appliances India Pvt. Ltd. The plot is situate in Shendra Five Star MIDC area and the same has been allotted in favour of respondent no. 4 on 01.10.2014 and lease deed has also been executed between MIDC and respondent no. 4 on 26.11.2014. Petitioner-society is also praying for issuance of directions to respondents 1 to 3 to consider application dated 10.01.2014 tendered by society for allotment of the aforesaid plot.

2. According to petitioner, the members of the society are the prospective industrialists and they intend to set up small industries in the industrial estate and as such, by tendering application on 10.01.2014, have requested for allotment of plot no. A-1/6 at Five Star Industrial Estate,

Shendra. According to petitioner, there are about 150 industrialists who are members of the society and they intend to invest about 3,730 crores which would generate employment for 9844 persons. Petitioner further contends that it is infact a big project comprising of small industries.

3. Aforesaid plot was allotted on 03.09.2010 in favour of Sterlite Technologies Ltd. and, the agreement was executed between MIDC and Sterlite Technologies Ltd. on 19.07.2012. Since Sterlite Technologies Ltd. failed to develop the plot within prescribed period of two years, MIDC proceeded to direct cancellation of allotment by issuing notices on 22.08.2013 and 04.08.2013. Possession of the plot was resumed by MIDC ex-parte by preparing panchanama, which was challenged by the Sterlite Technologies Ltd. by presenting Writ Petition No. 1980/2014. There was settlement arrived at between MIDC and Sterlite Technologies Ltd. whereunder Sterlite Technologies Ltd. relinquished all rights over plot no. A-1/6 and tendered 'no objection' for allotment of said plot to any other Multi National company / Mega Project or FDI. According to petitioner, the agreement is infact a device to introduce Multi National company on the said plot. It is the contention of petitioner that there was an agreement arrived at between Sterlite Technologies Ltd. and respondent no. 4 – M/s Liebher Appliances India whereby an amount of Six Crore has been received by Sterlite Technologies Ltd. prior to withdrawal of the writ petition. According to petitioner, respondent no. 4 and Sterlite Technologies Ltd. played fraud on MIDC and thereby secured allotment of the plot in favour of respondent no. 4. Sterlite Technologies Ltd. was allotted plot bearing no.

A-1/7 admeasuring 25 acres in pursuance to the agreement arrived at in the writ petition presented to the High Court. Petitioner contends that allotment of plot in favour of respondent no. 4 is illegal since normal procedure for allotment of plot has been given go-by and preference has been given to the aforesaid company. According to petitioner, infact, another plot to the extent of 66.25 acres from additional Shendra MIDC area was allotted to respondent no. 4 for setting up unit for manufacturing refrigeration for domestic market. An amount to the tune of 5% of the land premium was also deposited by respondent no. 4. However, instead of allotting aforesaid plot, alternate plot bearing no. A-1/6 admeasuring 50 acres has been allotted in favour of respondent no. 4 without observing the procedure prescribed by MIDC in respect of allotment of plot. Petitioner contends that application tendered by the society was not considered before making allotment of the aforesaid plot in favour of respondent no. 4.

4. Affidavit-in-reply has been presented on behalf of respondent MIDC wherein objection is raised to the maintainability of the petition. It is the contention of respondent-MIDC that the Corporation has taken a decision not to allot plots to the co-operative societies in Shendra Five Star industrial estate. Application tendered by petitioner seeking allotment of plot infact was not maintainable and as such, petitioner cannot claim any entitlement in respect of allotment of plot. It is further stated that on the date of presentation of application, the petitioner-society was not registered and the application was tendered by the Chief Promotor. The society has been registered on 11.12.2014 much after tendering application dated 10.02.2014.

It is the contention of respondent that as per the policy of the corporation, after taking back possession of the plot from Sterlite Technologies Ltd., it was to be allotted to the needy entrepreneur for expansion of industrial activity and more particularly, for mega project and for FDI project. Allotment of plot in favour of Sterlite Technologies Ltd. in the year 2010 and subsequent allotment and compromise arrived at in the High Court has not been denied by respondent. It is contended that respondent no. 4 is 100% FDI unit and proposes investment of 900 crores and further investment of 500 crore during next five years and would be providing employment to thousands of employees. Since respondent no. 4 expressed willingness to pay premium as per the prevailing policy of the corporation, application of respondent no. 4 was considered. So far as allotment of 66.25 acre land in favour of respondent no. 4 is concerned, it was pointed out that though the land was tentatively allotted, the same was subject matter of pending writ petition and, as a result of pendency of petition, only 5% premium was charged from respondent no. 4. It is only upon availability of plot no. A-1/6, the same was offered to respondent no. 4 – company. It is thus contended that there are three reasons for preferring respondent no. 4 viz. i) company is FDI and a multinational company, ii) total investment in the project is 900 corers and iii) employment generation is for about 1000 persons. It is contended that after verifying the application and the project report, decision was taken to allot the plot in favour of a Multi National Company bringing foreign investment in the country. It is contended that the decision is in tune with the policy of MIDC and the industrial policy of the State.

5. It is however worth noting that the plot has already been allotted to respondent no. 4 and erection activity of the industry has also commenced. Much after allotment of the plot and after bringing substantial investment by respondent no. 4, instant petition has been presented. It is specifically contended by MIDC that so far as Shendra Five Star Industrial Estate is concerned, the policy of the Corporation is not to allot plots in favour of a co-operative society. It is also worth noting that petitioner society was not even registered when the application was tendered by the Chief Promotor. On consideration of the list of members of the society, it is noticed that none of the members of the society is an industrialist and the occupation of each of the members is recorded as businessman. It has not been made clear as to what type of industries are proposed to be set up by the members. Neither there was any project report nor the petitioner has furnished any detail in that regard. A list of about 51 members has been placed on record which discloses that each of the members is a businessman and not a single member is an industrialist. Thus, there was no serious claim by petitioner-society for acquiring the plot for industrial use. Instant petition is also presented much after respondent no. 4 has acquired the plot and started erection of the industry and invested huge amount. Respondent no.4 is admittedly an established Multi National production company and is proposing to set up refrigerator manufacturing unit at Shendra Industrial Estate, Aurangabad. The claim of respondent no.4 is bonafide and, the Corporation has surely acted in furtherance of industrial development in the region in allotting the plot in favour of respondent no. 4 which appears to be a genuine industrial manufacturing company. Petitioner appears to

have lodged the claim merely with a view to set up a priority claim. Petitioner does not appear to be a concern seriously dealing with industrial activities. As has been recorded above, there are absolutely no plans or project report presented either to this Court or submitted to the MIDC by petitioner – society or any of its members. As has been recorded above and at the cost of repetition, it must be said that all the members of petitioner-society are businessmen and none of the members is an industrialist. As such, application tendered by petitioner cannot be said to be an bonafide attempt to set up the industrial unit. Apart from this, as has been contended by respondent MIDC, it is not the policy of the Corporation to allot plots in Shendra Five Star Industrial Estate in favour of a co-operative society and as such, claim of petitioner society was not at all liable to be considered. Presentation of petition does not appear to be bonafide attempt to secure the plot however, it appears to have been presented to create hindrances for the genuine industry bringing valuable investment in the country. Writ petition is devoid of substance, hence stands rejected with cost of Rs.1,00,000/- (Rs. One Lac only) to be paid by petitioner-society.

(A.I.S. CHEEMA)
JUDGE

(R. M. BORDE)
JUDGE