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

WRIT PETITION NO. 8499 OF 2014

Aurangabad Carbon Produces
Pvt. Ltd. **.. PETITIONER**

VERSUS

The State of Maharashtra
& others .. **RESPONDENTS**

Mr. A.G. Talhar, advocate for petitioner.
Mr. N.B. Patil, AGP for the State.
Mr. P.M. Shah, Senior Counsel instructed by Mr. S.S. Deve, advocate for respondent no. 4.

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**CORAM : R.M. BORDE &
P. R. BORA, JJ.**
DATE : 6th JULY, 2015

PER COURT :

1. Heard.

2. Petitioner is objecting to levy of differential charges amounting to Rs. 6,09,900/- by MIDC. According to petitioner, there is no change in the constitution of the company and, if at all there is any change in the share holding, it comes within the definition of term 'Formal Transfer' and as such, the company is not liable to pay differential charges. Petitioner also challenges the policy of the corporation as reflected from circular dated 12.05.1998.

3. It is not a matter of dispute that the original lease agreement has been executed between MIDC and M/s Aurangabad Carbon Products Pvt.

Ltd. At the time of entering into agreement, composition of the company and distribution of share holding was amongst three family members namely one Rajnarayan Bagla, Harshawardhan jain and Surendra Kumar Raniwala. The structure of share holding thereafter had undergone change and one shri Harshawardhan Jain acquired share holding of other two share holders and as such, Harshawardhan Jain held 100% share holding. It has been however pointed out that there is distribution of share holding on 22.09.2005 and 71000 equity shares of Rs.10/- each were allotted to Aurangabad Electricals private limited, 75000 shares of Rs.10/- each were allotted in favour of Aurangabad Motor Manufacturers limited and 5000 shares were allotted in favour of Waluj Industry and Trading Company Private Limited thus constituting total shares to the tune of 151000 out of 292550 shares. Thus, there is transfer of 51% shares in favour of private limited companies. The companies shall have to be construed as different entities apart from the family of the share holders. Thus, there is transfer of more than 51% shares outside the family of the original share holder Shri Harshawardhan Jain. Transfer of shares to the tune of more than 51% shall have to be construed as non-formal transfer and the contention of petitioner that transfer is merely a formal transfer does not deserve acceptance.

4. Petitioner is also objecting to circular issued on 12.05.1998 which is in the nature of transfer guidelines for industrial plots, shares, residential plots, Galas in Flatted type buildings. The circular contemplates demand of differential premium on account of non-formal transfer. Petitioner contends

that levy of premium by MIDC is not within contemplation of the provisions of Maharashtra Industrial Development Act. Petitioner has invited our attention to section 17 of the Act which relates to power to levy service charges, section 63 prescribes powers to make rules and section 64 prescribing powers to make regulations. Petitioner contends that it is not within the competence of MIDC to levy any charges except within contemplation of section 17 of the Act in respect of which rules are required to be framed by the State Government or regulations are required to be approved by the State Government. According to petitioner, such regulations have not been framed and as such, levy of differential charges is not within competence of MIDC.

5. Learned Senior counsel has invited our attention to section 15 of the Act, more particularly clause (a) of section 15 which provides for powers of MIDC to prescribe conditions as may be deemed proper in the matter of lease, sell, exchange or otherwise transfer of any property held by it. It is the contention of respondent that levy of differential charges is within contemplation of section 15(a) since there is transfer of share holdings which amounts to violation of terms of the lease agreement. The lease agreement specifically prohibits assignment or parting with the possession of the demised premises or any part thereof or any interest therein without the previous written consent of the Chief Executive Officer and the Chief Executive Officer may in his absolute discretion refuse such consent or grant the same subject to such conditions as he may think fit including the condition for payment of premium and in any event not to assign, underlet

or transfer the Lessee's interest therein so as to cause any division by metes and bounds or otherwise to alter the nature of this present demise. Since in the instant matter, transfer of share holding to the extent of more than 51% does not amount to formal transfer, MIDC is entitled to claim differential premium. If petitioner is not willing to deposit differential premium and does not abide by the notice, MIDC may take appropriate steps as deemed fit in consonance with the lease agreement and relevant rules and regulations.

6. Reliance is placed on judgment in the matter of U.P. State Industrial Development Corporation Ltd. Vs. Monsanto Manufacturers (P) Ltd. and another. The matter was taken up to the Supreme Court in identical circumstances whereunder U.P. State Industrial Development Corporation directed levy of amount on account of transfer of interest in the property by the lessee in favour of different company. While dealing with the matter, in paragraphs 24 and 27 of the judgment, the Supreme court as observed thus :

> 24. In the present case the entire shareholding of Goyal family headed by Mr. Amar Nath Goyal in the said company was transferred to the Mehta-Lamba Family. The entire list of shareholders, Managing Director and Board of Directors was provided by monsanto to the appellant-Corporation vide letter dated 7.5.1994. The record shows that the original subscribers of shares were members of Goyal family and the entire shareholding was transferred to Mehta-Lamba family. Therefore, the original subscribers of shares of respondent no. 1 company were totally changed.
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> 27. In this case, the ownership of a huge Industrial plot measuring 14,533 sq. ft. in the prestigious and economically affluent area of

> Sahibabad (Ghaziabad) has been transferred from Goyal family to the Mehta-Lamba family for material financial gains, by adopting clever means that too without taking written consent of the Lessor i.e. appellant-Corporation. There are many instances/examples in which the lessee gets allotment of huge industrial plots and thereafter sells the same for huge monetary gains. This adversely affects the aims and objectives of appellant-Corporation i.e. the planned development of industrial areas in the State of Uttar Pradesh. The Hon'ble High Court ought not to have interfered in the matter looking into the public interest involved and Clause 3(p) of the lease deed.

In view of the reasons enumerated above and the observations made by the Supreme court as reproduced above, we are of the view that no interference is called for in the instant matter. Writ petition is devoid of substance hence stands dismissed.

7. Pending civil application, if any, does not survive and stands disposed of.

(P. R. BORA)
JUDGE

(R. M. BORDE)
JUDGE

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