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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10604 OF 2012

1. Sudam Vithoba Dhumal
R/at Village Maan, Taluka Mulshi,
District Pune ..
2. Dilip Sudam Dhumal
R/at Village Maan, Taluka Munshi,
District Pune. .. Petitioners.

V/s.

1. Maharashtra Industrial Development
Corporation, Pune Region,
Wakadewadi, Pune 411 003 ..
2. Pegasus Properties Pvt. Ltd.
Kumar Capital, 1st Floor,
East Street, Camp,
Pune 411 001 .. Respondents.

Mr.Prathmesh Bhargude i/b. Mr.Sugandh B.Deshmukh for the
Petitioners.

Mr.Prashant P. Chawan with Mr.C.M. Lokesh i/b. A.R. Bhole & Co. for
Respondent No.1.

Mr.Milind Sathe, Senior Advocate with Ms.Cheryl Fernandes and
Ms.Ankita Singh i/b. ALMT Legal for Respondent No.2.

**CORAM : A.S.OKA AND
A.K. MENON, JJ.**

DATED : 3RD MARCH, 2015

JUDGMENT (PER A.K.MENON, J.)

1. By this petition, the petitioner calls into question the
action of Respondent No.1 Maharashtra Industrial Development
Corporation (MIDC) in allotting the property acquired for industrial

purposes to builders to construct a township including residential buildings and other amenities wherein flats are sold to persons other than those working in industries in the area.

2. Few facts will be required to be gone into to appreciate the Petitioner's case:-

The plot in question is land bearing Survey No.213/2 admeasuring 5 acres and 36 gunthas (the said property). The MIDC decided to acquire the said property for the purpose industrial development and took possession of the said property on 17th May, 2005. The MIDC thereafter decided to assign the work of the acquisition to the Sub-Divisional Officer, Maval, Pune and an Award came to be passed on 31st January, 2005 by which a sum of ₹85,16,258/- was agreed to be paid as final compensation to various persons, including the Petitioners. By virtue of the compensation to be paid all rights of the said persons in the lands were extinguished. There is no dispute that the compensation had been paid.

3. It is the contention of the Petitioners that after acquiring the said property, the MIDC allotted part of the said property admeasuring approximately 4 acres for the construction of a township contrary to the purpose for which the land was acquired in the first place to Respondent No.2. Being aggrieved by the said

decision, the Petitioners filed a suit in February, 2008 being Civil Suit No.616/2008 in the Court of Civil Judge, Senior Division, Pune seeking a declaration that the MIDC cannot allot any part of the said property to any private person for carrying out the development of the residential flats and buildings for profiteering from them. They also sought an order of temporary injunction restraining the the use of the said property for any purpose other than the industrial purpose.

4. An application for temporary injunction was made. The MIDC was heard in the matter. One of the contentions taken by the Petitioners was that the possession was handed over only on paper to the MIDC. This is controverted by the MIDC in its written statement. The MIDC contended that the physical possession of the said property was handed over to MIDC on 17th May, 2005 and that the MIDC was in actual physical possession of the said property. The MIDC contended that while developing the industrial set up, it is also necessary to provide other basic needs of the persons working in such industrial area like housing, gardens, roads, water, electricity, postal service, banking service, telephone, commercial and other basic amenities which completes the development of any industrial area and for this purpose, a part of the said property has been allotted by MIDC to Respondent No.2. The MIDC supported the allotment of the said property to Respondent No.2.

5. Respondent No.2 was also heard in the suit and submitted that it has received the possession of the part of the property. The entire project is known as Rajiv Gandhi Infotech Park, Hinjawadi (for 'IT Park'). Respondent No.2 has been allowed to commence construction of a township consisting of residential buildings and other structures after getting the plans approved from the MIDC. The construction was already underway when the suit was filed. The Petitioner's contention that there were cattle-sheds, water tanks, etc. on the said property was disputed.

6. On 2nd May, 2008 the MIDC made an application under 9-A of the Civil Procedure Code questioning the jurisdiction of the Court and prayed for framing of a preliminary issue. A preliminary issue framed in these terms came to be decided against the present Petitioner on 6th December, 2008. An appeal came to be filed in the District Court which came to be dismissed on 18th September, 2010. Against the said order, a Second Appeal came to be filed in this Court. The learned Single Judge of this Court vide order dated 21st August, 2012 dismissed the appeal holding that the action could not be questioned in the absence of any malafide alleged post acquisition. It is pursuant to this order dated 21st August, 2012 that the Petitioners have filed the present petition.

7. An affidavit in reply has been filed by Mr.Manish

Vimalkumar Jain, the Director of Respondent No.2 questioning the locus of the petitioner contending that the action is not bonafide and that the petitioner and others had accepted the compensation willingly and is now not entitled to challenge the action of Respondent No.2 to construct the township. It is on record that after the MIDC acquired the said property, the lands have been amalgamated and layout have been prepared by dividing the entire land into plots. Many IT companies have been set up a IT park in which thousands of workers are employed therein. The MIDC has passed a resolution in its meeting dated 12th August, 2005 and decided to allot 30% of the land for development of integrated residential township as the IT park is situated far away from Pune as well as from Pimpri-Chinchwad Municipal Corporation areas. The IT Park is situated approximately 8 kms away from the National Highway No.4 towards the West side of Pune city and as a result, the employees have to travel a lot and, therefore, it was decided to have a residential complex near the place of IT Park to promote industry and “*walk to work*” concept and, therefore, a township is being constructed by Respondent No.2.

8. As an integral part of the township, a school, grocery, medical facilities, physician, consultants, etc. have also been set up therein. Respondent No.2 is constructing 75-80 buildings out of which work of 65 building are completed and the rest of the buildings are completed upto 17th floor. Completion certificates

have been issued in respect of 31 buildings and the possession of the flats have been handed over to the various purchasers. More than 1000 families are residing in the buildings as of January, 2014. Respondent No.2 has also contended that Respondent No.2 is under obligation to convey the title to the flat purchasers as per Maharashtra Ownership Flats Act, 1963 and hence it resisted the grant of interim relief.

9. An additional affidavit filed by Mr.Manish Vimalkumar Jain on 27th February, 2015 on behalf of Respondent No.2, discloses that out of total 4638 flats that have been constructed, 2354 of the flats i.e. more than 50% have been sold to the persons working in IT companies and the endeavour is to give preference to the persons working in IT companies in the area developed by the MIDC who intend to purchase a flat constructed on the said property. The balance flats are sold to other persons. Presently, about 84 flats are lying vacant and after preference is given to the persons working in the IT companies, they will be disposed of after due publicity. A chart having been annexed to the said affidavit showing number of flats constructed and sold to IT and non IT employees, it is submitted that there is no prohibition to sell of the flats to those who were not working in the IT park.

10. Mr.Bhargude, learned counsel for the Petitioners has vociferously submitted that the acquisition was for a specific

purpose namely for promoting industrial development. The purpose of acquisition does not contemplate setting up of residential premises for the purposes of those who are not employed in the industries set out in MIDC completed. Learned counsel appearing for the petitioner submitted that the conduct of the MIDC in permitting the development of township amounts to a fraudulent exercise. If land which was acquired by MIDC for public purposes to develop and promote industrial development is used by private parties for residence if a fraud played and against public purpose. He relied upon the ratio of the judgment of the Apex Court in the case of **Royal Orchid Hotels Ltd. V/s. G. Jayarama Reddy & Ors.** reported in **(2011) 10 Supreme Court 608** wherein the facts reveal that the land acquired for public purpose was used for the purpose of setting up a golf-cum-hotel resort. It was submitted before the Apex Court that the officials of the Respondent had fraudulently allotted the land acquired for the public purpose to the private sector. The Apex Court after considering the all the issues raised, held in paragraph 38 as follows:-

“The courts have repeatedly held that in exercise of its powers of eminent domain, the State can compulsorily acquire land of the private persons but this proposition cannot be overstretched to legitimise a patently illegal and fraudulent exercise undertaken for depriving the landowners of their constitution right to property with a view to favour private persons. It needs no emphasis that if land is to be acquired for a company, the State Government and the

company is bound to comply with the mandate of the provisions contained in Part VII of the Act. Therefore, the Corporation did not have the jurisdiction to transfer the land acquired for a public purpose to the companies and thereby allow them to bypass the provisions of Part VII. The diversification of the purpose for which land was acquired under Section 4(1) read with Section 6 clearly amounted to a fraud on the power of eminent domain. This is precisely what the High Court has held in the judgment under appeal and we do not find any valid ground to interfere with the same more so because in Annaiah v. State of Karnataka the High Court had quashed the notifications issued under Sections 4(1) and 6 in their entirety and that judgment has become final. "

11. Learned counsel for the Petitioners further submitted that the MIDC did not have power to transfer the land acquired for the industrial purpose or public purpose to Respondent No.2 to set out a residential purpose wherein the flats were allotted to the persons not connected with the industrial development at the instance of MIDC. He further submitted that the construction of the residential township such as the present one, amounted to use of land for the private purpose which violated the very purpose for which the said property was acquired in the first place. He, therefore, submitted that the Petitioners had been deprived of the lands on the basis of fraud that the land was required for the public purpose. The Petitioner along with others have accepted the compensation offered without a demur of protest since a public purpose was to be achieved. Therefore, a fraud has been practiced

by acquiring the said property for industrial purpose and thereafter, utilising the same for setting up a township. That the land can be used only for the purpose of industrial development and cannot be used for any other purpose, including the construction of a township and sale of the flats to all outsiders.

12. The Petitioners, however, admit paragraph 5 of the petition that the Petitioners have no objection to the flats being sold to the persons working in industries in the MIDC. They have taken exception to the sale of flats to outsiders.

13. Having considered the submissions, we are unable to agree that the construction of township on the said property acquired by Respondent No.1 is against the provisions of Industrial Development Act, 1961 and that the Respondent No.2 had no authority to make any construction and sell the flats in the open market. In the facts and circumstances of the present case, admittedly, a residential township has been set up in recognition of the fact that many IT parks have been set up and large number of persons are employed therein. Flats were constructed along with other support infrastructure to house those employees who were keen on a residence close by. As detailed above, more than 50% of the flats have been sold to those working in the industries which are set up in the MIDC. It has been stated that preference is given to those workers in the industries at MIDC and it is only thereafter,

the remaining flats are sold to others. These statements are not seen to be contradicted. The objection of the Petitioners to the sale of these flats cannot be the basis for holding that the development of the township by Respondent No.2 at the instance of MIDC of the Industrial Development Act, 1961 was a fraudulent exercise. No doubt, the larger issue involved needs to be gone into but that can be done in an appropriate case. In the facts of the present case, we do not think any interference is called for. The Respondent No.2 has sold 50% of the flats to the employees of the industries in the MIDC. There has been no express provision not to sell the flats to outsiders. It is not necessary to prevent the Respondent No.2 from not selling the flats to outsiders if the flats are not bought by the employees of the industries. In this view of the matter, we are not able to agree with the submissions of the Petitioners that the Respondents have perpetrated fraud.

14. In the result, the petition is rejected. No order as to costs.

(A.K.MENON, J.)

(A.S.OKA, J.)