IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6102 OF 2013

(A.P.M.C., Akola vs. State of Maharashtra, Ministry of Industries thr. Its Secretary & Ors.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's Orders.	Court's or Judge's orders.

CORAM : B.P. DHARMADHIKARI &
A.P. BHANGALE, JJ.
FEBRUARY 12, 2015.

Heard Shri Bhuibhar, learned counsel for the petitioner, Shri Fulzele, learned Additional GP for respondent Nos. 1, 2, 4 & 5, Shri Agnihotri, learned counsel for respondent No. 3 and Shri Dutonde, learned counsel for respondent No. 6.

The petitioner states that the respondents have either refused or avoided to discharge the statutory obligations.

After hearing the respective counsel, as we find that the matter needs to be placed back for fresh consideration, it is not necessary to record the reasons or facts in detail.

The property of Respondent No. 6 – Spinning Mill was auctioned by Respondent No. 2 – Collector to recover the gratuity dues of employees of Respondent No. 6. Part of said property i.e. about 7 Acres and 38 Gunthas has been purchased by the petitioner –

A.P.M.C. in that auction. After purchasing, the petitioner wanted said area to be demarcated by meats and bounds and then placed in possession. It also wanted its name to be recorded for that area and was ready and willing to pay transfer fees. The plot is an industrial plot in the area of Respondent No. 3 – MIDC at Akola. MIDC as per its policy considered the request of the petitioner and found that the petitioner wanted to use the land for commercial purpose. It, therefore, found that it was a case if change of user and hence mutation could not have been allowed until and unless change of user is agreed to.

It is not in dispute that as per terms and conditions of the auction, the petitioner has to obtain a fresh lease from Respondent No. 3 in relation to the piece of land purchased in auction by it. MIDC has demanded transfer fees and also the additional amount i.e. differential amount on account of change of user. There is some dispute in relation to that demand or its quantification also. However, it is not relevant at this stage or in the present matter.

According to Shri Bhuibhar, learned counsel, activity of APMC on the property purchased in auction cannot and does not qualify to be a commercial activity and as such the demand of differential amount or transfer fees accordingly is not proper.

The learned Additional Government Pleader submits that auction was made with clear understanding and the petitioner, therefore, has not made any grievance against the office of the Collector or other Government officers.

Shri Agnihotri, learned counsel submits that the petitioner has, before participating in auction, agreed to abide by the terms and conditions of Respondent No. 3. The petitioner has after purchase, applied for mutation and that application has been looked into by the Minor Modification Committee (MMC) of Respondent No. 3. The application shows commercial user and accordingly the demand has been worked out. He invites attention to a similar instance at Satara where in relation to Kurduwadi Industrial Area, a request made by APMC Kurduwadi was considered. He has invited attention to a Circular dated 03.05.2012 to urge that the Minor Modification Committee of Respondent No. 3 is bound by said policy decision.

To explain how this Court has understood the activities of APMC, he has placed reliance upon the Division Bench judgment of this Court in the case of *Dhule Agricultural Produce Market Committee vs. Employees State Insurance Corporation & Ors*., reported at 2003 (3) Mh. L.J. 916.

Before us, it is not in dispute that the land purchased in auction was within the area of Respondent No. 3. It was for Respondent No. 3 to demarcate a portion ad measuring 7 Acres and 38 Gunthas out of the property sold in auction to the petitioner. Actually, the petitioner has been placed in possession of the property purchased in auction but without demarcation by Respondent No. 2 – Collector. The petitioner thereafter has moved an application for mutation on 22.10.2012. In that application, they have generally mentioned the purpose or object with which the APMC is established. They have not pointed the specific object with which the said portion ad measuring 7 Acres and 32 Gunthas of land has been purchased.

Respondent No. 3 has by impugned communication dated 04.01.2013 found that the petitioner has to pay the charges at commercial rate and did not yield to its request to apply industrial rate. Respondent No. 3 has pointed out that the petitioner has to pay the amount at commercial rate only.

A perusal of the proceedings of MMC dated 15.10.2012 shows an observation that the activities conducted in APMC are commercial in nature and, therefore, Circular dated 03.05.2012 which permits 5% of land in MIDC area to be used for commercial purpose has been examined. It has been found that if commercial user of said portion is allowed, the percentage of commercial land in MIDC Akola rises to 2.90% and it is within permissible limits. However, on record, there is nothing to show the specific details of activities to be undertaken by APMC on 7 Acres and 38 Gunthas of land purchased by it in MIDC area.

The APMC being the statutory authority and a local body, before participating in auction must have decided on a particular object for which the land was to be purchased. It could have, therefore, pointed out the object for which the purchased land would be utilized by APMC. Respondent No. 3, in the absence of such documents, has considered generally the aims and objects with which the APMCs are constituted.

The Division Bench of this Court in the case of Dhule Agricultural Produce Market Committee vs. Employees State Insurance Corporation & Ors., (supra), considers the argument opposing applicability of Employees' State Insurance Act to the establishment of APMC. The provisions of Employees State Insurance Act, were sought to be extended to the office establishment of APMC and in that background definition of "*shop*" contained in Section 2(27) of the Bombay Shops and Establishments Act and the precedent have been appreciated.

In present facts, we do not find anything at least at this stage before us to show the exact purpose for which the land will be utilized by the petitioner APMC. It has paid an amount of Rs.1.41 Crore in auction as the highest bidder. In this situation, we are inclined to give it one more opportunity.

The petitioner shall accordingly submit proper application giving necessary details pointing out the purpose or object with which it has purchased the land and how it wishes to use it in future. Respondent

No. 3 – MIDC shall then consider it in accordance with law and take suitable decision. If the petitioner submits such an application, complete in all respects, within a period of three weeks from today, the MIDC shall consider it within a further period of three months.

With these directions and keeping all rival contentions open, we dispose of the present writ petition. No order as to costs.

JUDGE **JUDGE**

*GS.