

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

**WRIT PETITION NO. 1489 OF 2015
WITH
WRIT PETITION NO. 1500 OF 2015**

Parshwanath Infra Tech Pvt. Ltd., Dhule .. Petitioner

Versus

The Maharashtra Industrial Development .. Respondents
Corporation, Mumbai and others.

Mr. V.D. Sapkal, Advocate for the petitioner.
Mr. S.S. Dande, Advocate for respondent Nos. 1 & 3.
Mr. V.A. Thorat, Sr. Counsel a/w Mr. Vaibhav A. Sugdare,
Ms. Manorama Mohanty and Mr. Amol Savant, advocates for
respondent Nos. 4 & 5.

**CORAM : A.V.NIRGUDE &
V.L. ACHLIYA, JJ.**

DATED : 21.04.2016

P.C. :-

1. Heard. Both these writ petitions can be decided by this common order. In both these petitions respondent Nos.4 and 5 applied for allotment of plots to respondent No.1-Maharashtra Industrial Development Corporation (for short "MIDC") in 2012. In 2013 the MIDC's Land Allotment Committee considered their applications. Before the Committee could take decision, which was taken in

November, 2014, the petitioner got incorporated as a company in July, 2014. Immediately thereafter the petitioner applied for a plot of land to respondent No.1 to establish an engineering unit. Respondent No.1-MIDC rejected the petitioner's application on 19.08.2014. On 10th November, 2014, the MIDC allotted plots to respondent Nos.4 and 5 as per their applications. Lease-deeds were executed on 19th January, 2015. The petitioner raised objection to such allotment and transfer, but in-vain. So, the petitioner came before this Court seeking relief mainly to get the allotment, made in favour of respondent Nos. 4 and 5 in respect of a particular plot, cancelled by issuing appropriate writ from this Court.

2. What is pertinent to note is that the petitioner did not seek any direction that the MIDC should reconsider its decision of not allotting plot to the petitioner. The petitioner did not even challenge the decision of MIDC rejecting their application. On the face of it, the petitions look mischievous.

3. The respondents submitted reply justifying allotment of plots to respondent Nos.4 and 5. Their contentions mainly are that their application came in 2012 and after following due process, the proposal was sent to the Committee and after Committee took decision,

the allotments were made. On the other hand they contended that the petitioner's application was rejected mainly because in 2014 the MIDC had formed a policy not to entertain individual applications but only after following process of public auction. The question before us is - whether allotment made to respondent Nos. 4 and 5 is lawful? Our answer is in Affirmative.

4. On facts, we did not see any malafides in the impugned decision. The law of allotment is prescribed in sections 14 and 39 of the Maharashtra Industrial Development Act, 1961 (for short "the MIDC Act") and the rules and regulations framed thereunder, to which we would refer subsequently. Section 39 of the MIDC Act, 1961 reads as under :-

"39. Disposal of land by the Corporation.

(1) Subject to any directions given by the State Government under this Act, the Corporation may dispose of -

(a) any land acquired by the State Government and transferred to it without undertaking or carrying out any development thereon; or

(b) any such land after undertaking or carrying out such development as it thinks fit, to such persons in such manner and subject to such terms and conditions, as it considers expedient for securing the purpose of this Act.

(2) The powers of the Corporation with respect to the disposal of land under sub-section (1) shall be so exercised as to secure, so far as practicable, that -

(a) where the Corporation proposes to dispose of by sale any such land without any development having been undertaken or carried out thereon, the Corporation

shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it, subject to such requirements as to its development and use the Corporation may think fit to impose;

(b) persons who are residing or carrying on business or other activities on any such land shall, if they desire to obtain accommodation on land belonging to the Corporation and are willing to comply with any requirements of the Corporation as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

(3) Nothing in this act shall be construed as enabling the Corporation to dispose of land by way of gift, mortgage or charge, but subject as aforesaid reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, by way of sale, exchange or lease or by the creation of any easement, right or privilege or otherwise."

5. In exercise of power given by Section 64 of the MIDC Act, Corporation made certain regulations which are called the Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975. Said Regulation Nos.4 to 10 are as under :-

"4. Manner of disposal of land open lands. Out of land covered by the layout so prepared the Corporation may dispose of plots of land-

- (I) by public auction; or
- (II) by entertaining individual applications;

In either case the plots may be allotted-

- (a) on rental basis;
- (b) on premium lease basis; or
- (c) partly on rental basis and partly on premium basis;

as the Corporation may from time to time decide in respect of each Industrial Area.

5. Terms and conditions of disposal of land by public auction- Where the Corporation decides to dispose of the plots in any Industrial Area by public auction, the terms and conditions governing the auction shall generally be as laid down in Form "A" with such modifications as the Corporation may deem fit from time to time.

6. Allotment of plot by applications- Where the Corporation decides to dispose of plots by entertaining applications, such application shall be made to the Chief Executive Officer in Form 'B'

7. Security deposit to be paid with the application for grant of lease on rental basis. - Where any land is intended to be disposed of on rental lease basis, the application shall be accompanied by such amount of security deposit as may be directed by the Corporation from time to time.

8. Amount of premium to be paid with the application for grant of Lease- Where any land is proposed to be disposed of on premium lease basis, the application shall be accompanied by such amount of premium as may be laid down by the Corporation from time to time.

9. Security deposit as earnest money- Payment of security deposit under (7) or the amount of premium under (8) shall, as the case may be, be held as earnest money or deposit and such payment shall not be construed as any commitment or obligation on the part of the Corporation that a particular plot or any plot shall be allotted to the applicant at the rate prevailing at the time of payment of deposit.

10. Consideration of applications for plots by the Land Committee- In receipt of any application for allotment of land, the Chief Executive Officer shall make such enquiries as he deems necessary and place it before the Land Committee with his recommendations and the Land Committee may either sanction or reject such application.

Provided that the Chief Executive Officer may allotment of a plot of land where the requirement of the applicant does not exceed the area laid down by the Corporation. A list of such allotments shall be placed before the Land Committee for its information."

6. These are statutory provisions and the Corporation is bound to follow them while making allotment of plots. The regulations clearly provide two methods of allotment. One is by public auction and other is by entertaining individual applications. In the case of respondent Nos.4 and 5, they were allotted plots by entertaining their individual application. In 2012, their individual applications were received and were processed till 2014. There occurred considerable delay in disposal of their applications. The Committee contemplated by Regulation No.10 had met on 26th September, 2013 for taking decision on the applications of respondent Nos.4 and 5. But the decision was delayed for about one year. This delay, however, is not a lapse on the part of respondent Nos.4 and 5. Ultimately, the decision was taken and the plots were allotted.

7. On the other hand, the Corporation's reason for rejecting petitioner's application also does not appear in consonance with the regulations referred to above. The MIDC could not have unilaterally decided that from 2014 they would allot plots only on the basis of auction. Until regulations are changed, such decision is not

viable and possible. Out of the two methods of the allotment of plots, the method of public auction is generally considered fair and transparent. The law is also settled in that regard. There are various judgments, which suggested that as a rule, lands or plots should be allotted by public auction, but there are exceptional circumstances, where individual applications are required to be entertained. Regulations of the MIDC considered such exigencies.

8. Learned Counsel for the petitioner placed reliance on judgment of this Court in the case of **Real Team Systems Pvt. Ltd vs The State Of Maharashtra, W.P. NO.9279 of 2012 decided on 25th February, 2014.** In this judgment, in para 29 the Court has expressed its opinion as to how and in what manner individual applications are entertained while allotting public property. Said para 29 is quoted as under :-

"29. It may be that, there is an exception as it is normally and ordinarily there in every law, namely, that a public body or a public corporation may dispose of plots of land by entertaining individual applications. However, such decisions should be exceptional and not as a matter of rule. If the rule is that the public auction or open tenders is the mode of disposal of public property, then, exception cannot become the rule. Merely because a individual application can be entertained and property can be disposed of to individuals does not mean that the corporation is displaced from its position as a trustee of the public. Even when the manner of disposal is of this nature, the

corporation is bound to act fairly, reasonably and in a transparent manner. It cannot pick and chose applications, nor it can reject applications indiscriminately. The mandate of [Article 14](#) of the Constitution of India has to be abided by even when the property is being disposed of by entertaining individual applications. The regulation, makes this aspect very clear inasmuch as on receipt of any application for allotment of land, the Chief Executive Officer is bound to make such inquiries as he deems necessary and place the application before the land committee with his recommendations and the land committee can make allotment of a plot of land where the requirement of the applicant exceeds the area laid down by the corporation. Thus, the regulations put in place a mechanism which ensures orderly and proper disposal of even these applications. The land committee, which is defined to mean the committee formed by the corporation for the purpose of dealing with all matters connected with the acquisition and disposal of land and built up sheds and property owned or transferred to the corporation by the State Government, thus acts as a trustee of the public. The land committee in this case was not the committee before whom the application of the petitioner or the respondent No.5 was placed."

9. Having regard to the need for keeping the option of allotment on the basis of individual applications open, the Court opined that the regulations which devised mechanism generally should ensure orderly and proper disposal of plots. In other words, even when the MIDC or any other public body entertains individual application for allotment of plots, the procedure should be transparent and fair.

10. We are not deciding the question as to whether the decision of the MIDC rejecting the petitioner's

application was lawful or otherwise. Yet, we have expressed above our view about it. The writ petitions therefore fail.

11. The writ petitions are dismissed.

[V.L. ACHLIYA, J.]

[A.V.NIRGUDE, J.]