

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE, BENCH AT AURANGABAD

WRIT PETITION NO.8960 OF 2013**Milind Shriram Patil Vs. The State of Maharashtra and others.**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.Amol Sawant, advocate for the Petitioner.
Miss. S.S.Raut, A.G.P. for the State.
Mr.R.S.Deshmukh, advocate for Respondent No.2.

**CORAM : S.V.GANGAPURWALA AND
K.K.SONAWANE, JJ.**

Date : 26.07.2016.

PER COURT :

1. Heard.
2. The present petition is filed assailing the communication issued by the Additional Secretary, Tourism and Cultural Department, Mantralaya, Mumbai, thereby negating the request of the petitioner for allotment of alternate land.
3. Mr.Sawant, learned counsel for the petitioner states that the land of the petitioner was acquired by the Respondents for the development project of Ajanta caves. The petitioner had prior to acquisition filed an application with the Collector for grant of permission of construction of hotel upon the land of the petitioner.

However, as the said land was under acquisition, the petitioner submitted an application with MTDC to allot alternate piece of land to the petitioner for running hotel business. Upon request being made to the Collector, the Collector directed the petitioner to approach the MTDC for the alternate land. SLAO had also issued communication to the MTDC to consider the request of the petitioner for alternate land. On or about 27.7.1993, the Deputy General Manager, MTDC, issued a communication to SLAO that the request of the petitioner will be considered on priority basis. The learned counsel submits that on or about 10.8.1994, the Deputy Managing Director, MTDC informed the petitioner that the request of the petitioner for allotment of alternate land has been positively considered. The same would be allotted from the commercial area of Ajanta. The same would be allotted on lease basis as per the prevailing market rate. The terms and conditions were also prescribed. The petitioner on 25.8.1994, in writing accepted the terms and conditions. On 20.1.1995, the Managing Director of MTDC also communicated to the petitioner that the request of the petitioner for allotment of alternate land is accepted by the MTDC on the terms and conditions and the land would be allotted to the petitioner after finalisation of land use plan but however, the same did not materialise. The learned counsel submits that further discussion took place and on 29.4.1998, the Managing Director,

MTDC, informed the petitioner that as per the request of the petitioner it was agreeable to allot the alternate piece of land, however, some time was required for allotment of the land. Thereafter on 16.9.1999 the Senior Manager, MTDC issued a communication that after preparation of the land use plan, the alternate land will be allotted to the petitioner on the terms and conditions agreed. However, the said communications did not materialise. The petitioner even did not withdraw the compensation amount as he was being assured of allotment of alternate land. In 2010 also the petitioner submitted detail representation. Thereafter filed Writ Petition bearing No.103/2011 before this Court. This Court directed the Respondents to decide the representation of the petitioner. Thereafter the communication is issued to the petitioner stating that the request of the petitioner can not be considered. The learned counsel submits that the action of the Respondents in resiling from their promise is improper. Right since 1994, the petitioner was assured of allotment of alternate land for the purpose of his business. Relying on the written assurances, the petitioner even did not withdraw the compensation amount for many years, however, subsequently the said compensation amount has been withdrawn. The learned counsel submits that the petitioner is discriminated. One Mr.Mirajkar, who was similarly situated has been allotted alternate

land. The application of the petitioner for alternate land was being considered along with Mr.Mirajkar, as would be clear from various communications. The petitioner is entitled for alternate land. Even the impugned communication does not give the reasons for rejection of the claim of the petitioner. The same is illegal. As it is the Respondents would be allotting the acquired land to the entrepreneurs, the petitioner is also seeking the allotment of land for its hotel industry.

4. Mr.Deshmukh, learned counsel for the MTDC submits that the MTDC had forwarded the proposal of the petitioner for allotment of alternate land to the Government, however, the Government is of the opinion that such an alternate land can not be allotted and that would be against the policy. It is not that MTDC has resiled from its stand but MTDC is bound by the decision of the Government.

5. Learned A.G.P. states that in case the land acquired can not be used for the public purpose, for which it is acquired, still, the same can be used for another public purpose and there can not be an allotment of land by private negotiation. The same has to be by public auction. As such the request has been appropriately rejected.

6. The communications as referred to above between the MTDC and the petitioner, thereby MTDC assured the petitioner of allotment of alternate land is not disputed. The same is a matter of

record. No doubt, the petitioner was assured by the MTDC of allotment of alternate land though, the site of alternate land was not fixed.

7. We do not find any policy or a scheme on record, whereby the Respondents are duty bound to provide alternate land to the persons whose land has been acquired. In absence of any such scheme or policy, it would not be possible for this Court to issue any specific directions in this regard.

8. The MTDC is an instrumentality of the State. No doubt, has to act as model litigant. However, is also bound by the directions of the Government. We do not find that the MTDC had at any point of time denied the request of the petitioner. Even the communication dated 10.8.1994, specifically states that in the event of the piece of land so selected is falling within the area of land transferred by Government, the terms and conditions of lease will be as per the guidelines given by the Government. The site to be allotted to the petitioner was never selected nor any location was finalised. The MTDC was only assuring the petitioner of allotting alternate land. The same never fructified nor it can be said that a concluded contract between the parties had come into force. In absence of any concluded contract between the parties, so also in absence of any scheme, rules or policy, whereby alternate land could be allotted, the request of the petitioner in the present

petition can not be considered. Only because land to one of such person was allotted, we can not issue direction to allot land to the petitioner. It is for the authorities to consider the said aspect and the claim of the petitioner as per its policy and scheme.

9. The Writ Petition is accordingly disposed of. No costs.

(K . K . SONAWANE , J .)

(S . V . GANGAPURWALA , J .)

Dt.26.07.2016.
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