IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.10014 OF 2014

M/s. Magma Agro Products Pvt.,)
A Registered Pvt. Ltd. Company)
having its head office at)
D-112, Puru Co-op. Hsg. Society,)
Airport Road, Pune – 411 032)
Thr' Chairman and Managing Director)
Shri Chandrashekar Gaikwad) ..Petitioner

Versus

1. Maharashtra Industrial Development)
Corporation,)
Thr' Area Manager,)
M.I.D.C., H.Q., Udhyog Sarathi,)
Mahakali Caves Road, Andheri (E),)
Mumbai – 400 093.)
2. Maharashtra Industrial Development)
Corporation,)
Thr' Regional Officer,)
M.I.D.C., Regional Office,)
Udyog Bhawan, Nagala Park,)
Kolhapur – 416 003.)
3. The State of Maharashtra,)
Thr' Secretary,)
Industries Department,)
Mantralaya, Mumbai.) ..Respondents

Mr. Tejpal S. Ingale, advocate for the petitioner.
Ms. Shyamali Gadre with Mr. Abhijit Deshmukh and Mr. Aniket Kulkarni i/b. M/s.Little and Co., advocates for respondent Nos. 1 and 2.
Ms. Aparna D. Vhatkar, AGP for respondent No.3-State.

CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.

DATE : 29th JUNE, 2016.

Oral Judgment : (Per Ranjit More, J.)

Heard Mr. Ingale, learned counsel for the petitioner, Ms. Gadre, learned counsel for respondent Nos. 1 and 2 and Ms.Vhatkar, learned AGP for respondent No.3.

2. Rule. Rule is made returnable forthwith. Since the controversy involved in the petition is short, the petition is taken up for final hearing by consent of learned counsel for the parties.

3. By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the orders dated 25th May, 2012 and 20th February, 2013 passed by respondent No.2-Regional Officer, M.I.D.C., Kolhapur and respondent No.1-Area Manager, Maharashtra Industrial Development Corporation respectively cancelling the allotment of plot in favour of the petitioner and forfeiting the earnest money deposit of Rs.36,75,000/-. The petitioner also seeks directions to respondent Nos. 1 and 2 to refund the earnest amount of Rs.36,75,000/- deposited by the petitioner along with interest.

4. The facts giving rise to this petition in brief are as follows:

The petitioner is registered private limited company engaged in manufacturing agro based products. Respondent No.3-State Government issued a Industrial Policy for manufacturing of Neutral Alcohol and Rectified Spirit Absolute Alcohol items based on grains in the year-2006. The petitioner intended to install Distillery in Chandgad Taluka of Kolhapur District. On 23rd August, 2006, the petitioner applied to respondent No.2- Regional Officer, M.I.D.C., Kolhapur, for suitable industrial plot of 1,05,300 square meters' area for construction of the said unit at MIDC Halkarni, Taluka Chandgad, District Kolhapur. On 29th August, 2006, the petitioner obtained NOC from MPCB for allotment of plot at MIDC, Halkarni, Taluka Chandgad, District Kolhapur. On 11th September, 2006, the Maharashtra Industrial Development Corporation (for short "the MIDC") granted approval for allotment of plot of land to the petitioner for setting up the said unit and asked it to furnish NOC from MPCB and State Excise Department for further action of allotment. The MPCB gave consent letter to the petitioner on 10th November, 2006, to establish the said Distillery on certain terms and conditions. The petitioner thereafter submitted required NOC to respondent No.2 for further action of allotment of plot. On 22nd January, 2007, the MIDC informed the petitioner that they have decided to offer the plot of land @ Rs.70 per square meter and requested the petitioner to submit "Blue Application" along with demand draft of Rs. 36,75,000/- towards earnest money. In terms of the offer letter by the MIDC, the petitioner obtained environmental clearance and various NOCs from MPCB and the State Excise Department. On 28th June, 2007/10th July, 2007, the Excise Department issued LOI for setting up the said unit on certain terms and conditions. The validity of the LOI was restricted to two years and it was stated that the manufacturing of spirit will be started within that period. In September, 2007, the petitioner also obtained term loan from Saraswat Co-op.Bank for Rs.2190 lacs, and thereafter, requested time and again to the MIDC for issuance of allotment order for the plot of land before expiry of the validity period of LOI granted by the Excise Department.

Respondent No.2 despite repeated requests of the petitioner, failed to allot the plot before expiry of the validity period of LOI granted by the Excise Department and ultimately on 20th January, 2010 i.e. after expiry of the validity period of the LOI granted by the Excise Department, sanctioned allotment of plot admeasuring 99,768 square meters to the petitioner for setting up manufacturing unit subject to payment of premium of Rs.80,31,400/- calculated @ Rs.70/- per square meter. The MIDC, accordingly, directed the petitioner to pay the balance amount of Rs. 43,56,400/- within a period of thirty days from the date of receipt of the order dated 20th January, 2010, on the terms and conditions specified in the allotment order.

On 4th February, 2010, the petitioner made representation to respondent No.2 for extension of time for payment of balance amount as the petitioner was required to apply to the State Excise Department for extension of the period of LOI. On 5th February, 2010, the petitioner applied to the State Excise Department(Government of Maharashtra) for extension of the LOI granted earlier. Despite repeated requests, the extension of LOI was not granted by the State Excise Department to the petitioner.

Meanwhile, respondent No.2 and respondent No.1 by the impugned orders dated 25th May, 2012 and 20th February, 2013 respectively cancelled the plot allotment order and forfeited the earnest amount of Rs.36,75,000/- deposited by the petitioner. The petitioner, thereafter, made various representations to respondent No.2 to consider their case sympathetically and refund the earnest amount. Respondent No.2, however, refused to do so and, therefore, the petitioner is constrained to approach this Court by way of the aforesaid writ petition.

5. Mr. Ingale, learned counsel for the petitioner took us through the volumnous correspondence between the petitioner and respondent No.2 as well as the Excise Department and submitted that the petitioner is not at fault. He also submitted that earlier to

cancellation of allotment and forfeiture of the earnest money, respondent No.2 by letter dated 13th December, 2010, had agreed for refund of earnest amount. He submitted that in similar circumstances, respondent No.2 refunded the amount to other allottees. Mr. Ingale relied upon Circular of MIDC dated 19th November, 1996 and submitted that respondent No.2 is duty bound to refund the earnest amount. He also relied upon the decisions of the Apex Court in ***Teri Oat Estates (P) Ltd. versus U.T.Chandigarh and ors. (2004) 2 SCC 130 and Jagmohan Singh versus State of Punjab and ors. (2008)7 SCC 38.***

6. Ms.Gadre, learned counsel for respondent Nos. 1 and 2 opposed the petition vehemently. She submitted that the cancellation of allotment and forfeiture of earnest amount is done as per the terms and conditions of the allotment order of the plot to the petitioner. She stated that action of respondent No.2 is in consonance with the Circular dated 22nd January, 2014 of the MIDC. She also relied upon the decision of the Apex Court in ***Shri Hanuman Cotton Mills and ors. versus Tata Air Craft Limited (1970) 3 SCR 127.***

7. Having considered the rival submissions and having gone through the petition along with annexures thereto and the ratios of decisions cited at Bar, we find merit in the petition.

Respondent No.2, in principle, agreed to allot the plot in question to the petitioner by its letter dated 11th September, 2006. Respondent No.2 by its letter dated 22nd January, 2007 decided to offer the plot of land to the petitioner with request to submit the "Blue Application" and Demand Draft of Rs.36,75,000/- towards earnest money. Respondent No.2 also directed the petitioner to obtain NOCs from various departments. The petitioner, accordingly, deposited the earnest amount of Rs.36,75,000/- on 22nd February, 2007 and also obtained NOCs from the Ministry of Environment and Forest on 6th March, 2007, and permission from the State Excise Department on 28th June, 2007/10th July, 2007, and, thereafter LOI of the State Excise Department. It is worth to mention that the period of LOI granted by the State Excise Department was for two years and the Excise Department made it clear that the petitioner will not be given any extension. Under the LOI, the petitioner was duty bound to start manufacturing of spirit within the validity period of LOI. Thus, the petitioner, under this LOI, was required to begin manufacturing of spirit before June-2009.

Despite deposit of 50% of the earnest amount and time and again requests by the petitioner, respondent No.2, for the reasons best known to them, failed to allot the land to the petitioner within the validity period of the LOI granted by the Excise Department. Learned counsel for respondent Nos. 1 and 2 also could not point out any reason as to why the petitioner was not alloted the said plot of land before the expiry of the validity period of LOI granted by the Excise Department. Respondent No.2, only on 20th January, 2010, made allotment of plot of land to the petitioner on certain terms and conditions. Condition No.1 was about payment of balance amount of Rs. 43,56,400/- within period of 30 days from the allotment order. Condition No.2 was that if the balance payment is not made within the stipulated time, the allotment is liable to be cancelled and condition No.3 was, in the event of allotment being cancelled as aforesaid, respondent No.2 will be entitled to forfeit the whole of earnest amount. The petitioner, thereafter, made written representation to the MIDC on 4th February, 2010 and requested for extension of time to pay the balance amount in order to enable it to obtain extension of validity period of the LOI from the Excise Department. Despite the best efforts made by the petitioner, it could not get extension of the validity of period of LOI from the Excise Department, nor respondent No.2 granted extension for payment of balance amount. In the absence of extension of the validity period of LOI from Excise Department, the allotment of plot of land by respondent No.2 to the petitioner was of no use, as the petitioner could not have established its manufacturing unit. Had respondent No.2 allotted the land immediately on petitioner obtaining NOCs from various departments and LOI from the Excise Department, the petitioner would have been able to install distillery and start manufacturing spirit. We find that the petitioner was not at fault and it was because of inaction on the part of respondent No.2 that the petitioner could not comply with the condition of LOI of the State Excise Department.

8. Mr. Ingale, learned counsel for the petitioner strongly relied upon the circular dated 19th November, 1996 of respondent No.1 and, in our view, rightly so. The circular is about refund of earnest money/occupancy price-land premium. As respondent No.1 received several representations regarding refund of earnest money of the allottees of land, certain guidelines are issued under the circular. Clause (2) of the circular has bearing to the subject matter of the present petition and it reads as follows:

> "2. When the party fails to pay the balance 50% of the premium within time limit of one month or after grant of extension for another 5 months from the date of allotment order, the same is required to be cancelled immediately on completion of the specified time limit. In such cases along with order of cancellation the allotment order, the refund order should also be necessarily issued. Concerned Area Manager should process such cases within 3 days. If the allottee before processing case for cancellation, applies for reallotment, the case should be processed within 7 days."

Reading of this clause makes it abundantly clear that, in the event, a party fails to deposit the balance premium amount of allotment of land within stipulated time, the allotment order is required to be cancelled and along with cancellation of the allotment order, the refund order should also be issued by the concerned area manager. This circular is binding on respondent No.2 and, therefore, in our considered view, respondent No.2 could not have forfeited the earnest amount deposited by the petitioner towards allotment of the plot of land in question.

9. The correspondence annexed to the petition makes it clear that respondent No.2 was aware about the said circular. As a matter of fact, respondent No.2 wrote a letter to the petitioner on 13th December, 2010, and informed that the land allotment order is automatically cancelled on account of failure on the part of the petitioner to deposit the balance amount within 30 days. This letter also mentioned that an action is being taken to refund the earnest amount to the petitioner after making necessary deductions. Respondent No.2, having agreed to refund the earnest amount to the petitioner by letter dated 13th December, 2010, could not have forfeited the same at later point of time. The petitioner has annexed the order dated 26th October, 2010, of respondent No.2 at

page 65 of the petition. This order reveals that one Dattu Jyotiba Jadhav was issued allotment letter for plot No.PAP-9 on 4th December, 2009. The said Jadhav had paid earnest money of Rs.1800/-. However, he failed to pay the balance amount of premium of Rs.1700/- within the stipulated time. The order also further discloses that respondent No.2 cancelled the said allotment order and directed refund of earnest amount to the said Dattu Jyotiba Jadhav. The case of the petitioner is similarly situated with that of Shri Dattu Jyotiba Jadhav. Respondent No.2-being statutory authority is expected to treat the parties similarly situated equally. The order of forfeiting the petitioner's earnest amount, in our view, is therefore discriminatory.

10. Justifiability of the forfeiture of the earnest money by the statutory authorities fell for consideration in the case of ***Teri Oat Estates (P) Ltd. (supra)***. The Apex Court considered the provisions of Section 8-A of the Capital of Punjab(Development and Regulation) Act, 1952, under which, the Estate Officer is authorized to allow payment of instalment/rent with penalty for the delayed period or order cancellation of lease and forfeit the whole/part of the earnest amount. The Apex Court held that such powers should be exercised only as a last resort. The Apex Court further held that application of the said power would depend upon the factual matrix in each case and no hard and fast rule

can be laid down. It was also observed that where lessee defaulted/delayed in payment of instalments of premium, interest thereon and ground rent in terms of letter of allotment and default/delay, found not to be wilful or dishonest but occasioned due to a situation beyond his control, resort to the drastic power of resumption and forfeiture would amount to a disproportionate action. In similar circumstances, the Apex Court in ***Jagmohan Singh (supra)*** held that the statutory authority should act in consonance with Article 14 of the Constitution of India and is bound to consider the subsequent events. In our considered opinion, these decisions are squarely applicable to the facts and circumstances of the present case. We have already found that the petitioner was not at any fault at all. We have also found that because of the inaction on the part of respondent No.2 to allot the plot of land in question immediately after the deposit of earnest money, the petitioner could not begin manufacturing of the spirit within the time stipulated under the LOI granted by the Excise Department. Respondent No.2, being the statutory authority, is required to take into consideration the subsequent events and act reasonably. We find that the action on the part of respondent No.2 in forfeiting the earnest deposit of the petitioner is arbitrary and, therefore, violative of Article 14 of the Constitution of India.

11. A reference must be made to the circular and decision of the Apex Court relied upon by Ms.Gadre, learned counsel for respondent Nos. 1 and 2. Under the circular dated 22nd January, 2014, respondent No.1 directed that following conditions should be included in offer letter and allotment order :

> "Condition to be inserted in the offer letter :
> "In case, you fail to accept the final allotment after it is communicated to you or fail to pay the balance of premium amount or to execute the Agreement to Lease, the Corporation shall forfeit the entire amount of Earnest Money."
>
> Condition to be inserted in the allotment letter:
> A) "In case the allottee fails to pay the balance amount of premium within a period mentioned above (period of 30 days from the date of receipt of allotment order), the allotment shall be liable to be cancelled without further notice."
> B) "In the event of the allotment being cancelled as aforesaid the Corporation shall forfeit the whole of the Earnest Money received with application.""

12. The petitioner was given offer letter on 22nd January, 2007 and allotment order on 20th January, 2010 respectively, which is prior to the circular dated 22nd January, 2014. This circular, in our view, therefore, cannot be made applicable to the petitioner's case

retrospectively. Be that as it may, respondent No.2 could not point out that the earlier circular dated 19th November, 1996 is modified or cancelled by respondent No.1. So far as the decision of the Apex Court in ***Shri Hanuman Cotton Mills and ors. Versus Tata Air Craft Limited (1970) 3 SCR 127*** relied upon by learned counsel for respondent Nos.1 and 2 is concerned, we are of the opinion that the same has no application to the facts and circumstances of the present case. The Apex Court, in that case, was considering the issue of breach of contract between private parties under Sections 64, 73 and 74 of the Indian Contract Act, 1872. In the present case, the issue is whether the statutory body can act unreasonably and arbitrary by refusing to refund the earnest amount despite there being no fault on the part of the petitioner.

12. In the result, we accordingly make Rule absolute in terms of prayer clauses (b)(i) and (ii). Respondent Nos. 1 and 2 are directed to refund to the petitioner the earnest amount of Rs.36,75,000/- along with interest @6% per annum from the date of cancellation of plot allotment order dated 25th May, 2012. The writ petition, accordingly, stands disposed of.

[ANUJA PRABHUDESSAI, J.] **[RANJIT MORE, J.]**