

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

WRIT PETITION NO. 4640 OF 2015

- 1] Prakash Dada Dalvi,
age 48 years, occ. Agril.
And business, R/o Hanga,
Tq. Parner, Dist. Ahmednagar,
 - 2] Jalindar Lahu Shinde,
age Major, occ. Agril.,
R/o as above,
 - 3] Sachin Bhaskar Pawar,
age Major, occ. Agril.,
R/o as above
- ...Petitioners

VERSUS

- 1] The Maharashtra State
Industrial Development
Corporation, through
its Managing Director,
 - 2] The Regional Officer,
The Maharashtra State
Industrial Development
Corporation, Nashik Division,
Office of the Regional Office
MIDC Audyogik Vikas Mandal,
Udyog Bhavan, 2nd Floor,
Satpur, Nashik,
 - 3] The Area Manager,
MIDC, Ahmednagar
- ...Respondents

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Shri N.V.Gaware, advocate for the petitioners
Shri S.S.Dande, Advocate for respondent no.1
Respondent nos. 2 and 3 served

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CORAM : S.V.GANGAPURWALA
AND
K.L.WADANE, JJ.

DATE OF RESERVING
THE JUDGMENT : 2.3.2017

DATE OF PRONOUNCEMENT
OF THE JUDGMENT : 31.3.2017

JUDGMENT (Per K.L.Wadane, J.)

Rule. Rule is made returnable forthwith.
With the consent of the learned counsel for the parties, taken up for final hearing.

2. It is the case of the petitioner that respondent no.1 has taken decision to set up M.I.D.C. at villages Hanga and Supa of Parner Taluka in Ahmednagar District, for which agricultural land of petitioner no.1 was acquired.

3. On 2.7.2005 the petitioners have registered a partnership firm named and styled as 'M/s Hangeshwar Ware House'. Consequently, the petitioners have submitted an application in the requisite form for

the allotment of the plot in the said industrial area for setting up a Ware House. The proposal of the petitioners was scrutinized and same was found to be fit. The Area Manager, M.I.D.C., Pune had issued allotment letter in favour of the petitioners thereby allotting the land admeasuring 5748 square meters bearing Plot No. X-34 in Supa-Parner Industrial Area subject to the conditions.

4. On 29.5.2007 the petitioners have paid the entire premium amount including earnest money and further the sanction was accorded to the said allotment by the Area Manager of M.I.D.C.

5. On 23.10.2008 the respondent no.3 Area Manager issued a communication in favour of the petitioners in respect of Plot No. X-34/1 thereby shrinking the size of the said plot to 2998 square meters and accordingly on 8.4.2008 the possession receipt was issued in favour of the petitioners. The petitioners were put to actual possession of the said plot No. X-34/1.

6. On 23.10.2008 the respondents have called upon the petitioners to execute the agreement with respondent no.1 in pursuance to the allotment of plot. An agreement was executed between the petitioners and respondent no.1. The petitioners had paid entire amount of Rs.2,99,800/- before execution of the lease deed. Thus, the petitioner became lawful allottee and holder of the said plot.

7. On 23.7.2012 the Deputy Engineer of M.I.D.C. had accorded fresh approval to the building plan of proposed industrial building on plot no. X-34/1 of "X block". The petitioners had carried out the construction of ware house strictly in accordance with the approved plan and the drawings submitted by them for the construction of ware house and they started the business activities. The Deputy Engineer of M.I.D.C. issued completion certificate in favour of the petitioners.

8. On 27.10.2014 the respondent no.2 Regional

Officer has abruptly issued a communication thereby shrinking/reducing the size of the plot to 2000 square meters in stead of 2998 square meters. The respondent no.2 has passed the said order in utter disregard and against the principles of natural justice without issuing any sort of notice and without offering the opportunity of being heard. It is further contended by the petitioners that pursuant to the agreement between the petitioners and respondent no.1 certain rights were created in favour of the petitioners. The impugned communication has been passed behind the back of the petitioners. The petitioners have submitted representations on 18.11.2014 and 8.12.2014 against the impugned communication, however, both the representations were rejected. Hence, this petition.

9. On behalf of respondent nos. 2 and 3 affidavit in reply is filed and it is contended that at the time of initial allotment of the plot the lay out plan was not at all sanctioned and despite the same, the allotment has been made by the then Officer

of the Corporation without verifying the said aspects and issued the offer letter and accepted the earnest money. It is further contended that in some cases the allotment orders were also passed and when the allottee made representations to the higher authorities for allotment of the plot, the matter was noticed and thereafter the competent authority directed to make the inquiry. In some of the cases the offers and allotment orders were issued of more than required area as per the project report. The competent authority of M.I.D.C. directed to reconsider the said offers and allotments and accordingly a Committee was constituted for the same. The said Committee after calling upon all the interested persons including the petitioners submitted its report to the competent authority.

Considering the report of the land allotment committee and project report, fresh offer and allotment letters were issued to the proposed allottees. The Committee found that the petitioners are eligible for the area of 2000 square meters as per the project report and as per initial demand of

the petitioner No.1.

10. It is further contended that the petitioners have suppressed some material facts from this Court i.e. the petitioners were called for the meeting of the Land Allotment Committee. The petitioners attended such meeting and after verifying the aspect of the project report an area of 2000 square meters was allotted to the petitioners. The petitioners have deliberately suppressed this fact. The petitioners were given information about the same and the petitioners have also attended the said meeting and after hearing the petitioners the impugned communication is issued to them.

11. The respondent/authority has power to reconsider the allotment as per the suitability based upon the project report. Accordingly, the respondents have allotted the plot admeasuring 2000 square meters to the petitioners. With this, the respondents have prayed to dismiss the Writ Petition.

12. We have heard Mr. N.V.Gaware, learned counsel for the petitioners and Mr. S.S.Dande, learned counsel for respondent no.1.

13. Mr. Gaware, learned counsel for the petitioners has argued that the respondent no.1 has executed an agreement in favour of the petitioners and thereby allotted a plot admeasuring 2998 square meters. The possession of the said plot was already handed over to the petitioners. The petitioners have constructed thereon a ware house as per the approved plan. Completion certificate was also issued in favour of the petitioners. Therefore, according to Mr. Gaware, learned counsel, the right is created in favour of the petitioners and subsequent alteration by way of shrinking the plot is an illegal act of the respondents.

14. As against this, Mr. Dande, learned counsel for respondent no.1 has argued that earlier allotment made was without approval of the lay out. Certain irregularities were committed by the then Officer of

the M.I.D.C. The Officer without verifying these aspects has offered certain plots to the allottees. When these irregularities were noticed by the higher authorities, the Land Allotment Committee was constituted. The Committee has examined all the allotments and after considering the project report of the allottees they have reconsidered and taken decision to allot plot as per the requirement based upon the project report and the respondents have every authority to alter the area of the plot given. Even the respondents have every authority to cancel such allotment.

15. We have perused the record. On perusal of the same, it appears that petitioner No.1, in the year 2003-2004, requested the respondents to allot him Plot admeasuring 2000 square meters. This was his initial demand as per requirement of his business. Subsequently, by filing another application on 25.02.2005, the petitioner No.1 demanded Plot No. X-34, admeasuring 5478 square meters. However, the petitioner was unable to deposit the required amount

with the respondents, therefore that offer was cancelled by the respondent authority. Subsequently, Plot No.X-34/1, Admeausring 2998 square meters was allotted to the petitioner. However, such allotment was without sanction of lay out plan. Such allotment was made in favour of the petitioner by the then Officer of the MIDC without verifying the said aspect and issued offer letter and accepted the earnest money from the petitioner. In some cases, allotment orders were also passed and when the allottee made representation to the higher authority for the allotment of the plots, the matter was noticed and it has been further noticed by the competent authority that there is no lay out plan sanctioned and despite that the offers and allotments of the plots were made. In some cases, the offers and allotment orders were issued more than the required area as per the project report. Further, it reveals from the record that after noticing such irregularities, the Land Allotment Committee was constituted. The said committee examined near about 18 allotments and found that such allotments were made without

sanction of the lay out plan and also the plot were of more area than required.

16. For allotment of plots, the respondents have considered the establishment of industry in the area, nature of its activities, its requirement, the environmental norms and after examination of such aspects, allotment of the plots were made to the allottees, including the petitioner. The petitioner requested for allotment of plots and submitted a project report for ware house as partnership firm and considering the project report, the Committee found the petitioner eligible for the area of 2000 square meters for setting up the activity. Based upon such report, Plot X-34/1 admeasuring 2000 square meters is allotted to the petitioner. The petitioner acknowledged the same. But this fact has not been mentioned by the petitioners in the writ petition. Respondent Nos. 2 and 3 have specifically contended that the petitioner has suppressed the material facts.

17. Considering the rival contentions of the parties, it reveals that earlier allotment of the plots admeasuring 2998 square meter was without sanction of the lay out plan. Allotment of a particular area without sanction of the layout plan is meaningless and without any base. Therefore the respondents, after scrutiny of the proposals, reallotted the plots as per eligibility of the allottees. In fact, the respondents have removed the irregularities in the allotment. Therefore, it cannot be said that such act of respondents is illegal.

18. The petitioners have relied upon the observations of this Court in PIL No. 68/2013, wherein, this Court has issued certain directions about handing over of possession of the plots which are carved without there being sanctioned lay out plan and further directed to auction plots on which the production activity is going on. In fact, the above observation is in favour of the respondents, since the earlier allotment of plot in favour of

the petitioner was without sanction of lay out plan.

19. Furthermore, the respondents have relied upon the provisions of Section 15 (f) (ii) of the Maharashtra Industrial Development Act, 1961, which reads as follows:

"15. Subject to the provisions of this Act, the Corporation shall have power -

(f) (ii) To modify or rescind such allotments, including the right and powers to evict the allottees concerned on breach of any of the terms or conditions, of their allotment;"

As per this provision, the respondents have power to cancel the allotment, in case of breach of any of the provisions of the Act. In the present case, initial allotment of plot was basically without there being sanctioned lay out plan. Therefore, it was in contravention of the scheme. The respondents have rightly cancelled the earlier allotment and have allotted plot, admeasuring 2000 square meters, considering the entitlement of the

petitioners, based upon the project report.

20. It is thus clear from the above facts and circumstances and the reasons mentioned that no case is made out by the petitioners. Writ petition is accordingly dismissed. Rule discharged. No order as to costs.

21. Status quo granted on 30th November, 2016 to continue till 14.04.2017.

(K. L. WADANE, J.)

(S. V. GANGAPURWALA, J.)

JPC