

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

WRIT PETITION NO.6583/2017

M/s. Shree Balaji Ginning &
Pressing Factory, MIDC
Bhokardan Road, Jafrabad, Jalna
Through partner Smt.Chandrakalabai
Rampratap Khandelwal,
Age 81 yrs, Occ-Business,
R/o Bazar Road, Jafrabad,Dist.Jalna
At present R/o Flat No.A-3, Golden
Palm Apartment, Kamla Nagar,
Near Abhushan Park, Deolai Road,
Aurangabad 431 005.

..PETITIONER

Versus

1]The State of Maharashtra,
Through Secretary,Industries Department
Mantralaya, Mumbai.
[Copy to be served on Govt.Pleader]

2]M.I.D.C. Udyod Sarathi
Marol Industrial Area, Anderi [East]
Mumbai – 000 092

3]M.I.D.C. Through
Regional Officer, Regional Office
MIDC Near Railway Station,
Aurangabad.

..RESPONDENTS

Mr.R.F.Totala, Advocate for petitioner
Mr.A.R.Kale, AGP for Respondent 1
Mr.S.S.Dande, Adv.for R.2 and 3.

**CORAM : S.C.DHARMADHIKARI &
MANGESH S.PATIL,JJ.**

**RESERVED ON :08/06/2017
PRONOUNCED ON :16/06/2017**

JUDGMENT [PER MANGESH S.PATIL,J.] :-

1] Rule. Rule is made returnable forthwith. By consent, heard finally at the stage of admission.

2] In this Petition under Article 226 of the Constitution of India, the petitioner which is a partnership firm is seeking a writ of mandamus or a writ in the like nature directing the respondents 2 and 3 which is a Corporation constituted under the Maharashtra Industrial Development Act, 1961 to execute a lease deed in respect of plot nos.A4 to A9 in its area at Jafrabad, Dist.Jalna and simultaneously restraining them from opening or finalising the tender process for allotment of these very plots.

3] According to the petitioner by virtue of a registered lease deed executed on 1/1/2004, plot nos.A3, C3 to C6 from the MIDC area at Jafrabad were leased out to it as per the deed which is at Exh."B" in the paper book. Realising that these plots will be insufficient to carry out the proposed industry, it applied for the adjacent plots as per the copy of the application at Exh.C. According to the petitioner in pursuance of its such offer, respondents 2 and 3 allotted it the plots totally admeasuring

8500 Sq.Mt at a premium of Rs.10/- per Sq.Mt., and it was called upon the deposit Rs.42,500/- being 50% of the amount as an earnest. Accordingly allotment order dated 8/8/2003 as per Exh.D was issued. The petitioner accordingly deposited the entire amount of Rs.85,000/- by way of a demand draft on 26/8/2003.

4] The petitioner has then averred that after the lease deed in respect of the plots A3 and C3 to C6 was executed it started construction of ginning and pressing factory and as per the allotment order dated 8/8/2003, it was also put into possession of the plots A4 to A9 which are adjacent to the ginning factory.

5] According to the petitioner plots A4 to A9 totally admeasure 8500 Sq.Mt. and it has wire fenced those and are being used for parking bullock carts for drying cotton. Due to sad demise of the elder son of one of the partners of the petitioner, she shifted to Aurangabad. When she went to the regional office of the respondents 2 and 3 in Aurangabad on 2/5/2017 to enquire about her application dated 9/1/2017 (Exh.G) whereby she had sought time to submit building completion certificate over the leasehold plots A3, C3 to C6 she came to know that the respondents 2 and 3 have floated a fresh tender for disposal of the undisputed plots viz. A4 to A9 which were already allotted to the petitioner. The bids were to be opened on 11/5/2017 and this is how the petitioner rushed to this Court by filing the petition and has sought a mandamus directing the respondents 2 and 3 to execute a lease deed of the plots A4 to A9 and also ad-interim relief directing

respondents 2 to 3 not to proceed with the tender process.

6] Respondents 2 and 3 appeared In pursuance of the notice and submitted affidavit in reply of the Area Manager of the respondents 2 and 3. He has not disputed about the plots A3 and C3 to C6 having been leased out to the petitioner by a registered lease deed. For that matter, he has also not disputed about having floated a tender for disposal of plots A4 to A9. However, he has denied to have ever allotted these plots to the petitioner. He has admitted that the petitioner had applied for allotment of these plots for extension of their business on the lease hold plots and offer letter was issued to it on 8/8/2003. However, he has contended that inspite of allotment of the lease hold plots in the year 2003, those were not put to substantial use and only 2172.83 Sq.Mt. out of the total area of 17402.17 Sq.Mt. was actually put to use and a substantial portion of the plot was available to the petitioner for expansion of its business.

7] The Area Manager of respondents 2 to 3 has further submitted that having noticed these facts a letter dated 30/9/2013 (Exh.R-3/A) was sent to the petitioner and which was duly received and acknowledged by it on 7/10/2013 (Exh.R-3/B). By serving such letter the earlier communication, by which these plots A4 to A9 was offered to the petitioner, was cancelled and even the amount of Rs.80,750/- was subsequently refunded. Thus according to him, these plots were never finally allotted to the petitioner. It has deliberately and intentionally suppressed these facts regarding cancellation of the offer way

back in the year 2013. There was no allotment letter ever issued or any possession receipt obtained in respect of these plots and therefore the petitioner is not entitled to any relief as prayed for.

8] The learned advocate for the petitioner referred to the following decisions to buttress his submission that the writ jurisdiction of High Court under Article 226 of the Constitution of India can be invoked to set right the illegality, irrationality and the procedural impropriety in the administrative decisions/actions of a State. The cases cited are : **[1] (2007) 14 S.C.C.517 Jagdish Mandal V/s State of Orissa and ors [2] (2004) 2 S.C.C.130 Teri Oat Estates (P) Ltd. V/s U.T.Chandigarh and ors. [3] 2015(3) ALL MR 717 M/s Punya Coal Roadlines & Ors V/s M/s Western Coalfield Ltd. & Anr.** The learned Advocate has also relied on the decision in **(2004) 3 S.C.C.553 in the case of ABL International Ltd. and Anr V/s Export Credit Guarantee Corporation of India Ltd. and others** and submits that in appropriate cases the writ Court has jurisdiction to entertain Writ Petition involving disputed questions of fact and there is no absolute bar.

9] The learned advocate for the petitioner has submitted that the offer of the respondents 2 to 3 for allotment of plots A4 to A9 to the petitioner was duly accepted by the latter and thus there was a concluded contract which could not have been revoked/cancelled unilaterally. The action of the respondents 2 and 3 in taking steps for offering the very same plots or disposal by way of auction in breach of the earlier contract is illegal and

calls for intervention at the hands of this Court.

10] So far as the principles laid down in the catena of decisions referred to by the learned advocate for the petitioner are concerned, with respect, there can be no dispute that it is trite that the powers of the Courts to judicially review administrative decisions/actions are duly governed by principles laid down therein, popularly known as Wednesbury's principle. Similarly there also cannot be two opinions about the fact that merely because there are disputed facts, a writ Court cannot refuse to exercise its jurisdiction. As also there can be no dispute that once an offer is accepted and is duly communicated before it is revoked gives rise to a concluded contract.

11] Even accepting and following the above legal principles it is apparent that the petitioner is not entitled to invoke any benefit therefrom as will be demonstrated herein.

12] It needs to be emphasized that admittedly the plots A4 to A9 belong to the statutory corporation and in a sense vests in the Government body. It is trite that any transaction for disposal of such property vesting in a corporation as contemplated u/s 39 of the MIDC Act, 1961 cannot take place by private negotiations. Respondents 2 and 3 who are the officers of the corporation are expected to act with utmost transparency without there being any prejudice to the interest of the corporation. In view of such position, the petitioner's version that the respondents 2 and 3 had offered to lease out the plots A4 to A9 does not hold any water for more reasons than one.

Beginning with the pleading, there is absolutely none as far as the details of the so called leasehold rights, alleged to have been derived by it. Admittedly the lease is not written, even its tenure is also not pleaded and prescribed and no explanation is coming forth as to what steps were taken towards finalisation of whatever dealings that were to take place for disposing of these plots to the petitioner. In the absence of such pleadings and any concrete lease deed, where from the petitioner could have derived rights, one cannot conclude that it was an offer put forth by respondents 2 and 3 which was accepted by the petitioner and has become a concluded contract. At the most it can be said that there were some sort of preliminary deliberations, the petitioner having expressed its intention to have few more plots and the willingness of the respondent 2 and 3 to accommodate him. However, the talks seem to have never reached finality for years together for omission on their part to reach a concluded contract.

13] It must be remembered that the petitioner is a business establishment and had already got executed a registered lease deed in respect of plots A3, C3 to C6 and was certainly not oblivious of such requirement of registered lease deed even for deriving similar rights in respect of plot A4 to A9. However, they never seem to have taken any steps towards finalisation of such subsequent deliberations and allowed the things to linger. Precisely for these reasons, even the claim of the petitioner can be castigated as suffering from delay and laches.

14] In reply to the argument on behalf of the respondents 2

and 3 to the effect that the petitioner who was made aware about cancellation of the offer in respect of the disputed plots A4 to A9 (Exh.R-3/A) the learned advocate for the petitioner submitted that the letter was firstly never served to the addressee lady who is one of the partners of the petitioner and secondly it merely referred to the building completion certificate in respect of the lease hold plots A3 and C3 to C6.

15] This explanation of the learned advocate for the petitioner is apparently a lame attempt to somehow come out of the harshness of the consequences. A careful reading of the letter dated 30/9/2013 would clearly reveal that apart from reference to the building completion certificate, a specific reference was also made to the offer letter dated 8/8/2003 which was admittedly in respect of the additional area of 8500 Sq.Mt. that was sought to be leased out. Not only this but even in the reply dated 28/10/2013 (Exh.R-3/C) to this letter dated 30/9/2013 the lady had specifically acknowledged about having received the letter dated 30/9/2013. There being no counter emanating from the petitioner's side disputing any such reply having been sent, one can safely proceed that it admits to have sent this reply to the letter dated 30/9/2013. This document clearly falsifies the submission of the learned advocate for the petitioner on all fours.

16] Conspicuously even in this reply the petitioner's partner has conveniently avoided to object to the cancellation of the so-called allotment of the disputed plots A4 to A9. In such circumstances, the conclusion drawn by us that the petitioner's

claim suffers from delay and laches as well as acquiescence stands fortified.

17] For all these reasons, the precedents cited by learned advocate for the petitioner and the arguments advanced do not come to the rescue of the petitioner and does not entitle it to solicit writ jurisdiction of this Court. Petition fails. Rule is discharged.

(MANGESH S.PATIL,J.) (S.C.DHARMADHIKARI,J.)

18] At this stage, a request is made by learned counsel for the petitioner to continue the ad-interim arrangement and, particularly, the contesting respondent may initiate process but should not conclude it for reasonable period so as to enable the petitioner to decide on the future course of action including challenging the judgment in higher Court. The request is opposed.

19] Bearing in mind our finding and conclusion, we do not think that this is a fit case for continuing the interim arrangement. Request is refused.

(MANGESH S.PATIL,J.) (S.C.DHARMADHIKARI,J.)

umg/

