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

**WRIT PETITION NO. 8248 OF 2017**

**ASHOK SURSINGH BHIMANI AND ANOTHER  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS**

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**Advocate for Petitioners : Kulkarni Suresh M.  
AGP for Respondents: Mr.A.R.Kale  
Adv.Mr.S.S.Dande for R. 3 to 5.**

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

**DATE : 19/07/2017**

**PER COURT :-**

1] This Petition under Article 226 of the Constitution of India challenges the notices issued by the Maharashtra Industrial Development Corporation [MIDC] through the regional office.

2] The petitioner was served with a notice initially on 11/6/2015 and thereafter on 22/4/2017 terminating an agreement dated 27<sup>th</sup> July 2012. The argument is that the petitioner was allotted the land for setting up an industry in the Supa-Parner industrial area. Plot No.E-3 admeasuring 3000 Sq.Mtrs. came to be allotted by an allotment order dated 2<sup>nd</sup> August 2007.

3] The argument of Mr.Kulkarni is that though this allotment order was issued, it could not fructify into handing over of physical possession or conferment of legal title. Though the possession was handed over on 27/3/2010, the agreement with the MIDC and in the prescribed form came to be executed only on 27/7/2012. Thus there was no legal title to commence or carry out any development. It is in this backdrop that the condition imposed in the agreement that the development should take place within five years must be construed and viewed. However, the notice of termination and the action of the MIDC in pursuance thereof conspicuously omits to state the fact that the petitioner was in no way responsible for the delay in carrying out any development. Though the petitioner applied and obtained the building permission, there was an obstruction by the villagers. The obstruction was raised specifically by the erstwhile owner. The petitioner was therefore constrained to approach a Civil Court. The Civil Court came to the rescue of the petitioner and it passed order on 10/12/2013. Even thereafter, no assistance was provided by the MIDC or its regional office. The MIDC did not take up the petitioner's cause, even the local police station did not assist the petitioner and was non cooperative. It is in these circumstances that this Court should set aside the notice of termination and the impugned action of resuming possession of the property. Though the petitioner is in physical possession, even today the MIDC and its officials have highhandedly prepared and drawn up a panchanama. This is a unilateral act. The petitioner was present at the site but it is the MIDC officials who could not take physical possession on account of the opposition by local farmers and agriculturists. They had entered the land and have carried out certain work. It is in these circumstances that this Court should interfere in its writ jurisdiction.

4] Mr.Kulkarni has invited our attention to not only the annexures

to the petition but the affidavit in reply of the MIDC and the rejoinder of the petitioner. He would submit that the action is hasty, unfair, unreasonable, unjust and violative of the mandate of Article 14 of the Constitution of India.

5] On the other hand, Mr.Dande appearing for the MIDC would submit that this Petition has no substance and it must be dismissed. Our attention is invited to statements in the affidavit in reply and it is urged that there is no denial thereof. It is claimed that the petitioner has no vested right and cannot claim restoration of possession of the subject plot once the agreement has been cancelled. There was an agreement to lease executed and by that agreement the petitioner agreed to complete the construction of building, in accordance with the plans approved, within a period of five years from the date of allotment. The MIDC was always ready and willing to execute the agreement but it is the petitioner who was entirely at fault. Admittedly the petitioner resides at Navi Mumbai. The petitioner was aware that the agreement to lease was executed on 27/7/2012. Even if one computes and calculates the period of five years from this date, it is evident that the petitioner delayed the whole process. The advance possession was obtained by the petitioner on 27/3/2012. Even after the agreement was executed, a letter was written by the petitioner requesting the MIDC to accommodate him as he has his own personal difficulties. It is claimed by him in his letter dated 18/6/2012 addressed to the Regional Manager that because of his domestic problems and difficulties he could not execute the regular agreement though the preliminary agreement entitled him to commence and carry out construction. He undertook that the moment this agreement is executed, he would carry out the construction and produce the completion certificate. It is urged by Shri Dande that even from the date of this letter the petitioner did nothing. It is

pointed out that despite the injunction order from the trial Court no development was carried out. If no development is carried out and the petitioner was accommodated time and again, then this Court should not enter into any disputed question. All the more when there was a show cause notice served on the petitioner way back on 30/4/2013, on 2/5/2013, this show cause notice was replied by the petitioner and the petitioner admitted that there was a delay on his part. He requested for extension of time for obtaining building completion certificate. This letter was considered favourably by the MIDC and it granted an extension of time till 31/08/2013. Even thereafter, all the requests made by the petitioner and deemed as reasonable came to be accepted. There was a re-measurement of the plot so as to ascertain exact boundaries and carried out in the terms of the petitioner's request in writing made on 24/4/2013. The MIDC assisted him by calling upon its Surveyor to remeasure the plot. The building plans were submitted for the first time on 19/6/2013. The building plans were promptly approved on 27/6/2013. Even after sanctioning of the building plans, no construction was carried out. Assuming that until the trial Court order, petitioner was prevented from carrying out any development on the plot, still thereafter, there was enough time for him to commence the work. The MIDC assisted him by calling upon him to participate in a scheme styled as Udyog Sanjivani Yojana 2015. The petitioner was issued a communication on 15/12/2015. He once again requested for extension of time as per the scheme. Petitioner was informed on 4/1/2016 that the request for grant of extension would be considered subject to payment of Rs.1,57,000/- towards non-refundable additional premium fees. Even this reasonable term was not complied with. It is in these circumstances, that the MIDC was constrained to terminate all agreements and served him a notice. The notice was that he should remain present at the site to

hand over vacant, peaceful possession of the plot. He failed to remain present.

6] It is in the above circumstances, that Mr.Dande would submit that the mandate of equality enshrined in Article 14 of the Constitution of India has not been violated in any manner. The Writ Petition be dismissed.

7] With the assistance of both counsel, we have perused the Petition and all Annexures thereto. We have perused the affidavit in reply and the annexures thereto and the rejoinder affidavit filed by the petitioner. On a perusal of these materials, we find much substance in the contentions of Shri Dande.

8] The MIDC admittedly allotted the plot on 2/8/2007. The Writ Petition contains the averment and the admitted position but fails to indicate and conveniently that the petitioner sought a extension and accommodation repeatedly from the MIDC. In the reply affidavit of the MIDC, apart from making a specific statement to the above effect all the relevant documents have been annexed. On 18/6/2012, it is the petitioner who addressed a letter to the Regional Manager. The Regional Manager duly received this letter which acknowledges that the plot was handed over and possession was taken by the petitioner and that the MIDC was ready and willing to execute all the documents particularly in relation to legal title. However, it was the petitioner's domestic difficulties which prevented him from coming forward and taking the requisite steps. The petitioner was duly informed that he will have to abide by the terms and conditions of the agreement. The petitioner was also informed that in the event he fails to abide by the stipulation in the agreement, he would have to face all the legal consequences. It is common ground that on

30/4/2013 and aware of the petitioner's request and representations, the pendency of the Civil Suit, the MIDC did not pursue its notice dated 30/4/2013. On 30/4/2013, a show cause notice was issued calling upon the petitioner to show cause as to why action in terms of Clause-V (b) (I) of the agreement to lease should not be taken. It is common ground that such an agreement ought to be executed and was executed. There is no challenge raised at any time to the recitals or clauses/covenants therein. The covenants with regard to carrying out construction and development of plot bind the petitioner. The petitioner therefore, replied to the show cause notice and the same was duly considered. The Corporation on 28/5/2013 informed him that since he has paid Rs.34,200/- towards nonrefundable additional premium, the extension was granted upto 31/8/2013 for approval of plan and completion of construction of factory building and obtaining building completion certificate. At page 119 of the paper book is this letter. The petitioner then was informed that he has to take the requisite steps and he was reminded that if he requires any extension then he would have to approach the competent authority. At page 121 of the paper book is the letter addressed by the petitioner. The petitioner say that as discussed, he submits the plan but he requires an extension or correction deed. Since the agreement to lease was executed late on 27/7/2012, the period of five years will be counted from that date. Therefore, the extension was granted till 31/8/2013 as per the request of the petitioner himself. Then, at page 123 of paper book is a letter whereby the petitioner requested the Regional Officer to depute a Surveyor for remeasurement of the plot to ascertain the exact boundaries. He states in this letter that the plan for construction is ready and he would be able to make any changes if necessary after remeasurement. Promptly on 2/5/2013, the MIDC informed its Surveyor that he should carry out the necessary measurement and

submit a report. Thereafter, what the petitioner does is to seek a building permission/commencement certificate. Even that is granted on 27/6/2013. After obtaining this commencement certificate, the petitioner was expected to commence and complete the development and construction activity. However, as set out in the affidavit in reply, he failed to carry out any such construction. He was informed on 4/12/2015 that even the extension has come to an end on 31/8/2013, he would be accorded a last or final opportunity, if he desires to obtain any assistance under the scheme styled as Udyog Sanjivani Yojana 2015. This letter, copy of which is at page 137 of the paper book has been received for we find that on 15/12/2015 the petitioner addresses a letter to the MIDC. He informs that the local villagers/residents are obstructing carrying out any construction activity. That is why he wants a special extension/time limit under this Yojana. He also agreed to provide the revised construction program and even pay the fees for the same. He therefore, prayed for extension. This letter was duly replied on 4/1/2016. The petitioner was informed by this letter by MIDC that he had already been granted three extensions. Now, if he wants a further extension he should deposit a sum of Rs.1,57,000/- as non refundable additional premium.

9] This communication dated 11/01/2016 gave eight days time for the above purpose. Since that was also not replied nor the amount paid, the Corporation was constrained to cancel or terminate the agreement.

10] Even if we agree with Mr.Kulkarni that there has been a modification and mutually carried out to the covenants and clauses of the agreement, still we are of the opinion that the Corporation has indulged the petitioner enough. Even if the petitioner makes a

excuse of not been able to carry out any construction or development activity on account of obstruction and illegal intervention by the villagers, still he was aware of his legal rights. On the strength of the documents executed or an agreement entered into, he could persuade a Civil Court to grant an injunction in his favour. Even if we assume that the petitioner was not at fault for being unable to carry out any development and construction activity still there is no justification in failing to carry out same from 2012 to 2017. Even if we compute the period from the date of the injunction in favour of the petitioner dated 10/12/2013, still no steps were taken beyond seeking extension. Even when the extensions were granted, all assistance and cooperation was rendered by MIDC, the remeasurement was done, still the petitioner failed to commence the construction. From the date of receipt of the construction permission, viz. 27/6/2013, or we take the date of order of injunction from 10/12/2013, the petitioner did not take any steps. He went on seeking extensions after extensions. He was accommodated by the MIDC by offering a scheme or the benefit of the scheme already framed. Thus, a budding entrepreneur or a businessman and industrialist genuinely interested in setting up an industry, was assisted in every possible manner by the Corporation. We do not think any Corporation and much less the MIDC can wait endlessly for parties like petitioner to abide by the terms and conditions of an agreement and voluntarily executed. Eventually MIDC deals with public properties. It cannot allow public property to be retained by the private parties even after breach of the terms and conditions, on which it was allotted. If the indulgence shown and as noted above is undisputed or we find no whisper about the same, in the rejoinder affidavit, then we do not think that the petitioner deserves any equitable and discretionary relief. The rejoinder affidavit has also been perused by us. Beyond disputing the panchanama and bringing on record the judgment in



Regular Civil Suit No.1016/2012, the petitioner has done nothing. The petitioner has not stated anything which would controvert the statements in the affidavit in reply or the contents of the written documents. The petitioner may have addressed some letters here and there but he has suppressed the fact that it is he who sought extension from the MIDC. If he was accommodated then it was the bounden duty of the petitioner to have disclosed the full materials.

11] As a result of the above discussion, and finding that there is a gross suppression of material facts, so also on merits, the petitioner does not deserve any equitable and discretionary relief, we proceed to dismiss the Petition. The ad-interim relief is vacated forthwith.

**(MANGESH S. PATIL,J.)**

**(S.C.DHARMADHIKARI,J.)**

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