

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

WRIT PETITION NO. 6432 OF 2012

1. Shri Vinod S Shedekar & Anr. ... Petitioners

Vs

1. State of Maharashtra & Ors. ... Respondents

Ms. Gauri Deshpande i/b Mr. Y.M. Pendse for the Petitioner.

Ms. Sushma Bhende, AGP, for the Respondent Nos.1 to 3.

Mr. Prashant Chavan with Mr. Navdeep Vora i/b Navdeep Vora & Associates for the Respondent No.4 - MIDC.

**CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.**

THURSDAY, 23RD FEBRUARY, 2017

P.C. :

1 The petitioners dues towards gratuity and as crystallized in a certificate issued under section 8 of the Payment of Gratuity Act, 1972, read with Rule 19 of the Payment of Gratuity (Maharashtra) Rules, 1972, have still not been recovered by the concerned authorities. They are obliged to recover the same as arrears of land revenue.

2 One of the immovable properties and claimed by the employer is a plot of land in the Maharashtra Industrial Development Corporation's Industrial Estate. The MIDC states that the plot of land belongs to it and ordinarily it is leased to such entities who are interested in setting up the industries. The lease is obtained after due compliance with the Act and the Rules, more particularly referred in the affidavit-in-reply of the MIDC. The MIDC has raised the specific contention that the defaulter employer / company has no right, title and interest in the immovable property. However, without prejudice to its rights and contentions to proceed against the defaulter in terms of the statutory regulations, namely MIDC Land Disposal Regulations, 1975, which are traceable, according to the MIDC, to the Act of the State Legislature styled as Maharashtra Industrial Development Act, 1961, the said plot and more particularly described in the affidavit can be sold by a public auction.

3 In paragraph 3.5 of the affidavit of the MIDC, it is stated as under :

"3.5) It is submitted that since the Respondent No. 5, M/s. Asha Brothers Pvt. Ltd. were only the licensees of MIDC under the Agreement to Lease they

do not have any interest in the said plot as lease was never executed in their favour. However, considering the sentiments expressed by this Hon'ble Court during the course of arguments and the fact that M/s. Asha Brothers Pvt. Ltd. were having their factory on the said Plot No. C-35 till its closure in the year 2002, the MIDC is agreeable that in the event this Hon'ble Court directs the Tahsildar, Thane to auction the rights of Respondent No. 5 in the said Plot No. C-35, MIDC would permit transfer in favour of Auction Purchaser subject to payment of all the dues of MIDC under the provisions of MID Act, the Rules and Regulations, various circulars issued therein including dues towards differential premium, extension charges, service and other charges. This Hon'ble Court may direct that the said dues of MIDC be recovered from auction price and any deficiency in the same be paid by the Auction Purchaser. It is submitted that transfer in favour of the Auction Purchaser would be permitted by MIDC only after recovery of all the dues of MIDC before the said transfer in favour of Auction Purchaser is effected in the record of MIDC.

4 In the light of this stand of the MIDC, we do not see any impediment in the authorities now proceeding to recover the amounts / dues crystallized as above and in accordance with law. Therefore, respondent Nos.2 and 3 shall proceed on the footing that the respondent No.5 defaulter-employer, though allotted a plot as above, has not paid the amount due and payable by it to the workers/employees. Therefore, they can proceed to auction the movable and immovable properties. They shall take requisite steps as expeditiously as possible and within a period of eight (8)

weeks from the date of receipt of a copy of this order.

5 The writ petition, accordingly, stands disposed of. All concerned to act on an ordinary copy of this order.

6 The petitioner's advocate shall duly intimate this order to the Collector, Thane as also the respondent No.3 - Tahsildar.

B.P. COLABAWALLA, J.

S.C. DHARMADHIKARI, J.