

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

WRIT PETITION NO. 8033 OF 2015

Vidyut Metallica Ltd. & Anr. ... Petitioners
V/s.
Maharashtra Industrial Development
Corporation & Ors. ... Respondents

Mr. Mustafa Doctor, Senior Advocate, a/w Mr. Rohan Cama, Mr. P. Parekh, Ms. Ashna Contractor i/b M/s. Federal & Rashmikant for the Petitioners.

Mr. Prashant Chavan a/w Ms. Chaitali Kandare i/b Navdeep Vora & Associates for Respondent No.2.

Ms. Jyoti Jadhav, A.G.P. for Respondent No.3.

**CORAM : ANOOP V. MOHTA AND
MANISH PITALE, JJ.**

DATE : 13th NOVEMBER, 2017.

ORAL JUDGMENT : (Per Anoop V. Mohta, J.)

1. Rule returnable forthwith. By consent of parties, Petition is taken up for final hearing.

2. The Petitioners have challenged order dated 28.07.2015 of Respondent-Maharashtra Industrial Development Corporation (MIDC) whereby lease agreement dated 11.07.1975

was terminated and directed the Petitioners to handover the possession for non-use of the plot for long. This Court on 10.08.2015, directed the parties to maintain status-quo in all respects. The Petitioners have been in possession of the plot till this date.

3. The Respondents by reply dated 23.06.2017 resisted the claim made in the Petition in every aspect. Petitioners by rejoinder reiterated the case and placed on record substantial document/material to support their case to show that they have been using the plot since 23.07.1962, based upon earlier agreements. The impugned lease agreement for 99 years is dated 11.09.1975. Even prior to the lease agreement, before the establishment of MIDC, pursuant to Maharashtra Industrial Development Act, 1961, based upon the earlier agreements, the Petitioners have been in possession of the plot. After formation of MIDC, they entered into the agreement so recorded. Based upon the conditions, the Petitioners had established factory and started using the plot but because of accident they were unable to use it further. However, because of an unfortunate fire-accident on 04.04.2010, the running factory having 350 employees, was

required to be closed down. This, in addition to the facts of dispute between the family members/directors since 2010, also resulted into delay in restarting of the factory and/or re-use of the plot after the stated incident. The averments and material so placed on record by affidavit dated 27.07.2017, also reflects their steps taken to restart the factory/production on the plot.

4 These undisputed factors, we are inclined to take note of while disposing the present Petition finally. The litigations details are on record, that prevented the Petitioners to start the new business/production. The Petitioners have with supporting material made the representations to Respondents to re-consider their case and grant the requisite sanction/permission to re-start the business/production afresh. The Respondents, however, by impugned communication dated 28.07.2015 terminated the lease.

5 Both the counsel appearing for the parties read and referred the lease agreement and its conditions. We have also gone through the same. There is no term/condition in the covenant whereby in situation like this, the MIDC is empowered to cancel the lease of 99 years abruptly.

6 There is no breach of any specific terms and/or conditions read or shown in the background, so referred above. The power of the Respondents to terminate and/or cancel the lease if there is breach and/or breach of covenants need no discussion. Such a power is always available with the MIDC, however, it should be within the frame work of law and the record. In the present case, as noted above, there is no breach of specific terms and/or conditions. There was no intended stoppage of business and/or production. Therefore, this background itself can not be the reason to cancel such lease. Due to pendency of litigation, Petitioners were unable to restart the factory and/or production. Unfortunate incident including pendency of such litigations, is beyond the control of Petitioners. We see that there is no reason to refuse opportunity to the Petitioners to re-start the business on the legally allotted plot.

7 After going through the documents placed on record including the averments so made, we are of the view that there was no intentional delay and/or reason on the part of the Petitioners in re-starting the production/factory on the plot. From the material placed on record including the justification so given, as reflected in

representations dated 08.02.2016 and 26.02.2016 and also the Petitioners rejoinder so filed, we are convinced that, in the interest of justice, the Respondent-Corporation is required to consider the explanation, justification and the material placed on record by the Petitioners and to revoke or cancel and/or withdraw the order/communication, intimation dated 28.07.2015. Even otherwise the Petitioners are eligible and entitled to start the business/production though the plot was lying vacant for a considerable time, for the reason so recorded.

8 The action of Respondents, in the absence of any specific breach of any clause and/or condition in the background so referred above, is unjust, unacceptable and illegal. We are, therefore, inclined to consider the case of Petitioners by setting aside the order/Notice dated 28.07.2015. Liberty is granted to the petitioners to file additional representation, if any, within two weeks. Hence the following order.

ORDER

a) The Petition is allowed.

- b) The order notice dated 28.07.2015 is quashed and set aside.
- c) We direct the Respondents to consider the case of the Petitioners based upon the representations, including representations dated 08.02.2016 and 26.02.2016, in accordance with law. All contentions are kept open of both the parties.
- d) All representations to be decided, as early as possible, preferably within eight weeks from today.
- e) We are inclined to order the parties to maintain status-quo with regard to the possession of the plot pending the hearing and disposal of representations, and two weeks further if adverse order is passed against the Petitioner.
- f) Rule is made absolute in the aforesaid terms with no order as to costs.

(MANISH PITALE, J.)

(ANOOP V. MOHTA, J.)