

WRIT PETITION No. 9315 OF 2005

- | | | |
|---|-------------------------------------|-----------------|
| 1 | Kamlakar Bhimrao Patil |) |
| | Adult, Age 37 yrs. Proprietor of |) |
| | Maitreya Group of Companies, |) |
| | Residing at Flat No.12, IVth floor, |) |
| | Bipin Vijay Super Market, |) |
| | Burud Galli, Sangli |) |
| 2 | Terrafirm Softtech Private Limited |) |
| | formerly known as Everest Realtors |) |
| | Pvt. Ltd., a company registered |) |
| | under the Companies Act, 1956 |) |
| | having its registered address |) |
| | at Everest House, Office Floor, |) |
| | Plot No.157 18 th Road, |) |
| | Near Ambedkar Garden, Next to SBI, |) |
| | Chembur (East), Mumbai-400 071. | ... Petitioners |

Vs.

Maharashtra Industrial)
Development Corporation)
A Statutory Corporation, constituted)
under the Provisions of the MIDC)
Act, having registered office at)
Jeevan Prakash, 4th floor,)
Mumbai 400 001. ... Respondent

Mr. Shrihari Aney, Sr. Advocate a/w Ms. Shyamali Gadre a/w Shamira Naik i/b M/s. Little & Co. for the Respondent-MIDC.

CORAM : ANOOP V. MOHTA, &
MANISH PITALE, JJ.

RESERVED ON : NOVEMBER 28, 2017

PRONOUNCED ON : NOVEMBER 30, 2017

JUDGMENT [PER : MANISH PITALE, J.]

1. Heard. Rule. Rule is made returnable forthwith. Learned advocate Ms. Shyamali Gadre waives service of notice for the Respondent – MIDC. By consent of parties, petition is taken up for final hearing.

2. The Petitioners have invoked writ jurisdiction of this Court praying for quashing of letter dated 30th March, 2005 issued by the Respondent – Maharashtra Industrial Development Corporation (hereinafter referred to as the “MIDC”), as being arbitrary and illegal and they have further sought a direction to the MIDC to execute lease-deed in favour of Petitioner No. 2 in respect of the piece of land in question, allegedly allotted to them in what is called the Knowledge Park Airoli, with a further direction to place the Petitioners in possession of the said piece of land. The essential grievance of the

Petitioners is that, having allotted the said piece of land in their favour, and the Petitioners having adhered to the requirement of deposit of consideration amount, the MIDC could not have returned the demand drafts of the said amount by the impugned letter dated 30.3.2005, thereby rescinding the allotment of the said land made in favour of the Petitioners.

3. The facts of the present case, as discernible from the pleadings and documents on record, are as follows:

. On 7.7.2004 the Petitioner No. 1 made an application for allotment of the land in question i.e. 116000 sq. mts. in Knowledge Park, Airoli to the MIDC in terms of the MIDC Land Disposal Regulations, 1975 (hereinafter referred to as the “Land Disposal Regulations”), wherein the land can be disposed by the MIDC either by public auction or by entertaining individual applications. The Petitioner No. 1 submitted the said application alongwith a Project Note, giving a brief description of the project that he intended to start on the said piece of land. Petitioner No. 1 was called to attend a meeting with the Land Allotment Committee of the MIDC on 9.8.2004, and thereafter on 17.8.2004 a resolution was passed by the

MIDC to allot the said piece of land in favour of Petitioner No. 1 by charging premium @ Rs. 1,800/- per sq. mt., amounting to a total consideration (premium) of Rs. 20,88,00,000/- (Rupees Twenty crores, Eighty Eight Lakhs).

4. On 15.9.2004 the Area Manager of the MIDC issued an offer letter to Petitioner No. 1 stating that the Land Allotment Committee of the MIDC had decided to offer him the said land in question by charging premium at the aforesaid rate. The Petitioner No. 1 was requested to submit the enclosed blue application, completed in all respects with a demand draft of Rs. 10,44,00,000/- towards earnest money within 15 days of the receipt of the offer letter. The said amount was equivalent to half of the total amount of consideration for the said land. As per Clause 9 of the said offer letter, it was stated that said offer was valid only for 15 days, by the end of which the offer letter would stand lapsed. Clause 8 of the said letter stated that the MIDC reserved its right to reject the application without assigning any reason. On 29.9.2004, Petitioner No. 1 submitted a letter to the concerned Minister, who was Chairman of the MIDC, seeking extension of 90 days period i.e. upto 30.12.2004 for deposit of

the aforesaid amount of earnest money. An endorsement on the said letter by the Minister / Chairman of the MIDC states that such extension stood granted. As a result, Petitioner No. 1 now had extended time till 30.12.2004 to submit the blue application alongwith the aforesaid amount of earnest money.

5. On 18.12.2004 Petitioner No. 1 in the capacity of the Director of Petitioner No. 2 submitted the blue application before the MIDC, but the demand draft of the amount of earnest money was not submitted alongwith the said application. On 27.12.2004, Petitioner No. 1 claimed to have entered into an arrangement with Petitioner No. 2 – Company for the proposed Project on the said land. On 30.12.2004, which was the last date of the extended period for submission of the blue application alongwith the demand draft of the aforesaid amount of earnest money, a person claiming to be a partner of one of the group of companies of Petitioner No. 2, sent a letter to the Regional Officer of the MIDC claiming that he was making arrangement for deposit of the amount but as he was stranded in Malaysia on account of Tsunami, he would be able to deposit demand draft as soon as he returned to India in the first week of

January, 2005. It is relevant that the scored out portion in the said letter stated that a cheque for amount of Rs. one crore, dated 6.1.2005 was being enclosed but since the said portion was scored out, there was no such cheque accompanying the said letter dated 30.12.2004. Thus, even on the last day of the extended period, the Petitioners had failed to deposit earnest money, as required under offer letter dated 15.9.2004. In fact, no amount was deposited by the said date.

6. Thereafter on 13.1.2005, the Petitioners submitted a letter to the Regional Officer of the MIDC stating that, as promised by one of the Directors of Respondent No. 2 by letter 30.12.2004, a demand draft of Rs. one crore was being sent alongwith letter dated 13.1.2005. It was also stated that Petitioners were making arrangements from Banks and Financial Institutions for payment of the balance premium amount. A request was made in this letter that further communications may be addressed in the name of Petitioner No. 2. On 14.1.2005 the Regional Officer of MIDC sent a letter to Petitioner No. 2 referring to the aforesaid letter dated 13.1.2005 and requested for certain documents. On 17.1.2005, Petitioner No. 1 sent a letter to the Chief Executive Officer of the MIDC requesting that appropriate directions

be given to the Regional Officer of MIDC for issuing letter in the name of Petitioner No. 2 and further that he was ready to deposit the entire amount of premium instead of the earnest money, which was only half of the entire premium. On 31.1.2005 Petitioner No. 2 submitted documents before the Regional Officer of the MIDC.

7. On 4.2.2005 the Area Manager of the MIDC sent a letter to Petitioner No. 2, returning the demand draft of Rs. one crore dated 13.1.2005 and it was stated that the proposal for allotment of the land to the Petitioner No. 2 could not be considered. The Petitioners have seriously disputed the existence of the said letter dated 4.2.2005 on the ground that they never received such a letter.

8. Thereafter on 9.3.2005, Petitioner No. 1, as Director of Petitioner No. 2 Company sent a letter to the Chairman of the MIDC, enclosing three demand drafts, amounting to balance premium of Rs.19,88,00,000/-. It was stated in this letter that as per a meeting held on 7.3.2005 with the Chairman, the Chief Executive Officer of MIDC agreed to accept the aforesaid balance premium for the land in question towards full and final payment. A request was made that a lease agreement may be executed in the name of Petitioner No. 2 for

the said land. On 30.3.2005 the Area Manager of MIDC sent a letter to Petitioner No. 2 returning all the four demand drafts, amounting to entire premium, stating that the request of Petitioner No. 2 for allotment of land in question at the Knowledge Park, Airoli could not be considered.

9. It is this letter, which is the subject matter of challenge in the present writ petition, filed on 22.12.2005. It is relevant to mention here that when the present writ petition was filed on 22.12.2005, the Petitioners did not annex the letter dated 9.3.2005 whereby they had deposited the amount of balance premium, although a reference was made to the fact that the demand drafts for the balance premium amounts were deposited by the Petitioners on or about 9.3.2005. The writ petition was heard by this Court on 31.1.2006 and an order was passed dismissing the same on the ground that Petitioners were claiming specific performance of contract, which prayer could be considered by a civil court of competent jurisdiction. Aggrieved by the same, Petitioners filed a Special Leave Petition (Civil) No. 3162 of 2006 wherein notice was issued by the Hon'ble Supreme Court on 20.2.2006 and interim direction was given that no third party rights

would be created.

10. On 28.1.2009, the Hon'ble Supreme Court disposed of the said SLP by granting leave and holding that the High Court could have decided the matter. The writ petition was restored by the Hon'ble Supreme Court, directing the parties to appear before this Court on 9.2.2009, extending the interim direction till the said date. The Hon'ble Supreme Court categorically observed that it had not expressed any opinion on merits of the case. The interim direction of the High Court was continued by this Court. It is seen from the record that even before the Hon'ble Supreme Court, the Petitioner did not annex a copy of the letter dated 9.3.2005 whereby they had deposited the demand drafts towards balance premium. The Petitioners made only a reference to the said date in the SLP.

11. On 10.5.2012 the MIDC filed its reply to the writ petition, opposing the prayers of the Petitioners, in response to which on 20.6.2012 the Petitioners filed their rejoinder. Thereafter, Petitioners applied for extensive amendment of the writ petition, which was allowed by this Court on 22.11.2012 and the amendment was carried out on 30.11.2012. The writ petition, upon remand from

the Hon'ble Supreme Court, has now come up for final hearing before us.

12. Mr. Virag Tulzapurkar, learned senior counsel appearing on behalf of the Petitioners submitted that the impugned letter dated 30.3.2005, whereby the Respondent MIDC returned the demand drafts of the Petitioners and communicated that request of the Petitioners for allotment of the land in question could not be considered, was wholly arbitrary and unsustainable, which was required to be quashed and set aside. He contended that the said land had already been allotted to the Petitioners and that since the Petitioners had deposited the entire premium amount of Rs. 20,88,00,000/-, there was no reason why the MIDC could escape from its duty to execute lease-deed in respect of the said land in favour of the Petitioners and handing over possession of the same. It was contended that even as per the Land Disposal Regulations of the MIDC, an allottee could deposit the premium amount within six months of the date of the offer letter, and the Petitioners having made such deposit within the said period, the MIDC could not have issued the impugned letter dated 30.3.2005. It was further contended that a concluded contract between the parties

existed and that the MIDC could not have issued the impugned communication when it had accepted the initial demand draft of Rs. one crore, and thereafter it had accepted the balance premium amount on 9.3.2005 in pursuance of the extension granted by the Chairman of the MIDC in the presence of Chief Executive Officer in a meeting held on 7.3.2005. It was also contended that the MIDC being an agency and instrumentality of the State was expected to act in a reasonable, fair and non arbitrary manner, even though the present case concerns a contractual matter. It was also submitted on behalf of the Petitioners that even if it was assumed that this was not a concluded contract between the parties, the cancellation of allotment by the MIDC by letter dated 30.3.2005 was illegal and invalid, since it was an administrative decision, which did not satisfy the test of reasonableness and non-arbitrariness. A further contention raised on behalf of the Petitioners was that there was breach of principles of natural justice as no hearing was given to the Petitioners before issuance of the impugned letter and that there was total non application of mind by the Respondent – MIDC.

13. The learned senior counsel appearing on behalf of the

Petitioners, in support of his contentions, relied upon following judgment of Hon'ble Supreme Court and this Court:

- (i) Mahabir Auto Stores & Ors. Vs. Indian Oil Corporation & Ors.¹
- (ii) Rajesh Sadanand Vs. Addl. Collector, Pune²;
- (iii) Oryx Fisheries Pvt. Ltd. Vs. Union of India & Ors.³
- (iv) City Industrial Development Corporation Vs. Platinum Entertainment & Ors.⁴
- (v) Mohinder Singh Gill & Anr. Vs. The Chief Election Commissioner, New Delhi & Ors.⁵

14. Per contra, Mr. S. G. Aney, learned senior counsel appearing on behalf of the Respondent MIDC contended that the claims made by the Petitioners, particularly after amendment of the writ petition, gave rise to disputed questions of fact and that it was for the civil court to decide the dispute raised by the Petitioners and not the writ court. It was contended that there was no material produced by the Petitioners to show that a meeting had taken place between the Petitioners and the Chairman of the MIDC in the presence of its Chief Executive Officer, other than claims made by the Petitioners in the

1 (1990) 3 SCC 752

2 2003 (2) Mh. L. J. 200

3 (2010) 13 SCC 427

4 (2015) 1 SCC 588

5 AIR 1978 Supreme Court 851

letter dated 9.3.2005 and other communications, as also in the writ petition. It was contended on behalf of the MIDC that disposal of the lands of the MIDC is governed by MIDC Disposal of Land Regulations, 1975 and that the procedure of acceptance of earnest money and extension of time for such acceptance in pursuance of offer letter is governed by Circular dated 5.5.1990.

15. It is further contended that on reading of the offer letter dated 15.9.2004 in the present case along with Circular dated 5.5.1990 and Land Disposal Regulations, it would be clear that in the present case Petitioners could have maintained the claim on the land in question only if they had deposited earnest money i.e. 50% of the premium amount (Rs. 10,44,00,000/-) either before expiry of the period of 15 days from the offer letter dated 15.9.2004 or before expiry of the extended period of 90 days i.e. on or before 30.12.2004. It was contended that when the Petitioners failed to deposit the said earnest money, by operation of the aforesaid circular and the Land Disposal Regulations, the offer made to the Petitioners lapsed and that no further communication was required on behalf of the MIDC in the matter. It was pointed out that the Petitioners had failed to deposit

even a single rupee before expiry of the extended period. It was contended that Petitioners had failed to make out basic foundational fact regarding the existence of the concluded contract between the parties, for this court to exercise writ jurisdiction. It was also contended that since the Petitioners had failed to comply with the conditions of the offer letter dated 15.9.2004 and the extension granted on 29.9.2004, there was no acceptance of the offer and in this situation the Petitioners could not claim any relief. The learned senior counsel appearing for the Respondent – MIDC relied upon the following judgments:

1. Ratan Singh Rathore & Ors., Appellants Vs. Vikram Cement, Respondent⁶;
2. Noor Aga, Appellant Vs. State of Punjab & Anr, Respondents⁷;
3. R. Maheswari, Appellant Vs. Secretary, Selection Committee, Tamil Nadu Professional Courses, Madras & Anr., Respondents⁸;
4. State of U. P., Appellant Vs. Kishori Lal Minocha, Respondent⁹;

6 AIR 2009 SC 713

7 (2008) 16 SCC 417

8 AIR 1995 Mad 168

9 AIR 1980 SC 680

5. Union of India & Ors, Appellants Vs. Mohanlal Likumal Punjabi & Ors.¹⁰;
6. State of U. P., Appellant Vs. Sheo Shankar Lal Srivastava & Ors., Respondents¹¹;
7. Sukhdev Singh & Ors., Appellants Vs. Bhagat Ram & Ors.¹²;
8. State of Bihar & Ors., Appellants Vs. Jain Plastics & Chemicals Ltd.¹³

16. We have referred to the chronology of facts and the related documents in detail because an appreciation of the sequence of events in the present case is necessary in order to analyse and pronounce upon the contentions raised on behalf of the parties.

17. At the outset, we are of the opinion that the contentions raised on behalf of the Respondent MIDC that the present case, particularly after amendment of the writ petition, involves disputed question of facts and therefore, writ jurisdiction may not be exercised, does not deserve to be accepted. We find that challenge to the impugned action of the MIDC in the present case is on the basis that

10 (2004) 3 SCC 628

11 AIR 2006 SC 3548

12 AIR 1975 SC 1331

13 AIR 2002 SC 206

such action is arbitrary, unreasonable and unfair and that such challenge can certainly be entertained in writ jurisdiction.

18. The central question that arises for consideration in the present case is as to what is the manner and procedure in which the Respondent MIDC can dispose of lands and whether the claims of the Petitioners, as regards to their entitlement to the land in question, can be said to be within the framework of such procedure. The related question is, whether in the present case, action of the Respondent MIDC in issuing letter dated 30.3.2005, thereby refusing to consider case of the Petitioners for allotment of the land, can be said to be arbitrary, unreasonable and unfair, requiring interference from this court while exercising writ jurisdiction.

19. The admitted facts narrated above, show that the Petitioners were required to deposit earnest money amounting to 50% of the total premium within 15 days of the offer letter dated 15.9.2004 issued by the MIDC. It is an admitted position that the Petitioners failed to make such deposit and on 29.9.2004, they applied for extension of time for making such deposit, which extension was granted by the Chairman of the MIDC. This extended period was till

30.12.2004. It is also an admitted position that the Petitioners failed to deposit the aforesaid earnest amount on or before 30.12.2004. In fact, not a single rupee was deposited by the Petitioners till the said date. There is only a letter dated 30.12.2004, written by the Director of one of the group of companies of Petitioner No. 2, promising that an amount of Rs. one crore would be deposited in the first week of January 2005. This letter also does not promise deposit of earnest money which was 50% of the entire premium. There is also, admittedly, no written application from the Petitioners for further extension of time on or before 30.12.2004.

20. It is only on 13.1.2005 that a demand draft of Rs. one crore is deposited by the Petitioners for the first time. Thereafter, the Petitioners sent the demand drafts of the balance premium amount along with their letter dated 9.3.2005. This letter and the demand drafts are sent by the Petitioners on the basis of a purported meeting with the Chairman of the MIDC, in the presence of the Chief Executive Officer. There are no minutes of the meeting said to have taken place on 7.3.2005 and there is no document showing any application submitted by the Petitioners for further extension of time

for deposit of balance premium, although when the extension of time was granted upto 30.12.2004, there was a written application by the Petitioners in the form of letter dated 29.9.2004 on which the Chairman of the MIDC had granted extension by making an endorsement. There is, admittedly, no such document for further extension of time. The reliance placed by the Petitioners on letter dated 14.1.2005 sent by MIDC to claim that it amounted to the MIDC entertaining the case of the Petitioners for extension of time, is also wholly misplaced. The said letter only called upon the Petitioners for some documents concerning status of Petitioner No. 2. Therefore, other than the alleged meeting dated 7.3.2005, for which there is no document or written material to support and alleged oral directions given by the Minister / Chairman of the MIDC on 7.3.2005, there is no material to show that any extension of time was granted to the Petitioners beyond 30.12.2004.

21. We have perused Circular dated 5.5.1990, which provides for revival of offer letter beyond the period of 15 days. In the present case it is evident that such power, as provided in the aforesaid Circular, was exercised on 29.9.2004 in favour of the Petitioners

whereby the period for deposit of earnest money was extended upto 30.12.2004. There is nothing on record to show that in the present case any such request for further extension of time was made on behalf of the Petitioners.

22. We have also perused the relevant portions of the Land Disposal Regulations. The Petitioners have heavily relied upon proviso to Regulation 12 which provides that the MIDC, in its discretion, may extend the period for payment of balance premium, not exceeding 6 months. It is contended on behalf of the Petitioners that since they have deposited the demand drafts for the entire premium amount within 6 months from 15.9.2004 i.e. the date of offer letter, the MIDC was bound under the said Regulation to accept the amount and to execute the lease-deed in their favour. Relevant portion of Regulation 12 of the Land Disposal Regulations reads as under:

“12. Payment of balance money. Where any plot of land is allotted on premium basis, the allottee shall pay the balance within 30 days from the date of the receipt of the letter communicating the allotment to him :

Provided that the Corporation may, in its discretion, extend the period for the payment of the balance premium not exceeding 6 months on payment of interest at such rate as may be fixed by the Corporation from time to time on the

amounts remaining unpaid:

...”

We find that the aforesaid proviso pertaining to the 6 months period would operate when the party who is given an offer letter deposits earnest amount with the MIDC within the period stipulated in the offer letter or in the extended period, which in the present case was till 30.12.2004. It is only when earnest amount is deposited that the question of payment of balance amount of premium would arise and in the present case the Petitioners could have taken the benefit of 6 months period under proviso to Regulation 12 of the said Regulations only if they had deposited earnest amount as per offer letter dated 15.9.2004 within 15 days or on or before 30.12.2004 when the extended period expired.

23. Having failed to deposit even a single rupee till 30.12.04, it cannot lie in the mouth of Petitioners that they are entitled to claim the benefit of 6 months period referred to in the proviso to Regulation 12 of the said Regulations. Therefore, the said contention of the Petitioners seeking benefit of the said Regulation cannot be accepted.

24. Once we have found that the Petitioners failed to deposit

even the earnest money in the extended period of time, it becomes clear that there is no concluded contract between the parties. In this situation, when offer of the land in question by the MIDC stood lapsed, the Petitioners cannot claim that the MIDC could not have returned demand drafts submitted by the Petitioners on 9.3.2005 and that by doing so, the MIDC acted in an arbitrary and unfair manner. The only basis for the Petitioners to claim that they were entitled to the land in question upon depositing the demand drafts on 9.3.2005, is the alleged meeting that they had with the Minister who was Chairman of the MIDC, in the presence of the Chief Executive Officer. According to the Petitioners, it is this meeting and the oral directions given by the Minister / Chairman of the MIDC that amount to an extension of period of time for deposit of premium.

25. The Petitioners claim that this meeting and the extension granted by the Minister / Chairman of the MIDC was in the same manner, as was granted on 29.9.2004. But the Petitioners have failed to produce any document or minutes of the meeting to show that any such meeting ever took place or that oral directions were given by the Minister / Chairman of the MIDC, which were recorded in any

manner. The only documents referring to and supporting claim of the Petitioners that such a meeting took place are the letter dated 9.3.2005 sent by the Petitioners to the Respondent MIDC, and subsequently the alleged letter dated 6.4.2005 sent to the Chief Minister and the averments made in the writ petition. Thus, other than the word and claim of the Petitioners, there is no record to support that such a meeting ever took place or that any oral or other directions were given by the Minister / Chairman of the MIDC for extension of time to the Petitioners for deposit of balance premium.

26. In such a situation, we find that the Respondent MIDC was well within its rights to send the letter dated 30.3.2005, returning all the four demand drafts, deposited by the Petitioners for allotment of land in question. Admittedly, all the four demand drafts were submitted to the MIDC much after expiry of the extended period of 30.12.2004. Even if we accept the contention of the Petitioners that the Respondent MIDC never sent the letter dated 4.2.2005 whereby the first demand draft of Rs. one crore was allegedly returned, it still does not carry the case of the Petitioners any further. The Petitioners have to make out their own case in support of the contentions raised in

the writ petition. We find that, other than the purported oral directions given by the Minister / Chairman of the MIDC in the alleged meeting dated 7.3.2005, the Petitioners have no basis to claim that MIDC had granted any specific extension of time for deposit of premium, or that any right had crystalised in favour of the Petitioners, despite the fact that they failed to deposit even a single rupee towards the earnest money till 30.12.2004.

27. In the case of *Mumbai International Airport Pvt. Ltd., Appellant Vs. Golden Chariot Airport & Anr., Respondents*¹⁴, the Hon'ble Supreme Court has held that the contesting respondent therein was not justified in claiming relief on the ground that Officer of the Airport Authority of India had orally assured for extension of licence because mere oral assurance of extension of license by officer of the Airport Authority of India was of no legal consequence since no such assurance had been proved and even if it was proved, such assurance did not and could not bind the Airport Authority of India. This was because being a statutory corporation, it was bound by the Airport Authority of India Act, 1947 and the regulations framed thereunder. The relevant portion of the said judgment reads as follows:

14 2010 (10) SCC 422

“34. The AAI is a statutory body constituted under Section [3](#) of the Airport Authority of India Act, 1994 (the AAI Act). Under Section [3\(2\)](#) of the AAI Act, it is a body corporate with power to hold and dispose of both movable and immovable property and to contract. The power of the AAI to enter into contracts has been conferred under Section 20 read with Section [21](#) of AAI Act. As per Section [20](#), the AAI is competent to enter into contracts (subject to the provisions of Section [21](#)) which may be necessary to discharge its functions under the AAI Act.

35. Section [21](#) of AAI Act lays down the mode of executing contracts on behalf of AAI. The Section requires that every contract on behalf of AAI is to be made by the Chairperson or any other member/officer who has been empowered to do so. Further, the contracts, which have been specified in the Regulations, have to be sealed with the common seal of AAI. Sub-section (2) of Section [21](#) of AAI Act provides that the form and manner of the contract shall be such as may be specified by the Regulations.

36. The relevant Regulations have been framed by the AAI with the previous approval of the Central Government and in exercise of the power conferred on it under Section [42\(1\)](#) read with Section [42\(2\)\(e\)](#) and (4), read with Section [21](#) of the AAI Act, 1994 and the regulations are called the Airports Authority of India (Contract) Regulations 2003. Obviously the regulations are statutory.

37. The said Regulations specify that contracts by AAI are required to be sealed with the common seal of AAI. They further provide that contracts are to be made with the previous approval of the Central Government and AAI. Regulation 3(3) also state that all contracts shall be finalized by the execution of a Deed of Agreement, Deed of Licence, Indenture or like instrument, duly signed by AAI and the party concerned, and the said instruments or deeds are to be

executed on non-judicial paper of appropriate stamp value when necessary.

38. Having regard to the aforesaid statutory framework, the case of the contesting respondent that it was orally assured of extension of licence by some officer of AAI is of no legal consequence. No such assurance has been proved, even if it is proved, such assurance does not and cannot bind AAI. Being a statutory corporation, it is totally bound by the Act and the Regulations framed under the Act.”

28. Applying the ratio of the aforesaid judgment of the Hon’ble Supreme Court to the facts of the present case, it is evident that the Petitioners are not justified in claiming relief in the writ petition on the basis of purported oral directions given by the Minister / Chairman of the MIDC on 7.3.2005, which are not supported by any material on record, other than claims of the Petitioners themselves.

29. Thus, we hold that the Petitioners having failed to deposit any amount towards earnest money before expiry of the extended period on 30.12.2004, are not entitled to any relief from this Court exercising writ jurisdiction. The disposal of lands by the MIDC can only be in consonance with the aforesaid regulations and circulars governing the field and the procedure is required to be strictly followed. If the contentions of the Petitioners are accepted, it would

lead to a situation where an applicant for a piece of land would not be required to follow any of the requirements of the procedure governed by the regulations and the circulars, and upon an offer being made, the applicant could walk into office of MIDC on the last date of 6 months period from the date of offer letter to deposit entire premium amount, claiming that oral directions have been issued by the Minister / Chairman or any other official of the MIDC. Such a situation cannot be countenanced in the context of disposal of lands by a statutory body like Respondent MIDC. Therefore, the contention of the Petitioners regarding availability of period of 6 months to deposit the amount is unacceptable. The basic condition of deposit as prescribed in offer letter was breached, as a consequence there was no question after 30.12.2004 to consider the case of the Petitioner for extension of time, quite apart from the fact that no such application for extension was shown to have been made. In this backdrop, the deposit of demand drafts on 9.3.2005 by the Petitioners cannot be the basis for claiming relief.

30. After the completion of hearing of the matter and the judgment being reserved, the learned senior counsel appearing for the

Petitioner mentioned the matter on 29.11.2017 to place on record a recent judgment passed by a Division Bench of this Court in Writ Petition No. 9659 of 2015 (Smt. Julie Amitabh Parekh & Ors. Vs. Reliance Asset Reconstruction Company Ltd. & Ors.). By placing reliance on para 26 of the said judgment, it was contended on behalf of the Petitioners that where a particular fact is stated on an affidavit, a non-denial thereto by counter affidavit, would deem such averment to be uncontroverted and, as such, admitted. It was contended that since Respondent MIDC, in the present case, had not denied the fact of the meeting dated 7.3.2005 between the Petitioners and Minister / Chairman of the MIDC, it stood admitted.

31. But the said judgment and the legal proposition laid down therein, with which there cannot be any quarrel, does not come to the aid of the Petitioners. Even if it is accepted that such a meeting took place and oral directions were given by the Minister / Chairman of the MIDC, it cannot lead to extension of time for the Petitioners to deposit the premium amount. As held by the Hon'ble Supreme Court in the case of Mumbai International Airport (supra) mere oral assurance of the Minister / Chairman of MIDC shall not bind the MIDC, as it is a

statutory corporation, totally bound by the MIDC Act and regulations. Thus, the aforesaid contention of the Petitioners is also rejected.

32. Therefore, we do not find any substance in the contention of the Petitioners that the Respondent- MIDC ought to have given detailed reasons while issuing the impugned letter dated 30.3.2005 or that a hearing ought to have been given to the Petitioners before taking the impugned action. A defaulting party cannot claim that it was not heard in the matter when the impugned communication is nothing but a fallout of the default on the part of the Petitioners. The contention of the Petitioners that having accepted the demand drafts on 9.3.2005 and having kept them for 21 days, the Respondent MIDC could not have issued the impugned communication, is without any substance as the demand drafts were never encashed. They were, admittedly, deposited well after expiry of the extended period of time i.e. after 30.12.2004.

33. We have not referred to the judgments relied upon by both the parties in support of their respective contentions, because there is no quarrel with the propositions of law laid down therein, but the facts of the present case are such that the Petitioners are clearly not entitled to any relief from this Court while exercising writ jurisdiction.

Accordingly, the writ petition is dismissed and the Rule is discharged with no orders as to costs. The interim order stands vacated. Respondent MIDC is at liberty to dispose of the land in question, in accordance with law.

Sd/-
[MANISH PITALE, J.]

Sd/-
[ANOOP V. MOHTA, J.]

Vinayak Halemath

. At this stage, the learned senior counsel appearing for the Petitioners orally requests for continuation of interim order. In view of the reasons, so recorded in the judgment so pronounced today, we are not inclined to continue the interim order. The oral request for continuation of interim order is, therefore, rejected.

Sd/-
[MANISH PITALE, J.]

Sd/-
[ANOOP V. MOHTA, J.]