

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5294 of 2017

M/s. Alpha Kooltherm Pvt. Ltd.Petitioner
versus
The State of Maharashtra and ors.Respondents

Mr. Sandesh Deshpande, advocate for the petitioner.
Mrs. M. P. Thakur, AGP for the State.
Mr. Prashant Chavan along with Ms. Chaitali Kandare I/b. Navdeep Vora
and Associates, advocates for the respondent Nos. 2 to 5.

**CORAM : RANJIT MORE &
SMT.ANUJA PRABHUDESSAI, JJ.**

DATE : 13th JULY, 2018.

P. C. :

Heard learned counsel and learned AGP appearing for the
respective parties.

2. The petitioner, by filing this petition, under Article 226 of the Constitution of India, takes an exception to the resumption notice dated 10th April, 2017 issued by the MIDC terminating the agreement to lease in respect of plot No.RH-11 in Mahad Industrial Area, Mahad and calling upon the petitioner to handover possession of the said plot to MIDC. By an agreement to lease dated 9th July, 2009, executed between the petitioner and respondents – MIDC, the petitioner was required to get the plan sanctioned from the executive engineer and complete the

construction of the concerned residential building within 36 weeks from the date of the said agreement of lease. The condition 5(b)(i) of the said agreement to lease makes provision that upon failure on the part of the petitioner to complete the said residential building on the said plot in question within time stipulated therein, then the MIDC can resume the possession of the said plot. In terms of this agreement, the petitioner, therefore, was obliged to complete construction by 8th July, 2012.

3. Admittedly, the petitioner did not complete construction before July, 2012. There is also no dispute that the two extensions of one year and one year, two months respectively were given to the petitioner. Within this extended period also, the petitioner did not commence the construction and, therefore, the impugned notice was issued. The affidavit of the respondent Nos.2 to 5 show that, despite remainders, the petitioner thereafter never applied for extension and approached this Court only after issuance of the impugned notice. Under the policy adopted by the MIDC, 4 extensions of one year each for completion of the construction can be given. In the present case, the petitioner has not even commenced the construction and moreover has not applied for further extension and, therefore, no fault can be found in the impugned notice.

4. It is also pointed out that, on termination of the agreement to lease, the respondent- MIDC is entitled to resume the property. If the petitioner is willing to handover possession, he will get an amount paid by him by way of premium after deducting 5% of the administrative expenses and, if possession is not given voluntarily by the petitioner, then 10% towards administrative cost/expenses and any other dues of the MIDC shall be deducted from the premium paid by it.

5. Be that as it may, Mr. Chavan, learned counsel for the MIDC, submits that the plot in question would again be auctioned and the petitioner is at liberty to participate in the auction.

6. Considering the above facts and circumstances, we are not inclined to entertain the petition and the same is, accordingly, dismissed.

[SMT.ANUJA PRABHUDESSAI, J.]

[RANJIT MORE, J.]