

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION / O.O.C.J.**

WRIT PETITION NO.5435 OF 2018

M/s.Subodh Technologists

... Petitioner

Vs

Maharashtra Industrial Development
Corporation & Ors.

... Respondents

Mr.Sandesh Deshpande for the Petitioner

Ms.Shraddha Dube Patil i/b M/s.Jay & Co. for the Respondents

**CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATED: JULY 9, 2019

P.C.:

1. The petitioner is aggrieved by the action of the respondents i.e., Maharashtra Industrial Development Corporation and its officers in cancelling the allotment of plot No.R-968/1 in T.T.C. Industrial area, M.I.D.C., Navi Mumbai and further forfeiting the amount of Rs.21,94,500/- which the petitioner had deposited with the Corporation for such allotment.
2. It appears that the petitioner is already running its industry in the said industrial area. The petitioner desired to expand the

industry for which purpose, the petitioner applied for allotment of a plot of land of 500 sq.mtrs. adjacent to its existing industry. At one stage, the MIDC was inclined to consider such request favourably. A communication dated 11.9.2014 was, therefore, issued to the petitioner asking the petitioner to deposit a sum of Rs.21,94,500/- @ 17,556 per sq.mtr., upon which the request for allotment of the land would be considered further.

3. By the impugned communications dated 29.8.2017 and 23.8.2018, the respondents cancelled the allotment and further forfeited the Earnest Money Deposit of Rs.21,94,500, upon which this petition has been filed.

4. The respondents have filed an affidavit principally stating that upon the petitioner depositing the said sum of Rs.21,94,500/-, a proposal was placed before the Land Allotment Committee for approval. The Land Allotment Committee granted approval for allotment of land admeasuring 345 sq.mtrs only. It appears that the petitioner was not prepared to accept such smaller plot upon which the impugned communications came to be issued.

5. Having heard the learned Counsel for the parties and having perused the documents on record, we find that if it is not feasible for the MIDC to allot a plot of land adjacent to the petitioner's existing industry of an area of 500 sq.mtrs., no directions as prayed for can be granted. The prayer for quashing the order and for directing allotment of plot therefore cannot be granted. However, the respondents could not have in our opinion, in any case, forfeited the Earnest Money Deposit. The petitioner did bind itself to pay the remaining amount upon the plot being allotted to it failing which the Earnest Money Deposit could be forfeited. However, when the respondents themselves changed the offer from allotment of a plot of area 500 sq.mtrs to a smaller plot of 345 sq.mtrs., the entire basis had changed. The petitioner could not have been compelled to accept such smaller plot, whether it was useful for expansion of his industry or not. When the very foundation of the offer of the respondents changed, it was open for the petitioner not to accept such an offer. The order dated 11.9.2014 merely envisages forfeiture of Earnest Money Deposit in case the allottee fails to accept the final allotment after it is communicated to him and fails to deposit the remaining sale consideration. The respondents themselves have treated this as a

tentative offer. In the affidavit in reply also, it is stated that the same was not an allotment letter. Under the circumstances, clause 22 could not have been activated. It would be wholly unfair and unjust to allow the respondents to modify its acceptance of the petitioner's offer and then to enforce the same against the petitioner whether a considerably smaller area of plot was useful to the petitioner or not.

6. Learned Counsel for the petitioner submitted that the petitioner would not mind accepting another plot of 500 sq.mtrs. or thereabouts in the near vicinity of his existing industry where according to him, in the said industrial area, vacant plots are still available. It would be open for the petitioner to apply for such allotment which the respondents would consider subject to availability, in accordance with its rules, regulations and current policy. Such an application may be made within two weeks from today. If so made, the same may be decided within two months from the date of its receipt.

7. The Earnest Money Deposit of Rs.21,94,500/- shall be refunded to the petitioner with simple interest @ 7.5% p.a. from the

date of deposit till actual payment, which shall be done in four weeks from today.

8. The petition is disposed off accordingly.

(S.J. KATHAWALLA, J.)

(AKIL KURESHI, J.)