

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

WRIT PETITION NO.6841 OF 2018

Ridham Texport Pvt. Ltd.	...	Petitioner
versus		
Maharashtra Industrial Development Corporation and Ors.	...	Respondents

Mr. Chirag Mody with Mr. Devansh Bheda I/by Purnanand and Co., for Petitioner.
Mr. Ramesh Dube Patil with Ms. Khushbu Manwani I/by M/s. Jay and Co., for Respondents.

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

DATE: 18th JULY, 2019

P.C.:

1. Draft amendments dated 18th July, 2019 is allowed. Amendments to be carried out within one week. Re-verification is dispensed with.
2. Heard the Counsel for the parties for final disposal of the Petition. The Petitioner is a Private Limited Company. The Petitioner had been allotted a plot of land admeasuring 10463 sq.mtrs., at Tarapur Industrial Estate by the Respondent No.1 – Maharashtra Industrial Developer Corporation (“MIDC” for short). Pursuant to an agreement between the parties, the Petitioner also paid full consideration for such allotment. The Petitioner was also put in possession of the plot in question. As per the terms of the agreement, the Petitioner was to complete the construction of the industrial unit within two years from the taking over of the possession, which

happened to be on 30th April, 2015. According to the Petitioner, due to reasons beyond its control, such construction could not be carried out. The Petitioner therefore, applied to MIDC on 14th November, 2016 and requested for extension of time. It was pointed out that certain restrictions for starting new industries were imposed by the National Green Tribunal (“NGT” for short). The Petitioner assured that soon after such restrictions have lifted, the Petitioner would complete the construction within 12 months.

3. The Respondents did not accept such request. The Petitioner was instead served with the impugned notice dated 12th June, 2018. In such notice, it was pointed out that the Petitioner has not carried out the construction within the stipulated time of two years from the date of taking possession. The MIDC has therefore, initiated an action of termination of agreement by issuance of Notice dated 14th December, 2017. The impugned communication conveyed to the Petitioner that the MIDC terminates the agreement of lease and withdraws the license granted to the Petitioner for use of the said land. The notice threatened that the possession would be reclaimed. Thereupon, the present Petition has been filed.

4. Counsel appearing for the Petitioner pointed out that the Petitioner was unable to set up the industry on the leased plot on account of an interim order passed by the National Green Tribunal on 9th September, 2016 in Application No.62 of 2016. He submitted that the Pollution Control Board was unable to give clearance on

account of the interim order passed by the National Green Tribunal. Such facts were brought to the notice of the MIDC, despite which the impugned action has been taken.

5. On the other hand, the learned Counsel for the MIDC submitted that it was the duty of the Petitioner to get necessary clearances, complete the construction and start the industry within the stipulated time, which the Petitioner failed in doing. The MIDC was therefore, within its right to cancel the lease.

6. The operative portion of the interim order dated 9th September, 2016 passed by the National Green Tribunal reads as under :

“1. The 3rd Respondent is directed to ensure forthwith treatment of effluent is its parameter and standards prescribed and effluent of treatment should be safe and in terms of standards fixed.

2. MPCB is further directed to ensure that it grants no fresh consent to establish or expansion of any of the industries in that area till further orders from this Tribunal.

3. The CEO, Zilla Parishad, District Palghar, is directed to constitute a Committee, comprising of District Health Officer, Tehsildar and Officials from department of Women and Child Welfare and Fisheries to inspect the areas of Tarapur and surrounding for fact finding about adverse impact on environment and the health of local residents. After assessment of adverse impact the CEO shall ensure proper health medical facilities made available to the residents.

4. The Deputy Collector of the jurisdiction shall ensure compliance of this order by all concerned indicated herein.

5. *All the industries in Tarapur areas are directed to reduce generation of effluent waste from whatever present generation is by 40%.*
6. *MPCB and MIDC must ensure that waste generated by industries is reduced by 40% as indicated in the above directions.*
7. *There shall be no discharge of effluent in other areas except in designated locations, if any industry is found doing so, MPCB is directed to take strict action forthwith as is permissible in law.”*

7. As per paragraph 2 of the interim order, the Pollution Control Board was restrained from issuing any fresh consent to establish or even to expand an existing industry in any of the industries in the area in question. Admittedly, the Petitioner's industry was covered by the said direction. It was on account of this factor that the Pollution Control Board refused to grant clearances to the Petitioner. Thus due to the factor beyond the control of the Petitioner, the construction could not be carried out and the industry could not be commenced. We do not find that the stand of the MIDC of reclaiming the leased land is therefore, justified under such circumstances. We may also refer to a circular dated 2nd April, 2017 issued by the MIDC to meet with such situations. In such circular, it is provided that if under unavoidable circumstances beyond control of the land holders, the permission is not obtained, the extension should be granted. One of the clauses envisaged under the said expression 'beyond the control' is that injunction order granted by the NGT or any other Court. Clearly thus, the case of the Petitioner was covered by such Circular issued by the

MIDC itself. MIDC should have acted on such circular and its own policy particularly when the relevant facts were brought to the notice of the MIDC by the Petitioner.

The impugned communication dated 12th June, 2018 is therefore, quashed.

7. The Writ Petition is disposed of.

(S.J.KATHAWALLA,J.)

(AKIL KURESHI,J.)