

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

APPEAL FROM ORDER NO. 32 OF 2018

WITH

CROSS-OBJECTION NO.101/2018

Maharashtra Industrial Development Corporation through Regional Officer,
Regional Office, M.I.D.C. and another

...Versus...

Jaju Krushi Utpadan and Prakriya Udyog Pvt. Ltd. and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A.P. Chaware, Counsel for appellants
Shri S.S. Sarda, Counsel for respondent No.1
Mrs. G.R. Tiwari, G.P. for respondent No.2

CORAM : AVINASH G. GHAROTE, J.

DATE : 10/02/2020

1. Present appeal from order (A.O.) challenges the order dated 31.01.2017 passed by the Joint Civil Judge, Senior Division, Akola in Special Civil Suit No.108/2015, by which the application for injunction at Exh. 5 was partly allowed, in terms of the order at page no.190 of the record.
2. Heard Shri Chaware, learned counsel for the M.I.D.C./appellants, Shri Sarda, learned counsel for the respondent No. 1 and Mrs. Tiwari, learned Assistant Government Pleader for the respondent No. 2.
3. By the impugned order, the learned Trial Court, has restrained the original defendant No.2, i.e., the

Maharashtra Industrial Development Corporation (M.I.D.C.), Akola in the following terms.

“1. This application Exh. 05; is partly allowed – only in terms that :-

(i) The defendant No.2; shall submit the Statement of Account of Water Charges for Chikhali Plot; to the plaintiff.

(ii) Defendants; are hereby temporarily restrained from making claim in respect of

(a) past Service Charges and

(b) future Service Charges

from the plaintiff; for the Chikhali Suit Plot; until the amenities and infrastructure – of water supply are completely made available to the plaintiff at the said Chikhali Suit Plot; or until the decision of the suit whichever is earlier, and

(c) Defendant No.2; is temporarily mandated to adjust the said Service Charges as per letter No. B00288/2014; dated 01/04/2014; of the Executive Engineer, M.I.D.C., Akola.

2. Costs in cause. “

4. It is the contention of Shri Chaware, learned counsel for the appellants that the service charges as mentioned in the order, have nothing to do with the water supply agreement dated 04.08.2011, under which water was

agreed to be supplied to the plaintiff. He submits, that the service charges, are related to Section 17 of the Maharashtra Industrial Development Act, 1961, which are chargeable and payable by all plot holders, *de hors*, the purpose for which the plot has been granted. For the sake of ready reference, Section 17 of the Maharashtra Industrial Development Act, 1961 is quoted as under.

“17. Notwithstanding anything contained in any contract or in any law for the time being in force, it shall be lawful for the Corporation to levy fees or service charges to cover its expenses on maintenance of roads, drainage, water supply and such other services and amenities as may be provided by it, including provision of street lighting, at such rates as may be prescribed, from time to time. Such fees or charges may be levied on the plot holders or other persons receiving benefit of the services or amenities.”

5. He further submits that the language of Section 17 of the M.I.D. Act is clear and specific in as much as the service charges are chargeable to cover the expenses on maintenance of road, drainage, water supply and such other services and amenities as may be provided including the provision of street lighting at such rates as may be prescribed from time to time.

He, therefore, contends that merely for the reason of failure of the water supply agreement dated 04.08.2011, on account of non-supply of water which was required for operation of the industry, the same would not absolve the plaintiff to pay service charges, as may be levied under Section 17 of the M.I.D. Act.

6. Mr. Sarda learned counsel for respondent No. 1 submits that failure to supply water, under the water agreement dated 04.08.2011 has resulted in the industry becoming a non-starter, as the industry, was for the purpose of producing the neutral alcohol and poultry feeds, for which water was the basic necessity.

7. A perusal of Section 17 of the M.I.D. Act, would demonstrate that the service charges as leviable there under, has no relation or nexus, with the nature of industry which is being run, as such service charges relate to cover the expenses incurred by the M.I.D.C., on maintenance of road, drainage, water supply, street lighting and such other services and amenities as may be provided from time to time, which is chargeable under Section 17 of the M.I.D. Act. This obviously, has no relation to the failure of the water agreement dated 04.08.2011. The plaintiff, therefor, cannot be absolved from payment of the service charges, past, present or future, as plaintiff continues to hold the land. The liability to pay the service charges, goes with the holding of the land and till such time the plaintiff continues to hold the land, the liability

would survive. The Trial Court, therefore, could not have passed the impugned order restraining the Maharashtra Industrial Development Corporation (M.I.D.C.) from making claim in respect of service charges. It obviously erred in co-relating the water supply agreement, dated 04.08.2011, with the liability under Section 17 of the M.I.D. Act, though both are separate and distinct. That being the position, the impugned order dated 31.01.2017, therefore, cannot be sustained. The same is accordingly set aside and Exh. 5 as filed by the plaintiff, is dismissed.

8. Mr. Sarda, learned Counsel for the respondent no.1 invites my attention to the cross-objection filed by the plaintiff, which is against the denial of the relief regarding the prayer for temporary and mandatory injunction, as prayed in prayer clauses (iii), (v) and (vi) of the application for grant of temporary injunction. Prayer clauses (iii), (v) and (vi) read as under :-

“(iii) This Hon’ble court may kindly be pleased to allow this application and by issuing mandatory temporary injunction the defendants be directed to provide all the amenities as per obligation, as per their guarantee and as per their responsibility under the provisions of law.

(v) This Hon’ble court may kindly be pleased to allow this application and by issuing mandatory

temporary injunction the defendants be directed to grant permission of letting out the godowns to the plaintiff which are constructed on the plot at Chikhali as per tri party agreement dated 30-3-2012 between plaintiff, defendant no 1 and Akola Urban Co-operative Bank Ltd. Akola till the defendant provides all amenities necessary for starting the factory of the plaintiff.

(vi) This Hon'ble court may kindly be pleased to allow this application and by issuing mandatory temporary injunction for the survival of the plaintiff they be granted permission to use the land approximately 5 acers as per project report already submitted by plaintiff and verified by defendant out of Plot no E-9 adjacent to the portion of the land to be used for 30 KLPD Distillery factory for private Agriculture Market and while granting said permission the amount of difference mentioned in plaint prayer clause ix be adjusted for rate difference of commercial purpose."

9. In so far as prayer clause-(iii) is concerned, the same relates to providing of all the amenities as per the water supply agreement dated 04.08.2011. The Trial Court has already taken a note of the fact, that there was water shortage in the Pantakali dam, as a result of which due to shortage of water, the water could not be supplied in terms of the water agreement dated 04.08.2011. As regards prayer clause - (v) is

concerned, the learned counsel for the respondent no.1 submits, that an application has already been moved to the M.I.D.C., for use of the land for alternative purposes, which the M.I.D.C. has already rejected, and so far as prayer clause - (vi) is concerned, the same is also within the exclusive domain of the M.I.D.C., which request is also stated to be rejected. These reliefs have been claimed in the plaint and cannot be decided at the stage of deciding the application for temporary injunction as these issues require evidence. Mr. Sarda, learned Counsel for the respondent no.1 further submits, that the suit also raises the issue of non-demarcation of the boundaries which has resulted in the plaintiff being unable to lay an approach road to the plot allotted to it.

10. Mr. Chaware, learned Counsel for the appellants submits that all possible assistance as would be necessary for demarcation of the boundaries, and laying of the approach road would be provided. The statement is accepted and recorded.

11. Thus, there is nothing wrong with the rejection of these prayer clauses - (iii), (v) and (vi) and the appeal from order and the cross-objection therefore, fail and are rejected. In circumstances, there shall be no order as to costs.

Mr. Sarda, learned Counsel for the appellants prays for six weeks' time to approach the Apex Court, since injunction was already granted by Trial Court on 31.01.2017 and the same is in operation till date.

Mr. Chaware, learned counsel for the respondent no.1 opposes the same. However, considering that the order of the Trial Court has been in force from 31.01.2017, and has not been enforced till date, the present order of dismissal, is kept in abeyance for a period of four weeks from today, after the expiry of which, it will come into operation forthwith.

JUDGE