

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.4801 OF 2012

Anil S/o Shrikishan Agrawal,
Aged: 49 years, Occ: Business,
& Proprietor of M/s. Sudarshan
Solvent Industries,
C/o Radhe-Radhe Jewellers,
Bhusar Line, Latur,
Tq. & Dist. Latur.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Ministry of Industries,
Maharashtra State, Mantralaya,
Mumbai-32.

2. Maharashtra Industrial
Development Corporation,
(Govt. of Maharashtra Undertaking),
Through Regional Officer,
Maharashtra Industrial
Development Corporation,
Nanded.

...Respondents

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Mr. Patil N.P. Jamalpurkar, Advocate for the Petitioner.
Mr. S.G. Sangle, AGP for the Respondent No.1/State.
Mr. S.S. Dande, Advocate for Respondent No.2.

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**CORAM : RAVINDRA V. GHUGE &
S.G. MEHARE, J.J.**

RESERVED ON : 06th SEPTEMBER, 2021

PRONOUNCED ON : 24th SEPTEMBER, 2021

JUDGMENT (PER S.G. MEHARE, J.) :-

1. The petitioner has impugned the communication of respondent no.2 dated 10.05.2012 cancelling the allotment of the plot situated in

MIDC Kalamnuri.

2. The facts giving rise to this petition are that plot no. 17-A measuring 12344 square meters was allotted to the petitioner by letter of allotment dated 03.02.2003. The petitioner executed a registered agreement with the Regional Officer MIDC on 28.02.2003. The plot was delivered in possession of the petitioner on 17.03.2003. The petitioner had to construct the industry on the allotted plot within seven years from the date of the agreement. Besides, according to the agreement terms, he was to fence the plot, plant the trees and pay service charges determined by the respondent.

3. The petitioner failed to comply with the terms of the agreement in the given time. Hence a show cause dated 14.07.2010 was served on him. The petitioner placed his reply dated 03.08.2010 and explained that the water arrangement could not be made. Due to the deficit rainfall for the last three years and the global economic crisis, he could not raise the construction on the plot. Lastly, the petitioner requested the extension of one year for obtaining the Building Commencement Certificate.

4. In response to his letter, respondent no.2, by its letter dated 19.11.2010, called upon the petitioner to submit the copy of the bank loan application, copy of fire NOC proposal, and the copy of the building map. By letter dated 1.12.2010, the petitioner submitted the copy of loan proposal and fire NOC. He contended in the said letter that he tried

to pay service charges of Rs. 52,664 at Parbhani Office, but that was not accepted. By letter dated 01.12.2010, the petitioner objected to the demand of Rs.01,02,455/- towards the service charges. By letter dated 11.01.2011, respondent no.2 informed the petitioner that he should clear the arrears of service charges first so he may take appropriate decision on his request to extend the time to construct the factory. By letter dated 29.03.2011, it was informed to the petitioner that the service charges were imposed after sanctioning the maps. Lastly, respondent no.2, by impugned decision, cancelled allotment of his plot.

5. The petitioner challenged the impugned order mainly on the ground that the petitioner could not construct the factory since the respondent did not provide the water facility. The drastic action cancelling the allotment of the plot was unwarranted when the dispute of assessing the service charges was pending. The necessary facilities were not available in the Kalamnuri Industrial Area. Therefore, the plot holders could not construct the factory buildings. The water facility and other amenities were lacking. No action was taken against similarly situated plot holders, but the respondent took drastic action against him only. Before issuing the impugned order, no hearing was given to him. No show cause notice was served on him. Such conduct of respondent no.2 violates the principles of natural justice and Article 14 of the Constitution of India. The rules and guidelines for assessing the service charges were never supplied to him. He went to deposit the amount of Rs.52,664/-, but the Officer of the respondent has not accepted the

money. He was not at fault for not paying the service charges. He was willing to comply with all the conditions relating to the construction of the factory building within two years, subject to the condition that the respondent shall provide all basic amenities i.e., water supply, road/street, lights, etc. The impugned order is arbitrary, illegal against the principle of natural justice. Hence liable to be quashed and set aside.

6. The contesting respondent no.2 filed his affidavit in reply. He did not dispute the correspondence between them. However, he opposed the petition contending that the petitioner has no legal right to insist the respondent to extend the time to complete the construction and obtain a Building Completion Certificate. The petitioner was granted a reasonable opportunity to construct the factory on the plot in question. Though the building plans were approved, the petitioner did not build a factory for about nine years. The inaction of the petitioner shows his interest in not developing the plot in question. The petitioner has no vested right for extension of time as prayed by him. The petitioner is a mere licensee of the corporation, and the respondent has the power to terminate the said agreement and restore the land allotted. The petition is not liable to be entertained as it involves disputed questions of fact and the dispute arising out of the agreement executed between the parties. The petitioner has a statutory and efficacious remedy for the dispute raised in this petition, and without availing the same, the present petition is bad in law. The terms and conditions of the agreement bind

the petitioner. The construction ought to have been completed within seven years of delivering the possession of the plot in question. The petition is on flimsy grounds. The petitioner took around three acres of land without paying a single pie towards the service charges to the respondent. From time to time, the correspondence was made, and the facts were brought to the notice of the petitioner, but he did not take any appropriate steps to follow the terms of the agreement. The time to construct the building was reduced to four years from seven years, which was also brought to his notice. The letters were sent from time to time to the petitioner, seeking explanation. The petitioner has no substantial grounds to seek extension.

7. To show the conduct of the petitioner, respondent no.2 has filed an additional reply dated 31.08.2021 contending that the petitioner has got various plots in MIDC at Latur, and instead of constructing the factories or units, he has used the said plots for residential purposes. By these facts, respondent no.2 tried to show that the petitioner had no intention to develop the plot in question. To support such contentions, he filed few photographs on record. He prayed to dismiss the petition.

8. Heard learned counsel Shri Patil for the petitioner at length and learned counsel Shri Dande for respondent no.2 and learned AGP Shri Sangle for respondent no.1-State.

9. Shri Patil, the learned counsel for the petitioner would argue that the impugned order is arbitrary and against the principles of natural

justice. He stressed his argument that neither many plots are developed nor the factories are constructed in the Kalamnuri Mini Industrial Area. However, the respondent deliberately chose the petitioner only and made him a scapegoat. The required amenities like light, water, and the road are still not available in the MIDC. The respondent failed to discharge its duties to make such facilities and amenities available. The respondent has no explanation how abruptly the service charges were made double against the earlier demand of Rs.52,664/-.

10. He has further vehemently argued that the representation made by the petitioner has not been considered in true perspective. The overall conduct of the respondent reveals that it had made a mind to evict the petitioner anyhow from the plot in question. The use of plots in Latur MIDC is not the question before this Court in this petition; hence the allegations of change of use of those plots have no relevance. He would also argue that the petitioner was and even today ready and willing to construct the factory on the plot in question, but he couldn't comply with the terms of agreement for want of facilities. He would also argue that the petitioner is ever ready to raise the unit/factory on the plot, provided the respondent shall make all the amenities available. He tried to make out a case that it is the respondent whose inaction to develop the MIDC and provide necessary amenities and facilities cause the failure of the construction of the factory not only by him but by many other industrialists. Stressing his argument on not following the principles of natural justice, he would pray to quash the impugned order.

11. Per contra, Shri Dande, the learned counsel for respondent no.2, taking the Court through the record and various correspondence and communications between the petitioner and respondent no.2 pointed out, that the overall conduct of the petitioner is not bonafide. Referring to clauses of the agreement, he would further argue that there were specific conditions in the agreement that the plot holder has to construct the factory anyhow within seven years from the date of possession. Admittedly, the petitioner has raised no construction as such. The petitioner obtained the sanction for the construction of the factory and went silent till the service of notice dated 14.07.2010. He would further argue that the extension of time for completing the construction of factory building is the discretion of the respondent. No one can claim an extension of time as a matter of right. Referring to the various notices and the reply given by the petitioner, he would point out that the overall conduct of the petitioner is explicit that he never intended to comply with the terms and conditions of the agreement and utterly failed to use the plot in question for the purpose for which it was allotted. He vehemently denied the allegations of no facilities as argued by the petitioner's counsel in the MIDC area. He would say that till 2010, the petitioner never whispered or complained about the non-availability of the alleged facilities and amenities. On the contrary, all the necessary facilities were available. The intention of the petitioner is clear from his conduct that he was not interested in developing the industrial unit. Hence, no extension as prayed can be permitted.

12. He relies upon catena of judgments against the petitioner, which held that violation of the terms of the agreement would not allow extending the time. He relied on the following cases:

1. *Dalip Singh and Ors Vs. State of Haryana and Ors*, MANU/SC/1210/2018.
2. *Phatu Rochiram Mulchandani Vs. Karnataka Industrial Areas Development Board and Ors*, MANU/SC/0214/2014.
3. *National Project Construction Corporation Ltd Vs. State of Maharashtra*, 2015 (1) Bom C.R. 22.
4. *Ashok Sursingh Bhimani and Another Vs. The State of Maharashtra and Others in Writ Petition No.8248 of 2017 dated 19/07/2017*.
5. *Surajagrah Steel & Mines Pvt. Ltd., Gadhchiroli Vs. The Chief Executive Engineer, Maharashtra Industrial Development Corporation, and another in Writ Petition No.4354 of 2012 dated 13.03.2013*.
6. *Abhay S/o Jayantilal Shah Vs. The State of Maharashtra and others in Writ Petition No.5213 of 2013 dated 25.02.2016*.
7. *Sau. Chandrakala w/o. Suresh Mugdiya (Jain) Vs. Maharashtra Industrial Development Corporation and others in Writ Petition No.8295 of 2006 dated 21.04.2009*.
8. *Orissa Industrial Infrastructure Development Corporation Vs. MESCO Kalinga Steel Ltd and Ors*, (2017) 5 SCC 86.
9. *Sethi Auto Service Station and Ors Vs. Delhi Development Authority and ors*, AIR 2009 SC 904.

13. The law is settled, that the parties are bound by the terms of an agreement or the contract. The parties to the agreement reciprocally bind each other according to the terms and conditions of the agreement/contract.

14. The agreement dated 28.02.2003 is an agreement for seven years. The petitioner had the license only to enter the piece of land for building and executing work thereon. Respondent no.2, by the impugned communication dated 10.05.2012, cancelled the letter of allotment of plot no. 17-A which was issued in favour of the petitioner for the following reasons that the petitioner;

- i) had neither paid the annual rent nor fenced the plot.
- ii) has made no development activities as per the sanctioned map,
- iii) has not constructed the factory within seven years as per clause 3(c) of the agreement,
- iv) the plot is lying unused,
- v) he had not planted the trees.
- vi) no service charges as contemplated in clause 3 (g) were paid,
- vii) he did not submit a bank loan sanction order.

15. As per Clause 3(a) of the agreement dated 28.02.2003, the petitioner was bound to submit the specification, plan elevations, sections of the factory building to the Officer appointed by respondent no.2 for approval within 84 months from the date of the agreement.

Respondent no.2 has complete control over such maps, elevation, and plans. For the said compliance, the Licensee may be called upon by the authority appointed by respondent no.2. As per Clause (b), the plot holder was bound to fence the plot granted to him at his or her expense. Clause (c) speaks of the work that shall not begin until the plans are approved. Until no objection certificate is obtained from the Maharashtra Pollution Control Board, no building work shall be commenced following the building regulations. Clause 3(d), which is most relevant to the issue involved in this case, is reproduced hereunder;

“(d)That he shall within a period of seven years from the date of this agreement hereto commence, and within a period of seven years from the said date at his own expenses and in a substantial and workmanlike manner and with new and sound material and in compliance with all Municipal rules, bye-laws and regulations applicable thereto and in strict accordance with the plans, elevations, details and specifications to the satisfaction of the Executive Engineer and conformably to the building lines marked on the plan hereto annexed and the building Regulations, set out in the Second Schedule hereunder written, build and completely finish fit for occupation a building to be used as an industrial factory with all requisite drains and other proper conveniences thereto.”

16. Clause (d) imposes responsibility on the plot holder to plant the trees in the open space. Clause (g) speaks of the service charges and other charges to be paid by the plot holder as may be prescribed by the State Government under MIDC Act, 1961 in respect of amenities or common facilities provided by the grantor.

17. Clause 5(b) of the agreement empower the respondent to resume the land allotted to the holder of the plot on the failure of the plot holder to make construction on the plot within seven years from the date of the agreement, the plot holder defaults to pay the service charges or fails to observe the terms of the agreement. Upon resuming the land, the agreement shall cease and terminate.

18. The above conditions mandate the plot holder to construct the industrial factory anyhow within seven years from the date of the agreement. Considering the date of the agreement, it was incumbent upon the petitioner to build the factory unit on or before 27.02.2010. Since the petitioner raised no construction on the plot, the respondent issued him the first notice dated 14.07.2010, calling upon him why the action shall not be taken against him for breach of the terms of the agreement. The petitioner, by way of reply dated 03.08.2010 submitted the explanation as discussed above.

19. In addition to the above, Clause (6) of the agreement empowers the respondent to extend the period for completion of the factory building and the necessary work for the said period mentioned in clause 3(d), if it is satisfied that the building and works could not be completed within the prescribed time for reasons beyond the control of the licensee.

20. The petitioner accepted, particularly vide Clause 3(d), the responsibility to commence the construction of the factory building within seven years from the date of the agreement. The petitioner also

knew, by letter dated 16.11.2007, that the period of seven years was reduced to four years. He never challenged such reduction of tenure. It is not in dispute that till the first show-cause notice dated 14.07.2010, no action was taken to cancel the allotment of the plot after four years from the date of the agreement. The respondents waited for seven years and then initiated the action. The burden is on the petitioner to prove that there were reasons for not raising the constructions within a given time. Firstly he complained that the respondent did not make water facility and infrastructure available, to any plot holder. He further explained that there was deficit rainfall for the last three years and global economic crisis. He has nothing to show that he ever complained of the lack of water and infrastructural facilities. He tried to convince us that shortage of rain for the last three years and a global economic crisis are the reasons for not raising construction, and it was a situation beyond his control. To believe his defence he placed no material that shortage of rain and global economic crisis had a bearing on his project. He also has no case; that for these reasons, the bank refused him the loan. He never made any representation to respondent no.2 that he is facing difficulties as mentioned above in raising the construction until the show cause notice dated 14.07.2010 was served on him. Indisputably, the petitioner is in arrears of the service charges. He has a defense that he went to pay the arrears, but the Officer refused. Had he intended to pay the arrears, he could have paid by cheque or demand draft. On the other hand, he went on disputing with the respondent about how the charges were assessed. He could have paid the arrears under protest.

That could throw light on his bonafide. Having regard to the circumstances, we do not find substance in the arguments of the petitioner that the situation was beyond his control which restrained him from raising the construction of the factory within agreed time.

21. It is also the argument of the learned counsel for the petitioner that the respondent was biased against the petitioner and took a drastic step to evict him when numerous plot holders had not completed the construction in the same MIDC area.

22. A person alleging bias against the authority has to place the material or circumstances to believe the defense of bias. Bias is inclination or prejudice for or against one person or group, especially in a way considered unfair. It is a personal or sometimes unreasonable judgment. The person alleging bias, shall prove instances of prejudice. The petitioner has not placed a single example against respondent no.2 that he acted against his interest; he favoured others or did the acts with malafide intention to evict the petitioner from the allotted plot. On the contrary, no immediate action was taken within four years from the date of agreement when the petitioner had not constructed the factory. Respondent no.2 vide letter dated 11.01.2011, positively requested the petitioner to clear the arrears first so the appropriate decision may be taken on his request to grant the extension. In the absence of material that prejudiced respondent no.2 against the petitioner, the bare allegations of bias have no meaning.

23. The learned counsel Shri Dande for respondent by filing additional reply, would argue that the plots in MIDC Latur were allotted to the petitioner for construction of the factory, but instead of constructing the factories, he constructed residential houses on those plots. That shows his conduct that he never intended to use the land for the purpose for which those were allotted. We are not impressed by his arguments for the reasons that no issue of its change of user is before us, and no material is placed in this case for what purpose those plots were allotted to him. We are unaware what restrained respondent no.2 or the concerned Officer from taking action for the breach of agreement, if any.

24. The learned counsel Shri Dande would argue that the plot allotted under an agreement was subject to the terms and conditions therein. Therefore, it could not be kept idle for stalling and stultifying industrial growth of the area. To bolster his argument, he relied on the case of *National Project Construction Corporation Ltd* (Supra). He would also rely on the case of *Ashok Sursingh Bhimani* (Supra) and argue that the properties of MIDC are public. Therefore in violation of the terms of the agreement, the public property cannot be retained by private persons. He also relied on the case of *Abhay S/o Jayantilal Shah* (Supra), and argued that just applying for construction permission would not mean taking the steps for the development of the property in its real sense. In this case, the facts are that the petitioner has obtained only the plan sanctioned from the concerned authority of the respondent.

The above case law come to the aid of the learned counsel Shri Dande.

25. The facts and material placed on record indicates that the petitioner breached the agreement terms. There were no circumstances beyond the control of the petitioner that restrained him from constructing the factory within the agreed time. Therefore nothing is there to believe that the action cancelling the allotment of plot for the given reason is arbitrary, perverse, and against the principle of natural justice.

26. In the light of the above, we do not find that judicial indulgence is necessary in this case. Accordingly, the petition is devoid of merit; hence dismissed. Thus, the interim orders stand vacated.

27. The learned counsel for the petitioner prayed to extend the interim relief for eight weeks.

28. We have discussed the issues at length. The plot in question is vacant and unused since 2003. It is a plot to be commercially used. The MIDC is getting no revenue since then. The petition was pending for about nine years. It would be improper to put the MIDC at further loss. Hence, we reject the prayer.

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)