

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

**WRIT PETITION NO.7219 OF 2020
WITH WP/7627/2020 WITH WP/8029/2020
WITH WP/8028/2020 WITH WP/8025/2020
WITH WP/8026/2020 WITH WP/8027/2020
WITH WP/7227/2020**

**M/S. EVEREST ESTATES (RF) REGISTERED PARTNERSHIP FIRM
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...
Advocate for Petitioner : Mr. D. P. Palodkar
AGP for Respondent No.1 : Mr. S. G. Sangle
Advocate for Respondent No.2 : Mr. S. S. Dande
...

**CORAM : RAVINDRA V. GHUGE AND
S. G. MEHARE, JJ.**

DATE : 22nd OCTOBER, 2021

PER COURT :

1. This petitioner has filed identical petitions setting forth prayer clause (B) and (C), which read as under:-

"B) The Hon'ble High Court may be pleased to issue writ of certiorari or any other appropriate writ, order or direction in the nature of writ and thereby quash and set aside the order dated 28.12.2019 bearing No. MIDC/ ROA/ SHD/E34243/2019 (Annexure "N"), regarding cancellation of allotment of forfeiture of EMD in respect of Plot No.P-21 situated in Shendra 5 Star MIDC, Aurangabad.

C) The Hon'ble High Court may be pleased to issue writ of mandamus or any other appropriate writ, order or direction in the nature of writ and thereby direct respondent No.2 to allot plot No.P-21 to the petitioner. In case, the allotment is not possible, the EMD deposited by the petitioner may kindly be directed to be refunded with 17.5% interest per annum from the date

of deposit till actual realization along with the costs/compensation as described in detail in the writ petition."

2. The learned advocate for the petitioner has vehemently canvassed the following grounds:-

a) The MIDC published a public notice inviting tenders in sealed quotations for allotment of available industrial/commercial plots, vide notice dated 25-01-2013.

b) Vide clause 8 under Annexure-II, it is provided as under:-

"8. Allotment order will be issued, if quotation is accepted. The applicant shall pay to the Corporation the entire Balance Premium amount within 15 days from the date of receipt of allotment order. If the Premium amount is not received to the corporation within stipulated time limit, allotment of plot will be cancelled and Earnest Money Deposit will be forfeited."

c) The tender bid indicated the rates quoted by the petitioner and such rates were to be held valid for 60 days under clause 15, which reads as under :-

"15. The rates received will be valid for 60 days from the date of opening of Sealed quotations."

d) The petitioner received a communication dated 07-01-2019 from the MIDC calling upon them to comply with clause 8 and deposit the balance amount, excluding the Earnest Money Deposit (EMD), within 15 days.

- e) Vide impugned orders, the MIDC cancelled the allotment of 8 commercial plots to the petitioner and thereafter, forfeited the EMD which is a total amount of Rs.12,86,300/-. The said chart is placed below paragraph No.4 in the memo of the petition, which reads thus:-

Writ Petition No.	Plot No.	Date of cancellation
7219/2020	X-27	22-12-2019
7627/2020	X-33	22-12-2019
8029/2020	P-19	28-12-2019
8028/2020	X-29	22-12-2019
8025/2020	P-21	28-12-2019
8026/2020	X-26	22-12-2019
8027/2020	X-30	22-12-2019
7227/2020	X-25	22-12-2019

- f) Plot No. X-23 is not a matter of litigation in these petitions as the petitioner establishment was allotted the said plot after it paid the remainder bid amount as directed within 15 days.
- g) Considering the effect of clause 15, as the bid amount was valid only for 60 days and since the MIDC called upon the petitioner to deposit the remainder amounts after 60 days, the tender bid loses its significance and would not apply to the case of the petitioner. Consequentially, the petitioner cannot be faulted for not paying the remainder price of the plots as per its bid and hence, the EMD should be returned to

the petitioner.

3. The learned advocate for the MIDC has vehemently opposed this petition by contending as follows:-

- a) Clause 15 would not apply to these cases as it was just a precautionary clause indicating that the amount quoted by the bidder would be valid for 60 days, meaning thereby that after 60 days the MIDC would have a right of refusing to continue with the bid, in as much as, could insist upon the appreciated value of the plot by re-floating the tender.
- b) The prayer of the petitioner clearly indicates that the petitioner prays for quashing the cancellation of allotment of the plots.
- c) In prayer clause (C), the petitioner clearly mentioned that if the allotment is not possible, the EMD may be refunded with interest at the rate of 17.5% per annum.
- d) This very petitioner (identical petitioner in all these matters) deposited the remainder amount with regard to plot X-23, ad-measuring 600 sq. meters, and succeeded in obtaining the allotment after complying with clause 8 by depositing the amount within 15 days.
- e) The petitioner cannot invoke clause 15, selectively as per it's

convenience.

4. Having considered the submissions of the learned advocates for the respective sides, we have perused the petition paper book with their assistance and especially clauses 8 and 15 which have a nexus with the issue raised.

5. It is apparent from prayer clause (B) and (C) that the petitioner is still interested in the 8 plots out of the 9 plots, for which it had bid. One plot viz. X-23 has been allotted to the petitioner after the petitioner fulfilled clause 8. This clearly indicates that the petitioner still desires the allotment of the plots and in the event of the MIDC refusing allotment, the petitioner prays for refund of the EMD, in the alternative.

6. As such, by the conduct of the petitioner, it is estopped from relying upon clause 15 as a ground that the petitioner had the liberty to refuse to continue with the bid. We have arrived at this conclusion that the petitioner clearly indicates its interest in the said plots even on the date of the filing of the petition and has prayed that the plots be allotted to it, by way of an alternative prayer, the petitioner cannot contend that if the plots are not allotted, the EMD may be refunded. This eliminates the applicability of clause 15 in these matters.

7. In view of the above, prayers of the petitioner have to be considered only in the light of clause 8, which mandates that, if the quotation is accepted, the applicant will have to pay the entire balance premium amount within 15 days from the date of the receipt of the allotment order. If the premium amount is not received within the stipulated period of 15 days, the allotment of the plot is cancelled and the Earnest Money Deposit (EMD) would be forfeited.

8. There is no dispute that the petitioner received the allotment letters on 07-01-2019 (different dates are mentioned in the writ petitions) and was expected to deposit the balance premium amount within 15 days. The petitioner did deposit such amount only in relation to plot X-23 and the allotment attained finality. With regard to the remaining 8 plots, the petitioner, despite receiving the allotment letters for all nine plots, paid the balance premium amount for one plot and did not pay the balance amount for the remaining 8 plots. It was after about 11 months that the MIDC issued the impugned orders cancelling the allotment of the 8 plots. Naturally the EMD was forfeited in the light of clause 8.

9. We also find from the record that Writ Petition No.8864 of 2013 was preferred by some petitioner challenging the said

tender/auction/proceedings. Ad-interim order was passed by this Court on 11-02-2013. The MIDC, therefore, held itself from proceeding with the allotment of plots. By order dated 12-09-2018, this Court dismissed Writ Petition No.8864 of 2013. The said petitioner being aggrieved, approached the Hon'ble Apex Court by preferring SLP No. 29533 of 2018. The present petitioner was a party respondent in the writ petition before this Court as well as in the SLP, in view of the fact that it received notice from the Hon'ble Apex Court on 15-01-2019. The said SLP has also been dismissed vide order dated 08-07-2019.

10. As such, after this Court dismissed Writ Petition No.8864 of 2013 on 12-09-2018 and as the MIDC did not receive any notice from the Hon'ble Apex Court, the allotment of the plots in favour of the petitioner was communicated vide the communications set out in the petitions. It is, therefore, apparent that the MIDC resorted to allotment of the plots in favour of the petitioner and the petitioner responded by depositing the balance premium amount only with regard to a single commercial plot X-23. It was by choice that the petitioner did not comply with clause 8 with regard to the remainder plots.

11. In view of the above, we do not find that the impugned order of cancellation of allotment of 8 plots and forfeiture of the

EMD could be termed as being perverse or unsustainable.
Therefore, these petitions, being devoid of merits, are dismissed.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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