IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.14564 OF 2019

Tulsi Jelly Sweets
D-29, Addl. MIDC, Ajanta Road,
Jalgaon-3, Tq. & Dist. Jalgaon
through its proprietor,
Ashutosh Chudaman Patil,
Age 43 years, Occu. Business,
D-29, Addl. MIDC, Ajanta Road,
Jalgaon-3, Tq. & Dist. Jalgaon … PETITIONER

VERSUS

1. The State of Maharashtra,
through its Secretary,
Industrial Development Department,
Mantralaya, Mumbai – 32
(Copy to be served upon
Govt. Pleader, High Court of
Judicature of Bombay,
Bench at Aurangabad)

2. Maharashtra Industrial Development
Corporation, Udhyog Sarthi,
Marol Industrial Area,
Mahakali Caves Road,
Andheri (East), Mumbai – 93
through its Chief Executive Officer

3. The Regional Officer,
Maharashtra Industrial Development
Corporation, Opp. Office of
Deputy Engineer, M.I.D.C., Awadhan,
Dhule, Tq. & Dist. Dhule

4. Area Manager,
Maharashtra Industrial Development
Corporation, Jalgaon

5. M/s Balaji Seeds and Processing Pvt. Ltd.
Plot No.D-60, MIDC Area, Jalgaon

… RESPONDENTS

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Shri P.D. Bachate, Advocate with
Shri U.A. Bhadgaonkar, Advocate for petitioner
Shri S.P. Sonpawale, A.G.P. for respondent No.1.
Shri S.S. Dande, Advocate for respondents No.2 to 4
Shri K.C. Sant, Advocate for respondent No.5

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CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.

Date of reserving judgment : 16th December, 2020
Date of reserving judgment : 11th March, 2021

JUDGMENT (PER R.G. AVACHAT, J.) :

Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, taken up for final hearing.

2. The petitioner is proprietor of "Tulsi Jelly Sweets". He is engaged in the business of production of jelly sweets. The production unit is situated on the Plot (D-29) in Additional M.I.D.C. Area, Jalgaon. The petitioner applied for grant of additional plot, being Plot No.D-13/1 and D/13-2 for expansion of his business. The respondent No.1 is the State of Maharashtra in Industrial Development Department. The respondent No.2 is the Maharashtra Industrial Development Corporation (MIDC), while the respondent No.3 is the Regional Officer of MIDC, Dhule and respondent No.4 is Area Manager of MIDC, Jalgaon. The respondent No.5 is a Private Limited

Company, doing its business on Plot No.D-60 in Additional MIDC, Jalgaon.

3. The petitioner, by this petition, has sought for the relief of quashing of order dated 13/9/2019, issued by the respondent No.4 Area Manager, allotting the Plot No.D/13-2 to the respondent No.5. The petitioner has also prayed for a writ of mandamus directing the respondents No.1 to 4 to allot the said plot/s to him for expansion of his business.

4. Shri Bachate, learned counsel for the petitioner would submit that, the decision of the respondent MIDC to allot the plot to the respondent No.5 has been against its policy. The petitioner did comply with requirement of additional plot for expansion of business. The decision of the MIDC to defer the petitioner's claim is discriminatory and smacks of arbitrariness. According to him, the petitioner had never been informed about the alleged deficiencies in his application for grant of additional plot. As per the policy for grant of additional plot for expansion of business, applicant is required to consume not less than 60% of Floor Space Index (FSI) of his existing plot. The petitioner has consumed 95% FSI. Whereas the respondent No.5 has utilized not more than 40% of the FSI. When there are more than one claimants for one and the same plot, they are required to submit their bids

in a sealed cover. The applicant, who is the higher/ highest bidder amongst the claimants, is supposed to be allotted the plot. The online status of the application of respondent No.5 disclosed it to have been rejected. Respondent No.5 was allowed to submit application offline and documents as well. The MIDC granted three of the applicants plots admeasuring double the area of their existing plots. The same is also inconsistent with the policy of the MIDC. Learned counsel took us through the relevant Circulars to point out as to how the conditions therein have been flouted by the MIDC itself. According to learned counsel, the order allotting the plot in favour of respondent No.5 deserves to be set aside. The petitioner deserves allotment of the plots bearing No.D-13/1 and D/13-2 for expansion of his business.

5. Learned counsel for the petitioner placed reliance on the following authorities :

(1) (1996) 6 SCC 530 (Common Cause, a Registered Society V/s Union of India)

(2) (1979) 3 SCC 490 (Ramana Dayaram Shetty V/s International Airport Authority of India & ors.)

(3) (2011) 5 SCC 29 (Akhil Bharatiya Upbhokta Congress V/s State of M.P.)

(4) (2015) 4 Mh.L.J. 758 (Tanaji Jagdale V/s State Government of Maharashtra)

6. Shri Dande, learned counsel for the respondent No.2 to 4 would, on the other hand, submit that the petitioner does not have a vested right to claim a particular plot. Petitioner's application has not been rejected. It has simply been deferred since it was not complete in all respects. The petitioner was called upon to submit the necessary documents. He, however, failed to submit all the documents in time. The MIDC is prepared to grant the petitioner other plot.

7. Shri K.C. Sant, learned counsel for respondent No.5 would make submissions consistent with the submissions made by learned counsel for respondent No.2 to 4. He would further submit that, in case of judicial review of administrative action, this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, cannot sit in appeal. It is only when administrative action is found to have been tainted with malafides or arbitrariness, the same could be set aside. According to learned counsel, the petitioner has not come with clean hands. He has obtained an order of status quo by suppressing material facts. The petitioner filed Petition (W.P. No.10746 of 2019) challenging letter of offer of the plot in favour of respondent No.5. Since the petitioner failed to secure interim relief therein, he filed the present petition.

When the respondent No.5 has been served with a notice, and date for his appearance was fixed/ extended for 27/3/2020, the petitioner circulated the matter without informing the respondent No.5 and by misrepresenting some facts, obtained relief of status quo. According to learned counsel, the respondent No.5 has been put in possession of the plot. He has paid Rs.87 Lakhs towards lease money. The petitioner has no vested right to claim a particular plot. In the factual backdrop, the petition deserves to be dismissed.

8. There can be no two views over legal proposition that in case of judicial review of administrative action, the Court, in exercise of jurisdiction under Article 226 of the Constitution of India, cannot sit in appeal. If it is found that there is arbitrariness, procedural impropriety, unfairness or abuse of process, then only the Court would interfere.

The gist of the legal propositions emerged from the authorities relied on by learned counsel for the petitioner is that, in the matter of grant of largesse including award of jobs, contracts, quotas and licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of the land.

9. The petitioner is a proprietor of Tulsi Jelly Sweets.

He is engaged in the business of production of jelly sweets. The manufacturing unit has been established on the plot, D-29, situated in Addl. Jalgaon MIDC. The petitioner had earlier applied for grant of a plot for expansion of his business. In 2009, Minor Modification Committee converted amenity plots into industrial plots. M-Plot No.6 was converted into Plots No.D-13/1 and D/13-2. The decision of conversion of amenity plots had been challenged in a Writ Petition. After the concerned Writ Petitions were decided, the petitioner, on 24/4/2019, again applied for allotment of the aforesaid two plots for expansion of his business. According to the petitioner, the policy regarding grant of additional plot for expansion of business has been covered by Circulars dated 7/1/2013 and 7/6/2019. The petitioner has complied with all the conditions for grant of additional plot. The respondent No.5 has not. A reference to the relevant Circulars has, therefore, become necessary. The Circular No.8460, dated 7/1/2013 speaks regarding allotment of plot for expansion of business. The Circular inter alia contained the following conditions :

The applicant is required to submit documents such as Development Project Report (DPR), Block Plan, Audited Accounts for the period of the preceding three years of the existing business, orders in hand, the consent letter issued by Maharashtra Pollution Control Board. It further reads that, in case of demand by two adjoining plot holders, their applications should be considered in order of their seniority (means, which has been received first), and considering the utilization of FSI. The applications should be considered on their own merits.

10. While Circular No.B-88135, dated 7/6/2019 speaks that while granting a plot for expansion of business, there has to be utilization of 40% of FSI of the existing plot. In case more than two persons are claiming an adjoining plot, then preference should be given to the claimant who has utilized more than 60% FSI of his existing plot. In case of there being more than one claimants, who have utilized more than 60% of FSI, then such claimants may be directed to submit their bids in sealed covers. Bid of highest bidder has to be accepted. The bid shall not be for the amount less than upset price to be fixed beforehand. The Circular further records that, investment in the land in the proposed project shall not be more than 10% of the entire project cost.

11. Learned counsel for the petitioner would submit that, his case would be governed by the Circular No.B-88147, dated 7/6/2019. Close reading of the said Circular makes it

more than clear that the same is applicable in case of MIDCs located in MMR and PMR regions only.

12. The two Circulars referred to above save the terms and conditions of the Circular dated 27/4/2012, which are not inconsistent therewith. A copy of this Circular is also on record. Clause (3) thereof speaks of a preference to be given for grant of additional plot for expansion of business to one who is an adjoining plot holder. The clause further reads that, grant of preference should not be misconstrued to be a right or entitlement for allotment of said plot.

13. Close reading of the aforesaid three Circulars undoubtedly indicate that no applicant has a right to claim a particular plot for expansion of his business. In case there are more than one claimants, preference is required to be given to adjoining plot holder. The applicant should have consumed at least 40% of FSI of his existing plot. Clause regarding utilization of 60% of FSI is applicable only in case of there being more than two claimants who are adjoining plot holders. Admittedly, both the petitioner and the respondent No.5 are not the holders of the plots adjoining Plot No.D-13/1 and D/13-2. Therefore, the aforesaid conditions have no application to the present case. As such, the applicant asking for additional plot for expansion of business is required to

show to have utilized at least 40% of FSI of his existing plot. Both the petitioner and respondent No.5 have admittedly utilized 95% and 41% of the FSI of their respective plots.

14. The MIDC had received 16 applications for allotment of plots. A meeting of the Land Allotment Committee (LAC) was scheduled for 13/7/2019. The petitioner was invited to attend the LAC meeting. A copy of the letter inviting the petitioner to attend the said meeting is on record. The letter reads thus :

> *"You are, therefore, requested to make it convenient to attend the said meeting on* ***at Udyog Sarathi, MIDC Head Office, Mahakali Caves Road, Andheri (East), Mumbai – 93*** *along with the justification of requirement of land, last 3 years Balance Sheets of any existing Company, proposed investment, details of raising of funds for proposed investment, details of orders in hand if any etc."*

15. The LAC held its meeting on the scheduled day i.e. on 13/7/2019. The petitioner attended the said meeting and submitted the following four documents :

1) Process Chart,
2) MPCB Consent to operate,
3) Machinery Quotation,
4) List of proposed machinery

16. According to the respondent MIDC, the application

of the petitioner was not complete in all respects. It was short of many documents. The aforesaid four documents were with the petitioner. He, therefore, submitted those documents on the spot. The petitioner and all other applicants were invited to the meeting with a direction to submit the documents as stated in the letter. The respondent MIDC, vide its letter dated 12/9/2019, informed the petitioner that his application could not be considered in the LAC meeting since he had not submitted the following documents :

a) Proposed Income Returns not provided,
b) Proposed increase in turnover not provided,
c) Present orders in hand not provided
d) Quantitative details of raw material is not submitted
e) Quantitative details of effluents not submitted
f) Procedure for treatment of effluents is not submitted
g) Purchase and Sales bills not submitted.

17. The letter dated 12/9/2019 indicates that, vide letter dated 27/7/2019, the petitioner was invited to attend the meeting along with justification of requirement of land, last three years Balance Sheets of any existing Company, proposed investment, details of raising of funds for proposed investment, details of orders in hand if any etc. The petitioner, therefore, cannot be heard to say that he had not been informed of his application having been short of the

documents mentioned in the letter dated 12/9/2019. The MIDC has not rejected the application of the petitioner. The application has simply been deferred. The petitioner was called upon to submit the necessary documents. If the application is found to be complete in all respects, his claim would be considered. It is reiterated that, the aforesaid three Circulars indicate that the petitioner cannot have a right for allotment of Plot No.D-13/1 and D/13-2, since he is not an adjoining plot holder.

18. The MIDC has specifically averred on affidavit that, the application preferred by the respondent No.5 was complete in all respects. Both the petitioner, respondent No.5 and other applicants were permitted to submit hard copies of some of the documents since the system of submitting online applications did not permit furnishing documents in bulk. In the LAC meeting, 16 applications were considered. 13 thereof have been sanctioned. Claims of 3 applicants including the present petitioner came to be deferred. So far as regards status of online application of the respondent No.5 as on 16/6/2019 indicate to have been rejected, it has been stated on affidavit that, the copy which has been produced by the petitioner on record is a copy of the print out taken by the concerned allottee from his login and at the relevant time

there was some technical error in the system. The same appeared in some of the applicants' status. It has further been stated that, it being online system, the status at the login of the applicant is of no meaning and the actual status at login of the officer (MIDC) level is required to be considered. Although the status was shown as rejected, in fact, the status of applications was - 'Pending'. The same could be verified from the fourth column of the application in which the processing status is clearly shown that DPR scrutiny is pending.

19. Vide Circular dated 26/9/2016, guidelines have been issued about allotment of all types of plots. Clause 2.4.3 thereof clearly mentions submission of Detailed Project Report (DPR) and also the documents as per Annexure 3. The said Circular was available on the Website of the MIDC. The petitioner has already been holding two plots. He, therefore, cannot be assumed to have not been aware of the Circular dated 26/9/2016.

20. By filing subsequent affidavit, the petitioner has contended that, three of the applicants have been granted area more than double the area of their existing plots. The same is in breach of the policy of the MIDC. In this regard, it may be stated that, same is not the issue in this present Writ

Petition. Even otherwise, the MIDC has filed its affidavit-in-reply and clarified the position. It has specifically been stated that the LAC has granted those three plots after having considered the said applicants' requirements and report of a Technical Adviser. In our view, the petitioner cannot be benefited by making such contentions.

21. In sum and substance, it has to be observed that, the petitioner did not have a right to claim Plot No.D-13/1 and D/13-2 for expansion of his business. The petitioner is not the adjacent plot holder. Requirement of utilization of at least 60% FSI of existing plot applies only in case of a claim to the adjoining plot. The minimum requirement of utilization of the existing FSI is of 40%. The respondent No.5 has admittedly utilized 41% of FSI of his existing plot. The petitioner was called upon to attend the LAC meeting held on 13/7/2019. The petitioner accordingly attended the meeting. In the letter inviting him to attend the meeting, the petitioner was called upon to come with certain documents.

The petitioner accordingly attended the meeting. His application was found to have not been accompanied with/ by certain documents, described in letter dated 12/9/2019. The petitioner only submitted 4 of those documents. Necessarily, his application was required to be deferred.

Since the application of the respondent No.5 was found to be complete in all respects, he has been allotted the plot. The respondent No.5 has been put in possession thereof. He has paid lease money amounting to little over Rs.87 Lakhs and spent about Rs.3 Lakhs. The mother of the petitioner is a local Corporator of Bhartiya Janata Party. She wrote letter to the M.L.A., making complaint regarding allotment of plots. The petitioner even approached the local police station against the officials of MIDC. The respondents alleged the petitioner to have tried to exert pressure on them for allotment of the plot. Since the petitioner did not have a right to claim a particular plot and the MIDC is prepared to consider his request and grant him another plot, we find the petition to be without merit.

22. Accordingly, the Writ Petition is dismissed. Rule discharged.

(R. G. AVACHAT)
JUDGE

(SUNIL P. DESHMUKH)
JUDGE

After pronouncement of the judgment, learned counsel for the petitioner prays for continuation of the interim relief for a period of four weeks. The prayer is rejected.

(R. G. AVACHAT) **JUDGE**	**(SUNIL P. DESHMUKH)** **JUDGE**

fmp/-