

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

WRIT PETITION NO. 6596 OF 2017

- 1) Shri. Rajaram s/o Ananda Patil,
Age 68 years, Occ. Agriculture.
- 2) Smt. Indubai Damu Patil,
Age 80 years, Occ. Agriculture.
- 3) Shri. Gulabrao s/o Damu Patil,
Age 61 years, Occ. Agriculture.
- 4) Shri. Bhausahab s/o Damu Patil,
Age 59 years, Occ. Agriculture,
- 5) Shri. Keshav s/o Damu Patil,
Age 56 years, Occ. Agriculture,
- 6) Shri. Jaywant s/o Damu Patil,
Age 52 years, Occ. Agriculture,
- 7) Sau. Ratnabai Gulabrao Patil,
Age 44 years, Occ. Agriculture,

All r/o. Audhan, Tq. & Dist. Dhule
All petitioners through General Power
of Attorney- Ramesh s/o Manaklal
Khandelwal, Age 60 years, Occ. Business,
R/o. Bahar, Rajrang Colony, Near
Agrawal Nagar, Police Chowky, Dhule,
Tq. & Dist. Dhule.

... **Petitioners**

VERSUS

- 1) The State of Maharashtra,
Through Ministry of Industrial Development,
Mantralaya, Mumbai – 32.
- 2) The Maharashtra Industrial Development
Corporation, through its Chief Executive
Officer, having its head office at Udyog
Sarathi, MIDC, Marol Industrial Area,
Mahakali Caves Road, Andheri (East)
Mumbai-400 093.

- 3) The Deputy Chief Executive Officer,
The Maharashtra Industrial
Development Corporation, Mumbai.
 - 4) Regional Officer,
The Maharashtra Industrial
Development Corporation, Dhule.
 - 5) Mr. Amrishbhai Rasiklal Patel,
Age 62 years, Occ. Member of
Legislative Council,
R/o. "Janak Villa" Nedhru Road,
Shirpur, District Dhule.
 - 6) M/s Yash Knit Wear,
A registered partnership firm,
having its office at 1, Green park,
80 feet road, Dhule.
Through its partner
Rajwardhan Raghojirao Kadambande,
Age 58 years, Occ. Business,
R/o. 1, Green Park, 80 feet road, Dhule.
 - 7) M/s. Mahacot Trading Corporation,
having its office at Plot No. 7,
Shri. Laxmi, Tulshiram Nagar,
Dhule- 424 002
Through its partner:
 - a) Mr. Rajendra Shyamrao Desle,
Age Major, Occ. Business,
R/o. As above.
 - b) Mr. Sachin Shivajirao Dahite,
Age Major, Occ. Business,
R/o. As above.
- ... **Respondents.**

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Advocate for the Petitioners : Mr. Anand P. Bhandari.
A.G.P. for Respondent No. 1/State : Mrs. V. N. Patil-Jadhav
Advocate for Respondent Nos. 2 to 4 : Mr. S.S. Dande
Advocate for Respondent No. 6 : Mr. Amol S. Sawant
Advocate for Respondent No. 7 : Mr. V.D. Hon, Senior Advocate i/b Anup D.
Mane

CORAM : MANGESH S. PATIL &
Y. G. KHOBRAGADE, JJ.

RESERVED ON : 23.11.2022.
PRONOUNCED ON : 02.12.2022.

JUDGMENT : (PER : MANGESH S. PATIL, J.)

Heard.

2. Rule. The Rule is made returnable forthwith. Learned A.G.P and the learned advocates for the respective respondents waive service. At the joint request of the parties, the petition is being disposed of finally.

3. The petitioners are coming with following prayers :

“(B) By appropriate writ, order or direction it be held that the land bearing Gat No. 25 admeasuring 3-Hectares 25-Are situated at village Avdhan, Tq. & Dist. Dhule, is released from acquisition proceeding, in view of nonpayment of amount of compensation to the petitioners and consequently respondents be directed to hand over the possession of the land in favour of the petitioners.

(C) By appropriate writ, order or direction the respondents be directed to allot the entire land bearing Gat No. 25 admeasuring 3-Hectares 25-Are situated at village Avdhan, Tq. & Dist. Dhule to the petitioners.

(D) By appropriate writ, order or direction the allotment of Plot No. L-28 admeasuring 11980 square meters, situated at Additional Industrial Area, Dhule, District Dhule, in favour of respondent No. 6, be quashed and set aside.

(E) By appropriate writ, order or direction the allotment of plot No. L-29 admeasuring 11980 square meters, situated at

Additional Industrial Area, Dhule, District Dhule, in favour of respondent No. 7, be quashed and set aside.

(F) By appropriate writ, order or direction appropriate inquiry be initiated in relation of allotment of land in Additional Industrial Area, Dhule, District Dhule, and appropriate action be initiated against the persons who have deviated from their statutory duties”.

The petitioners were the owners of land Gat No. 25 admeasuring 3-Hectares 25 Are of village Avdhan Tq. & Dist. Dhule. By government notification dated 12.02.1981 by resorting to the provision of Section 33(3) of the Maharashtra Industrial Development Corporation Act, 1961 (hereinafter ‘the MIDC Act’), an award was passed on 31.12.1993 for acquiring the land. The petitioners preferred reference claiming enhanced compensation. The Reference Court by the judgment and award dated 13.12.2011 granted enhancement but the petitioners were not paid the compensation till the date of filing of the petition. The petitioners then executed a power of attorney in the year 2004 in favour of Ramesh Khandelwal through whom they have filed the present petition. The petitioners preferred Writ Petition No. 2808/2008 for releasing the property from acquisition. It was dismissed on 23.11.2010 and liberty was granted to file a fresh representation with the respondents for releasing the land. The petitioners challenged that order before the Supreme Court but the Special Leave Petition was withdrawn in the year 2015. The petitioners further aver that they had never delivered possession and only papers were prepared in the office regarding such delivery of possession. The petitioners, therefore, pray that the acquisition has lapsed for non-payment of compensation and the possession having never been taken away.

It is the case of the petitioners that they wanted to start an industry over the same property and had submitted an application with the MIDC on 06.01.2011. The respondent No. 3 who is the Deputy Chief Executive Officer

of MIDC called report from the respondent No. 4 who is its regional officer stationed at Dhule. The latter submitted a report on 16.05.2011.

It is then averred that the respondent Nos. 6 and 7 submitted applications with the MIDC on 09.01.2012 and 20.01.2012 requesting for allotment of the plots carved out from the petitioners land Gat No. 25 which was acquired by the respondents. On a recommendation by the respondent No. 5 who happens to be a member of the Legislative Council, a meeting of the allotment committee of the MIDC was held on 26.09.2013 and the proposal of the respondent Nos. 6 and 7 was rejected. Once again, the Minister of Industries recommended allotment of the plots to the respondent Nos. 6 and 7 in the year 2014 and respective respondents were allotted the plot Nos. L-28 and L-29. Thus, the petitioners allege that when their application for allotment of the land was already pending, such allotment to the respondent Nos. 6 and 7 was arbitrary and illegal. It is also alleged that as many as 37 applications for allotment of plots were already pending before the MIDC and the applications of respondent Nos. 6 and 7 were filed last in point of time and were at Serial Nos. 36 and 37. Thus, they allege that the allotment of plots in favour of the respondent Nos. 6 and 7 is illegal and have prayed for its quashment and have also further prayed for allotment of the entire land Gat No. 25 according to their request.

4. Learned advocate Mr. Bhandari would at the outset fairly concede that the amount of compensation having been deposited as is contemplated in the matter of **Indore Development Authority Vs. Manoharlal and others; A.I.R. 2020 SC 1496**, the petitioners are not entitled to and pressing for the prayer clause (B) regarding lapsing of the acquisition.

5. Mr. Bhandari would take us through the papers to demonstrate that the petitioners' application for allotment was first in point of time and still overlooking it, the plots were allotted to the respondent Nos. 6 and 7 without holding any auction. Considering the fact that it is a matter of

allotment of a plot from the MIDC which is a statutory Corporation established by the Government for promoting industrial development, it ought to have acted in fair manner but has succumbed to the political pressure. He would point out that in the affidavit in reply filed by the MIDC, it specifically admits that the petitioners have submitted the application prior to the respondent Nos. 6 and 7. He would also point out to us that even the respondent No. 3 had called upon the respondent No. 4, his subordinate, who is the officer of the MIDC, to consider the petitioners' application for allotment of the plot. The process of allotment ought to have been transparent and fair. By not adhering to such settled norms the plots have been allotted to the respondent Nos. 6 and 7. Such allotment is illegal and is liable to be quashed and set aside. He placed reliance on judgment of this Court in the matter of **Real Team Systems Pvt. Ltd. Vs. The State of Maharashtra and others in Writ Petition No. 9279/2012 decided on 20.02.2014.**

6. Learned advocate Mr. Dande for the respondent/MIDC would strenuously submit that the petitioners are not entitled to seek any relief. Their claim for return of the land was already turned down by this Court in Writ Petition No. 2808/2008. Only a liberty was granted to them to once again approach the MIDC regarding grievance in respect of dereservation. The petitioners had even challenged that decision of this Court by approaching the Supreme Court but even the Special Leave Petition was withdrawn. He would, therefore, submit that whatever rights the petitioners were agitating and claiming were already considered by this Court and they cannot be permitted now to put up any claim for allotment.

7. Mr. Dande would further submit that the petitioners have no *locus standi* to question the allotment in favour of the respondent Nos. 6 and 7. The Rules and the MIDC Act permits allotment of plots even on an application although auction is one more recognized mode for such allotment. It would be difficult for the MIDC to conduct auction in respect

of all the plots which would deprive the small entrepreneurs because they would have to then compete with the big fish eyeing for the plots. Therefore, allotment of plots in favour of the respondent Nos. 6 and 7 on the basis of their application cannot be said to be illegal.

8. Mr. Dande would further submit that the petitioners are not approaching this Court *bona fide*. The owners have purportedly executed an irrevocable power of attorney in favour of an individual on the basis of a notarized deed and it is the power of attorney who is now taking lead in laying a claim over the plot. The petitioners have no right to claim a specific plot to be allotted.

9. Learned Advocate Mr. Hon for the respondent no. 7 and learned advocate Mr. Sawant for the respondent No. 6 would submit that the petitioners have no *locus standi* to question allotment of plots in favour of the respondent Nos. 6 and 7. The decision in the matter of **Real Team Systems Pvt. Ltd. (supra)** was rendered in the peculiar facts obtaining before this Court. The provision for allotment contained in regulations which are called as 'Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975' permit allotment of plots even on an application. There is no mandate that all such allotments of plots by the MIDC should be only by resorting to auction. They would, therefore, submit that there is no illegality in the allotment of plots to the respondent Nos. 6 and 7.

10. Mr. Hon and Mr. Sawant would further submit that allotment of plots to these respondent Nos. 6 and 7 was also questioned by another entity Parshwanath Infra Tech Pvt. Ltd. Dhule by filing Writ Petition Nos. 1489/2015 and 1500/2015. This Court after going through all the material did not find any illegality in the allotment of the plots and the petitions were dismissed. Once this Court having undertaken an objective scrutiny regarding such allotment, it would not be proper to reconsider it again at the instance of the petitioners. They would also point out that the order of

this Court in those two petitions was also challenged before the Supreme Court by preferring Special Leave Petitions but those were dismissed.

11. Mr. Hon and Mr. Sawant would further submit that pursuant to such allotment of plots even lease agreements have been executed on 08.01.2015. They have developed the plots and erected infrastructure, as can be seen from the photographs filed on the record by spending huge money. The petitioners have approached this Court belatedly in the year 2017 and have allowed the time to lapse. A huge textile industry has been established by spending crores of rupees. Several employees have been working in the industry and therefore even for this reason the allotment of plots to the respondent Nos. 6 and 7 cannot be permitted to be questioned.

12. Mr. Bhandari learned advocate for the petitioners, in rejoinder, would submit that it would not lie in the mouth of respondent Nos. 6 and 7 to seek equity. The allotment was in the year 2015 and the petition was filed in the year 2017. The respondents have not been diligent and did not permit the matter to be taken up and decided. They have spent for setting up the industries which they should have refrained from when the allotment in their favour has been a subject matter of challenge before this Court. If they have done so, they have run the risk and cannot be allowed to make capital out of it.

13. The learned advocate Mr. Bhandari in the alternative would submit that in any case, when the petitioners' application for allotment of the plot was already pending before the MIDC even before the application of the respondent Nos. 6 and 7, the MIDC could have offered them some alternate plot. He would submit that the petitioners case can now be considered by the MIDC for allotment of some other plot, if it is available.

14. The rival submissions now fall for our consideration. Taking up the issue regarding legality or otherwise of the allotment of the plots in favour of the respondent Nos. 6 and 7, it is necessary to note that the whole

emphasis being laid by the petitioners is on the fact that the plots were allotted without holding auction. It is, therefore, imperative to reproduce the regulation Nos. 4 to 10 in Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975 which read as under:

“4. Manner of disposal of land open lands. Out of land covered by the layout so prepared the Corporation may dispose of plots of lands -

(I) by public auction; or

(II) By entertaining individual applications;

In either case the plots may be allotted -

(a) on rental basis;

(b) on premium lease basis; or

(c) partly on rental basis and partly on premium basis;

as the corporation may from time to time decide in respect of each Industrial Area.

5. Terms and conditions of disposal of land by public auction- Where the Corporation decides to dispose of the plots in any Industrial Area by public auction, the terms and conditions governing the auction shall generally be as laid down in Form “A” with such modifications as the Corporation may deem fit from time to time.

6. Allotment of plot by applications- Where the Corporation decides to dispose of plots by entertaining applications, such application shall be made to the Chief Executive Officer in Form ‘B’.

7. Security deposit to be paid with the application for grant of lease on rental basis. - Where any land is intended to be disposed of on rental lease basis, the application shall be accompanied by such amount of security deposit as may be directed by the Corporation from time to time.

8. Amount of premium to be paid with the application for grant of Lease- Where any land is proposed to be disposed of on premium lease basis, the application shall be accompanied by such amount of premium as may be laid down by the Corporation from time to time.

9. Security deposit as earnest money- Payment of security deposit under (7) or the amount of premium under (8) shall, as the case may be, be held as earnest money or deposit and such payment shall not be construed as any commitment or obligation

on the part of the Corporation that a particular plot or any plot shall be allotted to the applicant at the rate prevailing at the time of payment of deposit.

10. Consideration of applications for plots by the Land Committee- In receipt of any application for allotment of land, the Chief Executive Officer shall make such enquiries as he deems necessary and place it before the Land Committee with his recommendations and the Land Committee may either sanction or reject such application.

Provided that the Chief Executive Officer may allotment of a plot of land where the requirement of the applicant does not exceed the area laid down by the Corporation. A list of such allotment shall be placed before the Land Committee for its information.”

15. As can be seen from the aforementioned provision, allotment of plot on the basis of application is also recognized as one of the modes for allotment. It is not mandatory that every such allotment should be by resorting to some auction process. Therefore, the argument that the MIDC cannot make allotment of plots except by holding auction is not tenable. The aforementioned provisions clearly indicate that there could be instances for allotment of plots on applications as well. Consequently, the allotment in favour of the respondent Nos. 6 and 7 cannot be questioned only on the ground that it was allotted on their applications and without holding any auction.

16. True it is that there is no specific provision and even Mr. Bhandari learned advocate for petitioners fairly conceded that there could not be any request by an aspirant for allotment of a specific plot. However, as is pointed out by him, even the respondent Nos. 6 and 7 had put up their applications raising a specific demand for allotment of the self-same plots carved out from the petitioners' land Gat No. 25.

17. But then, we cannot lose sight of the fact that though strictly speaking, the petitioners were not the parties to the petitions filed by Parshwanath Infra Tech Pvt. Ltd. Dhule questioning the allotment of the

plots in favour of the respondent Nos. 6 and 7 and the decision would not bind them, the fact remains that there was an entity which was questioning the allotment of the plots to the respondent Nos. 6 and 7 and this Court had objectively considered that challenge and had dismissed the petitions which decisions have also reached finality. It is in view of such state of affairs, in our considered view, right of the petitioners for allotment of some plots apart, it would not be appropriate for this Court in exercise of powers under article 226 of the Constitution to reconsider the legality or otherwise of the allotment of plots in favour of the respondent Nos. 6 and 7 at the petitioners instance.

18. It may not be appropriate to question the *locus standi* of the petitioners inasmuch as they had already submitted an application for allotment of the self same plots, but those were subsequently allotted to the respondent Nos. 6 and 7 and it can certainly be said that the petitioners have been aggrieved. Pertinently even the land committee of the respondent/ MIDC had considered the petitioners request favourably.

19. But then, it is necessary to bear in mind that for whatever reason, the time has lapsed. The petitioners have approached this Court in the year 2017, when the plots were allotted to the respondent Nos. 6 and 7 in the year 2015 by registered lease deeds. Though the petition has been pending in this Court since 2017, there is no interim relief, which was specifically declined when the first order was passed on 07.06.2017. The record does not show that the petitioners at any latter point of time had insisted for any interim relief. The fact remains that for some reason or the other the petition has been pending in this Court for five years, which is an enormous period, during which the respondent Nos. 6 and 7 have apparently developed the infrastructure on the plots allotted to them. True it is that the respondent Nos. 6 and 7 have made such development at their own risk but then this Court cannot turn blind eye to the fact that an industry has been established by spending crores of rupees and employees have been engaged.

In view of all such facts and circumstances, we are of the considered view that it would not be now appropriate to set the clock back more so when the petitioners do not have any independent right to assert allotment of the self same plots.

20. Though the learned advocate Mr. Bhandari for the petitioners has improvised by submitting that the respondents/MIDC can now be directed to consider the petitioners' request for allotment of an alternate plot, we are afraid, there is no such prayer even in the alternate, wherein they have been claiming allotment of the very same plots carved out from their land Gat No. 25.

21. Resultantly, we find no merit in the petition and it is liable to be dismissed.

22. The Writ Petition is dismissed. The Rule is discharged.

(Y. G. KHOBRAGADE, J.)

(MANGESH S. PATIL, J.)

mkd/-