Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5711 OF 2021

ICONO India Infotech Pvt Ltd Through Director ...Petitioner
Versus
Maharashtra Industrial Development Corporation (MIDC) Through District Regional Officer ...Respondent

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Mr Uday Warunjikar, *for the Petitioner.*
Ms Shyamali Gadre, *i/b Little & Co, for the Respondent-MIDC.*

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 14th February 2022

PC:-

ASHWINI HULGOJI GAJAKOSH

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Date: 2022.02.16 09:53:51 +0530

1. Heard Mr Warunjikar for the Petitioner and Ms Gadre for the sole Respondent, the Maharashtra Industrial Development Corporation ("**MIDC**"). The Petitioner assails a communication dated 7th April 2021, a copy of which is at Exhibit-R at page 58. The Petitioner is a private limited company.

2. MIDC invited online tenders for the lease or disposal of various plots of land at the Vile Bhagad Industrial Estate Plot. One of these was Plot No. A-149. The Petitioner made an offer as long ago as 25th November 2016. This was accepted. The transaction required an earnest money deposit. The Petitioner paid an amount of Rs. 3,54,000/- with the application. On receiving MIDC's offer letter dated 25th November 2016, the Petitioner was required as per the terms of the disposal to pay an amount of Rs. 22,94,100/-.

3. It is at this point that the narrative in the Petition becomes curious. What the Petitioner says in paragraph 6 at page 4 is:

> "However, the Petitioner submits that on account of demonetization, the present Petitioner herein found it difficult to deposit the said amount within the stipulated time. Therefore, request was made by the Petitioner on 30.12.2016."

4. Clearly, whatever the reason, and we do not pretend to understand what is meant by this reason, for the Petitioner would have had to make payment by demand draft or instrument and not in demonetized currency notes, the Petitioner did not make this payment on time.

5. Nonetheless, MIDC granted the Petitioner 15 days' further time by its communication of 13th December 2017. The Petitioner paid an amount of Rs. 22,94,100/- an interest of Rs. 3,90,400/- making a total of Rs. 26,84,500/-. But this was not the full consideration.

6. On 18th January 2018, MIDC asked the Petitioner to remain present for taking possession. The Petitioner did receive possession on 24th January 2018 but this was almost immediately cancelled on 9th February 2018 when MIDC said that possession would be handed over to the Petitioner only against payment of the balance consideration.

7. On 15th February 2018, MIDC made a demand saying that the remaining amount due was Rs. 1,04,72,800/-. It confirmed that Rs. 28,18,200/- (including the EMD) has been paid. The Petitioner was asked to pay Rs. 78,54,600/- within 30 days by virtue of the allotment dated 15th February 2018.

8. On 7th March 2018, the Petitioner asked for further time.

9. Nothing happened for several months thereafter.

10. On 26th June 2018, MIDC wrote to the Petitioner saying that it would have to pay the amount, i.e. Rs. 78,54,600/- with interest on or before 17th August 2018. MIDC said that in default the allotment would be cancelled and the amount already paid would stand forfeited.

11. Mr Warunjikar for the Petitioner now says that 15th August 2018 and 17th August 2018 were both consecutive bank holidays. The Petitioner therefore requested that the amount may be accepted the very next date 18th August 2018 and also agreed to pay interest for the additional day lost. The Petitioner put this in writing on 13th August 2018.

12. 18th August 2018 came and 18th August 2018 went, but the Petitioner made no payment to MIDC at all. It is pointless, therefore, for the Petitioner to say that there was no response to its 13th August 2018 communication. It is equally pointless for the Petitioner to contend as it does in the Petition that it sent a reminder on 28th August 2018 indicating 'willingness' to pay the balance amount due. Mere willingness and pious expressions of sincerity are insufficient. To paraphrase John F Kennedy, *sincerity demands proof.*

13. This is the narrative up to paragraph 11 of the Petition. There is then a completely inexplicable silence for the next two years, until 11th December 2020. By that time, as the dates themselves make self-evident, the world was in the grip of the Corona Virus pandemic and lockdown. There is not a whisper of an explanation of this delay between 2018 and 2020.

14. The Petitioner says in paragraph 12 that it was not until 11th December 2020 that it made a representation to MIDC's CEO. The Petitioner seems to have once again made some sort of plea to the Government. But MIDC informed those authorities by the impugned communication of 7th April 2021 that that request could not be considered.

15. It is in these circumstances that the Petitioner asks us to quash the 7th April 2021 communication by MIDC to the government rejecting the Petitioner's request. Prayer clause (b) asks that we direct MIDC to accept the outstanding amount due to MIDC as on 25th November 2016 with interest.

16. There is absolutely no substance to this Petition. No infirmity is pointed out in the action of MIDC. No failure to perform a legal or constitutional duty by MIDC is demonstrated. No legal or constitutional right vesting in the Petitioner is shown to exist, let alone be transgressed or violated.

17. Indeed, we believe this Petition may be entirely speculative. What the Petitioner wants in 2022 February is land at a price that was accepted in 2016 simply by offering to pay interest on that amount. This may be nothing more than a calculated gamble.

18. The argument by Mr Warunjikar that this is a plea in 'equity' is singularly unimpressive. There is no equity at all in favour of the Petitioner. There might have been had the Petitioner on 18th August 2018 actually made tender to MIDC and had MIDC then rejected it for being made one day late. Nothing of the kind happened. As of the date of this order the Petitioner has not made tender to the MIDC at all. All that it has done is give assurance after assurance that it is ready or willing to pay, but it has actually paid nothing.

19. Mr Warunjikar's submits that MIDC itself has done nothing with the land, although Ms Gadre points out that the allotment being cancelled, MIDC is within its rights to now put up the land for another auction for disposal. We do not see how the Petitioner can possibly dictate to MIDC what it can or cannot do with any particular plot that is vested in it.

20. Mr Warunjikar lastly submits that by accepting the Petitioner's offer, MIDC will at the very least mitigate its loss. For, on a re-auction, it might realize even less than the Petitioner's so-called 'offer' to pay a six-year old stale price with interest. This is rank speculation. The Petitioner has made not the slightest effort to show how, contrary to all received wisdom and common knowledge, property prices have fallen so precipitously from 2016 to 2022 that the Petitioner's delayed payment will inure to MIDC's benefit. In any case, MIDC's financial well-being is not the concern of the Petitioner.

21. The Petition is rejected. No costs.

22. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**