

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 8499 OF 2022

Enn Enn Corp. Ltd.

..... Petitioner

Vs.

State of Maharashtra & Ors.

..... Respondents

Mr. Rahul Narichania, Senior Advocate Mr. Pranav Thackur for the
Petitioner

Ms. S. S. Bhende, AGP for the State

Ms. Shyamali Gadre a/w. Harshita B. I/b. Little & Co. for Respondent
Nos.2 to 6

Ms. Arti R. Dharamsey for Respondent No.7

**CORAM: S.V.GANGAPURWALA &
R.N. LADDHA, JJ.**

DATED : OCTOBER 7, 2022

P.C.

1 Heard the learned Senior Advocate for the Petitioner and the
Respondents.

2 The Petitioner seeks direction against the Respondents to
refund of amount of Rs.7,45,54,608/- (Rs. Seven Crores Forty Five
Lacs Fifty Four Thousand Six Hundred Eight Only) with applicable
interest since the year 2018 out of the total premium paid by the
Petitioner towards change in activity from Engineering to IT/ITES by
way of additional development charges/FSI. The learned Senior
Advocate for the Petitioner submits that the said claim of the

Petitioner is negated only on the ground that no policy exists with the MIDC for refund of the amount.

3 The learned Senior Advocate submits that the Petitioner has not carried out any construction pursuant to the permission granted for additional FSI and development. The Corporation had issued commencement certificate granting approval to the fresh building plans, drainage plans etc. submitted by the Petitioner on payment of development charges, labour charges and other charges.

4 According to the learned Senior Advocate, as the construction activity has not been undertaken the Respondents cannot withhold the amount.

5 The learned Counsel for the Respondents submits that there is no policy with the MIDC to give refund of the amount. As the Petitioner has not constructed, the Petitioner should suffer.

6 The learned Senior Advocate for the Petitioner submits that there are internal memos of the Authorities to the effect that the amount of Rs.7,45,54,608/- (Rs. Seven Crores Forty Five Lacs Fifty Four Thousand Six Hundred Eight Only) needs to be refunded to the Petitioner.

7 The MIDC has filed affidavit. Paragraph 7.10 of the affidavit reads thus:

“7.10 I say that the Corporation doesn’t have any such policy for refund of the additional FSI which the Petitioner never constructed after the approval in the year 2018. I say that the amounts deposited and for which the present petition is filed were towards the consent granted by the Corporation and hence despite no construction by the Petitioner the Corporation is in no position to refund the amounts.”

8 From the affidavit filed by the MIDC, it is manifest that the Petitioner never constructed on account of additional FSI after the approval in the year 2018, however, the amount is being denied only on the ground that no policy exists. If no construction or development is at all carried out, it would not be appropriate for the Respondent to retain the amount. The amount deposited by the Petitioner with the Corporation was towards development activity to be carried out.

9 It appears that the Dy. Planner also communicated his officers that necessary instructions may be issued regarding the refund of development charges and premium by the MIDC amount to Rs.7,45,54,608/- (Rs. Seven Crores Forty Five Lacs Fifty Four Thousand Six Hundred Eight Only). It is only on the ground that no policy exists for granting refund of the amount paid for additional

FSI, the refund is not being granted. It is submitted that the leasehold rights are transferred to Respondent No.7 with an express consent of the MIDC. It is accepted that even Respondent No.7 has not carried out development activity and the same is again restored to the Engineering activity for which additional FSI is not required. As the land is restored to the Engineering activity with valid permission, no question arises of taking up any development activity.

10 In light of that it would not be appropriate for the Respondents to retain the said amount. The Respondent MIDC shall refund the said amount of Rs.7,45,54,608/- (Rs. Seven Crores Forty Five Lacs Fifty Four Thousand Six Hundred Eight Only) to the Petitioner preferably, within four months. We are not inclined to accept the contention of the Petitioner for grant of interest. It is the Petitioner who did not carry out the construction. The Respondent MIDC did not restrain the Petitioner from carrying out the development activity. In view of that prayer for grant of interest is rejected.

11 The Writ Petition is disposed of. No costs.

(R.N. LADDHA,J.)

(S.V. GANGAPURWALA, J.)