IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.6614 OF 2021

Anthony Alex Nazareth
Age: 58 years, Occu-Business,
Proprietor of M/s A.C.E. Pneumatics,
R/o Plot No. G-126, MIDC,
Ahmednagar, Tq. & Dist. Ahmednagar … **Petitioner**

Versus

1. The State of Maharashtra
Through its Secretary,
Industries, Energy & Labour
Department, Mantralaya, Mumbai-32

2. The Chief Executive Officer
Maharashtra Industrial Development
Corporation,
Udyog Sarthi, Mahakali Caves Road,
Andheri (E), Mumbai-93

3. The Regional Officer,
Regional Office,
Maharashtra Industrial Development
Corporation, Udyog Sarthi,
Satpur, Nasik – 422007

4. The Area Manager,
Maharashtra Industrial Development
Corporation, Nagapur, Ahmednagar,
Dist. Ahmednagar … **Respondents**

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Mr. V. P. Latange, Advocate for Petitioner
Mr. V. M. Kagne, AGP for Respondent No.1 – State
Mr. S. S. Dande, Advocate for M.I.D.C.

….

CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRAGADE, JJ.

DATE : 04.07.2023

ORAL JUDGMENT ***(Per Ravindra V. Ghuge, J.)*** :-

1. Rule. Rule made returnable forthwith and heard finally by consent of the parties.

2. The petitioner is the proprietor of M/s A.C.E. Pneumatics at Plot No.G-126, M.I.D.C. area, Nagapur, Ahmednagar. He has put forth prayer clauses [B] and [C] as under:-

> *[B] This Hon'ble Court by issuing appropriate Writ, order or directions in like nature be pleased to direct the Respondent authorities to regularize the Plot No.G-126 situated at Maharashtra Industrial Development Corporation Area Nagapur, Ahmednagar.*
>
> *[C] Pending hearing and final disposal of this Writ Petition the Hon'ble Court may be pleased to direct the Respondent authorities to not to take any coercive action in pursuance of notice dated 08.07.2016 issued regarding cancellation of allotment of Plot No.G-126 situated at Maharashtra Industrial Development Corporation Area Nagapur, Ahmednagar.*

3. Having considered the strenuous submissions of the learned Advocates for the respective sides, we have gone through the petition paper-book and the voluminous record available with their assistance. We have also perused the additional affidavit filed by the Petitioner along with certain documents.

4. The sequence of events are summarised as under:-

(a) The Petitioner applied for allotment of an industrial plot in the M.I.D.C. area in Ahmednagar district and was allotted such a plot on 02.11.2007.

(b) There is no dispute that the Petitioner had tendered an application and the same was entertained by the M.I.D.C. Based on such application, the plot was allotted.

(c) On 20.01.2009, the Petitioner received a building completion certificate by the competent authority of the M.I.D.C. The NOC from the Maharashtra Pollution Control Board was also obtained.

(d) At the time of execution of the lease-deed agreement on 27.12.2007, the Petitioner has paid the premium of Rs.26,40,000/- at the time of execution of the agreement. Subsequently, he has also paid an amount of Rs.5,22,000/- towards additional premium with interest.

(e) The Public Interest Litigation No.68/2013 was filed by persons from Ahmednagar district before this Court. On

14.06.2016, a judgment was delivered in the said Public Interest Litigation and directions were issued in paragraph Nos.64 and 65, which are reproduced hereunder:-

> "*64. In view of the facts and circumstances discussed above, it will be necessary to direct the Chief Executive Officer of the MIDC to classify the plots into two groups. The first group would comprise of the plots of which allotment and locations can be regularised. Such plots only would be placed for public auction. The second group would comprise of the plots of which allotment as well as locations cannot be regularised, as also the plots which have been unauthorisedly sub-let, sold or transferred in any manner. The Chief Executive Officer will have to be directed to take necessary steps according to law to terminate allotment of the said plots and resume possession thereof. The allottees of such plots would not be entitled to get any equitable relief including that of refund of the premium paid by them. However, the allottees of such plots would be entitled to remove the superstructures, machineries and other movables belonging to them from over such plots within the given time, failing which they would stand vested in the Chief Executive Officer without paying any compensation, allowance or refund of premium to the allottees thereof. He would remove the said superstructures, machineries and other movables at the cost of the allottees concerned. Necessary directions will have to be given to the Chief*

Executive Officer to deal accordingly with the plots subject matter of the reports of Gatne Committee and Internal Committee.

65. In the result, we issue the following directions:-

(1) The impugned order dated 29.05.2013 passed by respondent no.2 is quashed and set aside.

(2) The allotment of the plots made by entertaining individual applications, subject- matter of the reports of Gatne Committee and Internal Committee is cancelled.

(3)(a) Respondent nos.4 and 5 shall place proposals within three months from today before the Minor Modification Committee in respect of the plots carved out from open spaces and amenity areas which, according to them, are liable to be regularised despite being carved out from open spaces and amenity areas, by giving specific reasons justifying such regularisation.

(b) If such proposals are received, the Minor Modification Committee shall consider them on their own merits and take appropriate decision thereon on the question of their regularisation or otherwise, within three months from the date of receipt of the proposal concerned.

(c) If the Minor Modification Committee accepts any proposal for regularisation of certain plots for justifiable reasons, the Chief Executive Officer of the MIDC shall put up such plots for allotment by public auction within two months from the respective dates of the decisions recorded by the Minor Modification Committee in respect of regularisation thereof.

(d) Prior to publishing notice of public auction in respect of the plots proposed to be auctioned, the Chief Executive Officer shall get the superstructures, machineries and other movables etc. standing thereon evaluated through a Government Valuer and the value thereof shall be specifically mentioned in the notice of public auction besides the upset amount of premium of the plots concerned.

(e) The original allottee of the plot so regularised shall be allowed to participate in the public auction and if he offers highest premium, he shall be allowed to retain that plot along with the superstructures, machineries and other movables standing thereon, on payment of difference between the highest premium offered by him on one hand, and the amount of premium paid by him at the time of initial allotment of the plot to him as well as the amount paid by him in pursuance of the impugned order dated 29.05.2013 with interest accrued on those payments at the rate of Rs.8/- percent per annum from

the respective dates of payments thereof till the date of public auction, on the other.

(f) In case the original allottee of the plot so regularised does not offer highest premium in the public auction, such plot alongwith its superstructures, machineries and other movables standing thereon shall be allotted to the highest bidder and the value of superstructures, machineries and other movables as determined pursuant to the directions given in clause 3(d) above, shall be paid to the original allottee. Moreover, the amount of premium paid by him at the time of the initial allotment of the plot as well as the amount paid by him in pursuance of the impugned order dated 29.05.2013 shall be refunded to him with interest at the rate of 8% per annum from the respective dates of such payments till the date of refund thereof.

(g) If the plot, where production is going on, is allotted to the highest bidder other than the original allottee, it would stand transferred to the new allottee on payment of the premium etc. alongwith the workers/officers serving in the industrial unit run thereon and the new allottee shall continue their services on the same terms and conditions as applicable to them prior to such transfer. The condition to that effect shall be specifically mentioned in the notice of public auction and the auction documents.

(h) If the Minor Modification Committee finds that the change in the location of any particular open space and amenity areas from where any plot has been carved out and allotted for industrial, mercantile or any other purpose, is not justifiable and permissible, the Chief Executive Officer of the MIDC shall get restored such open space and/or amenity area to its original position as demarcated in the original lay-out plan, within two months from the date of decision of the Minor Modification Committee.

(4)(a) The Chief Executive Officer of the MIDC shall take necessary steps according to law within three months from today to terminate allotment and resume possession of the plots which have been unlawfully sub-let or sold or transferred in any manner by the original allottees to the third persons.

(b) The original allottees or their assignees shall remove their superstructures, machineries or movables from over such plots within two months from the date of the order passed by the Chief Executive Officer for resuming possession thereof, failing which the same shall stand vested in the Chief Executive Officer without paying compensation or allowances to the original allottees or their assignees. The Chief Executive Officer shall get such plots restored to their original position as demarcated in the original lay-out plan by removing the

superstructures, machineries and other movables etc. standing thereon, at the costs of the allottees concerned and recover the same from them as land revenue.

(c) If the Chief Executive Officer terminates allotment and resumes possession of the plots in pursuance of the directions given in clauses 4(a) above and if such plots are legally transferable, the Chief Executive Officer shall allot them by public auction.

(5) The Chief Executive Officer of the MIDC shall take necessary steps within three months from today vide Sections 44 and 46 of the Maharashtra Industrial Development Act, 1961 in respect of the plots and against the allottees thereof, who have carried out illegal construction by encroaching upon the marginal open spaces around the buildings.

(6) The area of 35.15 Hectares which has been kept vacant in pursuance of the directions given in paragraph 2 of the order dated 08.05.2014 passed by this Court shall be kept vacant, until further orders.

(7) Respondent no.3 - the Managing Director of the MIDC shall conduct necessary enquiry in respect of missing files, fix the responsibility and initiate departmental enquiry against the Officers found responsible for missing of files, within three months from today.

(8) Respondent no.3 - the Managing Director of the MIDC, shall take necessary steps to initiate departmental enquiry within three months from today against the erring Officers of the MIDC for unauthorisedly and illegally carving out plots from open spaces and amenity areas, allotting the plots by entertaining individual applications, failing to take action against the allottees for unlawfully sub-letting or transferring the plots to third persons and also for carrying out construction by encroaching upon the marginal open spaces.

(9) Respondent no.3 shall get prepared the list of the plots in respect of which the files are missing, verify whether the said plots were legally transferable from the area demarcated in the lay-out plan and have been allotted as per the prescribed procedure and submit a report to this Court within three months from today, so that necessary orders in respect of those plots could be passed.

(10) Shri.Waghmode, the Director of M/s.Siddhi Forging Pvt. Ltd. (allottee of nine plots) would be at liberty to lodge report to the Police Station concerned in respect of the script of conversation alleged to have taken place between petitioner no.1 and himself, along with the requisite certificate of authenticity of that script as contemplated under Section 65-B of the Indian Evidence

Act. If such report is filed, the Police Station Officer concerned shall conduct necessary investigation and take further steps according to law.

(11) The interim order dated 08.05.2014, to the extent it permitted the members of respondent no.6 to develop their respective plots, stands vacated.

(12) The Chief Executive Officer of the MIDC shall submit action taken reports quarterly, with effect from 15th September, 2016, before the Registrar (Judicial) of this Court at Aurangabad, for perusal of this Court, until further orders.

(13) With these directions, the P.I.L. stands disposed of."

(f) The effective directions as are found in paragraph 65 indicate that the plots allotted by entertaining individual applications which was the subject matter of the reports of the Gatne Committee and Internal Committee, were cancelled.

(g) The M.I.D.C. was directed to place proposals within three months before the Minor Modification Committee in respect of the plots carved out from open spaces and amenity areas which were liable to be regularised, by giving specific reasons justifying such regularisation.

(h) If the Minor Modification Committee accepted any proposal for regularisation of certain plots for justifiable reasons, the Chief Executive Officer of M.I.D.C. was directed to put up such plots for allotment by public auction.

(i) Prior to publishing of notice for public auction in respect of the plots proposed to be auctioned, the Chief Executive Officer was directed to get the superstructures, machineries and other movables standing thereon, evaluated through a Government Valuer and the value thereof was to be specifically mentioned in the notice for public auction, besides, the upset amount of premium of the plots concerned.

(j) The original allottee of the plot so regularised, was permitted to participate in the public auction and if he offered highest premium, he could be allowed to retain that plot along with the superstructures, machineries and other movables by setting of the amount paid and the difference between such amount and the highest premium to be paid along with interest at the rate of 8% p.a. till the date of the public auction.

(k) In clause (f), it is observed that if the original allottee of the plot so regularised, does not offer highest premium in the public auction, such plot along with its superstructures, machineries and other movables, shall be allotted to the highest bidder and the value of these superstructures, machineries and other movables as determined in terms of clause 3(d), shall be paid to the original allottee.

(l) In clause (g), it is ordered that if production is going on, the plot allotted to the highest bidder other than the original allottee, would stand transferred to the new allottee on payment of the premium along with the workers/officers serving in the industrial unit run thereon and the new allottee shall continue their services on the same terms and conditions as applicable to them prior to such transfer.

(m) On a review application filed by some of the original allottees i.e. Review Application No.171/2016, a further order was passed on 20.09.2016.

(n) The Special Leave to Appeal (Civil) No.20234/2016 filed by the Association of Ahmednagar Manufacturing Industries, was dismissed by the Hon'ble Supreme Court vide order dated 08.08.2016.

(o) In the order on the review application, it was recorded that the Gatne Committee and the Internal Committee ordered the cancellation of allotment of plots made by entertaining individual applications.

(p) In paragraph 5 of the order, this Court noted that there are no directions to take possession of the plots which have been legally allotted to the industrialists and who have not committed any breach of any of the provisions of the M.I.D.C. Act or the Rules / Regulations framed thereunder. The Chief Executive Officer is bound to extend an opportunity of hearing to the plot holders against whom he proposes to take action for termination of allotment or resumption of possession or the plots which have been unlawfully allotted.

(q) The Petitioner has tendered a detailed representation dated 13.09.2016 to the M.I.D.C. The same is still pending for hearing and no orders have been passed.

(r) In paragraph 6 of the review judgment, this Court recorded that the allottees are at liberty to address the Chief Executive Officer on their claim that they are lawful allottees of the plots and if their claim is not accepted by the Chief Executive Officer, the applicants would have a fresh cause of action for challenging the action taken by the Chief Executive Officer.

(s) The Petitioner has invested more than rupees two crores in the manufacturing industry along with a loan amount of Rs.2,36,40,638/-. The industrial unit has expanded. It's business has grown and recently a further amount of Rs.12,34,13,238/- has been invested by the Petitioner. The number of workers working today are 120, out of which 90 are permanent employees.

(t) The plot No.G-126 allotted to the Petitioner is carved out from the "plotable land" and it is claimed that it does not fall under the open space or community area.

(u) The Minor Modifications Committee which was granted the authority by this Court, considered which of the allotment of the plots could be regularised, and has submitted a report dated 09.10.2019 to the learned Registrar (Judicial) of this Court, wherein, the Petitioner's plot is set out at Serial No.F-

Table-6 under Annexure-III. The M.I.D.C. concludes that the plot of the Petitioner was carved out from the plotable land of M.I.D.C. and hence it was decided to regularise the same. It is also recorded in the report that there is no encroachment or subletting done by the Petitioner. It is also admitted that the Petititioner has paid the required premium amounts.

5. In the above,backdrop, the affidavit-in-reply filed by the Regional Officer, M.I.D.C. dated 20.01.2022, indicates that the Petitioner was challenging the notice dated 08.07.2016 and hence, this petition should not be entertained. It is further stated that Annexure-III(f) rightly indicates that the plot is carved out from the plotable land. However, the affiant further submits in paragraph 9 that this Court has permited the applicants to bring the facts of their cases to the notice of the Chief Executive Officer, if they claimed that they are lawful allottees of the plots.

6. The learned Advocate for the Petitioner submits that after the notice dated 08.07.2016 was issued, a detailed representation dated 13.09.2016 has been filed. Same can be considered as a reply of the Petitioner to the said notice and a personal hearing may be given to the Petitioner. The learned Advocate for the M.I.D.C. submits on instructions that, in such cases personal hearing is granted.

7. In view of the above, **this petition is partly allowed** only to the extent of directing the M.I.D.C. not to proceed with the notice dated 08.07.2016 until the M.I.D.C. considers the reply of the Petitioner dated 13.09.2016 and grants a personal hearing to the Petitioner before passing a reasoned order. The Petitioner is at liberty to tender additional documents and narrate the present status of the manufacturing unit being operated by him.

8. The Petitioner agrees to appear before the Chief Executive Officer, M.I.D.C. on 20.07.2023 at 12.00 noon. Assistance of an Advocate or a Legal Consultant is permitted. After the hearing is completed, we expect the Chief Executive Officer, M.I.D.C. to pass an order on or before 31.08.2023, in the light of the notice dated 08.07.2016 and the hearing conducted as directed above.

9. Rule is made partly absolute in the above terms.

[Y. G. KHOBRAGADE, J.] **[RAVINDRA V. GHUGE, J.]**

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