

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

**WRIT PETITION NO.2305 OF 2015
WITH
CIVIL APPLICATION NO.2679 OF 2015
IN
WRIT PETITION NO.2305 OF 2015**

Dr. Dhananjay Patil	)
Age : Adult, Occu. : Medical Practitioner,	)
R/o. 'Shriniwas'	)
1 st Floor, Chetna Hospital Building,	)
MIDC G-Block, GP 116	)
Sambhaji Nagar, Chinchwad,	)
Pune- 411 019.	)... Petitioner

VERSUS

- | | |
|--|---|
| 1. The Honourable Minister of Industries |) |
| [Summons to be served on the |) |
| Learned Government Pleader as per |) |
| the provisions of Order 27 Rule 4 of |) |
| the Code of Civil Procedure. |) |
| | |
| 2. The State of Maharashtra |) |
| Through its Industries Department |) |
| Mantralaya, Mada Cama Road, |) |
| Mumbai-400 032 |) |
| | |
| 3. The Maharashtra Industrial |) |
| Development Corporation |) |
| Udyog Sarathi, Mahakali Caves Road, |) |
| Andheri (East), Mumbai-400 093 |) |
| | |
| 4. The Regional Officer, Pune |) |
| Maharashtra Industrial |) |

- Development Corporation)
 Jog Center, Wakdewadi,)
 Pune-411 003.)
5. The Chief Executive Officer)
 Maharashtra Industrial)
 Development Corporation)
 Udyog Sarathi, Mahakali Caves Road,)
 Andheri (East), Mumbai-400 093)
6. M/s. Healing Touch)
 A partnership firm)
 Plot No. RL 40, MIDC,)
 G Block, Chinchwad, Pune-411 019.)
7. Dr. Parag Hitnalikar,)
 Age : Adult, Occ. : Business,)
 R/o. G Block, Sambhaji Nagar,)
 MIDC Chinchwad, Pune-411 019.)
8. Dr. Damodar More,)
 Age : Adult, Occu. : Business)
 R/o. LC-1A, Shivaji Park,)
 Sector No. 18, Pradhikaran,)
 Chinchwad, Pune-411 019.)
9. Shri. Dhondiram V. Gunthe,)
 Age : Adult, Occu. : Business)
 R/o. GP-166, MIDC, G Block,)
 Sambhaji Nagar, Chinchwad,)
 Pune-411 019.)
10. Shri. Rajeev Patwardhan,)
 Age : Adult, Occu. : Business)
 R/o. GP-166, MIDC, G Block,)
 Sambhaji Nagar, Chinchwad,)
 Pune-411 019.)... Respondents

**WITH
INTERIM APPLICATION NO.18988 OF 2022
IN
WRIT PETITION NO.2305 OF 2015**

Shri. Rajeev Patwardhan,

)... Applicant
(Org. Respondent No.10)

Versus

Dr. Dhananjay Patil & Anr.

)... Respondent
(Org. Petitioner)

Appearances

Mr. Anil Anturkar, Sr. Advocate a/w. Mr. Ranjit Shinde a/w. Mr. Sugandh B. Deshmukh for Petitioner.

Mr. B. V. Samant, AGP for State.

Ms. Shyamali Gadre, a/w. Ms. Harshita Bhanushali i/b. Little & Co., for Respondent No.3 to 5.

Mr. Pralhad Paranjape, a/w. Manish Kelkar a/w. Mr. Rahul Punjabi, for Respondent No.6.

Mr. Abhaykumar Apte, for Respondent No.3 to 5.

**CORAM : S. V. Gangapurwala, ACJ &
Sandeep V. Marne, J.**

**RESERVED ON : 20th April 2023
PRONOUNCED ON: 28th April 2023**

JUDGMENT : (Per - Sandeep V. Marne, J.)

1. **Rule.** Rule made returnable forthwith. With the consent of the parties, petition is taken up for final hearing.

2. Petitioner-Dhananjay Patil seeks allotment of Plot No. GP 66/2 and challenges allotment made in favour of Respondent No. 6 partnership firm-‘Healing Touch’. Petitioner himself is a partner in ‘Healing Touch’. He is aggrieved by allotment of plot by Maharashtra Industrial Development Corporation (**MIDC**) in favour of the partnership firm and wants allotment in his own name. Petitioner is an allottee of the adjacent plot and therefore seeks to enforce right of first refusal. Petitioner also seeks enforcement of the directive dated 21st August 2014 issued by the Hon’ble Minister for Industries-cum-Chairman, MIDC.

3. Facts of the case are in a narrow compass. Petitioner is a medical professional. He runs Chetna Hospital on Plot No. GP-116, Sambhaji Nagar, Chinchwad, Pune. He desires to expand the operations of his hospital and accordingly, made an application for allotment of additional land to MIDC in the year 2005. He claims that allotment of additional land was approved by the Chief Executive Officer of the MIDC, however the allotment was actually not effected.

4. In the year 2010, the Land Allotment Committee of MIDC divided Plot No. AM-3 into two plots viz. Plot No. GP-66/1 and GP-66/2 both admeasuring 714 sq. mtrs. Both plots were reserved for construction of hospital. By letter dated 5th May 2010, Petitioner’s request for allotment of additional land for expansion was rejected. MIDC issued tender notice in April 2012 for allotment of two hospital plots bearing Nos. GP-66/1 and GP-66/2. In the list of plots available for allotment appended to the tender notice, a remark was made ‘first right of refusal to adjacent plot

holders'. The upset rate for both the plots was fixed Rs.21,445/- per sq. mtrs. Petitioner objected to the tender process by submitting letters dated 12th June 2012 and 13th June 2012. Despite his objection, Petitioner submitted his bid for the Plot GP 66/2 in pursuance of the tender notice, but quoted rate of Rs.9,502/- per sq. mtr., which was lower than the upset price indicated in the tender notice. Respondent No.6, in which petitioner is a partner, also submitted its bids for both the plots, by quoting rate of 22,001/- for plot No.GP 66/1 and Rs. 22,005/- for plot No.GP 66/2. By his letter dated 11th June 2012, Petitioner withdrew his objection. Bids were opened on 11th June 2012 and Respondent No.6 was found to be highest bidder in respect of both the plots. Petitioner addressed e-mail dated 12th June 2012 exercising his right of first refusal in respect of plot No.GP 66/2 and offered the rate quoted by the highest bidder. However, it appears that no response was received by petitioner.

5. Petitioner filed Writ Petition No.6654 of 2012 seeking allotment of plot No.GP 66/2 at industrial rate prevailing in October 2006. Petitioner also sought cancellation of steps taken in pursuance of the tender notice. This court however rejected Writ Petition filed by the petitioner on the ground of suppression of facts. Petitioner filed Special Leave Petition No. 949 of 2013 challenging the decision of this court before the Apex Court which also came to be dismissed. Petitioner thereafter approached the Hon'ble Minister of Industries by making representation dated 25th February 2014 and 26th June 2014. The Hon'ble Minister addressed communication dated 21st August 2014 to Chief Executive Officer, MIDC for acceptance of Petitioner's bid for allotment of plot No.GP 66/2 in his

favour. However no further action was taken by MIDC for allotment of the plot. It appears that an opinion was obtained by MIDC *inter alia* on the ground that petitioner had withdrawn his objection to open the bids opining that petitioner cannot be allotted the plot in question. However instead of allotting plot to petitioner, MIDC issued allotment order dated 6th February 2015 allotting plot Nos. GP 66/1 and GP 66/2 in favour of Respondent No.6 firm. Petitioner has accordingly filed the present petition challenging allotment of Plot No. GP-66/2 in favour of Respondent No. 6 and seeking of Plot No.GP 66/2.

6. Appearing for petitioner, Mr. Anturkar, the learned senior advocate would contend that allotment of plot in favour of Respondent No.6 is in breach of tender condition which clearly confers right of first refusal on the adjacent plot holder. That petitioner exercised his right to first refusal on 12th June 2012 offering to pay the highest price received after opening of bids on 11th June 2012. Despite specific directions by the Chairman of MIDC to allot the plot No.GP 66/2 to petitioner under right of first refusal, MIDC has erroneously allotted the said plot to respondent No.6. He further submitted that the Respondent No.6 has not fulfilled the basic eligibility criteria specified under the tender notice. That the partnership firm has not been registered. That the tender notice required submission of registration certificate of partnership firm, which has not been issued. Similarly, authorization letter authorizing partnership firm to participate in the bidding process was also not submitted. Though several other issues are sought to be raised by petitioner in various pleadings filed in the present petition, Mr. Anturkar has essentially restricted his

submissions as recorded above. He would pray for cancellation of allotment made in favour of Respondent No.6 and for allotment of the plot in favour of petitioner.

7. Petition is resisted by MIDC. Ms. Gadre learned counsel appearing for MIDC would submit that petitioner is a partner in Respondent No.6 firm and cannot be permitted to agitate grievance regarding allotment of plot in the name of Respondent No.6. That Petitioner's request for allotment of additional land was rejected in the year 2010 and later on auction process was initiated in the year 2010, in which petitioner had participated. But on account of non-receipt of bids above upset price, the auction was required to be cancelled. That in the fresh tender process also Petitioner participated. That though the petitioner initially thought to challenge the auction proceedings, he subsequently did not raise any objection for opening of the bids. That petitioner withdrew his objection to the bidding process on 11th June 2012.

8. Ms. Gadre would further submit that petitioner cannot simultaneously press his claim in his individual capacity as well as in the capacity as a partner of the partnership firm. She would submit that upon dismissal of Writ Petition No.6654 of 2012, the petitioner cannot now be permitted to re-agitate the same issue. Writ Petition No.6654 of 2012 was filed on 10th July 2012 after opening of the bids and therefore petitioner's claim based on right of first refusal is deemed to have been raised and rejected in that Writ Petition. That petitioner indulged in serious misconduct of suppression of facts in Writ Petition No.6654 of

2012. Such a conduct on the part of petitioner would dis-entitle him from pressing the present petition. Petitioner withdrew his objection by letter dated 11th June 2012. He claimed right of first refusal only after auction process was over. She would pray for dismissal of the Writ Petition.

9. Mr. Paranjpe the learned counsel appearing for Respondent No.6 would oppose the petition. He would submit that the issues raised in the present petition are barred by principles of *res judicata* and *constructive res judicata*. That there is gross suppression of facts on the part of petitioner in filing the present petition. That as per terms and conditions stipulated in tender notice, no right of first refusal was created in favour of petitioner. There was no such stipulation in the tender notice. That petitioner's claim for allotment of plot No.GP 66/2 was negated by the MIDC by order dated 5th May 2010. Petitioner has 33% share in the partnership firm. That petitioner voluntarily participated in the auction process with full knowledge that his partnership firm had also submitted its bid. That petitioner did not disclosed submission of new bids to the partnership firm and thereby created the conflict of interest. Lastly Mr. Pranajpe would submit that possession of plot No.GP 66/1 and GP 66/2 have been handed over to Respondent No.6 on 13th March 2015 and that transaction is complete. Therefore he would pray for dismissal of the petition.

10. Rival contentions of the parties now fall for our consideration.

11. Petitioner's claim for allotment of adjoining plot No.GP 66/2 is premised essentially on the remark made in the List of Plots appended to the tender notice which allegedly conferred right to first refusal on him. Petitioner had essentially questioned the entire tender process by filing Writ Petition No.6654 of 2012. Prayers made in the petition were as under:

"[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, directing the Respondent No.1 and the Respondent No.2 herein to issue the allotment order, to the Petitioner in respect of the area of 714 sq. mtrs., from GP 66/2, MIDC area at the industrial rate prevailing in October 2006, as per the order passed by the Chief Executive Officer dated 3rd October 2006 and the resolution passed by the Land Allotment Committee dated 22nd February, 2010, at the industrial rate, as per the Resolution of the Board No.2695(B-4) MIDC, dated 1st August 1991 and as per the Circular dated 22nd August 2007.

[B] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order, under Article 226 of the Constitution of Industrial, 1950, directing the Respondent to cancel, the steps which have already been taken and restrain the Respondent from taking any further steps, in pursuance of the Tender Notice which was called on 25th April, 2012, as the land was already been approved for allotment to the Petitioner herein."

12. Thus, the tender notice for allotment of plot No.GP 66/1 and GP 66/2 was under challenge in Writ Petition No.6654 of 2012. That Writ Petition was filed by petitioner on 10th July 2012, by which date petitioner had not only participated in the tender process but the financial bids were opened on 11th June 2012. By the time Writ Petition No.6654 of 2012 was filed on 10th July 2012, MIDC had taken a decision to allot the plot to respondent No.6. The file noting initiated on 11th June 2012 was approved on 18th June 2012. Petitioner had in the meantime

submitted the e-mail on 12th June 2012 and letter on 13th June 2012 communicating exercise of right of first refusal by offering rate of the highest bidder. Petitioner however did not include the prayer for allotment of plot in exercise of right of first refusal in Writ Petition No.6654 of 2012. He chose to restrict Writ Petition No.6654 of 2012 to prayer for allotment of the plot at industrial rates prevailing in October 2006 as per resolution passed by the Land Allotment Committee dated 22nd February 2010. By not raising the prayer for allotment of plot No. GP 66/2 as per right of first refusal (which was already exercised by petitioner on 12th June 2012) petitioner is deemed to have given up the said prayer. Here, the provisions of explanation IV to Section 11 of the Code of Civil Procedure, 1908 would apply. Petitioner had sought allotment of Plot No. GP 66/2 in Writ Petition No.6654 of 2012, *albeit* on the ground of resolution of the Land Allotment Committee dated 22nd February 2010. On the date of filing of Writ Petition No.6654 of 2012, the other ground of seeking allotment as per right of first refusal was available to petitioner. He however himself did not include that ground in Writ Petition No.6654 of 2012. The ground of right of first refusal thus would be covered by explanation IV of Section 11 of the Civil Procedure Code. Therefore, the prayer made in the present petition for allotment of plot No. GP 66/2 on the ground of right of first refusal would be barred by principles of constructive *res judicata*.

13. Faced with the difficulty of the ground of right to first refusal not being raised in Writ Petition No.6654 of 2012, Mr. Anturkar would

contend that the request made by petitioner for allotment of plot under right of first refusal vide e-mail/ letter dated 12th June 2012 was pending consideration with MIDC when order dated 13th February 2013 was passed in Writ Petition No.6654 of 2012. That a specific direction was issued by the Hon'ble Minister-cum-Chairman of MIDC on 21st August 2014 for allotment of plot under right of first refusal. He would therefore contend that the present petition would not be barred by the principles of constructive *res judicata*. We are unable to agree. Once petitioner sought allotment of Plot No. GP 66/2 to himself in Writ Petition No.6654 of 2012, he ought to have raised all grounds in support of such allotment in that writ petition. Petitioner cannot not be permitted to file multiple proceedings by raising different grounds. Petitioner had exercised his right of first refusal on 12th June 2012 and the same was never accepted by MIDC till final decision of Writ Petition No.6654 of 2012. Petitioner is already accused of suppressing facts in the order dated 13th February 2013. We are not aware whether the aspect of exercising right of first refusal was disclosed in Writ Petition No.6654 of 2012. Petitioner cannot be permitted to have multiple bites at the cherry. He first tried his luck by seeking allotment of the plot at industrial rates prevailing in October 2006 and after failing in that prayer, he cannot be permitted to file another petition to press his claim of right of first refusal by matching the rate quoted by the highest bidder.

14. No benefit would accrue to petitioner out of the directive issued by the Hon'ble Minister-cum-Chairman, MIDC on 21st August 2014 especially after rejection of Writ Petition No. 6654 of 2012.

15. This is not a case of accrual of fresh cause of action. Petitioner's cause of action relates to non-allotment of plot. As on 10th July 2012, when Petitioner filed Writ Petition No. 6654 of 2012 MIDC had taken a decision to declare Respondent No. 6 as the highest bidder for allotment of the Plot. Petitioner knew that MIDC was allotting the Plot to Respondent No. 6 and to stall that decision and for getting the Plot allotted to himself, he filed Writ Petition No. 6654 of 2012. By the time he filed the Petition, his right of first refusal was exercised and no communication was issued to him by MIDC accepting his right of first refusal. The cause of action regarding non-allotment of the Plot had accrued to Petitioner as on 10th July 2012. He is once again seeking to pursue the same cause of action, *albeit* on a different ground. This is exactly where the provisions of Explanation IV to Section 10 of the Code would be attracted. This is not a case where MIDC had accepted Petitioner's request for allotment of plot under right of first refusal and Petitioner wanted allotment at lesser rates (Industrial rates applicable in October 2006) and therefore filed Writ Petition No. 6654 of 2012. In that case, Petitioner would have been justified in filing separate Writ Petition for enforcement of his right of first refusal after rejection of his earlier writ petition. However Petitioner's request for allotment of plot under right of first refusal was not accepted by MIDC as on 10th July 2012 or even till the decision of Writ Petition. No liberty was sought by Petitioner from this Court or from the Apex Court to pursue his right of first refusal in an independent petition.

16. Even if the petition was to be considered on merits by momentarily ignoring objection of constructive *res judicata*, no case is made out by petitioner for interference by this court. Petitioner is a partner in Respondent No.6 firm with 33% share in the partnership. He has bid not only in his individual capacity but also in the capacity as a partner of Respondent No.6 firm. Though petitioner had initially objected to the tender process, he subsequently withdrew his objection by submitting letter dated 11th June 2012, which reads thus :

“To
Regional Officer I
MIDC, Pune.

Subject : Withdrawal of objection taken for process of auction for hospital plots No.GP/66-1 & GP/66-2 in Pimpri Industrial area.

Respected Sir,

We had asked for the stay for the auction process for hospital plots in Pimpri Industrial area GP/66-1 and GP/66-2.

We request you that we are withdrawing our objection for the above plots and request you to initiate the process of tender opening.

Thanking you.”

17. In the letter dated 11th June 2012, petitioner did not exercise right of first refusal. On the contrary it appears that petitioner did not have any objection for consideration of bid of Respondent No.6 firm, in which he is a partner. He allowed the bids to be opened on 11th June 2012 and communicated exercise of right of first refusal only after the bids were opened by submitting e-mail dated 12th June 2012. This conduct of petitioner in (i) withdrawing objections to the auction on 11th June 2012,

(ii) permitting the bids to be opened, (iii) thereafter submitting an e-mail / letter of right of first refusal in casual manner on 12th June 2012 and (iv) not pressing the claim of right of first refusal in Writ Petition No.6654 of 2012 filed on 10th July 2012 clearly dis-entitles him from seeking any relief in the present petition.

18. Petitioner ought to have communicated to MIDC in his bid itself that he was exercising right of first refusal, which he admittedly did not. On the contrary, he also submitted bid through his partnership firm. He later withdrew his objections to tender process by letting the bid of his partnership firm being considered. It appears that as on 11th June 2012 while withdrawing his objections, Petitioner wanted to pursue allotment for his partnership firm. He later took a *volte face* and submitted letter dated 12th June 2012 to exercise right of first refusal against the offer made by his partnership firm. By withdrawing his objection to the auction on 11th June 2012 petitioner permitted the bid of Respondent No.6 firm (in which he is a partner) to be considered in the auction process. This shows that the petitioner was agreeable not only for consideration of bids of Respondent No.6 but also to the possibility of Respondent No.6 been adjudged as the highest bidder.

19. The auction process has been finalised on 6th February 2015 when Respondent No.6 was issued the allotment letters in respect of plot No.GP 66/1 and GP 66/2. Possession of the plots have been handed over to Respondent No.6 on 13th March 2015.

20 We are therefore not inclined to interfere in the decision of the MIDC in allotting the plot Nos.GP 66/1 and GP 66/2 in favour of Respondent No.6, in which petitioner is a partner. The petition filed by the petitioner is devoid of merits, it is dismissed with no order as to costs.

21. In view of the disposal of the Writ Petition nothing survives in the civil application and interim application and the same are disposed of.

SANDEEP V. MARNE, J.

S. V. GANGAPURWALA, ACJ