

Santosh

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

WRIT PETITION NO. 4069 OF 2023

**SANTOSH
SUBHASH
KULKARNI**

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General Motors Employees Union ...Petitioner

Versus

General Motors India Pvt. Ltd. and ors. ...Respondents

Mr. Sanjay Singhvi, Senior Advocate, a/w Rahul Kamerkar,
Nitin Kulkarni and Aparajita Jha, for the Petitioner.

Mr. J. P. Cama, Senior Advocate, a/w Mr. Subin
Behramkamdin, Vijay Purohit, Pratik Jhaveri, Faizan
Mitthaiwala, i/b P&A Law Offices, for the Respondents.

CORAM: N. J. JAMADAR, J.

DATED : 18th APRIL, 2023

ORDER:-

1. This petition takes exception to an order dated 8th March, 2023 on an application (Exhibit-U-1342) passed by the Industrial Court at Pune rejecting the application to restrain respondent No.1 from transferring, alienating or creating interest in the land admeasuring 300 Acres situated at Plot No.A-16, MIDC Talegaon Industrial Area and also from selling and/or disposing of any plant and machinery situated at the aforesaid factory premises, during the pendency of the complaint.

2. In the wake of an industrial dispute there have been a number of proceedings between the parties in a relatively short

span of time. For the purpose of determination of this petition, it may not be necessary to advert to all the developments and the proceedings.

3. It would be suffice to note the the complainant is a Union representing the employees working in respondent No.1 Company. Respondent No.1 proposed to sell the company to Great Wall Motors, China. The complainant raised an industrial dispute before the appropriate Government leading to reference to the Industrial Tribunal being Reference (IT) No.31 of 2020. Respondent No.1 filed a closure application before the State Government. By an order dated 18th January, 2021 the Labour Minister rejected the closure application. By a further order dated 19th March, 2021, in review, the Labour Minister referred the application for closure to the Industrial Tribunal. A lay off notice was issued. Petitioner challenged the lay off notice in a complaint. On 12th July, 2021 respondent No.1 terminated services of 1086 employees by a letter of retrenchment on the ground of continued lay off for the period beyond 45 days. The petitioner filed Complaint (ULP) No.155 of 2021 before the Industrial Court assailing the termination of its 1086 members.

4. In the said complaint the petitioner preferred an application for interim relief. By an order dated 5th January,

2022 the said application (Exhibit-U2) came to be partly allowed. Respondent No.1 was directed to pay 50% of the salary to each employee, who had been retrenched as per order dated 12th July, 2021, on 7th day of each month till final disposal of the complaint. However, the prayer of the petitioner – complainant to restrain respondent No.1 from alienating its property came to be rejected. The challenge to the said order to pay 50% of the salary, by respondent No.1 failed in this Court as well as before the Supreme Court.

5. The petitioner, in order to restrain respondent No.1 from disposing of its property filed Writ Petition No.5140 of 2021. By an order dated 17th June, 2022 the Division Bench disposed of the writ petition on the following terms:

“2. The petitioner – Union is principally challenging the transfer of 300 Acres of land by respondent No.1 MIDC, which was leased out to respondent No.4 Company.

3. During the pendency of the present petition, the respondent No.1 MIDC has filed an affidavit stating therein that till date no such application has been moved by respondent No.4 regarding transfer of the land in question. In view of the said affidavit, parties agree that the writ petition be disposed.

4. In view of above, writ petition is disposed of. However, all the contentions raised in the petition are kept open.”

6. The petitioner preferred application (Exhibit-U1342) before the Industrial Court in Complaint (ULP) No.155 of 2021 alleging that the complainant learnt that respondent No.1 was

negotiating with Hundai Motors, TATA Motors and Mahindras to sell the factory premises, plant and machinery. The petitioner asserted, if the factory premises, plant and machinery are transferred, recovery of backwages would become impossible. Hence to protect the interest of the employees it was necessary to restrain respondent No.1 from alienating the factory premises, plant and machinery.

7. By the impugned order the learned Member, Industrial Court was persuaded to reject the application on two counts. First the prayer to restrain respondent No.1 from transferring the assets came to be rejected by order dated 5th January, 2022. Second, there was no apprehension of disposition of the assets by respondent No.1. Reference was made to a letter dated 30th January, 2023 issued by MIDC to the President of the petitioner Union that there was no proposal for transfer of 300 Acres of land.

8. Mr. Singhvi, the learned Senior Counsel for the petitioner, would urge that despite the order passed by the Industrial Court to pay 50% backwages having been confirmed up to the Supreme Court respondent No.1 had not complied with the said order. A criminal complaint under Section 48(1) filed by the

petitioner for non-compliance of the said order is not an efficacious remedy as the employees cannot be left in the lurch.

9. Mr. Singhvi invited the attention of the Court to a press note that Hundai Motors India has signed, “term sheet” for potential acquisition of General Motors India, Talegaon plant, to bolster up the submission that the Member, Industrial Court, was not justified in rejecting the application on the premise that there was no alienation of the assets of respondent No.1 Company.

10. Mr. Cama, the learned Senior Counsel for respondent No.1, supported the impugned order. It was submitted that indeed the order passed by the Division Bench in Writ Petition No.5140 of 2021 (extracted above) adequately protects the interest of the petitioner.

11. It seems the renewed apprehension is based on alleged negotiations and understanding between respondent No.1 and Hundai Motors. In Writ Petition No.5140 of 2021 the Court noted that MIDC had filed an affidavit to the effect that it had not received any application for transfer of the land. Mr. Cama invites attention of the Court to Clause No.12 of the affidavit-in-reply on behalf of the MIDC in the said petition. It reads as under:

“xii. I say and submit that the Respondent No.4 has not yet approached the Corporation to transfer the plot to any Company or third party. As and when it does approach the Corporation, the Corporation will take a decision as per the prevalent transfer guidelines of the Corporation.”

12. In view of the aforesaid assertion in the affidavit-in-reply on behalf of the MIDC, it becomes abundantly clear that the parties reckon that land cannot be transferred to any transferee without MIDC giving approval to the transfer of the leasehold rights. In the circumstances, in my view, the interest of the petitioner can be protected by directing MIDC to intimate the petitioner before it processes the application received from respondent No.1 for transfer of the land to any transferee. Such an intimation would provide an opportunity to the petitioner to work out its remedies, if desired to.

13. The petition thus stands disposed with a direction to MIDC to give at least 10 days prior intimation to the petitioner Union before it takes decision on an application for transfer of the land to the transferee as and when it is called upon to decide the said issue.

14. Petitioner is permitted to serve a copy of this order on MIDC.

15. All concerned to act on an authenticated copy of this order.

16. No order as to costs.

[N. J. JAMADAR, J.]