

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

WRIT PETITION NO. 6091 OF 2023

Mahatma Education Society
Through its Chairman/Trustee/Secretary,
A Public Trust registered under The
Bombay Public Trust Act, 1950, and
Society
Registered under the Society
Registration Act, 1860,
having Chembur Naka,
Mumbai - 400071

..... Petitioner

Versus

- 1 State of Maharashtra
Through : The Secretary Urban
Development, Mantralaya,
Mumbai.
- 2 City and Industrial Development
Corporation, through their
Managing Director/Social Service Officer,
Maharashtra (CIDCO) Having office at
CBD-Belapur, Navi Mumbai.
- 3 Ville Parle Kelavani Mandal
Through Their
Chairman/President/Secretary
SVKM's NMIMMS new Building,
10th Floor, West Wing, V.L.Mehta Marg,
Ville Parle (West)
Mumbai - 400056

..... Respondents

Mr. R. A. Dada, Senior Advocate with Mr. C. K. Thomas i/b. C. K. Thomas and Associates for the Petitioner.

Mr. O. A. Chandurkar, Addl.GP with Mr. M. M. Pabale, AGP for Respondent No.1 – State.

Mr. G. S. Hegde, Senior Advocate I/b. Ms. P. M. Bhansali for Respondent No.2 – CIDCO.

Dr. Milind Sathe, Senior Advocate with Mr. Gaurav Srivastav, Ms. Manorama Mohanty, Ms.Mittal B. Nor, Kunjan Makwana I/b. S. K. Srivastav and Co. for Respondent No.3.

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. & ARIF S. DOCTOR, J.

RESERVED ON : OCTOBER 27, 2023
PRONOUNCED ON : DECEMBER 19, 2023

JUDGMENT (PER : CHIEF JUSTICE)

1. By instituting these proceedings under Article 226 of the Constitution, the Petitioner, which is a society registered under the Societies Registration Act, 1860 and the Bombay Public Trust Act, 1950 and is running various educational institutions and courses challenges the validity of the result of e-auction process published on 26th April 2023 whereby Respondent No.3 has been declared to be successful in the said process conducted by Respondent No.2 – City and Industrial Development Corporation (hereinafter referred to as the **CIDCO**), for lease of plot No.22 Scheme No.SS/EC/02/2022-23, Sector 16 of the developed Node

of New Panvel (E), Navi Mumbai. The lease of the plot in question is to be awarded for professional college, area of which is approximately 8962.39 sq.mtrs.

Further challenge made in the Writ Petition is to a communication dated 17th July 2023 received by the Petitioner from the General Manager (Social Services), CIDCO, whereby it has been informed to the Petitioner that "first right of refusal" claimed by it has not been granted. The Petitioner-society has also prayed that appropriate directions may be issued to the CIDCO to declare the Petitioner as eligible to exercise its "first right of refusal" under the relevant term of the e-auction and further to accept its offer to match the offer submitted by the highest bidder and to allot the plot in question on this basis for professional colleges to the Petitioner-society.

Another prayer made in the Writ Petition is that the allotment letter dated 24th April 2023, whereby the plot in question has been allotted on lease basis in favour of Respondent No.3, be quashed.

2. We have heard Mr. R. A. Dada, learned Senior Advocate representing the Petitioner, Mr. O. A. Chandurkar, learned State

Counsel representing Respondent No.1, Mr. G. S. Hegde, learned Senior Advocate for Respondent No.2 – CIDCO and Dr. Milind Sathe, learned Senior Advocate representing Respondent No.3 and have also perused the records available before us on this Petition.

3. Before dwelling upon the respective submissions advanced by learned Counsel representing rival parties, we may advert to certain facts which are necessary for proper adjudication of the controversy involved in this Petition. As already observed above, the Petitioner is a society registered under the Societies Registration Act, 1860 and the Bombay Public Trusts Act, 1950 and has been running various educational institutions, including certain professional colleges in Mumbai and Raigad Districts. The Petitioner-society has been formed with the objective of promoting the cause of education amongst citizens in general and Malyalam speaking linguistic minority in particular and to improve educational standards in the State of Maharashtra by opening and running educational institutions like schools, degree colleges, polytechnics, management studies and engineering colleges etc. Respondent No.2 - CIDCO, a Government company and is a New Town Development Authority for Navi Mumbai area

in terms of Section 113(3A) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as the MRTP Act), had already allotted earlier Plot Nos.10, 10A and 21 situated in Sector 16 at New Panvel (E) to the Petitioner-society. Plot No.10 was allotted for running a B.Ed College, College of Architecture, a composite complex of Arts, Science and Commerce Colleges and College of Management Studies. Plot No.10A was allotted to the Petitioner-society for college playground whereas Plot No.21 is said to have been allotted to the Petitioner-society for hostel for girl students.

4. For running the engineering college, the Petitioner-society has been making requests to Respondent No.2 – CIDCO since the year 2000 for allotting additional land for meeting the land norms prescribed by the All India Council for Technical Education (hereinafter referred to as the **AICTE**). It appears that the request of the Petitioner was examined, however, initially the said request was not acceded to. Thereafter, in the year 2006, the Petitioner-society again approached Respondent - No.2 - CIDCO reiterating the request for allotment of additional land to meet the requirement as per the norms of the AICTE and accordingly a meeting on 16th November 2007 was held between

office bearers of the Petitioner – society and the officials of Respondent No.2 wherein it was found that some institutional land is available which could be considered for allotment to the Petitioner – society. The request of the Petitioner society for allotment of additional land was taken up for discussion in the 506th meeting of the Board of Directors of Respondent No.2 held on 14th July 2009. The Agenda relating to request of the Petitioner – society for allotment of additional land, which was considered and discussed by the Board of Directors of Respondent No.2 – CIDCO in its meeting held on 14th July 2009, gives the details and feasibility of the request made by the Petitioner – society. A perusal of the said Agenda available as Exhibit-A1 at Pages 43 to 50 of the Writ Petition reveals that the request of the Petitioner was considered by the Planning Department of Respondent No.2 which, considering all the relevant aspects of the matter, including the population of Navi Mumbai and the requirement of professional colleges for New Panvel area, provided that an area of 7500 sq.mtr. which was earlier earmarked for institutional use has been converted to professional use to meet the AICTE land norms of the Petitioner-society. The Board of Directors of Respondent No.2, thus,

passed resolution No.10137 in its meeting held on 14th July 2009 resolving to approve the proposal to lease Plot No.22 to the Petitioner-society, as a special case, subject to the approval of the Government. The relevant extract of Resolution No.10137 passed by the Board of Directors of Respondent No.2 is extracted hereinbelow:

"RESOLUTION No. : 10137"

"RESOLVED THAT the proposal to lease Plot No. 22, admeasuring approx. 7500 sq. mtrs. in Sector-16, New Panvel (E), as shown in the plan appended to the agenda note, to Mahatma Education Society, as a special case, by charging the premium at the rate prescribed and prevailing as per the Navi Mumbai Disposal of Lands (Amendment) Regulations, 2008 of the Corporation at the time of issue of firm letter of allotment plus Water Distribution Betterment Charges @ Rs.50/- per sq. mtr. to meet the land norms of AICTE for Engineering College, on demarcation, with FSI One, on 60 years lease, be and is hereby approved subject to approval of the Government"

"RESOLVED FURTHER THAT the firm allotment letter be issued only on receipt of approval from the Government."

"RESOLVED FURTHER THAT the request of the Society to allot on Leave & Licence basis entire stretch of river base for development of botanical and herbal garden for development and maintenance be and is hereby regretted, due to opposition from the residents."

"RESOLVED FURTHER THAT the VC&MD/Jt.MD/CSSO/M(TS) be and are hereby authorised to implement the above Resolutions."

5. It appears that since the aforesaid resolution passed by the Board of Directors of Respondent No.2, dated 14th July 2009 was not acted upon, the Petitioner-society approached the State Government and considering the request of the Petitioner, the Government wrote a letter to the Managing Director of Respondent No.2 – CIDCO on 30th August 2012 forwarding the request of the petitioner for allotment of additional plot, for necessary action. Another letter was sent by the State Government on 1st September 2012 to the Managing Director of Respondent No.2 calling upon the Managing Director to submit a report in the matter to the State Government. Thereafter, again, vide letter dated 1st September 2014, the State government wrote a letter to the Managing Director of Respondent No.2 – CIDCO stating therein that the Respondent No.2 has already allotted certain plots to the concerned educational institutions and all such institutions located in Navi Mumbai are required to comply with the norms of the Central Regulatory Authorities, like AICTE and others. The said letter also directed that the Respondent No.2 – CIDCO to invite Application / Bids for allotment of plots from eligible professional institutions which are facing shortage of land to run their institutions.

6. It was also directed by the State Government by means of said letter dated 1st September 2014 that "right to first refusal" to match the highest quoted rate be given to the institutions situated beside or adjacent to the plot advertised who participate in the tender process to meet any deficiency of land norms of AICTE. It was, thus, directed by the State Government that Respondent No.2 – CIDCO shall adopt the said policy for allotment of additional plot to the eligible institutions as desired by the Government. Referring to letter dated 1st September 20014, the State Government again wrote a letter on 21st September 2016 to the Managing Director of Respondent No.2- CIDCO requiring him to take action regarding providing additional land to the concerned educational institutions located in the vicinity of Navi Mumbai for compliance of shortage of land as per the norms of Central Regulatory Authorities, in accordance with the directions issued by the State Government vide its letter dated 1st September 2014. Yet another letter was written by the State Government on 20th January 2018 directing Respondent No.2 – CIDCO to take action in terms of the directions already issued by means of letter dated 1st September 2014 for allotting the additional area to the institutions which are

lacking to fulfill the standard of the Central Regulatory Authorities.

7. It appears that considering the pressing need of fulfilling the shortage of land as per the norms of the AICTE and other Central Regulatory Authorities by the Educational Institutions, the State Government again wrote a letter dated 8th January 2019 to the Managing Director of Respondent No.2 to put up the matter before the Board of Directors of Respondent No.2 – CIDCO and to take immediate action. It, thus, appears that the Petitioner – society has continuously been making its endeavour since the year 2000 seeking allotment of additional land so that the deficiency in land as per the norms of AICTE may be fulfilled. It is in these circumstances, that the State Government had also directed Respondent No.2 – CIDCO vide its letter dated 1st September 2014 to invite Application/Bids for allotment of plots and further to give “right to first refusal” at the highest quoted rate to the institutions which are situated beside or adjacent to the plot to be advertised.

8. Respondent No.2 – CIDCO, ultimately issued a notice on 27th April 2022 inviting tenders for lease of Plot No.22 i.e. the

plot in question. As per the time schedule published in the said e-auction notice payment for on-line registration started on 10th May 2022 and continued till 9th June 2022. The submissions of Application and processing fee started on 10th May 2022 and continued till 9th June 2022. Similarly, the payment of Earnest Money Deposit (EMD) fee also started on 10th May 2022 and continued till 9th June 2022. The technical bid as per the said time schedule was to be scrutinized between 10th June 2022 to 5th July 2022. The result of the technical scrutiny was to be declared on 13th July 2022 where after on-line payment, e-auction was to start on 14th July 2022 at 11.00 hrs and continued till 15.00 hrs., whereupon the result was to be announced on 14th July 2022 at 17.00 hrs.. However, a corrigendum to the said e-auction notice was issued on 15th July 2022 whereby it was provided that technical bid scrutiny shall start on 19th July 2022 and would continue till 22nd July 2022 and thereafter technical bid result was to be announced on 25th July 2022 at 15.00 hrs. whereupon e-auction was to start on 26th July 2022 which was to be continued till 26th July 2022 and thereafter the result was to be announced on 28th July 2022 at 17.00 hrs.

9. The Petitioner, fulfilling the requisite eligibility criteria as per the e-auction notice dated 27th April 2022 submitted its Application which was complete in all respects. Technical scrutiny of the Application of the Petitioner was also successful. In addition to making an Application pursuant to the e-auction notice dated 27th April 2022, the Petitioner also claimed that the Petitioner may be given "right to first refusal" at the highest quoted rate as per the terms and conditions contained in the Information Brochure issued by Respondent No.2 with e-auction notice. The clause relating to "right to first refusal" as publicized in the Information Brochure of Respondent No.2 is quoted hereunder:

In addition to the above eligibility criteria, the condition of 'First right of refusal' in this scheme as follows

- 1) 'Right of first refusal' at the highest quoted rate be given to the institution situated beside or adjacent to the plot advertised, who participated in tender process to meet any deficiency in land norms of AICTE (if the plot advertised is situated beside or adjacent to their complex if existing allottee educational Trust/Society submits its bid for getting the plot allotted under this E-Tender Scheme advertised.*
- 2) "if in rebid the highest offer is less than present highest offer, the institution exercising the right to refusal should match present highest bid rate."*

10. Immediately after submitting the Application pursuant to the e-auction notice dated 27th April 2022, the Petitioner submitted an Application on 1st July 2022 clearly stating therein that it is running professional and degree colleges on Plot No.10 and 10A and having a hostel on Plot No.21 which is adjacent to plot in question i.e. Plot No.22 and that the Petitioner is short of land requirement as per AICTE norms for its engineering college and therefore the Petitioner was exercising its "right of first refusal" as per the condition given in the Information Brochure (Tender Booklet).

11. Respondent No.2 – CIDCO, thereafter wrote a letter dated 20th July 2022 to the Petitioner requiring it to submit certain documents in response to which the documents were submitted to Respondent No.2 by the Petitioner vide its letter dated 21st July 2022. While submitting the documents by means of letter dated 21st July 2022, the Petitioner again claimed "right to first refusal" as is apparent from a perusal of the said letter itself.

12. Bids of all the Applicants were opened on 28th July 2022 at 15.00 hrs and it was noticed by the Petitioners that the highest bid of Rs.35706 per sq.mtr. was submitted by Respondent No.3

as against the bid submitted by the Petitioner of Rs.33706 per sq.mtr. On opening the bids on 28th July 2022, the Petitioner again wrote a letter on 29th July 2022 to Respondent No.3 stating therein that the Petitioner is eligible for exercising its "first right of refusal" and that it is giving its consent that it shall match the highest bid quoted by Respondent No.3. In the said letter dated 29th July 2022, it was clearly stated by the Petitioner that land comprised in Plot Nos.10, 10A and 21 currently being used by the Petitioner society for running the educational institutions is adjacent to and beside the plot in question viz. Plot No.22 and accordingly, the Petitioner society is eligible for allotment of the said plot as per the scheme publicized vide notice dated 27th April 2022. The letter dated 29th July 2022 written by the Petitioner society to the Social Service Officer of Respondent No.2 – CIDCO is extracted hereinbelow:

"MAHATMA EDUCATION SOCIETY

*Chembur Naka, Mumbai – 400 071 Tel: 2522 4865/
2522 8414 Fax: 91 22 2522 9587*

Website: www.mes.ac.in, Email : mess@mes.ac.in

*Ref. No.: MES/CIDCO/SS/PC/08-22-23 Date: 29th July
2022*

*The Social Services officer,
The Social Services Department,
CIDCO Limited 7th FLOOR Tower No. 7,
CBD Belapur Rly. Station Commercial Complex Bldg.
CBD-Belapur, NAVI MUMBAI*

Dear Sir/Madam

Sub: Regarding allotment of plot No. 22 of Scheme no. SS/PC/02/2022-23 lease of plot for "Professional college plot at New Panvel (East) node of Navi Mumbai" to Mahatma Education Society as per the condition of 'First right of refusal' and our consent to match and pay highest bid rate.

Ref:

1. CIDCO tender application no. SS/PC/02/2022-23, advertisement published on 27.04.2022.
2. Our letter Ref. No.: MES/CIDCO/SS/PC/04-21-22, dated 20th June 2022

We have successfully submitted our application on the portal with all the relevant documents for our application for allotment of Plot No. 22 lease of plot for "Professional college plot at New Panvel (East) node of Navi Mumbai" and all the documents have been approved on the portal.

As per the re-schedule date and time for Bid opening for the said tender plot announced by CIDCO, we have attended the tender-Bid opening on 28th July 2022, 5.00pm at 3rd floor hall, CIDCO Bhavan, Belapur, Navi Mumbai.

After the opening of the bid of all the applicants it was noticed that Shri. Vileparle Kalvani Mandal trust had the highest bid of Rs. 35706/- per sq.mtr. for the said tender plot against our bid rate of Rs. 33706/- per sq. mtr.

Kindly note that as per the clause in the tender booklet about "the condition of 'First right of refusal' we are also eligible for 'First right of refusal' and **we are giving our consent that we shall match the highest bid quoted by Shri. Vileparle Kalvani Mandal trust and we are ready to pay Rs. 35706/- per sq. mtr. for the allotment of plot No. 22, CIDCO tender scheme no. SS/PC/02/2022-23 as per the condition of 'First right of refusal' to Mahatma Education Society.**

For your more information and consideration of allotment of the tender plot no. 22 to MES is that of Mahatma

Education Society's Dr. K. M. Vasudevan Pillai College Complex situated and located on Plot No. 10, 10A and 21 is adjacent and beside the aforementioned tender Plot No. 22, which also makes Mahatma Education Society eligible to get the allotment of the said plot as per the scheme booklet conditions. We would further like to state that we need this additional land to satisfy the land requirement norms of AICTE for our existing professional colleges located at Dr. K. M. Vasudevan Pillai College complex.

For your ready reference the scheme & eligibility criteria and conditions mentioned in the tender booklet, which is reproduced below:

"the condition of 'First right of refusal' in this scheme as follows

1) 'Right of first refusal' at the highest quoted rate be given to the institution situated beside or adjacent to the plot advertised, who participated in tender process to meet any deficiency in land norms of AICTE (if the plot advertised is situated beside or adjacent to their complex if existing allottee educational Trust/Society submits its bid for getting the plot allotted under this E – Tender Scheme advertised.

2) "if in rebid the highest offer is less than present highest offer, the institution exercising the right to refusal should match present highest bid rate."

We request you to kindly allot the plot to us as we are ready to pay the highest bid/auction rate for the said plot.

*Thanking you,
Yours faithfully,*

*(Dr. Priam Pillai)
COO, MES."*

13. It is worth noticing that the said letter dated 29th July 2022 was tendered by the Petitioner – society not only to the Social

Service Officer of Respondent No.2 – CIDCO but also to its Managing Director as well. Both the letters are on record of this petition at Exhibit-H.

14. On 31st August 2022 the Petitioner society was issued with a show cause notice by AICTE stating therein, *inter alia*, that the College of Engineering being run by the Petitioner – society was found deficient in land area as per the prevalent norms. The said show cause notice mentioned that the Pillai College of Engineering run by the Petitioner society, which was formerly known as Pillai Institute and Information Technology, Engineering, Media Studies and Research, had not been given approval by the AICTE on account of deficiency in terms of land which continued even on the date of issuance of said show cause notice dated 31st August 2022. By the said show cause notice, the Petitioner – society was required to submit its reply showing cause as to why action as stipulated in the notice of AICTE may not be taken.

15. It is further noticeable that on the prayer made by the Petitioner – society for exercising its “first right of refusal” the General Manager (Social Services) of Respondent NO.2 – CIDCO

wrote a letter on 1st September 2022 directing the Petitioner to submit updated / latest documents / papers relating to the claim of its "first right of refusal" in response whereof the Petitioner submitted its reply and the documents by means of letter dated 5th September 2022.

16. The Petitioner society again wrote a letter on 13th September 2022 requesting Respondent No.2 to allow it to match the highest bid received for the plot in question and issue allotment letter to it on urgent basis so as to avoid any action by the AICTE which may result in loss to the students. Certain additional information was also given by the Petitioner society to the Respondent No.2 vide its letter dated 2nd November 2022 intimating therein that Respondent No.2 – CIDCO had granted permission to conduct the Institute / College of Computer Engineering and Information Technology in the year 1998 and said courses were approved by the Government of Maharashtra, University of Mumbai and AICTE. By the said letter, it was also informed to the CIDCO that the Government of Maharashtra and University of Mumbai had permitted change of name of the institution from Pillai Institute of Information Technology to Pillai College of Engineering. Along with the said letter, the

permission accorded by Respondent No.2 – CIDCO vide letter dated 4th September 1998 to the Petitioner society to conduct the institute and / College of Computer Engineering and Information Technology in the college complex on the plots allotted by it, was also enclosed. The said letter also contained the permission accorded by the Government of Maharashtra vide letter dated 11th October 1999 to run courses like Information Technology, Electronics Engineering and Computer Engineering. The approval of AICTE granted to the Petitioner society for running the said courses vide letter dated 23rd September 1999 was also enclosed. The letter dated 24th November 2000 issued by the Registrar, University of Mumbai whereby the Institute of Information Technology and Media Studies, New Panvel run by the Petitioner society was granted affiliation, was also enclosed. The letter dated 4th August 2016 issued by the Department of Higher and Technical Education, Government of Maharashtra was also enclosed with the said letter by the Petitioner whereby approval to change of name of the institution from Pillai Institute of Information Technology, Engineering, Media Studies and Research to Pillai College of Engineering, Plot No.10, Sector 16, New Panvel, District Raigad was accorded. Enclosed with the

said letter dated 2nd November 2022 was also the letter of 16th March 2015 from the Director of Department of Technical Education, University of Mumbai whereby it was stated that the University does not have any objection regarding change of name of the college.

17. On the basis of the aforesaid facts, it has been submitted by the learned Senior Advocate representing the Petitioner that in terms of the conditions of e-auction notice inviting Application for allotment of plot No.22 on lease basis, the Petitioner society was fully eligible to exercise its "first right of refusal", however, Respondent No.2 – CIDCO has unlawfully denied the Petitioner the said right and has thus wrongly allotted the plot in question in favour of Respondent No.3 on account of favouratism and extraneous considerations, hence such an action on the part of Respondent No.2 – CIDCO cannot be permitted to be sustained in the eyes of law.

18. It has also been argued on behalf of the petitioner that no reason whatsoever has been assigned by CIDCO for not permitting the Petitioner to exercise its "right of first refusal" though the letter / communication dated 17th July 2023 gives

some indication as to why the Petitioner's "right of first refusal" has not been acceded to by Respondent No.2 – CIDCO, however, the reason as indicated in the communication dated 17th July 2023, is not tenable. It has been argued in this regard that the communication dated 17th July 2023 states that as per the AICTE standards, there is no shortage of space for running the institution and that insufficient space being pleaded by the Petitioner – society is in respect of the courses started without permission and accordingly, the plot has been allotted to the highest bidder i.e. Respondent No.3. The submission is that the said reason, however, is completely incorrect and is belied of by the documents available on record. Submission in this regard is further that the show cause notice issued by the AICTE, dated 31st August 2022 itself makes it evident that the Petitioner's institution, Pillai College of Engineering is deficient in land area as per the norms prescribed by AICTE. It is also the submission on behalf of the Petitioner that it is absolutely incorrect to say that the courses being run by the Petitioner society are without permission.

19. Drawing our attention to the Affidavit-in-Reply filed by Respondent No.2, it has been stated by the learned Senior

Advocate appearing for the Petitioner that there is no denial in the said affidavit that the name of the institution was changed with the requisite approval from the authorities concerned and the no- objection issued by the Mumbai University and hence merely because change of name of the college, it cannot be said that the Petitioner society has been running the courses without permission. Thus, the submission is that the reason as can be culled out from the communication dated 17th July 2023 denying the Petitioner its "first right of refusal" cannot be sustained and accordingly, the impugned action on the part of the Respondents is liable to be struck down.

20. Opposing the prayers made in the Writ Petition, it has been argued by Mr. Hegde, learned Senior Advocate appearing for Respondent No.2 – CIDCO that the Scrutiny Committee constituted for the purpose of examining the Bids/ Applications submitted by the parties pursuant to e-auction notice dated 27th April 2022 found the documents submitted by the four Applicants, including the Petitioner and Respondent No.3, to be in order. It is also submitted that e-auction was held on 28th July 2022 in presence of the representatives of three of the participating parties and the members of the committee

comprising of the Accounts Officers, Officials of Public Relation, Department of Social Services of Respondent No.2 – CIDCO and accordingly, after opening of closed bids and e-auction, it was found that the highest rate received as H1 was Rs.35706/- per sq.mtr. as against the base rate of Rs.22706/- per sq.mtr. and further that the highest rate offered by Respondent No.3 was accepted. Further submission made as per the contents of the Affidavit-in-Reply filed by Respondent No.2 opposing the Writ Petition is that earlier, three plots viz. Plot Nos.10, 10A and 21 were allotted to the Petitioner for specific purposes i.e. to run B.Ed Course and Architecture college, composite complex of Arts, Science and Commerce College and College of Management Studies and also for college play ground and hostel for girls. It is further argued that the said three plots were allotted to the Petitioner for specific purpose and the Petitioner had not sought any change of user in respect of these plots and that "first right of refusal" is available only to the institution which requires additional land for expansion of the user for which the plot was allotted. It is, thus, submitted that such "first right of refusal" could be made available to an institution seeking additional land for the use for which the earlier plots were allotted, however, in

the present case the additional land needed is for running an Engineering College known as Pillai College of Engineering and that Respondent No.2 had not allotted earlier any plots for running Engineering College and hence in this view, "first right of refusal" is not available to the Petitioner.

21. In another words, the submission is that the "first right of refusal" is restricted only for expansion of the existing user and not for the expansion of Engineering College which use, according to the Respondents, was not permitted by it.

22. Thus, the Writ Petition has been vehemently opposed by Respondent No.2 making the aforesaid submissions and stating that the Petitioner is not entitled to exercise "first right of refusal" for the reason that such right is available only to those institutions which are using the land allotted earlier for the purpose for which it was allotted to them and any subsequent change in user of the land dis-entitles the Petitioner to seek such "right of first refusal".

23. Dr. Milind Sathe, learned Senior Advocate, representing Respondent No.3 has also opposed the Writ Petition by stating, *inter alia*, that it is incorrect that the Petitioner's institution is

beside or adjacent to the plot in question and that Plot No.10A has been taken by the Petitioner on leave and license for playground and as such it does not belong to the Petitioner. It is, thus, submitted on behalf of Respondent No.3 that the Petitioner's plot is not contiguous to the plot in question and hence the Petitioner does not fulfill the eligibility criteria to claim "first right of refusal". It has also been urged that Plot Nos.10 and 10A, as allotted to the Petitioner, were for running B.Ed (course) and for constructing and running a composite college complex i.e. College of Arts, Commerce and Science and College of Management Studies, however, the Petitioner has constructed an Engineering College and since running such Engineering College is in violation of the terms and conditions of the lease granted earlier, therefore the Petitioner cannot claim allotment of the plot in question i.e. Plot No.22 which is meant for constructing and running a professional college. It has also been stated that the plot in question can be used for running a professional college and not for removing the deficiency of land as per the norms prescribed by the AICTE and thus, the Petitioner is not entitled for the claim put-forth by it in the instant Writ Petition.

24. On the basis of pleadings of the respective parties available on record and the submissions made by the learned Counsel representing respective parties, the issue which emerges for consideration of the court for deciding the instant Writ Petition is, as to whether in terms of the provision contained in the e-auction notice dated 27th April 2022, the Petitioner – society is eligible to exercise its “right of first refusal” to match the highest quoted rate and, as to whether the Petitioner has wrongly been denied the said right?

25. The case setup by Respondent No.2 – CIDCO, denying the Petitioner’s “first right of refusal”, is that the said right is available only to the institutions who have not changed the user of the land for which land was earlier allotted to them and since in this case, the land earlier allotted to the Petitioner was for the purpose of running a composite college complex comprising of B.Ed. institution, College of Architecture, College of Management Studies and College of Arts, Science and Commerce and for college playground and also for hostel for girl students and presently the Petitioner is seeking land for fulfilling the requirement of the norms prescribed by the AICTE for running

an Engineering college, hence, the Petitioner is not eligible to claim "first right of refusal". The reason indicated in the communication dated 17th July 2023 to deny the Petitioner the right as claimed, is that the courses being run by the Petitioner is without permission and hence, the Petitioner is not eligible to exercise its "first right of refusal".

26. So far as the first reason indicated by Respondent No.2 denying the Petitioner to exercise the "first right of refusal" is concerned, we may point out that the letter dated 8th March 1994 by which the land comprising Plot Nos.10 and 10A were allotted to the Petitioner clearly indicates that the plot was allotted for composite college complex and for playground. Said letter dated 8th March 1994 recites that the land was allotted to the Petitioner for ***composite college complex i.e. College of Arts, Science and Commerce and College of Management Studies etc.***

27. It is further noticeable that the user of the plot in question i.e. Plot No. 22 is reserved for professional college and in terms of CIDCO's New Land Pricing & Land Disposal Policy – 2007, as is available on record of this Petition as Exhibit-A appended to the

Affidavit-in-Reply filed by Respondent No.2, contains 'Land Use' and the 'Land Use' of professional colleges mentions: (i) Engineering / MBA /Law /Other Professional Institutions / Colleges with Courses recognized by Government / HRD Ministry / Indian University / AICTE. The amendment to Revised Land Pricing and Land Disposal Policy for Navi Mumbai – 2015 announced by Respondent No.2 which is available on record of this petition also categorizes professional colleges to mean College of Engineering / MBA / Law / Other Professional Institutions / colleges with courses recognized by the Government / HRD Ministry / Indian University / AICTE. Thus, any plot that is reserved for professional college can be used for setting up, amongst others, an Engineering College as well.

28. Accordingly, we are of the opinion that since land use of a plot reserved for professional colleges permits an Engineering College as well and the land use of plot in question i.e. Plot No.22 is reserved as professional college, hence, the said plot can be permitted only for setting up professional colleges which include an Engineering College as well as mentioned in the aforesaid policy promulgated by Respondent No.2. In this view, it is indisputable that plot No.22 i.e. the plot in question can be

used for setting up of an Engineering college. It is further noticeable that composite college complex as per the allotment letter dated 8th March 1994 issued by Respondent No.2 in favour of the Petitioner included College of Arts, Science and Commerce and College of Management Studies etc. Occurrence of the word "etc." thus enlarges the scope of College Complex. It is further noticeable that Respondent No.2 has all along recognized the Engineering College run by the Petitioner on the land allotted earlier.

29. In this regard, we may refer to Resolution of the Board of Directors of Respondent No.2 viz. Resolution No.11209 wherein it was resolved that while advertising the higher educational plots for higher educational institutions, the "first right of refusal" shall also be given. Resolution No.11209 of the Board of Directors of Respondent No.2 – CIDCO was passed on 9th September 2014 on the basis of Agenda circulated for the said purpose which, *inter alia*, took notice of the fact that recently AICTE had barred few professional colleges from Navi Mumbai, including the college run by the Mahatma Education Society. At this juncture, we may point out that AICTE is a statutory body created under the All India Council for Technical Education Act,

1987, regulating the technical education which includes Engineering Education, as well. Thus, as far as back on 9th September 2014 itself Respondent No.2 had recognized the deficiency of land being faced by the Engineering College being run by the Petitioner – society. Relevant points which form part of the Agenda considered by the Board of Directors of Respondent No.2 – CIDCO in its meeting dated 9th September 2014 are, as under:

"B) Issue for consideration

.....

iv) Recently, AICTE had barred few professional colleges from Navi Mumbai including Mahatma Education Society and Saraswati Education Society to admit students in some courses or reduced their intake capacity. The Hon'ble High Court had permitted these institutions till next academic year to meet land and other norms of AICTE.

v) Considering the difficulties being faced by existing professional Colleges in Navi Mumbai to acquire land to meet the land norms of AICTE, the Govt. vide letter dated 1/9/2004 has recommended that first right to refusal be given to institutions who had been already allotted plot at concessional rate and seeking land adjacent to beside their plot to meet the land norm of competent authority while tendering the plots as per(illegible) policy.

(D) Details about the proposal :

.....

4. Recently, AICTE has barred some of higher educational institutions in Navi Mumbai, including Mahatma Education Society, New Panvel to admit students in some courses or reduced their intake capacity because of not meeting the AICTE norms including land norm. AICTE vide letter dated 23.06.2014 addressed to Mahatma Education Society informed that 'As per AICTE norms the total land required for the 4 Colleges i.e. i) Pillai's Institute of IT, Engg. Medica Studies & Research, ii) Pillai's Polytechnic, iii) Pillai's Institute of Management Studies and Research and iv) Pillai's College of Architecture is 5.5 acres (2.5+1.5+0.5+1.0 acres). Further from AICTE affiliation, the institute requires approval for the 3 Colleges for which the effective land.....(illegible) the Institute is considered to be 2.39 acres (excluding land of 1.0 acre for Architecture). In short, the Society has only 3.39 acres of land for 4 aforesaid Colleges as against minimum land requirement of 5.5 acres, shortfall of 2.11 acres the approx. 8440 m². Therefore, the AICTE has decided to place this institute under "No admission" category for the year 2014-15.

5. The affected institutions have approached the Hon'ble High Court and Hon'ble High Court vide order dated 14th July, 2014 has given interim relief till next academic year. The order of High Court says that "protection granted by these orders shall not extend in any case to the next academic year. The approvals for the next academic year shall be decided on its own merits". A copy of interim order of Hon'ble High Court is annexed at Annexure-A.

The Mahatma Education Society has been following with the Government and considering the difficulties being faced by existing professional Colleges in Navi Mumbai the Govt., with reference to our letter No. CIDCO/ SSO/ Govt./2014/598 dated 26th June, 2014 vide letter No.CID-3309/1324/P.K.177/UD-10 dated 1st September 2014 of Dy. Secretary, UDD has issued recommendations that if the Corporation had allotted land for higher and technical educational use at concessional rate and if the said plot is not sufficient to meet the land norms stipulated by

Competent Authority (i.e. AICTE, etc.), to make available land to such educational institutions besides or adjacent to their plot, the Govt. feels it appropriate if the Corporation adopt the policy while inviting tenders as per existing policy by participating such institutions in the tender process and accepting it to pay the highest tendered cost by giving power of "first right to refusal" in the tender conditions. Letter received from Dy. Secretary, UDD is annexed at Annexure-B."

30. The Resolution No.11209 passed by the Board of Directors of Respondent No.2 in its meeting held on 9th September 2014 is also extracted hereinbelow:

"RESOLUTION NO.: 11209

"RESOLVED THAT the Board do hereby note the recommendations received from the Government and further resolved that while advertising higher educational plots which is adjacent or beside the existing higher educational Institutes as recommended by the Government and as indicated in Para 6 of the agenda note, as under, be incorporated in Clause A-5(i) & (ii) of Land Pricing & disposal Policy: -

<i>Eligibility Criteria</i>	<i>d) All the professional Colleges must fulfill the norms/ conditions laid down by AICTE / MCI/ DCI/ CCH etc. for requirement of land for establishing such institutions, qualified staff, Syllabus / portion of the subject to be taught etc.</i>	<i>d) All the professional Colleges must fulfill the norms/ conditions laid down by AICTE/ MCI/ DCI/ CCH etc. for requirement of land for establishing such institutions, qualified staff, Syllabus/ portion of the subject to be taught etc. (this clause is not applicable to</i>
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		<i>Institution already functioning in Navi Mumbai and seeking additional land to meet land norm of AICTE only if the plot advertised is situated adjacent or beside their complex).</i>
<i>Method of disposal</i>	<i>By Inviting tender</i>	<i>By inviting tender. First right to refusal at the highest quoted rate be given to the Institution situated beside or adjacent to the plot advertised, who participated in tender process, to meet any deficiency in land norm of AICTE (if the plot advertised is situated beside or adjacent to their complex)."</i>

"RESOLVED FURTHER THAT higher educational plots adjacent to Mahatma Education Society, New Panvel and Saraswati Education Society, Kharghar, earlier identified and recommended by Board to the Government, to meet AICTE norms, after verifying the exact deficiency in land norm of AICTE, be advertised with the said condition."

"RESOLVED FURTHER THAT the intending allottees of such plots shall give admissions to the wards of CIDCO/State Govt. Employees and PAPs by allocating reservations of 5% seats [2% for the wards of CIDCO/Govt. Employees and 3% for PAPs.] and these Institutions shall have to display these reservation provisions on their Notice Board/ Brochure etc."

"RESOLVED FURTHER THAT the Board do and hereby authorise and empower the VC & MD/Jt. MD to implement the above Resolutions, without waiting for confirmation of the Minutes."

31. The sketch map depicting on the spot position of Plot No.10, 10A, 21 (earlier allotted to the Petitioner – society) and Plot No.22 (plot in question), appears to be part of the said Resolution No.11209 which clearly shows that Plot No.21, where exists a girls' hostel constructed, run and managed by the Petitioner – society is adjacent to Plot No.22, which is reserved for professional college. These two plots appears to be separated only by a road and thus, it cannot be said that Plot No.22 i.e. the plot in question in this Petition is not adjacent to the land earlier allotted to the Petitioner – society. We may note that resolution uses the word 'adjacent' and not 'contiguous'. It is also worthwhile to notice that one of the conditions of allotment as per Resolution No.11209 of the Board of Directors of Respondent No.2 was that the intending allottees shall give admission to the wards of CIDCO / State Government employees by providing reservation of 5% seats. There are various letters on record such as letters dated 21st July 2014, 14th August 2014, 6th June 2014 etc. whereby recommendations by the authorities

of Respondent No.2 have been made from time to time for giving admission to certain students in the Engineering College run by the Petitioner – society as wards of CIDCO employees within the quota reserved for such category of candidates.

32. Form the aforesaid facts, it is clear that (i) if a particular plot is reserved for land use of profession college, it can be used for constructing and running a college imparting education in various professional courses and disciplines, including in Engineering subjects. (ii) Respondent No.2 has never objected to running of the Engineering college by the Petitioner – society, rather it has all along recognized the Engineering college, which is clear from Resolution No.11209 of the Board of Directors of Respondent No.2, as also from the letters sent by the Officials of Respondent No.2 – CIDCO claiming admission to the said Engineering College for wards of the CIDCO employees, and (iii) Plot No.22 is adjacent to Plot No.21, which was allotted to the Petitioner-society earlier, where, admittedly, a girls' hostel is running and that it cannot be said that a hostel being run and managed for housing students in a college does not form part of the college.

33. Accordingly, any submission to suggest that the plot in question i.e. Plot No.22 is not adjacent to the earlier plots allotted to the Petitioner – society, is apparently not acceptable being not tenable.

34. The stand taken by Respondent No.2 denying the Petitioner its “first right of refusal” to match the highest bid, is, in fact, contrary to the decision embodied in Resolution No.11209 which was taken by Respondent No.2 only to extend “first right of refusal” to the institutions which are running on the plot allotted by Respondent No.2 earlier and are facing deficiency in land norms prescribed by the AICTE. The Agenda on the basis of which Resolution No.11209 was passed on 9th September 2014 by Respondent No.2 clearly establishes the primary consideration for Respondent No.2 to take such a decision was the deficiency of land norms being faced by such Institutions, including the Institution being run by the Petitioner -society, as the same finds mentioned in the Agenda discussed in the meeting held on 9th September 2014.

35. Thus, what is apparent and obvious from the aforementioned facts is that the very purpose for which the decision by the

Board of Directors of Respondent No.2 was taken in its meeting held on 9th September 2014 is being defeated by not recognizing the "first right of refusal" of the Petitioner – society to match the highest bid. The Petitioner society, in the facts of the case, cannot be said to be ineligible for exercising the said right as the reasons given by Respondent No.2, both in the Affidavit-in-Reply and the communication dated 17th July 2023 are clearly not tenable.

36. As far as the stand taken by Respondent No.3 is concerned, what we notice is that apart from submitting that Plot No.22 i.e. plot in question is not adjacent to the plots earlier allotted to the Petitioner over which the Petitioner is running its institutions, it has also been stated that user of land allotted earlier to the Petitioner has been changed without any requisite permission.

37. So far as the submission of learned Counsel representing Respondent No.3 that the plot in question is not contiguous to the earlier plots allotted to the Petitioner is concerned, we have already given a finding that the said plot is adjacent to the plot earlier allotted to the Petitioner, as is apparent from the sketch

map which forms part of Resolution No.11209 of Respondent No.2 – CIDCO. It is also noteworthy that Respondent No.2 has not taken any such stand that Plot No.22 is not adjacent to the plots earlier allotted to the Petitioner – society on which it is running its institutions. For deciphering and recognizing as to whether the plot i.e. Plot No.22 is adjacent to the plots earlier allotted to the Petitioner, it is Respondent No.2 who can be said to be the best judge and admittedly, no such stand has been taken in the opposition to the instant Writ Petition by Respondent No.2. Thus, this submission advanced on behalf of Respondent No.3 merits rejection, which is hereby rejected.

38. The submissions made by learned Counsel for Respondent No.3 based on the alleged change of land use is also not tenable for the reasons already discussed above. At the cost of repetition, we may state that the allotment letter dated 8th March 1994, whereby the plots were allotted to the Petitioner - society earlier, only recites allotment of land for composite college complex i.e. College of Arts, Science and Commerce and College of Management Studies etc. As already observed above, Respondent No.2 has never objected to running the Engineering College by the Petitioner – society, rather it has all along

recognized the same not only while considering the relevant aspects of the matter while passing the Resolution No.11209 dated 9th September 2014, but also by sending recommendations for admission of the wards of CIDCO employees. It is also relevant to point out at this juncture that for running an Engineering Institutions, under law, what is required statutorily is the recognition by the State Government, by the affiliating University and by the Central Regulatory Body viz. AICTE. No such recognition for running an Engineering College is required from Respondent No.2. As a matter of fact, the function of Respondent No.2 is not to recognize any college imparting education in any discipline or field, rather, its function is to ensure development of land and to allot the same according to the need and planning in the area. It is for this reason that while passing the resolution No.11209, Respondent No.2 had taken into consideration all relevant factors, specially the need of land required for fulfilling the land norms as prescribed by the AICTE by the professional colleges, including the college run by the Petitioner – society. Any stance taken by Respondent No.2 opposite and contrary to the purpose for which Resolution No.11209 was passed by it, cannot be approved of.

39. Lastly, it has been submitted on behalf of the respondents that the Petitioner had earlier filed Writ Petition No.4589 of 2015 before this Court which was decided by a Division Bench by means of the order dated 24th August 2015, wherein, it has been noted that the Petitioner's college has land area of 7.15 acres which is sufficient to run all the programs and thus, it cannot be pleaded by the Petitioner that there is any land deficiency in terms of the requirement of the norms prescribed by the AICTE. In this regard we may observe that against the said order dated 24th August 2015 passed by this Court in Writ Petition No.4589 of 2015, the AICTE appears to have filed an SLP (Civil) No.34553 of 2015 which has been converted into Civil Appeal No.3901 of 2017 which is pending before the Hon'ble Supreme Court. Further, even after the order dated 24th August 2015, a show cause notice was issued by the AICTE on 31st August 2022, wherein deficiency in land area as per the norms of AICTE has been clearly mentioned. Thus, the issue as to whether the Petitioner's institution fulfills the land criteria prescribed by the AICTE cannot be said to have been conclusively decided. It is to be further noticed that the AICTE is still treating the deficiency in area of land possessed by the Petitioner institution as is

apparent from the show cause notice dated 31st August 2022.

40. In view of the discussions made and the reasons given above, we are of the opinion that Respondent No.2 has illegally denied the Petitioner its "first right of refusal" to match the highest bid. The reasons indicated, both in the Affidavits-in-Reply filed by the Respondents as also in communication dated 17th July 2023, are not tenable. Further, we may also note that the base price for the e-auction of the plot in question was Rs.22709/-, whereas, the maximum price offered in the process is Rs.35706/- which, the Petitioner is ready to pay in exercise of its "first right of refusal" to match the highest price and thus, monetarily also, no prejudice is going to be caused to Respondent No.2, if Petitioner is permitted to exercise its "first right of refusal" to match the highest price in the e-auction.

41. Resultantly, the Writ Petition is allowed. The communication dated 17th July 2023 and the order / letter of allotment dated 24th April 2023 or any other such order / letter of allotment issued in favour of Respondent No.3 is hereby quashed. Respondent No.2 is directed to permit the Petitioner to exercise its "first right of refusal" and take decision thereon

accordingly, with expedition, say within a period of eight weeks from the date a certified copy of this order is produced before it.

42. There will be no order as to costs.

(ARIF S. DOCTOR,J)

(CHIEF JUSTICE)

Digitally
signed by
PRAVIN
DASHARATH
PANDIT
Date:
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