

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7716 OF 2014

M/s. Sesa Sterlite Ltd., Shirur, Pune] .. **Petitioner**

Versus

1. State of Maharashtra,]
Through Ministry of Industries]

2. The Maharashtra Industrial Development]
Corporation, Mumbai] .. **Respondents**

Mr. Janak Dwarkadas, Senior Advocate, with Ms. Rishika Harish, Mr. Nishit Dhruva, Mr. Prakash Shinde, Ms. Niyati Merchant and Mr. Harsh Sheth, i/by MDP & Partners, for the Petitioner.

Mr. N.C. Walimbe, Additional Government Pleader, with Ms. Kavita N. Solunke, AGP, for Respondent No.1-State of Maharashtra.

Dr. Birendra Saraf, Senior Advocate, with Ms. Shamali Gadre and Ms. Harshita Bhanushali, i/by Little & Co., for Respondent No.2-MIDC.

Ms. Smita Borikar (GM, Legal) and Mr. Akhilesh Kharabe (Manager, Legal), Officers of MIDC are present.

CORAM : A.S. CHANDURKAR & JITENDRA JAIN, JJ

The date on which arguments were heard : 24TH JANUARY, 2024.

The date on which Judgment is pronounced : 9TH FEBRUARY, 2024.

JUDGMENT : [Per A.S. Chandurkar, J.]

1. RULE. Rule made returnable forthwith and heard learned counsel for the parties.

2. In this writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner, a Public Limited Company, incorporated under the Companies Act, 1956, has raised a challenge to the

notices dated 25th June 2014 issued by the 2nd respondent – Maharashtra Industrial Development Corporation (MIDC), thereby terminating the Lease Agreements dated 5th August 1992 that were entered into between the parties. The petitioner has also raised a challenge to the orders dated 31st July 2014 passed by the learned Principal District Judge, Ratnagiri in proceedings under Section 7 of the Bombay Government Premises (Eviction) Act, 1955 (*for short, "Act of 1955"*), by which the stay applications preferred by the petitioner came to be rejected in proceedings filed for challenging the notices dated 25th June 2014.

3. The facts in brief that are relevant for considering the challenge as raised are that the petitioner claims that it is engaged in the business of exploring, extracting as well as processing minerals, oil and gas. With a view to set up a Copper Smelter Project in the industrial area at Ratnagiri, it approached the MIDC in the year 1992. Pursuant to an application made by it, the MIDC allotted two plots on license to the petitioner for a period of three years. An industrial plot bearing no.Y-1, admeasuring 513.97 acres and a residential plot bearing no.R-57, approximately 37 acres, located at Zadgaon / Shirgaon in Ratnagiri District came to be allotted to the petitioner. On the basis of two separate Agreements dated 5th August 1992, the petitioner was permitted to undertake its activities therein. The grant of license was for a period of three years during which period the petitioner was required to submit its plans of construction for approval.

The construction work was to be completed in thirty-six months. On certification by the Executive Engineer of MIDC, a further lease for ninety-five years at a yearly rent of rupee one was to be granted. Possession of both these plots came to be delivered on 20th August 1992. The license was subject to various terms and conditions, reference to which would be made at a later stage. It is the case of the petitioner that it took all necessary steps of seeking statutory permissions and approvals for setting up its Copper Smelter Plant. It invested approximately an amount of Rs.80 crores to Rs.100 crores at the initial stage for setting up the said plant. The petitioner was granted sanction by a letter dated 11th February 1993 after which preliminary work was initiated at the site. When these activities were underway, the petitioner received a communication from the office of the District Collector, Ratnagiri dated 10th July 1993 in which it was stated that Grampanchayat, Shirgaon had refused to grant permission for construction to the petitioner. It was further stated that against the resolution passed by the Grampanchayat, the petitioner had approached the Zilla Parishad, but the Zilla Parishad had dismissed the petitioner's appeal. The petitioner was called upon to comply with the said orders. Thereafter, on 15th July 1993, the District Collector informed the petitioner that in view of the agitation made by local residents which had given rise to a law and order situation, it was directed on the instructions of the Hon'ble Chief Minister dated 13th July 1993 that until further orders, the

petitioner should not undertake any construction. In view of the aforesaid, the petitioner contends that its work came to a standstill.

4. On 27th January 2010, the Regional Officer, MIDC issued a communication to the petitioner stating therein that despite license having been granted on 5th August 1992 and a period of 18 years having elapsed, no work had been undertaken at the said plots and the same were lying vacant. The petitioner was asked to clarify within a period of ten days. On 4th February 2010, the petitioner responded to the aforesaid communication stating therein that in view of the communication dated 15th July 1993, it had stopped its work of undertaking the Copper Smelter Plant. It was thereafter required to re-locate the said project to Tuticorin, Tamil Nadu and that it was facing losses in that regard. It, however, continued to pay the lease amount of Rs.60,00,000/- p.a. to MIDC. Since the non-use of the site for industrial activities was for reasons beyond its control, it was stated that the construction could be re-started only after the “stop work order” was lifted. Thereafter, there were communications exchanged between the petitioner and MIDC including an attempt being made by the petitioner to undertake an alternative activity at the allotted plots. Ultimately, on 9th July 2013, the MIDC issued two show cause notices to the petitioner for plot nos.Y-1 and R-51, stating therein that the petitioner had committed breach of clauses 3(a), (d) and clause 5(b)(i) of the Agreements since it had not commenced its activities within a period

of thirty-six months from the date of the lease. The petitioner's explanation was called for within fifteen days and it was put to notice that on a satisfactory reply not being given, MIDC would re-enter the allotted plots in terms of clause 5(b)(i) of the Agreements. In the show cause notices, it was stated that if the petitioner desired grant of an opportunity of hearing, it was free to seek the same by having a prior appointment. The petitioner replied to the show cause notices on 23rd July 2013 denying that there was any breach or non-compliance of the clauses referred to in the show cause notices. It was stated that in view of the communication dated 15th July 1993, it was required to stop the construction activities and that position continued till date. Since the petitioner had been paying the monthly amount of lease and there was no default in that regard, the Agreements were not liable to be revoked.

5. On 30th August 2013, the Regional Officer, MIDC informed the petitioner that for a considerable period, the petitioner did not undertake the activities that it was required to undertake as per the Agreements. Though the petitioner had agreed to undertake another project which was to be pollution-free, as indicated in the meeting held on 17th September 2010, no steps were taken even in that regard despite the fact that the period of three years had elapsed. On these grounds, it was communicated that the MIDC had taken a decision to seek the possession of both the plots. The petitioner was called upon to deliver possession of both the

plots within a period of fifteen days. Since the petitioner failed to handover possession of both the plots, the MIDC on 25th June 2014 issued notices through its Regional Officer stating therein that the Agreements stood cancelled from the date of the notices on the ground that there was breach of clauses 3(a), (d) and clause 5(b)(i) of the Lease Agreements. It was further stated that if possession of the plots was not handed over and the MIDC was required to undertake further legal process for recovering the possession, an amount equivalent to 10% from the security amount as well as any further amount that would become due would be recovered and the balance amount would be returned.

6. The petitioner being aggrieved by the aforesaid notices, raised a challenge to the same by invoking the provisions of Section 7 of the Act of 1955 and approached the District Court, Ratnagiri. It sought stay to the effect and operation of the notices dated 25th June 2014. The learned Principal District Judge, Ratnagiri, on 31st July 2014 rejected the stay application in both the appeals but directed the MIDC to defer the action of taking back possession of both the plots for a period of one month from the date of the order. Being aggrieved by the aforesaid, the petitioner has approached this Court challenging the aforesaid action.

7. Mr. Janak Dwarkadas, learned Senior Advocate for the petitioner at the outset submitted that the proceedings under Section 7 of the Act of

1955 had been wrongly initiated before the District Court and that the petitioner was not pursuing its challenge to the said orders in the present writ petition. The challenge was to the notices dated 25th June 2014. He submitted that the MIDC was not justified in seeking to revoke the Lease Agreements dated 5th August 1992 by assigning the reason that the petitioner had failed to commence its activities for setting up a Copper Smelter Plant at plot no.Y-1. Immediately after possession of the aforesaid plot was delivered to the petitioner, it took various steps to commence its activities in that regard. Having obtained all statutory permissions and approvals, the work of construction was commenced. However, within a short time, there was an agitation by the local villagers which resulted in communications dated 10th July 1993 and 15th July 1993 being issued to the petitioner requiring it to stop its activities until further orders. In deference to these directions, the petitioner was required to stop its activities and this position continued for a long time beyond the period of thirty-six months as stipulated in clause 3(a) and (d) of the Agreement. For circumstances beyond the control of the petitioner, it was required to hold its hands and for this reason the Copper Smelter Plant could not be set up. Attention was invited to the “Third Schedule” of the Agreement to indicate that in the list of obnoxious industries, there was no reference made to a Copper Smelter Plant, which thus indicated that such activity was permissible. Despite this position, it was only on account of the

communication dated 15th July 1993 that the petitioner was required to stop its further activities of setting up the plant. The petitioner always intended to utilize the plots allotted to it and it had thereafter approached the MIDC with a proposal to set up an alternative activity therein. There was no positive response from the MIDC and for this reason, the petitioner could not take any further steps in the matter. Despite having the necessary resources as well as the intention to utilize the said plots, the petitioner was prevented from doing so for reasons beyond its control. The invocation of clauses 3(a), (d) and 5(b)(i) of the Agreements was therefore unwarranted in the facts of the present case. The petitioner had no alternative but to shift its Copper Smelter Plant to Tuticorin, Tamil Nadu. It was thus submitted that the petitioner could not be prejudiced for not starting the Copper Smelter Plant for reasons beyond its control.

. It was further submitted that the impugned action of terminating the Agreements was without following the principles of natural justice. Since civil consequences followed as a result of termination of the Agreements, it was necessary for the MIDC to have complied with the principles of natural justice by hearing the petitioner and granting it due opportunity in that regard. Relying upon the judgment of the Hon'ble Supreme Court in *State Bank of India and Ors. Vs. Rajesh Agarwal and Ors.*, (2023) 6 SCC 1, it was submitted that for failure to comply with the principles of natural justice, the impugned action was liable to be set

aside. It was thus submitted that for aforesaid reasons, the notices dated 25th June 2014 issued by the MIDC were liable to be set aside and the petitioner was entitled to continue use of the plots in question.

8. Dr. Birendra Saraf, learned Senior Advocate for MIDC opposed aforesaid submissions. He submitted that pursuant to the Agreements dated 5th August 1992, the petitioner was allotted two plots bearing nos.Y-1 admeasuring 513.97 acres as well as plot no.R-57 admeasuring approximately 37 acres. Both these plots consumed about 75% of the total area available with Ratnagiri MIDC. It was not disputed that pursuant to the aforesaid Agreements, the petitioner did commence its activities and its plans for construction on portion of the plots had also been sanctioned. However, due to opposition by the local villagers who were opposing setting up of the Copper Smelter Plant, communication dated 15th July 1993 came to be issued by the Collector and the petitioner was required to stop its further activities. Referring to various communications between the parties thereafter, it was submitted that on 14th January 1994, the petitioner had sought permission from MIDC to mortgage the aforesaid plots. The MIDC on 6th July 1994 informed the petitioner to intimate the MIDC as to whether the proposed project for which the plots had been allotted was likely to be continued or not. Based on such reply, it was stated that the approval for granting the mortgage could be considered. On 22nd February 1995, the petitioner admitted that it was unable to take

effective steps for implementing the Copper Smelter Project on account of the stop work notice. Since there was no further progress made, MIDC on 22nd October 1996 brought to the notice of the petitioner that under clause 3(a), (d) as well as clause 5(b)(i) of the Agreements, it was necessary to undertake construction activities within a period of thirty-six months of the Agreements. At that point of time itself, the petitioner had been put to notice but there was no response to the said communication. Reference was also made to the communication dated 6th May 1997 made by the MIDC to the petitioner. The petitioner in its communication dated 8th September 2000 clearly stated that due to opposition to the said project, it had abandoned the same and the plant was shifted from Ratnagiri to Tamil Nadu. The petitioner further stated that it had decided to construct a Technology Park at MIDC, Ratnagiri. Thereafter on 9th January 2001, the petitioner submitted a fresh proposal for setting up a Polytechnic and Engineering College at plot no.Y-1 and sought approval to the same. Despite this communication, it was submitted that the petitioner did not follow up the matter. As there was no response from the petitioner, on 13th January 2010 the petitioner was granted time of ten days to explain its position on the ground that a period of more than eighteen years had elapsed since possession of the plots was given to it on 20th August 1992. On 4th February 2010, the petitioner issued a communication to the MIDC referring to the stop work notice and stating that for this reason, it could

not re-start its activities. The same could be done as and when the stop work order was vacated. It was further stated that it had re-located its Copper Smelter Plant to Tuticorin, Tamil Nadu. Reference was also made to the minutes of the meeting held on 17th September 2010 between the representatives of the petitioner and the MIDC in which it was discussed that if the petitioner was willing to diversify the project to a non-polluting activity, MIDC would move the State Government for vacating the stay. In case the petitioner was not willing to accept the alternative option, the plots would be required to be surrendered. This fact was reiterated by MIDC in its communication dated 3rd November 2010 issued to the petitioner. Since no further steps were taken by the petitioner in this regard, show cause notices dated 9th July 2013 came to be issued after almost three years of the earlier meetings. Such show cause notices were given with regard to both the plots. The petitioner responded to the said show cause notices on 23rd July 2013 and merely referred to the stop work notice that was earlier issued. In that backdrop on 30th August 2013, the MIDC issued a communication to the petitioner calling upon it to return the original Agreements. Ultimately, on 25th June 2014, both the Agreements came to be terminated.

9. It was further urged that since allotment of the plots on 5th August 1992, a period of more than twenty years had elapsed and both the plots were lying vacant without any activities being undertaken therein. Since

the MIDC was concerned with industrial development in the lands owned by it, the action of terminating the Agreements was taken. More than sufficient opportunity was given to the petitioner. It was an admitted position that the petitioner had abandoned its project of setting up the Copper Smelter Plant at plot no.Y-1 and that it had been shifted to Tuticorin, Tamil Nadu some time in the year 1995 itself. Though the petitioner sought to contend that it was inclined to undertake an alternative activity, no steps in that regard were also taken. While initially it was stated that a Polytechnic and Engineering College was sought to be set up, this was again altered by referring to a non-polluting activity to be undertaken. Except for assurances in that regard, no concrete steps whatsoever were taken nor was any alternative proposal submitted by the petitioner. MIDC was required to keep about 75% of its land unutilized which was not in larger public interest. It was denied that the impugned action was taken in breach of principles of natural justice. Referring to the show cause notices issued by the MIDC, it was pointed out that an opportunity of oral hearing was also offered to the petitioner. It, therefore, could not be said that the impugned action was liable to be questioned on the grounds of breach of principles of natural justice. The petitioner had no right whatsoever to continue to hold on to the plots allotted to it without undertaking the activities that it was required to take under the Agreements. Merely because the petitioner continued to pay the amounts

under the Agreements, the same would not give it a right to occupy the said plots since the object of allotment had not been satisfied by the petitioner. It was thus submitted that there was no case made out to exercise discretion in favour of the petitioner especially since there was no illegality whatsoever in the impugned action taken by the MIDC. Reference was made to the following decisions to submit that while denying relief to the petitioner, a direction deserves to be issued to it to handover vacant possession of both the plots to MIDC :

- Dalip Singh and Ors. Vs. State of Haryana and Ors., (2019) 11 SCC 422
- Surajagarh Steel & Mines Pvt. Ltd., Gadchiroli Vs. The Chief Executive Engineer, Maharashtra Industrial Development Corporation, Mumbai and Anr., (Writ Petition No.4354 of 2012, dated 13th March 2013)
- Anil Vs. The State of Maharashtra and Ors., (Writ Petition No.4801 of 2012, dated 24th September 2021)
- Ashok Sursingh Bhimani and Anr. Vs. The State of Maharashtra and Ors., (Writ Petition No.8248 of 2017, dated 19th July 2017)
- Abhay S/o. Jayantilal Shah Vs. The State of Maharashtra and Ors., (Writ Petition No.5213 of 2013, dated 25th February 2016)
- National Project Construction Corporation Ltd. Vs. State of Maharashtra and Anr., 2014 SCC OnLine Bom 1522
- Andhra Pradesh Industrial Infrastructural Corporation Ltd. and Anr. Vs. Shivani Engineering Industries, (2015) 7 SCC 241
- Bombay Flying Club and Anr. Vs. Airport Authority of India and Ors., 2018 SCC OnLine Bom 451

- Dunlop India Ltd. Vs. Bank of Baroda and Anr., 2009 (108) DRJ 32
- Vertex Spinning Ltd. and Anr. Vs. The State of Maharashtra, Through Department of Industries and Ors., (Writ Petition No.7850 of 2021, dated 29th July 2021)
- Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Ors., (2011) 1 SCC 236

The writ petition, therefore, was liable to be dismissed.

10. We have heard the learned counsel for the parties at length and with their assistance, we have also gone through the documents placed on record. Having given due consideration to the rival contentions, we are of the view that the petitioner has failed to make out any case for this Court to interfere under Article 226 of the Constitution of India. The factual aspects that are undisputed reveal that on 5th August 1992, the petitioner was granted license of two plots bearing nos.Y-1 and R-57. While plot no.Y-1 was to be utilized for setting up the Copper Smelter Plant, plot no.R-57 was to be utilized for constructing premises to be utilized for residential purposes by its workmen. It would be necessary to refer to clauses 3(a), (d) as well as clause 5(b)(i) of the said Agreements since MIDC has proceeded to terminate the Agreements by relying upon these clauses. The same read as under :-

“3. The Licensees hereby agree to observe and perform the following stipulations that is to say :-

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- (a) That they will within 36 months from the date hereof submit to the Executive Engineer, Maharashtra Industrial Development Corporation, in-charge of the said industrial area (hereinafter called “the Executive Engineer” which expression shall include any other officer to whom the duties and functions of the said Executive Engineer, Maharashtra Industrial Development Corporation may be assigned) for his approval the specifications, plans, elevations, sections and details of the factory buildings hereby agreed by the Licensees to be erected on the said land and the Licensees shall at their own cost and as often as they may be called upon to do so amend all or any such plans and elevations and if so required will produce the same before the Executive Engineer and will supply him such details as may be called for the specifications and when such plans, elevations, details and specifications shall be finally approved by the Executive Engineer and signed by him the Licensees shall sign and leave with him three copies thereof and also three signed copies of any further conditions or stipulations which may be agreed upon between the Licensees and the Executive Engineer.
- (b)
- (c)
- (d) That it shall within a period of 36 months from the date hereof commence and within a period of three years from the said date at their own expense and in a substantial and workman like manner and with new and sound material and in compliance with all Municipal rules, bye-laws and regulations applicable thereto and in strict accordance with the plans, elevations, details and

specifications to the satisfaction of the Executive Engineer and conformity to the building lines marked on the plan hereto annexed and the Building Regulations set out in the Second Schedule hereunder written, build and completely finish fit or occupation a building to be used as an industrial factory with all requisite drains and other proper conveniences thereto.

(e)

5. Until the factory building and works have been completed and certified as completed in accordance with clause 7 hereof the Grantor shall have the following rights and powers :-

(a)

- (b)(i) In case the Licensees shall fail to complete the said factory building within the time aforesaid and in accordance with the stipulations hereinbefore contained (time in this respect being the essence of the contract) or shall not proceed with the works with due diligence or shall commit default in payment to the Grantor of the recurring fees in the nature of service or other charges as hereinabove provided or shall fail to observe any of the stipulations on their part herein contained, right and power to re-enter through the Chief Executive Officer, upon and resume possession of the said land and everything thereon and thereupon this Agreement shall cease and terminate and all erections and materials, plant and things upon the said plot of land shall notwithstanding any enactment for the time being in force to the contrary belong to the Grantor without making any compensation or allowance to the Licensee for the same, and without making any payment to the Licensee for refund or

repayment of the premium aforesaid or any part thereof but without prejudice nevertheless to all other legal rights and remedies of the Grantor against the Licensee.

(ii)”

11. Approval was sought by the petitioner for constructing the proposed factory building initially for 32,787 sq.mtrs. of plinth area, which amounted to 0.013% of total area allotted to the petitioner. Such approval was granted by the Executive Engineer, MIDC on 11th February 1993 and plans to this extent had been approved. It is common ground that on 10th July 1993, a communication was issued by the office of the Collector to the petitioner indicating the denial of permission to undertake construction by the Grampanchayat, which action was thereafter upheld by the Zilla Parishad. On 15th July 1993, the office of the Collector informed the petitioner that as per instructions of the Hon’ble Chief Minister given on 13th July 1993, the petitioner was restrained from carrying out any construction until further orders. This direction to stop the work of construction continued, as a result of which no further construction activities were undertaken by the petitioner. Thereafter, the petitioner sought permission to mortgage the aforesaid plot which resulted in enquiries being made by MIDC on 6th July 1994 as to whether the plots allotted were to be utilized for the purpose for which they were allotted or there was a change in that regard. On 22nd February 1995, the petitioner

informed the MIDC that it was unable to take effective steps in implementing the project of setting up the Copper Smelter Plant. It appears from the documents on record that immediately thereafter the petitioner gave up its intention of setting up the Copper Smelter Plant at plot no.Y-1 and shifted the project to Tuticorin, Tamil Nadu some time in the year 1995, as indicated by the petitioner. It is thus clear from the record that from 1995 and onwards, the petitioner was no longer interested in setting up the Copper Smelter Plant at plot no.Y-1 at MIDC, Ratnagiri.

12. It is true that in view of the stop work notice issued on 15th July 1993, the petitioner could not proceed further with undertaking construction for setting up its proposed project. It is seen that this position continued with neither the petitioner nor the MIDC taking any further steps to have the stop work notice either altered or withdrawn. There is no further communication on record to indicate that the said notice dated 15th July 1993 was subsequently modified or withdrawn. Both parties continued to exchange communications by accepting the position that the stop work notice continued to hold field. In this context, therefore, the conduct of both the parties assumes importance in the light of clauses 3(a), (d) and 5(b)(i) of the Agreements. Under the said clauses, the petitioner was required to undertake necessary steps within a period of thirty-six months to commence its activities under the Agreements. The

consequences of failure to complete construction of the factory building and have it certified as per clause 7 has been provided for in the Agreement itself and the right of re-entry has been recognized. In this factual background, therefore, it would be necessary to examine as to whether MIDC was justified in invoking the aforesaid clauses for determining the Agreements and exercising its right of re-entry.

13. The petitioner is justified in contending that in the Third Schedule to the Agreement with regard to plot no.Y-1, there is no reference in the list of obnoxious industries of a Copper Smelter Plant. The fact that the petitioner was required to stop work in view of the notice dated 15th July 1993 is a circumstance beyond its control can also be accepted. It is however necessary to consider the conduct of the petitioner thereafter. We may state that in view of the stop work notice, the petitioner would be entitled to grant of a reasonable period in the facts of the case during which the MIDC could be precluded from invoking clause 3(a) and (d) of the Agreements. A period of thirty-six months from the date of the Agreements has been provided for the petitioner to undertake the activity of commencing the factory. This period of thirty-six months even if reckoned from 15th July 1993 would come to an end by 4th August 1996. Being an industrial activity, the petitioner is entitled to grant of reasonable extension since it was precluded from undertaking the work of construction in view of the stop work notice. It is also to be noted that

sometime in 1995 itself, the petitioner shifted its Copper Smelter Project from Ratnagiri to Tuticorin, Tamil Nadu. This would indicate that by the end of 1995, the petitioner itself did not intend to set up the Copper Smelter Plant at plot no.Y-1, Ratnagiri. Its conduct thereafter would be also relevant while determining as to whether the Agreements have been sought to be terminated without granting it any further reasonable period in the light of the stop work notice.

14. It may be stated that the rights of the petitioner and MIDC are circumscribed by the terms and conditions of the Agreements dated 5th August 1992. The MIDC has proceeded to determine the Agreements by relying upon clauses 3(a), (d) as well as clause 5(b)(i) thereof. While examining the challenge to the aforesaid action taken by MIDC, it is to be noted that the petitioner does not allege any malafides on the part of MIDC while taking such action. The challenge as raised is on the premise that in view of the stop work order, the petitioner was precluded from starting the Copper Smelter Project, which was the purpose behind allotting it the said plots. Another ground raised is that having paid the agreed license fees without any default and the same having been accepted by the MIDC all the while, there was no occasion for MIDC to terminate the Agreements.

. It may be stated that in the present matter, the Court would be more

concerned with the decision making process of MIDC rather than the correctness of its decision of terminating the Agreements. The rights of the parties being governed by the terms of the Agreements, it would not be permissible for the Court to examine the finer niceties of such terms and conditions and whether on the contractual front, the MIDC was legally correct in terminating the Agreements. Being a statutory Corporation entitled to its own commercial wisdom, the action of terminating the Agreements would be liable to be interfered with if the same is shown to be grossly arbitrary or smacking of malafides or bias. Breach of principles of natural justice while taking such action could also be one of the grounds for this Court to interfere. The impugned action of MIDC would have to be adjudicated on this premise.

15. It is seen from the communications exchanged between the parties that after the stop work notice dated 15th July 1993 was issued, the petitioner had sought permission to mortgage the aforesaid lands vide communication dated 14th January 1994. In response to the same, the MIDC sought the response of the petitioner as to whether the proposed project for which the plots had been allotted was to be continued or not. It was stated that after receipt of the petitioner's reply, the approval for mortgaging the plots could be examined. The petitioner by its communication dated 22nd February 1995 admitted that it was unable to take effective steps in implementing the project due to the stop work

notice. After about four years, the petitioner on 8th September 2000 stated that it intended to construct a Technology Park at the said plots. On 9th January 2001, it further indicated that it desired to set up a Polytechnic and Engineering College in the first phase with a view to expand the same along with a Technology Park. Approval for the same was sought. There is no material on record to indicate that the petitioner sought to follow this proposed alternative project. Nothing happened for about nine years thereafter and on 13th January 2010, the MIDC again sought an explanation from the petitioner as to why action should not be taken since no activities had been commenced though possession was given to the petitioner about eighteen years back. The petitioner merely relied upon the stop work notice dated 15th July 1993 in that regard. Again in the joint meeting held on 17th September 2010, the intention of the petitioner of undertaking an alternate project was the subject matter of discussion and since nothing further was heard, communication dated 3rd November 2010 was issued by MIDC. After about three years, the show cause notices dated 9th July 2013 came to be issued to the petitioner.

. The aforesaid would indicate that more than sufficient time was granted to the petitioner to consider undertaking an alternate project. Though the petitioner stated that it desired to set up a Technology Park, no effective steps in that direction are shown to have been taken. Viewed from the perspective of a prudent business entity that has been allotted an

industrial plot for carrying on industrial activity therein, we find that after the petitioner shifted its Copper Smelting Project to Tuticorin, Tamil Nadu in 1995, it did not seriously consider undertaking any other alternative project at Ratnagiri, MIDC. Except for issuing few communications in that regard, there was no concrete proposal submitted to the MIDC. Thus, for a substantial period of almost twenty years from 15th July 1993 when the stop work notice was issued, the parties merely exchanged communications. In the facts of the case therefore we find that MIDC had granted more than reasonable period to the petitioner after the stop work notice was issued on 15th July 1993 so as to gather as to whether it was interested in undertaking any alternate project before the show cause notices were issued on 9th July 2013 and the Agreements were terminated on 25th June 2014. This decision of MIDC can hardly be said to be arbitrary or unwarranted. In absence of any allegations of malafides, we do not find any legal basis whatsoever to hold that the decision taken by MIDC to act in accordance with clauses 3(a), (d) along with clause 5(b)(i) of the Agreements is liable to be interfered with.

16. Coming to the grievance that the principles of natural justice had not been complied with by MIDC before terminating the Agreements, it is seen that in the show cause notices dated 9th July 2013, it was specifically stated that in case the petitioner desired an opportunity of being heard, it could make such request on any working day during office hours of MIDC.

The petitioner has not shown that any such request was made by it and the same was not accepted by MIDC. The show cause notices in clear terms indicate the action proposed to be taken by referring to the relevant clauses of the Agreements and thereafter grant opportunity to the petitioner. The petitioner did respond to the show cause notices by its reply dated 23rd July 2013. The same has been considered by MIDC in its communication dated 30th August 2013, in which a decision was taken to re-claim both the plots allotted to it after terminating the Agreements. We do not find therefore that the principles of natural justice were not complied with.

17. It was submitted on behalf of MIDC that by following the course as adopted by the Division Bench in *National Project Construction Corporation Limited (supra)* of directing the allottee to vacate the plots on termination of the Agreements, a similar direction should also be issued to the petitioner herein. We, however, find that in the notices dated 25th June 2014 issued by the Regional Officer, the consequences of the failure on the part of the petitioner in handing over possession pursuant to termination of the Agreements has been indicated. It has been stated that if possession of the said plots along with original Agreements dated 5th August 1992 was not handed over to MIDC and as a consequence, MIDC was required to take recourse to further proceedings in that regard, the MIDC would deduct 10% of the amount of security deposit as well as other dues before

returning the balance amount to the petitioner. It is therefore seen that in terms of the Agreements dated 5th August 1992, the manner of taking possession as well as consequence of failing to handover the same has been agreed to by the parties. It would, therefore, be necessary for both the parties to act in accordance with such terms that they have agreed. Since the impugned notices dated 25th June 2014 itself provide for the consequence of failure to handover possession, in the facts of the present case, we are not inclined to issue such direction, leaving it open for MIDC to take back possession in accordance with law.

18. Before parting, we may observe that of the entire area available with Ratnagiri MIDC, about 75% thereof was allotted to the petitioner on 5th August 1992 for undertaking industrial activities. The purpose behind making such allotment of industrial plots has been highlighted by the Hon'ble Supreme Court in *Dalip Singh (supra)*, wherein it was held that the twin objects of economic development and generation of adequate employment are sought to be achieved. The photographs on record indicate that there are hardly any activities undertaken on both the plots and the same are lying barren for all these years; thus, defeating the reservation of these lands for industrial purposes. The documents on record indicate that there have been exchange of communications between the parties but the same continued for almost twenty years without any development taking place on the said plots. The facts of the

case indicate that MIDC ought to have acted with more diligence while dealing with the petitioner especially when it found no activities being undertaken on the said plots even on lapse of reasonable period from the execution of the Agreements. Though it is true that there was a stop work notice issued on 15th July 1993, MIDC ought to have been more vigilant in pursuing the issue with diligence. It may only be observed that for more than twenty five years, the aforesaid plots constituting about 75% of Ratnagiri Industrial area have been lying unused.

19. Thus, for all the reasons indicated hereinabove, we do not find any case made out to interfere in exercise of writ jurisdiction. The writ petition stands dismissed. Rule stands discharged with no order as to costs.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]

20. At this stage the learned counsel for the petitioner seeks continuation of the interim order that was operating during the pendency of the writ petition. This request is opposed by the learned counsel appearing for respondent no.2.

21. Considering the fact that the interim order was operating since 2014, the same is continued for a period of four weeks from today. It shall ceased to operate automatically thereafter.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]