



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.316/2024

PETITIONERS :

1. M/s. South Central Steel and Power Ltd., a Company Registered under the Companies Act, having office at Plot No.A-25, Tadali Growth Centre, MIDC Ind. Area, Chandrapur, through its authorized person Miss. Premjyoti Shyamprasad Tiwari.
2. Sanvijay Alloys and Power Ltd., A Company registered under the provisions of Companies Act, having office at Plot No.A-25, Tadali Growth Centre, MIDC Ind. Area, Chandrapur, through its authorized person Shri Vishal Manoj Agarwal.

-Versus-

RESPONDENTS :

1. The State of Maharashtra, through the Department of Industries, Mantralaya, Madam Cama Road, Mumbai-400032.
2. Maharashtra Industrial Development Corporation, A Government of Maharashtra Undertaking through its Chief Executive Officer, having office at Udyog Sarathi, Marol Ind. Area, Mahakali Caves Road, Andheri (East), Mumbai – 400093.
3. Regional Officer, Maharashtra Industrial Development Corporation, Nagpur Region, Nagpur having office at Fifth Floor, Udyog Bhavan, Civil Lines, Nagpur 440001.
4. The Area Manager, Maharashtra Industrial Development Corporation, Nagpur Region, Nagpur having office at Fifth Floor, Udyog Bhavan, Civil Lines, Nagpur 440001.

Mr. Sunil Manohar, Sr. Advocate i/b Mr. Atharva Manohar, Advocate for petitioners.

Mr. A.M. Kadukar, AGP for respondent no.1.

Mr. J.B. Kasat, Advocate for respondent nos.2 to 4.

**CORAM : AVINASH G. GHAROTE AND
SMT.M.S.JAWALKAR, JJ.**

DATE : 24/04/2024

JUDGMENT (PER: AVINASH G. GHAROTE, J.)

1. Heard.

2. Rule. Rule returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

3. On 15/01/2024, while issuing notices, the following position was recorded :

“The petition questions the communication dated 29/12/2023, issued by the Area Manager Maharashtra Industrial Development Corporation, Nagpur/respondent No.4 to the extent, it imposes condition No.(b), asking the petitioners to pay a sum of Rs.1,68,47,686/- on account of non-utilization charges. Inviting our attention to the policy governing the field in this regard dated 19/11/2013, and specifically clause (A) (page 86), it is contended that by communication dated 13/6/2023, the period for utilization of the land in question has been extended till 29/5/2024 (page 80), as a result of which, the question of levying any non-utilization charges would not arise.”

4. Yesterday, we have heard the learned counsels for the parties partly. The following position merges :

5. On 23/09/2004, plot no.A-25 admeasuring 1,61,000 sq. mtrs. in the Chandrapur Growth Centre came to be allowed to the petitioner no.1, for setting up the industrial unit for manufacture for sponge iron, mini blast furnace, mild & alloy steel for generation of 15 Megawatts (MG) of power. Possession was delivered on 02/12/2004 and agreement of lease was executed on 16/02/2005 under the terms of which the unit was to be set up within a period of five years. On 14/01/2005 and 21/05/2005 the petitioner no.1 applied for approval of the building plan in respect of the proposed factory which came to be approved on 17/03/2005. Consent to establish was granted by the Maharashtra Pollution Control Board on 16/05/2005. However, the application for grant of prospecting licence was rejected by the Under Secretary of Industries, Energy and Labour Department, Government of Maharashtra on 31/08/2009. A moratorium was imposed upon to grant permission for commencement of the industry by the Ministry of Environment and Forest on 31/01/2010 which came to be lifted on 20/05/2016. On 15/05/2017 an application came to be filed by the petitioner no.1 seeking extension of the period of development up to 29/05/2018, which came to be granted on 11/09/2017 (pg.71) subject to payment of Rs.99,82,000/-. Thereafter, on 23/01/2023, a

circular was issued by the Maharashtra Industrial Development Corporation (MIDC) indicating extension of time for erection of the plant and factory on certain terms and conditions as indicated therein (pg.72), in terms of which, the petitioner no.1 applied for extension on 17/04/2023 (pg.76) in view of which extension was granted by the MIDC by its communication dated 25/06/2023 (pg.78) up to 29/05/2024 for approval of revised building plans, completion of factory building and obtaining Building Completion Certificate [B.C.C.], subject to payment of Rs.37,1,75,310/- towards non-refundable additional premium. This amount came to be deposited by the petitioner no.1 on 07/06/2023 (pg.79). The MIDC by its communication dated 13/06/2023 acknowledged payment of the aforesaid amount and indicated grant of extension of time limit up to 29/05/2024 for approval of plan, completion of construction of factory building and obtaining Building Completion Certificate from the Deputy Engineer & SPA, MIDC, Chandrapur (pg.80).

6. Thereafter, by communication dated 31/07/2023 the petitioner no.1 made a request for transfer of plot no.A-25 to the petitioner no.2 (pg.82), which came to be granted by the MIDC by its communication dated 29/12/2023 (pg.91), subject to three conditions, which are as under :

“(a) You shall pay to the Corporation

Rs.24094302/- (Rs. Two Crore Forty Lakh Ninty Four Thousand Three Hundred Two only) being DIFFERENTIAL PREMIUM.

(b) You shall pay to the Corporation Rs.16847686/- (Rs. One Crore Sixty Eight Lakh Forty Seven Thousand Six Hundred Eighty Six only) being Non Utilisation Charges.

(c) After the order of transfer to the transferee company, as per the policy of the corporation, it will be mandatory to get the building completion certificate and go into production within period using 40% FSI.”

7. The petitioners are aggrieved by condition no.(b) in this communication dated 29/12/2023, as according to them, once the extension was granted by the MIDC for completion of the factory and plant as indicated in the communication dated 13/06/2023 it was no longer permissible, for the respondents to have invoked the Circular dated 21/06/2019 and imposed a non-utilization charge of Rs.1,68,47,686/-.

8. Mr. Manohar, learned senior counsel for the petitioners contends, that very effect of grant of extension of the time limit for approval of plan, completion of construction of factory building and obtaining Building Construction Certificate, would indicate that the time limit for doing all these activities stood extended till 29/05/2024, which would itself indicate that the property was not utilized during this period, which period in terms, stands extended. It is, therefore, contended that the non-utilization charges, as contemplated by the

Circular dated 21/06/2019 and its extension on account of period of Covid-19 by the Circular dated 02/08/2021 (pg.95) would not be attracted to the case of the petitioners.

9. Mr. Kasat, learned counsel for the respondent nos.2 to 4 submits that the extension and non-utilization charges, operate in two different fields and therefore, it was permissible for the respondents to have levied the non-utilization charges under the Circular dated 21/06/2019 upon the petitioner no.1, as less than 10% construction was completed by the petitioner no.1 till the application for transfer. It is contended that extension of time, as granted by the communication dated 13/06/2023 (pg.80), has nothing whatsoever to do with the non-utilization of the property, which is separately chargeable to charges on account of the property not being utilized.

10. The word “Extension” would mean, that the time period, during which a certain act, is required to be done, is extended for the duration of extension. In ***Provash Chandra Dalui v. Biswanath Banerjee, 1989, Supp.(1) SCC 487***, the meaning of the word “Extension” has been stated as under:

“14. It is pertinent to note that the word used is 'extension' and not 'renewal'. To extend means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Extension, according to Black's Law Dictionary means enlargement of the main body; addition of something smaller than that to which

it is attached; to lengthen or prolong. Thus, extension ordinarily implies the continued existence of something to be extended. The distinction between 'extension' and 'renewal' is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act. In other words, the word 'extension' when used in its proper and usual sense in connection with a lease means a prolongation of the lease. Construction of this stipulation in the lease in the above manner will also be consistent when the lease is taken as a whole. The purposes of the lease were not expected to last for only 10 years and as Mr.A.K.Sen rightly pointed out the schedule specifically mentioned the lease as "for a stipulated period of 20 years". As these words are very clear, there is very little for the court to do about it."

11. In ***United India Insurance Co. Ltd. v. Great Eastern Shipping Co., (2007) 7 SCC 101***, the 'extension' has been held to mean as under:

"10. We have bestowed our best of consideration to the rival submissions of the parties. Mr.Divan, learned senior counsel for the respondent submitted that as per the Institute Cargo Clause, the English law and practice covers the dispute and in that connection, Mr.Divan invited our attention to a decision in Bayview Motors Ltd. v. Mitsui Marine & Fire Insurance Co. Ltd. & In John Martin of London Ltd. v. Russell Lloyd's Law Reports 131 and in John Martin of London, Ltd. v. Russel reported in [1960] 1 Lloyd's List Law Reports 554. He has also referred to The Law Lexicon, so as to give the meaning of the words, "extension" and "renewal" and also invited our attention to various interpretation of the word, "extension" and in that connection, he has also invited our attention to a decision of this Court in Provash Chandra Dalui v. Biswanath Banerjee

- 1 (2003) 1 Lloyd's Rep 131*
- 2 (1960) 1 Lloyd's Rep 554*
- 3 1989 Supp (1) SCC 487*

[1989 Supp. (1) SCC 487], and in that connection our attention was invited to para14 which reads as under :

" 14. It is pertinent to note that the word used is 'extension' and not 'renewal'. To extend means to enlarge, expand, lengthen, prolong, to carry out further than its original limit. Extension, according to Black's Law Dictionary, means enlargement of the main body; addition of something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between 'extension' and 'renewal' is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulated act. In other words, the word 'extension' when used in its proper and usual sense in connection with a lease means a prolongation of the lease. Construction of this stipulation in the lease in the above manner will also be consistent when the lease is taken as a whole.

He has also submitted that in case of interpretation of policy if two views are possible, then the one which favours the policy-holder should be accepted as the same serves the purpose for which the policy is taken and would be in consonance with the object to be achieved for the lives assured.

17. Learned counsel also referred to The Law, Lexicon, to give dictionary meaning to the word, "extend", which reads as follows :

"Extend"- This term has a wide variety of meanings and has been defined as follows : To prolong, to continue or continue in any direction; stretch out; to stretch out of reach; to expand; to enlarge or lengthen the bounds or dimensions or; lengthen. And it is sometimes used as equivalent to the word 'exceed' (as) to extend the bounds of jurisdiction."

Learned counsel also referred to K.J.Aiyar's Judicial Dictionary wherein the word "extend" has been defined as follows :

"Extend".- The word 'extend' in an enactment is not quite analogous to "shall come into force". Where it is laid down in an Act that it extends to a certain area it does not necessarily

mean that it is also in that area, particularly when there is an express provision that before it can come into force, something further, such as a notification, is necessary."

18. Learned counsel also invited our attention to Black's Law Dictionary (5th Edn.) which defines the word, "extend" as follows :

"Extend".- Term lends itself to great variety of meanings, which must in each case be gathered from context. It may mean to expand, enlarge, prolong, lengthen, widen, carry or draw out further than the original limit; e.g., to extend the time for filing an answer, to extend a lease, term of office, charter, railroad track, etc."

12. It would therefore be apparent that when an authority, grants extension for doing some act, deed or thing, the time period during which the same is required to be done would stand extended, to the extent time is granted.

13. The language of the communication dated 26/05/2023 (Pg.78) and the communication dated 13/06/2023, (Pg.80) being relevant, is quoted as under:

The Language in Communication dated 26/05/2023 is as under:

"Sir,

This is to inform you that, your request for grant of extension of time limit up to 29/05/2024 for approval of revised building plans, completion of factory building & obtaining B.C.C. is considered by this Corporation subject to payment of Rs.37175310/- (Rupees Three Crore Seventy One Lakh Seventy Five Thousand Three Hundred Ten Only) towards non refundable additional premium.

Total Amount Payable 37175310/-

*You are, therefore, requested to pay **Rs.37175310/- (Rupees Three Crore Seventy One Lakh Seventy Five Thousand Three Hundred Ten Only)** towards the non refundable additional premium by way of online payment (Netbanking/NEFT/RTGS/Credit Card/Debit Card) at Single Window Clearance within 15 days from the date of receipt of this letter, so as to enable us to proceed further in the matter.*

In case, you failed to pay the aforesaid additional premium & obtain BCC within the stipulated time limit as above, action deem fit will be initiated.”

The Language in Communication dated 13/06/2023

“Sir,

*Since you have paid **Rs.37175310/- (Rupees Three Crore Seventy One Lakh Seventy Five Thousand Three Hundred Ten Only)** towards the Non-Refundable Additional Premium Rs.3,71,75,310/- vide D.R. No.B003180Q006372 dated 07-JUN-2023, the Corporation has granted you extension of time limit upto 29/05/2024 for approval of plan, completion of construction of factory building & obtaining of Building Completion Certificate from the Deputy Engineer & SPA, MIDC Chandrapur.*

You are, therefore, requested to adhere to above time limit strictly.”

14. It is thus apparent that in the instant case in pursuance to the application dated 17/04/2023 (Pg.76) in terms of the circular dated 23/01/2023, bearing No.E28833 (Pg.72), made by the petitioner No.1, for extension of time, the respondent Nos.2 to 4 by the communication dated 26/05/2023 (Pg.78) extended time limit upto 29/05/2024, for approval of revised building plans, completion of factory building and obtaining Building Construction Certificate.

This was done by charging a sum of Rs.3,71,75,310/- towards non-refundable additional premium. It is not disputed that this amount has already been deposited by the petitioner No.1. The fact that this amount was paid for extension of the time limit for approval of plan, completion of construction of factory building and obtaining building construction certificate from the Deputy Engineer And SPA Chandrapur, is reinforced, from the language of the communication dated 13/06/2023 (Pg.80) by the respondent Nos.2 to 4. Thus, the extension, therefore, was granted by the respondent Nos.2 to 4 being well aware, of the fact that the construction on the plot in question, was complete only to the extent of 10%, which extension was granted for (a) approval of plan, (b) completion of construction of factory building and (c) obtaining building completion certificate from the Deputy Engineer and SPA, MIDC Chandrapur. This having been done, it would be axiomatic that the circular dated 29/06/2019, Pg.92) which provides for levy of non-utilization of charges upon an allottee, who had made construction less than 40% upon the plot in question would clearly not be attracted for the reason that by virtue of the communications dated 26/05/2023 and 13/06/2023, the time for making the construction itself stood extended.

15. Though Mr.Kasat, learned counsel for the respondent Nos.2 to 4 contends, that the circular for extension of time dated

23/01/2023, (Pg.72) and the circular dated 21/06/2019 (Pg.92) as well as 02/08/2021 (Pg.95), which provides for levy of non-utilization charges operate in different fields, and therefore, even after granting extension, the petitioner No.1 would be liable to pay non-utilization charges, we are unable to agree with this contention, for on account of extension of the time as granted by the respondent Nos.2 to 4 as indicated by the communications dated 26/05/2023 and 13/06/2023, above, for completion of (a) approval of plan, (b) completion of construction of factory building and (c) obtaining building completion certificate from the Deputy Engineer and SPA, MIDC Chandrapur, it will have to be held, that the circulars dated 21/06/2019 and 02/08/2021, would not be applicable to the petitioners, till the extended time. In that view of the matter, we find that the condition No.b imposed in the impugned communication dated 29/12/2023 (Pg.91) levying non-utilization charges upon the petitioner No.1, cannot be sustained and is hereby quashed and set aside. The petition is accordingly allowed in the above terms.

16. Rule is made absolute accordingly. No costs.

(SMT.M.S.JAWALKAR, J)

(AVINASH G. GHAROTE, J)