

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3516 OF 2024
WITH
INTERIM APPLICATION NO.8248 OF 2024
WITH
INTERIM APPLICATION NO.14446 OF 2022

Sisters Of Our Lady Fatima

Thr. Its Managing Trustee

...Petitioner

Versus

The State of Maharashtra and Ors.

...Respondents

Mr. Bhushan Walimbe a/w Mayank Tripathi & Shalu Tanvar, for the Petitioner.
Ms. Savita Prabhune, for the Respondent no. 1-State.

Mr. Prashant Chawan, Senior Advocate a/w Shraddha Chheda, for the
Respondent No. 2 – MIDC.

Mr. Narendra Walawalkar a/w Mr. Saif Dingankar i/b Aniket Mokashi, for the
Respondent No. 3.

CORAM : G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.

DATE : 03 FEBRUARY 2025

ORAL ORDER (G. S. Kulkarni, J.):

1. This petition under Article 226 of the Constitution of India is filed
praying for the following substantive reliefs :-

“a. This Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ /order/directions in the nature of mandamus directing the Respondent no.2 to decide the representations (Exh.G and Exh.K) made by the Petitioner for renewing/extending the lease of the Open space No.3 in favour of the Petitioner;

b. This Hon'ble Court may be pleased to issue a writ of mandamus or any other appropriate writ /order/directions in the nature of mandamus and C. d. maybe pleased to quash and set aside the notice dated 28.12.2023 (Exh.J) issued by the Respondent No.2;”

2. The petitioner was granted a license by the MIDC to use an open plot of land, which was adjoining to the petitioner school. Such open land being urged by the petitioner was in addition to the open land, which was already available with the petitioner school being regularly used as its play ground.

3. Be it so, such licensed plot of the land was initially allotted under a license agreement dated 23 June 1993 entered between the MIDC and the petitioner. Although the license was subsequently extended, the license expired by efflux of time on 31 May 2023. The license to use the plot of land was subject to several conditions, one of the conditions being that the petitioner shall plant trees. The petitioner had failed to abide by the conditions.

4. The license having expired, the MIDC within the power vested in it, intended to use the said plot of land for workers housing. However, it is the petitioner's contention that nonetheless the license needs to be renewed in its favour. It is in these circumstances the petitioner has approached this Court contending that the petitioner as a licensee has an enforceable legal right of renewal of the licensee qua the said open plot. It is hence contended that it was obligatory for the MIDC to extend the license for a further period or allot the said open plot of land, only to the petitioner, and none else.

5. Mr. Walimbe, learned counsel for the petitioner has submitted that once the petitioner was using the land for several years although as a licensee of the MIDC, the MIDC cannot be permitted to use the land for any other purpose much less for allotment of the land for housing workers. He submits that there is

a legitimate expectation of the petitioner's to obtain extension of the license which has been recognized as a legal right in the decision of the Supreme Court in **Food Corporation of India vs. Kamdhenu Cattle Feed Industries**¹.

6. The petition is opposed on behalf of the MIDC. Mr. Prashant Chawan, learned senior counsel has made extensive submissions referring to the reply affidavit filed on behalf of the MIDC of Shri Sagar G. Pawar, Area Manager of the MIDC. At the outset, he submits that the petitioner's rights were purely contractual, merely that of a licensee, much less any Constitutional right to seek renewal of the license or the allotment of the land hence the petitioner cannot maintain this petition. It is submitted that a lawful procedure was followed where under the said land is now allotted, to be used for workers housing as permitted under the Rules, hence no fault can be found in such decision which is taken by the MIDC, as per the provisions of the MIDC Act and the rules and regulations framed in that regard. Mr. Chawan would also submit that in any event, the license having expired by efflux of time as also the petitioner having not complied with the terms and conditions of the license, there can be no legal right to seek the reliefs as prayed for in the petition.

7. Mr. Walawalkar, learned senior Advocate has appeared for the proposed Udyam-Ratna Co-operative Housing Society, the society of workers, which is allotted the open plot and who would now be utilizing the said plot of land. He has adopted the submissions as made by Mr. Chawan, to submit that there is no legal right with the petitioner to maintain the prayers. He submits that the

¹(1993) 1 SCC 71

impugned notice dated 28 December 2023 issued by the MIDC - respondent no. 2 cannot be faulted on any ground.

8. We have heard the learned counsel for the parties, with their assistance, we have perused the record.

9. At the outset, we are in agreement with the learned senior counsel for the respondents that the petitioner has miserably failed to point out any vested right and/or any other legal right which could be said to be breached in maintaining the present proceedings under Article 226 of the Constitution of India. The petitioner enjoyed rights qua the open land merely as a licensee i.e., to use the plot of land in question although adjoining to its school and which was in addition to the open space which the petitioner school already possesses. In any event such license had expired by efflux of time, as noted by us hereinabove.

10. In such complexion of the legal relations between the petitioner and the MIDC, certainly, apart from the rights as a license which are purely contractual rights there are no other vested legal rights which the petitioner can assert to maintain a claim or to assert that the plot of land ought to be allotted to it, by the MIDC, either under a license or by way of a lease.

11. We cannot countenance any argument that a person can insist that sans any legal right the “State” is bound to allot only to such person and not to anyone else. This would be a proposition too far-fetched and contrary to constitutional principles. The MIDC is a statutory authority, it is vested with lands which are to be utilized for public purpose, for the objects and purposes with which it is so created. The lands vested with the MIDC are to be used as

per its policies, rules and norms. Thus, it is for the MIDC to use the land as per the statutory rules and regulations, for such appropriate permissible purposes, as it may deem fit and proper and in the best of the public interest.

12. The petitioner under the contractual relationship it had with the MIDC as noted by us, has enjoyed the land in question as a licensee during the license period. A licensee has limited rights. There is no right in a licensee to seek a perpetual license or seek extension of a license as a matter of right unless agreed between the parties. Thus, in the present case the petitioner had no such right to remain on the land after the license expired, as such limited rights of the petitioner having come to an end by efflux of time. Thus in these circumstances the petitioner cannot claim any vested legal right to maintain a Writ Petition for a *mandamus* to be issued to the MIDC that the MIDC be directed to enter into an agreement with the petitioner for allotment of such land.

13. The principles of law in this regard are well settled. We may refer to the decision of this Court in **Sugati Beach Resorts Pvt. Ltd. V.s Union of India and others²** wherein a Division Bench of this Court of which one of us (G.S. Kulkarni, J.) was a member, was considering an issue whether the petitioner therein, was entitled to seek an extension of a lease, also in the context of an argument of legitimate expectation, as urged before the Court. As observed by the Court in Paragraph 8 of the judgment, the Division Bench considering the complexion of the legal rights of the petitioner, which were purely under a “lease” of the land granted to the petitioner, and which had expired by efflux of time, observed that there could not be any fundamental right much less a legal

² 2017 SCC OnLine Bom 9418.

right to compel the respondent therein/Union Territory Administration of Daman and Diu, that it should enter into a lease only with the petitioner. The Court rejecting the Writ Petition made the following observations :-

“9. We are of the clear opinion that there is nothing arbitrary in the order dated 13 October, 2017 passed by the respondents calling upon the petitioner to vacate the suit premises and to grant an opportunity to the petitioner to enter into an ad hoc agreement of three months to continue in the premises till the tender process is completed. It appears to be the policy of the respondents to avail of a maximum benefit from the Government property and gain more revenue by initiating a new tender process. There would be nothing wrong in such a policy if the Union Territory Administration in public interest desires to enhance its revenue in such a manner. It therefore cannot be said that such a policy would breach any of the legal rights much less fundamental rights of the petitioner. There cannot be any fundamental right guaranteed to the petitioner to compel the respondent-Union Territory Administration to enter into a lease only with the petitioner. It is not the case that the petitioner is precluded from participating in fresh tender which may be floated by the Union Territory Administration and compete with the other market players. However, the intention of the petitioner is to avoid such fresh participation in the fresh bids to be invited by the Union Territory Administration and in some manner hang on to the property raising such untenable contentions as noted by us above.

10. Apart from the above observations, we are also surprised at the approach of the petitioner to invoke the jurisdiction of this Court under Article 226 of the Constitution when the dispute that the petitioner is raising is purely under a lease deed, a contract between the parties, and the contentions as raised are in the nature of a challenge to the terms and conditions of the contract on a spacious plea that the lease deed created an absolute right in the petitioner for extension of the lease, however, which we see none.

11. In our considered opinion, the petitioner thus cannot seek an absolute legal right to seek extension of lease and for such a relief seek a writ of mandamus that the

respondents be directed to enter into a further lease agreement with the petitioner. If such contention as urged on behalf of the petitioner is accepted, the very sanctity of the lease agreement dated 10 October, 1997 and the terms and conditions contained therein between the parties is lost. In any case such prayer of the petitioner before this Court in Writ Petition under Article 226 of the Constitution is certainly not maintainable.”

14. The case of the petitioner is not different. The decision taken by the MIDC in the facts of the case to allot the land for the workers housing appears to have been taken by the MIDC fully within the powers vested with the MIDC, which cannot be interfered in the absence of any illegality on part of the MIDC, and much less at the behest of the petitioner who also has no legal right to seek allotment of the land in question.

15. It is not in dispute that the allotment was made in favour of respondent no. 3 on 12 March 2024 despite this, a submission in desperation is made by Mr. Walimbe that the petitioner is ready and willing to match the amounts which are being paid by respondent no. 3. However, considering the aforesaid discussion, in our opinion, such submission cannot be accepted, as even to make such offer, the petitioner needs to have a locus and a legal right in that regard.

16. Insofar as the decision in **Food Corporation of India** (supra) as relied by Mr. Walimbe is concerned, the principles of law the decision lays down are well settled, however this decision is certainly not applicable in the facts of the present case. The issue before us is not in relation to an award of a tender in the context of which the Supreme Court has held it to be a well settled position in law, that legitimate expectation is an enforceable legal right. In the present case as legitimate expectation in favour of the petitioner cannot be even remotely

gathered in its capacity of a licensee, who was also in breach of the license conditions. Hence, this decision is certainly not applicable in the facts of the present case.

17. The petition is devoid of merits, it is accordingly rejected. Interim orders stand vacated forthwith. No costs.

18. At this stage Mr. Walimbe has prayed for continuation of ad-interim order passed on this petition. Considering the facts of the case and for the reasons which we have set out, the request cannot be accepted.

19. Interim Application, would not survive, the same stands rejected.

[ADVAIT M. SETHNA, J.]

[G. S. KULKARNI, J.]