

2025:BHC-AS:9591-DB



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

WRIT PETITION NO. 14773 OF 2022

Saket Infraprojects Pvt. Ltd.	... Petitioner
Vs.	
The Regional Officer of Maharashtra Industrial Development Corporation & Anr.	... Respondents

WRIT PETITION NO. 1911 OF 2025

Smarniya Infra Venture Pvt. Ltd. & Anr.	... Petitioners
Vs.	
The Regional Officer of Maharashtra Industrial Development Corporation & Ors..	... Respondents

WRIT PETITION NO. 14776 OF 2022

Ajwani Infrastructure Pvt. Ltd. & Anr.	... Petitioners
Vs.	
The Regional Officer of Maharashtra Industrial Development Corporation & Ors.	... Respondents

WRIT PETITION NO. 14777 OF 2022

M/s. Material Pioneering Construction Company	... Petitioner
Vs.	
The Regional Officer of Maharashtra Industrial Development Corporation & Ors.	... Respondents

WRIT PETITION NO. 14779 OF 2022

Uday G. Lad	... Petitioner
Vs.	
The Regional Officer of Maharashtra Industrial Development Corporation & Anr.	... Respondents

WRIT PETITION NO. 14774 OF 2022

Ashwini Infradevelopment Pvt. Ltd.	... Petitioner
Vs.	
The Regional Officer of Maharashtra Industrial Development Corporation & Anr.	... Respondents

Mr. Vineet Naik, Senior Advocate a/w. Mr. J.M. Joshi for the petitioner in WP/14773/2022, WP/14774/2022, WP/14779/2022, WP/14777/2022.

Mr. Cyrus Ardeshir, Senior Advocate a/w. Ms. Nupur Jalan, Mr. Munaf Virjee, Mr. Rushabh Parikh i/b. AMR Law for the petitioner in WP/14776/2022.

Mr. Aman Kacheria a/w. Mr. Rishabh Dhanuka, Ms. Sakshi Dube. Mr. Zaki Ansari i/b. Agarwal and Dhanuka Legal for the petitioner in WP/1911/2025.

Mr. B.V. Samant, Addl. G.P. with Ms. Pooja Joshi Deshpande, AGP for the respondent/State.

Dr. Milind Sathe a/w. Mr. Kunal Damle, Ms. Shraddha Dubepatil for respondent/MIDC in WP/14773/2022, WP/14776/2022, WP/14777/2022, WP/14779/2022 and WP/114774/2022.

Mr. Ashok R. Varma a/w. Mr. D.P. Singh i/b. Mr. A.A. Ansari for the respondent-UOI.

Mr. Jitendra Jagtap for respondent no. 5/MPCB in WP/14776/2022.

**CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATED: 10 FEBRUARY 2025**

P.C.

1. This is a batch of petitions raising common issues, hence they are being disposed of by this common order.

2. The dispute in question in all these petitions is in regard to the termination of a lease which was entered by the respondent-MIDC with the petitioners under which the petitioners were permitted to undertake quarrying activities on the respective lands (subject matter of the leases) which are of the MIDC (lessor). Initially a lease deed was entered between the parties and subsequently it was renewed subject to certain terms and conditions.

3. It is not in dispute that the petitioners are bound by the terms and conditions of the Lease Deed, insofar as the entitlement of the petitioners to excavate and/or undertake the quarrying activities are concerned. It is also not in dispute that the lease was subsequently extended and the terms and conditions of extension formed part of the original Lease Deed, which had expired by efflux of time and renewed subsequently upto 19 January, 2027. The terms and conditions in regard to the extension are required to be noted which reads thus:

“This is to inform you that the request of quarry operations has been considered by the Corporation and it has been decided to grant you renewal of quarry operation permission for further period of 10 years, i.e., from 20.01.2017 to 19.01.2027 subject to compliance of following conditions:

- 1) You shall produce Undertaking on Rs.100/- stamp paper that you will abide the conditions imposed by the MIDC and the Collector of Thane on permission.
- 2) You shall pay fees of Rs.25,00,000/- (Rupees Twenty Five Lakhs Only) for 120 months in advance by way of D.D. drawn in favour of the ‘Chief Executive Officer, MIDC’ payable at Mumbai.
- 3) You shall obtain blasting and quarry permission from the Collector of Thane and observe conditions as may be imposed by the Collector, Thane under Bombay Minerals Extraction Rules, 1965.
- 4) No permanent construction of any nature shall be carried out without permission of the Dy. Engineer & Special Planning Authority, MIDC Sub-Da II, Mahape, Navi Mumbai.
- 5) The stone crushers shall be installed with the consent of MPCB. The Asphalt Hot Mix/R.M.C. Plant be also allowed subject to permission of MPCB.
- 6) The quarry operators shall take responsibility that the area of quarries under them shall not be encroached upon.
- 7) The quarry areas shall remain under the possession of these quarry operators till the time the entire hilly area proposed is

brought to the land level. However, these quarry operators shall not make use of the leveled portion of the quarries for any other industrial or commercial use and they shall not carry out any construction on the leveled area of their respective quarries.

8) You shall bring hilly area of the respective quarries to the land level and in case it is found that more excavation below the land level is carried out, the permission granted to the quarry operator shall be cancelled.

9) It shall be your responsibility to hand over leveled area without any encroachment to the Corporation on completion of leveling work of hilly area of the quarries allotted to you.

10) You shall obtain all the required permissions for renewal of quarry operation from the concerned Department/Authorities.

11) You shall also execute Agreement with the Corporation immediately as per approved draft of Agreement provided to you and submit a copy of registered document thereof to the Corporation.

You are therefore, requested to produce the above Undertaking on Rs.100/- stamp paper duly notarized along with D.D. of Rs.25,00,000/- (Rupees Twenty Five Lakh only) drawn in favour of 'CEO MIDC' payable at Mumbai within 30 days from the date of receipt of this letter and also execute Agreement with the Corporation, failing which the subject matter will be closed."

4. We may also observe that the Lease Deed as entered between the parties provided for mechanism of resolution of disputes in the following manner:

"25. Any different of opinion between the lessor and the lessee as regards the said lease/permission or about any terms and conditions of this Lease, the Regional officer of the Lessor shall refer the matter to the Chief Executive Officer/Joint Chief Executive Officer for personal hearing of the Lessor and his decision shall be final and binding on the Lessee."

5. By the impugned letter dated 25 November, 2022 issued by the Regional Officer of the MIDC, lease has been cancelled on the ground that

the quarrying activities have reached a point of completion, as the land was already levelled in terms of what have been understood between the parties on the renewal of the lease by MIDC as issued on 7 July, 2017 and it is for such reason, the lease has been terminated by the impugned communication and against which the present petition has been filed.

6. Mr. Naik and Mr. Ardeshir, learned senior counsel for the petitioners have drawn our attention to the communication dated 29 November, 2022 issued by the petitioner, as addressed to the Regional Officer, which is stated to be in terms of Clause 25 of the Lease, which is the jurisdiction of the Chief Executive Officer/Regional Officer to resolve any dispute in relation to the Lease. It is submitted that no decision has been taken on such representation, which was the requirement of Clause 25 of the Lease Deed. It is submitted that immediately after the decision was taken, the petitioner filed this petition within two days, i.e., on 1 December, 2022. This petition was moved before the co-ordinate Bench of this Court (Coram : S.V. Gangapurwala, J. and S.G. Chapalgaonkar, J.) on 2 December, 2022 which passed an ad-interim order issuing notice to the respondents. Till the adjourned date, the impugned notice of termination was directed to be not acted upon. The said order is required to be noted, which reads thus:

“1. We have heard learned Sr. Counsel for the Petitioners.

2. The contention is that the Petitioners were allotted mining lease for a period of 10 years upon certain terms and conditions. It is submitted that on 25th November, 2022, the notice was issued to the

Petitioners that the lease in favour of the Petitioner is canceled and the possession would be taken on 2nd December, 2022.

3. According to the Petitioners, the term of the lease is up to the year 2027. The grounds on which the lease is canceled, is improper. Notice was issued on the premise that as per clauses 7 & 9 of the letter dated 7th July, 2017, the quarry area shall remain under the possession of the quarry operators till the time the entire hill area is brought to the land level.

4. It is submitted that the hill area as on date is not brought to the ground level. The photographs are sought to be relied upon. It is further submitted that as per the lease deed executed between the parties, the Petitioners are allowed to conduct the mining operation till the depth of 10 meters.

5. It is the further contention of the Petitioners that if the lease has to be canceled, 90 days notice is imperative. Reference is made to clause 24 of the lease deed.

6. According to the Petitioners, without issuing any notice to the Petitioners abruptly the impugned notice dated 25th November, 2022 is issued, on the basis of the survey, allegedly conducted on 24th November, 2022. It is the further contention that the survey referred to in the impugned notice is behind the back of the Petitioners. The further reliance is placed upon clause 25 of the lease deed to contend that, if any difference of opinion between the lessee and the lessor as regards the lease/ permission or about any terms or conditions of the lease deed arises, the Regional Officer of the lessor has to refer the matter to the Chief Executive Officer / Joint Chief Executive Officer for a personal hearing of the lease and his decision shall be final. No such procedure has been adopted.

7. It is submitted by learned Sr. Counsel for the Petitioners that they have served the MIDC . None appears for the MIDC.

8. Issue notice to the Respondents, returnable on 14th December, 2022. Humdust allowed.

9. Till the next date, further steps pursuant to the impugned notice shall not be taken.

Parties to act on an authenticated copy of this order.”

7. Dr. Sathe, learned senior counsel for the respondent-MIDC has submitted that after the notice was received by MIDC, it appeared in the present proceedings. Also, reply affidavit of the Area Manager, MIDC dated

13 December, 2022 is filed. A rejoinder affidavit on behalf of the petitioner came to be filed on 1 February, 2023. Dr. Sathe has fairly submitted that awaiting adjudication of the petitions, ad-interim order dated 2 December, 2022 have operated and as on date, the petitioners are undertaking quarrying operations. It is on the aforesaid premise, we have heard learned counsel for the parties.

8. The primary grievance of the petitioners is that the petitioners were not issued a notice as per the terms and conditions of lease before the impugned termination letter was issued. It is also contended that there is a breach of principles of natural justice in the impugned decision being taken, which although is under the lease. On behalf of the petitioners, it is fairly stated that the petitioners are ready and willing that the concerned officer in terms of Clause 25 of the Lease Deed hears the petitioner and pass appropriate orders.

9. Dr. Sathe did not dispute that much time has passed after the petitions were moved and an ad-interim protection was granted to the petitioners on 2 December, 2022. He would also submit that the concerned officer can hear the petitioner and pass appropriate orders in accordance with law, although his primary contention is that the petitions are not maintainable as the dispute is contractual dispute and arisen in regard to the rights of the parties under the Lease Deed.

10. We have given our anxious consideration to the proceedings, the peculiar facts and circumstances of the case. Without delving anything on the merits of the rival contentions as also without examining the issue of maintainability of this petition, we are of the opinion that it would be appropriate that in the facts and circumstances of the case and in terms of what the parties have agreed in paragraph 25 of the Lease Deed, the appropriate officer of the MIDC need to decide the petitioners grievances as raised in their respective letters dated 29 November, 2022, on the disputes which are also factual disputes, namely, on one hand, the petitioners contend that the land has not attained the ground level and on other hand, the respondents are contending that the land has attained ground level and/or any other issue which may arise in the Lease Deed. In our opinion, in fact this should have been the approach of MIDC at the very outset and for which the MIDC ought to have moved this Court instead of suffering an ad-interim order dated 2 December, 2022.

11. Be that as it may, as observed hereinabove, we dispose of these petitions in terms of the following order:

ORDER

- (i) The representation of each of the petitioners, which are made in terms of Clause 25 of the Lease Deed, shall be decided by the Regional Officer/Competent Officer of

MIDC in accordance with law after granting an opportunity of a hearing to the petitioners within a period of two weeks from the date a copy of this order is made available.

(ii) All contentions of the parties in that regard are expressly kept open.

(iii) In the event, there is an order adverse to the petitioners, the same would not be acted upon for a period of two weeks from the date of its communication.

12. We clarify that we have not examined the merits of the rival contentions as observed by us in the aforesaid paragraphs. Whatever decision may be passed, the parties are free to place their rival contentions in the proposed proceedings, if the same are required.

13. The petitions stand disposed of in the aforesaid terms. No costs.

(ADVAIT M. SETHNA, J.)

(G. S. KULKARNI, J.)