

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5891 OF 2024

M/s Unilab Chemicals & Pharmaceuticals Pvt Ltd ...Petitioner
Versus
Maharashtra Industrial Development Corporation ...Respondents
& Ors

Mr Sandesh Deshpande, for the Petitioner.
Mr Prashant Chawan, Senior Advocate, with Karishma Jhaveri, i/b
M/s. Navdeep Vora & Associates, for the Respondent-MIDC.

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

DATED: 24 FEBRUARY 2025

PC:-

1. This petition under Article 226 of the Constitution of India
has filed praying the following reliefs:

“(a) That this Hon’ble Court be pleased to quash and set
aside the impugned letter dated 17.04.2023 (Exhibit “M”
hereto) and impugned dated 15.12.2023 (Exhibit “R”
hereto) issued by the Respondent No. 4.

(b) That this Hon’ble Court be pleased to direct the
Respondents to consider letter of the Petitioner dated

07.01.2024 (Exhibit “S” hereto) and to grant extension of time without charging any additional premium.

(c) Pending the hearing the final disposal of the writ petition, the execution, operation and implementation of impugned letter dated 17.04.2023 (Exhibit “M” hereto) and impugned letter dated 15.12.2023 (Exhibit “R” hereto) issued by the Respondent No. 4 my kindly be ordered to be stayed.”

2. We have perused the petition, reply affidavit and rejoinder affidavit. The petitioner is aggrieved by two communications of the respondent, Maharashtra Industrial Development Corporation (“MIDC”), firstly, dated 17 April 2023 and, secondly, dated 15 December 2023, by which the petitioner has been called upon to pay an additional premium to the MIDC to the extent of Rs. 23,64,868/- and, thereafter, Rs. 47,29,735/-, respectively, to enable the petitioner to obtain a Building Completion Certificate (“BCC”) on certain terms and conditions. We do not intend to delve on the several facts of the case, suffice to observe that the petitioner, by communication dated 18 September 2019 issued by the MIDC, was granted an extension to complete the construction of the building within a period of 36 months from the date of 100% demolition of the existing structure on the plot. The relevant clause 11 reads thus:

“11. For redevelopment you have to obtain plan approval from this office within one month time limit and complete the construction within 36 months from the date of 100% demolition order and to obtain OC to that effect by scrupulously Breach of this condition will attract obtaining time limit extension as per MIDC prevailing guidelines to issue Occupancy Certificate.”

3. It is not in dispute that the petitioner is the assignee of the original allottee of the plot, namely, M/s. Blue Rock Dyes & Chemicals Ltd, later known as M/s. Chromatic India Limited. There is no dispute with regard to the assignment in favour of the petitioner, which is by virtue of a Deed of Assignment dated 24 April 2019. The case of the petitioner is that the petitioner is entitled to take the benefit of the circulars dated 24 May 2021 and 29 December 2021, issued by the respondents which grant an extension of time due to Covid-19 pandemic from 18 September 2021 to 17 January 2023, excluding any additional period granted to complete the construction, subject to recovery of Non refundable Additional Premium. However, the petitioner contends that contrary to what has been provided in such extensions hereinabove, the permission for demolition granted by MIDC by an order 18 September 2019 provides a period of 36 months to complete the construction and to

obtain a Building Completion Certificate, from the date of 100% demolition of the structure, which was being denied to the petitioner, without applying the Covid-19 extension as stated above. The petitioner has made an application for grant of Occupation Certificate by his application dated 29 December 2023 which is pending. According to the petitioner the same is within the extended period of time by MIDC, which is in conformity with the demolition permission dated 18 September 2019 and the circulars (Supra) for extension of time during Covid-19 pandemic. In this view of the matter, the petitioner has made an application on 4 May 2023 praying that the petitioner ought not be imposed with a condition of additional payment as per the MIDC's communication dated 5 April 2023. However, such application of the petitioner has been decided by impugned communication dated 17 April 2023. Thereafter, by a subsequent impugned communication dated 15 December 2023, the MIDC has demanded Rs. 40,08,250/- which was protested by the petitioner and the petitioner informed the MIDC by its letter dated 1 January 2024 noting its protest requesting MIDC to reconsider their decision of inviting additional premium/penalty on the petitioner.

4. Having heard the learned counsel for the parties and having perused the record, we are of the clear opinion that once the petitioner was granted a demolition order dated 18 September 2019, which in clause 11 (Supra) determined a period of 36 months from completion of construction as also when the petitioner was entitled to extension in terms of the circulars (Supra) issued for the Covid-19 period, the petitioner ought to have been granted the benefit of the same. The impugned orders dated 17 April 2023 and 15 December 2023 under which the petitioner was to pay additional premium as also the penalty, in our opinion, hence are untenable. Such plea of the petitioner entitling it to such an extension not only in terms of the demolition order, but also the circulars issued for Covid-19 period were not considered by MIDC.

5. For the aforesaid reasons, we are inclined to dispose of the petition in terms of the following order:

ORDER

- (a) The impugned orders dated 15 December 2023 and 17 April 2023 are quashed and set aside.
 - (b) The respondents shall consider the petitioner's representations dated 1 January 2024 and 7 January 2024 (Exhibit "S" to the petition) and take a fresh view of the matter considering what has been observed by us hereinabove.
 - (c) Let such an order be passed on or before 12 March 2025.
 - (d) Let a copy of this order be forwarded to MIDC.
6. The petition is disposed of in the above terms. No costs.
7. All concerned to act on an authenticated copy of this order.

(ADVAIT M. SETHNA, J)

(G. S. KULKARNI, J)