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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 4633 OF 2024

**Power of One Logistics Park
Private Limited**

.. Petitioner

Versus

**Maharashtra Industrial Development
Corporation & Anr.**

.. Respondents

Mr. Aspi Chinoy, Senior Advocate a/w Mr. Rashmin Khandekar,
Ms. Shalaka Patil, Mr. Ankit Pathak and Mr. Harsh
Khanchandani i/by Trilegal for petitioner.

Dr. Milind Sathe, Senior Advocate a/w Ms. Shradha Dubepatil
a/w Mr. Devarat Hiray i/by Jay & Co. for respondents (MIDC).

**CORAM: ALOK ARADHE, CJ. &
M. S. KARNIK, J.**

**RESERVED ON: 25th MARCH, 2025
PRONOUNCED ON: 2nd APRIL, 2025**

JUDGMENT [Per Chief Justice]:

- 1.** Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties, heard finally.
- 2.** In this writ petition, the petitioner seeks to quash and set aside the recovery of a sum of Rs.3,88,04,314/- and Rs.5,89,98,585/-. The aforesaid amount has been recovered from the petitioner on account of delay in submission of construction plan and for grant of extension of time to complete the project on Plot No. C-31 allotted to it by

Maharashtra Industrial Development Corporation (hereinafter referred to as "MIDC"). The petitioner seeks a direction to MIDC to refund the aforesaid amount along with interest at the rate of 12% per annum from the date of recovery till payment. In order to appreciate the grievance of the petitioner, relevant facts need mention which are stated infra.

3. The petitioner is a Private Limited Company incorporated under the Companies Act, 1956 and is engaged in the business of development, management and operation of industrial and warehousing parks. MIDC is a body constituted under the Maharashtra Industrial Development Corporation Act, 1961. MIDC is a Government of Maharashtra undertaking and was established in the year 1962. MIDC is a statutory industrial infrastructure development agency.

4. The petitioner, on 16th July, 2019, was allotted two plots, namely, Plot No.C-31 admeasuring 32,032 sq.mtrs. and Plot No.C-32 admeasuring 83,830 sq.mtrs. at Talegaon Industrial Estate, Pune. The possession of both the plots was handed over on 27th November, 2019, to the petitioner. An agreement to lease was executed on 20th December, 2019 in respect of Plot No.C-32. Thereafter, on 23rd December, 2019, agreement to lease was executed in respect of Plot No.C-31. The petitioner, on 25th June, 2020, submitted plan in respect of Plot No. C-32, which was approved by MIDC on 6th August, 2020.

5. The petitioner, during the work on Plot No.C-32,

encountered live gas pipeline which affected an area of 2700 sq.mtrs. The petitioner, by communication dated 5th December, 2020, was asked by MIDC to stop work on Plot No.C-32 and to leave an area of 2700 sq.mtrs. without any construction. The petitioner on 7th December, 2020 applied to MIDC for combining utilities of Plot Nos.C-31 and C-32, which was accepted by MIDC on 28th January, 2021. The petitioner thereafter submitted plan in respect of Plot No.C-31 on 24th September, 2021. Under the agreement to lease one year period for submission and approval of the plans expired on 26th November, 2022. The MIDC on 5th October, 2021 imposed a penalty of Rs.69,44,281.34 for delay in submission of the construction plan in respect of Plot No.C-31 as per stipulation contained in circular dated 7th June, 2019 of MIDC.

6. The petitioner on 25th May, 2022 offered to pay the aforesaid amount to get the plans approved in respect of Plot No.C-31. The petitioner on 18th October, 2022, sought 16 months' extension till 25th March, 2024 to complete 20% work of the construction. The MIDC on 19th April, 2024 granted extension for completion of 20% of the project on levy of penalty of Rs.5,89,98,585/-. The petitioner on 27th April, 2024 paid the aforesaid extension charges under protest. The MIDC on 30th April, 2024 granted extension for completion of the building on Plot No.C-31 upto 27th January, 2025.

7. The petitioner, on 6th June, 2024, submitted revised plans in respect of Plot No.C-31. The petitioner had paid a sum of Rs.69,44,281.34 as delay charges on 25th June, 2024. Therefore, MIDC on 2nd July, 2024 sanctioned plan for Plot

No.C-31. The petitioner on 9th September, 2024 sent a letter to MIDC seeking refund of the aforesaid amount. However, the aforesaid communication of the petitioner failed to evoke any response. In the aforesaid factual background, this petition has been filed, seeking the reliefs as stated supra.

8. Learned senior counsel for the petitioner submitted that the action of MIDC in levying the penalty of Rs.69,44,281.34 on account of delay in submission/approval of the construction plan in respect of Plot No.C-31 is ex facie arbitrary and unreasonable as the delay has been caused on account of the circumstances totally beyond the control of the petitioner, namely, discovery of gas pipeline passing through Plot No. C-32. It is further submitted that on account of the gas pipe line running through Plot No.C-32, the petitioner was constrained to combine the utilities for both the plots on Plot No.C-32. It is also submitted that MIDC failed to respond to the petitioner's request for extension of time and waiver of penalty since October, 2021 till date and insisted for payment of penalty as a pre-condition for approval of plan. It is contended that the aforesaid action is ex facie arbitrary. It is urged that the levy of penalty of Rs.5,89,98,585/- as extension charges to complete the project on Plot No.C-31 is also ex facie arbitrary and unreasonable. The action of MIDC, which is a public authority, seeking to recover said charges being arbitrary and unreasonable is required to be struck down and the petitioner is entitled to a refund of the amount. In support of his submissions, reliance has been placed on the decisions of the Supreme Court in **ABL International vs. Export Credit & Guarantee Corpn., (2004) 3 SCC 553,**

Surya Construction vs. State of U.P., (2019) 16 SCC 794 and **MP Power Management vs. Sky Power, (2023) 2 SCC 703.**

9. On the other hand, learned senior counsel for MIDC submitted that Plot Nos.C-31 and C-32 are independent plots granted under different agreements to lease. It is submitted that plan for development of Plot No.C-31 was submitted for the first time on 24th September, 2021. The contention of the petitioner that discovery of a live gas pipeline which affected 2700 sq.mtrs. of land of Plot No.C-32 admeasuring 83,830 sq.mts. should be considered as a factor for levying delay and extension charges for Plot No.C-31, is erroneous and is untenable. It is further submitted that plan for development of Plot No.C-31 was resubmitted on 6th June, 2024 which has absolutely no co-relation with the development on Plot No.C-32. It is urged that the writ petition raises disputed questions of fact which cannot be gone into in a summary proceeding under Article 226 of the Constitution of India. It is contended that the levy of delay penalty and extension charges had been made in accordance with the provisions of the agreements to lease and in accordance with MIDC circulars. It is submitted that the petitioner has an efficacious remedy of filing a Civil Suit. In support of his submissions, reliance has been placed on the decisions of the Supreme Court in **Joshi Technologies International Inc. vs. Union of India, (2015) 7 SCC 728** and **Gujarat Maritime Board vs. Larsen & Toubro Infrastructure, (2016) 10 SCC 46.**

10. We have considered the rival submissions made on both

sides and have perused the record. It is trite law that in the sphere of contractual relations the State, its instrumentality, public authorities are enjoined to act in a fair, just and equitable manner. In **Joshi Technologies International Inc** (Supra), in para 70.3, it has been held as under:

“70.3. Even in cases where question is of choice or consideration of competing claims before entering into the field of contract, facts have to be investigated and found before the question of a violation of Article 14 of the Constitution could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. In such cases the Court can direct the aggrieved party to resort to alternate remedy of civil suit, etc.”

11. The obligations of the parties are governed by agreements to lease which have been executed on 20th December, 2019 and 23rd December, 2019 in respect of Plot No.C-32 and C-31 respectively. Clause 4.1.3 (d) provides for time limit for commencement and completion of construction work. Clause 4.1.3(d)(i) provides that plans for approval shall be submitted within a period of six months from the date of possession and the licensee shall commence the construction on receipt of approval within a period of three years from the said date at licensee’s own expenses. The aforesaid clause

further mandates that at least 20% of the construction of the building should be completed within a period of three years from the date of possession. Clause 6 of the agreement enables Chief Executive Officer of MIDC to extend the time for completion of the project on sufficient cause being shown. Clause 11 provides that the licensee shall observe and confirm the provisions of Maharashtra Industrial Development Corporation Act, 1961 as well as the rules, regulations and policies of MIDC framed from time to time.

12. The petitioner was allotted two plots, namely, Plot Nos.C-31 and C-32 and two separate lease deeds were executed in respect of the aforesaid plots on 20th December, 2019 and 23rd December, 2019. In view of the stipulations contained in the MIDC circular dated 7th June, 2019, time for submission of the plan was extended upto one year. The petitioner submitted the plan in respect of Plot No.C-31 only on 24th September, 2021. The period of one year for submission of construction plan expired on 26th November, 2020 and period of three years to complete 20% of the project expired on 26th November, 2022. MIDC, therefore, imposed delay penalty of Rs.69,44,281.34 and granted extension on 19th April, 2024 subject to payment of penalty of Rs.5,89,98,585. The details furnishing the basis of levy of extension charges as per the agreement to lease and MIDC Circular are reproduced below in the form of a chart:

Date of Possession	27.11.2019	Clause 11 @ 70
Date of obtaining B.C.C.	26.11.2022	Clause 3(d) of the Agreement to Lease
Application for	28.01.2021	

combined utilities approved		
New period of 3 years from 28.01.2021	27.02.2024	
Extension Charges from 28.02.2024 to 27.01.2025	25% of the additional premium rate	Clause B of Circular dated 06.03.2013 (D/159)
Charges as per Circular dated 24.11.2023 & 23.01.2023 for 9 months from 27.01.2025 to 27/10/2025	5% additional premium rate	Clause 7 of Circular dated 23.01.2023 (AA/249) And Condition No.1 of Circular dated 24.11.2024 (E/196)
Plot Area – 32,032 Rate -5203 sq.mtrs. Total rate of the Plot (TRP): 16,66,62,496	Calculation: 25% (TRP) +5% (TRP) + GST =Rs. 5,89,98,584/-	

13. As stated supra, the plan in respect of Plot No.C-31 was submitted for the first time only on 24th September, 2021 which was resubmitted on 6th June, 2024 showing the utilities for both the plots together. The issue whether the petitioner on account of discovery of a gas pipeline on Plot No.C-32 was prevented from carrying out the construction on Plot No.C-31 is a question of fact which cannot be ascertained without recording evidence. The action of MIDC in levy and recovery of delay penalty and extension charges appears to be in consonance with the terms of the agreement to lease and circulars and the same cannot be termed as ex facie arbitrary.

14. For the aforementioned reasons, no case for interference with the action of MIDC for recovery of delay penalty and extension charges in exercise of summary jurisdiction under

Article 226 of the Constitution of India is made out. However, the petitioner shall be at liberty to take recourse to the remedy of civil suit, if so advised.

15. With the aforesaid liberty, the petition is disposed of.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)