



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15309 OF 2023

M/s. Bikaner Sweets & Namkin NX-2

...Petitioner

Versus

1. Area Manager

Regional Office, MIDC, Mahape

2. Smita Suresh Bawadekar

3. Mathurabai Babu Patil

4. Rohidas Moreshwar Patil

5. Hareshwar Shridhar Mhatre

6. State of Maharashtra

...Respondents

ALONG WITH

WRIT PETITION NO. 10246 OF 2024

Siddhilaxmi Enclave Pvt. Ltd.

...Petitioner

Versus

1. State of Maharashtra

2. Maharashtra Industrial Development
Corporation,
through its CEO

3. The Regional Officer, MIDC, Mahape

4. The Area Manager, MIDC, Mahape
 5. Navi Mumbai Municipal Corporation
 6. City Engineer, Navi Mumbai Municipal Corporation
- ...Respondents

Mr. Tushar Sonawane, *for the Petitioner in WP/15309/2023.*

Ms. Siddhi Sawant, *i/b Nikhil Waje, for Petitioner in WP/10246/2024.*

Mr. Prashant Chawan, *a/w Poonam Sheth, for Respondent No.1-MIDC in WP 15309/2023 & for Respondent Nos.2, 3 & 4 in WP/10246/2024.*

Mr. A.I. Patel, Addl.GP, *a/w S.L. Babar, AGP for Respondent-State in both Wps.*

Mr. S.R. Nargolkar, *a/w Neeta Patil, for Respondent Nos.5 & 6 in WP/10246/2024.*

CORAM : B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.

DATE : DECEMBER 20, 2024

ORAL JUDGEMENT: (Per, Somasekhar Sundaresan J.)

1. Rule. Rule is made returnable forthwith. Respondents in each of the aforesaid Writ Petitions, waive service. With the consent of the parties, both the Writ Petitions are taken up jointly for final hearing and disposal.

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December 20, 2024

Ashwini Vallakati

2. These Petitions essentially seek a writ of mandamus to issue a direction to the Maharashtra Industrial Development Corporation (“*MIDC*”) to execute the requisite agreement to lease in respect of the parcels of land allotted to the Petitioners, and to hand over possession of the land for their development towards the purposes for which they were allotted to the Petitioners.

3. For the reasons set out in this judgement, we allow the Petitions and direct the MIDC to execute the agreements to lease to enable further processing of the projects, and to hand over possession of the lands so that they can be developed towards the purposes for which they were allotted to the Petitioners.

Writ Petition 15309 of 2023:

4. In Writ Petition 15309 of 2023 (“*WP 15309*”), by an allotment order dated October 1, 2021, followed by corrigendum dated April 4, 2022, the MIDC had allotted land to the Petitioner for developing a hotel at the Trans Thane Creek (TTC) Industrial Area, Mahape (“*TTC Industrial Area*”). Despite the allotment having been made and full payment having been received, the MIDC has simply refrained from executing the requisite agreements and actually granting

possession of the land to the Petitioner. Such inaction has been assailed in this Petition as an arbitrary failure on the part of MIDC to perform a statutory obligation, and to issue a direction to the MIDC to execute the agreements to lease.

5. On June 28, 2021, July 2, 2021, July 22, 2021, and August 6, 2021 offer letters were issued by the MIDC to the Petitioner allotting plot No. PAP-A-582, PAP-A-583, PAP-A-584 and PAP-A-585 in TTC Industrial Area for payment of premium of Rs.33,10,400/-. The payment of premium was effected by the Petitioner. Since the Petitioner made a request for division of the land offered by MIDC, the MIDC issued a corrigendum and identified the divided plots with their area by a Corrigendum dated April 4, 2022. Despite the allotment being made and payments being received, the MIDC inexplicably refrained from actually giving possession of the land and from executing the agreement to lease to enable the Petitioner to put the land to use. It is common ground that all compliances from the Petitioner, including payment of the requisite amounts in respect of the allotted land has been made, and yet the project of the Petitioner has been stalled without any reason.

Writ Petition No. 10246 of 2024:

6. The Petitioner in Writ Petition No. 10246 of 2024 (“*WP*”

10246") is also desirous of setting up a hotel in the TTC Industrial Area. In this case, the MIDC allotted two plots of land admeasuring 100 square metres each by way of letters dated November 8, 2019 and December 27, 2019 and called for payment of earnest money deposit, which was paid. The Petitioner requested MIDC to amalgamate the plot so allotted, namely, Plot No. PAP-A-571 and PAP-A-572 by an application dated June 18, 2021, and sought allotment of the amalgamated plot to the Petitioner. On October 7, 2021 the MIDC issued an allotment order allotting a total land of 200 square metres in favour of the Petitioner for setting up a hotel subject to the terms and conditions stipulated by the MIDC including payment of the amounts specified.

7. In this case too, it is common ground that all the occupancy premium payable in respect of the allotted land has indeed been paid. According to the Petitioner, it is after November 2021 that MIDC started stalling further steps in the matter and did not proceed to take steps in furtherance of the allotment, thereby stalling the Petitioner's project.

Contentions and Issue Involved:

8. The land allotted to the Petitioner in WP 10246 and the land

allotted to the Petitioner in WP 15309 lie on the same service road at the TTC Industrial Area. They are separated by a hotel that has already been developed. There are other projects developed behind these plots of land in the interior, away from the service road, but adjoining these parcels of land.

9. Against this factual backdrop, we have heard the Learned Counsel for the Petitioners as well as for the MIDC and the AGP on behalf of the State. With their assistance, we have also examined the material on the record. In WP 10246, Learned Counsel for the Navi Mumbai Municipal Corporation (“*NMMC*”, made Respondent in this Petition) entered appearance and sought to plead that there are serious problems related to parking on the service road on which the plots of land involved are located. According to NMMC’s counsel, the land must not be developed and instead a parking lot must be created in that space.

Analysis and Findings:

10. Upon hearing the parties, it became clear that there has been an abject failure on the part of MIDC, at the intervention by office-bearers of the State Government. The sheer refusal to proceed further

with the two hotel projects, stalling them without any reason or basis in any manner known to law, calls for our intervention.

11. The matter was heard on various dates. The submission advanced by Mr. Prashant Chawan, Learned Senior Counsel on behalf of MIDC boils down to one core contention – by a letter dated January 4, 2024 (“*January 4 Instruction*”) the MIDC was issued a written binding “direction” from the State Government to keep further processing of these two leases on hold, and MIDC is helpless since the direction of the State Government is binding on the MIDC.

12. Towards this end, Mr. Chawan tendered the January 4 Instruction addressed to the CEO, MIDC and to the Commissioner, NMMC, stating that the (then) Chief Minister had chaired a meeting on June 1, 2023 at the Sahyadri Guest House in which Mr. Ganesh Naik, Member of the Legislative Assembly of that area, had raised various issues relating to his constituency. Pursuant to the meeting, the Chief Minister is said to have given instructions by a letter dated July 4, 2023, based on which the Government of Maharashtra is said to have addressed the January 4 Instruction to MIDC, stating that going forward, there should be no alienation of any land along the service

road. Even those to whom land has already been allotted and projects have developed, must be relocated elsewhere. The purported reason for issuance of such instructions is said to be potential vehicular accidents in the area.

13. The ground for MIDC's inaction having become clear, and since Mr. Chawan referred to the January 4 Instruction as being a "direction" under the MIDC Act, it is important to examine whether such an explanation is at all tenable. The only provision of the Maharashtra Industrial Development Act, 1961 ("**MIDC Act**") enabling issuance of directions by the State Government to the MIDC, is Section 18, which reads thus:

"18. Directions by the State Government.- The State Government may issue to the Corporation such general or special directions as to policy as it may think necessary or expedient for the purpose of carrying out the purposes of this Act, and the Corporation shall be bound to follow and act upon such directions."

[Emphasis Supplied]

14. The provisions of Section 18 of the MIDC Act are akin to

similar provisions across legislation involving economic policy and its administration, whereby the relevant Government is given powers to issue directions to bodies corporate that administer the legislation. In fact, in many legislation, it is usual to also find a provision that stipulates that the view of the Government as to what constitutes a policy direction shall be final and binding on the statutory body to which it is issued. Section 18 does not have such a stipulation, which makes it imperative for MIDC to truly and reasonably examine if a purported direction has been issued invoking Section 18, or whether, even while being silent on the provision invoked, the body of the instrument inexorably constitutes a policy direction.

15. Even a plain reading of Section 18 of the MIDC Act would point to the fact that the State Government may indeed issue general or special directions to the MIDC on such matters of policy as it may think necessary or expedient for carrying out the purposes of the MIDC Act. The directions enabled by such provisions are meant to be directions as regards policy matters and not directions relating to specific projects and specific allotments of land. Since MIDC has taken a stand that the January 4 Instruction is a direction under Section 18 of the MIDC Act, we called upon the Learned AGP to take factual instructions and inform

us about whether as per the records of the State Government, any direction under Section 18 of the MIDC Act has been issued to the MIDC in connection with land allotted in the TTC Industrial Area, and what is the due procedure in the conduct of business by the State Government for issuance of directions under Section 18 of the MIDC Act (essentially, the due process for how a proposal to issue directions is initiated, processed, approved and issued, for it to be a binding direction under Section 18 of the MIDC Act).

16. On December 17, 2024, the Learned AGP tendered a letter from the Under Secretary, Government of Maharashtra, confirming in writing that no policy direction has been issued by the State Government to the MIDC under Section 18 of the MIDC Act. The State Government's letter dated December 16, 2024 confirming this position has been taken on record by us. Once it is clear that there has been no processing for issuance of any direction under Section 18 of the MIDC Act (the only means of legitimate instruction from the Government of Maharashtra to MIDC and that too on a policy matter), it is clear that the January 4 Instruction is not at all a policy direction under Section 18 of the MIDC Act, and that cannot be the basis of MIDC refusing to discharge its statutory duty owed pursuant to its functioning.

17. Instead, what becomes clear is that the MIDC had, in compliance with all due process, allotted the lands involved in these Petitions. Such due process was suddenly interfered with, and stalled, at the instance of the local political representative. The contents of the January 4 Instruction are not only ambiguous in terms of dealing with pre-existing and accrued rights, but also do not even contain a semblance of a reasoned articulation of why such pre-existing rights and pre-approved projects are to be interfered with. Since the January 4 Instruction purports to recommend that even existing projects should be relocated, it would, at best, partake the character of a proposal. We asked Mr. Chawan if any land acquisition proposal has been initiated since January 2024 (this matter was finally heard in December 2024) to acquire the lands on which projects are already implemented, since the MIDC believes the January 4 Instruction to be a binding policy direction. The response was in the negative. On the contrary, on July 26, 2024 (over six months after the purported direction), the MIDC had written to the Principal Secretary, Industries, Government of Maharashtra, making a reference to the issues raised by the MLA, and the restrictions imposed by the January 4 Instruction, seeking clarifications from the State Government. None has been forthcoming.

18. Evidently, validly processed projects have simply been stalled and interfered with, without any basis in law – firmly placing the inaction by MIDC and the core reason or justification behind the stalling, in the realm of manifest arbitrariness, necessitating our intervention in exercise of our jurisdiction under Article 226 of the Constitution of India. The facts collectively paint a vivid picture of interference with the functioning of the MIDC, in the name of issuance of policy directions, which we are clearly informed, have never been issued. Besides, the written contents of the January 4 Instruction, *ex facie* do not carry the character of a *policy* direction, and they are evidently directions on the manner of handling *projects*.

19. The robust opposition to the projects in these proceedings by the NMMC calls for analysis. It is the MIDC that has planned and developed the TTC Industrial Area. Reservations for specific purposes, whether for parking or service roads or for development of hotels, and provisions for various other activities is normally envisaged in the planning and development process. It would be on the basis of such planning by MIDC that the TTC Industrial Area would have been developed. Such planning involves widespread public consultation. It is

MIDC that planned the development in this region, and the actual development has to conform to the approved plan. If planned development can be arbitrarily interfered with, and that too at the purported behest of a local municipal body, there would be no sanctity to the process of planned development.

20. In the instant case, MIDC has made allotments, its allotment letters contain stipulations and deadlines for activity to be undertaken by the allottee, and yet, despite pocketing the money payable by the allottees, the MIDC has refrained from moving the process forward, evidently on the basis of political interference through a process unknown to law. Consequently, it would be necessary to direct the MIDC to execute the requisite agreements to lease with the Petitioners and hand over their respective land parcels for development in terms of the allotments made.

21. There is one other facet of the matter. The January 4 Instruction was issued purportedly pursuant to a meeting held by the then Chief Minister in June 2023 i.e. with a gap of over six months. Even by June 2023, several years had gone by since the allotment of the land parcels in question, and receipt of payments for the same (all in

2021). If the MIDC (even if mistakenly) was of the view that the January 4 Instruction was a policy direction that it was required to follow as a binding direction (to deny even rights that have already accrued against it), it begs the question as to why the MIDC did not act between 2021 January 2024. One wonders how the MIDC felt entitled to sit on the monies received throughout this period. Even after January 2024, there is not a semblance of an effort to communicate to the allottees that it was in receipt of a binding policy direction. The Petitioners had to approach the constitutional court to even be told that there is a purported policy direction issued to the MIDC. Such conduct is inexplicable, and points to the manner in which development has been approached in the State of Maharashtra at least in these two cases.

22. Before parting, for the sake of completeness, it must be stated that even if the January 4 Instruction were to be a policy direction under Section 18, the issuance of such a direction would be amenable to judicial review in exercise of the writ jurisdiction under Article 226 of the Constitution of India, on the touchstone of manifest arbitrariness and the absence of reason.

23. In these circumstances, we have no hesitation in allowing both the Writ Petitions and directing the MIDC to execute the requisite

agreements to lease, within a period of six weeks from today, and to hand over physical possession of the respective allotted lands to the Petitioners.

24. Rule is made absolute in the aforesaid terms, and these Writ Petitions are disposed of accordingly. Although we have disposed of these Writ Petitions, they are placed for reporting compliance on February 3, 2025.

25. All actions required pursuant to this order shall be taken upon receipt of a downloaded copy of this order as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

[B. P. COLABAWALLA, J.]