
(2014) 09 BOM CK 0048

In the Bombay High Court

Case No : Writ Petition No. 6101 of 2013

National Project Construction Corporation Ltd.

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 15-09-2014

Acts Referred:

Contract Act, 1872 — Section 39

Maharashtra Industrial Development Act, 1961 — Section 14, 15, 31, 39, 40(1A)

Citation : (2015) 1 ABR 239 : (2015) 1 BomCR 22

Hon'ble Judges : C.V. Bhadang, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : A.H. Laddad, AGP, S.G. Aney, Senior Counsel and M.M. Agnihotri, Adv, A.P. Wachasunder and R. Malviya, Advocate for the Respondent

Judgement

A.P. Bhangale, J.—Rule returnable forthwith. Heard finally by the consent of the learned Counsel for the respective parties.

2. By this petition, the petitioner has prayed to quash and set aside Order, dt. 11.9.2013 passed by the Regional Officer of Respondent No. 2/Maharashtra Industrial Development Corporation, a body constituted under the provisions of the Maharashtra Industrial Development Corporation Act, 1961 (hereinafter referred to as "MIDC"), cancelling allotment of Plot No. 33 -A/1, admeasuring 55,620 Sq. Meters situated in MIDC, Industrial area, Hingna under the (incorrectly described as "Lease " in petition) agreement to lease dt. 8.11.1993 and to direct the MIDC to consider the proposal of the petitioner to utilise Plot No. 33 -A/1, MIDC Industrial area, Hingna, Nagpur under sub -section (5) of Section 42A of the MIDC Act. The petitioner has also prayed that the Government of Maharashtra be directed to give reasonable opportunity of hearing to the petitioner.

3. The facts, briefly stated, are as under: -

MIDC as a special Planning Authority under Section 40(1A) of the Maharashtra

Regional and Town planning Act, 1966 (for short " the MRTTP Act ") has established the Industrial area, for growth and development of industries in the Industrial area at Hingna. The petitioner had applied for allotment of the plot of 80000 square Mts. On 23.11.1984, the MIDC allotted 55630 Sq. Meters under the agreement to lease/license, dt. 8.11.1993. The licence was terminated by notice dt. 22.7.1993. The petitioner had challenged the action of MIDC to terminate the agreement to lease by filing Writ Petition No. 2074 of 1993. On 24.8.1993, the said Writ Petition was withdrawn with liberty to settle the matter. On 13.8.1993, fresh application was made and the petitioner was allotted plot no. 33A/1 under the agreement to lease. The petitioner had agreed to get the plan approved within 36 months to enter in the lease deed as no appropriate follow up action was taken by the petitioner so as to develop the plot as leasehold property so as to utilize it under the intended lease deed to be entered into by the petitioner with the MIDC to establish the Industrial unit for repairs of heavy power equipment. No steps were taken to abide by the agreement to lease. Due to inaction on the part of the petitioners despite terms and conditions of the agreement to lease, the Regional Office, MIDC, Nagpur informed the petitioner by letter dt. 11.9.2013 that allotment of the plot referred above was cancelled and to return the original documents including the agreement to lease / licence etc . within 7 days from the date of the receipt of the letter. The petitioner was informed that the balance premium amount would be refunded after deducting 10% penalty recoverable under the Rules and regulations of the MIDC. The petitioner has challenged this action of the MIDC to resume possession of the plot in question.

4. On behalf of the petitioner, it is contended by learned Counsel Mr. Vachasunder that the MIDC cannot cancel allotment of the plot and issue a notice calling upon the petitioner to return the documents. According to learned Counsel for the petitioner, the State Government alone can initiate such action under Section 42-A of the MIDC Act and therefore, the impugned notice issued by the Regional Officer without authority of the MIDC is bad in law. It must be noted that Clause 13 of the Agreement to lease clarifies that the expression "Chief Executive Officer" shall include "Deputy Chief Executive Officer", "Regional Officer", General Manager (Legal), the Area Manager and any other Officer specially authorised by the Chief Executive Officer. The petitioner also contended that the MIDC Act is not constitutionally valid piece of legislation so as to deprive a person of the property by means of notice to leave issued by any Authority under the Act. This challenge as to constitutionality of the Act is no more res integra as the Constitution Bench of the Apex Court has held the Act as valid piece of legislation Vide the ruling in the case of Shree Ramatanoo Co -operative Housing Society Ltd. vs. State of Maharashtra and Others reported in 1972 Mh.L.J. 320, wherein in para 15 it is observed thus : -

" It is in the background of the purposes of the Act and powers and functions of the Corporation that the real and true character of the legislation will be determined. That is the doctrine of finding out the pith and substance of an Act.

In deciding the pith and substance of the legislation, the true test is not to find out whether the Act has encroached upon or invaded any forbidden field but what the pith and substance of the Act is. It is true intent of the Act which will determine the validity of the Act. Industries come within Entry 24 of the State List subject to the provision of Entry 7 and Entry 52 of the Union List of the Constitution. Entry 7 of the Union List relates to industries declared by Parliament by law to be necessary for the purpose of defence or for the prosecution of war. Entry 52 of the Union List relates to industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest. The establishment, growth and development of industries in the State of Maharashtra do not fall within Entry 7 and Entry 52 of the Union List. Establishment, growth and development of industries in the State is within the State List of industries. Furthermore, - to effectuate the purposes of the development of industries in the State it is necessary make land available. Such land can be made available by - acquisition or requisition. The Act in the present case deals with acquisition of land by the State and on such acquisitions, the State may transfer the land to the Corporation which again may develop it itself and establish industrial estates or may develop industrial areas. Acquisition or requisition of land falls under Entry 42 of the Concurrent List. In order to achieve growth of industries it is necessary not only to acquire land but also to implement the purposes of the Act. The Corporation is, therefore, established for carrying out the purposes of the Act. The pith and substance of the Act is establishment, growth and organisation of industries, acquisition of land in that behalf and carrying out the purposes of the Act by setting up the Corporation as one of the limbs or agencies of the Government. The powers and functions of the Corporation show in no uncertain terms that these are all in aid of the principal and pre -dominant purpose of establishment, growth and establishment of industries. The Corporation is established for that purpose. When the Government is satisfied that the Corporation has substantially achieved the purpose for which the Corporation is established, the Corporation will be dissolved because the *raison d'être* is gone. We, therefore, hold that the Act is a valid piece of legislation."

5. S.G.Aney, learned Senior Counsel has submitted that the respondent/MIDC seeking enforcement of certain clauses in the agreement to lease entered between the petitioners took impugned action. The MIDC, the respondent had entered into an agreement to lease with the petitioner, who was, pursuant to the said agreement, under the obligation of the covenants, to act upon the terms and conditions thereof as agreed. But that was not done even after lapse of more than reasonable period for performance of the terms and conditions of the agreement to lease. Learned Senior Counsel submitted that when there was no reasonable excuse for non - performance of the agreement by the petitioner, the MIDC was entitled to take action impugned herein to achieve the statutory objective of planned and expeditious progress of the industrial development in Vidarbha area of the State.

6. Let us now consider the legal position in this regard. Allotment of land is governed by the provisions of "the MIDC Act". Section 14 of the said Act specifies the functions and powers of the MID Corporation. The MID Corporation has, in general, power to promote and assist in the rapid and orderly establishment growth and development of industries in the State of Maharashtra. Section 15 thereof provides for general power of the MID Corporation which includes the power to acquire and hold the land and to dispose of the same by executing the lease, sale deeds and exchange or otherwise transfer any property. Section 31 of the 1961 Act provides for acquisition and disposal of the land. The Maharashtra Industrial Development Corporation (Disposal of Land) Regulations, 1975 have been framed by the MIDC in exercise of the powers conferred by clauses (d), (f) and (g) of sub section (1) of section 64 of the MIDC Act with previous approval of the State Government to give effect to the provisions of MIDC 1961 Act. Regulation 4 provides for disposal of the land covered by the lay out prepared by the Corporation by public auction or by entertaining individual applications. Regulation 6 provides for a particular form to be filled up where the allotment is to be made by applications and deposit of process fee etc. Regulation 10 provides that the Land Committee shall consider the application and pass appropriate orders for allotment of land. Regulation 17 provides for action in the event of breach of the terms of the agreement by an allottee. If any allottee contravenes any of the terms and conditions of the agreement to lease, the MIDC shall be entitled to resume possession of the plot. The Agreement to lease gave licence to the allottee for the period of three years to enter into and hold the land to perform acts as contemplated under the agreement to lease. The petitioner is required to enter into and execute formal lease deed in accordance with law. Therefore, the petitioner cannot be termed as "lessee" but mere "licensee" till such formal lease deed is executed in accordance with law.

7. We find that Clause 2 of the agreement itself indicated that the agreement to lease shall not be construed as demise in law without formal execution of the lease deed. Formal registered Lease deed is required to be executed only when the licensee comply with the terms and conditions of the agreement to lease. The licensee cannot sit tight on the land without taking the requisite prompt steps within 36 months to construct the factory building in accordance with sanctioned plan from the Executive Engineer of the MIDC. Merely an agreement to lease cannot create interest in favour of the licensee to hold possession of the industrial plot meant to be developed within specified period of 36 months. Default/non -performance of the agreement to lease on the part of licensee would certainly create right in favour of the licensor/MIDC to resume possession of the plot concerned. The "MIDC" as a statutory body is expected to establish industrial area, prepare the lay out thereof and carve out the plots to allot them to needy entrepreneurs/industries in accordance with the provisions of the Act and the rules framed as to disposal of the land. Provision is made, thus, under Section 39 of the Act, which is mentioned below : -

39. Disposal of land by the Corporation :

(1) Subject to any directions given by the State Government under this Act, the Corporation may dispose of -

(a) any land acquired by the State Government and transferred to it, without undertaking or carrying out any development thereon; or

(b) any such land after undertaking or carrying out such development as it thinks fit;

To such persons in such manner and subject to such terms and conditions, as it considers expedient for securing the purposes of this Act.

(2) - - -

The provision would indicate that the MIDC has statutory power to dispose of the land within its area. Regulation 17 of the Disposal of land Regulations, 1975 is as under :

" 17. Breach of terms of Agreement :

If any allottee contravenes any of the terms and conditions of the Agreement to Lease, the Corporation shall be entitled to resume possession of the plot. "

8. The three Judges Bench of the Apex Court in the ruling in the case of The State of Uttar Pradesh vs. Anghalia Housing (P) LTD. and Others reported in (1976) 1 SCC 95B in para 12 has observed thus :

"In our opinion, therefore, the land had been actually utilized in execution of a housing scheme. According to Shorter Oxford English Dictionary, 3rd edition, the word "utilize" means "to make useful". Viewed in the light of the said meaning it is clear to us that the land was made useful in execution of the housing scheme that is to say in the process of the execution of the housing scheme. The question of further development of the land arose only after the clearance of the forest. The Collector of Dehra Dun by the impugned order held that the provisions of the Act were applicable to the land. The Company could not, therefore, take permission under the U.P . Act of 1958 from the prescribed authority nor could any further act for fully implementing the housing scheme be done. The felling of the trees was complete within the time allowed and, therefore, actual utilization of the land in the process of the housing scheme was made, in the sense of utilizing the land to the extent it was possible to utilize it."

9. Reference is also made to the order passed by this Court on 13.3.2013 in Writ Petition No. 4354 of 2012, Surajagarh Steel and Mines Pvt. Ltd. vs. The Chief Executive Engineer, MIDC, Mumbai and another. The Division Bench of this Court, after finding that there was an agreement to lease in favour of the petitioner and if the petitioner had complied with the terms and conditions of the agreement to lease, held that the lease deed could have been executed. The agreement to lease specifically stipulates that it is not demise and no interest, therefore, is created in favour of the petitioner who had refused to interfere with the notice by the MIDC in that case on the ground that there was no jurisdictional error or

perversity on the part of the respondents/MIDC to issue notice to the petitioner. Thus, it follows that if, during the operation of the agreement to lease, the licensee as a promisor under the agreement do not comply with the stipulations in the agreement within the specified period or during the period extended by the MIDC, the agreement would come to an end as a result of non-performance by the promisor. The promisee in such a case is always at liberty to put an end to the agreement vide Section 39 of the Indian Contract Act, which runs thus :

39. Effect of refusal of party to perform promise wholly :

When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

10. Having considered the submissions on the record in the light of the legal position stated, we are of the view that it was open and appropriate for the MIDC to take an action to resume possession of Plot No. 33 A in the MIDC area under its control, pursuant to the impugned notice and action to resume possession. The notice is neither arbitrary nor perverse. It is valid and sustainable according to law. The plots allotted under the agreement to lease subject to terms and conditions therein cannot be kept idle so as to stall and stultify the industrial growth of the area in any manner, more so when the Planning Authority is intending industrial development and growth in comparatively backward area like Vidarbha in the State of Maharashtra. The industrial progress and development must be made expeditiously in phased and organised manner. It cannot be put off unreasonably by anyone who has agreed to be a part of it, overlooking the terms and conditions under the agreement to lease. The petition, thus, has no merits. It is dismissed with costs. Rule is discharged.

The petitioner shall vacate the plot within a period of three months from the date of this Order and settle the accounts with the respondent/MIDC.

The respondent/MIDC shall be at liberty to allot the plot in question to any needy, bona fide entrepreneur genuinely interested in the industrial development of the plot in accordance with the provisions of the MIDC Act and rules and regulations framed thereunder.