
(2014) 02 BOM CK 0155
In the Bombay High Court
Case No : Writ Petition No.: 9279 of 2012

Real Team Systems Pvt. Ltd.

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14 226

Maharashtra Industrial Development Act, 1961 — Section 10 11 12 13 14

Citation : (2014) 5 ALLMR 68 : (2014) 3 BomCR 50 : (2014) 2 MhLj 917

Hon'ble Judges : S.C. Dharmadhikari, J; Ravindra V. Ghuge, J

Bench : Division Bench

Advocate : A.G. Talhar, for the Appellant; G.K. Thigale, A.G.P. for Respondent No. 1/State, Mr. P.M. Shah, instructed by Mr. S.S. Dande and Mr. G.S. Khaire, Advocates for Respondent Nos. 2 to 4, Mr. R.R. Mantri, Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. In view of the earlier orders passed by this Court, the writ petition is admitted. Rule.
2. Respondents waive service. By consent of parties, rule is made returnable forthwith.
3. By this writ petition, under Article 226 of the Constitution of India, the petitioner is challenging an allotment of the plot bearing No. T-22 in the Chikalthana Industrial area which plot admeasures 4950 Square Meters. That allotment is made by the Maharashtra Industrial Development Corporation, a Government of Maharashtra undertaking, in favour of Respondent No. 5.
4. The brief facts, which led to the filing of this writ petition, are that the 1st Respondent is the State of Maharashtra. The 4th Respondent is the Corporation established under the Maharashtra Industrial Development Act, 1961. The Respondent Nos. 2 and 3 are officers of Respondent No. 4 and in-charge of

promoting and encouraging Industrial Development. The 5th respondent is the allottee of the plot referred to above. The 6th Respondent is the Minister for Industries, Government of Maharashtra.

5. It is the case of the petitioner that, it is a company registered under the provisions of the Indian Companies Act, 1946. It is a leading service provider to global investment community for various information. It is in the business of tracking information pertaining globally listed companies through use of information technology and the process enables various stake holders to get access to timely and accurate information in transparent manner. After narrating the nature of the business activities, what has been stated is that the petitioner was founded and incorporated in 2005. It has grown from a strength of 25 employees to 200 in a span of 7 years. The company has operations at Navi Mumbai and Aurangabad.

6. The Respondent No. 2 (MIDC, for short) acquired a huge tract of land for developing it as a software technology park. That area is reserved for software technology park. The petitioner has a unit at Chikalthana Industrial Area since 2008. The business of the petitioner was growing enormously and that is why for its expansion it required additional area/space. It submitted an application to the regional office of MIDC on 3rd June, 2009. The petitioner pointed out that it is an operational and functional unit and for its growing needs and expansion plan it requires additional space. It, therefore, applied for allotment of an existing stall located at plot No. 22. The petitioner pointed out that it is ready and willing to pay the charges and the costs of the land as per the norms. The petitioner also pointed out the object and purpose of the Act.

7. After submission of the application, the petitioner was informed that the plot will be auctioned within a short period. The Petitioner was directed to submit an application as and when the plot will be auctioned. In view of this suggestion, the petitioner was under an impression that the plot will be auctioned shortly. However, some estate agents were interested in the plot. That is how the petitioner submitted one more letter on 7th July, 2009. It requested the Respondent No. 2 MIDC that there are lot of plots which are not being utilised. Similarly, there are plots allotted not to genuine users. The petitioner, therefore, suggested a criteria and one of which was that existing operational units in the vicinity should be given preference. The petitioner, thereafter, addressed another reminder finding that its earlier letter dated 7th July, 2009 (Annexure-C) was not responded at all. The reminder is dated 9th October, 2009 and copy of which is at Annexure-D.

8. Again, on 5th November, 2009, the petitioner submitted an application in respect of this very plot No. T-22 located in software technology park, Chikalthana M.I.D.C. The petitioner pointed out that since the plot is to be allotted by tender process to eligible information technology companies, that it should be given a preference in allotment.

9. The petitioner was consistently pursuing this application and addressed one more letter at Annexure-F dated 8th February, 2010. It was pointing out that it would require 8 more Galas for expansion and followed up this request by Annexure-G which is an application dated 9th July, 2010. The petitioner addressed letters at Annexure-H dated 20th July, 2010 and 26th July, 2010 requesting for expeditious decision. The petitioner was every time informed that the allotment cannot be made in the manner suggested by the petitioner. However, the petitioner was assured that as and when the plot is auctioned, preference will be given to the petitioner or even otherwise if the plot is to be allotted then preference will be given to it. Therefore, the petitioner had expected legitimately and reasonably that its application would be considered and there will be no legal impediment in allotting the plot.

10. However, the petitioner was shocked and surprised to note that this plot was allotted to Respondent NO. 5. It was done without any tender or auction and by keeping the petitioner's request pending. The petitioner, therefore, submits that this action is contrary to the policy of the MIDC and even otherwise illegal. Hence, it cannot be sustained. It is submitted that this allotment be quashed and set aside. The petitioner has in paragraphs 18 to 22 pointed out as to how the MIDC did not process the application of the petitioner and for obvious reasons. They were bent on allotting the plot to the Respondent No. 5. The allotment is contrary to its own regulations viz. the Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975. The MIDC was of the view that no auction or public tender ought to be held or invited but the allotment should be made on "first come first serve" basis. In para 21 and 22 of this writ petition, the petitioner has stated, as under:

21. That, the petitioner says and submits that, here in the present case though the plot to which the petitioner herein applied in the year 2009, but no decision was taken. That, moreover had it been the fact that the said plot could not have been allotted to the petitioner then it was incumbent upon the respondent MIDC to inform to the petitioner that plot No. T-22 is vacant and is subjected to allotment. Here it is important to note that at the relevant time the said plot was vacant but it was not given to the petitioner and without following due procedure the respondent MIDC has allotted the said plot to the respondent No. 5. While doing so the respondent MIDC ought to have followed their own policy because at the time when the plot No. T-22 was allotted at that time there was a specific ban regarding fresh applications as can be seen from the notices which were published by the respondent MIDC and number of notices were displayed on the notice board of their office. Hereto annexed and marked as Exhibit "J" collectively are the copies of the notices displayed by the Respondent MIDC. So it does indicate that in what manner the respondent MIDC has allotted the plot No. T-22, in fact the petitioner is having the first right on the said plot as the petitioner herein is in queue for genuine use in information technology park in MIDC area,

22. That, the petitioner say and submit that, as per the existing policy if the plot

No. T-22 is to be allotted the same is required to be allotted as per the present policy i.e. by calling the tenders. But at no point of time the said plot No. T-22 was ever known to any person. No wide publicity was made in respect of allotment of the said plot No. T-22. That, the petitioner is giving the example how and in what fashion the respondent MIDC Authorities is running away from their own policy and the petitioner is giving some examples in the said STP Park. The Respondent MIDC had allotted one Plot to Mauli Vidyapeeth (Plot No. T1) and the said Mauli Vidyapeeth is suppose to provide education in the field of IT i.e. which is not part of Objectives of setting up the STP Park by MIDC. The Primary goal of any STP park is to generate/provide employment in I.T./I.T.E.S. industry which have been proved worldwide for generating maximum employment per square meters as compared to any other industry and is the reason why MIDC set-up this as a separate area within Chikalthana Industrial Area. One of the plot is also allotted to the Garware Industry for I.T. development, but no development has been completed in the given time on multiple extensions. One more plot is allotted to India Internet Solutions since 2009 and two time the extension were given but as on today no construction and no development has taken place within the time-frame. One more plot No. T-14/15 is allotted, but the same is being used for godown/storage purposes which is a complete misuse. Similar is the case in respect of T-26 which is remaining unutilized for last 9 years. Hereto annexed and marked as Exhibit "K" copies of the photographs.

11. It is on these allegations that the present writ petition has been filed and, thereafter, petitioner relies on the information made available under the Right to Information Act, 2005. In para 27 the revelations from the documents obtained under the said Act are set out.

(i) Initially on 28.07.2011 the respondent No. 5 has given an application for allotment of the Plot No. T-22 for manufacturing of Ayurvedic Medicine Unit. Copy of the Application dated 28.07.2011 submitted by the Respondent No. 5 to the Minister of Industries is annexed herewith and marked as Exhibit "M".

(ii) On the same application the Hon"ble Industries Minister directed to the concern officer to process the said application on priority basis.

(iii) On 29.07.2011 one of the officer of the MIDC has endorsed the said application and it has been pointed out that the application for the respondent No. 5 is for manufacturing of the Ayurvedic Medicine and whereas the subject matter of the plot is reserved for the Information Technology.

Moreover it has been also endorsed that the plot is requires to be allotted through tender only. The further endorsement was also made that the said plot can not be allotted to the respondent No. 5. Copy of office endorsement dated 29.07.2011 along other endorsements are annexed herewith and marked as Exhibit "N".

(iv) On 08.08.2011 when it is noticed that the plot cannot be allotted manufacturing of the Ayurvedic Medicine as the said plot is reserved for I.T. Park,

therefore so as to legalize the said illegal act, the respondent No. 5 had submitted another application and demanded the said plot for Information Technology Purpose. And on the said application the similar remark was made by the Hon'ble Minister for Industries as the remark which was made on the first application. Copy of the application dated 08.08.2011 along with the remark of the Industries Minister is annexed herewith and marked as Exhibit "O".

(v) On 30.11.2011 meeting was held and the subject for allotment of the Plot No. T-22 is considered and in the said meeting it has been resolved that the Respondent No. 5 is highly educated women entrepreneur and since she has submitted an application for allotment of the plot for the purpose of Information Technology, and since the respondent No. 5 is interested in manufacturing the produce and as per the circular dated 29.01.2008 the benefit is to be given to the respondent No. 5. However from the perusal of the said circular it appears that the said circular is applicable only to the following industrial area i.e. "Shendra, Waluj, Butibori, Additional Patalganga, Additional Ambarnath, Ranjangaon, Talegaon. The said circular is not applicable to the other industrial area. That, it is also necessary to point out here that after allotment of the said plot to the respondent no. 5, the respondent No. 5 had floated the advertisement for the 24 Carat Bungalows and it is in violation of the condition No. 5 of the same circular. Copy of the circular dated 29.01.2008 issued by the respondent MIDC is annexed herewith and marked as Exhibit "P".

(vi) It is necessary to state that the subject matter of the plot is reserved for Information Technology and the said plot is given to the respondent No. 5 on the ground that the respondent no. 5 is highly educated women entrepreneur. In the project report submitted by the respondent No. 5 is has been mentioned that the respondent No. 5 is qualified as (ND) Naturopathy Doctor, which is a certificate one year course. So the maxim res ipsa loquitur (fact speaks itself) is applicable here. The industries Minister i.e. respondent No. 6 has directed to the concern authorities to allot the said plot to the respondent No. 5 preferentially for the reason for construction of 24 Carat Sky Bungalows.

(vi) That, though the Respondent No. 5 had submitted the project report wherein it is specifically mentioned that the said plot is required for IT purpose and it was also mentioned that the respondent No. 5 knows the line. However, after obtaining the said plot, the respondent No. 5 had floated the advertisement in the various news paper wherein it is specifically advertised that on the said plot the Respondent No. 5 advertised the Akshada Heights i.e. Premium Sky Bungalow with Swimming Pool for every flat i.e. 24 Carat Luxury Homes on the said plot. Copies of the Photographs are annexed herewith and marked as Exhibit "Q" collectively.

12. Mr. Talhar, learned counsel appearing on behalf of the petitioner, submitted that the action of the respondent No. 2 MIDC is contrary to law and also violates the constitutional mandate of equality, fairness, reasonableness and transparency in State action as is enshrined in Article 14 of the Constitution of

India. It is submitted that the petitioner's request, which was pursued by it from 2008, was well within the four corners of law. The petitioner was allotted an industrial plot earlier and for setting up a software unit. The petitioner set it up and successfully commissioned it. That the petitioner is a functional unit, is not disputed by the respondents. That the petitioner had requested for another plot so as to meet the requirement of its increased and expanded business activities. All such applications are on record of the MIDC. They were kept pending and no decision was taken on the same although the petitioner was vigorously following it up. The petitioner could have been allotted plot No. T-22 in terms of the circular of the MIDC dated 29th January, 2008 and 18th March, 2008. The petitioner, therefore, was shocked and surprised to find a board resolution dated 30th November, 2011 of the M.I.D.C. allotting the plot to respondent No. 5. Mr. Talhar submits that the industrial area and industrial estates are carved out in the form of plots. There is a lay out. Thereafter plots are allotted to needy entrepreneurs/industries. The allotment is made in terms of the powers that are conferred in the MIDC. Our attention is invited by Mr. Talhar to the Maharashtra Industrial Development Act, 1961 and particularly the provisions contained in the Act enabling disposal of the land by the Corporation. Section 39 of the Act has been heavily relied upon. It is urged that the Corporation may dispose of any land acquired by the State Government and transferred to it without undertaking or carrying out any development thereon or any said land after undertaking or carrying out such development as it thinks fit and all this has to be as per the direction given by the State Government under the Act. Mr. Talhar submits that the MIDC is a trustee of the public and particularly of the entrepreneurs. It holds the land in trust for them and with an obligation to make it available for industrial activities to needy persons. The corporation cannot at its sweet will consider any application out of turn or made directly and favour a party by not following the object and purpose of the Act. In that regard, our attention has been invited to section 39(2) and Section 39(3). Equally, our attention was invited to section 64 of the MIDC Act enabling it to make regulations consistent with the Act and the Rules framed thereunder to carry out the purpose of the Act. Mr. Talhar submits that in accordance with the power conferred by the Act, the MIDC Disposal of Land Regulations, 1975 have been framed and Regulation 4 provides for manner of disposal of land/open lands. It may be that this regulation empowers the corporation to dispose of lands by entertaining individual applications, yet, by further regulations viz. Regulations 5 to 10 it is the duty of the Chief Executive Officer to place the applications for individual allotments or individual applications before a land committee with his recommendations. The land committee may either sanction or reject such applications.

13. Mr. Talhar submits that the power to dispose of the plots by entertaining individual applications cannot be a rule. The auction ought to be the ordinary and general rule and disposal of land by entertaining individual applications an exception. Even if individual applications can be considered, yet, the corporation should have in the given facts and circumstances, preferred the petitioner for

allotment because it is a functional unit. It required the additional land/plot for expansion of its existing business. There was nothing illegal or unconstitutional in the request made by the petitioner. Yet, the petitioner's application was not considered and the respondent No. 5 was favoured openly and brazenly. Mr. Talhar also relies on section 14 of the MID Act and submits that the function of the corporation shall be generally to promote and assist in rapid and orderly establishment, growth and development of industries in the State of Maharashtra and, therefore, it is empowered to dispose of the land.

14. Mr. Talhar submits that in the present case all such powers, as are conferred by the Act, and to fulfill an avowed object and purpose, have been abused and misused to allot the plot to respondent No. 5. Her application has been treated in the garb of she being a lady entrepreneur. Her application has been considered on the footing that she would immediately set up an industry to promote herbal medicine. However, she desired to obtain the allotment not to set up any industry but for undertaking Mega Housing Project. That is not the purpose for which the allotment could have been made, and in the manner done. For all these reasons, it is submitted that the decision taken cannot be sustained.

15. On the other hand, Mr. Shah, learned Senior Counsel, appearing on behalf of the MIDC has relied on the stand taken in the affidavit in reply. He submits that the corporation has explained in this affidavit as to how the allotment cannot be said to be illegal. He relied upon the affidavit of Gangadhar Laxman Giri, Area Manager. Mr. Talhar complained that this court had specifically passed an order scoring of or striking of this affidavit. In these circumstances, it is his plea that no reliance could be placed on this affidavit. Mr. Shah submits that he is not relying only on this affidavit but the additional affidavit which has been filed fully explaining the position. In that Mr. Shah relies on the affidavit that is filed by Gangadhar S/o Laxman Giri, Area Manager, MIDC, affirmed on 24th June, 2013. He submits that MIDC has disposed of the plot or Galas by a process known to law. The procedure adopted by the corporation for allotting the plot is transparent. It has been explained by the corporation. Mr. Shah submits that Plot No. T-22, admeasuring 4950 Sq. Mtrs., is from the I.T. park. That plot was attempted to be auctioned by the MIDC in the year 2005 and advertisement was published on 31st March, 2005 in local newspapers. Bids were invited from interested parties. However, there was no response. The plot was lying vacant. The application was made by respondent No. 5 on 19th July, 2011 requesting for allotment of plot by waiving auction formalities. The respondent No. 5 along with the application submitted a project report for Ayurvedic Pharmaceutical Project. However, the plot is from I.T. park. Hence, the activity mentioned by the respondent No. 5 was not permissible. Respondent No. 5, therefore, submitted project report for the activity in the name of Akshada InfoTech. The project report highlighted that the total investment is Rs. 2.28 Crores. The employment generation would be about 30 persons. Requirement of electricity is 30 HP and water is 2000 liter per day. Mr. Shah submitted that considering the urgent need and to promote a lady entrepreneur that the application of the Respondent No. 5

was placed before the Board in a Board meeting for appropriate decision. The Board of Directors, after verifying the application and project report, so also strictly applying the terms and conditions of the circular dated 29th January, 2008, decided to allot the plot to respondent No. 5. This action of the respondent MIDC to allot the plot to respondent No. 5 is in conformity with the rules and regulations. There is no illegality. Mr. Shah has relied upon the assertions and statements at page 318 of the paper book which is an extract of the affidavit in reply of the respondent NO. 4.

16. Mr. Shah then relies upon para 9 of this affidavit and submits that the petitioner never sought this plot but by an application dated 9th October, 2009 prayed for allotment of Gala Nos. 37 and 38 in STP on rental basis. The petitioner also prayed for allotment of Gala Nos. 23 to 26 on rental or outright basis. Then, the petitioner made an application for allotment of Gala Nos. 13 to 28 by making an application on 30th December, 2009. Thus, the application of the petitioner is not for the purpose of expansion. The petitioner cannot claim the plot allotted to respondent No. 5 as of a right for the purpose of expansion. Merely because the petitioner decided to obtain allotment of an additional plot or Gala does not mean that it should be given any priority. Thus, the petitioner merely filed applications but was never interested in securing an allotment. Further, the circular issued by the corporation does not speak of any expansion policy. Hence, plots which are allotted as industrial plot and for industrial use, can be allotted for expansion of existing business activities but such policy does not apply to plot from I.T. park. The petitioner has already been allotted Gala Nos. 31 to 34. It cannot insist upon being allotted a additional plot for expansion purpose. The circular dated 18th March, 2008, does not, therefore, apply. Rather the policy of "first come first serve" basis was adopted in allotting a plot to Respondent No. 5. It is the Chairman of the Respondent No. 2 Corporation who proposed that the application of the Respondent No. 5 shall be placed before the board and that is how the board has considered the application in its entirety and found that being a lady entrepreneur the respondent No. 5 deserves to be allotted the plot. Mr. Shah, therefore, submits that there is nothing illegal or arbitrary, unfair, unjust and unreasonable in making the allotment in favour of respondent No. 5. All actions are in accordance with law. The decision, therefore, cannot be quashed and set aside, all the more, when the petitioner has not challenged the board resolution dated 30th November, 2011. The petitioner had filed a writ petition being Writ Petition No. 2985 of 2012 and that writ petition was dismissed. For all these reasons, even this writ petition deserves to be dismissed. Mr. Shah places reliance upon a judgment of the Honourable Supreme Court reported in the case of Tata Cellular Vs. Union of India, . It is urged that the petitioner has been allotted other plot in Shendra MIDC. Petitioner surrendered that plot and has not utilised it. It cannot now insist on being allotted another plot. There has been no allegations made of malafides in the allotment. The allotment to respondent No. 5 is made at the market rate. A Priority has been given to woman entrepreneur.

17. Mr. Mantri, learned counsel appearing for Respondent No. 5, submits that this Court cannot substitute its views with that of the board of the MIDC. Mr. Mantri relies upon page 130 of the paper book to submit that the application was made on 8th March, 2011 to the Respondent No. 6. The Respondent No. 6 did not straightway allot any plot but directed that the application be scrutinised. Thereafter, Mr. Mantri relies upon the circular dated 29th January, 2008 and submits that it is open for the MIDC to allot plots without floating any tender in certain industrial estates and on "first come first serve" basis. It is in these circumstances that the MIDC has considered the application and has taken a firm decision. That decision is rational and not arbitrary or discriminatory at all. Lastly, Mr. Mantri submits that an undertaking has been given by the Respondent No. 5. She has not constructed any structure on the open area. Therefore, he submits that the writ petition be dismissed.

18. Thus, the contesting respondents have strenuously urged that merits and demerits of the above decision cannot be considered. This Court can only find out, and by taking a review of the decision making process, as to whether a public body has acted in terms of the constitutional mandate. The argument is that there is no contravention of law. The law permits making allotment of plot to individuals. The object and purpose of the Act is to promote setting up an establishment of industries, rapid and orderly industrialization. Hence, the application of Respondent No. 5 could have been considered. The Respondent Nos. 2 to 4 urge that the application of Respondent No. 5 is granted by imposing stringent conditions on her.

19. For the above reasons, it is prayed that the writ petition be dismissed.

20. For properly appreciating the rival contentions reference is required to be made to the Maharashtra Industrial Development Act, 1961. It is an Act to make a special provision for securing the orderly establishment in industrial areas and industrial estates of industries in the State of Maharashtra and to assist generally in the organizations thereof and for the purpose to establish an industrial development corporation and for purposes connected with the aforesaid. The corporation is defined u/s 3 to mean Maharashtra Industrial Development Corporation. The term "Industrial Area" and "Industrial Estate" have been defined in section 2(g) and (h). Chapter II provides for establishment and constitution of the corporation and therein section 3 to 6 deal with the establishment and incorporation, constitution, disqualification for membership and term of office and conditions of service of members.

21. It is undisputed that the Minister of Industries is the Ex-officio Chairman of the Corporation. In the present case, Respondent No. 6 has been impleaded in his capacity as the Chairman. Section 7 provides for meetings of corporation and several aspects of membership are dealt with by sections 8 to 10. Section 11 indicates the general presumption that the Act or proceeding of the Corporation are presumed to be good and valid. The provisions of officers and servants of the corporation are found in section 12 and 13.

22. Chapter III provides for functions and powers of the corporation. Section 14 therein reads as under:

14. Functions:

The functions of the Corporation shall be:

i) generally to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Maharashtra and,

ii) in particular, and without prejudice to the generality of clause (i), to:

(a) establish and manage industrial estates at places selected by the State Government;

(b) develop industrial areas selected by the State Government for the purpose and make them available for undertakings to establish themselves;

(c) * * *

(d) undertake scheme or works, either jointly with other corporate bodies or institutions, or with Government or local authorities, or on an agency basis, in furtherance of the purposes for which the Corporation is established and all matter connected therewith.

23. A bare perusal thereof would indicate that the corporation is enjoined to promote and assist in the rapid and orderly establishment, growth and development of industries in the State of Maharashtra. It has been empowered by law, to perform this function, discharge this obligation and duty. All powers and particularly by Chapter IV are intended to enable the corporation to discharge its obligation and perform its function so as to fulfill the objects of the Act. It is also apparent that by Chapter V the Corporation has been exempted from application of certain enactments.

24. Chapter VI is entitled as Acquisition and disposal of land. The corporation is empowered to acquire land so as to enable it to set up industries or industrial estate. It is to make available the land, for Industrial areas that the Corporation by this law, is empowered to acquire private lands and pay compensation. Section 31 to 38 are incorporated in the Act in that endeavour. Then comes section 39, which reads under:

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

2) The powers of the Corporation with respect to the disposal of land under subsection (1) shall be so exercised as to secure, so far as practicable, that:

(a) where the Corporation proposes to dispose of by sale any such land without any development having been undertaken or carried out thereon, the Corporation shall offer the land in the first instance to the persons from whom it was acquired, if they desire to purchase it, subject to such requirements as to its development and use as the Corporation may think fit to impose;

(b) persons who are residing or carrying on business or other activities on any such land shall, if they desire to obtain accommodation on land belonging to the Corporation and are willing to comply with any requirements of the Corporation as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them.

3) Nothing in this Act shall be construed as enabling the Corporation to dispose of land by way of gift, mortgage or charge, but subject as aforesaid reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner, whether by way of sale, exchange or lease or by the creation, of any easement, right or privilege or otherwise.

25. Thus, upon scanning all the provisions of the Act, it is apparent that the MIDC can acquire, possess and dispose of land. That disposal is for performing the public duty. That the Corporation is a public body and therefore bound by the constitutional mandate, is apparent. The corporation, therefore, cannot urge, and as an absolute principle of law, that the land held by it can be disposed of by it to individuals in terms of the regulations. There is no obligation, according to the learned senior counsel Mr. Shah, on the corporation to dispose of the land by public auction only.

26. However, it is too late in the day to urge that the corporation can, at its absolute will, pleasure and without following the normal and general rule of disposal of property by public auction, deal with its lands by entertaining individual applications. The purpose of inviting applications and bids from interested parties and by inserting an advertisement or publishing a tender notice is obvious. That is to enable the public body to obtain maximum returns or competitive bids for disposal of its properties and assets. It has been a well settled rule by series of judgments of the Honourable Supreme Court that sale of public property by private negotiations is not visible to the public eye and may even give rise to legal disputes. It should not be permitted unless there are special reasons to justify doing so. Public property owned by the State or by any statutory body of the State should be generally sold by public auction or by inviting tenders not only to get the highest price but also to ensure fairness in the activities of the State and public authorities.

27. It is not without reason or logic that the Supreme Court is emphasizing that public property should be generally sold by this method as that ensure fairness, justness, reasonableness and transparency.

28. It may be that, there is an exception as it is normally and ordinarily there in every law, namely, that a public body or a public corporation may dispose of plots of land by entertaining individual applications. However, such decisions should be exceptional and not as a matter of rule. If the rule is that the public auction or open tenders is the mode of disposal of public property, then, exception cannot become the rule. Merely because a individual application can be entertained and property can be disposed of to individuals does not mean that the corporation is displaced from its position as a trustee of the public. Even when the manner of disposal is of this nature, the corporation is bound to act fairly, reasonably and in a transparent manner. It cannot pick and chose applications, nor it can reject applications indiscriminately. The mandate of Article 14 of the Constitution of India has to be abided by even when the property is being disposed of by entertaining individual applications. The regulation, makes this aspect very clear inasmuch as on receipt of any application for allotment of land, the Chief Executive Officer is bound to make such inquiries as he deems necessary and place the application before the land committee with his recommendations and the land committee can make allotment of a plot of land where the requirement of the applicant exceeds the area laid down by the corporation. Thus, the regulations put in place a mechanism which ensures orderly and proper disposal of even these applications. The land committee, which is defined to mean the committee formed by the corporation for the purpose of dealing with all matters connected with the acquisition and disposal of land and built up sheds and property owned or transferred to the corporation by the State Government, thus acts as a trustee of the public. The land committee in this case was not the committee before whom the application of the petitioner or the respondent No. 5 was placed.

29. We are really concerned with the manner of individual allotment and in favour of Respondent No. 5. In both affidavits of the MIDC it has not been stated that the application of the Respondent No. 5 was placed before the land committee. The affidavit also does not indicate that the Chief Executive Officer made any recommendation in terms of the regulation No. 10. Therefore, the land committee was not the committee which decided the course of allotment nor did it decide to allot the land to Respondent No. 5. It is the board of directors which took this decision and that is what is being justified before us. True it is that there is a board contemplated and it may be meeting regularly. However, what one finds in this case is that the Respondent No. 5 has made an application straightway to the Minister of Industries and what is further clear is that there is a circular dated 10th December, 2009. That states that all such applications, as are received individually for allotment of MIDC plots, should be made on line. What this circular, issued by the corporation itself and copy of which is to be found at page 304 of the paper book, states is that all Regional offices should

receive such applications on line. It should maintain a list of such applications and assign them serial numbers. The applications shall be taken serial number wise or seniority wise, meaning thereby the oldest pending application will be taken up first and thereafter the fresh applications. It is this circular which refers to the powers and authority of the land committee and states in clearest terms that wherever in any industrial areas plots are to be allotted on individual application basis, then, the same should be considered in the above manner viz. seniority wise and allotment should be made after approval of the land committee. Similarly, there is a procedure laid down for making allotment by public auction. Therefore, it is futile to urge that the corporation is not bound by the mandate to act fairly, reasonably, rationally and in a transparent manner when it makes individual allotments. Even this process ought to be just and open.

30. In the present case, the corporation has stated on oath as to how the application of Petitioner was received and equally that of the Respondent No. 5.

31. In that regard, the Annexures to the writ petition would disclose that the petitioner made an application on 3rd June, 2009 and requested for a specific plot viz. Plot No. 22 and if possible the remaining land around it to fulfill their expansion plan. The corporation in its affidavit maintains that the petitioner made an application on 9th October, 2009 and also requested for allotment of other Galas. That is how Para Nos. 9 to 12 of the affidavit in reply would read:

9. The answering respondent submits that the petitioner has deliberately and intentionally suppressed the material fact from this Hon"ble Court and therefore he is not entitled to claim any relief from this Hon"ble Court. It is further submitted here that the plaintiff with deliberate intention has not stated anything about the applications submitted by them for the allotment of other certain galas for the expansion purpose. This clearly proves that the petitioner with an ulterior motive has filed the present petition and on this ground alone the petition is liable to be dismissed with costs.

10. The petition as filed deserves to be rejected as the petitioner has no legal enforceable right in the said land. Also, the petitioner is guilty of stating falsehoods and half-truths, and deserves no indulgence from this Hon"ble Court.

Without prejudice to the aforesaid preliminary objections the defendants submits its parawise reply as under and the facts which are not specifically & categorically admitted shall be deemed to have been denied.

11. With reference to paragraph No. 1 it is submitted that the contention raised by the petitioner in this paragraph are matter of record and the contentions raised are within the knowledge of the petitioner. However, it is specifically denied that respondents have illegally allotted the plot to the respondent no. 5.

12. With reference to Para No. 2 it is submitted that the petitioner has no legally enforceable right to challenge the action of the answering respondent in respect of the allotment of plot no. T-22. It is specifically denied that the answering

respondent without following any due process of law allotted the plot in favour of respondent No. 5. The petitioner totally failed to prove the said contention and also failed to establish the said contention raised in this paragraph. The petitioner has specifically admitted that he has filed an application for expansion purpose. So far as the filing of application is concerned, the same does not create any right in favour of the petitioner. Moreover, the petitioner cannot claim the plot for expansion purpose as of right. Moreover, the allotment of plot for expansion purpose from the Chikalthana Industrial Area is not at all applicable as per the circular issued by the Corporation. It is specifically denied that the respondent no. 5 is not interested in running the unit and the said contention seems to be premature at this stage for the reason that the respondent no. 5 has to submit the building plan and only after the grant of approval and sanction to the said plan respondent no. 5 is entitled to commence the construction over the plot which is allotted in their favour. It is specifically denied that the respondent no. 5 is doing the commercial business with the help of the answering respondent. The petitioner is hereby called to produce strict proof of each and every contention raised and allegation made in this paragraph.

In paragraph 12 the Corporation distorts the picture by saying that the petitioner by application in the year 2009 requested to allot other Galas for their expansion purpose. This is not the tenor of Exhibit-B page 26. It is a copy of application dated 3rd June, 2009. That application reads as follows:

Real team

Count on Us

3rd June, 2009. To, Regional Officer MIDC Aurangabad

Subject: Allotment of Shed/Plot in Software Technology Park, Chikalthana, MIDC.

We have been operational unit for the last 7 months and are already the largest employer in the STP Building of Software Technology Park. For our growing needs and expansion plans, we have a requirement of additional space. We hereby apply for allotment of existing Shed located on Plot No. 22 and if possible the remaining land around it to fulfill our expansion plans.

We are willing to pay appropriate amount for the already built Shed as per the depreciated value of the structure and cost of the land surrounding it as per the STP norms.

Our goal and objective is to create more employment opportunities for the local youth and contribute to growth of I.T. related industry in Aurangabad. Within a short span of time, we have scaled-up our operations considerably, generating jobs thereby stimulating the local economy which is the primary objective of the Government of Maharashtra's I.T. policy. Taking into consideration our immediate plans and requirements, we request you to do the needful at the earliest. Looking forward to a positive response.

Thanking you. Yours truly. Sd/- Sachin D. Chapke, Managing Director

32. All communications, following the same, viz. 7th July, 2009, 9th October, 2009, 5th November, 2009 upto 8th February, 2010 make a specific request, that is to allot plot No. T-22. It is true that in the letter of 8th February, 2010 the petitioner referred to requirement of 8 Galas and did not give specific number. However, it is apparent that neither of the applications have been considered and this is the fate of every single written request upto July, 2010. Pertinently, in the communication of 26th July, 2010, page 33, the petitioner referred to plot No. T-22 specifically.

33. At the same time what one finds from Annexure-I, page 34 that the respondent No. 5 Dr. Smt. Namrata S. Punekar made an application for allotment of Gala/plot on 19th July, 2011. The corporation decided to offer her plot No. T-22 with the condition that she will have to pay the cost of shed and abide by the circular dated 29th January, 2008. The application of the respondent No. 5, however, was taken up with alarming expediency, considered and a plot offered to her within about eight months from her request.

34. In that regard, what one finds is that she received the plot allotment letter on 21st March, 2012 and in the letter accepting the offer she prays for reduction of the land rates. Thus, it is very surprising that her application is processed with enormous speed and she received this letter of allotment as well. The application of the Respondent No. 5 and which is in the prescribed format, according to the MIDC, was placed before the officers in-charge of processing the applications and Mr. Talhar has invited our attention to page 63 of the paper book which is an intimation that the MIDC has stopped accepting forms on line for allotment of plots in the very Industrial Estate in which the respondent No. 5 requested for allotment. It has been pointed out and very rightly by Mr. Talhar that at one stage on 13th November, 2009 the MIDC took a decision that the plot No. T-22 should be auctioned and the firm decision was even communicated at the official level. In this communication, reference is made to the letter of 5th of November, 2009 addressed by the petitioner in which the attention of the authority was invited to the delay in taking a decision, whether to allot the plot on individual application or to auction it. Therefore, this communication emphasises the need to auction the plot. We are not impressed by the arguments that an earlier petition was filed in this Court and it is urged that the said writ petition having been disposed of the present writ petition is not maintainable. A perusal of the order passed by this Court, in that writ petition, copy of which is at Exhibit-R-4/G, page 292 of the paper book, reveals that it was filed by another petitioner viz. Sujata Sadashiv Raut. It may be that the petition relates to Plot No. T-22 but what one finds is that the Court did not enter into the merits of the claim of the petitioner in that writ petition being Writ Petition No. 2989 of 2012 and the defences raised by the respondents. All that this writ petition directs is that a decision be taken by the MIDC on its own merits and in accordance with law. Therefore, there is no substance in the objection to the maintainability of the

present writ petition.

35. Now, if we peruse the application made by the respondent No. 5, and which is directly made to the Minister of Industries, Government of Maharashtra, what is revealed is that the Minister endorsed thereon that the application be scrutinised on priority basis. That application was placed before the officers and the officers recorded that there are 36 plots in the STP Sector. 34 plots have been already allotted and plot No. T-22 is reserved for the Maharashtra State Electricity Board. As far as the plot No. T-22 is concerned, the policy or the decision taken in regard thereto is that it should be allotted on tender basis. Further, the officers endorsed that the requirement of the respondent No. 5 for manufacture of Ayurvedic Medicines does not fit in the reservation specified, viz. information technology. Therefore, the officers opined that in the Information Technology Sector or Information Technology Park allotment for any other purpose particularly Ayurvedic Medicine manufacture will not be proper and the request of the respondent No. 5 should not be granted. The plot should be auctioned or disposed of by inviting tenders. This is the endorsement made on the file, copy of which is at page 124 of the paper book. After that, the file moved and what one finds is that the respondent No. 6 was insisting that the application be scrutinised and on priority basis. At page 126-127 the officers once again record their opinion that it will not be proper to allot plot No. T-22 on individual application basis. They stated that the consistent view has been to allot it only after inviting tenders. In fact, the request of the Applicant/respondent No. 5 was specifically rejected and it was endorsed that as per the policy a regret letter may be issued to her. However, the Minister suggested that this matter be put up before the board meeting for appropriate decision and that is an endorsement on 12th September, 2011. Prior thereto, the officers had already endorsed that the application of the respondent No. 5 be rejected.

36. On 14th November, 2011 there is another file noting and what one finds is that the Respondent No. 5 went on pursuing her request for allotment and though that was not acceptable to the officers. The attention of all concerned was invited to the circular dated 29th January, 2008 as well. It also appears that the board meeting was held on 30th November, 2011 and item 7.01 is the decision taken on the request made by the respondent No. 5. The request has been granted by assigning a reason that the very plot which she sought was attempted to be disposed of by inviting tenders way back in the year 2005. However, there was only one bid received. Thereafter, the Respondent No. 5, who is a highly educated woman entrepreneur has requested for allotment of the plot and she wants to make immediate investment and start production. Therefore, it was resolved to accept her application and allot her the plot No. T-22 in terms of circular dated 29th January, 2008.

37. A perusal of the circular dated 29th January, 2008 reveals that the board does allot plots to individuals on "first come first serve" basis. True it is that in this circular the corporation is empowered to consider some applications out of

turn but those are in cases where the investment is huge, there is an intention to commence the production immediately, there are some foreign investors and when they apply there is a scope for augmenting the foreign exchange reserves that such applicants should be allotted the plots before others. This is all the more because the experience of the corporation is that there are investors who invest in the plots, do not use them and when the prices increase and the market potential is tremendous that they approach the corporation to sanction or permit transfer of the plots. It is in these circumstances, that the corporation decided that wherever there is increasing demand for allotment of plots and for industrial estate at Shendra, Waluj, Butibori, Additional Patalganga, Additional Ambarnath, Ranjangaon, Talegaon then the allotment should be made in such MIDCs/ Industrial Areas in the above manner but on the terms and conditions which have been laid down in this circular of 29th January, 2008 and which conditions have to be abide by and enforced strictly.

38. We are of the opinion that the case of the Respondent No. 5 ought to have been considered in terms of this circular but by applying its first part viz. to consider individual applications on "first come first serve" basis. In her case, there is absolutely nothing to indicate that any exception to a rule can be made. She is not a foreigner, her investment does not appear to be huge enough, nor is her product such that it would generate employment potential to a great extent. She was not an applicant desirous of setting up a heavy or big industry. In these circumstances, the sanction given to her is contrary to the avowed policy of the corporation. The corporation could not have deviated from its own policies and decisions taken earlier. The officials at senior level had from time to time recommended that the respondent No. 5 should not be allotted the plot but the plot must be disposed of on tender basis and by inviting bids. There appears to be a policy circular of 10th December, 2009, copy of which is at page 304 of the paper book, and which endorses the earlier policy and contents of all the earlier circulars. All this was before the board of directors and we do not understand how the board of directors could have taken a decision over-ruling all these views. The views of the officers were in consonance with the object and purpose of M.I.D. Act and the consistent policy of the corporation. That the plot was earlier tried to be auctioned way back in the year 2005 and that no bids were received at that time, is not the answer and to refuse a public auction or disposal of the plot by inviting tenders from interested parties. Thus, an open auction was the view and suggestion of the corporation officials in 2011. This was their opinion despite the plot could not be disposed of earlier by public auction. The officers were aware that after 2005 there is a change in the industrial and economic scenario. The very plot would now fetch more than the market rate and therefore it should be auctioned by inviting tenders was their view and which was communicated to the board as well.

39. In these circumstances, we are surprised that the corporation turned around and allotted the plot to respondent No. 5 by entertaining her application. Her request made in July, 2011 was not acceptable to the corporation and that is

clear from the endorsements in the files in the month of August, 2011. In the circumstances, the corporation could not have changed its views and decisions in the month of November, 2011. There was no material other than the application of respondent No. 5 which would enable the board to overrule the views and suggestions so also recommendations of the senior officers of the corporation. The board could not have picked up the respondent No. 5 for allotment of a plot only because she approached the Minister of Industries and the Minister of Industries being the Chairman of the Corporation, requested the corporation to process her application expeditiously. The Minister may have endorsed this view on the file but he was aware that he could not have made any allotment by himself. At best he could have requested the corporation to consider the application of the respondent No. 5 favourably. Beyond that, as a Chairman of the Corporation, he could not have discarded or brushed aside the views and suggestions and recommendations of the senior officers. In these circumstances, merely because he was present at the board meeting and presided over it as the Chairman of M.I.D.C. does not mean that the corporation should have granted the application of the respondent No. 5.

40. The reasons assigned for justifying the allotment and to which we have made a detailed reference herein above, do not appeal to us at all. A Minister in-charge of the department of Industries, as is well settled, performs a public duty. He acts as trustee of the public just as the corporation acts in that capacity. Therefore, a public property should have been disposed of by public auction and which ensures complete transparency. That avoids the charge of nepotism, corruption and favouritism. Even when individual applications have to be considered, there is a policy of the corporation and which is enunciated in its own circulars. There was no reason to deviate from that policy. The justification that a woman entrepreneur has approached the corporation and she needs to be encouraged can hardly deserves acceptance. We find that this is a desperate attempt to support the board resolution dated 30th November, 2011. We are of the view that the technical objection that the board resolution is not challenged or there is no prayer clause to that effect will not mean that the petition deserves to fail. The technical objection has no substance because throughout the petition, the petitioner has made a reference to the decision of the corporation, including that of the board and has raised grounds to question and challenge the same. The absence of prayer, therefore, does not mean that the petition must be dismissed.

41. Equally, we do not find that the corporation has any material in its possession and which it could have placed before the court in support of its stand that the petitioner was never interested in allotment of plot No. T-22. We have found that the said objection has no substance because the petitioner was throughout pressing for allotment of that plot and in that process also invited the attention of the MIDC to the vacant Galas or plots. If there was a policy to consider individual applications, then, that is the one which is invoked by the petitioner. Even when implementing and enforcing such policy the corporation deals in

public property and, therefore, must act fairly, reasonably and in a non-arbitrary and non-discriminatory manner. Even in the matter of considering individual applications, the mandate of Article 14 of the Constitution could not have been brushed aside or deviated from. That has been completely brushed aside and the decision to allot the plot to respondent No. 5 suffers from complete arbitrariness on the part of the corporation. The corporation has not acted fairly and reasonably in not considering the request of the petitioner but taking up for consideration the request of the respondent No. 5 and accepting it promptly. Such conduct of a public corporation may expose it and its officers to serious allegations and charges of breach of trust and cheating. If such conduct is not deprecated and dealt with sternly and strictly, then, the mandate of the constitution and the guarantee of equality would be reduced to nullity and rendered meaningless. Then such public bodies would merely go by the directions of the Ministers Incharge of the department under which they are working/functioning. The Minister's command would then be the last word in every decision of a public corporation and particularly while disposing of its properties. That would completely destroy the faith of the public in open governance and the regime of transparency guaranteed by enactments like the Right to Information Act, 2005. It is apparent that the Ministers have a limited role to play in such matters. They have to guide the corporation policies and ensure that the corporation abides by and acts in accordance with the same. They cannot dictate the policies nor issue directions to allot or dispose of properties of a public corporation to a few and chosen individuals. That would be contrary to the rule of law. The doctrine of due regard and credit to the Constitution of India is eroded by overruling the views of the senior officers of a public corporation and preferring commands of the Ministers in-charge of the Department and who happen to head the public body in that capacity. The tendency to overrule honest officers and demoralise them by overruling their views ought to be discouraged. In these circumstances, we cannot uphold the decision of the corporation to allot the plot No. T-22 to respondent No. 5.

42. We find that when this petition was entertained by the Court it issued an ad-interim order and which is operating from 13th November, 2012. This court also modified it and by accepting an undertaking from the respondent No. 5 that the plot allotted to it/her will not be used during the pendency of the petition or thereafter for the purpose for which it was allotted. In the light of said undertaking being given, we do not find that any equities are created in favour of the respondent No. 5. Once we are of the opinion that she has no right to insist on allotment of plot No. T-22 which was falling in and reserved for use as information technology park, then, all the more this is not a case where the usual and normal direction cannot be issued. That deserves to be issued in the present case.

43. As a result of the above discussion, the writ petition is allowed. Rule is made absolute in terms of prayer clause (D).

44. Needless to clarify that this order and direction does not prevent or prohibit the corporation from disposing of the plot No. T-22 by inviting tenders from interested parties upon insertion of advertisement in widely circulated newspapers. Our order and direction also does not prohibit both the petitioner and respondent No. 5 from submitting their bids. However, the corporation must follow its avowed policy and reservations and accept the bids of only those entities and parties who are interested in utilising and using the plot for setting up an information technology industry or related activity. In the event reservation of I.T. Park in relation to this plot subsists then the corporation must make an allotment in terms thereof and strictly abide by its policy and circulars issued and in force so also the mandate of Article 14 of the Constitution of India. Every allotment and decision to allot such plots must be guided by the object and purpose for which the MIDC is set up and established by the State. Hence, needless to clarify that the mandate of Maharashtra Industrial Development Act, 1961 and the Maharashtra Industrial Development Corporation, Disposal of Land Regulations, should also be followed and abided by in making all such allotments. The writ petition is allowed in these terms. We also award costs quantified at Rs. 50,000/- [Rupees fifty thousand only] and which should be paid by the respondent Nos. 2 and 5 to the petitioner, within a period of four weeks, in equal proportions.