

(2016) 06 BOM CK 0018

In the Bombay High Court

Case No : Public Interest Litigation No. 68 of 2013

Somnath Gangadhar Karale

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 14-06-2016

Acts Referred:

Citation : (2016) 4 AIRBomR 724 : (2016) 5 BCR 185

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. N.V. Gaware, Advocate, for the Appellant; Mr. S.B. Yawalkar, Addl. Government Pleader, Mr. R.N. Dhorde, Senior Advocate, i/b. Mr. V.R. Dhorde, Advocate, Mr. S.S. Dande, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Sangitrao S. Patil, J.—;Heard. Rule. The respondents waive notice. With consent of the parties, Rule is made returnable forthwith and the petition is heard finally.

2. Respondent no.2 passed an order dated 29.05.2013, whereby the irregularities/illegalities committed in allotment of certain plots after the year 2006 within the territorial limits of Maharashtra Industrial Development Corporation ["MIDC", for short], Nagapur, Ahmednagar, have been sought to be excused and the allotment of the plots has been ordered to be regularised on the condition that the allottees should pay 10% of the amount more than the rates prevailing at the time of allotment of the plots with interest at the rate of Rs. 12/- percent per annum or at the prime lending interest rate of the State Bank of India, whichever is higher. The said order has been impugned by this petition. The petitioners have further prayed for the following reliefs :

(B) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ of mandamus directing the Secretary for the Ministry of Industries, Maharashtra State, to conduct an enquiry regarding illegal conversion

of open and amenity spaces into industrial and commercial plots within the limits of Nagapur M.I.D.C., Ahmednagar, by illegally modifying the development plan & further illegal allotment of said plots in favour of certain businessmen and to submit the report to this Hon''ble High Court and for that purpose issue necessary orders.

(C) Issue a writ of certiorari or any other appropriate writ, order or direction in the nature of writ of certiorari to quash and set aside the entire process of illegal conversion of open and amenity space into the commercial and industrial plots and further allotments of the said plots in favour of certain businessmen and for that purpose issue necessary orders.

(D) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ of mandamus directing the Secretary for the Ministry of Industries, Maharashtra State, to conduct an enquiry regarding illegal allotment of plots in single family and also regarding subletting of said plots without prior permission of respondent Nos. 4 and 5 and to take necessary action of confiscation of said plots as far as Nagapur M.I.D.C., Ahmednagar, is concerned and for that purpose issue necessary orders.

(E) Issue a writ of mandamus or any other appropriate writ, order or direction in the nature of writ of mandamus directing the Secretary for the Ministry of Industries, Maharashtra State, to conduct an enquiry against the erring officers, who are responsible for illegal conversion of open and amenity spaces into industrial and commercial plots within the limits of Nagapur M.I.D.C., Ahmednagar, by illegally modifying the development plan and further illegal allotment of said plots in favour of certain businessmen and to launch criminal prosecution against the said erring officers & to submit the report to this Hon''ble High Court and for that purpose issue necessary orders.

3. Respondent no.1 is the State of Maharashtra represented through the Secretary, Industries, Energy and Labour Department, Mantralaya, Mumbai. Respondent no.2 is the Chairman of MIDC and also the Cabinet Minister for Industries. Respondent no.3 is the Managing Director of the MIDC. Respondent no.4 is the Regional Officer, while respondent no.5 is the Area Manager of the MIDC having their offices at Andheri (E), Mumbai, Satpur (District : Nashik) and Nagapur (District : Ahmednagar), respectively. Respondent no.6 is the Association of Ahmednagar Manufacturing Industries which is represented through its General Secretary, namely, Shri Milind Eknath Kulkarni.

4. The petitioners claim themselves to be the persons espousing the public interest. They have no personal interest in the property subject matter of the petition. They have raised concern over illegal allotment of plots for mercantile as well as industrial purposes to some of the allottees after the year 2006, which has caused a great loss to the public exchequer and at the same time deprived the needy persons of the opportunity to have the plots for industrial or mercantile purposes. The case of the petitioners, in short, is that the Regional

Officers, namely, S/Shri P.J. Shinde, R.K. Gawade, Gajanan Patil and Ramdas Khedkar were working for the MIDC of Nagapur, Ahmednagar, during the periods from 10.09.2002 to 06.05.2006, 31.05.2006 to 02.04.2010, 02.04.2010 to 12.08.2010 and 12.08.2010 onwards, respectively. During the tenure of the said Regional Officers, they illegally converted the open and amenity spaces into plots and allotted them to various persons illegally. They illegally and unauthorisedly changed the locations of open spaces and amenity areas by modifying the sanctioned layout plan without prior sanction of the Competent Authority. The said Officers allotted a number of plots to particular families/industries as mentioned in the list at pages 19 to 21 of the petition.

5. According to the petitioners, prior to allotment of the plots, it was necessary for the said Officers to follow the procedure as prescribed in the circulars issued by respondent nos. 1 and 3 from time to time and also as per the provisions of the Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975 ["Regulations of 1975", for short]. However, they illegally allotted the plots in total disregard to the said provisions and circulars. It was necessary for the Officers of the MIDC to hold auction for allotment of the plots after giving wide publicity thereof in order to achieve transparency and rule out the possibility of favouritism, nepotism and arbitrariness. However, it was not at all done. The information collected by the petitioners from the offices of the MIDC disclosed that the Officers of the MIDC indulged in corrupt practices and illegally allotted the plots to the persons of their choice and thereby deprived the needy persons of the said plots.

6. The petitioners made grievance against the said illegal allotment of plots to respondent no.1 from time to time, but they did not get any positive response. Some of the files regarding allotment of plots were found to be missing. The petitioners alleged that some of the plot holders illegally sold out or sublet the plots allotted to them.

7. A Committee headed by Shri Gatne, the then Regional Officer of the MIDC was appointed to enquire into the irregularities/illegalities in allotment of the plots. The said Committee submitted its report on 04.12.2010. Thereafter, the Internal Committee comprising of the Regional Officer, MIDC, Nashik, and Senior Town Planner of the MIDC, Mumbai, was directed to conduct enquiry and submit report. Accordingly, the said Committee submitted report on 29.08.2011 to the Deputy Chief Executive Officer. It was transpired in the enquiries that the open spaces and amenity areas were converted into plots without approval of Minor Modification Committee (MMC). The said plots were directly allotted to some persons for industrial purpose at the level of Regional Officer and Area Manager instead of getting them allotted as per the prescribed procedure through the Plot Allotment Committee constituted at the Headquarters, headed by Joint Chief Executive Officer. Though, it was the policy to allot plots of Ahmednagar Industrial Area by auction, the plots created from open spaces and amenity areas were straightway allotted to certain persons. It was noticed that some of

the allottees had not started their respective industries over the plots allotted to them and some third persons were running industries over those plots. The original allottees had sublet or sold out the said plots illegally. In some of the plots, constructions were found to have been carried out by encroaching upon the marginal spaces. Some of the plots were divided into two to four subplots and some third parties were found utilising them illegally. Some of the plots were found to have been kept vacant. It was transpired that some of the plots were allotted without getting them demarcated. Despite all these illegalities and irregularities, respondent no.2 ordered regularisation of allotment of the industrial and mercantile plots to the allottees concerned on additional payment of the amount to the extent of 10% of the price thereof that was prevailing when they were allotted, along with 12% interest or interest at the prime lending interest rate of the State Bank of India, whichever was higher. Respondent no.2 further extended time to the allottees to construct buildings and develop the plots by 31.12.2014. On the basis of these averments, the petitioners claimed the above referred reliefs.

8. Respondents 4 and 5 filed affidavit-in-reply on 05.10.2013, additional affidavit on 15.10.2013 and one more affidavit on 18.11.2013 to challenge the case of the petitioners. According to them, no illegalities/irregularities have been committed by the Regional Officers of the MIDC in allotment of industrial and mercantile plots to the allottees. It is stated that plots can be allotted by entertaining individual applications as per Regulation 4(ii) of the Regulations of 1975. According to them, the prescribed procedure was followed for allotment of the plots. As per the Development Control Regulations for M.I.D.C., 10% of the total area of the land of MIDC is required to be kept as open space and 5% of the area is required to be kept for amenities, such as, post office, telephone exchange, schools, colleges, educational institutions, training centres, etc. It is stated that there is no bar to convert open spaces and amenity areas into industrial or mercantile plots provided the area to the extent of 10% and 5% is left out as open space and amenity area respectively. Accordingly, after allotment of the plots to the allottees who had filed applications, more than 10% of the land has been reserved as open space and more than 5% of the land has been left for amenities. It is stated that the Regional Officers followed the circulars issued by the MIDC as well as the provisions of the Regulations of 1975 in allotment of the plots. It is stated that there is no bar for allotment of more than one plot to the members of a single family if they fulfil all the requirements for allotment of plots. It is denied that the allotment of the plots was not transparent or was tainted with corrupt practices, nepotism, favouritism and arbitrariness. It is stated that the allotment of the plots during the year 2006 to 2010 has not been challenged by any aggrieved person.

9. Respondents 4 and 5 have further stated that on enquiry, it was found that certain irregularities were committed by the Officers of the MIDC, namely, Shri Patwa and Shri Mandape who have been suspended on 16.06.2010 and the departmental enquiry is going on against them. A Committee headed by Shri

Gatne, the then Regional Officer was appointed on 12.11.2010 to examine the irregularities in allotment of the plots. The said Committee submitted its report on 04.12.2010. Thereafter, Internal Committee was constituted by the MIDC, comprising of the Regional Officer, Nashik, Senior Town Planner, Nashik and Senior Town Planner, Head Office of the MIDC, to enquire into the matter. The said Internal Committee submitted its report on 29.08.2011 pointing out certain irregularities and recommended penal action as per the MIDC Development Control Regulations ["D.C. Regulations, for short]. Respondent no.6 Association vide letter dated 20.02.2013 put forth various hardships faced by its members and adverse effect on the industrial growth because of certain administrative deficiencies. Respondent no.2, in good faith, considered the relevant factors as well as the object of MIDC to promote and assist the rapid establishment, growth, the development of industries and employment. Respondent no.2 passed the order on 29.05.2013 to regularise the allotment of plots on the above mentioned conditions. Respondents 4 and 5 strongly resisted the PIL on the ground that it is not at all maintainable.

10. Respondent no.6 filed affidavit-in-reply on 23.09.2013 and additional affidavit on 02.09.2015 through its General Secretary, namely, Milind s/o. Eknath Kulkarni. Shri Kulkarni stated that the present petition has been filed with dishonest and mala fide intention to threaten the Officers of the MIDC as well as the allottees of the plots with a view to harass them and grab money. It is stated that petitioner no.1 is claiming himself to be a member of an organization, namely, "Sambhaji Brigade" and misusing the name of the said organisation with an ulterior motive. He contacts different Officers with a view to make gains. He is a jobless person. The information given by him in the petition is totally incorrect.

11. It is further stated by respondent no.6 in his affidavit-in-reply, that so far as petitioner no.2 is concerned, he is working in a Company situated in MIDC, Nagapur. He is interested in favour of some industrial units who are in need of plots. He is working in connivance with petitioner no.1 with a mala fide motive. It is stated that petitioner no.3 is a shopkeeper running his shop in the MIDC area. He is indulged in money lending business and other illegal acts of harassing people. According to respondent no.6, the petitioners are not the persons interested in the public interest. They are misusing the process of law for their personal gains. It is further stated that petitioner no.1 called one Shri Waghmode, the Director of M/s. Siddhi Forging Pvt. Ltd., on phone, on 07.08.2013, illegally demanded money and threatened that in case if his demand was not complied with, he would file proceedings before this Court or before some other forum. The conversation between petitioner no.1 and Shri Waghmode has been recorded. On these grounds, it is prayed that the petition may be dismissed with heavy costs and stern action may be taken against the petitioners.

12. About merits of allotment of plots, it is stated by Shri Milind Kulkarni that the allottees of the plots of MIDC have already constructed the buildings after taking

necessary permission from the MIDC. They have started manufacturing their products. They have paid the fine amount of about Rs. 7,00,00,000/- for getting necessary permission and 114 allottees have obtained building completion certificates. The applications of 23 allottees are in process and are being considered by the MIDC, according to law. It is stated that the allotment of the plots to these persons has been made completely as per the provisions of law. The said persons have borrowed a huge amount of loan for running their industries. About 4500 workers have got jobs in the said industries. It is stated that in the year 2006-07, there was no demand from the public for allotment of plots in the MIDC area, Nagapur. Therefore, the plots were allotted on receiving the applications from the persons interested in view of the circular dated 14.05.2007. It is denied that the allotment of the plots was illegal, arbitrary and tainted with favouritism. It is stated that whatever irregularities were there in allotment of the plots, have been regularised by respondent no.2 vide order dated 29.05.2013. The allottees have fulfilled the conditions laid down by respondent no.2 in the said order. In the circumstances, respondents prayed for dismissal of the petition.

13. Respondent no.1 filed affidavit-in-reply through one Pratap P. Jadhav, Additional Collector & Deputy Chief Executive Officer of MIDC, Andheri (E), Mumbai, on 23.10.2013. He produced the first layout plan of MIDC, Nagapur, that was prepared in the year 1995 as well as the layout plan prepared in the year 2004/05 and 2010/11. He further produced the copies of the D.C. Regulations of 1999 and 2009, besides the copy of Maharashtra Industrial Development Act, 1961 ["MID Act" for short]. He states that as per the circular dated 11.05.2007, Minor Modification Committee comprising of Senior Officers of the MIDC has the power to approve minor changes in the Development Plan/Layout. The said Committee is empowered to change and modify the approved plan considering the exigencies. He further states that the circular dated 21.06.2011 provides for the residential or other usage (mercantile, education, institutional, etc.) on the plotable area of the MIDC. He referred to the circular dated 05.09.2013 which authorizes change of industrial plot to mercantile plot. He states that layout of the industrial area of Ahmednagar MIDC has been changed from time to time, considering the development requirements and needs of the industry. According to him, the layout of the year 1995 depicts that there is ample space for plotable area which is other than available open spaces and amenity areas. He supports the action of the MIDC, Nagapur, to change the locations of open spaces and amenity areas and further convert them into industrial or mercantile plots in accordance with the Development Control Regulations maintaining the stipulated percentage of open spaces and/or amenities areas.

14. With the above referred summary of the pleadings of the parties, we propose to consider the submissions of the learned Counsel for the parties with reference to the controversial points raised therein.

Tenability Of The P.I.L.

15. The learned Counsel for respondent no.6 challenged the authority of the petitioners to institute this PIL on the ground that they are not independent persons espousing the cause of public interest. According to him, they filed this petition with an ulterior motive to threaten the Officers of the MIDC and the allottees of the plots and grab money from them. The learned Counsel pointed out to a script of the conversation alleged to have taken place between petitioner no.1 and one Shri Waghmode, the Director of M/s. Siddhi Forging Pvt. Ltd. (Allottee of 9 plots), to show as to how petitioner no.1 was trying to grab money from Shri Waghmode. We are not inclined to consider this conversation as authentic in the absence of the original recording thereof. Even Shri Waghmode has not filed any affidavit to attach authenticity to this conversation. Consequently, on the basis of the said conversation, the authority of petitioner no.1 to file this petition cannot be challenged. However, we are of the view that there should be thorough investigation into the alleged conversation between petitioner no.1 and Shri Waghmode, through the Police and necessary direction would be required to be given to that effect in the operative part of the order of this petition so that the truth would surface and necessary action could be taken against the wrongdoer.

16. There is nothing on record worth believing to show that the petitioners have filed this petition with a view to grab money and harass various Officers or other connected persons. Nothing is produced on record to show that these petitioners have filed any other petitions of the like nature wherein they were exposed. Even if it is accepted that petitioner no.2 is serving in some unit in MIDC and petitioner no.3 is running any shop in MIDC area, they cannot be said to be the persons having personal interest in this petition. The petition has been filed on the basis of the alleged irregularities and illegalities transpired in the inquiries conducted by the Committees comprising of the Officers of respondent nos. 1 and 2. No wild and reckless allegations have been made against anybody in the petition. In the circumstances, the judgment of the Hon'ble Apex Court in the case of P. Seshadri v. S. Mangati Gopal Reddy and others, AIR 2011 SC 1883, cited by the learned Counsel for respondent no.6, wherein it has been held that a petition filed for achieving oblique motives on the basis of wild and reckless allegations made by busybodies should not be entertained, is of no help to respondent no.6.

17. It is well settled that even if a person files a petition for vindication of his private interest, but raises a question of public importance, it is the duty of the Court to enquire into the matter. In the present case, the petitioners are not the persons vindicating their private interest. In the circumstances, we hold that the present petition is quite maintainable.

Enquiry Reports In Respect Of Illegalities/Irregularities In Allotment Of Plots

18. Undisputedly, a Committee headed by Shri Gatne, the then Regional Officer of the MIDC, Pune, was constituted to enquire into the illegalities/irregularities in

allotment of plots of MIDC, Nagapur. After conducting necessary enquiry, the said Committee submitted report dated 04.12.2010 which has been produced on record. The said Committee examined the process of allotment of plots of M.I.D.C., Ahmednagar during the period from January 2006 to October 2010 and collected detail information as mentioned in the tabular forms annexed to the report. The said Committee noticed that open spaces and amenity areas were converted into plots by the Regional Officer and Area Manager of M.I.D.C. at their own level without obtaining approval from the Headquarters and were allotted by entertaining individual applications. The said Committee noted that an amount of Rs. 41,72,425/- was received less on account of land price. The said Committee mentioned illegalities/irregularities in allotment of plots concerned in the tabular formats annexed to the report.

19. After considering this report and holding further enquiry, Internal Committee comprising of the Regional Officer, M.I.D.C., Nashik and the Senior Town Planner, M.I.D.C., Mumbai submitted report dated 29.08.2011. The said Committee noticed deficiencies, irregularities and illegalities in allotment of plots and submitted detailed information in respect of the plots concerned in tabular form annexed to the report. The said Committee further classified the deficiencies, irregularities and illegalities in respect of allotment of plots concerned and submitted Proformas 1 to 6 thereto. Now we propose to consider these reports point-wise with reference to the submissions advanced by the learned Counsel for the parties and the learned AGP.

Method Of Allotment Of Plots Of The Midc

20. The Internal Committee and Gatne Committee noted that the then Regional Officer and the Area Manager, at their own level, directly allotted the plots by entertaining individual applications.

21. The Internal Committee annexed additional chart in respect of the plots which were allotted for industrial development after January, 2006 by direct method (i.e. by entertaining individual applications) without following due procedure.

22. The learned Counsel appearing for respondents 4, 5 and 6 pointed out to Regulation 4 of the Regulations of 1975, wherein the manner of disposal of land/open lands of the MIDC has been enumerated. As per the said provision, out of the land covered by the layout so prepared, the MIDC may dispose of plots of land either by public auction or by entertaining individual applications. The learned Counsel for respondents 4 and 5 cited an unreported judgment in the case of Parshwanath Infra Tech Pvt. Ltd., Dhule v. The Maharashtra Industrial Development Corporation, Mumbai and others (Writ Petition Nos. 1489 & 1500 of 2015, decided by the Bombay High Court, Bench at Aurangabad, on 21.04.2016), wherein it is observed that in exceptional circumstances, individual applications are required to be entertained for allotment of plots. On the basis of Regulation 4 and the judgment in the above cited case, the learned Counsel for

respondents 4, 5 and 6 submit that allotment of the plots subject matter of this petition, by entertaining individual applications, cannot be said to be illegal.

23. As against this, the learned Counsel for the petitioners submits that the Officers of the M.I.D.C. unlawfully created plots from open spaces and amenity areas and allotted them to the industrialists without obtaining prior permission from the M.M.C. or Headquarters of the M.I.D.C. He states that the general rule for allotment of plots of the M.I.D.C. is by public auction and allotment of plots by entertaining individual applications is an exception. However, the plots have been illegally allotted to the persons of the choice of the Officers of the M.I.D.C. directly by entertaining individual applications on mass basis without calling for tenders or holding auction. He further submits that a number of plots have been allotted to certain families or industries, which shows corruption, favortism, nepotism and arbitrariness. The names of the allottees and description of the plots allotted to them given at pages 19, 20 and 21 of the petition, are as under :

Sr. No.

Name of the family

Plot No.

Area (Sq. Mtr.)

01.

Rupali J. Munot

A2/4

2396

J.J. Munot

C20/3/6

647

Rupali J. Munot

D42

1000

J.J. Munot

G112

5430

J.J. Munot

L135/5

2566

D.J. Munot

L176

872

J.J. Munot

L192

1801

J.J. Munot

F-78

7000

2.

M/s Ideal Steel

G-14/8

800

G10

940

G36

1000

G111

6705

L312

18

000

F91

17700

3.

M/s Siddi Forging Pvt.Ltd

L-3/1

10702

L-3/2

4220

E-2

24800

(E2/1

12800

E2/2

5464.33

E2/3

4885.14

L3/1

24000

F92

23290

F77

10000

4.

M/s Sai Distributors

X-19/2

1000

Shamsundar Naik

L135/2

Ms.Bharti Shamsundar

G41/2/A

810

Naik

G41/2/B

800

5.

Gore

G41

1000

G-42

1000

G-20/3

2550

G-102

1650

G-41/1

1000

6.

P.R. Agarwal

A11/1/8

1000

S.R. Agarwal

A11/1/7

1000

R.R. Agarwal

L198

1000

R.D. Agarwal

A11/1/5

1000

7.

S.A. Dhuppad

A11/1/16

23758

S.A. Dhuppad

A11/1/1

2445

P.S. Dhuppad

A11/1/9

1737

8.

Chhaya A. Gandhi

M98

600

Chhaya A. Gandhi

M99

600

R.Ashok Gandhi

L812/A

675

Ashok R. Gandhi

L220

4800

9.

M/s Automech

C-12/4

339

Industries - Sanjay

Nathmal Katariya

C-12/5 C/12/4/1

420 1350

10.

M/s Tecno Track Engineering

A-22

2100

A-40

1000

A-47/4

5969

24. The learned Counsel for the petitioners points out to the letter dated 15.09.2010 issued by respondent no.5 and the Information Officer of the MIDC wherein in answer to Question No. 8(c), it is clearly mentioned that in the area of Ahmednagar MIDC, the plots are being allotted by inviting tenders. He further points out to the Circular dated 12.12.2007 issued by the Chief Executive Officer of the M.I.D.C. wherein he has given the detail procedure for allotment of plots of the MIDC by calling tenders. He invites our attention to the Circular dated 14.05.2007 issued by the Chief Executive Officer of the MIDC wherein the procedure for allotment of stray plots for expansion of industry has been given. The learned Counsel submits that the allotment of the plots subject matter of the present petition has been done in total breach of the above mentioned circulars. Due to the said allotment, the public exchequer has been subjected to a huge loss. The allotment of plots is not at all transparent. Therefore, the allotment of plots subject matter of this petition is liable to be cancelled. In support of this contention, he placed reliance on the case of Real Team Systems Pvt. Ltd. v. The State of Maharashtra and ors., Writ Petition No.9279 of 2012 decided by the Bombay High Court on 20.02.2014 as also on Nagar Nigam, Meerut v. Al Faheem Meat Exports Pvt. Ltd. and ors., 2006 (13) SCC 382 and Mohamadiya Welfare Society v. State of Maharashtra and ors., 2013 (4) Bom.C.R.776.

25. It is true that as per Regulation 4, the plots of the MIDC can be allotted either by public auction or by entertaining individual applications. Undisputedly, the land of the MIDC, which is an instrumentality of the State, is public property. The learned Counsel for the petitioners points out to the following observations of the Hon'ble the Supreme Court made in the case of Sachidanand Pandey v. State of West Bengal, AIR 1987 SC 1109, which are reproduced in para 17 of the judgment in the case of Nagar Nigam, Meerut (supra) :

"On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established : State owned or public owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest when it is considered necessary to dispose of a property is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism. "

"The public property owned by the State or by an instrumentality of the State should be generally sold by public auction or by inviting tenders. This Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. They should undoubtedly act fairly. Their actions should be legitimate. Their

dealings should be above board. Their transactions should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favouritism or nepotism. Ordinarily, these factors would be absent if the matter is brought to public auction or sale by tenders. That is why the Court repeatedly stated and reiterated that the State owned properties are required to be disposed of publicly. But that is not the only rule. As O. Chinnappa Reddy, J. observed, "that though that is the ordinary rule, it is not an invariable rule". There may be situations necessitating departure from the rule, but then such instances must be justified by compulsions and not by compromise. It must be justified by compelling reasons and not by just convenience."

In para 18 of the judgment in the case of Nagar Nigam, Meerut (supra), the Hon"ble the Supreme Court has observed thus :

"The law is, thus, clear that ordinarily all contracts by the Government or by an instrumentality of the State should be granted only by public auction or by inviting tenders, after advertising the same in well known newspapers having wide circulation, so that all eligible persons will have opportunity to bid in the bid, and there is total transparency. In our opinion, this is an essential requirement in a democracy, where the people are supreme, and all official acts must be actuated by the public interest, and should inspire public confidence. "

26. In the case at hand, a large number of plots have been allotted by the Officers of the MIDC by entertaining individual applications without assigning any compelling reasons for doing so. Not only that, the said officers did not even obtain prior approval of the Committees concerned established by the MIDC at the headquarters for allotment of these plots. There is absolutely nothing on record to show as to why the plots were not allotted by public auction or by inviting tenders. The allotment of many plots to certain families/industries ex facie indicate nepotism, favouritism and bias. Though there is no bar to allot many plots to a single family or industry, such allotment cannot be said to be fair and transparent.

27. In Real Team Systems Pvt. Ltd., (supra) a single plot bearing No. T22 in Chikalthana Industrial area, which was adjacent to the plot of the petitioner Company, was requested to be allotted to the petitioner Company by sending an application to respondent no.4 MIDC. The petitioner was assured that as and when the plot would be auctioned, preference would be given to the petitioner or even otherwise, if the plot was to be allotted, then preference would be given to it. Therefore, the petitioner had expected legitimately and reasonably that its application would be considered by the MIDC. However, the said plot was allotted to respondent no.5 Company, without any tender or auction. The said action was challenged on the ground that it was contrary to the policy of the MIDC and even otherwise, illegal. After considering the relevant provisions, the Division Bench of this Court observed in para 27 as under :

"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. "

28. So far as the Regulation providing for disposal of plots by entertaining individual applications is concerned, the Court observed in para 29 as under :

"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. "

Ultimately, the Court set aside the action of allotment of plot No. T22 in favour of respondent no.5 therein and extended liberty to the MIDC to dispose of the said plot by inviting tenders from interested parties upon insertion of advertisement in widely circulated newspapers.

29. In the present case, a large number of plots have been allotted by the Officers of the MIDC by entertaining individual applications, that too, without following the due procedure for allotment of plots. The then Regional Officers and Area Managers of the MIDC allotted the plots subject matter of this petition at their own level. They allotted a number of plots to some of the families and industries. They did not even follow the procedure prescribed for conversion of open spaces and amenity areas into industrial/mercantile plots. There is no justification at all for allotment of the said plots by entertaining individual applications. The allotment of plots to the members of respondent no.6 by the then Regional Officers and Area Managers of the MIDC smells of corruption,

nepotism, favouritism and suffers from illegalities. In the circumstances, the case of Parshwanath Infra Tech Pvt. Ltd. (supra) would be of no help to respondent nos. 4, 5 and 6 to justify allotment of plots by entertaining individual applications. Consequently, in view of the judgments in the cases of Real Team Systems Pvt. Ltd. (supra), and Nagar Nigam, Meerut (supra), the allotment of all the plots subject matter of this petition and particularly referred to in the reports of Gatne Committee and Internal Committee, by entertaining individual applications, cannot be said to be sustainable and is liable to be cancelled on this sole count.

Illegal Conversion Of Open Spaces And Amenity Areas

30. There is no dispute that while preparing layout for development of land belonging to MIDC, the concerned Development Control Regulations have to be followed. As per Regulation 27 of the D.C. Regulations, 1999, open spaces and amenity areas are required to be kept in the Development Plan by the MIDC, to the extent of 10% and 5%, respectively, out of the total land. In para 6 of the affidavit filed by Shri Pratap P. Jadhav, the Additional Collector and Deputy Chief Executive Officer of the MIDC, it is stated that as per the D.C. Regulations, 60% of the total area is used for industrial purpose, 25% for infrastructure such as roads, pipelines, etc., 10% as open spaces and 5% for amenities such as post office, telephone exchange, schools, colleges, educational institution, training centres, etc. He has produced the copy of the layout plan prepared in 1995 in respect of MIDC, Nagapur, Ahmednagar. He has further produced the MIDC, Ahmednagar, at Exhibit "F", page 717. He has further produced the layout plans of the said MIDC, prepared in 2004-05 and 2010-11, at pages 718 and 719, respectively.

31. The learned Counsel for the petitioners submits that once the open spaces and amenity areas are earmarked in the layout plan, the locations thereof cannot be changed subsequently and the areas thereof cannot be converted into industrial or mercantile use. In support of this contention, he strongly relies on the circular dated 02.04.1997 (Page 50) issued by the Chief Executive Officer, MIDC, Andheri, Mumbai. In para 3 of the said circular, it has been specifically mentioned that the open spaces reserved as per the sanctioned layout plan of industrial area should be duly fenced and should not be allowed to be used for any other purpose excepting for playgrounds, garden and plantation. It has been further mentioned that in case, any person, institution or Company demands such open space, for any other purpose, the Officer concerned should reject it on the ground that it would be inconsistent with the layout plan. An Ad hoc Committee was appointed under the said circular comprising of the (1) President of Local Industries Association, (2) Secretary of the Chamber of Commerce of the concerned industrial area, (3) General Manager of the District Industrial Centre or Joint Director of Industries, (4) Executive Engineer of the MIDC, as the Members and the Member, Regional Authority Committee as a Member Secretary for considering the proposal for change of user of open spaces. If the said

Committee decides to change the user of open spaces, it should record reasons therefor and send a report to the Head Office suggesting the proposed change with specific recommendations. The Committee at the headquarters comprising of the Chief Executive Officer, the Chief Engineer and the Chief Planner should consider such proposal and if need be, the Chief Executive Officer should place such proposal before the Board of Directors for taking final decision. It is only after the said proposal is considered by the Board of Directors, the decision would be taken whether the layout plan should be changed or not.

32. The learned Counsel for the petitioners submits that the open spaces shown in the layout plan of 1995 have been converted into industrial/mercantile purposes as seen from the layout plans of 2004-05 and 2010-11. He submits that the procedure laid down in the circular dated 02.04.1997 has not at all been followed for making the said changes in the layout plan. Therefore, according to him, the changes effected without following the due procedure being arbitrary and illegal, are liable to be set aside.

33. As against this, the learned Asst. Government Pleader, on the basis of the affidavit filed on behalf of respondent no.1, submits that in view of the circulars dated 21.06.2011 (Page 714) and 05.09.2013 (Page 715), the MIDC was entitled to change the user of the open spaces and convert them into industrial or mercantile plots.

34. The circular dated 21.06.2011 prohibits conversion of industrial plots into Residential, Educational, Institutional, Assembly, Mercantile, etc., while the circular dated 05.09.2013 is in respect of conversion of industrial plots into mercantile plots. Both of these circulars do not speak about conversion of open spaces into either industrial or mercantile plots. Consequently, these circulars would not be of any use to respondent no.1 to justify conversion of open spaces into industrial or mercantile plots.

35. The Internal Committee mentioned in the report dated 29.08.2011 that in case the plots were to be de-reserved from open spaces or amenity areas, the proposed layout was required to be placed before the Minor Modification Committee ("M.M.C." for short) at the Headquarters for approval.

36. The learned Counsel for respondent nos. 4 and 5, relying on the unreported judgment of the Bombay High Court in Writ Petition No.3031 of 1999 delivered on 11.04.2001 in the matter of Owens Corning India Ltd. v. Maharashtra Industrial Development Corporation, submits that the M.I.D.C. is empowered to de-reserve an open space and use it for industrial purpose.

37. He points out to the list containing 134 plots, subject matter of the report of Gatne Committee and Internal Committee, in respect of which 10% penalty has been paid in pursuance of the impugned order dated 29.05.2013 and allotment thereof has been regularised by respondent no.2. He, therefore, submits that now there is no question of cancellation of allotment of plots of these industrialists.

38. As per the Development Control Regulations for M.I.D.C., 1999 and the Revised Development Control Regulations, 2009, open space means an area forming the integral part of the land left permanently open to the sky. As per Regulations 27.1 and 21.5 of the Regulations of 1999 and the Revised Regulations of 2009, in any layout or subdivision of land admeasuring more than 1 Hectare for industrial purpose and 0.5 Hectare for residential purpose, 10% of total area of land so subdivided shall be reserved for open space which shall, as far as practicable, be located in one central place. As per Regulation 33.1 and Regulation 21.6 of the Regulations, 1999 and the Revised Regulations, 2009 respectively, in any layout or subdivision of land admeasuring more than 1 Hectare for industrial purpose and 0.5 Hectare for residential purpose, 5% of the total area of land so subdivided shall be reserved for amenity area.

39. The Circular dated 02.04.1997 (page 50) produced with the petition contains the procedure for change of user of the open spaces or amenity areas for industrial or residential or mercantile use. It has been stated that as far as possible, the request for such change of user should, at the first blush, be rejected by the Area Manager concerned on the ground that such request is contrary to the proposed layout. However, if it is found that such request is reasonable, the Regional Officer of M.I.D.C. shall submit his report containing his recommendations supported with strong reasons to the Headquarters of M.I.D.C. for being considered by the Committee comprising of Joint Chief Executive Officer, Chief Engineer and Chief Planner for taking final decision. The said Committee would place its report before the Chief Executive Officer, who, in turn, if found necessary, would place the matter for taking final decision before the Board of Directors and then only, the final decision would be taken about effecting change in the layout plan or otherwise. Certain guidelines have been given in the said Circular governing change in the layout plan of M.I.D.C. area.

40. It was noticed that there used to be some delay in taking decision in respect of change in layout plan of M.I.D.C. by the Committee constituted as per the Circular dated 02.04.1997. Therefore, for taking decision speedily as per the Office Order dated 11.05.2007 (page 49) issued by the Chief Executive Officer of M.I.D.C., the Committee at the Headquarters of M.I.D.C. comprising of the Joint Chief Executive Officer, Chief Planner, concerned Deputy Chief Executive Officer and Chief Engineer (Headquarter) came to be constituted for taking final decision in respect of change in the layout plan of M.I.D.C.

41. In the case of Owens Corning India Ltd. (supra) cited by the learned Counsel for respondent nos. 4 and 5, the decision of the M.I.D.C. to dereserve the open space being plot No. OS 33, M.I.D.C. Phase II, Taloja and to allot the said plot to a Company (the second respondent in that case) for industrial use was challenged. As seen from the facts of the said case, the application of the respondent/Company was placed before the Land Allotment Committee comprising of the Joint Chief Executive Officer, the Chief Engineer and the Chief Planner. The Committee decided to convert Plot No. OS 33 as Plot No.T 21 Part.

The matter was placed before the Space Allotment Committee comprising the Regional Officer, Mahape, Executive Engineer, Alibag, General Manager, DIC (Alibag) and President of the Taloja Manufacturers Association for conversion of the open space into the industrial plots. The Committee approved the proposal on the condition that the plot bearing Nos. L71 and L70 be converted into the open space to maintain stipulation as per the D.C. Regulations. Upon receiving approval for open space, the Chief Executive Officer approved conversion of plot No.OS 33 and the said plot was allotted to the respondent/Company on payment of requisite premium and the same had been placed in possession of the respondent/Company.

42. The question for determination that was before the Hon'ble Court was, whether the Special Planning Authority was required to follow the procedure prescribed under Section 37 of the M.R.T.P. Act while making changes in the layout plan prepared for industrial area. It was held that M.I.D.C. being the Special Planning Authority, is not required to follow the procedure prescribed under Section 37 of M.R.T.P. Act for the purpose of making any change in the existing layout plan of M.I.D.C. It was further held that the decision of the Land Allotment Committee being consistent with the D.C. Regulations of M.I.D.C., needed no interference.

43. In the present case, as seen from the report of Gatne Committee and the Internal Committee, the procedure laid down in the above referred Circulars for change in layout plan of the M.I.D.C., was not at all followed. The proposed conversion of open spaces into industrial or mercantile plots was not at all referred to the above referred Committees for approval. In the circumstances, the judgment in the case of Owens Corning India Ltd. (supra) would be of no help to respondent nos. 4 and 5 to justify conversion of open spaces into industrial/mercantile plots by respondent nos. 4 and 5 at their own level without obtaining approval from the above referred Committees constituted at the Headquarters of the M.I.D.C.

44. It has been mentioned in the impugned order dated 29.05.2013 that as seen from the noting dated 05.04.2010 at pages N/1 to N/7 (Exhibit R5) the Joint Chief Executive Officer has approved the changes in the layout plan of M.I.D.C. on 07.04.2010. The copy of the said noting is produced by respondent no.5 with the affidavit-in-reply. It is a proposal made by the Deputy Planner to the Senior Town Planner, Chief Planner, Joint Chief Executive Officer and the Chief Officer. It seems that the said proposal has been approved by Town Planner and Chief Town Planner on 01.04.2010 and 05.04.2010, respectively. However, it does not seem to have been approved by the Deputy Chief Executive Officer and the Joint Chief Executive Officer. Anyway, no justification has been given in the proposal dated 05.04.2010 (Exhibit R5) to change the user and locations of the open spaces. The open spaces and amenity areas are fixed at particular places in the layout plan considering the utility thereof at those places. The open spaces work as the lungs for the total area of land where they are located. Their locations could not

and should not be changed indiscriminately at the whims of the Officer concerned. If the locations of the open spaces and amenity areas are to be changed, it would be necessary to give sufficient justification so that it would reveal that the object of keeping open spaces and amenity areas would be fulfilled by the proposed changes.

45. As seen from the above referred provisions of the D.C. Regulations in respect of recreational open spaces within the layout, they shall, as far as practicable, be located in one central place. Neither in the submission note (Exhibit R5) nor in the impugned order, any justification has been given for change of locations of open spaces and amenity areas. Leaving open spaces and amenity areas equivalent to 10% and 5% of the land of M.I.D.C. at any place at the whim of the Planner without any justification, would not serve the purpose of leaving such open spaces in the land of M.I.D.C. Consequently, expostfacto approval to the change in the locations of open spaces and amenity areas, allegedly given by the Joint Chief Executive Officer and confirmed by respondent no.2, cannot be said to be legal, proper and correct.

46. Thus, though change in the user of the open spaces and amenity areas into industrial/mercantile plots is permissible under the D.C. Regulations of M.I.D.C, since the changes in the locations of the open spaces and amenity areas in the present case have not been effected as per the prescribed procedure, they cannot be said to be permissible under the law.

47. In the circumstances, though it is the case of respondents 4 and 5, that open spaces to the extent of 10 % and amenity areas to the extent of 5 % have been reserved in the layout of the MIDC, even after converting the open spaces and amenity areas into industrial/mercantile plots, it would not justify the conversion of open spaces and amenity areas into industrial/mercantile plots which has been effected by totally ignoring the prescribed procedure for such conversion.

Plots Unlawfully Sublet, Transferred, Constructed in Marginal Open Spaces

48. The Internal Committee noticed that certain seven allottees carried out necessary construction on their respective plots and obtained Building Construction Certificates (BCC). However, they did not start their own industries on their plots, instead, the third parties started their industries on the said plots. It was found that the original allottees had sold out the said plots to the industrialists who were actually running their industries therein. It was further noticed that there was illegal construction by encroaching upon the marginal spaces of those plots. The said plots were divided into two to four subplots by the industrialists at their own, without obtaining permission from the Regional Officer or Headquarters. The description of the said plots has been given in Proformas 2 and 5, as under :

(Proforma 2)

[kqY;k tkxk@lqfo/kk {ks=kr eq[;ky;kph iwoZ ijokuxh u ?ksrk m|ksx foLrkjklkBh

vkjs[ku d:u okVi dsysY;k Hkw[kaMkoj voS/k iksV HkkMsd:] gLrkarj o lkekftd
lqj{kk varjkr cka/kdke vlysys

izi= dz0 2

Sr. No.

Carved out in O.S.A.M

Plot No.

Area Sqm

Position as on 30.06.2011

Remarks

1

OS-15

G32/1

3080

Only Structure

2

AM-43

G/83 PT

500

-

3

O-S6

M16PT

600

M16 25% use unauthorized Construction

4

AM-4

M74/1

1310

M74 Sub-letting for transfer

5

AM-21

W36/PT (36/C/2/PT)

912

W36 Marginal space construction & 30% use production

6

OS-21

W31 PT

2000

W31/A 720 Sub-letting transfer for to OM

7

AM-36

G41/1

2810

G41 23% use & Production

Total Area

11212

(Proforma 5)

[kqY;k tkxk@lqfo/kk {ks=kr eq[;ky;kph iwoZ ijokuxh u ?ksrk vkjs[ku ijarq okVi
dsysY;k Hkw[kaMkoj] iksVHkkMsd: gLrkarj o lkekftd lqj{kk varjkr voS/k cka/kdke
vlysys

izi= dz0 5

Sr. No.

Carved out in O.S.A.M.

Plot No.

Area Sqm

Position as on 30.06.2011

Remarks

1

OS-7/AM-19

M97

600

Transfer/sub-letting marginal space & construction & production

2

OS-7/AM-19

M100

600

Sub-letting & production

3

OS-24

G20/8PT

4050

marginal space tin shade & production

4

AM-27

P-152/1

150

Sub-letting & production

5

AM-27

P-152/2

150

sub-letting

6

AM-27

P-152/3

150

sub-letting

7

AM-27

P-152/4

480

Sub-letting & residential use

8

AM-27

P-152/6

180

sub-letting

9

OS-22

P-40/1

3286

Unauthorized construction

10

AM-52

P-40/A/2

300

to be transfer MS construction

11

AM-24

P-93/1/1

449

three sub-letting

12

AM-27

P-93/1/2

260

unauthorized sub-division & residential use

13

AM-27

P-152/5

150

unauthorized sub-division & sub-letting

14

AM-27

P/152/2

150

Unauthorized sub-division & varies business in same plot

15

PL-1

L-81B

4140

16

O-S17

F-78

7000

Unauthorised three sub-division & transfer

17

O-S17

F-79

4000

Unauthorised two sub-division & transfer

18

AM-4

M-74/1

1200

BCC & production but yet to transfer

19

OS-7

M-98-99

1200

sub-division & residential use

20

AM-13

L-135/5

2566

Marginal space construction & sub-letting

21

AM-12

L-135/5/1

2895

Very small construction & total plot sub-letting for godown purpose

22

AM-13

L-135/5/2

4120

Marginal space construction

23

AM-12

L-135/6

7630

under construction (open tin shed)

24

OS-26&15

L154/1

6756

very small construction open godown vehicle use

25

AM-24

A-47/1 PART

900

Sub-letting & marginal space construction plan approve

26

AM-29

D-67/2

1200

unser construction

27

AM-36

G-41/2

800

BCC but no production

28

AM-27

G-47/4

3745

unauthorised sub-division & under construction

29

OS-14

L-131/2

1060

marginal space construction, sub-letting & production

30

OS-14

L-132/1

1250

BCC but no production & submitted transfer

31

OS-14

L-132/2

1060

marginal space (three sides) construction & production

32

AM-13

L-135/5

2566

Marginal space construction & sub-let for godown purpose

33

AM-12

L-135/5/1

2895

Very small construction & total plot sub-let for godown purpose

34

OS-14

L-132/1

1250

BCC but no production

35

OS-14

L-132/2

1060

marginal space (three sides) construction & production

36

AM-21

L-243/1

1600

Construction, but no production

37

AM-21

L-243/3

1000

transfer to Rajendra Kothari M/s. R.K. Industries Plot in production.

38

B-113

B-113/1 (Sub.Div)

3229

Illegal Transfer

39

RH-6

L-135/1

1583

Under construction

40

AM-28

W-32BPT

10352

Marginal Space Const. & Resi. use

41

Vacant

X-19/8

2117

sub-letting

42

Vacant

X-10/1

1164

unauthorised use

43

Vacant

X-10/2

1656

unauthorised use

44

Vacant

X-10/3

363

unauthorised use

45

RH-6

L-135/2

1684

unauthorised use

Total Area

94996

49. It is reported that 7 allottees as mentioned in Proforma 2 and 45 allottees as mentioned in Proforma 5 have unlawfully sublet or otherwise delivered possession of their respective plots to the third persons unauthorisedly. As per the Forms of Leases given in the Schedule of the Regulations of 1975, the allottee/leasee is not allowed to assign underlet or part with the possession of the plot or any part thereof or any interest therein without previous written consent of the Chief Executive Officer and the Chief Executive Officer may, in his absolute discretion, refuse such consent or grant the same subject to condition as he thinks fit including condition of payment of premium. Some of the allottees of the plots, who, without obtaining previous written consent of the Chief Executive Officer, have sublet, assigned or parted with the possession of the plots to some third persons in breach of the said condition. Consequently, the Chief Executive Officer can treat the lease as terminated and resume possession of such plots. The Chief Executive Officer will have to be directed to conduct necessary enquiry in respect of such plots and take appropriate steps to resume possession thereof. The allottees of such plots would not be entitled to get refund of the premium paid by them. However, the allottees of the plots or their assignees would be entitled to remove their superstructures, machineries, other movables, etc. from over the said plot within the time given by the Chief Executive officer, failing which the said superstructures, machineries, other movables, etc. would stand vested in the Chief Executive Officer without paying any compensation or allowance to the allottees concerned. The Chief Executive Officer may remove the same at the cost of the original allottee.

50. It is further mentioned in the Internal Committee Report that construction

has been carried out over some of the plots described in Proformas 2 and 5 by encroaching upon the marginal open spaces. As per Regulation 38 of the D.C. Regulations of 1999 and Regulation 24 of the D.C. Regulations of 2009, marginal open spaces are required to be left open around the buildings. Thus, it would be incumbent on the part of the allottees to leave marginal open spaces open around the buildings as mentioned in these Regulations. Otherwise, the construction of the buildings to the extent it enters into the marginal open spaces around the buildings would be unauthorised and illegal. Such unauthorised development is liable to be demolished as per Regulation 20.1 of the D.C. Regulations, 1999. Moreover, as per Section 44 of the M.I.D. Act, 1961, where the erection of any building in an industrial estate or industrial area has been commenced or is being carried on, or has been completed, or any existing building is altered, in contravention of the terms on which such building or the land on which it stands is held or granted under this Act, any Officer of the Corporation empowered by it in this behalf may, in addition to any prosecution that may be instituted under this Act, make an order directing that such erection shall be demolished by the owner thereof within such period not exceeding two months as may be specified in the order, and on failure of the owner to comply with the order, the Officer may himself cause the erection to be demolished and the expenses of such demolition shall be recoverable by the Corporation from the owner. However, no such order shall be made unless the owner has been given a reasonable opportunity to show cause why the order should not be made. In addition to this action, the defaulting allottee is liable to be prosecuted vide Section 46 of the said Act. The Chief Executive Officer of M.I.D.C., therefore, will have to be directed to take necessary steps vide Sections 44 and 46 of the M.I.D. Act against the allottees who have carried out the construction within the marginal spaces around the buildings.

The Plots Which Have Been Kept Vacant

51. The Internal Committee found that 24 and 26 allottees of the plots from the open spaces/amenity areas as mentioned in Proformas 1 and 4, respectively, have kept the said plots vacant. Therefore, the Committee opined that allotment of the said plots should be cancelled and they should be taken back from the said allottees. The description of such plots given in Proformas 1 and 4, as under :-

(Proforma 1)

[kqY;k tkxk@lqfo/kk {ks=kr eq[;ky;kph iwoZ ijokuxh us ?ksrk m|ksx foLrkjklkBh vkjs[ku d:u okVi dsysys ek= fjdkes vlmysys Hkw[kaMkps

izi= dz0 1

Sr. No.

Carved out in O.S.A.M.

Plot No.

Area Sqm

Position As on 30.06.2011

Remarks

1

AM-37

G-53PT

1000

Vacant (Compound Wall)

2

AM-34

G-122/IPT

595

Vacant

3

AM-38

B-78PT

2000

Vacant

4

OS-14

L-135/4PT

1560

Vacant

5

OS-14

L-141/PT

770

Vacant

6

OS-6

M-16/1

600

Vacant

7

AM-6

M-82PT

1258

Vacant

8

AM-25

A-36PT

1500

Vacant

9

AM-35

A-35PT

1537

Vacant

10

AM-44

A-63PT

1347

Vacant

11

AM-20

F-21PT

1564

Vacant

12

PL-1

G-114PT

5710

Vacant (Compound Wall)

13

AM-43/1

G-77PT

1500

Not Visible layout

14

AM-3

M-54PT

597

Vacant

15

AM-2

M-67PT

554

Vacant

16

AM-21

L-9PT

1400

Vacant

17

AM-25

L-81/A/PT

1500

Vacant

18

AM-5

L-115PT

896

Vacant

19

OS-6

M-15PT

600

Vacant

20

AM-23

L-226PT

5218

Vacant

21

OS-7

M-27PT

1200

Vacant

22

PL-1

G-122/2PT

14622

Vacant

23

AM-16

L-1 PT

1596

Vacant

24

AM-11

M-11 PT

600

Vacant

Total Area

49724

(Proforma 4)

[kqY;k tkxk@lqfo/kk {ks=kr eq[;ky;kph iwoZ ijokuxh us ?ksrk ufou m|kstdklkBh
vkj[ksu d:u okVi dsysys ijUrq Hkw[kaM fjdkes vlysys

izi= dz0 4

Sr. No.

Carved out in O.S.A.M.

Plot No.

Area Sqm

Position As on 30.06.2011

Remarks

1

AM-24

A-47/2

3210

Plinth Level

2

AM-24

A/47/3

3210

Plinth Level

3

OS-17

F/76

10000

Vacant

4

OS-17

F/77

10000

Vacant

5

OS-25

G-23/3

2500

Vacant

6

OS-13

L-135/3

4905

Vacant

7

OS-11

L-255

6265

Vacant

8

AM-29

D/67/1

1000

Vacant

9

OS-25

G-23/1

2498

Vacant

10

OS-25

G/23/2

2498

Vacant

11

OS-14

L-131/1

1250

Vacant

12

OS-32

L-214/1

1580

Vacant

13

AM-21

L-243/2

1000

Plinth Level

14

AM-2

M-48/1

1383

Plinth Level

15

AM-7 OS-9

M-87

600

Plinth Level

16

OS-7 AM-17

M-95

510

Plinth Level

17

AM-27

F-46PT

10354

Plinth Level

18

OS-24

G-16/2PT

4800

Plinth Level

19

OS-27

G-47/2

1398

Plinth Level

20

OS-27

G-47/3

1878

Plinth Level

21

AM-27

G-115/1

8067

Plinth Level

22

AM-27

P-152/7/A

900

Plinth Level

23

OS-16, 17

X-34

294

Plinth Level

24

OS-4

M-81/1

1721

Vacant

25

Vacant List

X-10/4

1307

Vacant

26

Vacant List

X-11

2197

Vacant

Total Area

85325

52. The above mentioned plots have been kept vacant by the allottees concerned. As per the terms of the lease agreement, an allottee is bound within 3 months of the date of the agreement to submit to the Executive Engineer, MIDC, for his approval the specifications, plans, elevations, sections and details

of the factory building to be erected, complete erection of the building within the given time and start production. In case the allottee fails to complete the factory building within the given time, the Chief Executive Officer, MIDC is empowered to terminate the lease and resume possession of the plot without paying any compensation, allowance or premium to the allottee. In the present case, the abover-eferred plots have been illegally carved out and allotted from the open spaces/amenity areas by entertaining individual applications and on the top of it they have been kept vacant. For all these reasons, allotment of the said plots is liable to be cancelled and the Chief Executive Officer, MIDC is entitled to resume possession thereof without paying any compensation, allowance or premium to the allottees concerned.

Equity To The Allottees Of The Plots

53. As seen from the reports of Gatne Committee and the Internal Committee, certain Officers of the M.I.D.C., at their own level, carved out plots from the open spaces and amenity areas allotted them and unauthorisedly. In view of the circulars referred to above and the decision in the case of Owens Corning India Ltd. (supra) spaces can be converted into industrial plots provided the prescribed procedure is followed. If certain plots carved out from the open spaces and amenity areas are found by the Minor Modification Committee worth regularising according to law, the interests of the bona fide allottees of those plots will have to be protected. If such plots are liable to be used for industrial/mercantile purposes, the allottees of the said plots will have to be given opportunity to continue to hold them by allowing them to participate in the public auction. If they offer highest premium, they will be entitled to retain the said plots. The premium paid by them at the time of receiving the said plots as also the amounts paid by them in pursuance of the impugned order passed by respondent no.2 would carry simple interest at the rate of 8% per annum from the respective dates of payments thereof till the date of public auction and the amount so calculated would be liable to be adjusted towards the amount of highest premium offered by them in the public auction. The excess amount would be payable by them to get the plots allotted to them. In case any of the original allottees does not offer highest premium, he will have to be compensated by directing refund of the amount of premium paid by him as well as the amount paid by him in pursuance of the impugned order passed by respondent no.2 with interest at the rate of 8% per annum from the respective dates of such payments till the date of refund thereof. The value of the superstructures, machineries and other articles attached to the earth as fixed by the Government Valuer also would be liable to be paid to him. However, no such equitable relief can be granted in favour of the allottees in case the conversion of open spaces/amenity areas in respect of their plots into individual/mercantile plots cannot be regularised.

Plots Allotted Unlawfully But Whereon Production Is Going On

54. The Internal Committee noticed that three allottees of the plots carved out from open spaces/amenity areas and allotted for expansion of industries, without

seeking prior approval from the headquarter as described in Proforma 3, have started their production. Description of the plots given in Proforma 3 is as under :

(Proforma 3)

[kqY;k tkxk@lqfo/kk {ks=kr eq[;ky;kph iwoZ ijokuxh u ?ksrk m|ksx foLrkjklkBh vkjs[ku ijarq okVi dsysY;k Hkw[kaMkoj mRiknu "kq: vlysys

izi= dz0 3

Sr. No.

Carved out in O.S.A.M

Plot No.

Area in m2

Position as on 30.06.2011

Original Plot No.

Area in m2

Position As on 30.06. 2011

1

OS-22

A47/4

9625

24.43% Construction & Production

A-22

2100

Production

2

AM-29

C-12/4/1

1350

is not in Lay out

C-12/4

339

Production

3

AM-34

G-24PT

828

Plan approved under Construction

C-24

1250

Production

Total Area

11803

55. The Internal Committee further noticed that 11 plots carved out from the open spaces/amenity areas, as mentioned in Proforma 6, were allotted to new industrialists without seeking prior approval from the Headquarters, have completed construction of their industries and started production. The description of such plots given at Proforma 6 is as under:

[kqY;k tkxk@lqfo/kk {ks=kr eq[;ky;kph iwoZ ijokuxh u ?ksrk ufou m|kstdklkBh vkjs[ku ijarq okVi dsysY;k Hkw[kaMkoj mRiknu lq: vlysys

izi= dz0 6

Sr. No.

Carved out in O.S.A.M.

Plot No.

Area Sqm

Position As on 30.06.2011

Remarks

1

AM-24

A-47/1

1720

11% Construction 10% BCC & production

2

OS-7-AM-10

M-88

600

BCC

3

OS-7-AM-13

M-91

510

BCC & production

4

OS-7-AM-14

M-92

510

BCC & production but Yet to transfer

5

OS-7-AM-15

M-93

510

production

6

OS-7-AM-16

M-94

510

BCC & production

7

OS-27

G47/1

600

BCC & production

8

PL-4

G-126

6600

BCC & final lease

9

Vacant List

P-60

300

BCC

10

Vacant List

X-32/1

1750

BCC & Construction & Business

11

Vacant List

X-32/2

2716

BCC

Total Area

16326

56. There may be certain workers/officers serving in the above-mentioned industrial units. In case, the plot concerned is legally regularised on receiving proposal received from respondent nos. 3 and 4, it should be put up for public action. The original allottee may retain that plot by offering highest premium. If the original allottee does not offer highest premium and retain such plot, the plot along with the industrial unit and the workers/officers serving therein would be transferred to the new allottee who would offer highest premium. The said workers/officers would be governed by the same terms and conditions by which, they were being governed prior to transfer of such plots. It will be necessary to specifically mention such condition in the notice of public auction as well as in the auction documents, so that the interests of the workers/officers serving there could be safeguarded. If the plot, where production is going on, cannot be legally regularised, then allotment of such plot would stand cancelled and the Chief Executive Officer would be empowered to resume possession thereof without

paying any compensation or premium to the allottee concerned. The allottee concerned would be entitled to remove the superstructures, machineries, other movables, etc. standing on the plot concerned within the given time, failing which the Chief Executive Officer would get it removed at the cost of the allottee concerned.

57. As per the order dated 08.05.2014 passed by this Court, the M.I.D.C. was ordered to permit each of the entrepreneurs/allottees to continue with the development, establish industrial units and commence the production/business activity subject to furnishing undertaking by each of the allottees agreeing for a condition that whatever development that would be carried over the industrial plot, shall be subject to final outcome of this petition and the allottees shall remove such development and restore the original position of the industrial plots in the event of success of this petition and issuance of order to that effect. It was further directed that the allottees shall agree not to claim equities on the basis of modification of interim order permitting them to continue with the industrial/business activities. Accordingly, 88 members of respondent no.6 furnished undertakings before this Court and the same were accepted. Those who did not furnish undertakings were not entitled to get benefit of the interim order dated 08.05.2014.

58. In view of this position, only because some of the allottees of plots developed their plots and started production in pursuance of the order dated 08.05.2014, they would not be entitled to claim any equity on that basis when the very allotment of plots is not justifiable and permissible under the law for the reasons recorded above. Even then, this Court tried to safeguard the interests of the allottees of the plots in case conversion thereof into industrial/mercantile plots is liable to be regularised by allowing them to participate in the public auction and retain the plots by offering highest premium or get refund of the amounts of premium along with interest. So far as the superstructures, machineries and other movables standing over and attached to the plots allotted to them are concerned, necessary directions will have to be given to fix the value thereof through the Government Valuer, so that the same could be ordered to be paid to the allottee concerned, in case he does not offer highest premium for getting the said plot. In our view, this much equitable relief can be granted in favour of the allottees who do not wish to retain the plots allotted to them by offering highest premium in the public auction. Nothing would be liable to be paid to the allottees of the plots which are not liable to be regularised, who have unauthorisedly sublet or in any manner transferred their respective plots, who have not started using the plots for the purpose for which they were allotted to them and kept them vacant, who carried out development by encroaching upon the marginal open spaces etc. and possession of such plots is liable to be resumed by the Chief Executive Officer of the MIDC.

Missing Files

59. It is reported by the Committee headed by Shri. Gatne as well as the

Internal Committee that some of the files in respect of allotment of plots were not traced out. However, the reports are totally silent about such plots. It is not difficult to bring on record the details of such plots, the status thereof and the manner in which they have been allotted to the allottees concerned. Therefore, it would be necessary to direct respondent no.4 to prepare a list of the plots in respect of which files are missing, furnish details thereof, point out the manner in which the said plots have been allotted and whether they have been carved out from the plots demarked in the layout or otherwise, so that necessary orders could be passed in respect of those plots. It is further necessary to conduct enquiry against the custodians of the missing files so that requisite penalty can be imposed against them. If necessary, penal action also can be initiated against them. If necessary, penal action also can be initiated against them.

Enquiry Against The Erring Officers

60. The petitioners have given the names of S/Shri. P.J.Shinde, R.K.Gawade, Gajanan Patil and Ramdas Khedkar as persons responsible for allotment of the plots from the open spaces and amenity areas straightway by entertaining individual applications. However, respondent nos. 4 and 5, in paragraph 4 of their additional affidavit (page 250), stated that the M.I.D.C. has initiated action and suspended S/Shri Patwa and Mandape who were found prima facie responsible for committing irregularities on 16.06.2010. They further stated that departmental enquiry is going on against those Officers. Thus, there is total difference in the names of the persons and Officers involved in the illegal allotment of the plots. Moreover, S/Shri Patwa and Mandape have been subjected to departmental enquiry in respect of the irregularities committed on 16.06.2010 only, while the illegal/unauthorised allotment of the plots subject matter of the reports of Gatne Committee and Internal Committee, has taken place during 2006 to 2010. Naturally, some other Officers also are involved in this illegal/unauthorised allotment of plots. Therefore, respondent no.4 will have to be directed to initiate necessary inquiry against the erring Officers involved in allotment of plots illegally and unauthorisedly during 2006 to 2010 as mentioned in the reports of Gatne Committee and Internal Committee. So that stringent departmental as well as penal action could be taken against them.

Investigation into The Alleged Conversation between Petitioner No.1 and The Director of M/s. Siddhi forging Pvt. Ltd.

61. It is alleged by respondent no.6 that petitioner no.1 is a blackmailer. He demanded money from Shri. Waghmode, Director of M/s. Siddhi Forging Pvt. Ltd. (allottee of 9 plots) for withdrawing the name of M/s.Siddhi Forging Pvt. Ltd. from the Public Interest Litigation. The photocopy of the script of that conversation is produced at page 153 (Exhibit "R2"). As observed above, in the absence of a certificate under Section 65B of the Evidence Act, no authenticity could be attached to this conversation. However, if really the demand has been made by petitioner no.1 for money for withdrawing the name of M/s.Siddhi Forging Pvt. Ltd., it would be a very serious matter. Therefore, we think fit to

extend liberty to Shri. Waghmode to produce the authentic script of the alleged conversation along with the certificate under Section 65B of the Evidence Act and lodge a report to the police station concerned, so that further investigation could be conducted and the guilty person could be prosecuted. We, therefore, think fit to give directions to that effect.

Legality Of The Impugned Order Dated 29.05.2013

62. Respondent no.2 has passed the impugned order and directed to regularise allotment of plots though they have been carved out from the open spaces and amenity areas without following proper procedure and that too by entertaining individual applications. Respondent no.2 noticed that the plots were allotted by inviting tenders in the year 2005. Even then, respondent no.2 did not find anything wrong in allotment of plots by entertaining individual applications during the period from 2006 to April 2010. The impugned order does not at all contain any justification for giving directions to regularise allotment of the plots. In para 41 of the judgment in the case of Real Team Systems Pvt. Ltd. (supra), the role of respondent no.2 being incharge of the Department of Industries, and the necessity of disposal of the property of the MIDC by public auction, has been clarified in the following terms :

"A Minister incharge 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. "

63. The impugned order does not contain the reasons justifying regularisation of the plots allotted to the members of respondent no.6 despite the fact that the said allotment was illegal and tainted with corruption, nepotism and favouritism. The object of the MIDC Act is to secure the orderly establishment in industrial areas and industrial estates of industries in the State of Maharashtra. The impugned order runs contrary to the said object. In the circumstances, the impugned order cannot be upheld being not legal, proper and correct.

64. In view of the facts and circumstances discussed above, it will be necessary to direct the Chief Executive Officer of the MIDC to classify the plots into two groups. The first group would comprise of the plots of which allotment and locations can be regularised. Such plots only would be placed for public auction. The second group would comprise of the plots of which allotment as well as locations cannot be regularised, as also the plots which have been unauthorisedly sublet, sold or transferred in any manner. The Chief Executive Officer will have to be directed to take necessary steps according to law to terminate allotment of the said plots and resume possession thereof. The allottees of such plots would not be entitled to get any equitable relief including that of refund of the premium

paid by them. However, the allottees of such plots would be entitled to remove the superstructures, machineries and other movables belonging to them from over such plots within the given time, failing which they would stand vested in the Chief Executive Officer without paying any compensation, allowance or refund of premium to the allottees thereof. He would remove the said superstructures, machineries and other movables at the cost of the allottees concerned. Necessary directions will have to be given to the Chief Executive Officer to deal accordingly with the plots subject matter of the reports of Gatne Committee and Internal Committee.

65. In the result, we issue the following directions :

(1) The impugned order dated 29.05.2013 passed by respondent no.2 is quashed and set aside.

(2) The allotment of the plots made by entertaining individual applications, subjectmatter of the reports of Gatne Committee and Internal Committee is cancelled.

(3)(a) Respondent nos. 4 and 5 shall place proposals within three months from today before the Minor Modification Committee in respect of the plots carved out from open spaces and amenity areas which, according to them, are liable to be regularised despite being carved out from open spaces and amenity areas, by giving specific reasons justifying such regularisation.

(b) If such proposals are received, the Minor Modification Committee shall consider them on their own merits and take appropriate decision thereon on the question of their regularisation or otherwise, within three months from the date of receipt of the proposal concerned.

(c) If the Minor Modification Committee accepts any proposal for regularisation of certain plots for justifiable reasons, the Chief Executive Officer of the MIDC shall put up such plots for allotment by public auction within two months from the respective dates of the decisions recorded by the Minor Modification Committee in respect of regularisation thereof.

(d) Prior to publishing notice of public auction in respect of the plots proposed to be auctioned, the Chief Executive Officer shall get the superstructures, machineries and other movables etc. standing thereon evaluated through a Government Valuer and the value thereof shall be specifically mentioned in the notice of public auction besides the upset amount of premium of the plots concerned.

(e) The original allottee of the plot so regularised shall be allowed to participate in the public auction and if he offers highest premium, he shall be allowed to retain that plot along with the superstructures, machineries and other movables standing thereon, on payment of difference between the highest premium offered by him on one hand, and the amount of premium paid by him at the time of initial allotment of the plot to him as well as the amount paid by him in

pursuance of the impugned order dated 29.05.2013 with interest accrued on those payments at the rate of Rs. 8/percent per annum from the respective dates of payments thereof till the date of public auction, on the other.

(f) In case the original allottee of the plot so regularised does not offer highest premium in the public auction, such plot along with its superstructures, machineries and other movables standing thereon shall be allotted to the highest bidder and the value of superstructures, machineries and other movables as determined pursuant to the directions given in clause 3(d) above, shall be paid to the original allottee. Moreover, the amount of premium paid by him at the time of the initial allotment of the plot as well as the amount paid by him in pursuance of the impugned order dated 29.05.2013 shall be refunded to him with interest at the rate of 8% per annum from the respective dates of such payments till the date of refund thereof.

(g) If the plot, where production is going on, is allotted to the highest bidder other than the original allottee, it would stand transferred to the new allottee on payment of the premium etc. along with the workers/officers serving in the industrial unit run thereon and the new allottee shall continue their services on the same terms and conditions as applicable to them prior to such transfer. The condition to that effect shall be specifically mentioned in the notice of public auction and the auction documents.

(h) If the Minor Modification Committee finds that the change in the location of any particular open space and amenity areas from where any plot has been carved out and allotted for industrial, mercantile or any other purpose, is not justifiable and permissible, the Chief Executive Officer of the MIDC shall get restored such open space and/or amenity area to its original position as demarcated in the original layout plan, within two months from the date of decision of the Minor Modification Committee.

(4)(a) The Chief Executive Officer of the MIDC shall take necessary steps according to law within three months from today to terminate allotment and resume possession of the plots which have been unlawfully sublet or sold or transferred in any manner by the original allottees to the third persons.

(b) The original allottees or their assignees shall remove their superstructures, machineries or movables from over such plots within two months from the date of the order passed by the Chief Executive Officer for resuming possession thereof, failing which the same shall stand vested in the Chief Executive Officer without paying compensation or allowances to the original allottees or their assignees. The Chief Executive Officer shall get such plots restored to their original position as demarcated in the original layout plan by removing the superstructures, machineries and other movables etc. standing thereon, at the costs of the allottees concerned and recover the same from them as land revenue.

(c) If the Chief Executive Officer terminates allotment and resumes possession of

the plots in pursuance of the directions given in clauses 4(a) above and if such plots are legally transferable, the Chief Executive Officer shall allot them by public auction.

(5) The Chief Executive Officer of the MIDC shall take necessary steps within three months from today vide Sections 44 and 46 of the Maharashtra Industrial Development Act, 1961 in respect of the plots and against the allottees thereof, who have carried out illegal construction by encroaching upon the marginal open spaces around the buildings.

(6) The area of 35.15 Hectares which has been kept vacant in pursuance of the directions given in paragraph 2 of the order dated 08.05.2014 passed by this Court shall be kept vacant, until further orders.

(7) Respondent no.3 the Managing Director of the MIDC shall conduct necessary enquiry in respect of missing files, fix the responsibility and initiate departmental enquiry against the Officers found responsible for missing of files, within three months from today.

(8) Respondent no.3 the Managing Director of the MIDC, shall take necessary steps to initiate departmental enquiry within three months from today against the erring Officers of the MIDC for unauthorisedly and illegally carving out plots from open spaces and amenity areas, allotting the plots by entertaining individual applications, failing to take action against the allottees for unlawfully subletting or transferring the plots to third persons and also for carrying out construction by encroaching upon the marginal open spaces.

(9) Respondent no.3 shall get prepared the list of the plots in respect of which the files are missing, verify whether the said plots were legally transferable from the area demarcated in the layout plan and have been allotted as per the prescribed procedure and submit a report to this Court within three months from today, so that necessary orders in respect of those plots could be passed.

(10) Shri.Waghmode, the Director of M/s.Siddhi Forging Pvt. Ltd. (allottee of nine plots) would be at liberty to lodge report to the Police Station concerned in respect of the script of conversation alleged to have taken place between petitioner no.1 and himself, along with the requisite certificate of authenticity of that script as contemplated under Section 65B of the Indian Evidence Act. If such report is filed, the Police Station Officer concerned shall conduct necessary investigation and take further steps according to law.

(11) The interim order dated 08.05.2014, to the extent it permitted the members of respondent no.6 to develop their respective plots, stands vacated.

(12) The Chief Executive Officer of the MIDC shall submit action taken reports quarterly, with effect from 15th September, 2016, before the Registrar (Judicial) of this Court at Aurangabad, for perusal of this Court, until further orders.

(13) With these directions, the P.I.L. stands disposed of.

66. After pronouncement of this judgment, the learned Counsel appearing for respondent no.6 prays for stay to the execution of this judgment.

67. As seen from the directions given in the judgment, the period of three months has been given to the Chief Executive Officer of the MIDC to take effective steps for termination of the allotments and resume possession of the plots concerned. In our view, this would extend sufficient time for respondent no.6 to approach the Hon''ble the Supreme Court for seeking necessary relief. In the circumstances, prayer for stay to the execution of this judgment made by the learned Counsel for respondent no.6 is rejected.