

(2012) 12 BOM CK 0019

In the Bombay High Court

Case No : Writ Petition No. 7245 of 2006

Zenith Metaplast Pvt. Ltd.

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Maharashtra Industrial Development Act, 1961 — Section 18, 39

Citation : (2013) 3 ALLMR 351 : (2013) 4 MhLj 144

Hon'ble Judges : S.J. Vazifdar, J;R.Y. Ganoo, J

Bench : Division Bench

Advocate : Anil Menon instructed by Khaitan and Jaykar, for the Appellant; A.I. Patel for the Respondent No. 1 for State, Ms. Deepa Chavan instructed by Little and Co. for the Respondent Nos. 2 and 3 and Mr. Dinyar Madon, instructed by JMB Partners for the Respondent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Vazifdar, J.—The petitioner has sought a writ of certiorari to quash and set aside the communications dated 16th December, 2005 and 22nd June, 2006, rejecting its application for the allotment of a plot admeasuring about 3 acres and the allotment of plots of land admeasuring 17 acres and 6 acres adjacent to its factory to respondent Nos. 4 and 5 respectively. The petitioner has also sought the allotment for itself a portion of the said land admeasuring 3 acres. Respondent No. 2 is the Maharashtra Industrial Development Corporation (MIDC). Respondent No. 3 is the Regional Officer of the MIDC. Respondent No. 4 is M/s. Mahindra & Mahindra Limited. Respondent No. 5 is an individual, one Abhay Kulkarni.

2. The petitioner, a small-scale industry engaged in the business of manufacturing, inter-alia, luggage, tools and moulds, is a lessee of Plot No. F-18 admeasuring 4050 square meters in the industrial area in which it seeks the allotment of a plot for itself and cancellation of the allotment to respondent Nos.

4 and 5 of another plot.

3. In the year 2002, a part of plot No. F-17 admeasuring 500 square meters was allotted to the BSNL.

4. Respondent No. 4 is an allottee of a plot of land bearing various plot numbers in the same industrial area. By a letter dated 14th March, 2005, addressed to the Chief Minister, respondent No. 4 referred to its various business and the industrial activities in the State of Maharashtra, including in the said industrial area. The letter related to various aspects, including seeking the allotment of the plot of land in the said industrial area. Respondent No. 4 referred to its joint venture with Renault, one of the world's largest automobile manufacturers, for introducing a new mid-sized car-"Logan" in India. Respondent No. 4 stated that it was considering locating the project in Maharashtra in the said industrial area, Andhra Pradesh or in Uttaranchal. Respondent No. 4, therefore, raised various queries as regards the benefits which would be extended by the State Government in respect of the project. It stated that in Uttaranchal, it had surplus land and would be entitled to various financial facilities in terms of income tax benefits and waiver of octroi. Before finalizing the location, respondent No. 4 enquired of the Government of Maharashtra as to the benefits if it were to set up its plant for such a large project in the said industrial area. The enquiries relevant to this petition were as under:-

3. Availability of concessional land at Nasik for around 300-500 acres around Satpur MTDC, especially leveled and developed land.

12. 5-8 Acre parking facility for trucks and trailers at the Satpur Industrial Estate, Nasik.

13. A 3-4 Acre parking plot outside our existing factory gate at Nasik.

4(A). The Government of Maharashtra, by a letter dated 10th June, 2005, referred to the said letter dated 14th March, 2005, and the meetings pursuant thereto between respondent No. 4, the Chief Minister, the Finance Minister, the Chief Secretary and others. The letter mentioned various concessions including as regards octroi, reduction of stamp duty and exemption from electricity duty for seven years. The letter also stated as under:-

(6) The MIDC will locate maximum possible vacant land in the existing area and allot the same to you at the applicable rates. MIDC will also facilitate acquisition of additional land identified by you for your project as well as for locating the cluster of ancillaries.

The Government of Maharashtra is proud of its association with M & M's [respondent No. 4] various projects in the State, and we hope with these incentives the Group will locate its new LOGAN Project at Nashik and help in making this association stronger in the future. Upon hearing from you confirming your decision to locate the LOGAN Car project at Nashik, a formal MOU confirming the above package will be executed between the State Government

and your Company, by which time necessary formal approvals would be in place. I look forward to your early response.

It is obvious that there were considerable negotiations and discussions between respondent No. 4 and the Government of Maharashtra in respect of the said project. This is evident from the contents of the letter dated 10th June, 2005, which in the very first paragraph refers to the meetings between respondent No. 4 and various Ministers and authorities of the Government of Maharashtra.

(B). This was followed by an MOU dated 15th June, 2005, entered into between the Government of Maharashtra and respondent No. 4 in respect of the commissioning of the project at Nashik.

(C). By a letter dated 11th November, 2005, the Government of Maharashtra informed respondent No. 4 that its Logan car project at Nashik which involved an investment of over Rs. 700.00 crores had been considered by a High Power Committee set up for a mega project under the chairmanship of the Chief Secretary on 2nd June, 2005. The letter stated that the Committee had approved the proposal of respondent No. 4 and accorded the said project the status of a mega project.

(D). By a letter dated 23rd November, 2005, respondent No. 4 stated that it was in the process of implementing the expansion scheme for manufacturing and introducing the said new model and that the MIDC was aware of the same. Respondent No. 4 stated that its problems would be greatly eased by leasing from the MIDC plot No. 8 (part), which was an open space opposite plot No. 9 (open space) which were opposite its existing plant No. 1. The letter stated that the two plots would be utilized for the pre-despatch manufacturing activities viz. test track for all the vehicles, RFD yard of all the vehicles and despatch of the vehicles. Respondent No. 4 had stated that it needed the plot to achieve its expanded plant and full utilization of installed manufacturing capabilities. Respondent No. 4 specifically requested grant of lease for the said two plots.

Thus by this time, respondent No. 4 and the Government of Maharashtra had agreed, at least in principle, for the setting up of the project. Further by the said letter dated 23rd November, 2005, respondent No. 4 applied for a lease of plot Nos. 8 and 9.

5. The Petitioner, however, contends that these facts are entirely irrelevant to the case and ought to be disregarded for there was no formal application as required by MIDC's brochure for grant of a lease. The petitioner contends that its application, which we will now refer to, was in accordance with the requirement of MIDC. We will refer to the brochure and the petitioner's submissions in respect thereof after setting out the facts.

6(A). By a letter dated 30th November, 2005, the petitioner sought from MIDC, the allotment from plot No. 9, an area admeasuring about 8000 square meters. The petitioner stated that it planned to expand its existing factory on the

adjoining plot involving an investment of about Rs. 15.00 crores. The expansion was expected to generate employment for about 430 people. The letter enclosed the "White Application Form for Industrial Plot" and other documents in respect of the application for the allotment of the plot. The application states that the petitioner had used the entire FSI on the said plot. This statement is incorrect, as we will demonstrate later.

(B). By a letter dated 12th December, 2005, the petitioner addressed a reminder regarding the allotment. The petitioner stated that its plot No. F-18 was not sufficient to accommodate its expansion programme and that acquiring the plot away from its existing unit would either hamper the existing unit or escalate the costs of the expansion programme. The petitioner stated that the entire project required 12,000 square meters out of which it already had plot No. F-18 which admeasured 4050 square meters. It therefore, requested for only 8000 square meters. The petitioner also stated that a plot admeasuring 8000 square meters, lying contiguous to the north of its existing unit was lying vacant since long; that the lay-out plan of the industrial area indicated that the said plot had been given plot Nos. F-16 and F-17 and were later renumbered as open space No. 9. The letter also stated that the MIDC had a statutory policy of allotting the adjoining plot to the existing units for expansion and that the petitioner had utilized its existing plot No. F-18 fully.

(C). By the impugned letter dated 16th December, 2005, MIDC informed the petitioner that its application for allotment was not accepted.

7. On 22nd December, 2005, the proposal of respondent No. 4 for the allotment was put up before MIDC Land Allotment Committee. It was noted that respondent No. 4 was an important industry in the area and the expansion would greatly benefit the new growth in Nashik where the said industrial area was located. It was noted, however, that the land would have to be converted and its user changed in accordance with D.C. Rules and only then the issue of allotment would arise.

8. The petitioner, by a letter dated 27th December, 2005, reminded the MIDC regarding its application for allotment of the plot. The MIDC, however, by a letter dated 1st February, 2006 once again rejected the application.

9(A). Respondent No. 4 by its letter dated 6th February, 2006, made a "formal request" to the MIDC for lease in respect of plot No. 9. The petitioner requested the MIDC to inform it regarding the formalities to be complied with.

(B) On 10th February, 2006, pursuant to the order of the Chief Executive Officer, the MIDC altered the user of plot No. 9 from open space (part) to the industrial use. In the process from out of the open space of plot No. 9, there was carved out, plot No. 126.

(C). Pursuant thereto, MIDC's Land Allotment Committee approved, the fourth respondent's proposal for the impugned allotment.

(D). On 1st March, 2006, respondent No. 4 made a formal application in "White Application" for allotment of the said plot. It stated that MIDC was aware of its expansion programme; that it had already requested MIDC to release plot Nos. 8 and 9 and requested MIDC to release about 69,000 square meters from plot No. 9.

10. The learned counsel emphasized the fact that the white application i.e. appropriate application filed by respondent No. 4 was not only the first but also the only application on the records of MIDC after plot No. 126 was carved out and the user of the plot was changed from open space to industrial use. The facts upto this stage relate to the applications for allotment by the petitioner and respondent No. 4 and the grant by the MIDC of a plot only to respondent No. 4.

11. We will deal with the rival contentions regarding the applications and allotments after setting out the further correspondence and developments. It would be convenient to preface a reference to the same with these observations. The petitioner addressed its correspondence only to MIDC without even copying it to respondent No. 4. This correspondence was neither copied to respondent No. 4 nor forwarded to it later. In its correspondence, the petitioner sought the allotment for itself without disturbing the allotment in favour of respondent No. 4. This correspondence commenced with the petitioner's letter dated 15th March, 2006, and the petition was filed on 12th October, 2006. In the meantime, oblivious to the petitioner's grievance, respondent No. 4 proceeded with its project which was based on the availability of the plot. Indeed, considering the nature of the petitioner's objection, it would have made no difference to the result of the petition, including regarding the allotment of the plot to the petitioner.

12. The petitioner, by a letter dated 15th March, 2006, addressed to MIDC, referred to its application dated 30th November, 2005, for the allotment of the said plot and stated as under:-

Now we came to know from reliable sources that out of 23 acres of open space 17 acres including 2 acre which we have applied for is allotted to Mahindra & Mahindra without considering our request. Even now without disturbing the requirement of Mahindra & Mahindra the requested plot can be allotted to us. We are enclosing the layout of industrial area wherein we have marked the plot requested by us. Also the layout plan shows the plot available for Mahindra & Mahindra. The corporation has a statutory policy of allotting adjoining plot to the existing units for expansion purpose and the plot requested by us is adjacent to our existing factory and the new plot requested by us is for expansion and the expansion programme consists of continuous chain process along with our existing plant and machinery. We are an SSI unit and as a matter considered as a priority segment by Govt. of India. We have been deprived of our rights by not allotting the requested plot in our favour and allotting the same to Mahindra & Mahindra. If we have not been allotted the plot we will not be in a position to do the expansion and hence will undergo heavy losses.

[emphasis supplied]

13. Mr. Madon rightly emphasized that the petitioner did not, in this letter, challenge the allotment to respondent No. 4. It merely stated that whereas respondent No. 4 had been allotted the plot, its request for allotment from the same large plot had not been considered. He further emphasized that the petitioner did not even seek the cancellation of the allotment of the plot to respondent No. 4. It in fact stated: "Even now without disturbing the requirement of Mahindra & Mahindra the requested plot can be allotted to us."

14. The petitioner had admittedly not addressed any letter to respondent No. 4 informing it about its grievances. This is in consonance with its not having objected to the allotment of the plot to respondent No. 4. This position, in fact, continued during a crucial, material period during which time, the application of respondent No. 4 was processed further as we will now indicate.

15. On 17th March, 2006, MIDC issued an invitation to offer to respondent No. 4, which was valid for fifteen days. Respondent No. 4 by a letter dated 22nd March, 2006, submitted the Blue form i.e. the offer, forwarded the requisite documents and remitted the entire premium of about Rs. 7,51,14,600/- calculated at the rate of Rs. 1000/- per sq. mtr.

16. By an order dated 27th March, 2006, MIDC allotted plot No. 126 admeasuring 68,286 square meters to respondent No. 4. On the same day, MIDC handed over possession of the said plot to respondent No. 4.

17. Even thereafter the petitioner did not challenge the allotment to respondent No. 4. This is evident from a letter dated 3rd April, 2006, addressed by it to the Chairman of the MIDC, which reads as under:-

Dear Sir,

This refer to our personal meeting at Mantralaya on 27.03.2006 regarding the subject mentioned above. As per the discussion please issue us the balance left of open space no.9 of 24.000 so. mtr. left after allotment to Mahindra & mahindra. We are enclosing here with the layout of open space no.9 in which we have marked our existing plot, plot allotted to Mahindra & Mahindra, and the plot of our request.

Hope that as per our discussion the said plot will be allotted to us at the earliest.

Thus, even at this stage the petitioner did not raise a grievance regarding the allotment to respondent No. 4. It's only complaint was that whereas respondent No. 4 was allotted the plot of land, MIDC had not allotted the petitioner a plot of land.

18. Ultimately, an agreement to lease dated 3rd July, 2006, was executed between the MIDC and respondent No. 4.

19. Thus by this time, the allotment of the land in favour of respondent No. 4

and all the formalities in connection therewith stood concluded. Apart from all that transpired prior to the conversion of the said plot on 10th February, 2006, respondent No. 4 had on 1st March, 2006, filed the White application form. This was followed by respondent No. 4 filing the Blue-form on 22nd March, 2006, and the plot being allotted to respondent No. 4 on 27th March, 2006 pursuant to the formal application, which was made on 1st March, 2006.

20. Over a month later, correspondence ensued between the petitioner/petitioner's advocate and the MIDC in the course of which the petitioner reiterated the above facts. By its advocate's letter dated 25th August, 2006, the petitioner reiterated that even earlier it did not want to disturb the requirement of respondent No. 4 and that it could be allotted its requirement from the balance area of plot No. 9. The petitioner's advocate's letter further stated as under:-

On behalf of our clients, we have, therefore, to call upon you to forthwith withdraw your letter dated 22nd June 2006 and to allot the remaining area of open plot No. 9 to our clients as failing which, we have peremptory instructions from our clients to adopt proceedings against you which would then be at your entire risk as to costs and consequences.

Our clients have been reliably informed that the remaining open area is sought to be allotted for the purposes of a Truck Terminal viz., to a person who had not even applied to the allotment of the said land and in any event whose application was not in the records of the MIDC at the time when our clients application was made. On behalf of our clients we have to call upon you to ensure that no allotment is made of the remaining area of open plot No. 9 to any person much less for a Truck Terminal or otherwise. Our clients would appreciate if a confirmation in this regard is sent to our clients, as otherwise our clients would have to apply for urgent reliefs.

It is clear, therefore, that even by this letter, the petitioner did not question the allotment in favour of respondent No. 4. It, in fact, accepted the same. All that it sought was an allotment out of the balance area from plot No. 9. In respect of the balance area, what the petitioner challenged/questioned was the proposed allotment to respondent No. 5 for the truck terminal. This is evident from the last paragraph quoted above wherein the petitioner called upon MIDC to ensure that no allotment is made "of remaining area of plot No. 9." to any person, "much less for a Truck Terminal or otherwise.

21. Thus, on the one hand in the correspondence the petitioner did not question the allotment to respondent No. 4 and on the other at the hearing before us there was no challenge to the allotment of the plot in favour of respondent No. 5.

The petitioner, in its advocate's said letter dated 25th August, 2006, also contended that its application for allotment was contrary to MIDC's circular dated 24th January, 1994 -a contention we will deal with later.

22. The MIDC, by its letter dated 22nd September, 2006, in its reply to the petitioner's advocate's letter dated 25th August, 2006, stated that there was no area available out of plot No. 9 after allotment to respondent No. 4.

23. The petitioner's advocate by its letter dated 3rd October, 2006, raised a grievance regarding the allotment of a plot to respondent No. 5 on the basis of an application of respondent No. 5 made only in the month of September, 2006. The petitioner contended that the same was contrary to MIDC's resolution and the provisions of the Maharashtra Industrial Development Corporation Disposal of Land Regulation, 1975 as well as the Maharashtra Industrial Development Act, 1961. The petitioner sought various documents and information relating to respondent No. 5 alone.

24. It is of vital importance to note that no grievance was made regarding the allotment of the plot to respondent No. 4. It was only by its advocate's letter dated 10th October, 2006, addressed to MIDC that the petitioner for the first time complained about the allotment of the plot of land to respondent No. 4. The challenge, however, was only on the ground that the allotment was contrary to the said circular dated 24th January, 1994. The petitioner also sought the documents in relation to the allotment to respondent No. 4.

25. This petition was filed on 12th October, 2006. By an order dated 5th February, 2008, the petition was admitted, but interim reliefs were refused. The petitioner filed an SLP(C) No. 18934/2008/Civil Appeal No. 6201 of 2009 against the order refusing interim reliefs. The Supreme Court by an order and judgment, Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others, , allowed the appeal by granting an interim order. The Supreme Court, however, clarified that the observations made in the judgment, either on facts or on law, shall not adversely affect the case on either of the parties for the reason that the only question before the Supreme Court was whether the petitioner deserved to be granted interim protection till the writ petition was decided.

26. Mr. Menon's main grievance was that the entire process is vitiated on account of the fourth respondent's application for allotment having been granted despite the fact that the petitioner's application for allotment was prior in time. There were no cogent reasons for the same. A reasoned order in this regard had not even been passed.

In this regard he also submitted that the land had not been allotted in accordance with the MIDC's Disposal of Land Regulation, 1975 and the guidelines contained in MIDC's brochure. He also submitted that the rejection of the petitioner's application for the allotment of the land was without a speaking order.

Mr. Menon further submitted that the allotment in favour of respondent Nos. 4 and 5 and in preference to the allotment in favour of the petitioner was contrary to clause 4 of the circular of the MIDC dated 24th January, 1994, pursuant to a decision of its Board taken on 26th November, 1993. We will set out the circular

while dealing with this contention.

27. The contention that the petitioner's application was prior in time was based on its having submitted the White form on 30th November, 2005, whereas respondent No. 4 had submitted the White form only on 27th March, 2006. He submitted that it is the filing of the White form alone that entitled the respondents to process an application for allotment. He relied upon the answers to three questions in connection with the allotment procedure contained in a brochure issued by the MIDC. As a first step, the applicant would have to apply in a form popularly known as "White Application Form" along with the documents specified therein. The offer letter would be issued normally within fifteen days from the date of receipt of the White application form. As the next step, along with the offer letter, the applicant would receive an application for allotment letter in a Blue Application Form to be completed in all respects and submitted to MIDC. The MIDC would issue the allotment letter within about three weeks from the receipt of the application.

28. This really is a highly technical argument. It is, in any event, unfounded. Even assuming that such a technical argument ought to be considered, it is met with an equally strong technical argument on behalf of respondent No. 4.

29. The brochure does not establish that the plot can be allotted by MIDC only to the first applicant who fills in and submits a white form. There is nothing in the brochure that indicates the time of filing a white form to have an absolute priority. If, for instance, several applications are received within the span of a few days or weeks, it is always open to MIDC to consider all the applications and allot the plot to the most suitable applicant.

The error is in presuming that what is stated in the brochure is sacrosanct. It is pertinent to note that the letter enclosing the brochure indicates that it is merely indicative of the manner in which an application for allotment ought to be made. It specifically states that the brochure is not a legal document and that its primary objective is to explain the procedural details in a concise form and in simple language.

30. In a given case, a departure from the guidelines in the brochure may indicate an unfair allotment. This, however, is not such a case. Respondent No. 4 had started the process for the allotment of the land much before 30th November, 2005 the petitioner's application in White form. This is evident from the facts stated above. As we noted earlier, respondent No. 4 started the process by the said letter dated 14th March, 2005, addressed to the Chief Minister informing him about its mega project and enquiring about the availability of incentives, including the allotment of land. Respondent No. 4 had the option of setting up its mega project in two other States. MIDC replied stating that it would locate the land in the industrial area where the petitioner had an existing unit. Thereafter, an MOU was entered into between the Government of Maharashtra and respondent No. 4 dated 15th June, 2005. On 11th July, 2005, MIDC accorded the

fourth respondent's project, the status of a mega project. On 23rd November, 2005, respondent No. 4, in fact, sought a lease in respect of the said plot Nos. 8 and 9. It was only thereafter on 30th November, 2005, that the petitioner had filed its application.

31. The only contention is that the application for lease on 23rd November, 2005, was not in the prescribed format viz. the white form and is, therefore, non-est. We are unable to agree. There is nothing to indicate that the failure to submit the White form debars MIDC from considering an application. In any event, Mr. Menon has not indicated any principle of law which supports such an extreme proposition viz. that the failure to file the white form rendered the application non-est.

32. Moreover, it was open to the MIDC to reject the application or to insist upon the white form being filled. It did not do so. Respondent No. 4, therefore, cannot be prejudiced on this ground, especially at this advanced stage.

33. Assuming that there is any substance in the petitioner's technical argument, the petitioner is met with an equally strong technical argument. The said plot was an open plot. The MIDC altered the user of the plot No. 9 to industrial use only on 10th February, 2006. Till then, plot No. 9 could not have been allotted for industrial use. The petitioner's application, therefore, could not have been processed or considered till then. After the user of the land was converted on 10th February, 2006, respondent No. 4 made the formal application on a White form on 1st March, 2006. The petitioner had not made a fresh application in White form after the alteration of the user.

We do not suggest that it was not open to MIDC to consider the petitioner's application merely because it was filed before the alteration of the user. We will assume that MIDC could have considered the same in anticipation of the alteration. In that event, however, MIDC could also have considered the fourth respondent's application although it was not made in the White form. If, however, we are to proceed purely technically, we must apply the rules equally to all the parties. Either way, the petitioner's challenge to the allotment in favour of respondent No. 4 fails.

34. It is also important to note that the petitioner was aware of the allotment in favour of respondent No. 4 prior to 15th March, 2006, as is evident from the letter dated 15th March, 2006, addressed by it to MIDC. The petitioner never objected to the allotment of the plot by MIDC in favour of respondent No. 4. This is evident from the correspondence addressed by the petitioner which we have already referred to.

By the letter dated 15th March, 2006, the petitioner stated that it could be allotted a plot "without disturbing the requirement of Mahindra & Mahindra (respondent No. 4)". By the letter dated 3rd April, 2006, addressed to the MIDC's Chairman, the petitioner requested MIDC to issue "the balance list of open space No. 8 of 24000 square meters left after allotment to Mahindra &

Mahindra (respondent No. 4)". It further enclosed a layout of the open space of plot No. 9 in which it had marked out the plot allotted to Mahindra & Mahindra on the one hand and the plot it requested on the other. The petitioner, therefore, did not seek to disturb the allotment in favour of the respondent No. 4. The petitioner's advocate's letter dated 23rd August, 2006, inter-alia, referred to the above letters and reiterated the demand qua the balance area in plot No. 9. In other words, even by the advocate's letter, the petitioner did not seek to disturb the allotment made in favour of respondent No. 4.

It was only by the letters dated 3rd October, 2006 and 10th October, 2006, that the petitioner challenged the allotment in favour of respondent No. 4. This challenge was also essentially only on the basis of MIDC's circular dated; 5th January, 1994, and not on the basis that the allotment was not in accordance with the procedure or unfair.

35. In the result, therefore, respondent No. 4 commenced the process as far back as 23rd November, 2005. There were detailed negotiations between the Government of Maharashtra, MIDC and respondent No. 4 in regard to the allotment for the mega project. Crores of rupees have been spent by respondent No. 4 in respect thereof, including the payment of premium of about Rs. 7.51 crores. Respondent No. 4 had the option to set up the mega project in two other States viz. Andhra Pradesh and Uttaranchal.

36. The petitioner took no steps to challenge the allotment although it knew about the same prior to 15th March, 2006. Apart from the fact that till October, 2006, the petitioner had not complained regarding the allotment to respondent No. 4, the petitioner had not even copied the earlier correspondence to respondent No. 4. In the meantime, respondent No. 4 altered its position to its detriment for no fault of its own. We are not inclined to exercise our jurisdiction under Article 226 to annul the allotment in such circumstances.

37. This brings us to MIDC's circular dated 25th January, 1994, upon which considerable reliance was placed by Mr. Menon to contend that the plot ought to have been allotted to the petitioner. We find firstly that the circular does not apply in respect of the present plot. We also find that the petitioner is in any event not entitled to the benefit of this circular. The circular reads as under:

MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION

(UNDERTAKING OF MAHARASHTRA GOVERNMENT) Marol Industrial Area,
Mahakali Gunfa Road Marol, Andheri (East) Mumbai-400 093

No. MIDC/Proceedings/G-10/568 Dated 25-1-1994

CIRCULAR

Subject: Regarding fixing the rate of the industrial area in which allotment of plot is being made by inviting tenders.

The industrial plots available in industrial area of the Maharashtra Industrial

Development Corporation, allotment of which is being made by public sealed tenders, in respect of such plots of land and for allotting the retail plots available in this industrial area, the Board of Directors have taken the following decision by its Resolution 2962 in 226th Meeting held on 26-11-93.

RESOLUTION NO. 2962

16.2 The Industrial Area in which the allotment of industrial plot as being made by inviting tenders as per the decision of Board of Directors, in respect of the said plots, current rate for the said industrial area be fixed as per the following resolution.

(1) The industrial area for which average current rate which is fixed by inviting tenders by the Board of Directors, such rate be assumed as current rate for the next one year or till fixing the average rate by again inviting tenders.

(2) The industrial area in which the rate is not fixed by calling tenders for more than 1 year period or the industrial area, in which the tenders are not invited till date, in such industrial area by including 10 percent amount in the present current rate, the said rate be fixed as current rate for next year.

(3) The industrial area in which till date allotment of industrial plots is decided to be made by tender procedure, however, till date actually the allotment of plots is not made by this procedure, in such industrial area, the rate decided by the Board of Directors in the said industrial area then by treating the said current rate at one and half time from the date from which it is fixed, the same be fixed for 1 year and thereafter from 1st April coming after 1 year, by adding 10 percent amount therein, the rate which will come be fixed as current rate for next year till 31st March.

(4) The industrial area in which the allotment of plots is being made by inviting tenders, if retail plots are available for allotment in such industrial area and if the said plots are gone in the production of neighbouring plot holders and if the use of plots available with them is mostly completed by them and if the said factory is consistently in production for five years before that, then by taking into considering the plan of expansion of the said plot holder, in case application is made for granting nearby available plot by plot holder for expansion scheme, then allotment of plots be made in preference for their factory expansion. However, if more that one plot holders are made similar demands, then if it is possible to meet needs of all by dividing the available plots, allotment be made by dividing parts of plots appropriately. However, if it is not possible to do so, then the allotment of concerned plot be made by tender procedure.

By taking note of the aforesaid resolution by all concerned Officer staff, action be taken accordingly.

Sd/- (V.K. Date) Joint Chief Executive Officer

We have proceeded on the basis that the circular has been correctly translated

from Marathi. As agreed by all the parties, we have, while quoting the circular from the petition, corrected the word "retail" to read "paltry/small" and the word "nearby" to read "adjoining".

38. Mr. Menon relied solely upon clause 4 of the circular. It is, however, necessary to read the circular as a whole. The circular does not apply to the present case. It is in respect of the allotment of industrial plots made by inviting tenders. It further relates to the fixation of the rate for the said industrial area. Clauses 1, 2 and 3 of the resolution deal only with the fixation of the rates.

Clause 4 does not apply to the plot allotted in favour of the respondent Nos. 4 and 5. These are not paltry or small plots. Clause 4 refers to paltry/small plots if available in an area in which the allotment of the plots is made by inviting tenders. These paltry/small plots are those which remain after the plots are disposed of in an area by inviting tenders. They could be left out for a variety of reasons. The plots allotted to respondent Nos. 4 and 5 are not such paltry/small plots.

39. To be eligible for allotment of such paltry/small plots, the applicants ought to have used the plots already available with them substantially. That, we presume, is the purport of the words "and if the use of plots available with them is mostly completed by them". The decision of MIDC not to allot the plot to the petitioner can be supported independent of what we have observed thus far. MIDC contended that the petitioner has not even exploited the full potential of its existing plots, including the plot adjacent to the plot of which it now seeks an allotment. Moreover, as pointed out by MIDC and by respondent No. 5, i.e. the other allottee of a part of the plot, the petitioner has been allotted eight plots in the past by MIDC. It has not even exploited the full potential of these plots. It has sold one of them for a huge profit.

40. The petitioner admittedly is an allottee of the adjoining plot. Ms. Chavan, the learned counsel appearing on behalf of the MIDC, however, contends that the petitioner has not exploited the potential of the plot substantially. The area of the petitioner's plot is 4050 square meters. It was handed over to the petitioner on 12th October, 1994. In paragraph 3.01 of the affidavit in reply, MIDC has expressly stated that the plot has been utilized only to the extent of about 50% of its potential. In paragraph 11 of the rejoinder, the petitioner did not deal with the detailed calculations furnished by MIDC in its affidavit in reply. In the rejoinder, while dealing with paragraph 3.01 of the MIDC's affidavit, the petitioner merely repeated and reiterated what it had stated earlier and denied the contentions contrary thereto. The petitioner has put up construction of only 2258.20 square meters.

41. There was some dispute as to the extent of the FSI available on the plot. Mr. Menon initially contended that only FSI of 0.50 was available on the said plot. He subsequently conceded that FSI of 1.00 was available on the said plot.

42. It is established, therefore, that the petitioner has not exploited the full

potential of the said plot or even a substantial part thereof. The petitioner was, therefore, not even eligible to be allotted a plot under clause 4 of the said circular.

43. Faced with this, Mr. Menon submitted that considering the expansion programme that the petitioner intends implementing, its existing plot is of no use. He stated that the expansion programme involves installing heavy machinery and it is, therefore, necessary for the petitioner to construct only ground floor structures which is not possible on its existing plot.

44. This contention was never raised before the Writ Petition was filed. It has not been raised either in the petition itself or in any subsequent affidavits filed by the petitioner. We are, therefore, unable to accept this contention.

45. Even assuming that the contention is factually correct, it would make no difference. The rights which have accrued in favour of respondent Nos. 4 and 5 can hardly be defeated especially in exercise of our writ jurisdiction on the basis of a contention which is now sought to be raised after over six years.

46. Mr. Menon submitted that clause 4 of the circular cannot possibly be in respect of only paltry plots for it would be impossible to have an industry on a paltry plot. Thus, he submitted that though the words used are paltry/small plots, it would make no difference.

47. The submission is firstly contrary to the plain language of the circular. If accepted, it would render not merely the words "paltry/small" but the subject matter of clause 4 redundant. Secondly, the circular does not contemplate only the setting up of a new venture on such a paltry/small part. It could even be used by the adjacent plot holders to expand their business which is, in fact, the basis of the petitioner's application itself.

48. As rightly pointed out by MIDC even in equity, the petitioner has no case. The petitioner has, over the years, been allotted eight plots of land in the said area. The full potential of even these plots was not exploited by the petitioner. In fact, the petitioner had purchased one of these plots in the name of his wife and sold the same to respondent No. 5 and earned enormous profits. Thus, the petitioner has not even utilized substantially, the eight plots already allotted to him. The petitioner, therefore, has no case in equity either. The details of these eight plots and the extent to which they have been exploited have been furnished. The petitioner has not denied these statements or offered any cogent explanation for his accumulating plots and not using them.

49. Mr. Menon relied upon the judgment of a Division Bench of this Court in Patni Computers Systems Limited v. Maharashtra Industrial Development Corporation & Ors. - Writ Petition No. 1345 of 2007, decided on 11th February, 2010. He relied upon the observations in paragraph 29, which read as under:

29. Apart from that Respondent No. 1 have violated the principles of natural justice and fair play as no opportunity was given to the Petitioners. After entering into an M.O.U., accepting moneys from Petitioner No. 1 for the entire land in

terms of the M.O.U., the Respondent No. 1 was duty bound to give an opportunity to the Petitioner No. 1 before passing a resolution to terminate the M.O.U. Thus the action of Respondent No. 1 in not giving an opportunity amounts to infraction of the principles of natural justice and fair play. On this count also the Board resolution has to be quashed and set aside. An instrumentality of the State must have its actions judged on the touchstone of being fair, bonafide, non-discriminatory and unbiased. Parties who approach it for allotment of land should be dealt on predictable principles. Having entered into an M.O.U. for an agreed sum, it could not without an opportunity because it was getting more money terminate the M.O.U. The right of hearing is given so that the party affected can point out the unreasonableness of the action. See *Zenit Mataplast P. Ltd. Vs. State of Maharashtra and Others*, . The action of terminating the M.O.U. by the Board has civil consequences.

50. The case is clearly distinguishable. As is evident, in that case the MIDC had entered into an MOU and accepted money from the petitioner for the entire land in terms of the MOU. Despite the same, the allotment was cancelled without reasons or without affording the petitioner an opportunity of being heard. Indeed, after all that had transpired between respondent No. 4 and respondent Nos. 1 to 3, this judgment would have supported the case of respondent No. 4 had MIDC allotted the plot to the petitioner.

51. It was not necessary for MIDC to pass a reasoned order while" making the allotment. The Court would, in such cases, be entitled to look at the files or any other record to ascertain whether or not the decision was reasonable and fair. We do not suggest that this Court cannot exercise powers under Article 226 to interfere with an allotment in such circumstances. The allotments of plots by the State or any instrumentality of the State is justiciable. However, the scope of interference would be limited to cases such as where the action is arbitrary or contrary to any statutory provision or policy enforceable in law.

52. Having been through the record, we are satisfied that there is no arbitrariness in the decision. The decision to allot the said plots to respondent Nos. 4 and 5 was taken after due consideration of all the facts and circumstances of the case. The MIDC and the State of Maharashtra considered the application of respondent Nos. 4 and 5 to be, inter-alia, in public interest for the benefit of the State. We find no reason to condemn this decision as arbitrary for any reason whatsoever.

53. In this view of the matter, it is not necessary to consider Mr. Madon's reliance upon sections 18 and 39 of the Maharashtra Industrial Development Act, 1961.

A point which was taken before the Supreme Court was not seriously pressed before us. The judgment of the Supreme Court noted that there was nothing on record to show as to how plot Nos. F-16 and F-17 could disappear from the site plan or become part of open space No. 9. In the affidavit in reply, MIDC denied

that there was any part demarcated as F-16 and F-17 as contended by the petitioner. Earlier, the proposed F-16 and F-17 plots were over a nallah and the entire area was designated as open space No. 9. In any event, considering what we have held earlier, the argument really is a non sequitur. Even if there were such plot numbers, it would make no difference to the result of the petition. 56. In the circumstances, the Writ Petition is dismissed. The interim orders to continue upto and including 31st January, 2013. Petition dismissed.