



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 155 OF 2006

WITH
CIVIL APPLICATION NO. 41 OF 2012

Bhrastachar Nirmoolan Sangathana

....*Petitioner*

: *Versus* :

State of Maharashtra & Ors.

....*Respondents*

Mr. Uday Warunjikar with Mr. Hrishikesh Nabar, Mr. Sumit Kate and Mr. Yash Jagdale, for the Petitioner.

Mrs. Neha S. Bhide, Government Pleader with Mr. O. A. Chandurkar, Additional Government Pleader and Ms. G. R. Raghuwanshi, AGP for State, Respondent Nos. 1 & 3.

Ms. Shyamali Gadre (Through VC) with Mr. Ashwin Kulkarni i/b Little & Co., for MIDC, Respondent No. 2.

Mr. I. M. Khairdi, for Respondent No. 4.

Mr. Huzefa Nasikwala with Mr. Idris Balasinorwala, for Respondent Nos. 7 and 8.

Mr. Atharv A. Gidaye i/b Mr. Harshad Bhadbhade, for Applicant in Civil Application No. 41 of 2012.

CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

Reserved on : 12 AUGUST 2025

Pronounced on : 20 AUGUST 2025

JUDGMENT : *(Per Sandeep V. Marne, J.)*

1) This petition is filed in public interest challenging allotment of various plots of land by Maharashtra Industrial Development Corporation (**MIDC**) in favour of Respondent Nos. 4 to 25.

2) Petitioner claims to be a social organization and a public trust set up with the objective of eradicating corruption. Petitioner No. 2 is the President of Petitioner No.1. It is pleaded that Petitioner No. 2 came across a press report in newspaper where several plots of land were allotted by Maharashtra Industrial Development Corporation to various persons closely related to the Ministers and Members of Legislative Assembly. Petitioner alleges that public land, intended for industrial development in the State, has been allotted at throwaway prices and on concessional rates, contrary to the provisions of Maharashtra Industrial Development Corporation Act, 1961 (**MIDC Act**). Petitioner alleges that such allotment is made without conduct of tender process. Accordingly, the Petitioner has filed the present petition questioning the allotment of plots by MIDC to Respondent Nos. 4 to 25.

3) Dr. Warunjikar, the learned counsel appearing for the Petitioner would submit that the MIDC has made allotment of plots to political persons without conducting public auction. That public largesse cannot be distributed without grant of opportunity to all eligible persons to participate in the bid process. That even if MIDC's power of making allotment merely on the application is momentarily recognized, it was incumbent upon MIDC to issue at least public notice so that interested educational institutions which are in real need of land could apply for allotment, thereby creating a level playing field among similarly situated persons/entities. That the allotment in the present case is done by entertaining individual applications made by politicians

and their appreciated persons. That such a course of action has resulted in a situation where entities having no educational activities in the concerned area are favored by allotting plots without any advertisement. He would rely upon judgments of the Apex Court in Akhil Bhartiya Upbhokta Congress Versus. State of Madhya Pradesh and Others¹, City Industrial Development Corporation through its Managing Director Versus. Platinum Entertainment and Others² and Indian Oil Corporation Limited and Others Versus. Shashi Prabha Shukla and Another³ in support of his contention that government land cannot be allotted without implementing tender process.

4) Dr. Warunjikar would further submit that, in addition to the issue of allotments being selectively made to chosen individuals without implementing tender process, MIDC has extended further favours by allotting the lands at concessional rates. Lands are allotted for irrelevant purposes, such as setting up of monuments. He would therefore submit that the allotments made in favour of Respondent Nos. 4 to 25 deserve to be set aside.

5) Ms. Gadre, the learned counsel appearing for Respondent No.2-MIDC would oppose the petition, submitting that the allotments have been made strictly in accordance with the Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975. That Regulation 4 empowers MIDC to make allotments either by public auction or by entertaining individual applications. She would submit that an industrial area is developed in a planned manner under which 60% of the land is used for industrial purposes, 25% of the land is used for the purpose of roads, pipelines, footpaths, etc. and about 10% area is required to be kept as compulsory open space under the Development

1 (2011) 5 SCC 29

2 (2015) 1 SCC 558

3 (2018) 12 SCC 85

Control Regulations of MIDC. She would submit that 5% of the area is required to be compulsorily kept for amenities such as post offices, television exchanges, schools, colleges, educational institutions, etc. She would submit that the impugned allotments are accordingly made for the purpose of establishment of common amenities, within the prescribed 5% reserved quota. She would further submit that the MIDC has taken policy decisions from time to time for fixing the rates at which allotment of plots are required to be made to the educational institutions. That as per Resolution No. 3872 dated 2 August 2004, it has been decided to charge 50% of the industrial rate while making the allotment. She would submit that the regulations and resolutions are not under challenged. She would accordingly pray for dismissal of the petition.

6) Ms. Bhide, the learned Government Pleader, would also oppose the petition by adopting the submissions made on behalf of MIDC.

7) Mr. Nasikwala, the learned counsel appearing for Respondent Nos. 7 and 8, would submit that the challenge to the allotment of the land to Respondent No. 7 was made subject matter of challenge in PIL Nos. 219 of 2009 and 103 of 2007, which has been directed to be transferred to the Aurangabad Bench on account of situation of land in Latur district. That Respondent Nos. 7 and 8 are public charitable trusts. That Respondent No. 7 has established Ayurvedic Medical College and Hospital at the allotted land and has also developed herbal garden. That Respondent No. 8 has set up VDF School of Engineering, VDF School of Polytechnic, VDF School of Pharmacy and Goldcrest High School at the allotted land. He would submit that the allotment is made strictly in accordance with the land disposal Regulations, and that no interference is warranted in allotment

of plots at this distinct juncture, which would affect the educational activities conducted by Respondent Nos. 7 and 8.

8) Mr. Khairdi, the learned counsel appearing for Respondent No. 4, would submit that Respondent No. 4 is a leading entity in the field of education and has been allotted the concerned plot of land for setting up educational institutions. That the land is being utilized for the purpose for which the same is allotted. He would also pray for dismissal of the petition.

9) We have considered the submissions canvassed by the learned counsel appearing for the parties.

10) Petitioners have questioned the allotment of lands made by MIDC in favour of Respondent Nos. 4 to 25. Their grievance is two fold. Firstly, the allotments are made without implementing tender process and secondly, the allotment is made at concessional rates.

11) MIDC is a corporation established under the provisions of Maharashtra Industrial Development Act, 1961. MIDC has been established with the objective of ensuring planned and accelerated industrial development throughout the State. In furtherance of this objective, MIDC has acquired several industrial areas and industrial estates throughout the State. Land is acquired for the purpose of establishment of industrial areas. After notification of particular industrial area, MIDC develops the acquired land by sub-dividing the same into plots for development of industries. MIDC is also a Special Planning Authority under Section 40 of the Maharashtra Regional and Town Planning Act, 1966. MIDC has framed separate Development Control Regulations (**DCR**) in respect of industrial areas. The DCR framed by MIDC deal with various aspects relating to the planned

development of the industrial areas. Planned development of an industrial area includes primarily setting up of industries. However, MIDC also provides certain amenities within these areas. In some of the industrial areas, housing facilities are also created for workers employed in the industries. Additionally, MIDC also makes provision for other amenities such as playgrounds, open spaces, schools, colleges, post offices, telephone exchanges, fire stations, water supply units, recreation centres, training centres, etc.

12) In exercise of powers conferred under Section 64 of MIDC Act, the State Government has sanctioned Maharashtra Industrial Development Corporation Disposal of Land Regulations, 1975 (**the Land Disposal Regulations**). The Land Disposal Regulations provide for preparation of layout of land transferred by the State Government to MIDC. Under Regulation 4, out of the land covered by layout so prepared under Section 3, the MIDC can dispose of plot of land either by public auction or by entertaining regular applications. The plots can be allotted either on rental basis or on premium lease basis or partly on rental or partly on premium basis. Regulation 4 of Land Regulations provisions provides thus :-

4. Manner of disposal of land open lands:

Out of the land covered by the layout so prepared the Corporation may dispose of plots of land -

- (i) by public auction; or
- (ii) by entertaining individual applications;

In either case the plots may be allotted-

- (a) on rental basis;
- (b) on premium lease basis; or
- (c) partly on rental basis and partly on premium basis;

as the Corporation may from time to time decide in respect of each Industrial Area

13) Regulation 6 governs allotment of plots by applications and provides thus :-

6. Allotment of plot by applications-

Where the Corporation decides to dispose of the plots by entertaining applications, such application shall be made to the Chief Executive Officer in Form 'B'.

14) Regulation 8 provides for determination of amount of premium for grant of lease and provides thus :-

8. Amount of premium to be paid with the application for grant of Lease-

Where any land is proposed to be disposed of on premium lease basis, the application shall be accompanied by such amount of premium as may be laid down by the Corporation from time to time.

15) Regulation 10 provides for consideration of applications for allotment of plot by the land and provides thus :-

10. Consideration of applications for plots by the Land Committee-

A receipt of any application for allotment of land, the Chief Executive Officer shall make such enquiries as he deems necessary and place it before the Land Committee with his recommendations and Land Committee may either sanction or reject such application;

Provided that the Chief Executive Officer may make allotment of a plot of land where the requirement of the applicant does not exceed the area laid down by the Corporation. A list of such allotments shall be placed before the Land Committee for its information;

16) Regulation 11 provides for allotment of plots on concessional terms and provides thus :-

11. Allotment on concessional terms-

In cases where the Corporation decides to dispose of plots of land on rental basis, the quantum of rent and the concessions to be given in respect of payment thereof shall be such as may be determined by the Corporation from time to time:

17) Regulation 30 deal with allotment of plots for public utilities.

18) Thus, under the Land Disposal Regulations, it is lawful for MIDC to make allotment of plots in a given case by entertaining direct applications and it is not necessary that in every case, the allotment must be done by implementing a tender process.

19) MIDC, in its capacity as a Special Planning Authority, has formulated DCRs which regulate the manner in which the lands in an industrial area are to be developed. In its Affidavit-in-Reply, MIDC has pointed out that 60% of land in an industrial area can be used for industrial purposes, 25% area can be used for the purposes of roads, pipelines, footpath, etc., 10% of the area is required to be maintained as open spaces and the balance 5% area is required to be used for amenities such as post offices, telephone exchanges, schools, colleges, educational institutions, training centre, etc. Regulation 27 of the DCR of MIDC provides thus :-

“27.1 In any layout or sub-division of land admeasuring more than 1 hectare for Industrial purpose and 0.5 hectare for residential purpose 10% of total area of land so sub-divided shall be reserved for open space, which shall as far as practicable, be located in one central place. Out of such open spaces, an area to the extent of 5% may be allowed to be constructed, only by ground floor structure, for the purpose of incidental allied public use, such as a pavilion, water tank, care taker's room, store room and such other purpose which is incidental to the main purpose for which the open space is used. Location of such structures shall be in one corner of the open space

provided further that in the industrial layouts, minimum width of open space shall be 15m and area of open space shall not be less than 750 sq. mtr and in residential zone, it shall not be less than 125 sq. mtr.

27.2 Such open spaces, earmarked in the layout as "Open Spaces" shall be permitted to be used for -

- a) Tree Plantation
- b) Play ground/ Sports ground

27.3 In such open spaces following structures may be permitted:

- a) Erection of telephone line / electric line, if required may be permitted subject to the condition, that it does not affect the main purpose for which open spaces is used viz. tree plantation, play ground etc.
- b) Water retaining structures like tanks for water supply to the tree plantation, underground structures like septic tank, sump well, open transformer, telephone junction boxes, which are part of the services.

27.4 Following areas, however, shall not be counted towards the "Open Spaces", having regard to the fact, that such areas cannot be used as "Lung Spaces" since tree-plantation is not possible on such areas.

- a) land under nallas
- b) land under cart tracts/pathways and easement passages.
- c) land under transmission lines, telephone lines and the corridors left for such services.

27.5 For any layout or sub-division of land, if any part of the land is utilized for carving out plots of more than 4 hectares, the land under such large plots of more than 4 hectares, shall be excluded from the area under sub-division of land for the purposes of reserving 10% open spaces, provided that such large sized plots are governed by the following regulations:

Maximum permissible ground coverage for such large sized plots of more than 4 hectares, shall be 0.4 and Floor Area Ratio (F.A.R.) / Floor Space Index (F.S.I) for such large sized plots, shall be equal to 0.9. such large plots shall keep 10% of the total plot area as compulsory "Open Space" within the Plot."

20) Clause 33 of the DCR defines the term "Amenity Areas" as under :-

"Amenity Areas: In any layout or sub-division 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 sub-divided, shall be reserved for "Amenity Area". Following users shall be permissible in the lands reserved for Amenity Area. MIDC Offices, Local Area Offices, Post Offices, Telephone Exchanges, Fire Stations, Police Stations/Chowkeys, Electric Sub-station, Water Supply Works, Drainage Works, Common Facility Centre/Recreation Centre, Industries, Training Centre, Industries Association offices, Schools/Colleges, Educational Institutions, Training Centre, Pollution Control Laboratories, Sulabh Shauchalaya, informal shopping, stall sites, plots for PAPs, communication centers, milk booths, such other users as may be permitted by the Chief Executive Officer."

21) Thus, in the 5% amenity areas schools, colleges, educational institutions, training centres, etc. can be established. Similarly, open spaces can be used for tree plantation or for use as play grounds/sports grounds.

22) So far as the fixation of rates for allotment of plots in amenity areas and open spaces is concerned, MIDC has given details of various resolutions adopted by its Board from time to time fixing such rates. It would be apposite to extract the relevant averments in MIDC's Affidavit-in-Reply as under :-

"I say, that similarly the rate for allotment for plots in amenity area and open spaces are also decided by MIDC from time to time. I say, that the rates in respect of allotment of plots to Educational Institutions over the past years were as under:

i) Till the year 1991 the Policy was to allot the plots to Educational Institution at Industrial rate prevailing in the said Industrial Area and Rs. 1/-per sq.mtr for playground.

ii) Vide Resolution No. 2695 in 213th Meeting dated 01.08.1991 the Board of MIDC decided to allot plots at Industrial Rate to the Educational Institution and at the rate of Rs. 1 per sq.mtr. for playground on contract basis for a period of 10 years. Annexed hereto and marked **Exhibit '1'** is the copy of the Resolution No. 2695 dated 01.08.1991

iii) Thereafter, vide Resolution. No. 3681 dated 08.04.2002 it was decided to allot the plots to Government Industrial Training Institute (ITI) at the rate of Rs. 1 and Private Industrial Training Institute (ITI) at the rate of 10% of the Industrial rate in the concern Industrial area and the rate in respect of Educational Institutions was fixed at 50% of the Industrial rate and in respect of Universities and deemed Universities at the rate of 25% of the Industrial rate in concerned Industrial area. It was also decided that the rate of playground will be fixed at 10% of the Industrial area. Annexed hereto and marked as Exhibit '2' is the copy of the said Resolution No. 3681 dated 08.04.2002

iv) I say, that thereafter Resolution No. 3707 dated 07.06.2002 the aforesaid Resolution No. 3681 dated 08.04.2002 was modified, defining the term Education Institute, Technical Institute, Vocational Education, etc., and certain other modification were also made but the rate fixed under Resolution No. 3681 dated 08.04.2002 for Educational Institutions were continued. Annexed hereto and marked as Exhibit '3' is the copy of the said Resolution No. 3707 dated 07.06.2002:

v) I say, that thereafter vide Resolution. No. 3872 dated 02.08.2004 it was decided that while allotting plots from amenity area to Educational Institutions the decision of charging 50% of the Industrial rate would continue. However, it was decided that if the plots in amenity area is not available and the Educational Institution has requested for allotment of plot reserved for Industrial purpose then such an Institution should be charged 75% of the prevailing Industrial rate. Similarly, it was decided that in respect of plots in residential zone the Educational Institution should be charged at the rate of 75% of the residential rate. Annexed hereto and marked as Exhibit '4' is the copy of the Resolution No. 3872 dated 02.08.2004.

vi) I say, thereafter vide, Resolution No. 3929 dated 02.08.2004 the power in respect of allotment of plots to the Educational Institutions was delegated to the Hon'ble Chairman of MIDC. Annexed hereto and marked as Exhibit '5' is the copy of the Resolution No. 3929 dated 02.08.2004

Thus, it would be clear that the rates in respect of plots to be allotted to the Educational Institutions were fixed from time to time by the Board of MIDC and all the allotments which are subject matter of the present Petition have been effected at the said rates fixed by the Board of MIDC. It is therefore submitted that the contentions of the Petitioner that the plots in MIDC area have been allotted to various persons at throw away prices by granting concessional rates contrary to provisions of MID Act and State Policy is devoid of any merits."

23) Thus, it appears that MIDC used to allot plot to educational institutions till the year 1991 at nominal rate of Rupee 1 per sq. mtr. for playground when plot is allotted to educational institute. The Resolution No. 3872 dated 2 August 2004 fixes concessional rate of 50%

of the industrial rate for allotment of plots to educational institutions out of amenities areas.

24) The conspectus of the above discussion is that the allotment of land in industrial areas set up by MIDC is governed by provisions of Land Disposal Regulations, DCR of MIDC and various Board Resolutions. The Land Disposal Regulations empower MIDC to make allotments either by implementing tender process or by entertaining direct applications. Thus, allotment of lands by entertaining direct application is something which is not prohibited under the Land Disposal Regulations. DCRs formulated by MIDC contemplate earmarking of 5% land for amenities and 10% land for open spaces. The Board Resolutions have fixed 50% concessional rate for allotment of amenity plots and open space plots. Petitioners have not challenged the validity of Land Disposal Regulations or DCR of MIDC or any of the Board Resolutions fixing the concessional rates.

25) In its Affidavit-in-Reply, MIDC has given details of allotments made to Respondent Nos. 4 to 25. The relevant averments made in the Affidavit of MIDC justified allotment of plot, which are as under :-

"i) Allotment of land to Wardha Indira Bahuuddesiya Mahila Vikas Santha:

The allotment of land to Wardha Indira Bahuuddesiya Mahila Vikas Santha has been sanction vide Board Resolution No. 4089 dated 24.02.2006. The Industrial rate in Wardha Industrial area was Rs. 30/- per sq meter at the relevant time. Since the allotment was from amenity area the Institution was charged Rs.15/- per sq. meter for Building Site admeasuring about 3000sq. meters, being 50% of Industrial rate and Rs.3/- per sq. meter being 10% of the Industrial rate for Play Ground admeasuring about 9000 sq meters.

ii) Allotment to Datta Meghe Child welfare Education Institution:

The allotment of land to Datta Meghe Child welfare Education Institution has been sanctioned vide Board Resolution No. 4090 dated 24-02-2006. The Industrial rate in Additional Yawatmal Industrial area was Rs. 40/- per sq meter at the relevant time. The allotment being for secondary school the Institution was entitle for about 2000 sq meters each at concessional rate for building site and round respectively However as per the request of the Institution the allotment was sanction for about 4000 sq meters for building sanction and about 4000 sq meters for Play ground. Therefore though the allotment was from amenity area the Institution was charged Rs. 20/- per sq. meter for Building Site admeasuring about 2000 sq. meters being 50% of Industrial rate and Rs. 40 per sq. meter for remaining 2000 sq meters for building site being 100% of Industrial rate. Similarly Institution was charged Rs. 4/- per sq. meter being 10% of the Industrial rate for Play Ground admeasuring about 2000 sq meters and Rs. 40 per as. Meter being 100% of Industrial area for remaining 2000 sq. meters for Play ground.

iii) Allotment in favout of Bhausaheb Mulik Charitable Trust :

The allotment of land to Bhausaheb Mulik Charitable Trust has been sanctioned vide Board Resolution No. 4091 dated 24-02-2006 The Industrial rate in Butibori Industrial area was Rs. 100/- per sq meter at the relevant time. Since the allotment was from amenity area the Institution was charged Rs. 50/- per sq. meter for Building Site admeasuring about 22000 sq. meters being 50th of Industrial rate and Rs.10/- per sq. meter being 10% of the Industrial rate for Play Ground admeasuring about 18000 sq. meters. An additional area of 2600 sq meter was also aloted at Rs. 100/- per sq. meters being 100% of Industrial rate.

iv) Allotment To Navsanjivani Shikshan Prasarak Mandal:

The allotment of land to Nav Sanjivani Shikshan Prasarak Mandal, Yawatmal has been sanctioned vide Board Resolution No. 3845 dated 6-01-2004 namely 4000 sq. mtrs for building site & 4000 sq. mtrs. for playground. However, subsequently by Resolution No. 4121 dated 22.03.2006, the Board MIDC sanctioned allotment of 8000 sq. mtr. of land for building site and playground and about 17000 sq. mtr. for Nursing School. The Industrial rate in Additional Yawatmal Industrial area was Rs. 40/- per sq meter at the relevant time. As per the request of the Institution the allotment was sanctioned for about 4000 sq meters for building site and about 4000 sq meters for Play ground. Since the allotment was from Industrial area the Institution was charged Rs. 30/- per sq. meter for Building Site admeasuring about 4000 sq. meters, being 75% of Industrial rate and Rs. 30 per sq. meter for remaining 4000 sq meters for Playground site, being 75% of Industrial rate. As pointed out aforesaid the corporation has also sanctioned allotment of 1700 sq. mtrs. for Nursing school in favour of with the said Nav Sanjivani Shikshan Prasarak Mandal being 8000 sq. mtr for building site and 9000 sq. mtr for playground at the prevailing rate i.e. 75% of the Industrial rate.

v) Allotment to Dr. D. Y. Patil Pratishtan:

The allotment of land to Dr. D. Y. Patil Pratishtan has been sanctioned vide Board Resolution No. 3849 dated 6-01-2004. The Industrial rate in Pimpri Industrial area was Rs. 2343/- per sq meter at the relevant time. Since the allotment was from amenity area the Institution was charged Rs. 1180/- per

sq. meter for Building Site admeasuring about 8000 sq. meters, being 50% of Industrial rate and Rs. 240/- per sq meter being 10% of the Industrial rate for Play Ground admeasuring about 8000 sq meters. In Pimpri Industrial Area the amenity is about 61.21 Hectos and the Education zone is about 15.93 Hectors.

vi) Allotment to Vankatesh Education Institution Latur :

The allotment of 5 acres of land to Vankatesh Education Institution Latur for Building site and Play ground has been sanction vide Board Resolution No. 3900 dated 9-06-2004. The Industrial rate in latur industrial area was Rs.50/- per sq meter at the relevant time. However no further progress in respect thereof has taken place.

i) Allotment of Plot for Construction of Statute in Memory of Late Rajarambapu Patil :

I say, that in the year of 1968 the Chairman Walva Taluka Sahakari Sekar Kharkana had applied for allotment of 250 Acres of land at the Islampur Industrial Area for setting of Co-operative Sugar Factory. Since, the allotment involved a large piece of land and there was no issue of expenditure for construction of roads, the Co-operative Society requested for allotment of land at the cost of acquisition. Since, the unit was to be established in Backward area and there was no question of construction of road as large piece of land was to be allotted, the Board of the Corporation consider the said request and allotted 250 Acres of land to Walva Taluka Sahakari Sakar Kharkana at the cost of acquisition of land plus proportionate capital expenditure for water supply scheme, at its meeting held on 26.12.1968. The possession of the land was also handed over to Walva Taluka Sahakari Sakar Kharkana and the Co-operative Sugar factory is also functioning on the said plot for last several years. I say, that the said Walva Taluka Sahakari Sakar Kharkana has been renamed as Late Rajaram Babu Patil Sahakari Sakar Kharkana Limited. I say, that thereafter in the year 2006 the Late Rajaram Babu Patil Sahakari Sakar Kharkana Limited requested for utilization of 8 Acres of Area out of 250 Acres allotted to Late Rajaram Babu Patil Sahakari Sakar Kharkana Limited for construction of Memorial of Late Rajaram Babu Patil, the Founder Member of Late Rajaram Babu Patil Sahakari Sakar Kharkana Limited. I say, that the said issued was considered at the meeting of the Board dated 24.02.2006 and vide Resolution No. 4093, the Board Approved the transfer of 8 Acres of land out of the land allotted to the Late Rajaram Babu Patil Sahakari Sakar Kharkana Limited for Memorial of Late Rajaram Babu Patil. However, it has been clarified that allotment of land for construction of Memorial was not within the policy of MIDC and the Late Rajaram Babu Patil Sahakari Sakar Kharkana Limited should take appropriate permission from the State Government for the same.

ii) ALLOTMENT OF LAND TO VILASRAO DESHMUKH FOUNDATION

The Vilasrao Deshmukh Foundation had requested for allotment of land for the purpose of Educational complex consisting of Technical, Agricultural, Dairy, Bio-technology and Medical Science. The Industrial rate in the Additional latur Industrial Area at the relevant time was R3 50/- per sq

meter. Accordingly, an area of 3.53 Hectors considering the rate of amenity area and 8.47 Hectors considering Industrial rate was allotted to the said Vilasrao Deshmukh Foundation vide Resolution No. 3865 dated 06.01.2004. Thereafter, considering the representation of the Institution an area of about 12 Hectors was allotted to the said Institution from Amenity area at the prevailing rate of 50% of the Industrial rate i. e. at Rs. 25/- per sq meter and about 8 Hectors of land have been allotted to the said Institution for playground by Resolution No. 4853 dated 23.12.2004 at 10% of the Industrial rate i. e. at Rs. 5/- per sq. meter.

iii) Allotment of land to Manjara Charitable Trust :

The allotment of land to Manjara Charitable Trust has been sanctioned vide Board Resolution No. 4095 dated 24-02-2006. The Industrial rate in Additional Latur Industrial area was Rs. 50/- per sq meter at the relevant time. Since the allotment was from open space area the Institution was charged Rs. 5/- per sq. meter. The said sanction was accorded for allotment of about 11 acres of land for Tree Plantation of ayurvedic medicinal herbs and plants. The rate for open space was Rs. 5 per sq meter being 10% of the Industrial rate.

iv) Allotment of land to Vidya Pratishthan, Baramati:

The allotment of land to Vidya Pratishthan Baramati has been sanctioned vide Board Resolution No. 3346 dated 6-01-2004. The land allotted to Vidya Pratishthan was falling in residential Zone and The Residential rate in Baramati Industrial area was Rs. 150/- per sq meter at the relevant time. Since the allotment was from Residential area the Institution was charged Rs. 150/- per sq. meter for Building Site admeasuring about 5076 sq. meters, being 100% of Residential rate and Rs. 10/- per sq. meter being 10% of the Industrial rate for Play Ground admeasuring about 2924 sq meters. The Industrial rate in Baramati Industrial area was Rs. 100/- per sq. meters at the relevant time.

v) Allotment to Nav Sanjivani Shikshan Prasarak Mandal, Yawatmal:

The allotment of land to Nav Sanjivani Shikshan Prasarak Mandal, Yawatmal has been sanctioned vide Board Resolution No. 3845 dated 6-01-2004 namely 4000 sq. mtrs for building site & 4000 sq. mtrs. for playground. However, subsequently by Resolution No. 4121 dated 22.03.2006, the Board MIDC sanctioned allotment of 8000 sq. mtr. of land for building site and playground and about 17000 sq. mtr. for Nursing School. The Industrial rate in Additional Yawatmal Industrial area was Rs. 40/- per sq meter at the relevant time. As per the request of the Institution the allotment was sanctioned for about 4000 sq meters for building site and about 4000 sq meters for Play ground. Since the allotment was from Industrial area the Institution was charged Rs. 30/- per sq. meter for Building Site admeasuring about 4000 sq. meters, being 75% of Industrial rate and Rs. 30 per sq. meter for remaining 4000 sq meters for Playground site, being 75% of Industrial rate. As pointed out aforesaid the corporation has also sanctioned allotment of 1700 sq. mtrs. for Nursing school in favour of with the said Nav Sanjivani Shikshan Prasarak Mandal being 8000 sq. mtr for building site and 9000 sq. mtr for playground at the prevailing rate i.e. 75% of the Industrial rate.

vi) Allotment of land to Datta Meghe Child welfare Education Institution:

The allotment of land to Datta Meghe Child welfare Education Institution has been sanctioned vide Board Resolution No. 4090 dated 24-02-2006. The Industrial rate in Additional Yawatmal Industrial area was Rs. 40/- per sq meter at the relevant time. The allotment being for secondary school the Institution was entitle for about 2000 sq meters each at concessional rate for building site and play ground respectively. However as per the request of the Institution the allotment was sanction for about 4000 sq meters for building site and about 4000 sq meters for Play ground. Therefore though the allotment was from amenity area the Institution was charged Rs. 20 / per sq. meter for Building Site admeasuring about 2000 sq. meters being 50% of Industrial rate and Rs. 40 per sq. meter for remaining 2000 sq meters for building site being 100% of Industrial rate. Similarly Institution was charged Rs. 4/- per sq. meter being 10% of the Industrial rate for Play Ground admeasuring about 2000 sq. meters and Rs. 40 per as. Meter being 100% of Industrial area for remaining 2000 sq, meters for Play ground."

26) MIDC has taken a specific stand that the impugned allotments have been made strictly in accordance with the Land Disposal Regulations and the Board Resolutions. Petitioners have not challenged the Land Disposal Regulations which empower MIDC to make allotments by entertaining direct applications. Once 5% land in an industrial area is earmarked for amenities spaces, which include educational institution, it is actually the duty of MIDC to ensure that educational institutions are set up in such earmarked land.

27) Petitioners have questioned allotment of plots without implementing tender process or public advertisements. Reliance is placed on judgment of the Apex Court in *Akhil Bhartiya Upbhokta Congress* (supra) in which the Apex Court has held in paragraphs 65, 66 and 67 are as under :-

"65*. What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the

public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66*. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organisations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organisations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism and/or nepotism violating the soul of the equality clause embodied in Article 14 of the Constitution.

67*. This, however, does not mean that the State can never allot land to the institutions/organisations engaged in educational, cultural, social or philanthropic activities or are rendering service to the society except by way of auction. Nevertheless, it is necessary to observe that once a piece of land is earmarked or identified for allotment to institutions/organisations engaged in any such activity, the actual exercise of allotment must be done in a manner consistent with the doctrine of equality. The competent authority should, as a matter of course, issue an advertisement incorporating therein the conditions of eligibility so as to enable all similarly situated eligible persons, institutions/organisations to participate in the process of allotment, whether by way of auction or otherwise. In a given case the Government may allot land at a fixed price but in that case also allotment must be preceded by a wholesome exercise consistent with Article 14 of the Constitution."

28) In *City Industrial Development Corporation Versus. Platinum Entertainment* (supra), the Apex Court has referred to the judgment in *Akhil Bhartiya Upbhokta Congress* (supra) in addition to various other judgments and has held in paragraph 45 and 49 as under:

"45. The High Court instead of looking into these aspects of the matter, completely ignored the same on the ground that in the show cause notice none of the grounds were made basis of the order of cancellation of allotment. In our considered opinion, the High Court while exercising power of judicial review is supposed to have gone into the question as to how the three plots were allotted in favour of one group of persons. The High Court has lost sight of the admitted fact that by entertaining private applications of the same person three different valuable plots have been

allotted in different names. The High Court fell in error in holding that the allotment of plots of land to the same person but in the names of trust is also justified.

49. State and its agencies and instrumentalities cannot give largesse to any person at sweet will and whims of the political entities or officers of the State. However, decisions and action of the State must be founded on a sound, transparent and well-defined policy which shall be made known to the public. The disposal of government land by adopting a discriminatory and arbitrary method shall always be avoided and it should be done in a fair and equitable manner as the allotment on favoritism or nepotism influences the exercises of discretion. Even assuming that if the Rule or Regulation prescribes the mode of allotment by entertaining individual application or by tenders or competitive bidding, the Rule of Law requires publicity to be given before such allotment is made. CIDCO authorities should not adopt a pick and choose method while allotting the government land."

29) In *Indian Oil Corporation Limited* (supra), the Apex Court has held in paragraph 23 as under :-

"23. It is no longer res integra that a public authority, be a person or an administrative body is entrusted with the role to perform for the benefit of the public and not for private profit and when a prima facie case of misuse of power is made out, it is open to a court to draw the inference that unauthorised purposes have been pursued, if the competent authority fails to adduce any ground supporting the validity of its conduct."

30) On the other hand, contesting Respondents have relied upon judgment of the Apex Court in *M/s. Kasturi Lal Lakshmi Reddy and Others Versus. State of Jammu and Kashmir and another*⁴, in which it is held in paragraph 22 as under :-

"22. Now the 2nd respondents had made an offer for putting up a modern plant for manufacture of resin, turpentine oil and other derivatives within the State provided they were assured a definite supply of resin every year. But having regard to the commitments already made by it, it was not possible for the State to make any definite allocation of resin to the 2nd respondents and a proposal was therefore mooted that 11,85,414 blazes in inaccessible areas of Reasi, Ramban and Poonch Divisions could be allocated to the 2nd respondents for tapping on certain terms and conditions, so that the 2nd respondents could tap these blazes and out of the resin extracted, obtain for themselves an assured supply for running the factory to be set up by them and make the balance quantity available to the State for its own purpose. The 2nd respondents were agreeable to this proposal and they accordingly put forward an alternative proposal on these lines for the consideration of the State and eventually, the impugned order came to be made in favour of the 2nd respondents. We have already discussed the

4 (1980) 4 SCC 1

terms of the impugned Order and it is clear from what we have said that the impugned order was unquestionable and without doubt, in the interest of the State and even with a microscopic examination we fail to see anything in it which could possibly incur the reproach of being condemned as arbitrary or irrational. It is true that no advertisements were issued by the State inviting tenders for award of tapping contract in respect of these blazes; or stating that tapping contract would be given to any party who is prepared to put up a factory for manufacture of resin, turpentine oil and other derivatives within the State, but it must be remembered that it was not tapping contract simpliciter which was being given by the State. The tapping contract was being given by way of allocation of raw material for feeding the factory to be set up by the 2nd respondents. The predominant purpose of the transaction was to ensure setting up of a factory by the 2nd respondents as part of the process of industrialisation of the State and since the 2nd respondents wanted assurance of a definite supply of resin as a condition of putting up the factory, the State awarded the tapping contract to the 2nd respondents for that purpose. If the State were giving tapping contract simpliciter there can be no doubt that the State would have to auction or invite tenders for securing the highest price, subject, of course, to any other relevant overriding considerations of public weal or interest, but in a case like this where the State is allocating resources such as water, power, raw materials etc. for the purpose of encouraging setting up of industries within the State, we do not think the State is bound to advertise and tell the people that it wants a particular industry to be set up within the State and invite those interested to come up with proposals for the purpose. The State may choose to do so, if it thinks fit and in a given situation, it may even turn to be advantageous for the State to do so, but if any private party comes before the State and offers to set up an industry, the State would not be committing breach of any constitutional or legal obligation if it negotiates with such party and agrees to provide resources and other facilities for the purpose of setting up the industry. The State is not obliged to tell such party; "Please wait. I will first advertise, see whether any other offers are forthcoming and then after considering all offers, decide whether I should let you set up the industry." It would be most unrealistic to insist on such a procedure particularly in an area like Jammu and Kashmir which on account of historical, political and other reasons, is not yet industrially developed and where entrepreneurs have to be offered attractive terms in order to persuade them to set up an industry. The State must be free in such a case to negotiate with a private entrepreneur A with a view to inducing him to set up an industry within the State and if the State enters into a contract with such entrepreneur for providing resources and other facilities for setting up an industry, the contract cannot be assailed as invalid so long as the State had acted bona fide, reasonably and in public interest. If the terms and conditions of the contract or the surrounding circumstances show that the State has acted mala fide or out of improper or corrupt motive or in order to promote the private interests of someone at the cost of the State, the Court will undoubtedly interfere and strike down State action as arbitrary, unreasonable or contrary to public interest. But so long as the State action is bonafide and reasonable, the Court will not interfere merely on the ground that no advertisement was given or publicity or made or tenders invited. Here, the 2nd respondents approached the State for the purpose of setting up a modern factory for manufacture of resin, turpentine oil and other derivatives and asked for allocation of resin and the State, with a view to offering an incentive to the 2nd respondents to set up the factory, made the

impugned order awarding the tapping contract in respect of these blazes to the 2nd respondents as a part of a package deal. We have already pointed out and we need not repeat again, that the impugned order was reasonable and in the interest of the State and in the circumstances, we are clearly of the view that it cannot be assailed as invalid merely because no advertisements were issued inviting offers for setting up a factory and taking the tapping contract as an integral part of the transaction."

31) Thus, if the State action is bonafide and reasonable, Courts need not interfere in allotments only on the ground that no advertisement was issued or enough publicity was not made.

32) No doubt, the State and its instrumentalities cannot distribute public largesse to individuals of its choice. In ordinary circumstances, allotment of public land cannot be made by entertaining private applications and the State and its instrumentalities are required to implement auction process. However, in the present case, there is no challenge to MIDC's Land Disposal Regulations, which empower MIDC to make allotments even by entertaining private applications. It appears that a leeway is given to MIDC to allot land in a given case without undertaking the auction process, with the aim of attracting industries in a particular area. Similarly, when it comes to establishment of the particular amenity, MIDC has been vested with the authority to entertain direct applications of allottees. Once the power of MIDC to make allotments by entertaining direct applications is not questioned, the end result in making allotments to various educational institutions can also not be challenged, unless the allotment is demonstrably arbitrary.

33) MIDC has formulated a policy for charging only 50% of industrial rate while allotting lands to educational institutions. MIDC is an instrumentality of State and appears to have taken a policy decision of charging only 50% of industrial rate both for attracting educational

institutions in various industrial areas as well as to promote educational activities by offering land at concessional rates. There is no challenge to the board resolution by which decision is taken to apply concessional rate of 50% of industrial area for allotting lands to educational institutions. The decision to allot amenity plots to educational institutions at 50% concessional rates is otherwise not demonstrated to be arbitrary or *sans nexus* with the object sought to be achieved.

34) It is not the case of the Petitioners that the allotment has been taken for one purpose and the land is utilized for some other purpose. There is thus no dispute that the concerned entities have ultimately set up educational institutions on the allotted plots. During pendency of the present PIL, the educational institutions have been set up on the concerned plots and lakhs of students have been imparted education thereat. It would be too late in a day now to take back the lands from the said educational institutions only because MIDC did not implement auction process.

35) We are also not impressed by the contention raised on behalf of Petitioner that other needy educational institutions in the area are deprived of land. Establishment of industries is a continuous process undertaken by MIDC. If any needy educational institution in a particular industrial area is desirous of securing plot of land, it can always make an application for such purpose. The aggrieved educational institutions have not challenged allotments made in favour of the contesting Respondents complaining that they are deprived of an opportunity of setting up their own educational institutions on the concerned plots of land.

36) In view of the fact that Petitioners have chosen not to challenge the Land Disposal Regulations as well as Board Resolutions fixing concessional rates, coupled with the fact that the concerned plots

are used for the purpose for which the same are allotted, we are not inclined to grant any relief in favour of the Petitioners in the present petition. Needless to observe that, in the event, MIDC notices any unauthorized change of user of the concerned plots, the MIDC shall initiate necessary action against the concerned allottee.

37) With the above observations, the PIL petition is **disposed of**. In view of disposal of PIL petition, nothing survives in Civil Application No. 41 of 2012 and the same accordingly stands disposed of.

[SANDEEP V. MARNE, J.]

[CHIEF JUSTICE]

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