REPORTABLE

THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2009
(Arising out of SLP (Civil) No. 18934 of 2008)

Zenit Mataplast P. Ltd. ….Appellant

Versus

State of Maharashtra and Ors. ….Respondent

J U D G M E N T

Dr. B.S. Chauhan, J.

1. Leave granted.

2. This appeal has been filed against the order of the Bombay High Court dated 5.2.2008 rejecting the application for interim relief while

admitting the Writ Petition No. 7245/2006 and expediting its hearing against the allotment of land by the respondent No.2 in favour of respondents nos.4 and 5.

3. The facts and circumstances giving rise to this case are that appellant, a Private Ltd. Company, incorporated under the provisions of Companies' Act 1956, is indulged in manufacturing of press components, moulded components, soft luggage, moulded luggage and other travel goods, tools, moulds jigs, dies fixtures and other engineering goods and carrying its business on a land measuring 4050 sq. meters on plot no.F-18 in the Satpur industrial Estate, Nasik. The appellant submitted an application dated 30.11.2005 (Annexure P-3) for allotment of 8000 sq. yards land from the adjacent vacant land on a prescribed form complying with other requirements. The said application was rejected by the respondent no.2, the Maharashtra Industrial Development Corporation (hereinafter referred to as 'Corporation'), a Maharashtra Government Undertaking constituted under the provisions of Maharashtra Industrial Development Act, 1961 (for short 1961 Act). In fact, the Corporation has powers and duties to make allotment of land for industrial purposes. It appears that vide letter dated 14.3.2005 to the Hon'ble Chief Minister of Maharashtra, the respondent

no.4, M/s. Mahendra & Mahendra Ltd., a leading industrial Company, asked for providing pending dues of incentives which were extended to it earlier. In the said letter it was also pointed out that the respondent no.4 has entered into a collaboration with automobile company Renault and intended to set up a joint venture for manufacturing of car, "The Logan" into India and the said respondent was locating the project at Nasik (Maharashtra) or Zahirabad (Andhra Pradesh) or at any other new place in Uttranchal. In the said letter, a demand for land measuring 5 to 8 acres for parking facilities at Satpur Industrial Estate, Nasik and 3 to 4 acres parking plot outside the existing factory gate at Nasik was also included. The Government of Maharashtra vide letter dated 10.6.2005 promised that the respondent no. 2 – Corporation would provide maximum possible vacant land in the existing area at the applicable rates and the Corporation would further facilitate acquisition of additional land identified by the Corporation for its project as well as for locating the cluster of industrial units (Annexure R.4/R.5). The Government of Maharashtra accorded the status of "Mega Project" to the forthcoming project of respondent no. 4 known as 'Logan Car Project' at Nasik vide letter dated 11.11.2005 (Annexure R.4/R.6). Respondent no. 4 submitted an informal application dated 23.11.2005 to the Respondent No. 2 to make the allotment of designated Open Space, Plot Nos. 8 and 9, in its

favour. The user of land was changed from open space to Industrial Area vide resolution dated 10.2.2006 and plot was renumbered as 126, instead of Open Space No.9, by the respondent-corporation. The formal application was submitted for that purpose by the respondent no. 4 on 1.3.2006 to the respondent no. 2 (Annexure R.4/R.9). Respondent No. 2, vide letter dated 27.3.2006 (Annexure R.4/R.10), allotted the land measuring 17 acres in favour of the respondent no. 4 for a total premium of 7,51,14,600/- after changing the user of the land from vacant space to industrial. On the same date, namely, 27.3.2006, the respondent no. 4 was put in possession of the said land and an agreement for licence/lease was executed between respondent no. 2 and respondent no. 4 on 3.7.2006. A part of open space was also converted as a "parking space" and it was allotted in favour of respondent no.5 for parking of vehicles.

4. The appellant made various representations to the Respondent No. 2, Corporation particularly, dated 15.3.2006, 3.4.2006, 25.8.2006, 3.10.2006 and 10.10.2006, pointing out that rejection of its application and allotment of huge area of land in favour of respondent Nos .4 and 5 was discriminatory and violative of laws and particularly the statutory requirement which provided for allotment of land to the neighbouring unit holders. The

appellant asked that it may be allotted some part of the remaining land from the designated vacant land whose land user has been converted from open space to industrial Area. As no order was passed on its representations, the appellant filed the writ petition in October 2006 before the High Court. However, the Court admitted the writ petition, expedited the hearing of the writ petition but rejected the application for interim relief. Hence, this appeal.

5. Shri Dushyant Dave, learned senior counsel appearing for the appellant has submitted that the application of the appellant has been rejected without assigning any reason whatsoever and probably the reason may be that on the date of passing the order the land was merely a designated vacant land and not meant for industrial purpose. However, in order to favour the respondent No.4, a big industrial house, the State authorities passed the directions to the respondent-Corporation to allot open space after change of user. Application of respondent no.4 was processed in haste and all consequential orders have been passed within a very short span of time. Land has been allotted to Respondent No.4 on the direction of the higher authorities, which is not permissible in law. Thus, such a course is violative of

Article 14 of the Constitution of India. The writ petition filed by the appellant would become infructuous, if the respondent no.4 is permitted to develop the allotted land. The High Court ought to have granted the interim relief. Therefore, the appeal deserves to be allowed.

6. On the contrary, Shri Bhaskar P. Gupta, learned senior counsel appearing for respondent No.4 has submitted that there had been large number of offers by various States to Respondent No.4 to set up the industry for the purpose of production of cars/jeeps and various incentives were offered, particularly, by the States of Madhya Pradesh and Andhra Pradesh. However, as it has several units in Maharashtra, the respondent No.4 made application to the Hon'ble the Chief Minister for allotment of land and after considering the facts, it was decided to make the allotment of land at Satpur Industrial Estate Nasik, as the appellant was having about four other units in close vicinity thereof. It is also submitted by Shri Gupta that no law has been violated and the authorities proceeded strictly in conformity with the statutory requirements. Respondent no.4 has already invested a huge amount in the project. Appellant did not approach the High

Court promptly. Thus, the High Court has rightly refused to grant the interim relief. Impugned order does not require any interference.

7. Shri Shyam Divan, learned senior counsel appearing for the respondent-Corporation has submitted that when the application of the appellant was rejected, the land in dispute was a designated vacant land and therefore, it could not be allotted for any industrial purpose. The land was allotted to the respondent no.4 after change of user, considering the requirement of respondent No.4 and taking into consideration various other factors, particularly, the development of the city keeping in mind that the industry of respondent No.4 would provide job to large number of persons and the people of the local area would be benefitted otherwise also. Appellant cannot be heard complaining against the allotment in dispute, as it is in consonance with all the statutory requirements. Interim relief could not be granted at a belated stage as the appellant had not filed the petition before the High Court immediately after allotment of the land. Thus, the interim application has rightly been rejected by the High Court.. The appeal has no merit, thus liable to be dismissed.

8. We have considered the rival submissions made by the learned counsel for the parties and perused the record.

9. It is evident from the site plan that a large number of plots had been carved out from the huge area of land and in between, an open vacant space being No.9 was left. It is also evident from the said site plan that after plot Nos. F-13, F-14 and F-15, there was a vacant space and then, plot Nos. F-18, F-19 etc. Thus, there must have been plot Nos. F-16 and F-17 between plot nos.F-15 and F-18, at one stage. The land in dispute was adjacent to said two plots also. The appellant had demanded the land from Plot Nos. F-16 and F-17. However, there is nothing on record to show as to how these two plots bearing Nos. F-16 and F-17 could disappear from the site plan and become part of Open Space No.9.

10. Application of the appellant has been rejected vide order dated 19.12.2005 without assigning any reason and it cannot be said as to whether the application was rejected merely on the ground that the land in dispute, at that time was a designated vacant land and not meant for the industrial purpose, thus, its application could not be entertained. On the contrary, admittedly in the year 2004, a part Plot No. F-17 (vacant space) measuring

about 500 Sq.Mtrs. had been allotted to BSNL without the change of the user. No explanation could be furnished by the respondents as to under what circumstances such an allotment was permissible.

11. So far as the allotment to respondent No.4 is concerned, this had been under the directions of the State Government to the Corporation. The Corporation changed the land user and made the allotment of land to the extent of 17 acres and the possession had been handed over immediately. The license deed had been executed and all the proceedings had been taken in close proximity of time. Letter written by respondent No.4 dated 14th March, 2005 (Annexure R4/4) to the Hon'ble Chief Minister suggests that some other States had offered the respondent No.4 various incentives for establishing an industrial unit. It is evident from the letter dated 10th June, 2005 (Annexure R4/5) written by the Secretary to the Ministry of Industries, Energy and Labour Department, Maharashtra to the Respondent No.4 that the State Government was willing to make various concessions and provide incentives including the allotment of land at Nasik for establishment of LOGAN cars project.

12. The allotment of land is governed by the provisions of 1961 Act, Section 14 of which specifies the functions and powers of the Corporation and the Corporation has, in general power to promote and assist in the rapid and orderly establishment growth and development of industries in the State of Maharashtra. Section 15 thereof provides for general power of the Corporation which includes the power to acquire and hold the land and to dispose of the same by executing the lease, sale deeds, exchange or otherwise transfer any property. Section 31 of the 1961 Act, provides for acquisition and disposal of the land.

13. The Maharashtra Industrial Development Corporation (Disposal of Land) Regulations, 1975 have been framed to give effect to the provisions of 1961 Act. Regulation 4 provides for disposal of the land covered by the lay out prepared by the Corporation by **public auction** or **by entertaining individual applications**. Regulation 6 provides for a particular form to be filled up where the allotment is to be made by applications and deposit of process fee etc. Regulation 10 provides that the Land Committee shall consider the application and pass appropriate orders for allotment of land.

14. Government of Maharashtra had issued a Circular dated 25th January, 1994 regarding fixation of rate of industrial area in which allotment of plot has to be made by inviting tenders. Clause 4 thereof provided for "preferential right" of the unit holder for having allotment of "neighbouring land" for the purpose of factory expansion. It also provides that where there are more than one application for allotment, the plot may be disposed of by adopting the **tender process**.

15. There had been claims and counter claims by the parties. The appellant claimed that it had preferential right for allotment of the part of the vacant land for expansion of its factory. However, its application has been rejected without giving any reason whatsoever, though the law requires giving the reasons for passing any order and the allotment in favour of respondent No.4 was passed in undue haste showing favouritism being a big industrial unit. The right of equality guaranteed under Article 14 of the Constitution stood violated. The application of the appellant had been made prior to the application made by respondent No.4. The respondent No.4 instead of making application to the Corporation started negotiations with the Government directly for allotment of land merely by writing a letter in June, 2005 and on 10th June, 2005 an understanding was arrived in between

the Government of Maharashtra and respondent No.4 of commissioning of the Project at Nasik. The informal application was filed by respondent No.4 on 23.11.2005 for making allotment of land from Open Space No.9. The application of respondent No.4 was processed by Land Allotment Committee on 22nd December, 2005, wherein the observation was made that it was an important industry for the city land and its expansion would greatly benefit the industrial growth in Nasik.

16. The user of land in Open Space No.9 was converted from Open Space to Industrial Area vide order/resolution dated 10th February, 2006 and it was re-numbered as Plot No.126. The first formal application was submitted by the respondent no.4 to the respondent-corporation only on 1.3.2006 and the allotment was made in favour of the respondent No.4 on 27.3.2006. Respondent no.4 was put in possession on 27.3.2006 itself. The license agreement was executed by the respondent corporation in favour of respondent no.4 on July 3, 2006. The demand of respondent No.4 had not been to the extent the area had been allotted.

In view of the above facts and circumstances, the sole question has arisen as to whether the High Court was justified in not granting the interim relief in favour of the appellant?

17. Records reveal that the appellant had been bargaining with the respondent-Corporation making application after application for allotment of land from remaining vacant area and approached the Court at some belated stage. Even before the High Court the matter remained pending for long before it was admitted and the application for interim relief was rejected.

18. The Regulation 1975 provides for allotment of land by **public auction** or by entertaining individual applications. Therefore, the question does arise as to whether without taking a decision that land is to be settled by negotiation, the process of auction or calling the tender can be dispensed with.

19. In the instant case the appellant had been asking the respondent no.2 to grant the lease of plot nos.F-16 and F-17, which had earlier not been the part of the Open Space No.9, on the basis of being contiguous and adjacent to the appellant's existing factory at plot no.F-18. It has been canvassed on behalf of the appellant that the action of the respondent no.2 is arbitrary and unreasonable and not in conformity with the statutory provisions.

20. Every action of the State or its instrumentalities should not only be fair, legitimate and above-board but should be without any affection or aversion. It should neither be suggestive of discrimination nor even

apparently give an impression of bias, favouritism and nepotism. The decision should be made by the application of known principle and rules and in general such decision should be predictable and the citizen should know where he is, but if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law (vide S.G.Jaisinghani Vs. Union of India & ors., AIR 1967 SC 1427; Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, AIR 1988 SC 157).

21. In essence, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fide as it would only be a case of colourable exercise of power. The Rule of Law is the foundation of a democratic society. In I.R. Coelho (dead) by LRs Vs. State of Tamil Nadu, AIR 2007 SC 861, the Apex Court held as under:-

> "The State is to deny no one equality before the law.....Economic growth and social equity are the two pillars of our Constitution which are linked to the right of an individual (right to equal opportunity), rather than in the abstract.....Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review."

22. In a case like this, when the applicant approaches the Court complaining against the Statutory Authority alleging arbitrariness, bias or favouritism, the court, being custodian of law, must examine the averments made in the application to form a tentative opinion as to whether there is any substance in those allegations. Such a course is also required to be followed while deciding the application for interim relief.

23. Interim order is passed on the basis of prima facie findings, which are tentative. Such order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing. The object of the interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial. (vide Anand Prasad Agarwalla v. State of Assam vs. Tarkeshwar Prasad & Ors. AIR 2001 SC 2367; and Barak Upatyaka D.U. Karmachari Sanstha (2009) 5 SCC 694)

24. Grant of an interim relief in regard to the nature and extent thereof depends upon the facts and circumstances of each case as no strait-jacket

formula can be laid down. There may be a situation wherein the defendant/respondent may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted (vide M. Gurudas & Ors. Vs. Rasaranjan & Ors. AIR 2006 SC 3275; and Shridevi & Anr. vs. Muralidhar & Anr. (2007) 14 SCC 721.

25. Grant of temporary injunction, is governed by three basic principles, i.e. prima facie case; balance of convenience; and irreparable injury, which are required to be considered in a proper perspective in the facts and circumstances of a particular case. But it may not be appropriate for any court to hold a mini trial at the stage of grant of temporary injunction (Vide S.M. Dyechem Ltd. Vs. M/s. Cadbury (India) Ltd., AIR 2000 SC 2114; and Anand Prasad Agarwalla (supra).

26. In Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., AIR 1999 SC 3105, this court observed that the other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions are as below :

(i) Extent of damages being an adequate remedy;

(ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor ;

(iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;

(iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case- the relief being kept flexible;

(v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;

(vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;

(vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise."

27. In Dalpat Kumar & Anr. Vs. Prahlad Singh & Ors., AIR 1993 SC 276, the Supreme Court explained the scope of aforesaid material circumstances, but observed as under:-

"The phrases 'prima facie case', 'balance of convenience' and ' irreparable loss' are not rhetoric phrases for incantation, but words of width and elasticity, to meet myriad situations presented by man's ingenuity in given facts and circumstances, but always is hedged with sound exercise of

> judicial discretion to meet the ends of justice. The facts rest eloquent and speak for themselves. It is well nigh impossible to find from facts prima facie case and balance of convenience."

28. This Court in Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hira Lal, AIR 1962 SC 527 held that the civil court has a power to grant interim injunction in exercise of its inherent jurisdiction even if the case does not fall within the ambit of provisions of Order 39 Code of Civil Procedure.

29. In Deoraj vs. State of Maharashtra & Ors. AIR 2004 SC 1975, this Court considered a case where the courts below had refused the grant of interim relief. While dealing with the appeal, the Court observed that ordinarily in exercise of its jurisdiction under Art.136 of the Constitution, this Court does not interfere with the orders of interim nature passed by the High Court. However, this rule of discretion followed in practice is by way of just self-imposed restriction. An irreparable injury which forcibly tilts the balance in favour of the applicant, may persuade the Court even to grant an interim relief though it may amount to granting the final relief itself. The Court held as under:-

> "The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of

> the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice."

30. Such a course is permissible when the case of the applicant is based on his fundamental rights guaranteed by the Constitution of India. (vide All India Anna Dravida Munnetra Kazhagam vs. Chief Secretary, Govt. of Tamil Nadu & Ors. (2009) 5 SCC 452)

31. In Bombay Dyeing & Manufacturing Co. Ltd. Vs. Bombay Environmental Action Group & Ors. (2005) 5 SCC 61, this Court observed as under:-

> "The courts, however, have to strike a balance between two extreme positions viz. whether the writ petition would itself become infructuous if interim order is refused, on the one hand, and the enormity of losses and hardships which may be suffered by others if an interim order is granted, particularly having regard to the fact that in such an event, the losses sustained by the affected parties thereby may not be possible to be redeemed."

32. Thus, the law on the issue emerges to the effect that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and

responsibility of the party or, in case he looses the case, he cannot take any advantage of the same. The order can be passed on settled principles taking into account the three basic grounds i.e. prima facie case, balance of convenience and irreparable loss. The delay in approaching the Court is of course a good ground for refusal of interim relief, but in exceptional circumstances, where the case of a party is based on fundamental rights guaranteed under the Constitution and there is an apprehension that suit property may be developed in a manner that it acquires irretrievable situation, the Court may grant relief even at a belated stage provided the court is satisfied that the applicant has not been negligent in pursuing the case.

33. Anything done in undue haste can also be termed as arbitrary and cannot be condoned in law. (Vide Madhya Pradesh Hasta Shilpa Vikas Nigam Ltd. V. Devendra Kumar Jain & Ors. (1995) 1 SCC 638; and Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia & Ors. AIR 2004 SC 1159).

34. If the instant case is considered, in the light of the above settled legal propositions and admittedly the whole case of the appellant is based on

violation of Article 14 of the Constitution as according to the appellant it has been a case of violation of equality clause enshrined in Article 14, the facts mentioned hereinabove clearly establish that the Corporation and the Government proceeded in haste while considering the application of respondent No.4 which tantamount to arbitrariness, thus violative of the mandate of Article 14 of the Constitution. Application of the appellant was required to be disposed of by a speaking and reasoned order. Admittedly, no reason was assigned for rejecting the same. There is nothing on record to show as on what date and under what circumstances, Plot nos.F-16 and F-17 stood decarved and became part of the Open Space No.9. The respondents could not furnish any explanation as in what manner and under what circumstances, the Bharat Sanchar Nigam Ltd. has been made allotment of land from plot no.F-16, (a part of Open Space No.9), without change of user of the land. The respondent no.4 had not initially asked for 17 acres of land which has been allotted to it. There is nothing on record to show as to why the land could not be disposed of by auction. All these circumstances provide for basis to form a tentative opinion that State and its instrumentalities have acted affectionately in the case of respondent no.4.

35. Undoubtedly, there has been a delay on the part of the appellant in approaching the court but we cannot be oblivious of the fact that the appellant had been approaching the authorities time and again for allotment of the land. Admittedly, the entire land had not been developed by the respondent no.4 till this Court entertained the Special Leave Petition and directed the parties to maintain status quo with regard to the land measuring 2 acres adjacent to the appellant's plot no.F-15 vide order dated 21.7.2008. Therefore, it is not only the appellant who is to be blamed for the delay. The land had been allotted to the respondent no.4 in undue haste and no development could take place therein for more than two years of taking the possession of the land. In such a fact-situation the submission made on behalf of the respondents that interim stay cannot be granted at a belated stage in preposterous.

36. In view of above, we are of the considered opinion that the appeal deserves to be allowed and is hereby allowed. In the facts and circumstances of the case, the interim order passed by this Court on 21.7.2008 shall continue in operation till the writ petition is decided by the High Court. The Hon'ble High Court is requested to dispose of the writ petition expeditiously. Needless to say that any observation made herein

either on facts or on law shall not adversely effect the case of either of the parties, for the reason that the only question before this Court has been as to whether the appellant deserves to be granted interim protection till his writ petition is decided by the High Court.

The appeal stands disposed of accordingly. No costs.

……..J.
(ALTAMAS KABIR)

…….J.
(Dr. B.S. CHAUHAN)

New Delhi,
September 11, 2009