

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8864 OF 2013

M/s. Shraddha Commercial Premises
Co-op. Society, Aurangabad .. **Petitioner**
Versus
The State of Maharashtra and others .. **Respondents**

Mr. Rameshwar F. Totala, Advocate for the
Petitioner.

Mr. A. V. Deshmukh, A.G.P. for Respondent No. 1.

Mr. P. M. Shah, Senior Advocate i/b. Mr. S. S.
Dande, Advocate for Respondent Nos. 2 to 5.

Mr. R. R. Mantri h/f Mr. Rahul R. Sancheti,
Advocate for Respondent No. 7.

CORAM: S. V. GANGAPURWALA &
S. M. GAVHANE, JJ.

DATE: 12th September, 2018

ORDER (Per: S. V. GANGAPURWALA, J.):

1. The petitioner assails the orders dated
23.05.2006, 05.10.2007 and 21.10.2013 thereby
refusing to allot the commercial plot to the
petitioner in the Shendra Five Star Industrial
area. The petitioner also seeks directions against
the respondents to allot the petitioner land
admeasuring 26,000 Square Meters as per letter
dated 28.12.2005.

2. Mr. Totala, learned Advocate for the petitioner during the course of his erudite arguments canvassed following submissions-

I] On 28.12.2005 respondent - Maharashtra Industrial Development Corporation (hereinafter referred to 'MIDC') gave an offer of land to the petitioner admeasuring 26,000 Square Meters at the rate of Rs. 190 per Square Meter and requested to submit Blue application with Demand Draft of Rs.24,70,000/- towards the earnest money within fifteen days from the date of receipt of the letter.

II] The petitioner on 10.01.2006 within fifteen days accepted the offer unconditionally. The acceptance on the part of the petitioner gave rise to a concluded contract between the parties. It was not open for the respondent to resile from the contract after a period of four months and thirteen days.

III] Under letter dated 23.05.2006 respondent – MIDC cancelled the offer on the ground that it does not allot the plot to a society in the Shendra Five Star Industrial area.

IV] The petitioner immediately on 25.05.2006 submitted an application requesting appointment of the Chief Executive Officer for discussion and redeposited the Demand Draft to MIDC.

V] The petitioner filed writ petition bearing no. 5778 of 2006. The Advocate for the MIDC made a statement in the said writ petition that if the representation of the petitioner is not decided it would decide the same. The Court accepted the said statement and gave direction to the respondent – MIDC to decide the representation within two months and communicate the decision. In the said writ petition the MIDC never took a

stand that the acceptance of the offer by the petitioner was a conditional acceptance nor the same was the ground for refusing to allot the plot to the petitioner. Pursuant to the order passed in Writ Petition No. 5778 of 2006 the MIDC communicated it's intention of not allotting the plot to the petitioner by referring to the Resolution dated 09.04.2007 and stating that land to the co-operative societies would not be allotted. The Resolution is subsequent to the offer accepted by the petitioner.

VI] The petitioner again filed Writ Petition No. 6991 of 2008. In the said writ petition the Court recorded that the Advocate of petitioner has expressed willingness of his client to accept any other alternate plot. The Advocate for the MIDC expressed that his client would consider availability of the other plot in any other area and whether same can be made available to the

petitioner. In the said writ petition also it was not the stand of the MIDC that the concluded contract does not exist or that acceptance by the petitioner is a conditional acceptance. Till the Writ Petition No. 6991 of 2008 was disposed of, the respondent never took the plea that the acceptance was a conditional acceptance on the part of the petitioner.

VII] During the pendency of the said Writ Petition No. 6991 of 2008 the MIDC went for auction of plots. The allottees were put to notice that the allotment shall be subject to outcome of writ petition.

VIII] Writ Petition No. 6991 of 2008 was finally disposed of under order dated September 10, 2013 and the respondent was directed to apply his mind afresh to Annexure 'A' of the said petition and to take suitable decision. The Annexure 'A' was the

representation of the petitioner.

IX] Again the MIDC communicated the petitioner that in Shendra Five Star Industrial area commercial plots are allotted by calling tenders and the petitioner would not be allotted the plot.

X] In all these proceeding the MIDC never took a stand that the contract is not concluded between the parties. It would be too late in the day for the respondents now to contend that the contract is not a concluded contract.

XI] The Advocate for the petitioner to substantiate his contention that the acceptance was a valid acceptance and the contract was a concluded contract relied on the following judgments -

i] Bhagwati Prasad Pawan Kuamr Vs. Union of India reported in AIR 2006 (6) Mh. L. J. 6.

ii] Jawahar Lal Burman Vs. Union of India reported in AIR (1962) SC 378.

iii] Manohar S/o. Rambhau Galghate Vs. Saraswato Co-operative Housing Society Ltd. Dindayal Nagar, Nagpur and others reported in 2005 (3) Mh. L. J. 297.

iv] Deviprasad Khandelwal and Sons Vs. Union of India reported in AIR 1969 BOM 163.

v] Gujarat State Fertilizers Co. Ltd. Vs. HJ Baker and Bros. and others reported in AIR 1999 Gujarat 209.

vi] Progressive Constructions Ltd. Vs. Bharat Hydro Power Corporation Ltd. reported in AIR 1996 DEL 1992.

vii] Ashok Kumar Sharma Vs. State of Rajasthan reported in 2013 (1) RLW 920.

XII] The respondents are not coming with clean hands. The letter of acceptance is in two parts. First part is the unconditional

acceptance of an offer by the MIDC and the second part of the letter of acceptance dated 10.01.2006 is mere expression of desire of the petitioner mentioning that they have submitted list of fifteen members along with the project report and required land / area as per the project is about 35,000 Square Meters. The same cannot be said to be a conditional acceptance. The second part of the letter that desire of 35,000 Square Meters is only a submission of the petitioner for consideration to allot additional area and the same is not a condition precedent for accepting the offer. The acceptance is in consonance with Section 7 of the Indian Contract Act. The petitioner had deposited the amount of consideration viz. the earnest amount as demanded by the respondent. The offer is deemed to be accepted even as per Section 8 of the Indian Contract Act, 1872. The learned Advocate submits that respondent

– MIDC is discriminating the petitioner. The respondents are relying on the Resolution dated 09.04.2007 to contend that land in the Shendra Five Star Industrial area is not to be allotted to a cooperative society, whereas the petitioner has placed on record the allotments made to cooperative societies of commercial plots without issuing tender. The respondents are blowing hot and cold to suit their purpose. The Resolution relied by the respondents dated 09.04.2007 is much after the petitioner had accepted the offer of the respondent for allotment of 26000 Square Meters of land at Shendra Five Star Industrial area. The Resolution dated 09.04.2007 will not have any effect on the rights crystallized in favour of the petitioner.

XIII] The respondent – MIDC is not entitled to take unilateral decision of rescinding the contract. The same would

amount to breach of contract. The learned Advocate relies on the judgment of the Apex Court in a case of **Sunil Pannalal Banthia and others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and another** reported in **(2007) 10 SCC 674** and the judgment of the Division Bench of this Court in a case of **M/s. Shree Ambica Developers Vs. State of Maharashtra and others** reported in **2012 (3) Mh. L. J. 640**. The learned Advocate submits that acceptance of an offer by the respondent was completed as against the petitioner and a concluded contract came into existence the moment the payment was made by the petitioner. The learned Advocate relies on the judgment of the learned Single Judge of this Court in a case of **Manohar S/o. Rambhau Galghate Vs. Saraswati Co-operative Housing Society Ltd. and others** reported in **2005 (3) Mh. L. J. 297**.

XIV] The contention of the respondent

that the petitioner should approach the Civil Court and this Court would not entertain the present petition for enforcing the rights under the contract is not in consonance with the legal position. This Court can entertain the writ petition for enforcement of contractual obligation. The respondent – MIDC is the instrumentality of the State. Its acts are arbitrary, in such a case, this Court can entertain the writ petition. The learned Advocate relies on the judgment of the Apex Court in a case of ABL International Ltd. and another Vs. Export Credit Guarantee Corporation of India Ltd. and others reported in (2007) 3 SCC 553, the judgment of the Division Bench of this Court in a case of M/s. Punya Coal Roadlines Vs. M/s. Western Coalfield Ltd. and another reported in 2015 (3) ALL M.R. 717 and the judgment of the Apex Court in a case of Popcorn Entertainment and another Vs. City Industrial Development

Corporation and another reported in **(2007) 9 SCC 593.**

XV] The case put forth by the respondent that there is a novatio of contract is erroneous. On one hand respondent come with the plea that no concluded contract exists and on the other hand are taking plea of novatio of contract, meaning thereby that concluded contract existed between the parties. There is a consensus between the parties and just by showing willingness to pay the enhanced amount of consideration cannot be said to be a novation. The learned Advocate relies on the judgment of the Apex Court in a case of **Mukul Sharma Vs. Orion India Proivate Ltd. Through its managing Director** reported in **(2016) 12 SCC 623.**

XVI] The respondents have allotted the commercial plots directly to the private parties and also to cooperative societies, as

such, they cannot contend that the commercial plot cannot be allotted to a cooperative society. The learned Advocate relies on the judgment of the Apex Court in a case of **Shyam Telelink Ltd. now Sistema Shyam Teleservices Ltd. Vs. Union of India** dated **October 5, 2010**.

XVII] The learned Advocate for the petitioner further submits that the stand taken by the respondents that the petitioner is a proposed cooperative society, and as such, is not entitled to enter into a contract is absolutely erroneous. The learned counsel relies on Section 15-H and 19-E of the Specific Relief Act, 1963 and to substantiate his contention relies on the judgment of the Apex Court in a case of **Jay Narain Parasrampuriah (Dead) and others Vs. Pushpa Devi Saraf and others** reported in **(2006) 7 SCC 756**. The learned Advocate submits that the petitioner was ready to

abide by each and every term put forth by the respondents and for that purpose even had issued communications but the respondents had decided not to allot plot to the petitioner under any circumstances. The petitioner is a proposed cooperative society for the benefit of its members. The respondents being instrumentality of the State cannot discriminate and act in arbitrary manner. The respondents be directed to allot plot admeasuring 26,000 Square Meters as per their offer letter.

XVIII] It is only after the plot is allotted, then the question of registration of a society would arise. After the plot is allotted the petitioner would register the society. It is the practice of the respondent to invite applications from the proposed society. Even today in their application forms on the website, column is mentioned of proposed cooperative societies.

3. Mr. Shah, learned Senior Advocate appearing for respondent – MIDC in lucid manner put forth following propositions -

A] The petitioner claims to be a proposed cooperative society. The petitioner – society is not a registered society. The learned Senior Advocate submits that an unregistered society cannot enter into a transaction of sell or lease. An unregistered cooperative society cannot enter into a contract, as the same is not a legal entity and is not in existence unless and until its registration. The learned Senior Advocate relies on the judgment of the learned Single Judge of the Gujarat High Court in a case of Laxminagar Co-operative Housing Society Vs. Mamlatdar and another reported in (2005) 3 GLR 2083. The learned Senior Advocate further relies on the judgment of the Apex Court in a case of Ishwru Yatayat Cooperative Society Vs. State Transport Appellate Authority reported in

(1975) 2 SCC 685 and another judgment of the Division Bench of Gujrat High Court in a case of Shri Ramji Mandir Narsinhji and others Vs. Narsinh Nagar Cooperative Housing Society Ltd., Navsari and others reported in AIR 1979 Gujrat 134.

B] This Court would not exercise its writ jurisdiction to enforce contractual obligations. It cannot be issued merely because it is lawful to do so. The party is required to exhaust his remedy before the Civil Court. The learned Senior Advocate relies on the judgment of the Apex Court in a case of Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond and Gem Development Corporation and another reported in (2013) 5 SCC 470. No tender was issued. The allotment of land of plot for commercial purpose in industrial area has to be by public auction, by giving due publicity and not by private

negotiations, such an allotment is not countenance by law. The learned Senior Advocate relies on the judgment of the Apex Court in a case of the City Industrial Development Corporation Vs. Platinum Entertainment and others reported in (2015) 1 SCC 558, so also, the judgment of the Apex Court in a case of Bhubaneshwar Development Authority and another Vs. Adikand Biswal and others reported in (2012) 11 SCC 731 and the judgment of the Apex Court in a case of ITC Ltd. Vs. State of Uttar Pradesh and others reported in (2011) 7 SCC 493. The judgment of the Division Bench in a case of Somnath Vs. State of Maharashtra reported in (2016) 4 AIR Bom R 724. The judgment of Division Bench of this Court in Writ Petition No. 1619 of 2011 dated 04.02.2014. The judgment of Division Bench of this Court in a case of Vikrant Industries Vs. The State of Maharashtra and others reported in 2014 (3)

ALL MR 877.

C] If the letter termed by the petitioner as an offer letter by the respondent is perused the said letter does not specify a particular plot. The location of plot is also not specified. In view of that, the agreement is void as per Section 29 of the Indian Contract Act, 1872. The learned Senior Advocate relies on the judgment of the Apex Court in a case of **Nahar Singh Vs. Harnak Singh and others** reported in **(1996) 6 SCC 699.**

D] The learned Senior Advocate in alternate submits that even if the contention of the petitioner of existence of concluded contract is presumed, then it is case of novatio of contract. The petitioner issued a letter to the respondent – MIDC after filing the first two writ petitions that the tenders were issued but no proper response was received by the MIDC and as such the tender process was cancelled. In the said letter, the

petitioner specifically submitted that they are agreeable to receive the plot at a higher rate. Subsequently, the petitioner through their Advocate issued a notice on 12.10.2007 stating that if the existence of the society is an impediment for allotment of plot, then they are ready to change their constitution and are ready to convert it into the private limited company or the partnership firm and they are ready to file such an undertaking. The petitioner also communicated that they are ready to receive plot in any other area.

4. Mr. Mantri, learned Advocate for respondent no. 7 purchaser of plot no. 20 – 21 in the auction that is made subject to the decision of the writ petition submits that respondent no. 7 is an auction purchaser. Pursuant to the auction process conducted by the respondent – MIDC the petitioner has purchased the plot bearing no. P-19 and P-21 and has paid consideration of Rs. 49,58,94,785/- The learned Advocate submits that there are other

vacant plots at Shendra Five Star Industrial area. The petitioner is a bonafide purchaser for a huge consideration amount. The learned Advocate submits that the offer letter of the respondent – MIDC relied by the petitioner shows that the said offer is for allotment of plot for manufacturing purpose, meaning thereby that it is for industrial purpose and not for commercial purpose. The claim of the petitioner for commercial plot, as such, is illegal. The learned Advocate adopts the arguments canvassed by the learned Senior Advocate for the MIDC.

5. We have considered the submissions canvassed by the learned counsel for respective parties.

6. It is undisputed that the petitioner – society is not a registered cooperative society and is merely a proposed cooperative society. A proposed Cooperative society does not possess an independent legal identity. It is only after the cooperative society is registered it has a status of a body corporate. All the privileges and rights

enjoyed by the registered society cannot be availed of if the society is not registered. The cooperative society cannot act beyond its bye laws / Constitution. We had asked the learned Advocate for the petitioner as to the bye laws of the proposed society. The learned Advocate could not produce any bye laws of the society. The petitioner being a proposed society does not possess the legal right to maintain the petition. In fact, if at all the petition was to be filed, the same was required to be filed through the members of the proposed society.

7. We had also asked the learned Advocate for the petitioner that whether the petitioner - proposed society is now registered, the answer was in the negative. The proposed society is not yet registered. Eighteen years after giving the application seeking allotment of plot the proposed cooperative society is not yet registered. The Apex Court in a case of **Ishwru Yatayat Cooperative Society Vs. State Transport Appellate Authority**

(supra) has observed that the application filed by an unregistered society is an application on behalf of a non existent person. In the said case, the Apex Court held that actions prior to coming into existence of a cooperative society before its registration is not maintainable, as it has no existence at that moment and subsequent registration is immaterial. Section 4 of the Maharashtra Cooperative Societies Act, 1960 provides societies which may be registered. The Registrar has powers even to refuse registration under the circumstances detailed in proviso to Section 4 of the Registration Act, 1908. The contention that after the letter of allotment is issued by the MIDC, then the petitioner would register its society does not stand to reason. There was no impediment for the proposed society to get it registered in this eighteen years, if really they wanted to carry out business and preserve the economic interest of its members.

8. The petitioner cooperative society on

10.07.2000 issued communication to the respondent – MIDC that they are going to establish the cooperative society, and would get it registered, and they require a letter from the MIDC that the MIDC is contemplating allotting commercial plot to the proposed society, and request was made to give such a letter so that they would register the society. After four years on or about 20.04.2004 respondent - MIDC communicated the petitioner that they have not submitted the project report. The petitioner was requested to submit the project report of each member, the viability of the project and the necessary documents so that the application can be considered. Subsequently on 28.12.2005 letter was issued by MIDC with the subject offer of land with various clauses, wherein it is reflected in the said letter that MIDC has decided to offer the land admeasuring 26,000 Square Meters. On the date of issuance of offer letter the rate of premium of land applicable was Rs. 190 per Square Meters. The

petitioner was directed to enclose the Blue application duly complied in all respects with Demand Draft of Rs. 24,74,000/- towards the earnest money. The offer letter however states that if the rates are revised by the Corporation before receipt of the application or communication to the society of allotment in its favour, then premium at the revised rate shall be paid. It also has further provided that, if the plot alleged is facing the National Highway, State Highway, then petitioner will have to pay 15% additional premium over and above the usual premium. It further states that, in case the petitioner fails to accept the final allotment after it is communicated to it or pay the balance premium, the earnest amount would be forfeited. The offer letter starts with allotting plot for manufacturing purpose. The petitioner issued Demand Draft of Rs. 24,74,000/- and communicated to the respondent - MIDC that as per the project report the required land area is 35,000 Square

Meters. The respondent – MIDC was requested to allot minimum 35,000 Square Meters land. In the Blue application filed by the petitioner, petitioner has asked for 35,000 Square Meters of the land. The respondent – MIDC under its letter dated 23.05.2006 communicated that it has decided not to allot commercial plot to the cooperative society, and as such, the offer letter is cancelled, the cheque / Demand Draft issued by the petitioner is returned back and the application of the petitioner for allotment of plot is rejected. The petitioner thereafter on 25.05.2006 sought appointment with the Chief Executive Officer of MIDC for discussion through its authorized representative. The letter of the petitioner – society dated 25.05.2006 was considered by MIDC and communicated to the petitioner that it is not possible to allot the plot to the petitioner. The petitioner it appears filed writ petition bearing no. 5778 of 2006, the writ petition was disposed of under order dated 04.07.2007 wherein the

respondent agreed to consider the representation of the petitioner Annexure 'N' to the said petition. Pursuant to the order of this Court the respondent MIDC communicated the petitioner that the petitioner cannot be allotted the commercial plot at Shendra Five Star Industrial area. If the petitioner wants the plot at any other industrial area, the petitioner may apply and subject to availability of the plots and as per the policy of the MIDC the decision would be taken regarding allotment of plot. Eventually the petitioner was not allotted the plot though there was some internal communication between office of MIDC. The petitioner thereafter filed Writ Petition No. 6991 of 2008 for allotment of plot.

9. During the pendency of the said writ petition, the respondents proceeded to auction the plot. It was observed by the Court that auction may go on, however, allottees be put on notice that their allotment would be subject to outcome of the writ petition. The writ petition was

finally disposed of under order dated September 10, 2013. This Court under order dated September 10, 2013 observed that in the first order passed on 27.11.2008 it has noted the readiness and willingness of the petitioner – society to accept the allotment at any other site. This Court directed the respondents to apply their mind afresh to Annexure 'A' of the petition and also readiness and willingness expressed by the petitioner and to take suitable decision within six weeks. The respondent – MIDC, thereafter negatived the request of the petitioner under letter dated 21.10.2013, and thereafter the present writ petition is filed.

10. There cannot be any dispute with the proposition that the offer may be accepted by conduct. In a case of **Bhagwati Prasad Pawan Kumar Vs. Union of India** (*supra*) relied by the learned Advocate for the petitioner the Apex Court observed thus -

“It is well-settled that an offer may be accepted by conduct. But conduct would only

amount to acceptance if it is clear that the offeree did the act with the intention (actual or apparent) of accepting the offer. The Courts must examine the evidence to find out whether in the facts and circumstances of the case the conduct of the "offeree" was such as amounted to an unequivocal acceptance of the offer made. If the facts of the case disclose that there was no reservation in signifying acceptance by conduct, it must follow that the offer has been accepted by conduct. On the other hand if the evidence disclose that the "offeree" had reservation in accepting the offer, his conduct may not amount to acceptance of the offer in terms of Section 8 of the Contract Act, 1872. What, however, is significant is that the protest and non-acceptance must be conveyed before the cheques are encashed. If the cheques are encashed without protest then it must be held that the offer stood unequivocally accepted. An 'offeree' cannot be permitted to change his mind after the unequivocal acceptance of the offer."

11. The petitioner had given representation (*Exhibit G, Page No. 34*) thereby agitating that as they did not get any response they approached the Hon'ble Industries Minister of the relevant time and the Hon'ble Industries Minister directed the concerned officers to proceed further. However because of some of the officers the matter was kept pending and decision was taken to allot plots by auction. No response was received to the

auction. The auction process was cancelled. The petitioner categorically accepted that they are ready to pay the enhanced price after discussing with the officers. The extract of the said letter is as under -

“ आम्ही सर्व सुशिक्षित सभासद एकत्र येवून व्यवसायीक भूखंड उपलब्धता कमी असल्यामुळे सामुदायिकरित्या सहकारी सोसायटी स्थापन करून भूखंडाची मागणी करण्याचे ठरविले, परंतु आम्हास मा. औद्योगिक विकास महामंडळ कार्यालयाकडून चांगला प्रतिसाद न मिळाल्यामुळे आम्ही उद्योगमंत्री मा.ना.श्री. अशोकरावजी चव्हाण यांच्या निदर्शनास ही बाब आणून त्या प्रकारचे निवेदन त्यांच्याकडे दिले, त्यांनी ही बाब असथेवाईकपणे मान्य करून संबंधीत अधिका-यास कार्यवाही करण्याचे आदेश दिले.

प्रकरण पूर्णत्वाकडे असतांना काही अधिका-याच्या निरुत्साहीपणामुळे प्रकरण प्रलंबित ठेवून वरील भूखंडाचे निविदेद्वारे वाटप करण्याचे ठरविले.

सदर निविदिला जनतेकडून कोणताही प्रतिसाद न मिळाल्यामुळे ती रद्द करण्यात आली आणि आमचे प्रकरण पुढे नेण्याचे ठरविले. आम्ही परत आमचे प्रकरण कार्यवाहीसाठी संबंधीत अधिका-यांकडे दिले तसेच वाढीव दराप्रमाणे आम्ही भूखंड घेण्यास तयार आहोत हे संबंधीत अधिका-यांसोबत चर्चा करून मान्य केले.”

The notice issued by the Advocate of the petitioner Society on 12.10.2007 refers to allotting plot at other place also. The same reads thus -

“.....

वरील ठराव आमच्यावर बंधनकारक नसतांना देखील पुढील वाद न घालता व्यवसाय धंदा करावा असे सर्व सभासदांचे मत असल्याने तुमचे हे दुसरे देकार पत्र आम्ही सर्व मान्य करण्यास तयार आहोत. फक्त भूखंड यापुर्वीच्या क्षेत्रफळांचा सर्वसाधारणपणे

(२६००० चौ. मीटर) आवंटनातील असावा. तसेच कोणतेही हराशी, बिडींग अशी व्यवस्था नसावी. या पत्राद्वारे आम्ही आपणांस पुनःश्च विनंती करतो की, आमच्या संस्थेस उपयुक्त व वाटपास उपलब्ध असणा—या योग्य त्या भूखंडाची यादी व त्यांचे दर उपलटपाली आम्हाला १० दिवसाच्या आत कळविल्यास आम्हाला पुढील कारवाई करणे सोयीचे होईल. आमचे धनाकर्ष रू. २४,७०,०००/- (रू. चोवीस लाख सत्तर हजार मात्र) आपल्याकडे आहेच. ह्या शिवाय आम्ही अशीही विनंती करतो की जर आपणास सोसायटीला शेंद्रा मध्ये भूखंड देण्यास अडचणीचे येत असेल तर आम्ही आमच्या **Constitution** मध्ये बदल करण्यास तयार आहोत. जसे प्रा.ली. किंवा भागीदारी संस्था आणि तसे हमीपत्र आम्ही देण्यास तयार आहोत जर महामंडळ आम्हाला भूखंड ताबा पत्र देत असेल. तसेच महामंडळ देकार पत्राची रक्कम भरून घेतल्यानंतर सर्व साधारणपणे ताबा पत्र देण्यास किती कालावधी घेते ह्याची पण माहिती कृपया द्यावी.”

The aforesaid letter depicts that the petitioner was ready to accept any other plot. It was ready to constitute Private Limited Company or Partnership Firm. In one of the letter also agreed to enhance the amount of consideration. All these facts show that contract was never finalised. Enforceable contract did not come into existence.

12. Sections 15-H and 19-E of the Specific Relief Act, 1963 relied by the petitioner would not inure to the benefit of the petitioner. Sections 15-H and 19-E of the Specific Relief Act, 1963 provides that when the promoters of a company have, before its incorporation, entered into a contract for the

purpose of the company and such contract is warranted by the terms of the incorporation, the company may enforce the specific performance of the contract. In the present case, there is nothing on record to remotely suggest that such a contract is warranted by the terms of the incorporation of the petitioner proposed cooperative society. In absence thereof, reliance placed by the learned counsel for the petitioner on Sections 15-H and 19-E of the Specific Relief Act, 1963 appears to be misplaced.

13. It would appear that there was no final allotment order in favour of the petitioner. Proceedings were at the nascent stage. No legal right was crystallized in favour of the petitioner to seek allotment of a particular plot. The amount which was given by the petitioner along with its letter after receiving the offer of the land was not encashed by the respondent. No firm allotment letter came into existence thereby notifying that a particular plot is allotted to the petitioner

viz. unregistered cooperative society. Legal right was not created in favour of the petitioner to claim specific performance and or seek directions for allotment of a particular plot.

14. Though we are not inclined to grant relief to the petitioner however we do not appreciate the stand of the respondent – MIDC. On one hand it contends that proposed cooperative society is not competent to enter into transaction and on the other hand the application forms issued by the MIDC also shows proposed cooperative societies as an applicant. The respondent being an instrumentality of the State has to take one firm stand or it should correct its application forms. We direct the respondents to take necessary care and caution while issuing application forms or inviting applications.

15. In the light of above, writ petition stands dismissed. No costs.

[S. M. GAVHANE, J.]
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[S. V. GANGAPURWALA, J.]