

KAMLAKEAR BHIMRAO PATIL

v.

MAHARASHTRA INDUSTRIAL DEV. CORPN.
(Civil Appeal No. 477 of 2009)

JANUARY 28, 2009

**[DR. ARIJIT PASAYAT AND ASOK KUMAR
GANGULY, JJ.]**

Contribution of India, 1950 – Article 226 – Writ Petition – Maintainability of – Order by State Industrial Development Corporation that request for allotment of land would not be considered even though money was deposited – Writ petition – Dismissal of, by High Court on the ground that civil court competent to entertain such dispute – On appeal, held: Since the subject matter of challenge was decision by Corporation to repudiate the contract, writ petition was maintainable – Thus, order of High Court set aside – Writ Petition to be restored for disposal on merit.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 477 of 2009.

From the Judgment and Order dated 31/1/2006 of the High Court of Judicature at Bombay in Writ Petition No. 9315 of 2005.

V.A. Bobde, V.A. Mohta, Rajshekhar Govilkar, Naveen Chawla, Mayank Bughani and T. Mahipal for the Appellant.

Shyam Diwan and Fox Mandal and Co., for the Respondent,

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J.1. Leave granted.

A 2. Challenge in this appeal is to the order passed by a
Division Bench of the Bombay High Court dismissing the writ
petition filed. The writ petition was filed by the appellant
questioning legality of the order passed by the Maharashtra
Industrial Development Corporation (in short the 'Corporation')
B dated 30.3.2005.

3. Background facts in a nutshell are as follows:

C By Resolution dated 17.8.2004 a decision was taken for
allotment of land at a particular price. The money was
deposited on 9.3.2005 but letter dated 30.3.2005 was written
to M/s. Everest Realtors Private Ltd. intimating them that the
request for allotment of land in the Airoli, Navi, Knowledge/
Apparel Park cannot be considered. The pay orders submitted
along with letter dated 9.3.2005 were returned. According to
D the appellant no reason or basis has been indicated and the
High Court misconstrued the prayer in the writ petition as if it
was for enforcement of specific performance of contract with
the Corporation. The appellant has categorically stated that the
subject matter of challenge was the impugned decision taken
E by the Corporation to repudiate the contract. The High Court
erroneously, according to the appellant came to hold that it can
be considered by a civil court of competent jurisdiction.

F 4. Learned counsel for the appellant further submitted that
no reason has been indicated as to why the Corporation
decided not to go ahead with the contract.

G 5. Learned counsel for the Corporation on the other hand
submitted that the Corporation decided not to take any note of
the payments made by M/s. Everest Realtors Private Ltd. In fact
the Resolution earlier related to the present appellant.

6. It is clarified by learned counsel for the appellant that
he is a Director of the Pvt. Ltd. Co. and therefore, the reasons
indicated have no relevance.

H 7. We find that this is a case which could have been

decided by the High Court and therefore we set aside the impugned order of the High Court. The writ petition shall be restored for disposal on merit. To avoid unnecessary delay, let the parties appear before the High Court on 9.2.2009. The Hon'ble Chief Justice of the High Court is requested to direct listing of the petition before an appropriate bench. It is made clear that we have not expressed any opinion on the merits of the case. Till 9.2.2009 no third parties' interest shall be created by the Corporation. It is open to the High Court to pass such interim orders during the pendency of the writ petition as the circumstances warrant.

8. The appeal is accordingly disposed of.

N.J.

Appeal disposed of.