

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE SUSHRUT ARVIND
DHARMADHIKARI**

&

HON'BLE SHRI JUSTICE GAJENDRA SINGH

ON THE 25th OF APRIL, 2024

WRIT PETITION No. 1428 of 2023

BETWEEN:-

**M/S MALWA VANASPATI AND CHEMICAL CO. LTD.
THROUGH ITS AUTHORISED SIGNATORY GOVINDLAL
SADANI S/O SHRI RATANLAL SADANI REGISTERED
OFFICE AT 1 MOHATTA NAGAR BHAGIRATHPURA
INDORE (MADHYA PRADESH)**

.....PETITIONER

**(BY SHRI V.K. JAIN LEARNED SENIOR ADVOCATE WITH SHRI VAIBHAV
JAIN, ADVOCATE)**

AND

**THE STATE OF MADHYA PRADESH THROUGH
PRINCIPAL SECRETARY, URBAN DEVELOPMENT
1. AND HOUSING DEPARTMENT, BHOPAL (M.P.)**

**THE MADHYA PRADESH REAL ESTATE
REGULATORY AUTHORITY, THR ITS SECRETARY,
2. BHOPAL (M.P.)**

**THE M.P. REAL ESTATE APPELLATE TRIBUNAL, THR
3. ITS SECRETARY BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

**(BY SHRI AJAY GUPTA LEARNED SENIOR ADVOCATE (THROUGH V.C.)
WITH SHRI KUNJAN MITTAL, ADVOCATE)**

Reserved on : 16.04.2024
Pronounced on : 25.04.2024

*This Writ Petition having been heard and reserved for admission, coming on for pronouncement this day, **Hon'ble Shri Justice Sushrut Arvind Dharmadhikari** passed the following:*

ORDER

Heard finally with the consent of both the parties.

2. In this petition filed under Article 226 of the Constitution of India the petitioner prayed for the following reliefs:-

(1) To quash the impugned order passed by Respondent No. 3 vide its order(s) dated 04.08.2022 (Annexure P-13), 07.11.2022 (Annexure P-15) and 24.11.2022 (Annexure P-16).

(2) To grant waiver from conditions of pre-deposit of 30% of the penalty amount in compliance to proviso to Section 43(5) of RERA Act.

(3) To grant any other relief as the Hon'ble Court deems fit in the facts and circumstances of the matter.

(4) To quash the impugned order dated 02.02.2022 (Annexure P-10) passed by the Respondent No. 2.

3. The brief facts of the case necessary for the disposal of this matter are that the petitioner is company incorporated under the Companies Act. The petitioner is the owner of the Industrial Land at Survey No(s). 81, 82(Part), 83, 84/2, 85(Part), 86/1/1(Part), 86/2, 86/3(Part) and 87/1/1(Part) of the village Bhagiratpura, Tehsil and District Indore, admeasuring 11.464 hectares. The aforesaid land falls within the planning area of Indore and the designated land use of the said land is 'Industrial' in the Indore

Development Plan, 2021 (Master Plan). The petitioner had proposed to develop an industrial project of flatted factories for industrial use on 9.584 hectares of land out of the total area of 11.464 hectares. The said project was approved from the Joint Director of Town and Country Planning, Indore on 07.12.2018 for flatted factories use. The building permission for construction of industrial plan was also obtained from Indore Municipal Corporation on 13.05.2019. The Respondent No. 2 received a letter from the Collector, Indore dated 18.09.2020 asking the M.P. RERA to take action against the petitioner on alleged violation of provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "RERA Act") based on the report of the Committee comprising of the Additional Collector, the Chief City Planner, IMC and the Joint Director, T&CP Indore.

4. The proceedings under Section 59 of the RERA Act for non-registration of the project was initiated on the ground that the provisions of Section 3 of the RERA Act stood violated. The said proceedings were registered as MRC No. 44/20 before the Respondent No. 2. The Respondent No. 2 issued a notice to the petitioner dated 04.11.2020 to show cause as to why application for registration of the said project was not made before the Respondent No. 2. The petitioner filed a detailed written representation dated 24.11.2020 wherein, the petitioner denied the allegations leveled against it pointing out the RERA Act is not applicable on the flatted factories project. After hearing the arguments the Respondent No. 2 passed an order against the petitioner dated 02.02.2022 under Section 59 of the RERA Act holding the petitioner liable for violation of Section 3 of the Act by not registering the Industrial Project and imposed a

penalty of Rs. 2,27,98,800/- [**Rupees Two Crores Twenty-Seven Lakhs Ninety-Eight Thousand Eight Hundred Only**] and also imposed various restrictions including prohibition from taking new booking and restriction on sale of units in the instant Industrial Project.

5. Being aggrieved by the order passed by the Respondent No. 2, the petitioner preferred an appeal before the Respondent No. 3 which was registered as MJC No. 67/2022. The Respondent No. 3 vide its order dated 05.04.2022, directed the petitioner to deposit 30% of the penalty imposed by the Respondent No. 2 in compliance of proviso to Section 43(5) of the RERA Act. The petitioner preferred an application seeking waiver of the pre-deposit of 30% amount on the ground that the Industrial Projects are outside the scope of RERA Act and the Respondent No. 2 has no jurisdiction to entertain any such complaint and pass any order or to compel the petitioner to get its Industrial Project registered under the RERA Act. The application seeking waiver was dismissed vide order dated 04.08.2022. Thereafter, a review petition was filed which was also dismissed vide order dated 07.11.2022.

6. The petitioner has approached this Court under Article 226 of the Constitution merely on the fact that the provisions of the RERA Act would not be applicable on the sale of industrial plots for which they have got all the valid permissions and, therefore, the plea of efficacious alternative remedy would not come into play in such a situation. Hence this petition seeking quashment of the impugned orders.

7. Per contra, learned counsel appearing on behalf of Respondent No. 2 and 3 has vehemently opposed the prayer and submitted that the answering Respondents have acted on the letter dated 18.09.2020 issued by the

Collector Indore, to take action against the petitioner on the ground of violation of provisions of the RERA Act. The violations included unauthorized construction, development and land use without seeking registration under the RERA Act, 2016. Acting on the communication, the Respondents No. 2 and 3 initiated proceedings against the petitioner. Thereafter, the answering respondents came to the conclusion that the petitioner has indeed violated RERA Act by initiating projects without proper registration. Consequently, imposing penalties and restrictions on the petitioner's activities.

8. Learned counsel further contended that characterization of the project as industrial flatted factories is misleading and inaccurate. The action has been taken on the basis of report of Expert Committee who had thoroughly examined the project site, reviewed relevant documents and submitted a detailed report. The report clearly indicates that the project does not align with the characteristics of industrial flatted factories. The report of the Expert Committee reveals that the plots within the project were sold similar to any other real estate residential project, with no indication of flatted factories or industrial usage. The petitioner failed to produce any evidence such as sale deeds or documentation supporting the industrial nature of the project. As per the report, the area belonging to the petitioner is not an industrial flatted factories projects but it falls within the purview of residential and commercial real estate projects. From the report it can be very well gathered that the intention of the petitioner was to sell the land/ plot by obtaining permission for flatted factory with the intention to earn profit illegally by selling these plots for the purpose of residential and commercial use. In view of the aforesaid and as per the Section 3 of

the RERA Act, the petitioner is supposed to mandatorily registered the project under the RERA Act. The petitioner has surpassed the provisions of Section 43(5) of the RERA Act, whereby an alternative efficacious remedy is available which has been bypassed and the present writ petition has been filed. In view of the aforesaid, the instant petition being bereft of merit and substance is liable to be dismissed.

9. In reply, the learned counsel for the petitioner contended that due to inadvertence and instead of undertaking development for the flatted industrial project, only two open plots were sold, however, when it came to the knowledge of the petitioner, the same have been canceled/ annulled by way of decree of the competent Court. As on date, no a single piece of land has been sold to anyone. In such circumstances, there is no violation of the RERA Act and neither the petitioner is required to get himself registered under the RERA Act. In view of the aforesaid, there is no requirement of any registration under the RERA Act on behalf of the petitioner.

10. At this stage, Shri V.K. Jain learned Senior Counsel appearing on behalf of the petitioner contended that due to inadvertence two plots were sold directly, however now the petitioner undertakes not to sell any open plot for the purpose of residential or commercial use but instead the petitioner would be developing the flatted industrial area as per the permissions available from the competent authority, therefore, in such a situation the impugned orders passed by the Respondent No. 2 and 3 deserves to be set aside and the writ petition be allowed.

11. We have heard learned counsel for the parties and perused the record.

12. In view of the submissions made by the learned counsel for the

parties, this Court is not inclined to entertain the writ petition on merits at this stage, since the petitioner has already given an undertaking not to undertake some other activities for which the permission is not available. In view of the undertaking given by learned Senior counsel for the petitioner, no further adjudication is required in the matter. Accordingly, the orders impugned deserve to be set aside.

13. Resultantly, the orders impugned dated 04.08.2022 (Ann. P-13), 07.11.2022 (Ann. P-15), 24.11.2022 (Ann. P-16) and 02.02.2022 (Ann. P-10) passed by the Respondent No. 2 and 3 are hereby set aside. However, the respondents would be free to invoke the provisions of RERA Act against the parties, as and when the occasion arises.

14. Accordingly, the petition stands disposed off. There shall be no order as to costs.

(S.A. DHARMADHIKARI)
JUDGE

(GAJENDRA SINGH)
JUDGE