

**Competition Commission of India**  
Case No. 19 of 2012

May 30, 2012

In re:

**Dilip Thakkar**

....Informant

v.

1. Maharashtra Industrial Development Corporation  
(MIDC) ....Opposite Party No.1
2. Embassy Property Development Limited (EPDL) ....Opposite Party No.2
3. Dynasty Developers Private Limited (DDPL) ....Opposite Party No.3
4. Pune Dynasty Projects Private Limited (PDPPL) ....Opposite Party No.4
5. Pune Embassy Projects Private Limited (PEPPL) ....Opposite Party No.5

**Present:** Informant-in-person.

Coram:

**Hon'ble Mr. Ashok Chawla**  
(Chairperson)

**Hon'ble Mr. H. C. Gupta**  
(Member)

**Hon'ble Dr. Geeta Gouri**  
(Member)

**Hon'ble Mr. Anurag Goel**  
(Member)

**Hon'ble Mr. M.L. Tayal**  
(Member)

**Hon'ble Mr. Justice (Retd.) S. N. Dhingra**  
(Member)



Order under section 26(2) of the Competition Act, 2002

The present information has been filed by Shri Dilip Thakkar, proprietor of M/s Thakkar Estates ('the informant') against the opposite parties above named under section 19(1)(a) of the Competition Act, 2002 alleging *inter alia* contravention of the provisions of sections 3 and 4 of the Act.

2. Shorn of details, the informant is engaged in the business of property/land development. MIDC is a corporation constituted under the Maharashtra Industrial Development Act, 1961 and is engaged in the business of acquisition, planning and development of land. EPDL (earlier known as DDPL) is a company registered under the Companies Act, 1956 and is in the business of real estate development. PDPPL and PEPPL are subsidiary companies of EPDL and are also engaged in the business of real estate and property developments.

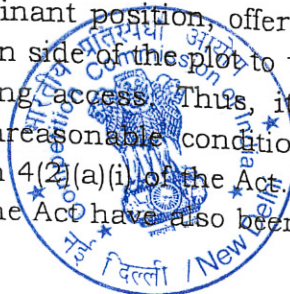
3. The informant is stated to be owner of a piece of land in village Marunji, Taluka- Mulshi, District-Pune, Maharashtra which was released from acquisition by MIDC. The informant is stated to have purchased the land from one Shri Mohan Rajkumar Diwan. The informant avers that he intends to develop the said released land by building hotel thereon.

4. The gravamen of the information centres around the allegation that MIDC acquired the entire land adjoining the released land and further leased the same to EDPL (which further assigned its leasehold rights to its subsidiaries) rendering the released land of the informant as land-locked.

5. The informant has alleged that MIDC, EDPL, PEPPL and PDPPL by forming a cartel have acquired the additional private land and by entering into agreements of lease restrained the informant from going on to the land owned by him from the only access available to him. This, it is alleged, has restrained the informant from offering his services relating to land development to potential users. Accordingly, the informant has alleged contraventions of the provisions of sections 3(1) read with 3(3)(a)-(c) of the Act.

6. Referring to the contraventions of section 4 of the Act, the informant has defined the market relating to land, real estate and commercial matters relating thereto in village Marunji and adjoining villages *viz.* Hinjewadi *etc.* of District Pune in State of Maharashtra as the relevant market. The informant has further pleaded that MIDC, EDPL, PEPPL and PDPPL were in dominant position in the relevant market.

7. Alluding to the abuse of dominance by the opposite parties, the informant has alleged that EDPL, abusing its dominant position, offered the informant only 3 meters (approx.) wide land on the western side of the plot to use as a road which was a 7 kilometres detour from the existing access. Thus, it is alleged, EDPL was imposing unfair, discriminatory and unreasonable conditions on the informant in contravention of the provisions of section 4(2)(a)(i) of the Act. Further, contraventions of provisions of section 4(2)(b)(i)&(ii) of the Act have also been alleged as the opposite





parties have restricted the provision of services and the development of the relevant land. Denial of market access is also pleaded by the informant as the opposite parties indulged in practices due to which the informant was not able to offer his services relating to business of land development etc. to the potential consumers in contravention of the provisions of section 4(2)(c) of the Act.

8. Relying upon the essential facilities doctrine, the informant has also prayed to the Commission to order the opposite parties to share the essential facilities (i.e. the only access road available to the released land) with the informant.

9. On perusal of the information and the documents filed therewith, it may be noted that the informant has alleged abuse of dominant position by the opposite parties. The dominance has been sought to be established jointly against MIDC and EPDL which are disparate entities. The Act does not cover cases of joint/collective dominance by disparate and structurally different entities as section 4(1) forbids abuse of dominant position by 'enterprise' or 'group'. By virtue of explanation (c) to section 4 of the Act, the word 'group' has been given the same meaning as assigned to it in clause (b) of explanation to section 5. According to it, 'group' means two or more enterprises which, directly or indirectly, are in a position to exercise 26% or more of the voting right in the other enterprise or appoint more than 50% of the members of the board of directors in the other enterprise; or control the management or affairs of the other enterprise.

10. The informant has also failed to bring out as to what was the relevant market. The market has to be either service market or goods market. The informant has claimed development of land as a market which cannot be a market. Development is a venture undertaken by the owner of the land. Market comes into question as and when a person sells goods or provides services. Mere development of land does not bring a market into picture. It seems that the informant had purchased certain land for the purpose of development, without caring whether the land was well accessible through a road. Because other enterprise also owned land in that area and were developing land, development of land does not become a market. The informant before purchasing land was supposed to consider the development plan of the area and was supposed to purchase the land in consonance with development plan. If the informant had purchased a piece of land which was land-locked from all sides by the land of others, he cannot approach the Commission for giving directions to other land owners to provide road to him by wrongly depicting the land development as a market. Since there is no relevant market in this case, the issue of abuse of dominance would also not arise.

11. Hence, the plea based on abuse of dominance is thoroughly misconceived.

12. The plea based on section 3 of the Act is equally misplaced. As per the provisions of section 3 of the Act, no enterprise or association of enterprises etc. shall enter into an agreement in respect of production, supply distribution, storage, acquisition or control of goods or provision of services which causes or is likely to cause an appreciable adverse effect on competition within India. It is not understood



as to how acquiring of land adjoining to the released land by MIDC and further leasing the same to EDPL (and further assigned to its subsidiaries) can be covered under the provisions of section 3(1) of the Act as quoted supra.

13. On a careful perusal of the information, it appears that the informant was alleging a kind of easmentary right. The informant has also made a grievance of non-adherence to the Development Control Rules, 1999 of MIDC by the opposite parties. The remedies for these lie elsewhere.

14. Resultantly, there exists no *prima facie* case and the matter is closed forthwith in terms of the provisions of section 26(2) of the Act.

15. The Secretary is directed to inform the parties accordingly.

Sd/-  
Member (G)

Sd/-  
Member (GG)

Sd/-  
Member (AG)

Sd/-  
Member (T)

Sd/-  
Member (D)

Sd/-  
Chairperson

Certified True Copy



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संयुक्त निदेशक (विधि)/Jt. Director (Law)  
भारतीय प्रतिस्पर्धा आयोग  
Competition Commission of India  
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19-6-2012