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WP-22735-2023

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

WRIT PETITION No. 22735 of 2023

*INDORE INTERNATIONAL TOY CLUSTER ASSOCIATION  
INCORPORATED UNDER THE COMPANIES ACT 2013 THOROUGH  
ITS D*

*Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

Shri Rishi Tiwari - Advocate for the petitioner.

Shri Mukesh Parwal - Government Advocate.

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Reserved on : 27.09.2024

Pronounced on : 14.10.2024  
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ORDER

This petition under Article 226 of the Constitution of India has been preferred by the petitioner being aggrieved by the order dated 05.04.2023 (Annexure P/1) passed by respondent No.2, whereby its members have been directed to establish the industry over the land leased to them stating that else proceedings shall be instituted against them for cancellation of the lease deed.

02. As per the petitioner, it is a special purpose vehicle registered under the Companies Act, 2013. On 15.12.2009, Department of Commerce, Industry and Employment granted approval for transfer of land comprised in survey Nos.645/3 and 647 measuring 2.145 hectares and 1.420 hectares respectively at Village Rangwasa, Rau, District Indore in favor of industries



department. On 18.12.2009, the Commissioner, Ministry of Industries recommended transfer of the land in favor of the industries department. On 07.08.2010, the Collector (Nazul) transferred the land in favor of the District Trade and Industries Centre, Indore. On 10.07.2013, the Town and Country Planning Department approved the layout plan of the land. On 14.06.2022, respondent No.1, the State Government in its Micro, Small and Medium Enterprises Department passed an order for allotment of plots comprised in the land to 20 industries recommended by the petitioner. On 28.06.2022, the Commissioner, Industries department approved the list of 20 industries for allotment of land and letters of intent were issued to them. On 20.07.2022, letter of allotment was issued in favor of those industries and on 29.07.2022 lease deed was executed in their favor.

03. On 28.10.2022, the General Manager, Trade and Industries informed the Chief Executive Officer, Zila Panchayat, District Indore that removal of encroachment from subject land is still in process. On 11.02.2023, the Revenue Inspector / Patwari issued notices to the encroachers for demarcation. On 14.02.2023 inspection of the land was done and on 19.02.2023 demarcation was carried out wherein it was found that 0.829 hectare of land out of total 3.565 hectare is under encroachment. The Superintendent, Land Records also submitted inspection report to the Sub Divisional Officer stating that land bearing survey No.645/3 admeasuring 0.553 hectare is less than its total area and survey No.647 admeasuring 0.276 hectare is less than its total area. Thereafter, proceedings for removal of encroachment were initiated and eviction orders were passed.



04. The petitioner has been making repeated representations to respondent No.2 for removal of the encroachment and delivery of vacant possession of the allotted land. The encroachers instead of removing the encroachment have preferred writ petitions before this Court wherein interim order has been granted in their favor, staying execution of eviction order. However, on 05.04.2023, respondent No.2 issued the impugned notices to the members of petitioner directing them to take necessary steps for establishment of industries stating that else the allotment would be canceled.

05. Learned counsel for the petitioner has submitted that the impugned notices have been issued despite encroachment over the allotted land. Unless the encroachment is removed, the industry cannot be developed. The members of the petitioner are keen on establishing industries and have paid huge amount of premium but due to encroachment on the land it is not possible for them to establish the industries. They have also been paying the yearly rent to respondent No.2. On one hand, vacant possession of the entire land is not being given and on the other, threat is being made for cancellation of the allotment which is highly unjustified. It is further submitted that by various orders passed by this Court in the writ petitions preferred by the encroachers, the matter has been remanded back to the revenue authorities for fresh proceedings and in the meanwhile the encroachers have been directed not to be evicted. Since a considerable part of the land is under encroachment, the notices issued by respondent No.2 are highly arbitrary, unjustified and an act of extreme high handedness on its part which hence deserve to be quashed.



06. Reply has been filed by the respondents and the learned counsel for the respondents has submitted that the impugned notices dated 05.04.2023 are letters of intimation only. Out of total area allotted to 20 units, area available has already been shown by the petitioner. The lease deed was executed in favor of members of the petitioner on 29.07.2022 and as per Rule 15 of the Micro, Small and Medium Enterprises Land Rules implementation of the project has to be done within a period of two years. The members of petitioner have failed to start production even after completion of one and a half year on the available land area. It is for that reason that the impugned notices have been issued to them. Proceedings for removal of encroachment are already pending and as soon as remaining part of the land is freed from encroachment it would become available to the members of the petitioner. They ought to have commenced establishment of industries over the area already available with them and cannot deny to do so in view of which there is no illegality in the impugned notices.

07. I have considered the submissions of learned counsel for the parties and have perused the record.

08. Admittedly, possession of the entire land allotted to the members of the petitioner has not been delivered to them. A considerable portion of the land is under encroachment. As per the petitioner, 0.829 hectare out of the land allotted to its members is under encroachment. This is a considerable part of the land. The encroachment is in varying proportion over different lands. Whereas in some lands the extent of encroachment is lesser, but in some lands, the same is to the extent of almost 50%. In most of the



plots, the encroachment is 40% and above. The details of the area under encroachment has been detailed by the petitioner in paragraph No.5.19 of the petition which has not been disputed or denied by the respondents. The same is as under:-

"It is pertinent to mention that in some cases, the encroachment extends to more than 50% of the plot area. Details of the plot wise encroachments are as under:-

<u>Plot No.</u>	<u>Size(in sq. mtr.)</u>	<u>Area available</u>	<u>Area Under Encroachment</u>	<u>Percentage</u>
1.	961.59	584.26	377.33	39.24%
2.	919.20	516.42	402.78	43.82%
3.	919.35	509.22	410.13	44.61%
4.	558.36	325.34	233.02	41.73%
5.	963.23	555.77	407.46	42.30%
6.	1236.61	650.11	586.5	47.43%
7.	1152.57	572.37	580.2	50.34%
8.	1067.92	522.37	545.55	51.09%
9.	983.58	456.03	527.55	53.64%
10.	899.58	450.14	449.44	49.96%
11.	899.24	753.04	146.2	16.26%
12.	600	481.60	118.4	19.73%
13.	600	477.75	122.25	20.38%
14.	750	647.63	102.37	13.65%
15.	750	648.75	101.25	13.50%
16.	750	638.13	111.87	14.92%
17.	750	629.50	120.5	16.07%
18.	750	625.63	124.37	16.58%
19.	720		Black& Road	30%
20.	897.78		Black& Road	35%

09. It was the duty of the respondents themselves to have allotted encroachment free land for the purpose of establishment of industry. If a considerable part of the land is under encroachment, it would not be possible for the industry to be set up since the building plan which has to be prepared is to be done by taking into consideration the entire land and not only vacant



land. It cannot be perceived that establishment of the industry would be commenced over the available vacant land and upon its completion it would be necessary to wait for the remaining land under encroachment to be made available so that the remaining establishment can be made. That cannot be the logical manner for establishment of any industry. The same cannot be done in piecemeal. Respondents cannot contend that establishment of industry should be commenced over the vacant land and completed and thereafter the remaining industry should be established after obtaining possession of the remaining land. That was not even a term or condition of the allotment made in favor of members of the petitioner. An industry can be commenced to be established only after obtaining possession of the entire vacant land. For their own fault in failing to deliver vacant possession of the entire allotted land to the members of the petitioner, the respondents cannot insist upon them to commence establishment of the industry over the available land.

10. Even as per Rule 15 of M.S.M.E. Rules, 2021, lessee has to obtain possession of the land/building and implement the project in a specified time period. Implementation of the project within the specified time period has to be done only after obtaining possession of the land / building. It is not contemplated that the project has to be implemented in parts. Implementation is only subsequent to obtaining possession. If the respondents themselves have not made possession of the land available to the members of petitioner, they cannot charge them with having failed to commence implementation of the project within the specified time period. Until and unless possession of



the leased land is not delivered to the members of the petitioner so as to enable them to commence establishment of the industry, the respondents cannot insist upon them for establishing their industries. It may be mentioned that the members of petitioner have paid a considerable premium amount to the respondents and are paying the yearly rent also hence there is no reason as to why they would on their own delay the implementation of the project.

11. Admittedly, considerable part of the leased land is still under encroachment and proceedings for their removal are under process. Till vacant possession of the leased land is not delivered to the members of the petitioner, the respondents are legally unjustified in issuing the impugned notices (Annexure P/1) to the members of the petitioner. The same being arbitrary and illegal cannot be sustained and are hereby quashed.

The petition is accordingly allowed and disposed off.

(PRANAY VERMA)  
JUDGE

Shilpa