

Court No. - 3

Case :- WRIT - C No. - 2835 of 2008

Petitioner :- M/S Vaid Organics And Chemical Industries Ltd. Thru Director

Respondent :- State Of U.P. Thru Secy. Ind. And 3 Ors.

Counsel for Petitioner :- Akhilesh Kalra, Akhilesh Kumar Kalra, Jyotiresh Pandey, Narendra Shanker Shukla, Narendra Shukla, Pooja Singh

Counsel for Respondent :- C.S.C., A.K. Chaturvedi, Alka Verma, Kartikey Dubey, Manoj Sahu

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Manish Kumar, J.

(Oral)

1. Heard Shri Akhilesh Kumar Kalra, learned counsel for the petitioner and Shri Kartikey Dubey, learned counsel for the respondents and perused the record.

2. This petition has been filed by the petitioner for quashing of the order dated 10.3.2008, as contained in Annexure-1 to the petition and for the direction to the respondent not to interfere in the peaceful possession of the land in the license agreement dated 30.4.1992, as contained in Annexure-4 to the petition.

3. It is the case of the petitioner as argued by his counsel that the respondent-Uttar Pradesh State Industrial Development Corporation Ltd. (hereinafter referred to as the "Corporation") had, for the purpose of encouraging industrialization in the backward District of Hardoi, developed an industrial area, in which the petitioner company with an intent to establish a chemical industry applied for allotment of an industrial plot for the said purpose. Respondent-Corporation allotted Plot No. B-9-10-11 & D-11 to the petitioner company on 17.7.1991. Although the petitioner had applied for 72 acres of land but final area of 119416.30 sq. mt. was allotted, for which a total amount of Rs. 14,76,601.25 was deposited by the petitioner in lump-sum before the respondent. Pursuant to such deposit, the lease agreement was executed on 30.4.1992. Subsequently, the Chemical Industry which the petitioner intended to set up could not be established because of ban on import of finished goods. Later on, the Export Import Policy of the Government of India was liberalized and the Central Government permitted such import of finished products which resulted in the steep fall in the prices of the product. Thus, the industry which the petitioner was going to set up became unviable.

4. The petitioner informed the respondent-Corporation that the industry which was initially intended to be set up could not be set up because of various reasons and the project had become unviable. They had communicated the decision to put up some other project in the field of horticulture which would require some time.

The petitioner applied for extension which was given. Subsequently, the petitioner was issued a notice by the respondent-Corporation in 2005 to show cause as to why its allotment may not be cancelled as the petitioner had not complied with the terms of the agreement and had not utilized the industrial plot for the purpose for which it was allotted to it. The petitioner immediately replied to the said notice and communicated that it was now intending to set up a Medicinal and Aromatic Crop based industry and the necessary soil testing, etc. would be carried out which would need sometime. Accordingly, a further time of three years may be permitted to it for utilizing the land as per the new proposal made by it. The petitioner made all efforts to set up the new industry but the respondent by the impugned order dated 10.3.2008 informed the petitioner that it had cancelled the allotment made in their favour on 17.7.1991 and also the license agreement dated 30.4.1992 as the petitioner had failed to comply with stipulation under Clause 4(e) of the agreement. It was also informed by the said impugned order that the Junior Engineer posted at the site has been directed to re-enter in the plot and submit the re-entry memo within a week.

5. It has been argued by the learned counsel for the petitioner that when the petitioner had made an application for extension of time in 2005 in response to show cause notice issued to it, it was under the bonafide impression that respondent-Corporation would consider and decide such application for extension of time and the Corporation would follow the due process for re-enter. Even thereafter, the impugned order was passed. However, the employees of the Corporation came on the site on 31.3.2008 and informed the petitioner that it should immediately dismantle the barbed wire fencing and harvest its crop so that the possession of the plot may be taken by the respondent-Corporation.

6. It has been argued by the learned counsel for the petitioner that when the matter was brought before this Court as fresh on 1.4.2008, the Court directed the counsel for the respondent to seek instruction and in the meantime if crops are there, the Court observed that the same shall not be removed or cut. When the matter was taken up on 30.4.2008, the protection given on 1.4.2008 was directed to be continued till the next date of listing. The writ petition was dismissed for want of prosecution twice but had been restored thereafter and interim order was still continue in favour of the petitioner and it is still in possession of the plot in question.

7. It has been argued on the basis of judgment rendered by the Hon'ble Supreme Court in **State Of U.P. & Ors vs Maharaja Dharmander Prasad Singh [1989 SCC (2) 505]** that once a lease agreement is signed, then it could be only cancelled through a civil suit and by adopting due process of law for resuming the possession. The respondents could not have cancelled the allotment when the application of the petitioner for extension of time was pending.

8. Shri Kartikey Dubey, learned counsel for the respondents, on the other hand, has taken this Court through the contents of the counter affidavit filed on behalf of respondent no. 3. In the said counter-affidavit, it has been stated that the petitioner had submitted an application dated 18.4.1991 for allotment of plot in Sandila Industrial Area, Hardoi for setting up of an Alcohol based Chemical Industry along with a project report. Four plots of land were allotted to the petitioner on 17.7.1991. Four plots of land were initially allotted and the petitioner made an application for surrender of one plot, the same was accepted. The petitioner and the Corporation signed an agreement on 30.4.1992, the petitioner had to commence construction of the manufacturing unit within nine months from the date of giving possession. The possession was handed over to the petitioner on 9.7.1992. The petitioner made no attempt to construct the manufacturing unit which ought to have been started within nine months and manufacturing was to be started within two years of the same. The petitioner has been issued show cause notice dated 8.2.1996 for showing cause within thirty days as to why allotment in favour of the petitioner be not cancelled. In reply to the same, the petitioner requested for extension of time for three years further time to start manufacturing an Alcohol based Chemical Industry. Copies of the representation of the petitioner and its reply have been annexed as Annexure No. C-4 and C-5 respectively to the counter affidavit. The petitioner's application was considered and the Managing Director of the Corporation allowed one years' time to the petitioner to set up Alcohol based Chemical Industry through its letter dated 27.6.1996 communicated to the Regional Office, Lucknow.

9. The petitioner was accordingly granted extension of time through letter dated 17.7.1996 but just before the expiry of the said period, the petitioner submitted another representation on 25.6.1997 requesting therein for extension of time for completion of construction and commencement of manufacturing and production of Alcohol based Chemical Industry within a period of three years. The representation of the petitioner was considered and an order passed on 19.11.1997 granting further one year period as extension. When the petitioner did not start any construction on the land in question, a show cause notice was again issued to the petitioner on 6.10.2005 to show cause within a period of sixty days why the allotment as well as the agreement dated 30.4.1992 be not cancelled because of violation of terms of the agreement. In reply thereof, the petitioner did not make any representation and at last the Regional Office, Lucknow sent a proposal to Head Office, Kanpur for cancellation of the allotment and agreement dated 30.4.1992 through letter dated 30.6.2006. The Head Office took sometime to clarify the situation and the order impugned had not passed after survey of the plot in question was made and it was found that petitioner had not made any attempt to raise any construction on the plots allotted to it and the aforesaid plots are lying vacant.

10. It has also been submitted by the learned counsel for the Corporation that the Corporation is a statutory corporation established by the State Government for industrial development of the State of Uttar Pradesh. The land is acquired by the State for the Corporation for allotment to deserving applicants for setting up Small and Medium Scale Industries. The land which is acquired has been given at subsidized rate to applicants who are genuinely interest for raising industrial units as stipulated in the agreement. Learned counsel for the respondent has taken this Court through a relevant clauses of the agreement which have been quoted in the order impugned. Clause 4(e) and Clause 5 of the agreement signed between the parties are relevant for the purpose herein and are being quoted here-in-below.

4(e). That the Licensee at his own cost shall erect on the plot of land in accordance with the lay out plan, elevation and design and in a position to be approved both by the Grantor and the municipal or other authority in writing and in a substantial and workman like manner a building to be used as industrial factory, with all necessary out houses, sewers drains and other appurtenances and proper conveniences thereto according to the local authority's rules and bye-laws in respect of building, drains latrines and communication with sewers and will commence such construction within a period of nine months or within such extended time as may be allowed by the Grantor in writing in its discretion at the request of the Licensee from the date hereof and shall completely finish the same fit for use and start the manufacturing and production with in the period of 24 months from the date of these presents or within such extended time as may be allowed by the Grantor in writing in its discretion or the request of the Licensee.

5. If the Licensee fails to commence and complete the building fit for use and start the manufacturing and production in the time and manner herein before provided (time in this respect being essence of contract) or shall not proceed with the works with due diligence or shall have failed to make payment of the interest installment of premium on or before the due date, the Grantor shall have the right and power to re-enter upon and resume possession of the said land and everything thereon, and thereupon this Agreement shall cease and terminate and all erection and materials, plant and things upon the said plot and land shall belong to the Grantor without payment of any compensation or allowance to the Licensee for the same without prejudice nevertheless to all other legal right and remedies of the Grantor, against the licensee the Grantor may permit the continuation of the occupation of the Licensee upon the said land on payment of such money and/or on such terms and conditions, as may be decided upon by the Grantor and/or to direct removal or alteration of any building or structure erected or used contrary to the conditions of the grant within the time prescribed, cause the same to be carried out and recover the cost of carrying out the same from the licensee and an amount equal to 20% of the total premium together with out standing interest due till date, use and occupational charges due, and other dues, if any, shall stand forfeited to the Grantor and the licensee shall not be entitled to any compensation whatsoever.

Provided that the Licensee shall be at liberty to remove and appropriate to himself all building, erections and structures, if any, made by him and all material thereof from the plot of the land after paying up all dues, rent and all municipal and other

taxes, rates and assessment then due and all damages and other dues, occurring to the Grantor and to remove the materials from the plot of land within three months of the date of revocation or termination of this Agreement.

11. It has been argued by the learned counsel appearing on behalf of the respondent that after the cancellation of allotment and agreement by the order dated 10.3.2008, the land in question was taken in re-possession thereof on 17.3.2008 at 12:30 P.M., the copy of re-entry memo has been filed as Annexure C-10 to counter affidavit filed by the respondent no. 3. The interim order that was granted by this Court did not stay the order impugned but only directed the crop of the petitioner if they were standing thereon. It cannot be said that the petitioner is in possession of the plots in question.

12. The learned counsel for the respondent-Corporation has placed reliance on judgment rendered the judgment of the Hon'ble Supreme Court in **ITC Limited Vs. State of U.P. [2011 (7) SCC 493]** and the order dated 7.1.2016 passed by the Division Bench of this Court in **Writ - C No. 68500 of 2015 (Rakesh Kumar Garg Vs. State of U.P. and Others)**. The question before the Court was with regard to leases of plot allotted by New Okhla Industrial Development Authority (hereinafter referred to as "NOIDA") for construction of hotels in District Gautam Buddh Nagar. NOIDA is constituted under the UP Industrial Area Development Act, 1976 for development of industrial and urban township in Uttar Pradesh and neighboring city New Delhi to encourage tourism. Certain plots were allotted but because of non-compliance with the conditions of the lease agreement, a cancellation order was issued. The Court was considering the question whether "plot leased can be cancelled?" The Court observed in Para 21, 22, 23 as follows:

21. A lease governed exclusively by the provisions of Transfer of Property Act, 1882 ('TP Act' for short) could be cancelled only by filing a civil suit for its cancellation or for a declaration that it is illegal, null and void and for the consequential relief of delivery back of possession. Unless and until a court of competent jurisdiction grants such a decree, the lease will continue to be effective and binding. Unilateral cancellation of a registered lease deed by the lessor will neither terminate the lease nor entitle a lessor to seek possession. This is the position under private law.

22. But where the grant of lease is governed by a statute or statutory regulations, and if such statute expressly reserves the power of cancellation or revocation to the lessor, it will be permissible for an Authority, as the lessor, to cancel a duly executed and registered lease deed, even if possession has been delivered, on the specific grounds of cancellation provided in the statute.

23. NOIDA is an authority constituted for development of an industrial and urban township (also known as Noida) in Uttar Pradesh under the provisions of the Act. Section 7 empowers the authority to sell, lease or otherwise transfer whether by auction, allotment or otherwise, any land or building belonging to it in the industrial development area, on such terms and conditions as it may think fit to impose, on such terms and conditions and subject to any rules that may be made.

Section 14 provides for forfeiture for breach of conditions of transfer. The said section empowers the Chief Executive Officer of the Authority to resume a site or building which had been transferred by the Authority and forfeit the whole or part of the money paid in regard to such transfer, in the following two circumstances: a) non- payment by the lessee, of consideration money or any installment thereof due by the lessee on account of the transfer of any site or building by the Authority; or b) breach of any condition of such transfer or breach of any rules or regulations made under the Act by the lessee. Sub-section (2) provides that where the Chief Executive Officer of the Authority resumes any site or building under sub-section (1) of section 14, on his requisition, the Collector may cause the possession thereof to be taken from the transferee by use of such force as may be necessary and deliver the same to the Authority. This makes it clear that if a lessee commits default in paying either the premium or the lease rent or other dues, or commits breach of any term of the lease deed or breach of any rules or regulations under the Act, the Chief Executive Officer of NOIDA can resume the leased plot or building in the manner provided in the statute, without filing a civil suit. The authority to resume implies and includes the authority to unilaterally cancel the lease.

13. This Court finds that the facts as mentioned in this Case before us are almost the same as the land in question has been given to the petitioner on lease by statutory Corporation under the fixed terms of the lease agreement and twice extension was granted to the petitioner. The allotment of these plots having been done in 1991 and lease agreement having been signed in 1992, The Corporation waited till 2008 for cancellation of the lease agreement. The petitioner had to make construction and start manufacturing within a period of two years from the date of lease agreement, as admittedly the lease agreement was executed on 30.4.1992 and the two years' period expired on 30.4.1994. Even after that on the request of the petitioner, twice the time was extended but the petitioner has neither made any construction nor started manufacturing which is in violation of Clause 4(e) and Clause 5 of the lease agreement.

14. The Corporation has been created for encouraging industrialisation coupled with the aim to generate employment and for betterment of the economy. Due to the non-adherence to the conditions in the lease deed by the petitioner, the industrial development for which the land was allotted to the petitioner has been affected..

15. This Court finds no infirmity in such order impugned.

16. Accordingly, the Writ Petition stands **dismissed**.

Order Date :- 22.2.2023

Mohit Singh/-

(Manish Kumar,J.) (Mrs. Sangeeta Chandra,J.)