

(2014) 07 JH CK 0014

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 3170 of 2011

Accropoly Metal Industries Private Ltd.

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Citation : (2015) 1 AJR 506

Hon'ble Judges : Dhruv Narayan Upadhyay, J

Bench : Single Bench

Advocate : D. Jerath and Sachin Kumar, Advocate for the Appellant; V.P. Singh, R.C.P. Sah, C.A. Bardhan, Ravi Kumar Singh and Sumit Gadodia, Advocate for the Respondent

Judgement

Dhruv Narayan Upadhyay, J.—This writ petition has been filed by the petitioner for issuance of writ of mandamus commanding the respondents, particularly Adityapur Industrial Area Development Authority, Adityapur (respondents 2) & Managing Director, M/s. Adityapur Industrial Area Development Authority, Adityapur (respondent 3), to adhere to their own procedure for setting up an industrial unit in Adityapur Industrial Area and for issuance of allotment letter in respect of Plot No. M-10(P), phase IV, Adityapur Industrial Area, having an area of 3.48 acres in terms of the promises and assurances given, for which the petitioner has not only deposited the required amount towards cost of the land, but also made further investment acting on the basis of instructions of respondents 2 & 3.

In view of the order dated 30.10.2013 passed by the apex Court in connection with SLP (Civil) No. 29324/2012, M/s. Hardrock Fabrication (P) Ltd., M/s. Hardrock Steel (P) Ltd. and M/s. Hardrock Auto(P) Ltd., through one of the director Dharamveer Singh, has filed I.A. No. 8470 of 2013 to implead them as respondents in the writ petition and after hearing the parties, above named three companies have been allowed to be impleaded as respondents No. 5, 6 and 7 vide order dated 10.2.2014.

After being impleaded, they have filed counter affidavit challenging the claim of the writ petitioner and also the validity of present writ petition.

2. It appears from the record that the present writ petition is the third round of litigation between the same parties in respect of Plot No. M. 10(P), phase IV, Adityapur Industrial Area, having an area of 3.48 acres and, therefore, brief history behind the litigation is required to be reproduced which is as under:

Industrial Plot No. M. 10(P), phase IV, Adityapur was leased out in favour of respondent No. 4, M/s. Jamshedpur Steel Pvt. Ltd., Adityapur, for running an industrial unit. In due course, respondent No. 4 had incurred heavy loss and liabilities and the Director of the said Company miserably failed to repay the loan and other outstanding dues to different parties and the financial institutions, including the Bank, BSFC and the Adityapur Industrial Area Development Authority, (hereinafter referred to as the AIADA). To come out from the financial crisis, respondent No. 4 had proposed to surrender the land and the industry in favour of respondent No. 5 and had taken considerable amount from said company. A deed of surrender was also executed by respondent No. 4 in favour of respondent No. 5 and the transaction was duly communicated to respondents No. 2 and 3 for needful.

It was contended by respondents No. 5 to 7 that notes were drawn for allotment of the aforesaid Plot No. M. 10(P), phase IV, in favour of respondent No. 5. In between, respondent No. 4 interfered and gave him a more lucrative offer and assured him to bear all the liabilities which the respondent No. 4 had had at that point of time. To improve faith of respondent No. 4, the writ petitioner had cleared the bank loan, loan obtained by respondent No. 4 from BSFC and got the lease deed released. Thereafter, respondent No. 4 considering more lucrative offer, executed another deed of surrender in favour of writ petitioner for transfer of the land and the industry.

Since respondent No. 4 had executed two deeds, firstly in favour of respondent No. 5 and secondly in favour of the writ petitioner, litigation commenced with regard to re-allotment/lease against the plot in question i.e. Plot No. M. 10(P), phase IV, Adityapur. In the prevailing situation, respondents No. 2 and 3 have taken a different stand and cancelled the lease granted in favour of respondent No. 4 in respect of the aforesaid plot No. Plot No. M. 10(P), phase IV, by order as contained in Memo. No. 1870 dated 21.10.2009 (Annexure 9 to the writ petition) invoking the provisions of section 6(2)(a)(b) of the Jharkhand Industrial Area Development Authority (Amendment) Act, 1991, and forfeited the lease amount.

3. Thereafter, respondents 5, 6 and 7 filed W.P.(C) No. 1213 of 2010 before this Court praying for setting aside the order dated 21.10.2009 as contained in Annexure 9 to the writ petition, by which lease granted in favour of respondent No. 4 was cancelled by respondents No. 2 and 3. Further, prayer was made for issuance of appropriate writ/direction to respondents No. 2 and 3 for allotment of Plot No. M. 10(P), phase IV, Adityapur in their favour, or other relief (s), as

deemed to be fit in equity and law.

4. In the said writ petition, i.e. W.P.(C) No. 1213 of 2010, present writ petitioner was also made a party and by filing counter affidavit, he has also raised his claim against allotment of said Plot No. M. 10(P), phase IV, Adityapur, and contested the said writ petition to the best of his ability on the basis of the evidence and the documents created in his favour.

5. Learned Single Judge, after considering the claims and the grievances of the parties as well as rules and regulations prevailing, disposed of the said W.P.(C) No. 1213 of 2010 by order dated 10.5.2011 wherein following directions were given to respondent No. 2.

"(v) I, therefore, direct respondent No. 2 as under:

(a) initially, advertisement will be given in three news papers having wide circulation, inviting applications from industrial units, who are in need of the plot in question, i.e. M-10, 4th Phase, Industrial Area Jamshedpur, along with area required, complete project report along with map, proposed investment in the establishment of the unit, no objection certificate from pollution Control Board, chartered Accountant's report and such other relevant details, which are thought fit by respondent No. 2;

(b) Reserved price for the plot in question will be fixed by the respondent No. 2, which will be published while inviting applications from the industrial units.

(c) These applications will be considered by respondent No. 2 by appointing proper committees, like Project Approval Committee or Land Approval Committee or such other committees constituted by respondent No. 2, and the list of industries, which get through the scrutiny process, will be prepared.

(d) After preparing aforesaid list, public auction will be heard from amongst the aforesaid short listed industries;

(e) The industrial unit, which is offering the highest price for the land in question, will be allotted the plot, in question.

(f) So far time limit is concerned, respondent No. 2 is directed as under:

(i) Publication of notice inviting applications from the industrial units will be made within a period of four weeks.

(ii) Scrutiny of the applications will be made by respondent No. 2 or by the committees appointed by the respondent No. 2 within a further period of four weeks and thereafter.

(iii) Within a further period of six weeks, the auction process will be completed.

(g) The aforesaid guideline is given by this Court because respondent No. 2 has no fixed procedure to be followed for allotment of industrial plots. The aforesaid arrangement will be continued till the exact procedure for allotment of the

industrial plots will be finalized by respondent No. 2.

(h) The aforesaid procedure will be valid for the plot in question, i.e. M-10, situated at 4th Phase, Industrial Area, Jamshedpur, District East Singhbhum, ad measuring 3.48 acres."

6. Being aggrieved by and dissatisfied with the aforesaid order passed by the learned Single Judge in W.P.(C) No. 1213 of 2010, present writ petitioner preferred LPA No. 204 of 2011 before a Division Bench of this Court.

Again, the parties had put forth their respective claims and extended arguments. It is necessary to mention that the Division Bench of this Court had taken much pains to know the practice and procedures as well as the rules and regulations followed by the Adityapur Industrial Area Development Authority (AIADA). During pendency of aforesaid Letters Patent Appeal, various directions were made and the AIADA was asked to furnish the rules and regulations followed by them with regard to allotment of land to the willing entrepreneurs for the purpose of establishing industrial units for development of the State. Pain taken by the Division Bench is apparent from the observations made in para 6 of the judgment dated 25.4.2012 passed in LPA No. 204 of 2011 which needs to be quoted herein below:-

"This Court also passed an interim order directing the respondents that no further proceedings be taken with respect of the plot in dispute. After above order dated 13.07.2011, the AIADA submitted supplementary counter affidavit and this Court observed that, after going through the provisions of the Bihar Industrial Area Development Authority Act, 1974, and Rules framed thereunder i.e., Bihar Industrial Area Development Authority Rules, 1981, the Court was of the considered opinion that, prima facie, it is a case where the Government land is allowed to be distributed without there being any transparency, fairness as well as may be at the loss of the State exchequer and the industrial plots which have been originally allotted or subsequently allotted after cancellation of the original allotment of industrial plot of any other prior allottee, there is given only by absolutely discreet method and, this fact has been admitted in the counter affidavit of the AIADA filed after the order of this Court referred earlier. This Court also observed that it is also doubtful whether AIADA has framed any Rules as provided under section 15 of the Act of 1974 with prior approval of the State Government by publishing a Resolution in the Official Gazette for carrying out the purpose of the Act of 1974? Finding such procedure which has been indicated in the counter, is in the process, for allotment of industrial plots in industrial area by AIADA, then AIADA was asked to show cause why their allotment of land may not be stayed till they frame a proper Rules or Regulations for allotment of land under the Act of 1974. This Court also issued notice to the State Government for this purpose so that the State Government may also give its stand."

7. The Division Bench of this Court disposed of the Letters Patent Appeal No. 204 of 2011 by order dated 25.04.2012 in which various directions have been given

to the AIADA, including direction to frame rules and regulations for the purpose of maintaining transparency in the matter of allotment of land to the willing and deserving entrepreneurs, but the order of the learned Single Judge passed in the W.P.(C) No. 1213 of 2010 has more or less been upheld. It can well be understood by going through para 39 of the judgment passed in LPA No. 204 of 2011. Para 39 is quoted below.

"39. In these facts and circumstances, we are of the considered opinion that at present there is no better way than to direct the AIADA to auction the plot in dispute not between these two entrepreneurs but it may be a public auction, in which the writ petitioners and non-petitioner-appellant will be given opportunity to take part, after duly notifying it and after notifying the reserved price for the unit and that process may be completed expeditiously by the AIADA."

8 Being aggrieved by the order dated 25.4.2012 passed in LPA No. 204 of 2011, the writ petitioner preferred SLP (Civil) No. 29324/2012 before the Hon"ble apex Court, but, at the same time, during pendency of the Letters Patent Appeal, present writ petition has also been filed on behalf of the petitioner through its Managing Director.

In the SLP (CM) No. 29324/2012, status quo has been directed to be maintained by the parties and further direction has been given to this Court to dispose of the present writ petition at the earliest.

9. The writ petitioner has taken almost the same plea which he had already taken while contesting W.P. No. 1213 of 2010 as well as LPA No. 204 of 2011. It is contended that his claim is more genuine than any other entrepreneurs and has tried to substantiate his claim on the following grounds:

(i) the disputed Plot No. M. 10(P), phase IV, situated in the Adityapur Industrial Area, is adjacent to its present unit and the two units are bifurcated with a boundary wall only;

(ii) the writ petitioner intends to expand his existing unit for which more land is required and for that the aforesaid plot in question is most suitable piece of land;

(iii) the project report of the writ petitioner stands duly approved by the committee and the petitioner is having sufficient funds, means and skill to expand the unit. All the outstanding dues of M/s. Jamshedpur Steel Private Ltd. such as the loan taken from the Bank, BSFC, etc. have been cleared by the writ petitioner and he got the lease deed released from equitable mortgage;

(iv) the writ petitioner has also deposited the cost of the land as notified by AIADA and the receipt No. 38506 dated 29.10.2009 issued by the AIADA in this regard has been annexed with the writ petition ((Annexure 10).

10. It was submitted that the claim of respondent No. 5 has now vanished, because they have realized the amount which they had paid to respondent No. 4 by filing criminal complaint. Further more, respondents 6 and 7 did not have the

approved project report at the time when the deed of surrender was executed in favour of respondent No. 5. Needless to mention that without an approved project report, no land can be allotted. The intention of respondents 5, 6 & 7 is only to accelerate the competition between entrepreneurs against allotment of land appertaining to the aforesaid plot in question i.e. Plot No. ML 10(P), phase IV, Adityapur.

That respondents No. 2 and 3 (AIADA) have fairly submitted that they are bound to obey the orders passed by this Court in W.P.(C) No. 1213 of 2010 and LPA No. 204 of 2011.

11 The respondent No. 4 M/s. Jamshedpur Steel Private Limited is the unit at whose instance all these litigations have cropped up. It was submitted on behalf of respondent No. 4 that it was not known to him that respondents No. 6 and 7 were not having an approved project in favour of their unit at the time when deed of surrender was executed. Apparently, respondent No. 4 felt cheated and, therefore, it had no option, but to execute another deed of surrender in favour of deserving units which he did by executing the deed of surrender in favour of the petitioner. In nutshell, respondent No. 4 has supported the claim of the writ petitioner.

12. That the respondents No. 5 and 6 and 7 who had initially knocked the door of this Court raising their grievance and claims by filing W.P.(C) No. 1213 of 2010 have again raised same and similar claim. It was submitted that the writ petitioner had allured respondent No. 4 by making exorbitant offer against allotment of land appertaining to Plot No. M. 10(P), phase IV, Adityapur, and it is none else, but the writ petitioner itself who had ignited the competition between entrepreneurs against allotment of land. It was further contended that the writ petitioner has violated the norms and procedures and he has obtained illegal possession over the plot in question (Plot No. M. 10(P), phase IV, Adityapur) by demolishing the boundary wall, though no allotment till date has been made by the AIADA. Contrary to that, AIADA has cancelled the lease by which disputed plot was allotted in favour of respondent No. 4 and, therefore, presumption would be that the land appertaining to Plot No. M. 10(P), phase IV, Adityapur, under dispute has again vested in the Adityapur Industrial Area Development Authority (AIADA) for re-allotment. Learned counsel has pointed out, it were respondents 5 to 7 who approached before this Court with the prayer to set aside the order dated 21.10.2009 by which the lease with regard to the Plot No. M. 10(P), phase IV, Adityapur executed in favour of respondent No. 4 was cancelled and further prayed for issuance of an appropriate writ/order/direction for allotment of the said land in their favour.

13 The respondents 5 to 7 have drawn my attention towards the counter affidavit filed by the present writ petitioner in W.P.(C) No. 1213 of 2010 and submitted that the writ petitioner has not made any prayer to set aside the order dated 21.10.2009 by which land allotted in favour of respondent No. 4 was cancelled. Now the writ petitioner has realized his mistake and has filed LA No. 8346 of

2013 during the pendency of present writ petition to allow him to amend the writ petition to the extent to add prayer for setting aside the order contained in Memo. No. 1870 dated 21.10.2009.

14. Last but not the least, it was submitted that this Hon'ble Court in W.P.(C) No. 1210 of 2010 has issued directions to do needful to auction the said plot by inviting open bids from the deserving and willing entrepreneurs. The direction to auction the plot in question given by the learned Single Judge stood confirmed by the Division Bench of this Court in LPA No. 204 of 2011.

15. Having heard the arguments advanced by the learned counsel representing the respective parties and also going through the writ petition, counter affidavits and Interlocutory Applications available on record, it is evident that M/s. Jamshedpur Steel Pvt. limited (respondent No. 4) had executed two deeds of surrenders, firstly, in favour of respondent No. 5 M/s. Hardrock Fabrication (P) Ltd., Jamshedpur and secondly, in favour of present writ petitioner. Due to execution of two deeds of surrender in favour of two different entrepreneurs for the same piece of land, respondents No. 2 and 3, Adityapur Industrial Area Development Authority, Adityapur, fell in trouble as to whom the plot in question (Plot No. M-10(P), Phase IV, Adityapur Industrial Area having an area of 3.48 acres, is to be transferred and then pursuant to the provisions contained in sub-section (2)(a)(b) of section 6 of the Jharkhand Industrial Area Development Authority (Amendment) Act, 1991, and also considering the conduct of respondent No. 4, cancelled the lease deed regarding allotment of Plot No. M-10(P), Phase IV, Adityapur Industrial Area having an area of 3.48 acres, by order dated 21.10.2009 (annexure 9 to the writ petition).

16. Respondents No. 5, 6 and 7 then preferred writ petition (C) No. 1213 of 2010 before this Court for allotment of Plot No. M-10(P), Phase IV, Adityapur Industrial Area having an area of 3.48 acres, and also prayed for setting aside the order dated 21.10.2009 (Annexure 9). It is already mentioned that the present writ petitioner appeared as a respondent and contested the said writ petition and put forth his claim as indicated in the present writ petition. Learned Single Judge in the order dated 10.5.2011 passed in W.P.(C) No. 1213 of 2010 has clearly held in para 9(ii) as follows:

"Lessor has initially granted the lease of the aforesaid plot to the respondent No. 4. Thereafter, for any reason whatsoever, respondent No. 4 could not continue with the manufacturing process and therefore, the necessary notices were given by the lessor, as submitted in the counter affidavit filed by the respondent No. 3 and ultimately, the lease granted to respondent No. 4 was cancelled by order dated 21st October, 2009 (annexure 9 to the memo. of petition). This order has not been challenged by respondent No. 4 before any forum and therefore, this order, dated 21st October, 2009, cancelling the lease granted to respondent No. 4 has attained its finality."

The findings of the learned Single has been confirmed by the Division Bench of

this Court in LPA No. 204 of 2011. The writ petitioner has filed I.A. No. 1151 of 2013 during the pendency of present writ petition to allow him to amend the writ petition to the extent to add prayer for setting aside the order contained in Memo. No. 1870 dated 21.10.2009.

Since this Court has already held that the order dated 21.10.2009 (Annexure 9 to this writ petition) has not been challenged by the original allottee, (respondent No. 4) before any forum, the said order of respondents No. 2 and 3 has attained its finality, prayer to challenge the said order in this writ petition appears to be unwarranted and therefore filing of I.A. No. 1151 of 2013 is nothing, but a futile exercise done by the writ petitioner. There is no need to allow I.A. No. 1151 of 2013 and, accordingly, the same stands dismissed.

17. Now coming to the prayer made by the writ petitioner in this writ petition to direct the respondents No. 2 and 3 i.e. to issue allotment letter in respect of Plot No. M-10(P), Phase IV, Adityapur Industrial Area, having an area of 3.48 acres, in their favour, this Court feels handicapped in passing any speaking order in view of the order dated 10.5.2011 passed by the learned Single Judge in W.P.(C) No. 1213 of 2010; order dated 25.4.2012 passed by the Division Bench in LPA No. 204 of 2011, and also in view of the fact that the order passed by the Division Bench in LPA No. 204 of 2011 is under challenge before the Apex Court in the SLP (Civil) No. 29324/2012, and, accordingly, this writ petition is disposed of.