
(2012) 06 CAL CK 0014
In the Calcutta High Court
Case No : Writ Petition No. 416 of 2012

Aditi Commodities Pvt. Ltd.	Vs	APPELLANT
State of West Bengal		RESPONDENT

Date of Decision : 21-06-2012

Acts Referred:

Citation : (2013) 2 CHN 346

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Noelle De Banerjee, Vivek Murarka and Arif Ali, for the Appellant;
Rudra Sankar De for WBIDC, for the Respondent

Final Decision : Dismissed

Judgement

Soumitra Pal, J.—In this writ petition, the petitioner, a company within the meaning of the Companies Act, 1956, has challenged the letter dated 18th November, 2011 whereby the West Bengal Industrial Development Corporation Ltd. ("WBIDC for short) has cancelled the allotment of the plot in its favour. The facts are that the petitioner, intending to set up a manufacturing unit within the industrial area/estate set up by the WBIDC, made an application for an industrial plot in the Second Phase of Plasto-Steel Park at Barjora in the district of Bankura. Pursuant to such application, the WBIDC agreed to allot a plot measuring 7.80 acres of land in the said industrial estate. The petitioner deposited a sum of Rs. 35,10,000/- being the total payment towards the long term lease of the plot and possession of the plot was handed over on 26th May, 2005. Allegation is in spite of requests for execution of lease deed, it is yet to be entered into. Statement is though the petitioner had obtained trade licence and No Objection Certificate from the Gram Panchayat, industry could not be set up for lack of infrastructure which the WBIDC was to provide under condition 13 contained in the Brochure. In such background, however, the WBIDC issued a show-cause notice dated 31st May, 2011 asking the petitioner company to show-cause why the allotment of land would not be terminated as on physical

inspection it was found that it was yet to be utilised for the purpose of setting up the industry. By letter dated 17th June, 2011 the petitioner had replied, Thereafter, the letter dated 18th November, 2011 was issued intimating that the allotment of land in favour of the petitioner stood cancelled. Aggrieved this writ petition has been filed.

2. Learned advocate appearing on behalf of the petitioner, reiterating the statements in the writ petition, submits that though meetings were held by the WBIDC with the petitioners and with the authorities of the DVC for providing electricity, there was no tangible result. Submission is as no lease deed has been executed as contemplated in the Brochure containing the terms and conditions, the WBIDC is not entitled to cancel the allotment. Referring to condition 28 of the general terms and conditions, submission is since it has been mentioned that Brochure is not a legal document and the terms and conditions outlined are only illustrative and not exhaustive, WBIDC is not entitled to rely on condition 16 thereof as mentioned in the notice to show cause dated 31st May, 2011.

3. Learned advocate appearing on behalf of the respondents submits that the action taken by the WBIDC is just and proper as the show cause notice dated 31st May, 2011 for non-utilisation of the plot was issued after conducting an inspection on 20th April, 2011. Thereafter, the petitioner by letter dated 17th June, 2011 replied. After considering the reply, which is silent regarding noncompliance of the provisions contained in condition 16 and as it was found on further inspection on 16th September, 2011 that the factory was yet to be set up, the letter dated 18th November, 2011 terminating the allotment of land was issued.

4. Admittedly, the petitioner applied for a plot of land for setting up an industry in the industrial park and deposited the entire amount for taking possession of an area consisting of 7.80 acres. On 26th May, 2005 possession of the plot was handed over to the petitioner. The question is whether the action of the WBIDC in cancelling the allotment in favour of the petitioner is just and proper. It is evident from the general terms and conditions contained in the Brochure, particularly condition 13 thereof, that the WBIDC is responsible only for providing the plots, internal roads and surface drainage. However, significantly, in condition 16, it has been stipulated that "The allottee will have to commence production within 18 (eighteen) months from formal handing over of plots to them. He has to obtain a certificate from appropriate government authority to the effect that the production has been started. In case of failure, WBIDC will have the right to take back the possession of the land by paying back the original price of the land only and without payment of any interest on the amount thereof." It is evident from the terms and conditions contained in the Brochure that a distinction has been made between a "lessee" and an "allottee". There is no dispute that the petitioner is an "allottee" of an industrial plot of land and admittedly has not been able to set up the factory and commence production within eighteen months from the date of formal handing over of the plot to the company. The

argument of the petitioner that such cancellation is illegal as no lease deed has been executed and for the lack infrastructure the petitioner is unable to set up the factory is without any basis, as being an "allottee", the petitioner had accepted the allotment after being fully aware of the condition that the company being an "allottee" will have to commence production within eighteen months and failure to do so will give WBIDC the right to take back possession. In fact perusing the terms and conditions it cannot be denied that allotment of land for setting up the factory and commencement of production as stipulated in the terms and conditions are not dependant on the execution of lease deed. The argument of the petitioner that the Brochure containing the terms and conditions is not a legal document, as evident from condition 28 and the terms and conditions outlined are only illustrative and not exhaustive and thus, the impugned action of the WBIDC is illegal, cannot be accepted because on the basis of the said terms and conditions, the petitioner had applied for an industrial plot. Moreover, the reply dated 17th June, 2011 is silent regarding noncompliance of condition 16 which formed the basis of the notice to show cause dated 31st May, 2011. Therefore, as production has not commenced within eighteen months from the date of allotment, the action of the WBIDC in issuing the letter dated 18th November, 2011 cancelling the allotment, is just and proper. Hence, the writ petition is dismissed.

5. No order as to costs. Urgent photostat certified copy of this order, if applied for, be furnished to the appearing parties on priority basis.