

(2015) 04 JH CK 0023
In the Jharkhand High Court
Case No : L.P.A. No. 450 of 2014

Adityapur Industrial Area Development Authority and Others	APPELLANT
Vs	
Forum Infrastructure (P) Ltd.	RESPONDENT

Date of Decision : 15-04-2015

Acts Referred:

Citation : (2015) 04 JH CK 0023

Hon'ble Judges : Virender Singh, C.J.; P.P. Bhatt, J.

Bench : Division Bench

Advocate : R.C.P. Sah and C.A. Bardhan, for the Appellant

Final Decision : Dismissed

Judgement

Virender Singh, C.J.—The issue relates to the cancellation of the allotment of the land made to the respondent-writ petitioner (hereinafter to be referred to as "petitioner" only) vide Allotment Order No. 772/ADA dated 26th March, 2007 for which the lease deed was executed between Adityapur Industrial Area Development Authority (for short "AIADA"), the appellant herein (respondent before the Writ Court) and the petitioner on 02.06.2008 for the purposes of implementation of a project known as "City Centre" at Adityapur comprising of Star Hotel, Club, Medical Centre/Hospital, Multiplex Retail/Shopping Mall etc. which lease deed was ultimately terminated vide order dated 15.01.2014, aggrieved thereof, the petitioner knocked at the Writ Court vide WP(C) No. 690 of 2014 inter alia on various grounds including projecting its bona fides for obtaining environmental clearance and other formalities as well at the end of AIADA after the building plan was sanctioned by AIADA way back on 17.11.2011 only. The learned Writ Court ultimately found it to be a fit case where the extension could be granted to the petitioner for completion of the construction within a period of 36 months on payment of 15% of the lease premium within a stipulated period, i.e., 25th October 2014, as such, vide impugned judgment dated 26.09.2014 directed the AIADA to issue required NOC to the petitioner within a week thereafter. AIADA being aggrieved of the said judgment, has

approached the Court through the medium of the instant Letters Patent Appeal, which is at the admission stage and with the consent of the learned counsel for both the sides, taken on Board for its final consideration.

2. At the very outset, Mr. Indrajit Sinha, learned counsel appearing for the petitioner submitted that pursuant to the impugned judgment, the petitioner had deposited the increased 15% of lease premium with AIADA within the stipulated period, as directed, but, the same has been returned to the petitioner by AIADA vide letter No. 985/ADA dated 22nd October, 2014. He places on record photocopy of the said order (be tagged at its proper place). Mr. Sinha submitted that because of non issuance of required NOC, the petitioner has not been able to proceed ahead for completing other formalities as the NOC to be given by AIADA has to be placed before the Central Ground Water Board (CGWB) which on consideration will result into grant of Ground Water Clearance (GWC) which, in turn, will be sent to the State Level Environmental Impact Assessment Authority (for short "SEIAA") Jharkhand for the purposes of grant of environmental clearance and it is thereafter only, the petitioner will be in a position to start construction at the site. Mr. Sinha submitted that the time period for the construction has been allowed as 36 months but in the present set of circumstances, when required NOC has not been issued in favour of the petitioner despite the impugned judgment having been passed on 26.9.2014 and about eight months elapsed by now, the petitioner will not be in a position to complete the construction at the site within the stipulated period as indicated in the impugned judgment, for which the fault lies at the end of the AIADA only and not the petitioner.

3. Before, we could enter into the merits of the appeal case, Mr. V.P. Singh, learned Sr. Counsel appearing for the AIADA has joined issues in this regard and stated that AIADA, in fact, is not required to issue any NOC which fact is vehemently controverted by Mr. Indrajit Sinha. He draws the attention of the Court to the contents of the affidavit filed by the CGWB before the National Green Tribunal in O.A. No. 357 of 2013 (filed by the petitioner) in which CGWB has categorically stated as under:--

"NOC/Consent Letter from local Authority stating about the quantum of ground water required and water availability/nonavailability certificate for infrastructure use form Government Water Supply Agency is required." 4. Mr. Sinha submitted that in the capacity of Local authority, it is AIADA only, who has to grant such certificate for the purposes of placing it before CGWB for further action.

5. Heard learned counsel for both the sides and gone through the entire record.

6. We do not feel the necessity of entering into the minutest details of the case as all factual aspects have not only been depicted in the impugned judgment, but, discussed also by the learned Writ Court in detail.

7. In terms of the relevant clauses of the lease agreement dated 2nd of August, 2008, reduced into writing and made effective from that day only, the lessee

(petitioner) had to start construction of facilities/projects within 120 days of the taking over of the possession of the demised plot and had to commence the development and construction work of the project within 180 days from the date of taking possession of the demised plot, which construction was to be completed within 36 months. In one of the clauses, it is categorically stated that period of 36 months from the date of getting physical possession of the demised plot, free from all encumbrances and the time so specified shall be the essence of the contract after obtaining sanction to the building plan, with necessary designs, plans and specifications from the proper municipal or other authorities.

8. The case of the petitioner as set up is that before the physical possession of the land was handed over to him on 14.11.2007, he had submitted its plan and specifications for obtaining the building plan on 25.04.2007, which fact is denied by AIADA stating that it was submitted somewhere on 19.11.2007. Be that, as it may, the admitted position before the Court is that AIADA has approved the building plan being local authority on 17.11.2011. Although Mr. V.P. Singh, learned Senior Counsel for AIADA, has vehemently contended that it is the petitioner, who had been submitting the plan with one or other defect, therefore, AIADA had to return the plan for rectifying all those defects, therefore, AIADA should not be blamed for that, but, we are not going to accept the contentions of learned Senior Counsel for the reason that AIADA, at any stage, could think of terminating the contract, finding fault at the end of the petitioner, knowing very well that time was the essence of the contract in terms of one of the clauses of the lease deed, still it thought of sanctioning the building plan on 17.11.2011, i.e., after more than 3 (three) months of entering into the lease deed. Thus, it can be said to be a case of implied extension of the time by AIADA itself.

9. Having said that, what is now worth noticing is that whether the petitioner, after approval of the building plan by AIADA, has deliberately consumed and wasted the time or has been able to project bonafides with regard to all this delay, which has occurred in obtaining approvals/No Objection Certificates from different authorities including environmental clearance, which now has to be considered by SEIAA, which could not be done till required NOC is granted to the petitioner by AIADA. Learned Writ Court has entered into a detailed discussion in this regard and it would be apt to refer to paragraph 14 of the impugned judgment.

"14. The learned Senior Counsel appearing for the respondent AIADA has contended that the lessee was required to commence the development and construction work of the Project within 180 days from the date of taking possession of Demised Plot and the lessee was required to complete all constructions within a period of 36 months from the date of getting physical possession of the Demised Plot however, even though the physical possession was given to the lessee on 14.11.2007, the lessee did not commence the development and construction work. I am of the opinion that the different clauses in the lease deed have to be read in conjunction to each other. As noticed

above, the lessee is required to construct the City Centre etc. in accordance with the applicable laws, including environmental clearances. The Project implementation chapter of the lease deed also provides that prior to commencing construction on the Demised Plot, the lessee is required to provide details of the Environment Impact Assessment of the Demised Plot. It further provides that, "the EIA must be carried out in accordance with the specifications/notifications of the Ministry of Environment and Forest". From these stipulations in the lease deed, it cannot be inferred that the lessee was required to construct and develop City Centre etc. without obtaining necessary clearances from the authorities. Now, the question would be whether the lessee could have obtained necessary permissions/clearances within the time stipulated in the lease deed. The petitioner has relied on numerous communications to impress upon the Court that it has been pursuing the matter with the authorities in all sincerity. Per contra, the respondent AIADA has asserted that inspite of undertaking given in the meeting held on 09-10.07.2012, the petitioner has not honoured its commitment and therefore, the respondent AIADA was constrained to issue show cause notice and cancel the lease deed. Without probing deeper in the factual aspect, it is seen that in the event the lessee fails to complete the construction within the stipulated date, the lessee would be granted two years" extension on payment of charges subject to maximum of 10% of the total lease premium. The chapter on the "Termination Procedure" provides that following the notice of intention to terminate, the parties are required to consult each other and deliberate upon the necessary steps that can be taken in order to prevent the termination of the lease deed. The procedure mentioned in Clause VII(2) has not been resorted to by the respondent AIADA in the present case. Though, it is mentioned in the lease deed that time is the essence, the delay on the part of the petitioner appears to have been substantially condoned by the respondent AIADA. It is not in dispute that the petitioner has made payment of all lease rent, yearly rent etc. and it also appears that the only necessary clearance for which the Project could not take off, is the environmental clearance. The abovenoted aspect of the matter has not been considered in the impugned order dated 15.01.2014. The respondent authority has considered the default in not commencing the construction and development of City Centre etc. in isolation to the peculiar facts of the case. I am of the opinion that in such a situation, termination of the lease agreement was not the most appropriate option available to the respondent AIADA. The petitioner could have been put to terms and granted extension of time for construction and development of the City Centre etc. Though the provision contained under Clause IV(2)(f) may not be strictly applicable in the present case and since the conduct of the parties does not indicate that the parties adhered to the time schedule provided in the lease deed, in the peculiar facts and circumstances, I am of the opinion that it would serve the ends of justice if the construction completion period of 36 months is allowed to the petitioner on payment of 15% of the lease premium. The lease amount shall be deposited by the petitioner on or before 25.10.2014 and upon depositing the said amount, the respondent AIADA would issue required NOC, if

any, to the petitioner within one week. The impugned order dated 15.01.2014 is quashed." 10. We have also gone through the order dated 15th of June, 2014 whereby termination of lease deed dated 2nd of June, 2008 was cancelled. What appears to us is that AIADA wants to put the entire blame upon the petitioner and does not want to take any responsibility upon itself, stating that the petitioner was more concerned with some other construction work taken by him and did not bother to start the construction of the City Centre, whereas the factual aspect of the matter is altogether different. We, thus, find the said order to be not a fair order on the face of it as already held by the learned Writ Court.

11. The learned Writ Court has granted period of 36 months to the petitioner for completing the construction at the site on payment of 15% of lease premium to be deposited within a stipulated period. We find the said approach to be quite justifiable as in terms of the lease deed, if the lessee fails to complete the construction within the stipulated period, another two years' extension on payment of charges, subject to maximum of 10% of total lease premium, can be granted. Admittedly, the construction has not started at the site as yet and about 8 months have elapsed by now. AIADA has not accepted 15% of the lease premium, and returned the same, may be, it chose to file the instant appeal. We are of the considered view that ends of justice would be served, if we increase the lease premium by another 10%, i.e., 25% from 15% and direct the petitioner to deposit the same on or before 15.05.2015. Ordered accordingly.

12. We make it clear that on deposit of the said amount (increased lease premium), AIADA shall issue required NOC to the petitioner and complete all other requisite formalities within two weeks' time thereafter, enabling the petitioner company to process its case for completing all other required formalities, as stated hereinabove, which shall be the responsibility of the petitioner only and the construction completion period, i.e., 36 months would reckon from the date of grant of NOC by AIADA only.

13. The net result is that, but for the alteration made in the impugned judgment with regard to the increase in the lease premium from 15% to 25% and the start of the period of completion of the construction at the site of the project, as indicated hereinabove, the instant appeal stands dismissed.

14. No order as to costs.