(2014) 02 GAU CK 0004

In the Gauhati High Court

Case No : W.P.(C) No. 59 of 2012

B. Daniala and Others — APPELLANT

Vs

State of Mizoram and Others — RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Citation : (2015) 2 GLD 517 : (2014) 5 GLT 427

Hon'ble Judges : Lanusungkum Jamir, J

Bench : Single Bench

Advocate : N. Sailo, Sr. Advocate, Dinari T. Azyu and Victor L. Ralte, Advocates for the Appellant; Aldrin Lallawmzuala, Addl. A.G, Advocates for the Respondent

Judgement

Lanusungkum Jamir, J.—Heard Mr. N. Sailo, learned senior counsel assisted by Victor L. Ralte, learned counsel appearing for the petitioners as well as Mr. Aldrin Lallawmzuala, learned Addl. Advocate General, Mizoram appearing for the State respondents. By this writ petition, the petitioners are challenging the fixation of allotment fee and the annual rent by the respondents in Industrial Estate, Zuangtui on the ground that the same is highly exorbitant and fixed without any rational basis.

2. Mr. N. Sailo, learned senior counsel appearing for the petitioners submits that the Industries Department, Govt. of Mizoram had bought plots of land from private individuals between the year 1981-1986 for establishment of industrial estate which latter came to be known as Industrial Estate of Zuangtui with an area of about 314.70 bighas. Certificate of Land Lease No. DLL 33 of 2001 was issued over the said land in the name of Secretary, Government of Mizoram, Industries Department. The respondents started allotting plots in the Industrial Estate from the year 1986 and the petitioners being interested in setting up an industry were also allotted their respective plots of land. There was no infrastructure or the required facilities except access to electricity and link road. The petitioners therefore had to construct their own sheds in the industrial estate in the plots allotted to them at their own expense.

3. The Government of Mizoram notified the Industrial Policy of Mizoram in the year 1989 and thereafter another policy in the year 2000. The main aim of the Industrial Policy of 2000 was to engineer rapid growth in the State by industrialization to a sustainable extent and to adopt approaches such as announcement of a package of fiscal and other incentives amongst others.

4. In the meantime, the Mizoram Industrial Estate Rules, 2002 was notified vide notification dated 2.9.2003 and thereafter the respondents enacted the Mizoram Industrial Area (Management, Regulation and Control) Act, 2008 (hereafter referred to as the Act of 2008) which was notified vide notification dated 23.4.2008. Accordingly, the Mizoram Industrial Area (Management, Regulation and Control) Rules, 2008 (hereinafter referred to as the Rules of 2008) also came into being which was notified by notification dated 18.11.2008. By the Rules of 2008, the Industrial Area Management Committee with the Secretary to the Government, Industries Department as Chairman was empowered to make recommendation for allotment fee and the annual lease rent to be paid by the tenant to the Government.

Accordingly, the Industrial Area Management Committee resolved to fix the allotment fee@ Rs. 100/- per sq. meter and the annual rent @ Rs. 16/- per square meter for areas smaller than 4000 square meter, and @ Rs. 12/- per square meter for area bigger than 4000 square meter. The resolution of the Industrial Area Management Committee was approved by the Government by letter dated 1.10.2009. The said resolution has been arrived at by taking into account the amount fixed towards land valuation per square meter as notified by the Revenue Department vide their notification dated 27.7.2007.

5. The learned senior counsel appearing for the petitioners submits that the Industries Department is paying a sum of Rs. 50,700/- towards annual land revenue for the entire Industrial Estate, Zuangtui to the Revenue Department covering an area of 421168.30 Sq. meters. The allotment fee and the annual rent charged from the petitioners are therefore highly exorbitant in comparison with the land revenue paid by the Industries Department. He also submits that no infrastructure was provided by the Department of Industries while allotting plots to the petitioners and that the petitioners had to spend huge amount of money from their own pockets while erecting their respective sheds. Apart from it, the petitioners have been allotted the plot only for a period of 10 years whereas for some cases the Industries Department has given permanent LSC to about 12 private individuals within the Industrial Estate area. This, the petitioners had come to learn through the RTI reply vide letter dated 12.7.2012. He also submits that the respondents had signed an Agreement Deed with one M/s. Mizoram ISPAT Industries on 28.9.2011 and the lease term of the plot has been leased out for 99 years from the date of signing an Agreement i.e. 18.12.2010. He, therefore, submits that the action of the Industries Department is highly discriminatory wherein certain Industries were given lease period for 99 years and the petitioners have been given their plot only for 10 years and

therefore their future becomes an uncertainty.

On 18.1.2010 a meeting was held by the State respondents and the petitioners were represented through their Industrial Estate Welfare Committee wherein the fixation of allotment fees and annual rent amongst other issues were discussed. The respondents again on 24.2.2010 held a meeting in the office Chamber of the Hon''ble Minister of Industries wherein the petitioners were represented by the members of the Welfare Committee. The petitioners again highlighted their grievances amongst others on the rate fixed by the State Government towards allotment fee and annual rent. The meeting was concluded with the note that the Management Committee should be asked to hold the meeting again to find a way to lower the allotment fee and the annual rent and the Welfare Committee should also submit their suggestion and proposal to solve the issues. Thereafter, the respondents without involving the petitioners/plot holders of the Industrial Estate decided on the allotment fee and annual rent which was subsequently approved by the Government on 1.10.2009. Thereafter, by order dated 23.5.2012 issued separately to each of the petitioners/plot holders of Industrial Estate, Zuangtui were given a months'' time to comply with the allotment terms and condition failing which their allotment order would be cancelled. Being aggrieved, the petitioners having no other option had approached this Court for setting aside the recommendation of the Management Committee, the approval of the Government as well as the order dated 23.5.2012.

6. The State respondents have filed their counter affidavit. Mr. Aldrin Lallawmzuala, learned Addl. Advocate General, Mizoram submits that in the year 1986, the respondents had extended invitation to some entrepreneurs to start their enterprise within the Industrial Estate, Zuangtui. The entrepreneurs who accepted the invitation under certain terms and conditions were given provisional allotment. He also disputed that all the petitioners in the writ petition are not allottees of plots of land in the Industrial Estate, Zuangtui and only 29 persons of the petitioners are provisional allottees . He also submits that 23 persons are unauthorized occupants from amongst the petitioners. The resolution of the Management Committee of Zuangtui fixing allotment fee @ Rs. 100/- per sq meter and the annual rent for the plots smaller than 4000 sq. meter @ Rs. 12/- sq. meter was approved by the Government. The petitioner No. 31 who was the President of MCIC was also one of the member and a signatory of the meeting minutes. He also submits that the amount payable was fixed corresponding with the fixation of Land Lease Certificate fee and annual rent made by the Revenue Department and that it is essential for the respondents to collect plot allotment fee for future improvement of infrastructure development and maintenance of the Estate. The Revenue Department fixed their fee for land lease certificate in respect of industries @ Rs. 500/- and therefore after considering the case of the petitioners the allotment fee was fixed @ Rs. 100/- per sq. meter which is 1/5 of the fee for land lease fixed by the Revenue Department by its Notification dated 27.7.2007. He therefore submits that there is nothing wrong in the resolution as the respondents are only charging one fifth of the fees fixed by the Revenue

Department.

The Chairman of the Management Committee had made attempt for consideration of the grievances of the petitioners on the issue of rate fixation by the Management Committee. However, the petitioners themselves did not attend the meeting which would indicate that they are not at all serious to set up their industrial unit in tune with the existing Government rules.

7. Countering the submission made on behalf of the petitioners, Mr. Aldrin Lallawmzuala, learned Addl. Advocate General, submits that the period of 99 years which was given on lease to M/s. Mizoram ISPAT Industries had subsequently been reduced to 25 years and that any entrepreneurs who are taking up Industrial activities seriously within any declared Industrial Area and are complying with Government rules and regulations can also submit application for extension of lease period for consideration of the authority. The petitioners are a mixed up group who are engaged in Industrial activities and unauthorized occupants who are not engaged in industrial activities and that the Management Committee had given a grace period of one month to the petitioners to entertain the allottees who are smoothly operating Industrial activities within the Industrial Estate. He, therefore submits that the petitioners have no basis to challenge the allotment fee and the rental fee fixed by the respondents and therefore their writ petition should be dismissed.

8. The petitioners have also filed affidavit-in-reply to the counter affidavit filed by the State respondents. Therein they have enclosed allotment order issued by the Director of Industries, Govt. of Mizoram to the petitioners. Mr. N. Sailo, learned senior counsel therefore submits that none of the petitioners are unauthorized occupants of the Industrial Estate and that the allotment order would speak for themselves. He also submits that despite the formulation of the New Industrial Policy of Mizoram by the State Government in the year 2000, the respondents have failed to fulfill its obligation by providing necessary facility or infrastructure. He has also drawn the attention of this Court to the budget estimate prepared by the State for the year 2013-2014 were under the Head of Account for Industrial Estate (Minor Head) no funds had been allotted either in the Plan, Non-Plan or even otherwise. This would clearly shows that the State respondents are not at all interested to provide the infrastructure, appropriate incentive schemes as projected in the Industrial Policy of Mizoram, 2000.

9. I have considered the submissions forwarded by the contending parties. Section 4(3) of the Act of 2008 read as under:-

"3) The Management Committee shall perform such functions as may be prescribed by the Government and in regards to:-

(a) Selection and recommendation of industrial units for allotment of industrial plot or industrial shed constructed in the Industrial area.

(b) Formation of guidelines for proper management of Industrial areas.

(c) Recommendation of allotment fee and lease rent to be collected from Industrial Units for occupying Industrial Shed or plot inside particular Industrial area.

(d) Any other functions as may be prescribed by the Government from time to time."

Section 8(1)(2) of the Act of 2008 read as under:-

"8. Payment of allotment fee and lease rent:

1) Any Industrial Unit, having allotted Industrial plot or shed inside any Industrial area, shall pay allotment fee and lease rent as may be prescribed by the Appropriate Authority of that Industrial area.

2) The amount of allotment fee and lease rent and the procedure of payment for a particular Industrial area shall be prescribed by the Government from time to time".

10. The terms of reference for the Industrial Area Management Committee under the Rules of 2008 under Rule 5(3)(i)(ii) read as under:-

"(3) Terms of Reference:

(i) The committee shall make recommendation for allotment or cancellation of plot/shed to the Appropriate Authority, who shall give allotment of plot to Enterprise or cancel in accordance with the New Industrial Policy of Mizoram, 2000.

(ii) The Committee shall make recommendation for allotment fee and annual lease rent to be paid by the tenant to the Government".

11. From a consideration of the aforesaid Sections and Rules, it is seen that the Industrial Management Committee is the appropriate authority for making a decision for allotment fees and annual lease rent to be paid by the tenant to the Government.

12. This Court on 28.11.2013 had directed the learned Addl. A.G. to obtain instruction as to whether any specific policy has been framed regarding allotment of land for Industrial use and fixation of allotment fee for such usage.

Today, the learned Addl. A.G. has produced a letter dated 12.12.2013. On consideration of the letter dated 12.12.2013, this Court is of the opinion that the contents are a reiteration of the counter affidavit only.

13. The recommendation of the Management Committee at resolution A-1 and 2 was approved by the Government on 1.10.2009. On the basis of the approval, the impugned Order dated 23.5.2012 was issued by the respondent No. 6 to the petitioners separately.

14. While considering the resolution of the Management Committee, this Court is

of the opinion that they were guided by the notification dated 27.7.2007 issued by the Revenue Department, Govt. of Mizoram whereby the calculation was taken under the classification of annual land revenue per Arc and land valuation per square meter. In the counter affidavit filed by the State respondents, nothing has been expressed as to why the respondents have proceeded to assess the fee under the land valuation per square meter notified by the Revenue Department. There is no denial by the respondents that infrastructure as well as required facilities have been provided by the respondents to the petitioners for setting up their Industrial Unit. While the Industrial Policy of Mizoram notified in the year 2000 provides for promotion of industrial growth in the State, the action of the respondents would show that while allotting plot to the petitioners, nothing has been done by the State respondents. In fact, it was the petitioners who had proceeded to erect their own shed at their own expense. Apart from that the petitioners by the resolution passed by the Management Committee appears to have been charged exorbitantly in comparison to the annual rent of Rs. 50,700/- by the respondents. The annual rent of Rs. 50,700/- payable by the respondents has also not been denied.

15. This Court does not have the expertise nor the required resources to come to a conclusion as to what would be the appropriate fees to be charged upon the petitioners with regard to allotment fee and rental charges. Under the Rules of 2008, it is the Management Committee who is to make recommendation in so far as the allotment fee and rental charges are concerned. From the last meeting minutes, it appears that the petitioners were also not consulted before passing the final resolution. Therefore, this Court is of the considered opinion that it would be in the interest of justice if the matter is remitted back to the appropriate authority i.e. respondent No. 3 (the Secretary to the Govt. of Mizoram, Industries Department) to reconvene the Management Committee for re-assessment of the allotment fee and the rental charges. Such re-assessment shall be done only after hearing the petitioners through their representatives. The respondents shall, thereafter, pass appropriate orders in accordance with law. This exercise should be completed within a period of 3(three) months from the date of receipt of a copy of the judgment and order of this Court by the respondent No. 3. Needless to say that the petitioners shall be at liberty to approach this Court if further aggrieved by any orders passed by the respondents.

16. In view of the above, the resolution No. A(1) and (2) of the Management Committee passed in its meeting in so far as it concerns the Industrial Estate is set aside and quashed. Consequently, the approval letter dated 1.10.2009 and the separate orders all dated 23.5.2012 issued to the petitioners individually are also set aside and quashed. With the above observation and directions, this writ petition stands disposed of.