

(1990) 03 KAR CK 0043

In the Karnataka High Court

Case No : Writ Petition No. 6620 of 1986

B. Jagannatha Shetty

APPELLANT

Vs

Karnataka State Small Industries Development Corporation
Limited, Bangalore and Another

RESPONDENT

Date of Decision : 15-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 4 KarLJ 105

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. When this matter was heard on March 9, 1990, the following was recorded in the order-sheet:

"The reliance placed by the learned counsel on the decision of the Supreme Court in the case of M/s. Dwarakadas Maffatia and Sons v Board of Trustees, Bombay Port, AIR 1989 SC 1649, will not be of any assistance to press into service Article 226 as a redressal for breach of contract. What is stated in the said decision is nothing new. It lays down the proposition that statutory authority should not act arbitrarily as there is only extended limb of state and degree of fairness in their action is expected. Here the dispute relates to breach of terms of allotment plus non-payment of arrears. Nor is there any admission that payments have been made by the petitioner in the statement of objections filed on behalf of respondents 1 and 2. Still the counsel insists that she has paid all the arrears due till today. The evidence of payment by Monday the March 12, 1990."

2. This petition was filed in 1986 and was disposed of on 17-8-1988 for non-prosecution and since restored.

3. Petitioner is aggrieved by the order dated 20-3-1986 as at Annexure-H by which the Managing Director of Karnataka State Small Industries Development Corporation Limited cancelled the allotment of shed. The allotment of shed which was taken possession by the petitioner on 14-2-1985 has been cancelled and he has been put on notice to deliver possession of the shed to the respondent-

Corporation, failing which possession will be taken in accordance with the Rules. He has also been put on notice that the arrears due by him shall be recovered in accordance with law. Aggrieved by the same the petitioner has approached this court, inter alia, contending that the said letter is arbitrary and without the authority of law.

4. Petitioner's own documents produced as Annexures to the petition evidence that he has entered into a lease-cum-sale agreement, a true copy of which is found at Annexure-B to the petition. Petitioner has averred that though the said lease-cum-sale agreement purported to have delivered possession of the property on the date of the agreement it was unfit for occupation and as such petitioner had to return the key to the respondent-Corporation or some officer of the said Corporation and only on 15-2-1985 the shed was given back to him in a condition fit for commencing his industry. Undisputedly on the date of the impugned order, the petitioner had not commenced the industry for which purpose the shed had been allotted. Annexure-E is a show cause notice dated 18th December, 1985. In that show-cause notice, petitioner has been called upon to show-cause why action should not be taken in accordance with the provisions of lease-cum-sale agreement as well as the law governing the allotment as he had not complied with the terms and conditions of allotment 5 and 9. Further that he was also in arrears of Rs. 49,786.14 towards rent instalment and that the unit was not functioning. What cause the petitioner showed to the said notice is also not in dispute as Annexure-F is a reply issued through his Advocate. In that, there is no reference whatsoever to the various breach of conditions. There is a clear assertion that the petitioner has been paying rental as and when they fall due and that he was not in arrears of rent. There is also reference to claim by respondent-Corporation, rent at a higher rate than was agreed to under the lease-cum-sale agreement. Soon thereafter in January, 1986, the Managing Director has addressed stating that he had not replied to the show-cause notice and that a final chance was given to him to clear the arrears and also show-cause. It was only thereafter that the impugned order came to be passed on March 20, 1986. Apparently the reply to the show-cause notice issued by the counsel had not been received by the Corporation at that point of time.

5. Having analysed the above correspondence, I called upon the petitioner to demonstrate and produce proof of payment of rent. The bills produced today relate to period subsequent to 15-2-1985, the date on which effective possession of the shed in working condition was taken over by the petitioner and the period subsequent to filing of the petition. From the receipts, it is seen that monthly instalments whatever they be admitted or disputed have never been paid regularly. On the contrary, they display that the petitioner has paid over the years in varying amounts ranging from Rs. 3,000/- to 9,000/- and odd towards rental dues, sometimes after a gap of nearly 14 months. The documents produced in court today shows that on 25-8-1986 a sum of Rs. 3,681/- was paid towards rental instalments, and the next payment is on 29-9-1987 in a sum of Rs. 7,363/-, after a gap of nearly 14 months. Admittedly rent according to the

petitioner is Rs. 1,840.95 ps. per mensem. For 14 months it should be in the range of Rs. 30,000/-, but payment made at the end of 14 months is only Rs. 7,363/-. Therefore, this court has no option but to come to the conclusion that the assertion made by the petitioner that he was regular in the matter of payment of rentals is an assertion which is far from truth.

6. In that view of the matter, any dispute in regard to the quantum of rent or breach of agreement are matters for detailed investigation and after examining such evidence as parties may produce. But on admitted facts, it cannot be said that the petitioner is not in arrears of rent and on that ground alone the allotment is liable to be cancelled and as indicated in the impugned order action taken in accordance with law to take back possession as well as to recover the arrears of rent.

7. Therefore, the impugned order does not call for interference under Article 226 of the Constitution. If there is any dispute in regard to the terms and conditions, the parties must agitate the same in a Civil Court which is the competent court and not proceedings under Article 226 of the Constitution.

8. Petition is therefore rejected.

The documents produced in court today have been returned after perusal to the counsel for the petitioner.

Order accordingly.