

(2007) 02 KAR CK 0028
In the Karnataka High Court
Case No : Writ Petition No. 20266 of 2002

Electro Anil Limited

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 21-02-2007

Acts Referred:

Constitution of India, 1950 — Article 19, 21
Karnataka Industrial Area Development Act, 1966 — Section 28, 34 B

Citation : (2007) 2 KCCR 1508

Hon'ble Judges : H.V.G. Ramesh, J

Bench : Single Bench

Advocate : Chandrakanth R. Goulay, for the Appellant; Basavaraj U. Sabarad, Ramesh B. Anneppannavar, AGA. for State and Ananth Mandgi, for Respondent 5, for the Respondent

Final Decision : Dismissed

Judgement

H.V.G. Ramesh, J.—The Petitioner has prayed for a declaration that Section 34B of the Karnataka Industrial Areas Development (Amendment) Act, 2000 as invalid and in violation of Articles 19 and 21 of the Constitution; that the termination of lease as per Annexure-S bearing No. IADB 3716 11118 2001-02 dated 2-1-2002 issued by the 3rd Respondent is illegal; to declare the order of allotment dated 4-3-2002 issued by the 4th Respondent at Annexure-Y as illegal and also to issue consequential direction to the Respondents to restore the possession of the property to the Petitioner by accepting the difference amount along with interest amounting to Rs. 6,52,696/- and for such other orders.

2. Petitioner is said to be registered as a private limited company on 27-4-1982 for the purpose of manufacture of electronic battery powered two wheelers. Later the Petitioner is said to have converted into a public limited company recognised by the Respondents as per Annexure-A. One Prabhakar who is a Director is also empowered to represent the company as per Annexure-B. On the application made, a plot was sought to be allotted on 25-6-1982 by the 3rd Respondent at

Veerasandra Industrial Area, Attibele Hobli, Anekal Taluk. Consequently, the 3rd Respondent put the Petitioner in possession of plot Nos. 31B and 31C as per Annexure-D which measured 12002 sq.mtrs and on 19-11-1982, a lease cum sale agreement was also said to be executed. At that time, Petitioner is said to have paid an initial deposit of Rs. 30,013/- Later, the Petitioner was sanctioned loan by the Karnataka State Financial Corporation to the tune of Rs. 20,87,000/- for establishing a small scale industry. According to him, he has utilised the said amount for the purpose of purchase of machineries. He also obtained a loan of Rs. 45 lakhs from the State Bank of Mysore for purchase of machineries and raw materials. However, according to the Petitioner, because of the pressure from the financial institutions, he has discharged the loan amount due to State Bank of Mysore as well as to Karnataka State Financial Corporation. According to him, the State Government has provided subsidy of Rs. 7.50 lakhs for setting up an industry in the backward area. At the time of establishing, after putting up the building, he had left sufficient space for runway in order to test drive the vehicles to be manufactured. He has also spent more than 60% amount towards cost of the project excluding the site cost. Petitioner is said to have obtained license from the Hebbagodi Panchayat for construction of factory building on 1-4-1987 as per Annexure-G.

3. According to the Petitioner, he has made efforts to secure several components from outside as the same was not available in the country for the intended manufacture of mopeds. Ignoring that he has invested 60% of the cost of the project, the Respondent has issued a letter dated 13-7-1992 as to why the lease shall not be determined although there is no violation of the terms of the lease. Though reply was issued to the said notice as per Annexure-N on 31-7-1992, 3rd Respondent has issued a notice dated 16-10-1992 stating that structure as well as land will be resumed on 20-11-1992 for failure to implement the project within the stipulated period ignoring the board's resolution made in the meeting held on 3-12-1991. Against which, Petitioner filed WP 34041/1992 before this Court wherein this Court disposed of the petition stating that there is a settlement between the parties according to which the Petitioner has to pay 75% of the difference between the market price that was prevailing on the date of resumption notice dated 16-10-1992 and the market price prevailing on the last date of time extended for completion i.e., on 21-3-1988. Petitioner had also agreed therein that 75% of the difference in rates along with penalty of Rs. 15,000/- would be paid within six months from 8-9-1999 or four and half months from the date of intimation and he had also agreed to give an undertaking to the KIADB to commence production activities within one year from the date of payment. On such failure, the 3rd Respondent was at liberty to take action in accordance with the terms of the contract. However, in response to the same the Petitioner was called upon to pay a sum of Rs. 5,31,469/- by letter dated 25-8-2000 and also to file a undertaking to implement the project. According to the Petitioner, in pursuance of the said letter, he paid only a sum of Rs. 15,000/- towards penalty and sought for extension of time to pay the difference on the

ground that he was facing financial crises. However, according to the Petitioner, instead of considering the request and without hearing him, letter dated 2-1-2002 was issued terminating the lease and fixing the date of resumption of the scheduled land. Hence, this petition on various grounds.

4. It appears, according to the Petitioner, he received the letter dated 2-1-2002 on 21-1-2002 and he is said to have made an attempt to pay Rs. 6,52,696/- by explaining the delay for nonpayment of the difference amount. However, the same was not accepted and the Board refunded the amount of Rs. 6,52,696/-. In this regard, Petitioner filed an application in the writ petition which was already disposed of and this Court noting that as per the amended Section 34-B of the KIADB Act, 1966 amended in 2000, the Board had taken over possession, reserved liberty to the Petitioner to file a fresh petition challenging the provisions of the amended Act.

5. Detailed statement of objection has been filed by the Respondent resisting the petition expressing the main object of the Respondent Authority and also about the breach of the agreement by the Petitioner and contending that despite allotment of the land as early as during 1982, for more than twenty years the land was kept idle; Petitioner had not invested any amount for several years and after the land was allotted, Petitioner neither set up the project nor surrendered the land to the Board. Meanwhile, value of the land had appreciated in the market and allowing the allottees to hold the land without implementing the project for speculative purposes would defeat the object of the Act. The implementation of the project was to be within two years or within the extended period. The Petitioner did not make sincere effort to establish the project. The Respondent authority develops the industrial area and provides all infra structure facilities required for industries by incurring substantial expenditure. The allotment will be made based on the requirement and the allottees are required to implement their project within a period of two years in different stages as agreed by them. As per the condition of allotment in the case of the Petitioner, he was expected to complete construction and commence production before 25th June 1984 even otherwise considering the various requests made by the Petitioner, time was granted up to the end of March 1988. Even then, the Petitioner did not commence the production. The Board after obtaining the report from the Zonal Office, after waiting for a long time, as there was no response from the Petitioner regarding commencement of the production, no machinery was installed, and there was no power connection obtained, resumed possession. Even the Petitioner has not complied with the terms of settlement as per the direction of this Court in WP 2440/1992. As such, there is no illegality on the part of the Respondent authority in determining the lease and taking possession of the land. The Board has encouraged the Petitioner by granting time several times and has also complied with the principles of natural justice before resuming the land. Accordingly, it is contended that the petition is not maintainable. It appears rejoinder is filed by the Petitioner for which additional objections are also filed by the Respondents.

6. Heard the Counsel for the Petitioner and the Respondent.

It is the submission of the Counsel for the Petitioner that the cancellation of the allotment and the procedure followed by the Respondent is without any basis and illegal as the Petitioner had substantially invested to raise the building and despite several correspondences made, though the payment is made by the Petitioner belatedly, there is substantial compliance on the part of the Petitioner as such, the Respondent authority ought not have resorted to determine the lease and take possession; the allotment made in favour of 5th Respondent is without following the procedure and, the provisions of amended provisions Section 34B is violative of Article 19 and 21 of the Constitution as it gives arbitrary power to the Respondent to cancel the allotment made and the allotment made in favour of 5th Respondent is violative of provisions of Section 28 of the Act. Accordingly, he prayed for allowing the petition.

Per contra, Counsel for the Respondents submitted that the allotment was made as early in the year 1982 and resumption was during 2002 after giving several extensions. Petitioner although earlier had filed a petition and had undertaken to complete the project and commence production, neither he has paid the amount as per the undertaking towards market value as on the subsequent date nor was he able to start production. It is also submitted that having regarding to his conduct, the stay granted earlier was vacated though it was subject to the result of the writ petition. There is no unreasonableness in introducing the amended provisions u/s 34B of the Act. In support of his argument, he has relied upon certain decisions which I shall refer in the course of order.

7. Having heard the Counsel for the respective parties, let me consider-Whether Section 34B of the Act is ultravires the provisions of Articles 19 and 21 of the Constitution and, whether any illegality has been committed by he Respondent authority in resuming the property allotted in favour of the Petitioner after determining the lease.

Section 34B of the Act amended by way of Act 19/2000 on 23-5-2000, reads as under:

Resumption of the possession of premises including the residential tenements on breach of terms and conditions of lease or holding without authority:

1. Whether the Board is of the opinion that an allottee of any premises or part thereof or residential tenement in an industrial area or industrial estate has violated any of the terms or conditions of allotment or holds it without any authority it may, without prejudice to Section 25 give notice to such allottee and Banks or financial institutions, in whose favour the Board has permitted the mortgage or leasehold rights of the premises, or residential tenement specifying the breaches of the terms and conditions of the allotment calling upon the allottee to remedy such breaches within a time stipulated in the notice.

2. If the allottee fails to remedy the breaches within the time so stipulated, the

Board shall serve a notice upon the allottee under intimation to such bank or financial institutions to show cause within thirty days from the date of service of notice, why the possession of the premises or part thereof or residential tenement should not be resumed.

3. After considering the cause, if any, shown by the allottee and after giving him an opportunity of being heard, the Board may pass such orders, as it deems fit.

4. Where the Board passes an order under Sub-section (3), for resuming possession of the premises or part thereof or residential tenement in the industrial area it may, by notice in writing, order any allottee to surrender and deliver possession thereof to the Board or any person duly authorised in this behalf within the date specified in the notice.

5. If any allottee refuses to surrender or deliver the possession of the premises or part thereof or residential tenement within the time specified in the notice, the Board or any officer authorised by it in this behalf may resume the possession of the premises or part thereof or residential tenement free from all encumbrances and for that purpose may use force as may be necessary.

A reading of the above provision makes it clear, on such violation of the conditions of allotment, it is for the Respondent authority to give such notice and also to the financier calling upon the allottee to remedy such breaches. If allottee fails to remedy the breaches within the time stipulated, on such intimation to the financial institution by way of show cause notice regarding resumption of possession and after giving him opportunity, Board may pass such order.

8. In the instant case the amended provision provides for resumption of the land allotted to industries for development of the industry. If there is any violation or breach of the terms of conditions, as is contemplated, in compliance of principles of natural justice action would be taken by the Board for resuming the possession of the land allotted. This provision is in the form of regulatory provision which enables the Board to regulate the activities and also regarding utilisation of the land meaningfully as per the terms and conditions and on such breach being noticed, it authorises the Board to take appropriate action of course, subject to due compliance of principles of natural justice. It is also expressed that in the absence of any such regulatory measures, there will be flagrant violation of the conditions of allotment in disposing the allotted land in the market for a higher value without accomplishing the purpose for which it was allotted, as lands are acquired from farmers to encourage development of industries, and after development/formation of the layout for industrial purpose, the land is allotted at a reasonable rate to encourage such establishments. In this regard, if certain measures have been provided then it may not be held to be either in violation of the provisions of the Constitution much less the provisions of the Act. It is also submitted in this regard that it is the experience of the Board that some of the allottees are said to have defeated the object of the Act by misusing the land allotted to them. When some changes are brought about in

the Act as a regulatory measure, and the reasons beyond introducing the provision are shown to be reasonable which withstands the test of reasonableness, question of calling it as violative of Articles 19 and 21 of the Constitution cannot be accepted.

9. In so far as determination of the lease is concerned, of course the argument advanced on behalf of the Petitioner is it is in violation of Section 28 of the Act. It is to be noted that Section 28 contemplates acquisition of the land by the Board for the purpose of developing the area identified for the purpose of industrial establishment from the farmers or others initially by following the procedure as is contemplated. Of course, similar provisions are provided under the Land Acquisition Act regarding acquisition of property. By exercising the power of eminent domain, property is sought to be acquired by the Board it being a part of the system of the government in promoting the establishment of industries, as a social welfare measure. In that context, Section 28 is enacted as an enabling provision to acquire the land for development and allotment of the land for the purpose of development of industries. The case of the Petitioner herein altogether stands on a different footing since there is violation of conditions of allotment as stated by the Respondent Board. As could be seen, after giving sufficient opportunity the Respondent authority has determined the lease and proceeded to resume the land.

10. According to the Petitioner, he is said to have invested more than 60% of the amount towards development of the project. Of course as is depicted in the photographs produced, except putting up a shed/building from 1982 onwards till 2000 there was no substantial progress made. As per the conditions of the Board, after such allotment and taking possession the Petitioner was supposed to complete the project within two years. After the allotment was made in the year 1982, the Petitioner has not evinced interest to complete the project as per the undertaking. Rather, he made a move to put up the shed and except that, there is no installation of machinery which are required for the purpose of manufacturing. Thereby he has violated the conditions of allotment. Further, even according to the settlement arrived at by him with the Respondent in the earlier writ petition, he has not fulfilled his obligation well within time much less the production was commenced. Under the circumstances, when the authorities after having issued due notice to the Petitioner, determine the lease and resumed possession, the same cannot be faulted with. However, it is the case of the Petitioner that he has invested huge amount in raising the shed/building and even now he is interested in completing the project. The way in which Petitioner has evinced interest through out for a long period of 18 years goes to show that he has not complied with the conditions of allotment even after reasonable time was given as per settlement arrived at between the parties in the writ petition filed by him before this Court and speaks of the fact that the Petitioner's case cannot be considered with any further sympathy.

11. As regards the allotment of the land made in favour of the 5th Respondent

by the Board, of course, it is a matter which the Petitioner cannot question as the allotment came to be made in favour of 5th Respondent on 4-3-2002 after determination of lease and resumption of the land by the Board.

12. In the decision reported in AIR 1997 Kar. 134 - Hanuman Silks and Etc. v. Karnataka Industrial Areas Development Board, Bangalore and Ors. in para 15 of the judgment, in similar circumstance, this Court held that there was inaction on the part of the Petitioner in filing the writ petition belatedly. In the meanwhile, the Board having taken possession rightly or wrongly had made fresh allotment, delivered possession and entered into lease cum sale agreement with the allottee Respondent. It is observed that any interference will upset the rights of the third party.

13. It appears in the above cited decision Petitioner therein had filed a writ petition on 2-1-1996. By a notice dated 16-2-1995 the Respondent Board drew the Petitioner's attention to the provisions of the agreement and non-fulfillment of the obligation. Subsequently, on 25-7-1995, Board took possession. However, according to the Petitioner therein, he sent a letter on 13-9-1995 stating that they are making arrangements for necessary finance for speedy completion of the project. The Board having taken possession of the plot is shown to have allotted the same to the third party on 31-10-1995 and the writ petition was filed on 2-1-1996. In that context, it is held that in the circumstances, Petitioner cannot contend they were expecting further communication from the Board and therefore, did not take any action.

14. In the decision in the case of Ananda and Others Vs. Karnataka State Electricity Board, this Court has held that after issuance of show cause notice to cancel allotment regarding failure to adhere to the terms, after reply of the Petitioner, Board has taken a decision and cancelled the allotment on the ground that Petitioner had failed to commence production as per the conditions, and that the Board has not committed any illegality in cancellation of the allotment.

15. In the decision reported in Ashwani Kumar and Others Vs. State of Bihar and Others, the Apex Court has held that the action of the authority although found to be illegal, the Supreme Court refused to grant stay on account of delay.

16. Similarly, in the decision reported in State of Andhra Pradesh and others, etc. Vs. McDowell and Co. and others, etc., wherein it is held a law made by the Parliament or legislature can be struck down only on two grounds i.e., if there is lack of legislative competence and violation of any of the fundamental rights guaranteed under Part III of the Constitution or of any other constitutional provision or, if an enactment is challenged as violative of Article 14 it can be struck down only if it is found that it is violative of equality clause.... No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some constitutional infirmity has to be found before invalidating the Act. An enactment cannot be struck down on the ground that the Court thinks it unjustified.

17. Having noticed the ratio laid down by this Court and the Apex Court as to the procedure following by the Respondent Board in cancellation of the allotment and resuming the land, the same cannot be held to be illegal. Further more, introduction of provision Section 34B to the Act cannot be said to be violative of the provisions of the Constitution much less as arbitrary.

18. In view of the fact that the Petitioner has invested amount for raising the shed, his interest should be protected by assessing the value of the building raised by him while making allotment to some third party and as far as possible, the Respondent authority shall compensate the Petitioner as to the investment made by him as per the value assessed by the competent authority. Ordered accordingly.

19. With the above observation and for the foregoing reasons, the petition is dismissed.