
(2014) 09 JH CK 0077

In the Jharkhand High Court

Case No : W.P. (C) No. 690 of 2014

Forum Infrastructure (P) Ltd.

APPELLANT

Vs

Adityapur Industrial Area Development Authority and Others

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Environment (Protection) Act, 1986 — Section 3(3)

Citation : (2015) 1 AJR 587

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Indrajit Sinha, Advocates for the Appellant; V.P. Singh, Sr. Advocate, R.C.P. Sah, R.K. Singh and C.A. Bardhan, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Alleging cancellation of the allotment and termination of the lease deed dated 02.06.2008 by the Managing Director, Adityapur Industrial Area Development Authority vide order dated 15.01.2014 as arbitrary, illegal, unjustified, pre-meditated and suffering from non-application of mind, this writ petition has been filed. In the writ petition, the petitioner - Forum Infrastructure (P) Ltd. has stated thus:

The petitioner is a company incorporated under the Companies Act. It is renowned for executing landmark projects and it is popularly known as "Forum". On 04.09.2006, the respondent No. 1 - Authority invited a tender bid for construction and development of a "City Centre" through a "Request for Proposal (RFP)". The City Centre in the Adityapur industrial Area is to comprise of a star hotel, club, medical centre/hospital, multiplex, retail/shopping mall etc. A consortium comprising of M/s. Forum Project (P) Ltd., M/s. Forum Shopping Mall (P) Ltd. and M/s. Genesis Advertising (P) Ltd. (the preferred bidders) submitted its bid on 14.10.2006 and on 14.12.2006 the bid was accepted. The respondent No. 1 directed the consortium to incorporate "Special Purpose Company" with which the lease deed was to be executed. Accordingly, the petitioner-Company was incorporated as the "Special Purpose Company" on 24.01.2007 and the

allotment letter was issued in favour of the petitioner on 26.03.2007. The allotment was for a period of 90 years on lease-hold terms from the date of execution of lease deed and subject to fulfillment of certain conditions. The physical possession of the land comprising an area of 21.698 acres was delivered to the petitioner on 14.11.2007 and a lease deed was executed between the petitioner, the preferred bidders and the respondent No. 1 on 02.06.2008 which was duly registered. Thereafter, the petitioner paid the lease-premium amount in two installments amounting to a sum of Rs. 11,12,00,000.00 and a sum of Rs. 83,40,000.00 as advance lease rental for 5 years from 02.06.2008 till 2013. For further lease rental for the period 2013 to 2018, an amount of Rs. 1,24,94,432.00 and a sum of Rs. 1,51,03,014.00 as one time project development fee to IL & FS Infrastructure Development Corporation Limited (IIDC) have also been paid by the petitioner-Company. For obtaining the building plan approval, the petitioner submitted its plan and specifications on 25.04.2007 to the respondent No. 1. And, for taking NOC under Sections 25 and 26 of the Water Act and Air Act, the petitioner submitted application dated 29.02.2008 to the Jharkhand State Pollution Control Board. The Jharkhand State Pollution Control Board vide letter dated 27.10.2011 informed the petitioner that its unit comes under EIA Notification and therefore, environmental clearance from the MoEF, Government of India is required. The building plan was sanctioned by the respondent No. 1 on 17.11.2011. After the building plan was approved, the petitioner sought approval for Rain Water Harvesting which was granted on 15.02.2012. The petitioner applied for environmental clearance EIA Notification on 30.03.2012 and the respondent No. 1 also sent its recommendation dated 13.06.2012 to the MoEF. The proposal for environmental clearance for the petitioner's project was considered in the 114th meeting of the Expert Appraisal Committee held on 9-10.07.2012. On 09.10.2012, the petitioner submitted its response to the query/observation of the EAC on the proposal. In the meantime, a show-cause dated 01.10.2012 was issued to the petitioner to which the petitioner submitted its response on 17.10.2012. The EAC in its 118th meeting held on 09.11.2012 recommended the proposal for environmental clearance and immediately the petitioner approached the Jharkhand State Pollution Control Board on 14.12.2012 seeking consent to establish. However, the formal environmental clearance letter was not issued from the MoEF and in the meantime, the State Level Environment Impact Assessment Authority (SEIAA) was constituted by the MoEF for the State of Jharkhand for grant of environmental clearances in respect of category (D) project activities. Accordingly, the petitioner approached SEIAA vide letters dated 23.07.2013 and 27.08.2013 for issuing necessary environmental clearance and NOC for consent to establish. On 07.09.2013, the SEIAA informed the petitioner that it has received proposal from MoEF, New Delhi on 22.08.2013 and asked the petitioner-Company to make a presentation on 24.09.2013. Vide letter dated 03.10.2013, the SEIAA informed the petitioner that in the joint meeting of SEIAA held on 24.09.2013, it has been decided to issue the environmental clearance to the petitioner's proposed project, subject to the conditions outlined therein. One of

the conditions was to get permission for drawl of water from CGWD and approval of the scheme for rain water harvesting. The petitioner wrote letter dated 10.10.2013 to SEIAA clarifying in respect of the information/approval sought from the petitioner however, vide letter dated 19.11.2013, the petitioner-Company was directed to produce certificate from the Ground Water Directorate. The SEIAA noted that the compliance report submitted by the petitioner-Company was not satisfactory for the disaster management plan as well as for Air Exchangers/Ventilator facilities provided in the parking area. While the petitioner was struggling to respond to the unnecessary objections from SEIAA, the respondent No. 1 issued show-cause notice dated 27.11.2013 for cancellation of allotment order, forfeiture of lease-premium and termination of lease deed dated 02.06.2008. The petitioner submitted its reply to the show-cause notice on 24.12.2013. The petitioner approached the National Green Tribunal, Delhi by filing Application No. 357 of 2013. On 13.01.2014, the Tribunal issued notice and passed an order that "any action on behalf of the respondent No. 5-AIADA (in Application No. 357 of 2013) shall be subject to the outcome of this application". However, the respondent issued the impugned order dated 15.01.2014 cancelling the allotment and terminated the lease deed dated 02.06.2008.

2. A counter-affidavit has been filed on behalf of the respondents stating that the respondent No. 1 is a statutory authority created under the Jharkhand Industrial Area Development Authority Act, 2001. A piece of land measuring 21.698 acres was allotted to the petitioner and a lease deed was executed. The schedule of completion of every stage was linked with the date of taking possession of the plot by the lessee and under Clause II 4(a) of the lease deed a maximum period of 120 days from taking over the possession of demised plot has been provided for making applications for clearances and under Clause II 4(b) a period of 180 days was provided for starting the construction of the project. The AIADA is required to grant requisite clearances and permits which are necessary for implementation of the project. It is also provided that non-adherence to the schedule for implementation of the project by the lessee would be considered as default which can result in termination of the lease deed followed by taking possession from the lessee and forfeiture of the lease-premium and lease rent. Since the lessee did not commence the work as per schedule, show-cause notice dated 01.10.2012 was issued to the petitions and sufficient time was granted to the petitioner however, even 14 months thereafter the petitioner did not make genuine efforts for commencement of the construction, completion and commission of the project and therefore, after issuing show-cause notice dated 27.11.2013 in exercise of power conferred under Section 6(2)(a) and (b) of the Jharkhand Industrial Area Development Act, 2001 read with Rule 3(1) of the rules framed thereunder, the allotment order No. 772/ADA dated 26.03.2007 was cancelled and the lease deed dated 02.06.2008 was terminated, forfeiting the amount deposited by the petitioner.

3. Heard the learned counsel appearing for the parties and perused the documents on record.

4. Mr. Indrajit Sinha, the learned counsel appearing for the petitioner submitted that this is not a case in which the petitioner has not taken serious steps for obtaining necessary sanctions/clearances from Government-Authority. For delay on the part of the Government-Authority and the AIADA the respondents cannot insist upon adherence to the time schedule prescribed in the lease deed. The petitioner could not have started the construction work in absence of necessary permission as, it would have incurred penal consequences. In any event, the MoEF had granted environmental clearance to the project and the Minutes of Meeting dated 09.12.2012 was duly displayed on the website however, in the meantime, SEIAA was constituted in the State of Jharkhand and therefore, the petitioner had to pursue the matter with SEIAA once again. Though, the ground water clearance was given vide letter dated 20.10.2012 itself, permission for extraction of ground water was delayed. The delay in granting permission was not for the reasons attributable to the petitioner and the petitioner had to approach the National Green Tribunal, Delhi for a direction upon SEIAA for grant of necessary environmental clearances. It is further submitted that now the petitioner has obtained all necessary sanctions/permissions and the project can be started once the environmental clearance is granted to the petitioner. The petitioner has completed all formalities and rectified all deficiencies and the environmental clearance would be granted once the respondent No. 1 gives NOC.

5. Finally, it is submitted that the cancellation of a concluded transaction should be the last resort and if the authority can be compensated for delay on the part of the lessee and extension of time can be granted, the contract should not be terminated. In the present case, Clause IV(2)(f)(i) provides for payment of Rs. 11,12,000/- per week (being 1% of the lease-premium) for every week of delay in the event of delay in execution of work, subject to a maximum of 10% of the lease-premium.

6. Shri V.P. Singh, the learned Senior Counsel appearing for the respondents submitted that under the lease agreement the lessee is required to apply for all necessary applicable permits for construction of project within 120 days of taking over of possession of the land and to commence the development and construction work of the project within 180 days from the date of taking possession of the land. It is also stipulated that the scheduled construction completion date was 36 months from the date of getting physical possession of the demised plot. The contract provided that time so specified shall be the essence of the contract. The petitioner hopelessly failed to adhere to the schedule of the completion and commission of essential components of the project and it did not honour its commitment as recorded in the Minutes of Meeting dated 12.06.2012 and therefore, a notice dated 01.10.2012 was issued to the petitioner. The petitioner again sought time which was granted to it however, it failed to start the project even 42 months after taking delivery of the possession of the demise plot. Therefore, in terms of clause VI of the lease deed for default on the part of the petitioner, a show-cause notice was issued to the petitioner and the preferred bidders. The petitioner submitted its explanation

vide reply dated 24.12.2013. The petitioner was also afforded a personal hearing on 04.12.2014. In the meeting held on 12.06.2010 the petitioner agreed to commence construction work at site latest by 3 months from the date of the approval of the building plan. The building plan was approved by AIADA vide order dated 17.11.2011 however, the petitioner failed to start construction work of the project and even the extended period was to expire on 16.11.2014, by which time the petitioner could not have completed the work and therefore, the contract was terminated. It is further submitted that the petitioner has not brought on record any instance of the AIADA not granting any permit within its authority or the instance where the AIADA had denied to facilitate the petitioner in obtaining applicable permits from other Government-Authorities. The petitioner has not even constructed its site office on the spot which indicates the casual approach of the petitioner in execution of the work. Subsequently, it was detected that the petitioner and its associates are developing a mall in Jamshedpur due to which construction of Adityapur City Centre is delayed by the petitioner and the preferred bidders themselves. The appreciation in the price of land in and around Adityapur is another factor which appears to prompt the petitioner to delay the project. The present value of the land which is subject matter of the writ petition is over Rs. 200 crore. The power of the Managing Director, AIADA in the matter of allotment of land and cancellation of allotment, termination of lease deed and forfeiture of lease-premium and rent has been decided by this Court in Adityapur Industrial Area Development Authority and Another Vs. M/s Sanderson Industries Limited and Others, and "M/s. Tata Steel Ltd. Vs. State of Jharkhand & Ors." reported in 2013 (1) JCR 714 (Jhr.).

7. I have carefully considered the submissions of the learned counsel appearing for the parties and perused the documents on record.

8. Before adverting to the rival contentions, relevant clauses of the lease agreement dated 02.06.2008 may usefully be noticed:

C. Terms of Lease

(a) the term shall commence from the date hereinabove written, 2nd day of June, 2008, and shall extend, for a period of 90 (ninety) years from such date or the earlier termination of this Deed on accordance with the terms, and conditions thereon- (hereinafter the "Term of Lease").

(b) The Lessee shall be entitled during the Term of Lease to be in peaceful possession and the use of the Demised Plot. The Parties accept and agree that the Demised Plot shall be used for the implementation of the project commercially and for residential accommodation (upto 20% max. of gross built-up-area) for the employees of Forum Infrastructure Pvt. Ltd. as well as all the operators, entrepreneurs and service providers of the Adityapur City Centre and also the associates, employees of operators and service providers engaged with Adityapur City Centre on Lease/Sub-lease basis.

(c) The Parties agree and accept that the lease shall not be renewed after the

expiry of the Term of Lease by efflux of time.

II) Covenants of Lessee

The Lessee for itself, its successors, assigns, administrators, legal representative and Persons claiming through or under it covenants with the Lessor with the Lessor in the manner following, that is to say:-

1. The yearly rent expressed as percent of the Lease Premium as provided above hereby reserved shall be calculated on the Lease Premium and from 2nd day of June, 2008.

4a) The Lessee shall at its cost apply for all necessary Applicable Permits for start of construction of the Facilities/Project within 120 days of taking over of possession of the Demised Plot and obtain the same, as necessary, prior to commencing the development and construction work.

b) The Lessee shall at its cost commence the development and construction work of the Project within 180 days from the date of taking possession of the Demised Plot.

c) The Lessee shall procure at its cost all Applicable Permits from the relevant competent authorities as are required, from time to time, for the development, construction, implementation, completion, commissioning and the operation and maintenance of the Facilities/Project, unconditionally or if subject to conditions then all such conditions shall have been satisfied in full and such Applicable Permits are in full force and effect.

d) The Lessee shall, within a period of 36 months from the date of getting physical possession of the demised plot free from all encumbrances, (the "Scheduled Construction Completion Date") 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 authority, at its own expenses, construct, complete and commission in a substantial and workman-like manner, in accordance with the provisions hereof, by itself or through sub-lessees or subcontractors..... in the event that construction completion of the Essential Components does not occur by the Scheduled Construction Completion Date, the time for achieving the same shall, subject to the Lessee paying the stipulated damages, be extended by two years from the Scheduled Construction Completion Date; subject to and in accordance with the provisions of Clause TV(2)(e) and (f) herein below.

TV Project Implementation

1. City Centre Scheme

a) Prior to commencing construction on the Demised Plot, the Lessee shall, within 120 days of the date hereof, prepare and submit to the Lessor an overall City Centre Scheme conforming to the provisions of the RFP documents and of this Deed and, inter alia, providing for:

* Details of the Environment Impact Assessment (EIA) of the Demised Plot carried out by the Lessee prior to commencement of construction. The EIA must be carried out in accordance with the specifications/notifications of the Ministry of Environment and Forest (MoEF), Government of India, as applicable or amended from time to time.

2. Construction

d) The Lessee shall ensure that the works shall be carried out in accordance with the provisions hereof, the approved building plans and the bye-laws, of the relevant municipal or other authority.

e) The Lessee shall achieve construction completion of the Essential Components by the Scheduled Construction Completion Date, failing which it shall be required to complete the same within two years from such date (within 5 years of the date hereof) upon payment of the stipulated damages, as set forth in Clause (f) below, and hereby agrees and accepts that time is of the essence of this Deed.

f) i) In the event that construction completion of the Essential Components is not achieved by the Scheduled Construction Completion Date for any reason other than Force Majeure or reasons attributable to the Lessor or any government authority, as certified by the Lessor's Engineer, the Lessee shall, subject to sub-clause (ii) below, pay to the Lessor damages for delay beyond that Scheduled Construction Completion Date to the extent of Rs. 11,12,000/- (Rupees eleven lacs twelve thousands only) per week (being 1% of the lease premium) for every week of delay or part thereof until such construction completion is achieved subject to a maximum of 10% of the total lease premium. Provided that nothing contained in this sub-clause (i) shall be deemed or construed to authorise any delay by the Lessee in achieving, construction completion of the Essential Components.

ii) In the event that construction completion of the Essential Components does not occur within 2 years from the Scheduled Construction Completion Date, the Lessor shall be entitled to terminate this Deed for a Lessee Event of Default in accordance with the provisions of Clause VII hereof. Provided that instead of terminating this Deed, the Lessor may on its sole discretion extend the time for achieving construction completion on such terms and conditions as it deems appropriate.

VII Termination Procedure on Lessee Event of Default

1) Upon the occurrence of Lessee Event of Default under Clause VI above, and upon the expiration of the cure periods, if any, the Lessor may issue a Notice of Intention to Terminate to the Lessee (and, if applicable, to the sub-lessee (s), with a copy endorsed to the Lenders. Such notice shall specify in reasonable detail the Lessee Event of Default giving rise to the Notice of Intention to Terminate.

2) Following the issuance of a Notice of Intention to Terminate, the Parties shall consult for a period of 30 days or such longer period as the Parties may agree in writing, as to what steps shall be taken in order to prevent the termination of this Deed and/or to cure the relevant Event of Default. Such steps shall include, the endeavor of the Parties in consultation with the Lenders to arrive at an agreement for the replacement of the Lessee by a new Lessee ["Substitute Entity"].....

9. Now, coming to the facts of the case, pursuant to notice inviting tender dated 04.09.2006 among the bids which were received, bid of the petitioner was found highest and accordingly, it was accepted. The letter of acceptance was issued on 14.12.2006 and the physical possession of the land was handed over to the petitioner on 14.11.2007. The lease agreement was executed on 02.06.2008 and it is an admitted position that AIADA granted approval of the building plan on 17.11.2011. The following payments have been made by the petitioner to AIADA:

a. A total sum of Rs. 11,12,00,000.00 being lease-premium amount paid in two installments, 50% in 15 days and remaining 50% in 6 months.

b. A sum of Rs. 83,40,000.00 being the advance lease rental for 5 years from 02.06.2008 till 2013. Subsequently, further lease rental has been paid by the petitioner of an amount of Rs. 1,24,94,432.00 for the period 2013 and 2018.

c. A sum of Rs. 1,51,03,014.00 as one time Project, Development Fee to IL & FS Infrastructure Development Corporation Limited (IIDC) being 1% of project landed cost.

10. From different clauses of the lease deed, it is gathered that the leasehold right of the Demised Plot has been granted to the petitioner for a period of 90 years and the date of commencement of the leasehold period has been fixed as 02.06.2008. The lessee is under an obligation to pay the yearly rent from 02.06.2008. The schedule of the yearly rent payable in advance has been given in the lease deed. In the lease-deed it is mentioned that an amount of Rs. 11,12,00,000.00 has been paid towards the lease-premium and the advance lease rental has been paid in single lump-sum amounting to Rs. 83,40,000.00. It is provided that the lease shall not be renewed after the expiry of the term of lease by efflux of time. From the above stipulations, it can be gathered that a certain amount of certainty with respect to subsistence of the lease period was the intention of the parties. It further appears that" the lessee is required to construct the City Centre, Hotel, Club, Medical Centre etc. in accordance with "the applicable laws, the terms of clearances, approvals, NOC and permissions

etc. including environmental clearances from the State Pollution Control Board and the Ministry of Environment, Government of India".

11. It is not disputed that the technical approval for the Rain Water Harvesting plan submitted by the petitioner was granted by the Ground Water Directorate, Jharkhand vide letter dated 20.10.2012. When the petitioner applied for environmental clearance to the MoEF, the AIADA vide letter dated 13.06.2012 had recommended for grant of environment clearance to the petitioner. In the 118th meeting of EAC of MoEF dated 09.11.2012, environment clearance to the petitioner was approved. The Minutes of Meeting dated 09.11.2012 was put on website also however, the letter granting environmental clearance was not issued to the petitioner and in the meantime, the State Level Environment Impact Assessment Authority (SEIAA) was constituted for the State of Jharkhand and therefore, the petitioner had to make fresh application for grant of environmental clearance. The petitioner has contended that the petitioner had already removed all the defects/deficiencies pointed out by the SEIAA for grant of environmental clearance and the said clearance is awaiting NOC from AIADA. It is also a matter of record that the petitioner had to approach the National Green Tribunal, Principal Bench, New Delhi in Original Application No. 357 of 2013 seeking a direction upon SEIAA, Jharkhand to issue environmental clearance in its favour. In the said proceeding the Central Ground Water Board, State Unit, Ranchi appeared and filed a reply stating that CGWA/CGWB cannot process and grant NOC to the applicant because AIADA has cancelled allotment order and terminated the lease deed. In the reply dated 25.02.2014, the Central Ground Water Board has stated thus,

4. That on 05.12.2013, the applicant M/s. Forum Infrastructure (P) Ltd. sought permission for ground water extraction for "City Centre Project", at Village-Asangi, Adityapur, Seraikella-Kharsawan district from answering respondent No. 3 and also asked for Hydrogeological Report and letter issued by the State Level Environment Impact Assessment Authority (SEIAA), Jharkhand. That on 05.06.2013 itself the answering respondent No. 3 forwarded the above said application to Regional Director, CGWB, Mid Eastern Region, Patna along with Hydrogeological Report. That on 06.12.2013 the answering respondent No. 3 received a letter from Regional Director, CGWB, Mid Eastern Region, Patna with a comment "Ask the firm to submit the application in the prescribed form for infrastructure, incorporating all the relevant details".

5. That on 09.12.2013 the answering respondent No. 3 sent letter to the applicant to submit the following details as per the requirement asked by the Regional Director, CGWB, Mid Eastern Region, Patna:-

- (i) Prescribed form for infrastructure, incorporating all the relevant details,
- (ii) NOC/Consent Letter from Local Authority stating about the quantum of ground water required and
- (iii) Water availability/non-availability certificate for infrastructure use from

Government Water Supply Agency.

6. That on 12.12.2013 the answering respondent No. 3 received the infrastructure form from the applicant but the same was partially filled/incomplete, without enclosing a consent letter from Local Authority and Water Non-Availability Certificate from Government Water Supply Agency.

11. That Adityapur Industrial Area Development Authority, Seraikella-Kharsawan has cancelled allotment order and terminated the lease deed. Therefore, CGWA/CGWB cannot process & grant NOC to the Applicant under present circumstances.

12. The letter dated 24.01.2014 by which AIADA forwarded a copy of letter dated 15.01.2014 terminating the lease deed has been brought on record. In Original Application No. 357 of 2013 before the National Green Tribunal, SEIAA also filed its reply admitting that in 118th meeting of EAC held on 09.11.2012 it was proposed to recommend the case of the applicant/petitioner for environmental clearance however, the said minutes of meeting was not signed and in the meantime, before the decision taken in 118th meeting was finalised, the State Level Environment Impact Assessment Authority (SEIAA), Jharkhand was notified by the Government of India. In its reply before the National Green Tribunal, SEIAA has pointed out as under:

REQUIREMENT OF PERMISSION FROM CGWB: That the applicant failed to submit the certificate from Central Ground Water Board, Ranchi (CGWB) for extraction of ground water and the disaster management plan was not adequate as the details relating to the Ventilation facility as well as Air Exchangers were not provided. Copy of the guidelines/criteria for evaluation of proposals/requests for ground water abstraction issued by the Central Ground Water Authority, Ministry of Water Resources, Government of India constituted under Section 3(3) of the Environment (Protection) Act, 1986 is being annexed herewith and marked as Annexure R-1/11. It is relevant to note that the Applicant Has only obtained technical approval, subject to certain conditions, from the Office of the Director, Ground Water Directorate, Jharkhand, Ranchi with respect to Rain Water Harvesting. One of the conditions is "Ground Water should be extracted only for Domestic Use." However, this does not, and cannot, mean that the permission for ground water abstraction has been granted. The competent authority to grant such permission is the CGWB in a given State.

13. From the facts disclosed in the present proceeding, it is evident that the petitioner failed to commence work within the stipulated time. The petitioner has contended that though it took all necessary and sincere efforts for obtaining necessary clearances from Government Department/Authority however, due to the reasons beyond its control, it could not succeed in obtaining necessary clearances for a longtime. The petitioner has put blame on MoEF, SEIAA, Central

Ground Water Board, AIADA etc. whereas, AIADA has taken a stand that under relevant rules/guidelines/notifications whatever clearance was required to be given by AIADA, it has promptly been given to the petitioner and therefore, AIADA is entitled to proceed in the matter in accordance with the terms and conditions of the lease deed. From the materials brought on record, though it cannot be concluded that the delay caused can be attributable to Government Department/Authority however, it also cannot be concluded that the petitioner was not pursuing the matter sincerely. The sincerity of the petitioner for obtaining environmental clearance is manifest in filing of Original Application No. 357 of 2013 before the National Green Tribunal.

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 above-noted 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.

15. The writ petition is allowed in the aforesaid terms.