

(2008) 09 KAR CK 0022
In the Karnataka High Court
Case No : Writ Appeal No. 1025 of 2008

Hoysala Plantations and Processing (Traders, Exporters of Agro Products) APPELLANT

Vs

KSSIDC (Karnataka State Small Industries Development Corporation Ltd.) RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 09 KAR CK 0022

Hon'ble Judges : P.D. Dinakaran, C.J.;Mohan Shantanagoudar, J

Bench : Division Bench

Advocate : G. Nataraj, for Law Nest, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, C.J.—The appellant is the unsuccessful writ petitioner in Writ Petition No. 1872/2006.

2. Appellant-petitioner was allotted industrial shed bearing Nos. B 142 and B-143 in the Industrial Estate at Hebbai, Mysore under Lease-cum-sale basis for establishing a small scale industry for the manufacture of coffee seeds processing. The tentative price of the shed was Rs. 25,74,000/- as per the allotment proceedings dated 4.6.2003. As per the terms of allotment and consequent agreement entered into between the appellant and the respondent-Corporation, the appellant agreed to the following terms for repayment of the loan under Lease-cum-sale basis:

05(a) In case the petitioner opts for allotment on Installment-Lease-Cum sale Basis (hereinafter referred to as Lease Purchase Basis) the lease shall be for a period of 120 months commencing from the 1st day of succeeding month from the date of taking possession(hereinafter called deemed date). The price of the shed (less security deposit) is required to be paid in 108 monthly instalments

commencing from the beginning of the 13th month from the deemed date ending with the 120th month. The Lease Purchase Monthly Instalments (hereinafter called LPMI) to be paid by you is 37620/- which comprises the balance price of the shed, along with the interest on deferred collection of moratorium interest, the interest payable on these amounts with annual rests. During the first 12 months interest @ half of the normal rate of interest will be collected and accordingly you will have to pay Rs. 12550/- pm (1st 12 months). The applicable interest will be 13% p. a and the interest is calculated on Annuity System of Accounting.

(b) The first instalment (EMI) will commence from the 13th month onwards and the LPMI shall be paid by you before the end of every month. Any delay in payment of instalments) will attract further interest in respect of the instalments) amount due at 15.5% pa from the due date till the date of payment

(c) Charging of such additional interest or acceptance of such payments of additional interest does not prejudice the right of the Corporation for taking such action as may be necessary for violation of terms of allotment

(d) Option is also available for 7 years or 12 years lease which will be extended on written request before taking the possession of the shed.

6. The final price of the shed will be intimated to you, in the event of a tentative price is intimated, before the expiry of the moratorium period. Should there be any increase between the price now indicated and the final price, the difference in the case of OLCS payment or in the Security Deposit the same is payable in 30 days from the date of receipt of such intimation. Any default in payment of the additional amount that may become payable on account of any difference payable by you consequent to the intimation of the final price will have to be paid with interest at 16.5% pa in the event of petitioner's failure to pay the same within 30 days. In the event of final price fixed is less than the price intimated herein, the excess payment made by the petitioner would be adjusted towards the principal price of the shed. However, in the case of OLCS allottees the excess will be refunded within 30 days. The revised EMI details was also to be intimated to the petitioner.

7. In case of failure to pay the Advance payment/security deposit as per Clause-2/3, the allotment of shed stands cancelled without further notice and the amount paid along with application submitted for allotment of shed stands forfeited.

8. Any default in payment of instalment or any other violation of the terms of allotment will render allotment of the shed being cancelled. Upon such cancellation, the following consequences will occur.

(a) If the cancellation is made and possession resumed within 12 months (moratorium period) the interest on the balance price of the shed at 13% per annum will be levied and collected from the petitioner after adjusting the security

deposit Further, petitioner will be required to pay the cost of repairs of the shed, should there be any damages caused to the shed during petitioner's occupation. Further petitioner will have to pay all other dues in respect of the shed such as Electricity dues, water supply dues, service charges etc. In the event of any delay in payment of all those amount they will continue to carry interest @ 13% PA till final payment

(b) In the event cancellation is made and possession is resumed after 12 months from the date of taking possession, you will be liable to pay interest on the balance price of the shed at the rate of 15.3% per annum from the date of taking possession till possession is resumed together with arrears such as water supply charges, electricity charges and the cost of damages. The amount paid by the petitioner towards Security deposit and instalments will be adjusted in the manner aforementioned and balance, if any, will be required to be paid by the petitioner. In the event of any delay in payment of these amounts, that amount will continue to carry interest at 15.5% per annum till final payment

(c) In case the shed is opted on OLCS basis if the allotment of shed is cancelled and possession is resumed by the Corporation, petitioner is liable to pay interest @ 13% PA on the full price of the shed from the date of taking possession till possession is reassumed. This interest amount payable along with cost of damages if any and other dues towards Electricity, water and other dues will be adjusted out of the Advance payment made by the petitioner and balance if any will have to be paid by the petitioner within 30 days from the date of such intimation. Failure to pay such balance will entail the corporation to levy interest @ 15.5% pa on such amount till the date of final payment.

3. Pursuant to the said agreement, the appellant-petitioner had taken possession of the shed.

4. However, Appellant committed default in repayment and thus violated the terms agreed by him, which necessitated the respondent-Corporation to cancel the allotment by order dated 21.1.2006, of course, after giving him a show-cause notice on 5.4.2005. The fact remains that the appellant-petitioner had not given any explanation to the said show-cause notice dated 5.4.2005, but chose to challenge the cancellation order dated 21.1.2006 in Writ Petition No. 1872/2006.

5. The learned single Judge pointing out the default committed by the appellant-petitioner and his failure to respond to the show-cause notice dated 5.4.2005, refused to grant the relief and dismissed the writ petition.

6. Aggrieved by the order of the learned single Judge, the above appeal is filed.

7. The learned Counsel for the appellant reiterates the contentions put forth before the learned single Judge.

8. It is well settled law that the remedy under Article 226 of the Constitution of India will not be available either to enforce a contract qua contract or to annul

existing terms of the contract and the Court, in any event, is disabled under Article 226 of the Constitution to introduce a fresh contract in place of an existing agreed terms of agreement between the parties by issuing a direction under Article 226 of the Constitution of India,

9. The Supreme Court in the case of *Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others*, held that:

The remedy of Article 226 is unavailable to enforce a contract qua contract. A mere contract agreeing to a quota of promotions cannot be exalted into a service rule or statutory duty. Private law may involve a State, a statutory body, or a public body in contractual or tortious actions. But they cannot be siphoned off into the writ jurisdiction. Although Article 226 is of wide amplitude to correct manifest injustice, but contractual obligations in the ordinary course, without even statutory complexion cannot be enforced by this short, though, wrong cut...

10. The extraordinary jurisdiction conferred on the High Court under Article 226 of the Constitution of India cannot be invoked or exercised for such reliefs which flow from commercial transactions agreed between the parties.

11. The Apex Court has, time and again, criticised the approach in adopting very generous or casual approach in exercising the power of judicial review under Article 226 of the Constitution of India in such contractual transactions.

12. It is true that there cannot be any hard and fast rule in exercising the power conferred under Article 226 of the Constitution of India in the matter of statutory contracts; but the contract on hand is not a statutory contract. Even though it is a contract between an individual and a State owned Corporation, the same cannot be gone into under Article 226 of the Constitution of India, as the same has been entered with specific terms relating to the rights and duties between the parties specifically provided in the agreement itself. Any interpretation or implementation of any of the clauses of such contract cannot be the subject matter of a writ petition, because the contractual obligations agreed between the parties are strictly governed by the very term of the agreement itself. If either of the parties commits any breach of the contract, it is for the parties to work out their rights before a competent civil court.

13. The Supreme Court in the case of *State of Orissa and others Vs. Narain Prasad and others*, etc. etc., has observed thus:

...We may also invoke the holding in *Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others*, and *Jageram* AIR 1980 SC 2018 that the writ petitioners, having entered into agreements voluntarily, containing the conditions aforesaid and having done the business under the licences obtained by them, cannot be allowed to either wriggle out of the agreements nor can they be allowed to challenge the validity of the Rules which constitute the terms of the contract. The High Court should not have exercised its extraordinary discretionary jurisdiction under Article 226 of the Constitution in aid of such licences.

14. That apart, the jurisdiction under Article 226 of the Constitution of India is not only extraordinary, but also summary in nature where parties are not entitled to substantiate their claims based on the evidence that are related to commission or omission of the terms of the contract Therefore, the parties to contract cannot invoke the jurisdiction of this Court under Article 226 of the Constitution to substantiate their rights and to seek a relief which they could do before a competent civil court Even though, in the instant case, the respondent-Corporation is a State owned Corporation, the contract in question was not entered into by exercise of any statutory power conferred on the respondent On the other hand, the same is purely a private contract between the appellant and the respondent corporation.

15. As this Court is deprived of its power to exercise judicial review under Article 226 to go into the factual controversies relating to the liabilities and rights between the parties, we are unable to take a different view than the one taken by the learned single Judge.

16. The writ appeal fails and is dismissed. No orders as to costs. However, we reserve liberty to the appellant to approach the competent civil court for appropriate reliefs, if he is so advised, in which event the parties are at liberty to substantiate their respective rights.