(2014) 01 KAR CK 0132

In the Karnataka High Court

Case No : Writ Appeal No. 300 of 2009 (GM-KSSIDC)

Karnataka State Small Industries Development Corporation — APPELLANT

Vs

Pranava Insulators Private Limited — RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:
State Financial Corporations Act, 1951 — Section 29

Citation : (2014) 5 KarLJ 102

Hon'ble Judges : S. Abdul Nazeer, J;H.S. Kempanna, J

Bench : Division Bench

Advocate : Asha for I.G. Gachchinamath, Advocate for the Appellant; Aravind Kamath, Bipin Hegde, Advocates and Holla and Holla, Advocate for the Respondent

Judgement

S. Abdul Nazeer, J.—This writ appeal is directed against the order in W.P. No. 5478 of 2006, dated 22-8-2008 whereby the learned Single Judge has allowed the writ petition and has directed the appellant to consider the case of the first respondent herein for allotment of an alternative industrial shed at the same rate which was prevailing at the time of issuance of the communication at Annexure-K, dated 29-7-1998. The first respondent was allotted two industrial sheds bearing Nos. A283 and A284, II Stage, Peenya Industrial Estate, Bangalore, in the year 1978. Lease-cum-sale deed dated 10-12-1980 was executed in its favour. Possession was also handed over to the first respondent on 15-12-1980. The first respondent has set up an industry in the said site for the manufacture of electrical insulation. It is contended that the first respondent has invested a sum of Rs. 90 lakhs for the said purpose.

2. The first respondent had hypothecated the plant and machinery in favour of the second respondent as security for repayment of the loan. On 10-8-2000, the second respondent took over the assets of the first respondent u/s 29 of the State Financial Corporations Act, 1951. Despite several advertisements issued for the sale of the assets, the assets could not be sold for want of buyers. In the

meanwhile, the appellant called upon the first respondent to vacate the premises. As the first respondent did not oblige, the appellant took over possession of the industrial sheds in question in 2004 and thereafter, the industrial sheds were allotted in favour of respondent 3. Therefore, the first respondent filed a writ petition seeking revocation of the order of cancellation of allotment of the industrial sheds and for certain other reliefs.

3. The writ petition was contested by the appellant. After consideration of the rival contentions of the parties, learned Single Judge has allowed the writ petition.

4. We have heard the learned Counsel for the parties.

5. Learned Counsel for the appellant would contend that two industrial sheds were allotted to the first respondent as early as on 14-6-1978 and lease-cum-sale deed was executed on 10-12-1980. Possession of the property was delivered on 15-12-1980. Under the terms and conditions of the lease-cum-sale deed, the first respondent ought to have deposited the value of the site in question in 114 monthly installments together with interest at 14% per annum. Except a sum of Rs. 36,600/- towards margin money, no other amount has been deposited by the first respondent. Instead of complying the terms and conditions of the lease-cum-sale deed, the first respondent hypothecated the property in favour of the second respondent. The first respondent is a defaulter and therefore, no indulgence can be shown to the first respondent. That is why the appellant cancelled the allotment and has taken possession of the industrial sheds. Learned Single Judge without taking note of these aspects has allowed the writ petition and has directed allotment of alternative industrials sheds, which is contrary to law.

6. On the other hand, learned Counsel appearing for the first respondent has sought to justify the impugned order.

7. We have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

8. As noticed above, the industrial sheds in question were allotted in favour of the first respondent on 14-6-1978. Lease-cum-sale deed was executed on 10-12-1980 and possession was handed over to the first respondent on 15-12-1980. The tentative estimated value of each of the industrial sheds was Rs. 3,56,200/-. Admittedly, the first respondent has deposited Rs. 36,600/- each towards margin money and service charges by way of advance. He has to pay the balance of the sital value in 114 regular monthly installments together with interest at the rate of 14% per annum. Clause 4 of the lease-cum-sale deed states that in case of default in payment of any installment or portion thereof, the lessee-cum-purchaser is liable to pay the dues with interest thereon at 2% per annum from the date of such default till the date of full discharge of the same without prejudice to the remedies of the KSSIDC to take action for recovery of the said dues.

9. From the various clauses in the lease-cum-sale deed, it is clear that two

options were available to the appellant in case of default in payment of the installments. The first option is to cancel the lease-cum-sale deed and to take possession. The second option is to collect the dues with interest at 2% per annum from the date of such default. It is submitted at the Bar that it is in addition to 14% interest on the balance of the amount as provided in Clause 2 of the lease-cum-sale deed. Be that as it may. The appellant has sent a letter to the first respondent on 29-7-1998, which is as under:

Please arrange to furnish the following documents for processing to issue of sale deed in respect of shed Nos. A-283 and A-284, Industrial Estate, Peenya II Stage.

(1) Latest Form 32 and annual returns obtained from Registrar of Companies.

(2) Certified copies of five years audited balance-sheet and IT, KST assessment orders of your Company.

(3) Renewed fire insurance policy.

(4) Balance payment of Rs. 30,660/- towards delayed period interest, Rs. 18,000/- towards service charges and Rs. 19,296/- towards water charges".

10. It is clear from the aforesaid communication that the first respondent is due only balance of Rs. 30,660/- towards delayed period interest, Rs. 18,000/- towards service charges and Rs. 19,296/- towards water charges. It is thus clear that the first respondent has defaulted in payment of the balance of the dues and it was called upon to pay interest on the delayed payment for the balance of the sital value. It appears that the second respondent had taken possession of the property. The appellant opened the lock and took possession of the shed and the property in the year 2004. Thereafter, it was allotted in favour of the third respondent. Clause 17 of the lease-cum-sale deed makes it clear that in the event of cancellation of the allotment, the lessee-cum-purchaser has to deliver possession of the property to the KSSIDC, failing which the KSSIDC is entitled to obtain possession of the property by adopting such suitable proceedings as may be permitted under the law for the time being, like the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974. It is not the case of the appellant that possession of the industrial sheds were taken from the first respondent in a lawful manner much less under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974. The learned Single Judge, therefore, found that possession of the industrial sheds have not been taken in accordance with law. Since the industrial sheds have already been allotted in favour of the third respondent after taking possession as above, the learned Single Judge has moulded the relief. Having perused the entire materials on record, we do not find any error in the order impugned herein. The writ appeal fails and it is accordingly dismissed. No costs.

