

(2015) 11 RAJ CK 0051
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1909/2015

Medical Designs (India) Pvt. Ltd.

APPELLANT

Vs

Rajasthan State Industrial Development & Investment
Corporation Ltd. and Others

RESPONDENT

Date of Decision : 18-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 11 RAJ CK 0051

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J.

Bench : Single Bench

Advocate : Sudesh Bansal, for the Appellant; Vyankatesh Garg, for the Respondent

Final Decision : Dismissed

Judgement

Kanwaljit Singh Ahluwalia, J.—Present writ petition has been filed under Article 226 of the Constitution of India praying that the order dated 10.3.2006 (Annx. 1A) whereby lease deed in favour of petitioner was terminated and allotment of Plot No. F-28(N), Malviya Industrial Area, Jaipur was cancelled, be set aside alongwith the order dated 26.12.2014 (Annx. 5) passed by the Appellate Authority whereby appeal of the petitioner was dismissed.

2. Petitioner on 16.9.1987 was allotted Plot No. F-28(N) measuring area 1752.88 sq. mtr. in Malviya industrial Area, Jaipur. Petitioner company had given a proposal for setting up universal legs bracing system and modular bracing system and orthopedic surgical equipments for fracture and limb injuries including aids for disabled injuries. As per Clause-8 of the allotment letter, petitioner had to commence construction on the allotted plot within six months of allotment. It was obligatory on the part of the petitioner to complete the construction work within a period of two years. It is not denied that possession of the allotted land was given to the petitioner on 3.8.1989, but no construction was started. A show cause notice was issued to the petitioner on 6.4.1990 to

explain as to why construction work had not commenced. A site plan report was obtained by the respondents on 24.2.1995 and since the petitioner company had only constructed boundary wall and guard room, allotment in favour of petitioner was cancelled on 5.12.1995 by the respondent No. 2 and refund of the deposited amount was ordered. It is stated that on the assurance given by the petitioner that the construction activity will commence, cancellation of the allotment was withdrawn on 31.1.1996 and a lease deed was executed between the petitioner company and the respondents on 16.7.1996. Clause 2(n) of the lease require that the lessee shall construct and complete the building within a period of three years from the date of agreement or from the date of possession of the said land. It is not denied that even after execution of the sale deed on 16.7.1996, petitioner company had not constructed the building and hence, again allotment was cancelled on 10.3.2006.

3. I have heard learned counsel for the parties.

4. The plots in the heart of the city irrespective of the prevailing market price are allotted at subsidized rate to the industrialist to give impetus to industrial growth so that employment is generated and the State is able to garner revenue from sale and purchase made by the industry. In the present case, the objective for which allotment was made was not fulfilled by the allottee. State cannot give plot as largesse to anyone. The plots at subsidize rate are only allotted to achieve the industrial growth in the State. Record of the petitioner reveal that allotment was made in 1987, but for good period of twenty nine (29) years the petitioner had taken no active steps to raise the construction.

5. The star argument raised by Shri Sudesh Bansal learned counsel for the petitioner is that during pendency of the appeal, amended Rule 24(3) was inserted by the Rajasthan State Industrial Development & Investment Corporation Ltd. (for short, RIICO) in the RIICO Disposal of Land Rules, 1979. Amended Rule 24(3) reads as under:--

"Rule 24(3)- Policy of Restoration of allotment of cancelled plot.

1. Restoration of allotment of cancelled plot can be considered by the Corporation depending upon the merit of each case, subject to fulfillment of the following criteria/conditions:--

- i. Possession of the cancelled plot is lying with the party (applicant), and/or;
- ii. Possession of the cancelled plot is with the Corporation, and refundable amount consequent upon cancellation of allotment of plot is not paid, and/or;
- iii. Possession of the cancelled plot is with the Corporation and cheque of refundable amount sent to the party but not en-cashed by the lessee/purchaser, and/or;
- iv. Possession of the cancelled plot is with the Corporation and no amount is payable to the lessee/purchaser consequent upon cancellation of allotment of

plot and the deposited money has been adjusted against the outstanding dues of the Corporation.

Provided the plot for which restoration is seeking, still not re-allotted after cancellation of allotment by the Corporation.

Further, provided that any request under the aforesaid restoration policy can be considered only when the allottee/applicant has removed or suppose to be removed, (in case possession with the Corporation), the breach/violation of terms and conditions of the allotment letter/lease agreement for which allotment of plot is cancelled.

2. Application for restoration of allotment of plot should be filed within one year of cancellation order issued on and after 17.06.2014. However, no time limit shall be applicable for old cases if they fulfilled aforesaid eligibility conditions for filing of restoration application.

3. Such restoration application should be disposed of by concerned Unit Head of the Corporation subject to approval of time extension involved for payments/ utilization of plot by the competent authority.

4. Restoration charges shall be payable as under:

(i) 20% of the prevailing rate of allotment of the industrial area in case where applicant has made default in payment of more than 50% of payable amount towards cost of land/3 or more consecutive installments.

(ii) 10% of prevailing rate of allotment of the industrial area in case where applicant has made default in payment of less than 50% of payable amount towards cost of land or less than 3 consecutive installments.

(iii) 1% of prevailing rate of allotment of area concerned, in case allotment of plot is cancelled due to non-payment of annual charges.

(iv) 10% of prevailing rate of allotment of the industrial area concerned, in case allotment of plot is cancelled on account of non utilization of plot within the stipulated/extended period, subject to condition that possession of plot is deemed with Corporation or possession is with the applicant/party.

(v) 10% of the prevailing rate of allotment, in case allotment of plot is cancelled due to violation/breach of conditions of allotment letter/lease deed other than mentioned at point No. (i), (ii) & (iii) of above subject to condition that possession of plot is with Corporation or possession is with the applicant/party.

Notes:

I. The prevailing rate of allotment for industrial and educational institute plots will be at par with the prevailing rate of allotment of industrial area concerned.

II. The prevailing rate of allotment for residential plot will be two times of the prevailing rate of allotment of industrial area concerned or rate of allotment of

the housing colony, whichever is higher.

III. The prevailing rate of commercial plot will be four times of the prevailing rate of allotment of industrial area concerned.

IV. The plots allotted through auction will also be considered for restoration as per the above policy.

V. The lessee/applicant shall be under obligation to pay other charges, if applicable such as outstanding dues along with interest, retention charges, annual charges and interest thereon etc., in addition to payment of restoration charges.

VI. After receipt of restoration charges, interest, retention charges, dues etc. and removal of breach of terms and conditions, cancellation letter shall be withdrawn and allotment of plot shall be restored to the plot holder on the terms and conditions mentioned in allotment letter/lease deed or further prescribed by the Corporation."

6. Shri Bansal has submitted that as per the amended rule since the petitioner was in possession of the cancelled plot, petitioner company should have been given an opportunity to commence the production after restoration of the plot.

7. Shri Vyankatesh Garg learned counsel appearing for the respondent RIICO has contended that again a site inspection report was called by the Appellate Authority and since no construction work had commenced, the case of the petitioner was not considered good for restoration of the plot under Section 24(3) of the amended Rules of 1979.

8. Shri Sudesh Bansal has further submitted that similarly situated three other companies, namely M/s. King Wing Chemicals, M/s. King Wing International (India) and M/s. Selective Designs were granted benefit of amended Rules of 1979 and their possession was restored. Referring to the additional affidavit, Shri Bansal has submitted that petitioner cannot be treated differently from those persons to whom benefit of amended rule has flowed and the plot has been restored to them.

9. Shri Vyankatesh Garg to counter the argument raised by the learned counsel for the petitioner has submitted that above said three units had commenced production and hence, their case cannot be equated with the petitioner's case. It is further contended that case of the petitioner is entirely on different footing as twice cancellation has been made in case of the petitioner. It is stated that cancellation earlier made on 5.12.1995 was withdrawn on 31.1.1996 and thereafter again cancellation was made on 10.3.2006. It is stated that even after execution of lease deed on 16.7.1996 for another period of ten years, petitioner company had not commenced the production. They had not even raised the construction over the demised plot.

10. Equality under Article 14 of the Constitution of India cannot be invoked by

the defaulter to say that he may be treated in the same manner as another defaulter has been treated. Rajasthan State Industrial Development & Investment Corporation Ltd., as the name suggest, has to achieve the sole objective of industrial growth in the State and has to provide impetuous to industrial activity. As Shri Garg has stated, the units names of which have been suggested by Shri Bansal to invoke equality and equity have started production, their case is on different footing. It is a travesty that even after lapse of twenty eight years of allotment, petitioner company has not constructed the building over the plot, what to say of production. Therefore, the respondents were well within their rights to infer that the petitioner company only intend to usurp the plot and not to carry on industrial activity.

11. Therefore, in terms of condition of allotment letter and lease deed, respondents were justified to cancel the allotment and terminate the lease deed.

12. Hence, this petition being devoid of merit is hereby, dismissed. Stay application also stands dismissed.