
(2016) 09 KAR CK 0037

In the Karnataka High Court

Case No : Writ Petition No. 46528 of 2011 (GM-KIADB)

Molex India Private Limited

APPELLANT

Vs

Karnataka Industrial Areas Development Board

RESPONDENT

Date of Decision : 19-09-2016

Acts Referred:

Karnataka Industrial Areas Development Act, 1966 — Section 3

Citation : (2016) 4 AirKarR 658

Hon'ble Judges : A. S. Bopanna, J.

Bench : Single Bench

Advocate : Anind Thomas, Shravanth Arya Tandra, Advocates, for the Petitioners; Basavaraj V. Sabarad, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J. - The petitioner is before the Court assailing the letters dated 03.09.2009 Annexures-Y and Z, respectively.

2. The petitioner which was a public limited company at the stage, when an application was made to the respondent seeking allotment of plots had been allotted the same under the agreement dated 25.1.1992 as at Annexure A to the petition. Similarly another plot was allotted in favour of the petitioner through the agreement dated 12.09.1995 as at Annexure B to the petition. The allottee thereunder had been put in possession and the industrial activity had been commenced. After the lease period was completed the petitioner addressed letters dated 22.2.2009 and 17.6.2009 seeking that the sale deed be executed in their favour. Prior to the same, the respondents through their communication dated 2.4.2009 had indicated the balance amount payable by the petitioner as at Annexures T and U to the petition. The said amount had been paid by the petitioner as evidenced from the receipt dated 21.4.2009 at Annexure V to the petition.

3. Though this was the position,; the respondent through their communication

dated 3.9.2009 in respect of the two plots bearing Nos.6A and 6B of Kadugodi Industrial Area, Whitefield, Bangalore, had addressed a communication at Annexures Y and Z demanding the cost payable by the petitioner by alleging that the petitioner had violated the terms of the agreement, as such the plots will have to be considered as transfer of lease hold rights of the petitioner and balance to be paid by the petitioner was demanded. Petitioner, who claims to be aggrieved by the said communication is before this Court.

4. The respondent has filed detailed objections to the petition. The clause contained in the agreement is referred to and reference is made to clause 2 (iii) (r) of the agreement to contend that there has been alteration with regard to the ownership of the company to which the plot was allotted inasmuch as there is a reconstitution of the petitioner-company and therefore, the allotment made will have to be considered as a transfer of the lease granted in favour of the original allottee and the petitioner will have to pay the amount as the value payable as on the date when the communication was issued in respect of a plot of the said dimension. In that view, through the objections the respondent seeks to justify its action in demanding the additional cost of the plot as indicated therein for the transfer of lease hold rights in the manner as had been demanded in the impugned communications. The respondent therefore, contends that the writ petition is liable to be rejected.

5. In the light of the contentions put forth, keeping in view the fact that the respondent is seeking to make the extra demand by relying on the clause contained in the agreement 2 (iii) (r), the contents of the clause is necessary to be extracted for the purpose of proper understanding: -

"(r) No change in the proprietorship or partnership of a private limited or unlimited company or of a registered or unregistered partnership firm to whom the plot is handed over shall be recognised without the previous written consent of the Executive member."

On a perusal of the clause, it is seen that one of the terms of the allotment was that no change in the proprietorship or partnership of a private limited or unlimited company or of a registered or unregistered partnership to whom the plot is handed over shall be recognised without previous written consent of the Executive Member. The purpose of such condition in the agreement is to see that an allottee shall not part with the plot allotted in their favour by using dubious method. If the said intention contained in the clause is kept in view, the sequence of events that have taken place is required to be taken note of, so as to come to a conclusion, firstly as to whether the said clause had provided the present change that had been effected by the petitioner and even if any written consent had not been obtained whether the alteration is of such nature that the allottee has parted with the plot to any other third party or such other persons, who have taken over in the guise of re-constitution of the company. In order to appreciate the said aspect of the matter, a perusal of the petition papers would disclose that as on the date when the allotment was made and the agreements

at Annexures A and B were entered into, the petitioner was a public limited company. Hence the restraint as indicated in the clause as on that day did not apply to the said company.

6. Be that as it may, the procedure as adopted by the petitioner for the change in the constitution of the company is noticed to be in accordance with the provisions contained in the Companies Act, inasmuch as a fresh certificate of incorporation consequent upon the change in the name on conversion to a private limited company has been issued by the competent authority on 11.09.2008 as at Annexure F to the petition. The said procedure as adopted would indicate that the very same company, which was a public limited company was converted as a private limited company and the change is only with regard to the share holding pattern. The details of the share holding pattern as a private limited company as articulated at Annexures A and B to the petition would disclose that though there was alteration in the share holding pattern from the year 2005 onwards, the petitioner had held 100% shares in the company as in the year 2009. If that be the position, the change of constitution of the company has not been made with a mala fide intention to either part with the property that had been allotted by the respondent or alter the same in any other manner.

7. In that light, having taken note of the condition in the agreement, in any event there can be no dispute with regard to the legal position that the clause contained in the agreement would have to be noticed to derive the intention thereof. To buttress the said position the learned counsel for the petitioner has relied upon the decisions in the case of Bank of India and another v. K. Mohandas and others reported in (2009) 5 SCC 313 : (AIR 2009 SC (Supp) 2783), ONGC v. Saw Pipes Limited reported in (2003) 5 SCC 705 : (AIR 2003 SC 2629) and on the decision of the Division Bench of this Court in the case of K. R. Ramaswamy Rao v. Prema Bai reported in ILR 1987 Kar 1751 : (AIR 1988 Kar 116).

8. Therefore, if in the background of the legal position as noticed, in the clause contained in the agreement to which the respondent has also made a reference is taken into consideration, the only change that has occurred in the constitution of the petitioner-company is that the very same company which was a public limited company has converted itself into a private limited company by complying with the provisions of the Companies Act and a certificate to the said effect has been issued. Therefore, the question of transferring the lease hold right to another company does not arise, as the plot as allotted by the respondent through the agreements at Annexures A and B is retained by the very same company. Hence while executing the sale deed, in indicating therein the name of the company to which allotment is made and in whose favour the sale deed is executed the only change is by describing it as a private limited company, as against the description contained in Annexures-A and B. If that be the position, considering the petitioner-company as a different entity and indicating that there would be transfer of lease hold right as stated in the

impugned letters at Annexures Y and Z both dated 3.9.2009, thus the amount demanded therein would also not be justified in law.

9. Accordingly, the demand as contained in the communication dated 3.9.2009 at Annexures Y and Z are quashed. Since the receipt dated 21.4.2009 at Annexure V discloses that the amount as demanded through the communication dated 2.4.2009 at Annexures T and U has been paid, the respondent is directed to execute the sale deed in favour of the petitioner in respect of the Plot Nos.6A and 6B situated at Kadugodi, Bangalore and register the same in favour of the petitioner, subject to the petitioner complying with the conditions with regard to the payment of necessary stamp duty and registration charges in that regard.

10. Petition is accordingly disposed of.