

(2013) 11 KAR CK 0213

In the Karnataka High Court

Case No : Writ Petition No. 51904 of 2012 (LA-KIADB)

M/s. Diamond Glass Works

APPELLANT

Vs

The Chairman, The Karnataka Industrial Areas Development Board

RESPONDENT

Date of Decision : 27-11-2013

Acts Referred:

Citation : (2013) 11 KAR CK 0213

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : Shaikh Saoud, for the Appellant; K.A. Kalburgi, for the Respondent

Final Decision : Dismissed

Judgement

Ram Mohan Reddy, J.—Petitioner claiming to be a glass show maker with an intention to establish a glass unit, when registered with the Directorate of Industries was issued with the registration certificate, where upon an application was filed with the respondent - Karnataka Industrial Areas Development Board [for short "the KIADB"] for allotment of a plot of land in the Auto Complex at Basavakalyan, District Bidar. That application is said to have fructified into allotment of plot No. 212 measuring 30 feet x 40 feet, followed, by an allotment letter dated 18.8.2003 - Annexure B. Petitioner is said to have deposited Rs. 20,000/- under acknowledgement - Annexure C and possession of the plot was handed over to the petitioner on 12.09.2003 under possession certificate ? Annexure D. Petitioner and the respondent are said to have executed a lease cum sale agreement No. 3504/2003-04 dated 7.10.2003 - Annexure E for a period of six years commencing from 12.9.2003 on a yearly rental of Rs. 49/- with maintenance charge at Rs. 47/-. According to the petitioner, the said plot of land was put to use for the manufacture of "show glass" after obtaining approval of the authorities and sanction of the building plan. However, due to ill health, it is said that the construction was not completed and therefore a representation dated 16.2.2012 - Annexure-F was made for extension of time. Petitioner states

that it was about that time the respondent informed the petitioner of the cancellation of allotment, when an application under the Right to Information Act, 2005 was made for issue of a certified copy of the said order which when not furnished led to proceeding under the Right to Information Act, 2005, whence, under a covering letter dated 20.7.2012 - Annexure-H, respondent furnished copies of the orders of cancellation and allotment of the said plot in favour of a third party. On the allegation that the petitioner was not extended a reasonable opportunity of hearing before cancellation of the allotment and resumption of the plot of the land, has presented this petition, calling in question the letter dated 8.1.2010 - Annexure-J and the letter dated 3.11.2007 - Annexure-K. Petition is opposed by filing statement of objections of the respondent, inter alia, denying the allegations and pointing out the fact that the petitioner did not put up construction of the building within 24 months of taking possession - a mandatory condition in the lease cum sale agreement despite the approval for construction of the building - Annexure-R3. According to the respondent, the Junior Engineer attached to the KIADB submitted a report that the petitioner had taken no steps to implement the project and the plot of land remained vacant, following which exercising jurisdiction under clause [4] of the lease cum sale agreement, notice dated 28.6.2005/7.7.2005 - Annexure-R5 was issued to the petitioner by registered post which was acknowledged by the petitioner - Annexure-R6. Since there was no reply to the said notice, respondent is said to have cancelled the allotment, terminated the lease cum sale agreement and directed resumption of the plot of land in its order dated 25.11.2005/2.12.2005 - Annexure-R7 which was acknowledged by the petitioner under the postal acknowledgement - Annexure-R8. The Junior Engineer attached to the KIADB, it is said was physically present at the site on 26.12.2005 and recorded the factum of resumption of plot of land - Annexure-R9. Thereafter wards, the plot of land was allotted in favour of M/s. Basavakalyan Four Wheeler Servicing Unit under allotment letter dated 11/16.5.2007 - Annexure-R10 and possession delivered under possession certificate dated 24.11.2007/19.12.2007 followed by the execution of the lease cum sale agreement dated 14.12.2007. - Annexure-R12. The respondent further states that the subsequent allottee has put up construction on the said plot and has put the same to use for servicing of automobiles.

2. This petition deserves to be dismissed at the threshold since there is no challenge to the order dated 25.11.2005/2.12.2005 - Annexure-R7 cancelling allotment, terminating the lease cum sale agreement and directing resumption of the said land.

3. What is challenged in this petition is the letter dated 8.1.2010 - Annexure-J issued by the respondent calling upon the petitioner to surrender the original documents of plot No. 212 in Basavakalyan and intimating the petitioner of the cancellation of allotment, while Annexure-K letter dated 3.11.2007 informs the petitioner about the cancellation of plot and the requirement to hand over the originals of the documents such as allotment letter; possession certificate; lease

cum sale agreement; and receipts.

4. A bare perusal of clause 2[p][1][iii] of the lease cum sale agreement makes it abundantly clear that the petitioner is required to complete civil construction work and erect machinery and commence production within 24 months from the date of taking possession i.e., from 12.9.2003 after obtaining necessary licence/clearance, approval from the concerned, failing which the respondent - KIADB is entitled to, under clause - [4] to re-enter upon the premises in breach of the terms of the lease cum sale agreement and forfeit the earnest money deposit, however, by extending notice period of 120 days.

5. It is a matter of fact that though the building plan submitted by the petitioner was approved on 7.2.2004, nevertheless, petitioner did not put up construction of the building and the plot of the land remained vacant. In other words, petitioner committed breach of the aforesaid clause in the lease cum sale agreement disentitling the petitioner to any benefit under the said agreement. Respondent having noticed the breach, issued the notice - Annexure-R5 inviting the attention of the petitioner to clause - [4] of the lease cum sale agreement and called up on the petitioner to remedy the breach within 120 days failing which action would be taken in accordance with law. The copy of the postal acknowledgement - Annexure-R6 discloses that the notice - Annexure-R5 was served on the petitioner, so also the order terminating the lease cum sale agreement cancelling allotment and directing resumption - Annexure-R7 was acknowledged by the petitioner as indicated in the copy of the postal acknowledgement - Annexure-R8. Therefore, the allegation that the petitioner was not extended an opportunity of hearing before the cancellation of allotment and termination of lease cum sale agreement is far from truth and unacceptable. The resumption having taken place followed by allotment of land to M/s. Basavakalyan Four Wheeler Servicing Unit who has put up construction and is carrying on business, the petitioner is disentitled to any relief.

In the result, this petition fails and is accordingly rejected.