

**(2018) 10 KAR CK 0005**

**In the Karnataka High Court**

**Case No :** Writ Petition Nos. 35948 of 2010(GM-KIADB)

M/S Distillers Company (P) Ltd

APPELLANT

Vs

Karnataka Industrial Area Development Board

RESPONDENT

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**Date of Decision :** 09-10-2018

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2018) 10 KAR CK 0005

**Hon'ble Judges :** R Devdas, J

**Bench :** Single Bench

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## **Judgement**

1. The petitioner is a company carrying on business in manufacture and sale of potable liquor and alcohol based chemicals. The petitioner was allotted

140 acres of land in plot Nos.1 to 17 at Shivamogga-Bhadravathi Industrial Area, in the year 1982. The petitioner is before this Court calling in

question the demand raised by the respondent Karnataka Industrial Area Development Board (for short "the KIADB") on 14.09.2000

(Annexure-J), calling upon the petitioner to pay Rs.1,28,23,888/- towards difference in the land cost, lease rent, interest, penal interest and

maintenance charges, etc and the Letter of termination dated 03.11.2010 (Annexure-Q).

2. The brief facts of the case are as follows:

The Government of Karnataka, pursuant to its policy to develop industrially backward areas, announced that it would allot land to qualified

entrepreneurs on down payment of 20% cost of land and balance to be collected over a period of 10 years on Lease-cum-Sale basis, for establishing

industry in Shivamogga-Bhadravathi Industrial Area. Based on the said policy, on 27.11.1982, respondent-Karnataka Industrial Areas Development

Board (for short "KIADB") allotted 140 acres of land in favour of the petitioner herein, at a tentative price of Rs.14,157/- per acre, which works out to Rs.19,81,980/-. On 29.11.1983, a Lease-cum-Sale Agreement was executed in favour of the petitioner, for a period of 11 years, starting from 18.02.1983. The Lease-cum-Sale Agreement was preceded by issuance of Letter of Allotment, Confirmatory Letter of Allotment and Possession Certificate. It is an admitted fact that initially possession was granted to an extent of 85 acres under Possession Certificate dated 10.08.1983 and thereafter the remaining 55 acres were handed over to the petitioner, vide possession certificate dated 15/21.11.1985. The petitioner had paid additional deposit of Rs.3,96,340/- on 08.02.1983 and the balance of the entire sale consideration of Rs.19,81,980/- was paid by the petitioner between 30.07.1985 and 30.08.1985. The petitioner thereafter established a distillery on the land allotted and commenced production in the year 1985-86.

3. Thereafter, the petitioner received a notice from the Karnataka State Pollution Control Board (for short "KSPCB") directing the petitioner to carryout various directions issued by the KSPCB. Since, the petitioner was unable to comply with the directions issued by the KSPCB, it appears that KSPCB issued directions to the concerned authorities to disconnect electricity, water supply and allotment of molasses to the distillery with immediate effect. When the matter stood thus, KIADB called upon the petitioner to pay arrears of rents of Rs.10,40,925/- by issuing a letter dated 29/31.05.1997. Thereafter, vide a letter dated 14.09.2000 (Annexure-J), KIADB informed the petitioner that final rate of the land in question was fixed at the rate of Rs.23.10/- per square meter which works out to 1,30,80,768/- and after giving deduction of Rs.19,81,549/- that was paid by the petitioner, it was called upon to pay Rs.1,28,23,888/-, which includes installments due, interest due, penal interest due and maintenance charges, along with interest. Thereafter, it appears that the petitioner made several representations to the KIADB and to the State Government seeking reconsideration of the demand made by the KIADB. Finally, KIADB terminated the lease by issuing a letter dated 03.11.2010, at annexure-Q. Being aggrieved the petitioner is before this Court assailing the demand notice and termination of lease made by the KIADB.

4. Learned counsel Sri. Abhinav R, appearing for the petitioner, submits that the demand raised by the KIADB is illegal, without force of law and

directly in conflict with the judgment of this Court as well as the Honâ??ble Supreme Court of India. Learned counsel submits that KIADB could not

have raised such a demand which runs counter to the terms enumerated in the Letter of Allotment and Lease-cum-Sale Agreement executed by the

KIADB in favour of the petitioner. It was pointed out that in the Letter of Allotment dated 27.11.1982, clause 4 and 5 provide for fixation of tentative

price, at the rate of Rs.14,157/- per acre which works out to Rs.19,81,980/-. It also provides for payment of additional deposit at the rate of Rs.2,831/-

per acre. Annual rents of Rs.1,133/-per acre per annum for a period of 10 years together with interest is also stipulated in clause 5 of the Letter of

Allotment. Learned counsel submits that the same conditions are also imposed in the Lease-cum-Sale Agreement dated 29.11.1983. It would be

beneficial to extract the relevant clauses i.e., clause 4 and 5 of the Letter of Allotment and clauses 7(a), 7(b) of the Lease-cum-Sale Agreement,

which read as:

â??4. The price of the land allotted is payable as follows:

20% down payment and the balance payable in

10 equal installments with interest at a rate of 3% per annum of such other rate as may be fixed by the Board from time to time on the unpaid balance

subject to a rebate of 3% for prompt payment. The annual installment will be treated as rent for the purpose of the lease.

5. The price of the land shall be determined by the Board and intimated to the allottee. However, for the purpose of this allotment, the tentative price

of the land per acre has been fixed at Rs.14,157/-. On this basis, a sum of Rs.2,831/- per acre shall be paid as initial deposit and an annual rent of Rs.

1,133/- per acre per annum for a period of 10 years together with interest at the rate mentioned in para (4) above. Suitable bank charges for clearance

shall be included in respect of cheques drawn on outstanding banks. At the end of 11 years the lease shall be converted into a sale subject to

fulfillment of other conditions of the lease and payment of the full price of the land as finally fixed by the Board, subject to adjustment of initial deposit

and rents already paid.â??

Â?? 7. (a) At the end of 11 years referred to in Clause I or the extended

period, if any the total amount of rent paid by the Lessee for the period of the Lease shall be adjusted towards the balance of the value of the property (as fixed in the manner herein after appearing).

7. (b) As soon as it may be convenient the Lessor will fix the price of the demised premises at which it will be sold to the Lessee and communicate it to the Lessee and the decision of the Lessor in this regard will be final and binding on the Lessee. The Lessee shall pay the balance of the value of the property, if any after adjusting the premium and the total amount of rent paid by the Lessee, within one month from the date of receipt of communication signed by the Executive Member of the Board. On the other hand, if any sum is determined as payable by the Lessor to the Lessee after the adjustment as aforesaid, such sum shall be refunded to the Lessee before the date of execution of the sale deed.â??

5. Taking the Court through the other relevant provisions under the Letter of Allotment and Lease-cum-Sage Agreement, the learned counsel for the petitioner submits that the petitioner has paid the annual rents that were payable for a period of 11 years, up front, and therefore, the KIADB could not have called upon the petitioner once again to pay arrears of rent. Learned counsel further submits that the question of payment of interest and penal interest on arrears of rent would not arise.

6. Learned counsel for the petitioner further submits that the petitioner had commenced business in the year 1985-86 itself. It was also submitted that till the KSPCB directed stoppage of electricity, water supply and allotment of molasses to the petitioner industry, the petitioner industry was functioning without any disturbance. It was therefore contended that the petitioner had fulfilled all the conditions under Letter of Allotment and Agreement entered with the KIADB. It was further contended that KIADB could not have terminated the lease that was granted in favour of the petitioner since, the petitioner had fulfilled all the conditions and commenced business at the earliest. Learned counsel would bring to the notice of this Court that the petitioner never intended to put up construction in the entire area of 140 acres. It was also submitted that for a industry running a business of distillery, vast extent of land is required to fulfill their allied activities, including treatment of effluents, etc. and waste water had to be put to use by way of irrigation. In fact, it was pointed out from the correspondence

between the petitioner and KSPCB that the petitioner had sought for additional lands for proper treatment of effluents and treatment of sewage arising out of industry, in a methodological manner, to protect the surrounding environment.

7. It was pointed out from the records that the authorities of the KSPCB were of the opinion that 140 acres were sufficient for treatment of 9,00,000

LPB effluents and remaining area being used for irrigation. It was also brought to the notice of this Court that after KSPCB issued directions to the

petitioner industry to close down its activities, there was labour unrest and the petitioner company had to deal with labour problem on one hand and

non-production on the other. It was during this stage that the KIADB called upon the petitioner to pay huge amount as final price.

8. Learned counsel placed reliance on the judgments of the Honâ??ble Supreme Court in the case of Raghuram Rao and others Vs. Eric P Mathais

and others reported in (2002) 2 SCC 624 and Karnataka Industrial Areas Development Board and Another Vs. Prakash Dal Mill and others, reported

in (2011) 6 SCC 714.

9. In the case of Prakash Dal Mill (supra), the Honâ??ble Supreme Court had clearly held that the clause 7(b) of the lease-cum-sale agreement

gives the Board an undefined power to fix the final price; it would have to be exercised in accordance with the principle of rationality and

reasonableness. It was also held that clause 7(b) does not contain any guidelines which would ensure that the Board does not act arbitrarily in fixing

the final price of demised premises. But in the grab of exercising the power to fix the final price, it cannot be permitted to saddle the earlier allottees

with the liability of sharing the burden of expenditure by the Board in developing some other sites subsequent to the allotment of the site to the

allottees.

10. From the judgment of Raghuram Raoâ??s case (supra), it was pointed out that to attract forfeiture, the lessee should have committed breach of

â??an express conditionâ?? which provides that on breach therefore, the lessor may re-enter. The words â??express conditionâ?? itself stipulates

that condition must be clear, manifest, explicit, unambiguous and there is no question of drawing any inference. Their Lordships have held that as there

is no express condition restraining partial alienation of the leasehold property, it

would not be open to the transferee of the lessor's right to invoke the forfeiture clause for determining the perpetual lease and such conditions cannot be inferred by implication.

11. Sri. Basavaraj V Sabrad, learned counsel appearing for KIADB submits that the KIADB was indeed entitled to raise a demand for payment as fixed under Agreement. Learned counsel submits that payment of rent is in addition to payment of the tentative price and additional deposit. Learned counsel would submit that the petitioner is not interested in establishing the project fulfilling the purpose for which it was granted and therefore KIADB was justified in terminating the lease granted in favour of the petitioner. It was pointed out that though activities of the petitioner was stopped way back in the year 1994, the petitioner has not taken any steps to comply with the directions issued by the KSPCB and therefore, it is manifest that the petitioner is not interested in continuing with the business of distilleries. It was therefore submitted that the allotment made in favour of the petitioner has become redundant and this Court should not show indulgence to the petitioner, who is not interested in establishing and running the industry, since the very purpose for which the land was allotted in favour of the petitioner has become useless. If the same land is given to other persons, industries or company, which would commence operation of distilleries or any other activity, the same would fulfill the objective of the Board and provide employment to several persons. It was also submitted that the demand was raised way back in the year 2000 and the petitioner has approached this Court at a belated stage, after lapse of 10 years. It was therefore contended that on this ground alone the petition deserves to be dismissed.

12. Other limbs of the argument of the learned counsel for respondent-KIADB are that the petition itself is not maintainable, since there are disputed question of facts and the issue raised, pertains to pure contract and this Court as also the Hon'ble Supreme Court have time and again held in several cases that where a dispute lies in the realm of pure contract, writ jurisdiction cannot be invoked. To substantiate his argument, learned counsel has placed reliance on the following judgments:

1. Sriram Builders Vs. State of M.P reported in (2014) 14 SCC 102.
2. Bakshi Security and Personnel Services Pvt. Vs. Dev Kishan Computed Pvt. Ltd

reported in (2016) 8 SCC 446.

3. Sanjay Kumar Shukla Vs. Bharat Petroleum Corporation Limited reported in (2014) 3 SCC 493.

4. Khela Banerjee and another Vs. City Montessori School & others reported in (2012) 7 SCC 216 and

5. ILR 1993 KAR 3323 in the case of Nagappa Vs. State of Karnataka.

13. Learned counsel submits that in the case of Sriram builders (supra), the Honâ??ble Supreme Court upheld the view of the High Court that in

exercise of jurisdiction under Article 226 of Constitution of India, normally the High Court shall not entertain a writ petition for granting the relief of specific performance of contract.

Reliance was placed on this judgment specifically since there was a prayer made by the petitioner seeking mandatory direction against respondent-

KIADB to execute sale deed conveying entire land leased to the petitioner.

The other decisions are also of the same opinion.

14. Learned counsel further submits that the decision in the case of Prakash Dal Mill (supra) is not applicable to the facts and situations of the present

case, since in Prakash Dal Millâ??s case (supra), the allottee had complied with all the conditions, while in the instant case, the petitioner had not

fulfilled all the conditions and therefore, the ratio in the Prakash Dal Mill case (supra) should not be made applicable to the petitioner herein. It was

also submitted that their Lordships have held in Prakash Dal Millâ??s case (supra) that the Board should assign reasons for raising prices and such

fixation of the final prices should be done within reasonable period. To substantiate these two aspects, the learned counsel for respondent-KIADB

pointed out that the Board had in fact made it clear in the demand notice dated 14.09.2000 at Annexure-J that the Board had fixed final price at the

rate of Rs.23.10/- per square meters, in the light of the expenditure incurred by the Board towards compensation for the land acquired, providing

infrastructural facilities and also for maintenance of industrial area. Learned counsel further submits that the time taken by the Board to fix final price

is quite reasonable and it should not be held that there was a delay on the part of the Board in fixing the price. On the other aspect, it was submitted

that the petitioner has not utilized the entire area and therefore there is non-compliance of the term of allotment.

15. Learned counsel for respondent-KIADB submits that the petitioner has not placed any material before this Court except placing reliance on a communication issued by the KSPCB that the petitioner company required 140 acres of land for running a distillery unit. It was vehemently argued that at no point of time KIADB had permitted the petitioner to use the land for irrigation purpose. It was pointed out from the communication between the petitioner and the Board that the petitioner had intended to put to use, the entire 140 acres of land. It was therefore submitted that since the petitioner has not put to use the majority of land granted to the petitioner, the Board was justified in terminating the lease to an extent of 75 acres. It was hasten to add that the Board has not terminated lease of the entire extent, while restricting the termination only to a portion of the property which was not put to use by the petitioner.

16. Heard learned counsels for the parties, perused the pleadings and other materials placed on record.

17. On the question of maintainability of the writ petition, it is quite evident from the case of Prakash Dal Mill (supra) that whenever a statutory body

like KIADB seeks to terminate a validly signed contract and while the allottee alleges that the action initiated by the Board is arbitrary and capricious,

this Court cannot decline to exercise its extraordinary power vested under Article 226 of the Constitution of India. The judgments cited by the learned

counsel for respondent-KIADB, are matters pertaining to tenders, government contracts, grant of largesse and public property, building contract, etc.,

which are not applicable to the facts of this case. As stated earlier, Prakash Dal Mill's case (supra) covers the subject matter involved in this

petition to a large extent and in several such cases, this Court has exercised its writ jurisdiction in deciding similar matters and therefore this Court is of

the opinion that this writ petition is maintainable.

18. The bone of contention is, whether the demand raised by the respondent-KIADB is valid and justifiable. The very same provision viz clause 7(b)

which enables fixation of final price was considered by Hon'ble Supreme Court in the case of Prakash Dal Mill (supra). On going through the

relevant provision, the Hon'ble Supreme Court has clearly held that the though clause 7(b) permits the Board to fix final price of the demised

premises, it cannot be said that where the Board arbitrarily or irrationally fixes

the final price of the site without any basis, such fixation of the price could bind the lessee. In such circumstances, the Court will have the jurisdiction to annul the decision, upon declaring the same to be void and non est.

It was therefore held that in the grab of exercising the power to fix the final price, it cannot be permitted to saddle the earlier allottees with the liability of sharing the burden of expenditure by the Board in developing some other sites subsequent to the allotment of the site to the respondents.

19. Though the learned counsel for respondent-KIADB pointed out that the Board has supplied cogent reasons for fixing the final price in the demand

notice, what this Court finds is, that the reasons supplied by the Board runs counter to the observations of the Honâ??ble Supreme Court in the case

of Prakash Dal Mill (supra). It is stated in the demand notice that the Board has taken into consideration, the expenditure incurred by the Board

towards compensation for the land acquired, providing infrastructural facilities and also for maintenance of industrial area. It was held in Prakash Dal

Millâ??s case, that the Board could not ask the petitioner herein to share the burden of expenditure incurred by the Board in developing some other

sites in the same industrial area.

20. Moreover, the contentions of the learned counsel for respondent-KIADB that the petitioner is liable to pay annual rents in additions to tentative

price fixed and additional deposit paid by it, is not acceptable.

21. A reading of clause 4 and 5 of the Letter of Allotment and clause 7(a) and 7(b) of the Lease-cum-Sale Agreement, makes it very clear that the

price of the land payable by allottee is 20% down payment of the tentative price fixed i.e., 20% of Rs.19,81,980/- which works out about Rs.3,96,340/-

. These clauses further provide that the balance is payable in 10 equal annual installments along with interest at the rate of 3% per annum. It is also

made clear that the annual installment will be treated as rent for the purpose of the lease.

22. At the end of clause 5 of the Letter of Allotment, it is stated that â??at the end of 11 years the lease shall be converted into a sale subject to

fulfillment of all other conditions of the lease and payment of the full price of the land as finally fixed by the Board, subject to adjustment of initial

deposit and rents already paidâ?. Clause 7(a) also says, at the end of 11 years referred to in Clause I or the extended period, if any the total amount of

rent paid by the Lessee for the period of the Lease shall be adjusted towards the balance of the value of the property (as fixed in the manner herein

after appearing). These provisions read with clause 7(b) of the Agreement which fell for consideration of the Honâ??ble Supreme Court in the case

of Prakash Dal Mill (supra) makes it clear that at the end of 11 years referred in the clause or extended period, if any, total amount paid by the lesser

for the period of lease shall be adjusted to the balance of the value of the property.

23. Therefore, the submission of the learned counsel for the petitioner has to be accepted and it is therefore held that the demand notice issued by the

respondent-KIADB runs counter to the agreed covenants as between the parties. Since the petitioner had paid entire tentative price of Rs.19,81,980/-

which also includes the annual rents payable for a period of 10 years, up front, in the year 1985, it cannot be held that the petitioner is in arrears of

payment of annual rents. The demand made by the respondent-KIADB that the petitioner is liable to pay installments due at Rs.3,70,436/- and interest

thereon i.e., Rs.7,40,690/- and penal interest at Rs.3,89,665/- is clearly without any authority of law. The demand made to that extent is unjustified.

24. As regards to payment of maintenance charges, the learned counsel for the petitioner has fairly submitted that the petitioner is ready and willing to

pay the maintenance charges. If the petitioner is due of maintenance charges, the petitioner is liable to pay maintenance charges.

25. On the overall view, it is seen that the demand made by the respondent Board is arbitrary and capricious and therefore deserves to be set aside.

26. On the aspect of fixation of final price, in the light of the observations of the Honâ??ble Supreme Court, in the case of Prakash Dal Mill (supra),

this Court is of the opinion that the Board is indeed entitled to fix final price, but the price fixation can be made by the respondent Board in the light of

the observation made in the case of

27. At this juncture, this Court deems it fit to remind the respondent-KIADB, of the observation of the Honâ??ble Supreme Court, wherein it is

stated that clause 7(b) does not lay down any fixed components of final price. Clause 7(b) does not contain any guidelines which would ensure that the

Board does not act arbitrarily in fixing the final price of demised premises. What is disturbing is that in spite of such an observation by the Honâ??ble

Supreme Court, the Board has not tried to remedy the situation, to bring in suitable provisions that would lay guidelines for the Board in the matter of

fixing of final price. Prakash Dal Mill's case was decided in the year 2011 and 7 years have elapsed, while the respondent-KIADB has not

attempted to bring in clarity, in any manner, by which the Board could fix final price. When this Court called upon respondent-KIADB to clarify, the

respondent Board failed to place on record any material to substantiate that such an exercise was undertaken by the respondent-Board.

28. As regards the issue whether the petitioner is guilty of non utilization of the entire land and therefore violated the terms of allotment, a pointed

question was put to KIADB as to whether there is any guideline prescribing percentage of land to be utilized for construction of an industry in an

industrial area?, KIADB came back with an answer in the negative. Information was also sought by this Court as to the percentage of utilization of

land by other distilleries in the industrial area. The respondent-KIADB was unable to substantiate or place on record any prescription in this regard.

The learned counsel for respondent-KIADB is also unable to point out to a specific clause under the agreement, in this regard. Therefore, the

contention of the learned counsel for the petitioner that the petitioner has not violated any term or condition of the agreement, has to be accepted. In

the light of the judgment in Raghuram Rao's case (supra), the Letter of termination issued by KIADB should fail since KIADB is unable to point

out to breach of "express condition".

29. In the light of the above, this Court is of the opinion that, the demanded notice issued by the respondent-KIADB and the Letter of termination at

Annexures-J and Q deserve to be quashed and set aside. The respondent-KIADB is indeed empowered to fix final price, as provided, but the same

should be done reasonably and in the light of the directions and observations made by the Hon'ble Supreme Court in the case of Prakash Dal Mill

(supra).

30. Accordingly, the writ petition is allowed. The Demand Notice dated 14.09.2000 vide Annexure-â??Jâ?? and Termination of Lease dated

03.11.2010 vide Annexure-â??Qâ??, issued by the respondent "KIADB are hereby quashed and set aside.

The respondent-KIADB is at liberty to reconsider the fixation of final price and

shall intimate the petitioner, and call upon the petitioner to pay final price. After payment of which, the petitioner is entitled to get the absolute sale deed executed in its favour.

No order as to costs.