
(2022) 08 OHC CK 0002

In the Orissa High Court

Case No : Writ Petition (C) Nos. 6312, 12116 Of 2012

M/s. Garuda Vahana Pvt. Ltd

APPELLANT

Vs

Odisha Industrial Infrastructure Development Corporation
And Other

RESPONDENT

Date of Decision : 01-08-2022

Acts Referred:

Citation : (2022) 08 OHC CK 0002

Hon'ble Judges : Dr. S. Muralidhar, CJ;R.K. Pattanaik, J

Bench : Division Bench

Advocate : A.P. Bose, L. Samantaray, P.K. Nayak, Gautam Mukherji

Final Decision : Disposed Of

Judgement

Dr. S. Muralidhar, CJ.

1. These are two writ petitions arising from a similar set of facts and are accordingly being disposed of by this common judgment.

2. Writ Petition (Civil) No.6312 of 2012 is filed by Garuda Vahana Pvt. Ltd. (GVPL) seeking the quashing of an order dated 8th December, 2011 issued by the Odisha Industrial Infrastructure Development Corporation (IDCO), Opposite Party No.1requiring Opposite Party No.3-M/s. Ispat Casting and Metal Industries (ICMI) to show cause why the Plot No. DL/4 of an area Acre 1.50 decimals in the Industrial Estate, Kalunga should not be cancelled.

3. On 10th July, 2012 while directing notice to issue in the present petition, this Court directed that status quo as on that date shall be maintained.

4. W.P (Civil) No.12116 of 2012 is by ICMI seeking the quashing of a subsequent order dated 7th June, 2012 cancelling the allotment of the aforementioned plot inter alia for the following reasons:

(i) The land was not utilized for the industrial activity for the purpose for which it was allotted viz., manufacturing of CI pipe fittings, special and other sanitary

fittings, CI manhole cover and gratings, grinding media, Balls and Cylpebs, Railway Sleeper, Bearing plates, brakes, R & T Socket Pipes and anchor plates and other C.I. Machine Parts;

(ii) Making unauthorized construction/additional construction without prior approval of the competent authority;

(iii) Unauthorized encroachment on an additional land of IDCO of Ac 0.45 decimals and erecting unauthorized constructions thereon.

(iv) Allowing GVPL to run its business of a Tata showroom and Service Station on the land thereby misutilizing the land.

5. W.P (Civil) No.12116 of 2012, while directing notice to issue on 26th July, 2012 this Court directed that no coercive action would be taken against ICMI. The interim order in both the petitions have since continued.

6. In W.P (Civil) No.6312 of 2012 for a period of eight years between 29th August, 2013 and 6th September, 2021 no hearing took place. In the second petition W.P (Civil) No.12116 of 2012 between 26th July 2012 and 6th September, 2021 no hearing took place.

7. This Court has heard the submissions of Mr. P.K. Nayak, learned counsel appearing for the ICMI, Mr. A.P. Bose, learned counsel appearing for the GVPL and Mr. Gautam Mukherji, learned Senior Advocate appearing for IDCO in both the writ petitions.

8. IDCO filed a reply in both the writ petitions pointing out that a lease deed was executed between ICMI and IDCO on 8th October, 2007. However, ICMI had not initiated industrial activity over the property for a considerably long period. Importantly, it was pointed out that ICMI was relying on a circular dated 23rd December, 2010 issued by IDCO regarding grant of permission for subletting of IDCO allotted premises. One of the first conditions to be satisfied for such permission was that the allottee should have utilized the allotted property by implementing the project for which it was allotted. In this case, rather than utilizing the property for itself, ICMI had without consulting the IDCO allowed GVPL to set up a Tata Motor Showroom and Service Station on the premises. Further, the approved building plan of the premises had been altered without the consent of IDCO for accommodating the subletting. Even on the date of filing of the counter affidavit i.e. 10th May, 2017 there was no industrial activity of ICMI in the premises.

9. In the rejoinder affidavit of ICMI, it is submitted that Opposite Party No.2 i.e. the Divisional Head, IDCO, Rourkela Division, had sent a status report to the Chief General Manager IDCO referring to the Tata Showroom which was under implementation since April, 2007. It is pointed out by Mr. Mukherji, learned Senior counsel for IDCO, that admittedly, this Tata Showroom was the one run by GVPL and not ICMI. Therefore, it did not fulfil the terms and conditions of the allotment. While it may be true that pursuant to the letter dated 7th February,

2007, ICMI paid IDCO Rs.8,82,792/- towards the cost of the land, together with interest, there is nothing to show that ICMI in fact fulfilled the terms of the allotment of the plot in question.

10. The prayers in W.P.(C) No.12116 of 2012 by ICMI are effectively countered by the averments made in the companion Writ Petition (Civil) No.6312 of 2012 by GVPL. It is stated that in para 3 of GVPL's petition that on the death of Shri Nanda Kishore Lenka, who had entered into the lease representing ICMI, the unit of ICMI became unviable and huge amount was due by it to IDCO. It is stated in para 4 of GVPL's petition that ICMI "thus negotiated with the Petitioner (GVPL) who was also interested to take a portion of the land on sub-lease rental basis". A letter was written on 17th December, 2007 by ICMI to IDCO for permission for subletting. There is no whisper in the entire petition of GVPL of such permission having been granted. In para 5 it is simply stated that in the meantime, GVPL upon being appointed as dealer of TATA Commercial Vehicles set up its business establishments on the land in question by incurring expenditure of more than Rs.1 crore. It is claimed in para 9 that it was GVPL which cleared all the dues of IDCO. A request for mutual transfer is stated to be pending with IDCO. It was in those circumstances that the petition was filed. Along with an affidavit dated 13th August, 2013 GVPL has placed on record the memorandum of understanding dated 14th December, 2006 entered into between ICMI and GVPL whereby the entire area has purportedly been 'leased out' to GVPL for a period of 15 years. It was claimed that therefore, cannot be a case of subletting.

11. Interestingly, in the counter affidavit filed by ICMI in W.P.(C) No.6312 of 2012 there is an admission in para 3 "that as per understanding in subsequent discussion some of the legal heirs of Nanda Kishore Lenka and M/s. GVPL, it was proposed to let out a portion of the premises as per IDCO guideline and thereafter a proposal/request submitted by Opposite Party No.3." This is an implicit admission that subletting happened without any prior approval of IDCO.

12. Mr. Gautam Mukherji, learned Senior Counsel appearing for IDCO, points out that the above facts are tell-tale. Without any prior approval of IDCO, and contrary to the express terms of the allotment of the plot in question, ICMI had unauthorizedly sub-let the plot in favour of GVPL and therefore, cancellation of lease by the impugned order dated 7th June, 2012 of IDCO was fully justified.

13. Mr. Nayak, learned counsel appearing for ICMI, had no answer to the above contentions of IDCO except saying that ICMI would still be interested in running a unit on the plot in question.

14. The clear position that emerges is that ICMI has proceeded to enter into a MoU with GVPL subletting the entire plot in question in favour of GVPL without prior permission of IDCO. IDCO's circular dated 23rd December, 2012 permitted such subletting only if the allottee had utilized the allotted property by implementing the project. Clearly, ICMI had not implemented any project on the plot in question at the time of such subletting. With the terms and conditions of

the allotment being breached, the Court finds no reason to interfere with the impugned order/letter dated 7th June, 2012 of IDCO cancelling the lease in favour of ICMI.

15. Consequently, W.P.(C) No.12116 of 2012 is dismissed. The interim order in favour of ICMI is hereby vacated.

16. Turning now to W.P.(C) No.6312 of 2012 counsel for the GVPL states that it has been operating the Tata Showroom on the plot in question for well over ten years. GVPL is prepared to apply to IDCO for regularizing the occupation of the plot in question and for consideration by IDCO of its request for a formal allotment of the plot in its favour considering the fact that the status quo has been continuing for over ten years.

17. Mr. Mukherjee, learned Senior Counsel for the IDCO states that if GVPL makes such a request, it will be considered in accordance with law in a time bound manner.

18. The Court finds that similar order has been passed by this Court on 8th August, 2013 in W.P.(C) No.24010 of 2012 (Rashmi Ranjan Mohapatra v. MD, IDCO).

19. In that view of the matter, W.P.(C) No.6312 of 2012 is disposed of with the following directions:

(i) On or before 16th August, 2022 GVPL will make a formal application to IDCO to consider its case for regular allotment of the plot in question in its favour in the light of the extant policy of IDCO.

(ii) IDCO will examine such application, process it and pass appropriate orders on it after hearing a representative of the GVPL, within a period of two months thereafter, in any event, not later than 17th October, 2022.

(iii) Till such time, the status quo order passed by this Court on 10th July, 2012 in Misc. Case No.5545 of 2012 in W.P.(C) No.6312 of 2012 will continue.

20. W.P.(C) No.6312 of 2012 is accordingly disposed of, but in the circumstances, with no order as to costs.

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