

(2023) 01 OHC CK 0097

In the Orissa High Court

Case No : Writ Petition (C) No. 23103 Of 2015

M/s. Hema Chemicals And Another

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 19-01-2023

Acts Referred:

Citation : (2023) 01 OHC CK 0097

Hon'ble Judges : Dr. S. Muralidhar, CJ; M.S.Raman, J

Bench : Division Bench

Advocate : Sumitra Mohanty, Sunil Mishra, P. Mohanty, Subash Chandra Acharya

Final Decision : Dismissed

Judgement

1. This is the second round of litigation at the instance of the present Petitioners who were aggrieved by the purported cancellation of the allotment of two plots, viz., Shed Nos. A/41 and A/42 measuring an area of Ac 0.091 in Industrial Estate, Khapuria, Cuttack which had been allotted to them for the establishment of a pharmaceutical unit.

2. A lease agreement was entered into by the Petitioners with IDCO in respect of the above Sheds on 02.07.2005.

3. The case of IDCO is that without prior permission of IDCO, the Petitioner entered into a lease agreement in respect of Shed No. A/41 on 21.02.2007 with M/s. Preeti Industries (Opposite Party No.7) and, therefore, the Petitioner had violated the terms and conditions of the lease granted in its favour by the agreement dated 02.07.2005. Apparently, there was a fall out between the Petitioners and Opposite Party No.7 who occupied the Shed A/41 and started operating a factory therein.

4. The Petitioners, after waiting for two years, wrote to IDCO seeking withdrawal of the application made to ratify the Petitioners entering into the aforementioned agreement with Opposite Party No.7. IDCO permitted withdrawal of the said

application.

5. Meanwhile, an FIR was filed by the Petitioner with the Police against Opposite Party No.7. Aggrieved by the inaction of IDCO in evicting Opposite Party No.7, W.P.(C) No.13284 of 2013 was filed in this Court by Petitioner No.2. That petition was disposed of by this Court by an order dated 15th April, 2014 permitting the Petitioners to approach the Chairman-cum-Managing Director, IDCO with a representation.

6. The Petitioners then filed a representation on 22.11.2014. On that representation, IDCO communicated its decision to the Petitioner and Opposite Party No.7 by its letter dated 19th October, 2015 cancelling the allotment of Shed No. A/41 and A/42. Aggrieved by the said decision, the present petition has been filed.

7. While directing notice to issue in the present petition on 24th December, 2015 this Court directed status quo to be maintained. That stay order has continued till now.

8. Learned counsel appearing for the Petitioners contended that although the Petitioners did enter to an agreement on 21.02.2007 with Opposite Party No.7 in respect of the Shed A/41 and admittedly without prior permission of IDCO, the Petitioners did apply to IDCO for a formal approval thereafter. Once it was realized that Opposite Party No.7 had forcibly occupied Shed No. A/41, the Petitioners wrote to IDCO on 03.08.2009 withdrawing their proposal for transferring Shed No. A/41 in favour of Opposite Party No.7. Learned counsel referred to IDCO's letter dated 05.08.2009 accepting that proposal. According to learned counsel appearing for the Petitioners, IDCO in the impugned letter failed to deal with the request of the Petitioners for eviction of Opposite Party No.7 and instead has erroneously cancelled the allotment in favour of the Petitioners.

9. The above submissions have been considered. The fact remains that a clause in the lease deed executed between IDCO and the Petitioners on 27.02.2005 contains a clear prohibition on the Petitioners assigning or transferring or encumbering or parting with its interest either in part or in whole or in any manner whatsoever in respect of the property in question "without the prior approval of the lessor". Entering into the agreement dated 21st February, 2007 with Opposite Party No.7 proposing to sell Shed No. A/41 was clearly in violation of that clause as the Petitioner was parting with its right and interest in the property and was doing so without prior permission of IDCO. There was, therefore, a clear breach by the Petitioners of the terms and conditions of the allotment of the plots.

10. Irrespective of Opposite Party No.7 occupying the plot in question without the authority of law, the fact remains that the Petitioners breached the terms of allotment made in their favour by IDCO.

11. Consequently, the Court is unable to find any error having been committed

by IDCO in rejecting the Petitioners' representation and cancelling the allotment made of Shed Nos. A/41 and A/42.

12. There is therefore no merit in the present petition and it is dismissed as such. The interim order passed earlier is hereby vacated.

.....