

(2013) 10 MP CK 0086
In the Madhya Pradesh High Court
Case No : Writ Petition No. 16576 of 2013

M/s. Hindustan Chemicals

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0086

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Sanjay Singh, for the Appellant; Rajesh Tiwari, Govt. Advocate for Respondents/State, for the Respondent

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—On behalf of the petitioner this petition has been filed under Article 226 of the Constitution of India, for issuing the appropriate writ for the following reliefs:-

(1) That the Hon''ble Court may please to set aside the impugned orders dated 17.6.2013 (Annexure-P-10) and 31.8.2013 (Annexure-P-12) passed by respondents no. 2 and 3.

(2) Any other relief, writ direction for order the Hon''ble Court may think fit in the facts and circumstances of the case may also be granted.

Petitioner''s counsel by referring the papers placed on the record along with the impugned orders dated 16.6.2013 (Annexure-P-10) and 31.8.2013 (Annexure-P-12) passed by the authorities of the respondents no. 3 & 2 respectively, has argued that the vide agreement dated 15.04.1972 (Annexure-P-1) the petitioner has entered into lease agreement with the respondent no. 3 with respect of the plot no. 5, situated in Industrial estate Jabalpur, having area 20,000 Sq. ft. According to which, such plot was given with possession on lease of 99 years to the petitioner-firm for industrial purpose to manufacture the Sodium Silicate etc., on the terms and conditions enumerated in the aforesaid lease deed. After

obtaining the requisite permission and license from the competent authorities, the petitioner established the industry and started manufacturing of Sodium Silicate within the stipulated period and has also filed the return in this regard in the Office of the Central Excise in the year 2009-10. Such industry had functioned smoothly for 39 years and there was no dispute between the petitioner and the respondents-Department, but in the year 2010 on diagnosis the cancer to the petitioner, she immediately rushed to the Tata Memorial Hospital Mumbai for treatment and remained admitted there as indoor patient for some time. Due to the treatment of such disease, the petitioner's become unable to continue the alleged Industry for some time. During such period on 25.11.2011 (Annexure-P-4), she received a show cause notice (Annexure-P-4) from the respondent no. 3 contending that the petitioner has closed the industry and thereby violated the condition no. 17 of the lease deed, with the direction to pay the rent Rs. 10/- and penalty Rs. 1/- and the maintenance charges and to comply the directions within a period of sixty days failing which, the allotment of the plot and the lease deed shall be cancelled. In compliance of the aforesaid show cause notice, the requisite rent, penalty and maintenance charges etc., were deposited by the petitioner on 5.12.2011 (Annexure-P-6) and thereafter on dated 7.12.2011, she has filed the reply of the show cause notice along with papers of the treatment (Annexure-P-5) contending that due to the cause of treatment, the Industry was remained closed for few months. Subsequent to filing the reply, near about after one year, the respondent no. 3 has given her a fresh notice dated 18.1.2013 (Annexure-P-7) contending that the aforesaid Industry of the petitioner is closed since last one year in violation of the condition no. 17 of the lease deed, with a direction to pay the rent of the year 2013 and maintenance charges with a further intimation that the rent of the plot is not being paid regularly in accordance with the condition no. 2 of the lease deed and again the petitioner was directed to comply the terms of the lease within sixty days failing which, the lease deed and allotment order of the plot shall be cancelled. After depositing the requisite sum of the rent and charges, the reply of such show cause notice was filed on behalf of the petitioner on dated 3.4.2013 (Annexure-P-8) contending that she is suffering from cancer and due to that disease, the manufacturing process of the Industry has been discontinued for few months and the same shall be started shortly. But without considering the abovementioned circumstances and the physical condition of the petitioner, the respondent no. 3 has passed the impugned order dated 17.6.2013 (Annexure-P-10) and thereby, aforesaid lease deed and the allotment order of the plot have been cancelled. She was also informed regarding his right to file the appeal before the respondent no. 2 on which, she has filed the appeal on dated 9.7.2013 (Annexure-P-11) challenging the order (Annexure-P-10) before the respondent no. 2. Inter-alia in such appeal, the aforesaid ground of illness of the petitioner for discontinuing the manufacturing process of the Industry was stated. It is further stated that the manufacturing process will be started shortly as she has received the orders from various manufactures of soap Industry. But on consideration, without appreciating the grounds and the circumstances raised

by the petitioner in the appeal, such appeal has been dismissed in a mechanical manner vide order dated 31.8.2012 (Annexure-P-12) thereby, the order dated 17.6.2013 of the respondent no. 3 was affirmed. In continuation he said that, in view of the aforesaid grounds, the authorities of the respondents no. 2 & 3 would have not cancelled the lease deed and the allotment of the aforesaid plot particularly when the alleged Industry was functioning continuously for 39 years and due to aforesaid disease and illness of the petitioner, the manufacturing process was discontinued only for few months. He further said that the regular rent, penalty and the maintenance charges etc., were paid by the petitioner in compliance of the direction of the authorities of the respondent no. 3 then, there was no occasion either to cancel the lease deed or allotment of such plot. He further said that, the impugned lease deed being granted for the manufacturing purpose could not be cancelled or terminated without issuing notice before six months from the date of cancellation of the same. In support of his arguments he also referred the papers thereby, some raw material were purchased by the petitioner-firm for the purpose to run the Industry and said that in such premises, it could not be said that the manufacturing process of the Industry has been closed. He further said that the grounds taken in the reply of the show cause notices were not considered with proper approach by the respondent no. 3 and the impugned order Annexure-P-10 was passed. On filing the appeal, the appellate authority has not considered the same and dismissed the appeal in a mechanical manner and without extending the proper opportunity of hearing. With these submissions, he prayed for issuing the appropriate writ for quashment of the impugned orders by admitting and allowing this petition.

2. Having heard the counsel at length, keeping in view his arguments, I have carefully gone through the averments of the petition as well as the papers annexed with it along with the impugned orders Annexure-P-10 and Annexure-P-12.

3. Undisputedly, the aforesaid plot was allotted to the petitioner long before vide order dated 31.3.1972 and in this regard, the lease deed dated 15.4.1972 (Annexure-P-1), was also executed between the parties. According to condition no. 2 of the lease deed, the petitioner was bound to pay the regular lease rent and the maintenance charges etc., but it is apparent that the same was not paid regularly within the prescribed period in accordance with the terms of the lease. Besides this, inspite repeated notices on behalf of respondent no. 3 to the petitioner to comply the terms of the lease, the manufacturing process of the alleged industry was not started for a longer period even between the period of the first show cause notice dated 25.11.2011 (Annexure-P-4) and of subsequent show cause notice dated 18.1.2013 (Annexure-P-7).

4. According to term no. 17 of the lease deed, on violation of the term of such lease, the respondent no. 3 had/has authority to discontinue the lease of the petitioner forthwith and in that circumstances, the notice of six months for termination of the lease deed is also not required. It is also apparent that by way

of aforesaid show cause notice, the petitioner was extended repeated opportunities to start the process of manufacturing in the industry, but the same was not started on which, the respondent no. 3 has passed the order dated 17.6.2013 (Annexure-P-10) and terminated/cancelled the lease deed as well as the allotment of the aforesaid plot.

5. True it is that in response of the show cause notice, by filing the reply on behalf of the petitioner inter-alia it is stated that due to aforesaid disease of the petitioner, as she was suffering from cancer, the manufacturing process has been discontinued for few months, but it is apparent fact on record that for years together, the impugned plot was not utilized by the petitioner for the purpose for which it was given to her on lease and in such premises, impugned order Annexure-P-10, was passed by the respondent no. 3.

6. In the entire lease agreement (Annexure-P-1) there is no any condition that even on discontinuing the manufacturing process in the alleged industry on account of any disease or sickness of the petitioner, the lease of the impugned plot could not be cancelled. So, in the lack of any specific condition in the lease deed, the authorities of the respondent no. 3 was not under obligation to continue the lease. So, in such premises, I have not found any infirmity, irregularity, perversity or anything against the propriety of law in passing the impugned order Annexure-P-10 by the respondent no. 3, terminating the lease deed and allotment of the plot.

7. In the aforesaid premises, on examining the order of the appellate Authority dated 31.8.2013 (Annexure-P-12), I have found that the same has been passed after taking into consideration the terms and conditions of the impugned lease deed Annexure-P-1 as well as the provisions of Madhya Pradesh Audyogik Bhoomi and Bhawan Prabandhan Niyam 2008 and documents placed on behalf of the petitioner regarding purchase of raw material for the Industry by the appellate Authority in a speaking manner holding that petitioner has violated the terms and conditions of the lease deed as well as the concerning rules and in such premises, by dismissing the appeal, affirmed the order of the respondent no. 3. So, it would not be said that the appellate authority has committed any error or illegality in affirming the impugned order dated 17.6.2013 (Annexure-P-10).

8. While dealing with the matter in the petition filed under Article 226 of the Constitution of India, this Court did not have any authority to decide the case as appellate Court against the order of the subordinate authority or the Tribunal. When the authority/Tribunal have passed the order on proper appreciation of the factual matrix of the matter and taking into consideration the concerning rules and the regulation then the same could not be quashed by this Court under the writ jurisdiction. So, in such premises, the impugned orders passed by the respondents no. 2 & 3, do not require any interference at this stage.

9. In the aforesaid premises, I have not found any perversity, irregularity,

illegality or any thing against the propriety of law in the order impugned requires any interference at this stage. Consequently, this petition being devoid of any merit, deserves to be and is hereby dismissed at the stage of motion hearing. There shall be no order as to the costs.