
(2022) 10 BOM CK 0076
In the Bombay High Court
Case No : Writ Petition No.172 Of 2022

M/s. Kamakshi Enterprises

APPELLANT

Vs

Goa Industrial Development Corporation And Others

RESPONDENT

Date of Decision : 12-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2022) 10 BOM CK 0076

Hon'ble Judges : M. S. Sonak, J; Bharat P. Deshpande, J

Bench : Division Bench

Advocate : Nigel Da Costa Frias, Nikhil Vaze

Final Decision : Disposed Of

Judgement

M. S. Sonak, J

1. Rule. At the request and with the consent of the learned counsel for the parties, the rule is made returnable immediately.

2. As recorded in our order dated 11.10.2022, we concluded the hearing arguments in this petition on 10.10.2022. However, the matter was placed on 11.10.2022 to enable the Petitioner to file an affidavit cum undertaking to which reference will be made in the course of this judgment and order. Accordingly, such affidavit cum undertaking was filed by the Petitioner on 11.10.2022.

3. The Petitioner is a proprietary concern of Mrs Mithila Deepak Netardekar. She was allotted by the Goa Industrial Development Corporation (GIDC), a statutory Corporation established under the Goa Industrial Development Act, 1965, a plot of land admeasuring 787 square metres in the Shiroda Industrial Estate vide allotment order dated 02.07.2015. This was followed by the execution of the deed of lease dated 23.09.2016.

4. In terms of the allotment order and the lease deed, the Petitioner was placed in possession of the said plot. Further, in terms of the allotment order and the

lease deed, the Petitioner was required to start the construction of her industry (building) within six months, complete the same and commence commercial operations within three years from such date.

5. The Petitioner claims that she submitted the plans for the construction of the building/industry for approval with the GIDC on 01.04.2016. However, the Petitioner failed to make payments towards the license fees and infrastructure tax though the Petitioner was called upon to pay the same vide communication dated 13.05.2016.

6. The Petitioner did not bother to use the said plot by constructing any building/industry thereon for over three years. Additionally, the Petitioner did not bother to pay the premium installment, lease rents, or other outstanding. Therefore, the GIDC issued a show-cause notice dated 07.06.2019 to the Petitioner, requiring her to show cause as to why the lease/allotment should not be terminated.

7. The Petitioner filed her response on 01.01.2020, after considerable delay. This was followed by yet another belated response dated 13.07.2021. Accordingly, the Petitioner was granted an opportunity for the oral hearing. Thus, after considering the Petitioner's oral and written response, the GIDC issued the impugned order dated 04.03.2022, reverting and cancelling the allotment/lease in respect of the said plot.

8. By instituting the present petition under Article 226 of the Constitution of India, the Petitioner challenges the impugned reversion and cancellation order dated 04.03.2022. The main ground urged by Mr Nigel Da Costa Frias, learned counsel for the Petitioner, was that the GIDC never disposed of the Petitioner's application seeking approval of plans submitted on 01.04.2016. He offered that in the absence of approval from the GIDC, the Petitioner was not in a position to construct the building/industry. Additionally, he pointed out that no construction could be undertaken between 2019-2021 due to COVID Pandemic. He submitted that the GIDC did not consider these crucial factors before issuing the impugned order dated 04.03.2022.

9. Mr Vaze, learned counsel for the GIDC, pointed out that the Petitioner was never serious about constructing or operating the industry. He submitted that the Petitioner did not pay the license fees and infrastructure tax to enable consideration of her construction plans. He offered that there was no justification for not paying outgoings like premium, interest, lease rents etc. He submitted that the Petitioner did not react for almost six years from the date of submission of her plans only because the Petitioner was never serious about constructing or operating an industry on the said plot. He urged the dismissal of this petition.

10. On 22.03.2022, we made the following order in this petition:

"Mr. Costa Frias learned counsel for the Petitioner states that the Petitioner, to show her bonafide, will pay to the Goa Industrial Development Corporation, without prejudice to her rights and contentions, the principal amount of

Rs.8,85,375/-together with interest of Rs.5,40,815/- totalling to Rs.14,26,190/- within 4 weeks from today. Mr. Costa Frias, on instructions, states that if the Petitioner is granted an opportunity, she will forthwith commence construction on the plot in question.

2. For the present, without going into the issues of maintainability, etc., we issue notice to the respondents returnable on 25.04.2022, subject to the Petitioner paying to the Goa Industrial Development Corporation, without prejudice to her rights and contentions, the amount of Rs.14,26,190/- latest by 12.04.2022. If such amount is not paid, then, the Registry need not issue any notice to the respondents but the matter will have to be placed for further consideration on 18.04.2022.

3. Stand over to 18.04.2022."

11. After some delay, the Petitioner ultimately paid an amount of Rs.14,26,190/- to the GIDC without prejudice to her rights and contentions. On 17.08.2022, after hearing the learned counsel for the parties, we made the following order:-

"Stand over to 06/09/2022 in order to enable the respondents to consider whether an additional opportunity can be granted to the petitioner, subject to the petitioner filing an undertaking that the construction of the industry will be completed in a time bound manner."

12. The above order was made because after hearing the learned counsel for the parties, and the Court was of the prima facie opinion that an opportunity could be granted to the Petitioner to complete the construction and commence the commercial operations on the said plot within some reasonable time, provided, the Petitioner pays the entire demanded amount of Rs.24,81,980/- specified in the impugned order dated 04.03.2022.

13. In arriving at this prima facie opinion, this Court considered that the Petitioner had submitted construction plans and sought approval of GIDC on 01.04.2016. Though the Petitioner had not followed up, it is not as if the Petitioner made no payments. Mr Costa Frias explained that the defaults in payment of premium, lease rents etc., were mainly because the Petitioner, a woman entrepreneur, could not raise funds without the construction of the industry and commencement of commercial operations thereon. Mr Costa Frias also pointed out that the COVID situation contributed to the Petitioner's inability to make payments.

14. Upon consideration of the material, this Court also felt that sustaining the impugned order dated 04.03.2022 would only entitle the GIDC to institute the proceedings before the Estate Officer under the provisions of the Public Premises Act. Even if the Estate Officers were to decide in favour of the GIDC, the law provides for an appeal to the District Court. This is invariably followed by a petition under Article 227 of the Constitution of India, in some cases further appeal by Special Leave to the Hon'ble Supreme Court of India. In short, the said

plot in the industrial estate would remain embroiled in litigation. Thereby, neither would the Petitioner be in a position to put up any construction on the said plot, nor would it be possible for the GIDC to allot it to some other entrepreneur for a considerable time. Therefore, the GIDC was requested to consider whether an additional opportunity could be granted to the Petitioner provided she undertakes to complete the construction within a reasonable period and also pay the demanded amount without any demur.

15. Mr Vaze placed before us the minutes of the 381st Board meeting of the GIDC held on 29.08.2022. The relevant extract from the said minutes reads as follows:-

"AOB Item No.1

Decision in the matter of the Order of Reversion and Cancellation to M/s. Kamakshi Enterprises, Plot No.3 at Shiroda Industrial Estate.

This agenda is placed by the Eviction Recovery Cell. The Board discussed the agenda item and took note of the fact that the allotment done to the allottee is of 02/07/2015 which is governed under the Goa Industrial Development Corporation Allotment Regulations, 2014 Clause 9 of the said Regulations grants maximum timeframe of 3 years to the allottee to complete the project and go into Commercial operations from the date of taking over possession. In case of delay beyond 3 years maximum relaxation that can be granted is one additional year, subject to the allottee paying a penalty of 25% of the prevailing land premium rate per sqmtr., calculated on the total plot area leased. If the allottee fails to start construction after 2 years or fails to implement the project and go into Commercial operations even after the period of 4 years, the allotment made stands terminated and the plot along with the buildings and appurtenances standing thereon shall stand reverted to the Corporation. The amounts paid by the allottee to the Corporation in such an event shall stand forfeited.

The Board further also took note of the fact that as per the outward register of the Corporation the letter no. GIDC/GM(E)/Shiroda/PI.No.03/1016 dated 13/05/2016 was sent to the allottee. Considering the above legal aspects, the Board of Directors decided to act as per the Orders/Directions/Decisions to be passed by the Hon'ble Court in the matter.

Thereafter the following resolution was passed.

Resolution No.42/2022

"Resolved unanimously that the Corporation shall follow and abide by the Orders/Directions/Decision to be passed by the Hon'ble Court in the matter and the Advocate on record to be informed accordingly.

Resolved further that the Managing Director be and is hereby authorized to take all further necessary action in the matter".

16. Mr Vaze, learned counsel for the GIDC, submitted that the Board had

resolved unanimously to leave the matter to the decision of this Court and that the GIDC would follow and abide by such a decision. Mr Vaze explained that there are several instances where plot allottees have failed to utilize the plots, thereby seriously hampering the industrial development in the State of Goa. He submitted that such plots are not allotted as an investment but to promote industrial development, employment etc. He submitted that the GIDC has resolved to take action against the allottees who have failed to utilize the allotted plots within a reasonable period and that it was in pursuance of such a drive that action was initiated against the Petitioner.

17. As noted earlier, the Petitioner cannot be said to be blameless. However, there are some mitigating circumstances, like the submission of construction plans for approval on 01.04.2016 and the payment of some amounts, if not all, in terms of the lease deed. Besides, as noted at the outset, the Petitioner has filed an affidavit cum undertaking before us on 11.10.2022. In the affidavit, the Petitioner has not only undertaken to pay the balance of the demanded amount, i.e. Rs.10,55,790/- but further offered an undertaking that she will complete the construction of the building/manufacturing unit within one year from the date on which the GIDC approves her plans.

Furthermore, she has also undertaken that should she fail to pay the balance demanded amount within the timeline mentioned in the undertaking or complete the construction, the GIDC shall be at liberty to take possession of the said plot without any objection from the Petitioner.

18. The affidavit cum undertaking dated 11.10.2022 reads as follows:-

"AFFIDAVIT CUM UNDERTAKING ON BEHALF OF THE PETITIONER.

I, Mrs. Mithila Netardekar, wife of Mr. Deepak Netardekar, age 35 years, R/o. Flat No.BF-2, Chrishally Residency, Vidhyanagar, Margao Goa, the proprietor of M/s. Kamakshi Enterprises, the Petitioner herein, do hereby most respectfully state on oath and solemnly affirm as under:-

1. I say that I shall pay the balance amount due to the respondent as per the impugned order dated 04.03.2022, which amounts to Rs.10,55,790/- in the following manner;

a) Rs.5,25,000/- within a period of 3 months from today i.e. on or before 11/01/2023.

b) Rs.5,30,790/- within a period of 6 months from today i.e. on or before 11/04/2023.

2. I say that I will submit a revised building plan to the respondent no.1 within a period of 2 weeks from today, upon the approval of the plan by the respondent no.1, I undertake to complete the construction of building/manufacturing unit within a period of 1 year from the date of communication of approval of the plan by the respondent no.1.

3. I agree and undertake that in the event I fail to adhere to the time lines mentioned herein above regarding the payment of Rs.10,55,790/- to the respondent no.1 and/or completion of construction, the respondent no.1 shall be at liberty to take possession of the plot no.3, admeasuring an area of 787 sq. mtrs at Shiroda Goa and I shall not object to or obstruct the same in any manner.

4. I do hereby solemnly affirm that the contents of paragraph nos. 1 to 3 hereinabove are true and correct to my personal knowledge.

Solemnly affirmed at Porvorim on this 11th day of October 2022.

Sd/-

DEPONENT"

19. The Petitioner was present in the Court on 11.10.2022 when the above undertaking was filed. Since some apprehensions were expressed regards the wording of the undertaking, Mr Costa Frias

explained the implications of the undertaking to the Petitioner, including the fact that even the first default in payment of Rs.5,25,000/-within three months would require the Petitioner to hand over the vacant and peaceful possession of the said plot to GIDC without the GIDC having to initiate any further legal process. The Petitioner stated that she understands the implications of her undertaking and has, nevertheless, given the said undertaking because she has every intention to comply with the same.

20. Therefore, on 11.10.2022, we made the following order:-

"1. In this case, we had heard arguments on 10th October 2022 and placed the matter today in order to enable Mr. Costa Frias to obtain instructions and file an undertaking. Accordingly, today Mr. Costa Frias has filed an undertaking of the Proprietor of Kamakshi Enterprises – Petitioner. The Petitioner is present in the Court today. Mr. Costa Frias states that he has explained to her the implications of the undertaking, including the fact that even the first default in payment of Rs.5,25,000/-within three months, will require the Petitioner to hand over the vacant and peaceful possession of the suit plot to the Respondent -GIDC. The Petitioner has stated that she understands the implications of such an undertaking and has, nevertheless, given the said undertaking because she has intention of complying with the same.

2. Accordingly, the matter is placed for orders."

21. Accordingly, we accept the Petitioner's undertaking as an undertaking given to this Court. Based upon such undertaking, coupled with other factors discussed above, we suspend the execution of the impugned order dated 04.03.2022. However, if the Petitioner, in breach of her solemn undertaking to this Court, fails to pay the amounts referred to in paragraph 1 of the affidavit cum undertaking within the timeline indicated or if the Petitioner fails to complete the construction of the building/manufacturing unit within the timeline stipulated in paragraph 2

of the affidavit cum undertaking, then, not only will the impugned order dated 04.03.2022 revive, but further the Petitioner, consistent with her undertaking, must hand over the possession of the said plot together with any construction, if any, thereon to the GIDC, without any protest, objection or demur. It is only subject to such undertaking already furnished by the Petitioner that some indulgence is extended to the Petitioner in the peculiar facts of the present case.

22. According to us, the Petitioner should have offered to pay the first instalment of Rs.5,25,000/- within a month from today. Accordingly, we direct the Petitioner to pay this amount preferably within a month from today but in no circumstances later than 11.01.2023. Mr Costa Frias, on instructions, has assured us that the Petitioner will adhere to the timeline in the affidavit cum undertaking and not seek any extension. Even this statement is accepted as a statement made by the Petitioner to this Court.

23. Mr Costa Frias has also stated that the Petitioner will submit revised building plans to GIDC within two weeks. The GIDC must decide on the issue of approvals within a reasonable period not exceeding six weeks. Further, upon approval of such plans, the Petitioner will complete the construction of the building/manufacturing unit. According to us, mere completion of the construction of the building/manufacturing unit would not suffice. The allotment is to undertake industrial/commercial activities. Therefore, the Petitioner must commence such industrial/commercial activities within a reasonable period. The Petitioner must also regularly pay the amounts due in terms of the allotment order and the lease deed.

24. The rule is disposed of in the above terms. However, there shall be no order for costs.