

(2018) 07 RAJ CK 0187

In the Rajasthan High Court

Case No : Civil Writs No. 9301 of 2018, 22425 of 2017

**M/s Medical Designs India Private Ltd @APPELLANT@Hash Rajasthan
State Industrial Development And Investment Corporation Limited**

Date of Decision : 16-07-2018

Acts Referred:

Rajasthan State Industrial Development and Investment Corporation Limited Disposal
of the Land Rules, 1979 — Section 24(3), 24(4)
Code of Civil Procedure, 1908 — Order 7 Rule 11
Constitution of India, 1950 — Article 14, 226(3)

Citation : (2018) 07 RAJ CK 0187

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : Sudesh Bansal, Hans Kumar Sharma, Varun Khandelwal, Virendra
Lodha, Jai Lodha

Final Decision : Disposed Off

Judgement

1. The matter comes up on IA No.31972/2018 filed by the respondents under Article 226(3) of the Constitution for vacating the interim order passed by this Court on 03/05/2018.

2. This Court, taking into consideration that the arguments advanced on the IA are akin to the arguments which may be advanced for admission of the writ petitions, has heard the respective counsels for final disposal of both cases at this stage.

3. Vide order dated 03/05/2018, this Court noted submission of the petitioner-M/s Medical Designs India Pvt. Ltd. that he was entitled to be considered for re-allotment of Plot No.F-28(N) at Malviya Nagar Industrial Area, Jaipur from which the petitioner was earlier dispossessed.

Accordingly, the Court restrained the respondents from putting the plot to auction.

4. The respondents have filed reply and alongwith reply, they have placed on record the orders in previous litigation which were initiated before this

Court. It appears that earlier, the petitioners filed one writ petition No.1909/2015 challenging the order passed by the RIICO cancelling the allotment

which was dismissed on 05/05/2016.

5. A look at the said judgment shows that an argument was advanced at that stage by the petitioner that as the plot was in his possession, Rule 24(3)

of the Rajasthan State Industrial Development and Investment Corporation Limited Disposal of the Land Rules, 1979 (hereinafter referred as the

Rules, 1979) should be made applicable which provides for policy of restoration of allotment of cancelled plot. Arguments were also put up that

similarly situated three other companies had been granted the benefit of the amended rules and possession was restored. The said argument was not

accepted by this Court and it was noted as under:-

“Equality under Article 14 of the Constitution of India cannot be invoked by the defaulter to say that he may be treated in the same manner as

another defaulter has been treated. Rajasthan State Industrial Development & Investment Corporation Ltd., as the name suggests, has to achieve the

sole objective of industrial growth in the State and has to provide impetuous to industrial activity. As Shri Garg has stated, the units names of which

have been suggested by Shri Bansal to invoke equality and equity have started production, their case is on different footing. It is a travesty that

even after lapse of twenty eight years of allotment, petitioner company has not constructed the building over the plot, what to say of production.

Therefore, the respondents were well within their rights to infer that the petitioner company only intend to usurp the plot and not to carry on industrial

activity.”

6. DB Special Appeal (Writ) No.1206/2015 was preferred wherein taking note of the submissions, as per Rule 24(3) of the Rules, 1979, the Division

Bench upheld the order passed by the Single Judge.

7. It is apparent that after dismissal of the special appeal on 05/05/2016, the petitioner handed over possession of the plot on 10th August, 2016 and

after handing over the plot, the petitioner is again claiming possession of the cancelled plot in terms of Rule 24(4) of the Rules of 1979 and the present

writ petition has been preferred with the prayer to direct the respondents to

consider and re-allot the plot on preferential basis under Rule 24(4) of the Rules of 1979. Rule 24(3) and 24(4) of the Rules of 1979 reads as under:-

24(3) Policy of Restoration of allotment of cancelled plot :

1. Restoration of allotment of cancelled plot can be considered by the Corporation depending upon the merit of each case, subject to fulfillment of the following criteria/conditions:-

- i. Possession of the cancelled plot is lying with the party (applicant), and/or;
- ii. Possession of the cancelled plot is with the Corporation, and refundable amount consequent upon cancellation of allotment of plot is not paid, and/or;
- iii. Possession of the cancelled plot is with the Corporation and cheque of refundable amount sent to the party but not encashed by the lessee/purchaser, and/or;
- iv. Possession of the cancelled plot is with the Corporation and no amount is payable to the lessee/purchaser consequent upon cancellation of allotment of plot and the deposited money has been adjusted against the outstanding dues of the Corporation.

Provided the plot for which restoration is seeking, still not re-allotted after cancellation of allotment by the Corporation.

Further, provided that any request under the aforesaid restoration policy can be considered only when the allottee / applicant has removed or suppose

to be removed, (in case possession with the Corporation), the breach/violation of terms and conditions of the allotment letter/lease agreement for

which allotment of plot is cancelled.

2. Application for restoration of allotment of plot should be filed within one year of cancellation order issued on and after 17.06.2014. However, no time

limit shall be applicable for old cases if they fulfilled aforesaid eligibility conditions for filing of restoration application.

3. Such restoration application should be disposed of by concerned Unit Head of the Corporation subject to approval of time extension involved for

payments/utilization of plot by the competent authority.

4. Restoration charges shall be payable as under; (i) 20% of the prevailing rate of allotment of the industrial area in case where applicant has made

default in payment of more than 50% of payable amount towards cost of land/3 or more consecutive installments.

(ii) 10% of the prevailing rate of allotment of the industrial area in case where

applicant has made default in payment of less than 50% of payable amount towards cost of land or less than 3 consecutive installments.

(iii) 1% of prevailing rate of allotment of area concerned, in case allotment of plot is cancelled due to non-payment of annual charges.

(iv) 10% of the prevailing rate of allotment of the industrial area concerned, in case allotment of plot is cancelled on account of non utilization of plot

within the stipulated/extended period, subject to condition that possession of plot is deemed with Corporation or possession is with the applicant/party.

(v) 10% of the prevailing rate of allotment, in case allotment of plot is cancelled due to violation/breach of conditions of allotment letter/lease deed

other than mentioned at point no. (i), (ii) & (iii) of above subject to condition that possession of plot is with Corporation or possession is with the applicant/party.

Notes:

I. The prevailing rate of allotment for industrial and educational institute plots will be at par with the prevailing rate of allotment of industrial area concerned.

II. The prevailing rate of allotment for residential plot will be two times of the prevailing rate of allotment of industrial area concerned or rate of allotment of the housing colony, whichever is higher.

III. The prevailing rate of commercial plot will be four times of the prevailing rate of allotment of industrial area concerned.

IV. The plots allotted through auction will also be considered for restoration as per the above policy.

V. The Lessee/applicant shall be under obligation to pay other charges, if applicable such as outstanding dues along with interest, retention charges, annual charges and interest thereon etc., in addition to payment of restoration charges.

VI. After receipt of restoration charges, interest, retention charges, dues etc. and removal of breach of terms and conditions, cancellation letter shall be withdrawn and allotment of plot shall be restored to the plot holder on the terms and conditions mentioned in allotment letter/ lease deed or further prescribed by the Corporation.

VII. Restoration Charges shall be deposited along with the application to be

calculated on the basis of prevailing allotment rate and prevailing rules of RIICO. This amount will be deposited as an advance till final disposal of application. In case of rejection of such application, the amount so deposited, will be refunded without interest to the concerned applicant. No legal right would be created in favour of applicant merely on deposition of such amount.â??

â??Rule 24(4): In cases possession of cancelled plot is taken under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1964.

In case wherein possession of cancelled plot has already been taken by the Corporation after eviction of unauthorised occupant under the provisions

of Public premises (Eviction of Unauthorised Occupants) Act, 1964, the allotment of such cancelled plot will not be restorable. In such case, re-

allotment of cancelled plot on preferential basis in favour of person who had held the plot at the time of cancellation/taken over the possession, can be

considered by the Infrastructure Development Committee of the Board of Directors (IDC) on case to case basis depending upon merit of each case

and on the terms and conditions as may be decided by the Committee.â??

8. It is further submitted that similarly placed another plot had been re-allotted to one M/s. Sunshine Drinks Pvt. Ltd.

9. A look at Rule 24(4) of the Rules of 1979 shows that the same would come into operation only when a cancelled plot is taken over possession by

the RIICO under the provisions of Rajasthan Public Premises (Eviction of unauthorized occupants) Act, 1964. Thus, Rule 24(4) of the Rules of 1979

would not operate in the facts and circumstances of the present case as the petitioner has not been evicted from the possession by following

provisions of the Act of 1964 or otherwise by order of Court. Reallotment in such cases alone has been provided otherwise Rule 24(3) of the Rules of

1979 would operate.

10. Since Rule 24(3) of the Rules of 1979 had already been examined by this Court earlier at that stage, the petitioner could have taken up the

arguments with regard to re-allotment also. However, the said argument was not taken up at that stage and would be deemed to have been

abandoned. He cannot be allowed to take up in separate proceedings.

11. Be that as it may, this Court had already examined from all corners in the previous litigation whether the petitioner should be granted re-allotment or restoration of the said plot and taking into consideration that no production had commenced by petitioner for 28 years, the Court refused to invoke equality and equity jurisdiction. As noted by the coordinate Bench while deciding earlier writ petition, the sole objective of industrial growth is slowed down if such activities are allowed. The very purpose of allotment of industrial plot stands frustrated. In the circumstances, therefore, this Court does not find it appropriate to accept prayer of the petitioner in terms of Rule 24(4) of the Rules of 1979.

12. A peculiar situation is required to be noted as in the other writ petition bearing SB Civil Writ Petition No.22425/2017, which has been tagged alongwith the first writ petition, learned counsel for the petitioner Varun Khandelwal states that he was having possession of the industrial plot no. F-28(N) at Malviya Nagar Industrial Area, Jaipur on rent from the respondent no.1-Medical Designs (India) Pvt. Ltd. who had been originally allotted the said plot. The petitioner had set up air condition and refrigeration work at the plot and was carrying his industry. However, wrongfully the respondent no.3-Dr. Anil Tambi, treating himself to be a power of attorney holder of respondent no.1-Medical Designs (India) Pvt. Ltd., against whom case before the Rent Tribunal was pending, proceeded to handover possession to the RIICO and the RIICO forcefully took over possession of the premises. The petitioner submits that from the documents of possession show that site plan with existing structure has been prepared and material which was belonging to the petitioner was seized. The petitioner was dispossessed from the premises wrongfully and therefore, he made a representation to the RIICO on 07/09/2017 mentioning all the facts but no decision has been taken by the RIICO.

13. In reply, the RIICO has come forward and pointed out that certain facts have been concealed by the petitioner. It is stated that a Civil Suit No.143/2016 was filed before the Court of Additional Civil Judge (East), Jaipur Metropolitan, Jaipur wherein the petitioner claimed possession and an application under Order 7 Rule 11 CPC was moved which was allowed on 17/03/2017 against which appeal was preferred before the court of Additional District No.10, Jaipur Metropolitan, Jaipur who has dismissed the appeal on 14/07/2017. It is stated that second appeal has been preferred

before this Court which is pending.

14. Having heard counsel for both the parties, this Court finds that admittedly, the physical possession of the property has been taken over from the

petitioner- Varun Khandelwal who at that time was having possession of the property. The proceedings between the original allottee namely; Medical

Designs (India) Pvt. Ltd. and the petitioner-Varun Khandelwal were undergoing before the Rent Tribunal. It is on account of cancellation of the

allotment, which has been upheld by this Court, that the RIICO took over possession. However, it is to be noted that even if the petitioner was holding

the property as a tenant of the original allottee, possession from the petitioner could not have been taken over forcefully without following due

procedure of law.

15. Thus, the action of the petitioner-M/s Medical Designs India Private Ltd. through its power of attorney holder in SB Civil Writ Petition

No.9301/2018 is clearly an abuse of the process of Court to take advantage. It is apparent that M/s Medical Designs India Pvt. Ltd. earlier filed SB

Civil Writ Petition No.1909/2015 informing that they have let out the premises to Varun Khandelwal who was carrying out industrial activities by the

name of Usha Air Conditioners & Refrigeration on the said Plot No.F-28(N) at Malviya Nagar Industrial Area, Jaipur. The litigation resulted in

recording of statement by this Court through RIICO that the plot was not being utilized and there was no production on the plot for 28 years although

the plot was under possession of Varun Khandelwal who was carrying out industrial activities. Since M/s Medical Designs India Pvt. Ltd. could not

get the place vacated from Varun Khandelwal in the suit preferred before the Rent

Tribunal, upon dismissal of his writ petition, the RIICO took decision of the property as if it was a vacant land and dispossessed Varun Khandelwal

and now the petitioner M/s Medical Designs India Pvt. Ltd. has preferred the another writ petition i.e. the present writ petition for claiming

repossession of the plot claiming benefit of Rule 24(4) of the Rules of 1979.

16. In view of above, it is apparent that the situation does not change in the present scenario and bonafides of the petitioner are not apparently for

setting up an industry for which the plot had been allotted and at the same time, the petitioner, in one way or the other, is seeking to get possession of

the plot and the action of the RIICO and the petitioner M/s Medical Designs India

Pvt. Ltd. thus appears to be collusive.

17. In these circumstances, it was incumbent on the respondent RIICO to have taken a decision when the facts were brought to their knowledge and

merely because the Civil Suit has been dismissed on the ground of jurisdiction, by allowing application under Order 7 Rule 11 CPC, the rights of the

petitioner could not have been curtailed forcefully and his eviction could not have been done without following due procedure. The action of the

RIICO in forcefully taking possession from the petitioner is thus held to be unjustified and illegal.

18. The petitioner shall have a right of restoration of possession from the RIICO. However, the RIICO shall be free to take up all proceedings in

terms of the provisions contained under the Rules of 1979 and if such proceedings are undertaken, the petitioner shall be entitled to set up his claim in

terms of Rule 24(4) of the Rules of 1979 with regard to re-allotment if so required.

19. A cost of Rs.50,000/- (Rs.Fifty Thousand) is imposed on the RIICO for forcefully and wrongfully taking over possession from the petitioner and

taking note of the facts of SB Civil Writ Petition No.22425/2017, which has been heard alongwith this writ petition, this Court restrains the respondent-

RIICO from auctioning the plot in question in the present case and is directed to first take decision relating to Rule 24(4) in relation to petitioner Varun

Khandelwal in SB Civil Writ Petition No.22425/2017.

20. With the aforesaid observations/directions, both the writ petitions stand disposed of.