

(2023) 04 OHC CK 0113
In the Orissa High Court
Case No : Writ Petition (C) No. 38796 Of 2021

M/s. Pashupati Ispat Pvt. Ltd

APPELLANT

Vs

Odisha Industrial Infrastructure Development Corporation
And Another

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Citation : (2023) 04 OHC CK 0113

Hon'ble Judges : Arindam Sinha, J;S. K. Mishra, J

Bench : Division Bench

Advocate : S. P. Mishra, B. Bhuyan, P. K. Mohanty

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Mishra, learned senior advocate appears on behalf of petitioner. He submits, his client, is a small scale industry. It purchased the plot, from Odisha State Financial Corporation (OSFC). The purchase was occasioned on original lease allottee having defaulted in repayment on the credit facilities, lease rent and other dues. The land belongs to Odisha Industrial Infrastructure Development Corporation (IDCO).

2. He submits, his client on purchase from OSFC had applied for transfer, by their letter dated 20th February, 1991 addressed to the Managing Director of IDCO. Subsequent thereto, his client filed several writ petitions for direction upon IDCO, to complete the transfer. Under order made in one of those writ petitions, statutory dues of Rs.16,63,788/- were paid by Demand Draft dated 24th July, 2017. Still the transfer was not made. Ultimately, in his client's last preceding writ petition WP(C) no.32495 of 2020, there was order dated 10th December, 2020 made by the First Division Bench, for IDCO to take a final view on application dated 24th June, 2020 made by his client. He submits, purported result of the consideration is reiteration by impugned demand dated 9th June,

2020, of exorbitant amount on transfer fees and misconceived penalty fees in excess of Rs.1.19 crores. He seeks interference.

3. Mr. Mohanty, learned senior advocate appears on behalf of IDCO and draws attention to order dated 26th February, 2021 passed by Chairman-cum-Managing Director of IDCO, being result of the consideration on petitioner's said application dated 24th June, 2020. He submits, there has been finding by the order that petitioner could only be said to have applied on 13th November, 2019, as prior to that petitioner had, inter alia, not cleared the statutory dues nor had vacated unauthorized encroachment of 34 decimals of land. As such, good reasons and basis were given for reiterating the demand, against which petitioner had filed its last preceding writ petition.

4. On query from Court Mr. Mohanty submits, the excess land was encroached by original allottee. Several notices were sent to petitioner, who had subsequently occupied the land. It is only after orders were made in aforesaid writ petitions that petitioner vacated the unauthorizedly occupied land. After payment of the statutory dues as well, also under direction made by the writ Court, petitioner's application could be deemed to be properly made and the date of it was correctly fixed as 13th November, 2019. As there had been gross delay in applying for the transfer, demand was duly made on current transfer fee and penalty. There should not be interference. He draws attention to page 5 of said order dated 26th February, 2021 to demonstrate that procedure followed was IDCO (Disposal of Land, Building, Amenities) Regulations, 2016, clause 19 therein read with procedure in post allotment proposal as per circular no.15995 dated 23rd July, 2016, paragraph 2.3 (i).

5. On query from Court Mr. Mohanty hands up the regulations. We reproduce clause 19 from the regulations.

"19. Transfer of land / shed by the allottee Entrepreneur

– The Corporation may permit the allottee to transfer his land on such terms and conditions as the Corporation may decide, from time to time:

Provided that no land which is lying vacant or remains unutilized shall be allowed to be transferred:

Provided further that no land shall be transferred in violation of the terms and conditions in the lease deed or agreement as the case may be executed between the allottee entrepreneur and Corporation:

Provided also that such transfer of land shall be only for the purpose of establishment of industries and social infrastructures."

(emphasis supplied)

We are clear in our mind that clause 19 in the regulations do not provide authority for imposition of penalty. This is for two reasons. Firstly, the clause is applicable, when the corporation permits an allottee to transfer. In this case the

allottee could not retain the leasehold, for having become a defaulter on credit facilities extended, which was taken over by OSFC and thereupon sold to petitioner. Secondly, the clause does not mention penalty.

6. We are not inclined to delve further, to look into the circular referred in said order dated 26th February, 2021. We have sufficient ground to set it aside and consequently impugned demand. Since parties had accepted said order dated 10th December, 2020, made in aforesaid WP(C) no. 32495 of 2020 and had attempted to work out directions made therein to result in the order set aside herein, the application/representation of petitioner dated 24th June, 2020 is restored to the Chairman-cum-Managing Director of IDCO for reconsideration. During pendency of the representation with the Chairman-cum-Managing Director, petitioner will continue to pay rents. Mr. Mishra submits, current rents are being paid and his client will continue to go on paying the same.

7. With above directions the writ petition is disposed of.

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