(2021) 10 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No. 7117 Of 2014 (GM-KSSIDC)

M/S Tyre Works APPELLANT

Vs

Managing Director, K.S.S.I.D.C. Limited & Others RESPONDENT

Date of Decision : 01-10-2021

Acts Referred:

Companies Act, 2013 — Section 2(45)
Constitution Of India, 1950 — Article 12

Citation : (2021) 10 KAR CK 0001

Hon'ble Judges : Krishna S.Dixit, J

Bench : Single Bench

Advocate : P.D. Surana, H.R. Renuka, Lakshmi S Holla, P.H. Virupakshaiah, Ajay R Aneppanavar

Final Decision : Dismissed

Judgement

Krishna S.Dixit, J

1. Petitioner is grieving before the writ court against the Communication dated 08.11.2013 at Annexure-A and another Communication dated 28.12.2010 at Annexure-B incidental to Annexure-A. The communication at Annexure-A at its operative portion reads as under:

"In view of the facts and circumstances, narrated above as you have failed to comply with the terms of change of constitution and the terms and conditions of allotment and failed to furnish the relevant documents called for even after granting sufficient opportunity and considerable period of time thus violating the terms and conditions of allotment your representations does not merit consideration and hence the same is rejected and "the allotment of plot made in your favour is hereby cancelled and the amounts paid by you towards the plot is forfeited. You are informed to handover the possession of the plot to the Deputy General Manager (IEs) Zone-III, Mysore within 30 days from the date of receipt of this letter failing which the possession of the plot will be resumed to the departmental custody as per rules".

2. After service of notice, the respondents having entered appearance through their Sr. Panel Counsel has filed the Statement of Objections opposing the writ petition; learned Panel Counsel makes vehement submission in justification of the impugned communications and seeks dismissal of the writ petition; they have also filed an application seeking initiation of criminal proceedings against the petitioner for the arguable acts of perjury; the petition and this application are taken up for consideration together on the request of both the sides.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court declines to grant indulgence in the matter for the following reasons:

(a) The respondent-Karnataka State Small Industries Development Corporation Ltd, is cent percent a Government of Karnataka undertaking; it answers the definition of 'Government Company' u/s.2(45) of the erstwhile Companies Act, 2013; the subject industrial site was originally allotted to one Mr. Prabhakaran Pillai vide allotment letter dated 25.05.1977 and on his death on 02.07.1980, this allotment was diverted to his father Sri.P.K.Shankara Panicker on 14.09.1981; later the proprietary concern of Mr. Panicker was metamorphosed into a Partnership Firm comprising of himself who held 51% share and 7 others holding the remaining 49% in a varying ratio; this alteration was approved by the KSSIDC on 09.03.1983; all this is not disputed by the petitioner side; in fact, that is his case too.

(b) The approval letter dated 09.03.1983 having specified the share holding between Panicker & seven other persons had stipulated the construction of building within six months as per the approved plan and starting of the industry; it also prescribed registration of the Partnership Firm and submission of registered Partnership Deed; however, these conditions have not been complied with; Mr. Panicker having died, the firm was allegedly reconstituted without L.Rs. of the deceased, is the version of the petitioner; but the Deed of Reconstitution of Partnership admittedly has not been registered; the contention that the registration of firm is not the requirement of law, is true; but, the prescription of registration as a condition for allotment of State Larges cannot be faltered; the petitioner's contention that the subject partnership firm has been converted into his sole proprietary concern at a later point of time, is bit difficult to countenance in the absence of necessary legal documents evidencing the same; this apart, it militates against the conditions subject to which the partnership was approved; further, conversion of such a firm into proprietary concern if accepted would virtually deprive of the interest of other partners and of LRs of the deceased partners, who are not parties to the proceedings here.

(c) When the allotment of the site stood transferred as the property of the partnership firm comprising of 8 persons including Mr.Panicker, the KSSIDC granted approval specifying the share holding as already mentioned above; after death of Panicker, his 51% share would devolve upon his legal representatives in accordance with the personal law applicable to them; that being the position, the contention of petitioner that his client constitutes a proprietary concern and therefore, it is entitled to have the sale deed in respect of subject industrial site exclusively, cannot be countenanced; his explanation that the L.Rs. of Panicker have consented & relinquished their interest in the subject property, is difficult to agree with, no cogent evidence being placed on record in support thereof.

(d) There is also a lot of force in the contention of learned Sr. Panel Counsel appearing for the KSSIDC that the lease of the industrial site was made on a particular substratum such as the identity of the partners and their specified shares in the leasehold and therefore in the absence of approval to the change of such substratum, the petitioner-proprietary concern does not have a justiceable right to retain the property in its capacity as such; an argument to the contrary, would give a lot of scope for abuse of the purpose for which the site is given to a partnership firm that too after specifying the variable shares of the partners, therein.

(e) One cannot lose sight of the fact that the site in question is not a house site and that it was allotted for the industrial purpose; it cannot be disputed that it is a State Larges and therefore the KSSIDC being an instrumentality of the "State" under Article 12 of the Constitution of India, in the light of R.D.SHETTY vs. INTERNATIONAL AIRPORT AUTHORITY OF INDIA, (1979) 3 SCC 489, is justified in canceling the allotment for the violation of conditions subject to which the lease was granted; despite notices and reminders, petitioner has not got the partnership firm registered; despite notices dated 17.05.2006 & 19.07.2007, he failed to furnish the necessary documents such as permanent SSI Registration Certificate, Renewed Insurance Policy, Audited balance sheet, VAT returns, NOC from Karnataka Industrial Co-operative Bank, Certificate from SSI Association about the functioning of the industrial unit.

(f) Petitioner's contention that the metamorphosis of the partnership firm into a proprietary concern has been approved by the KSSIDC and that he has made payment of prescribed fees of Rs.7,150/- therefor, cannot be accepted; no evidentiary material is produced for evidencing the alleged approval to the conversion of the firm into a proprietary concern; the amount as stated by the petitioner was paid, is true; however, it was not in connection with the pleaded conversion; this apart, the said payment was made four years after the intimation dated 04.08.2010; such belated payments would not create any right for sustaining the prayers in the petition.

(g) There is also force in the contention of learned Panel Counsel for Respondents that the petitioner does not have justiceable right for the relief which he has sought for, in the fact matrix of the case; added, there is some force in the contention that the petitioner has taken up evasive pleadings in relation to unilaterally prepared lease deed a copy which is enclosed to the petition without naming it as an annexure; in fact, apparently it is only a draft of the document which does not bear the signature of the officials of the KSSIDC; the petitioner who is not a peasant or a farmer, but, who has been a shrewd businessman, ought to have stated that it was only a draft document which solicited the signature of the other side; even the pleadings in connection with this document are craftily taken up in the amended petition; thus, the petitioner is not fair to the court if not to his opponents, as well; however, it needs to be stated that no case is made out by the respondents for initiating action against the petitioner for the offence of perjury.

(h) The vehement submission of learned counsel for the petitioner that what had been auctioned pursuant to money decree/award in question was only the plant & machinery and not the site in question is true; that is the clarification which the lendor - cooperative bank in its reply dated 29.10.2010 had stated; but that fact does not advance the case of petitioner for the invalidation of impugned communications; much was sought to be made out of bank's reply, copy whereof is at Annexure-B contending that this was cleverly obtained from the bank only to justify issuance of the cancellation letter at Annexure-A; however, a deeper consideration of entire material on record does not lend credence to this argument.

In the above circumstances, Writ Petition being devoid of merits, is liable to be dismissed and accordingly it is, costs having been made easy.