

(2013) 10 MP CK 0194

In the Madhya Pradesh High Court

Case No : Writ Petition No. 14762 of 2013

M/s. Vishnu Packaging Products

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0194

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

Bench : Single Bench

Advocate : Pratyush Tripathi, for the Appellant; Vivek Agrawal, Govt. Advocate for Respondent No. 1/State, for the Respondent

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—On behalf of the petitioner-firm, this petition is preferred under Article 226 of the Constitution of India, (the same appears to be under Article 227 of the Constitution of India) being aggrieved by the orders dated 23.11.2012 (Annexure-P-1) passed by the appellate Authority respondent no. 2 President, M.P. Audyogik Kendra Vikas Nigam Bhopal, (hereinafter in short "Niyam) affirming the order dated 29.8.2011 (Annexure-P-2) bearing no. Aukevinibho/BF-(iii) 2008/5812 passed by the respondent no. 3 Managing Director of Nigam whereby, the lease granted to the petitioner vide dated (10.1.2005) 12.1.2005 with respect of plot Nos. 24/A & 24/B having area 45,000 sq. feet, situated at Mandideep for the Industry purpose, on account of violation of the terms and conditions of the use of the plots and in default of payment of arrears of the dues, was cancelled and pursuant to that, the petitioner has been directed to handover the vacant possession of the plots to the Nigam, it's security deposit of Rs. 25,092/- has also been forfeited. Pursuant to aforesaid, the competent Authority constituted u/s 4 of the Madhya Pradesh Lok Parisar Bedakhali Adhiniyam 1974 (herein after in short "the Adhiniyam 1974") has also issued the show cause notice dated 4.7.2003 (Annexure-P-3) u/s 4 of the Adhiniyam for the petitioner and asking to evict it from such plots. The same is

also under challenged in this petition. Petitioner's counsel after taking me through the averments of the petition as well as the papers placed on the record along with impugned order Annexure-P-1 to Annexure-P-3 argued that the impugned orders Annexure-P-1 and P-2 were passed by the respondents no. 2 and 3 President and the Managing Director of the Nigam, without extending any opportunity of hearing to the petitioner-firm. In continuation he said that, without taking into consideration the actual facts of the matter by any of such authority, by holding that the petitioner-firm has violated the terms and conditions of the lease deed of the plots and cancelled the same and also forfeited its security deposit under the wrong premises and pursuant to it, the competent Authority appointed under the Adhiniyam 1974, has also issued the show cause notice (Annexure-P-3) to the petitioner to vacate the premises with information that in default the appropriate steps shall be taken to evict the petitioner from such plots. He also argued that inspite making efforts, the petitioner-firm could not start the Industry/production on such plots for which the lease was granted. He further said that from the date of granting the lease of the plots, the petitioner is utilizing the same in accordance with the terms and conditions and has not violated any of the terms of such lease. He is also not defaulter in making the payment of the premium or other dues to the Nigam. In further submission he said that, the impugned orders being passed by the Managing Director as well as by the appellate authority without following the principles of natural justice and the procedure prescribed under the law, are not sustainable. In support of such argument, he has also referred some rules from the M.P. Rajya Audyogik Bhoomi Avam Audyogik Bhawan Prabandhan Niyam 2008 (hereinafter in short "the Niyam 2008") (Annexure-P-8) and said that while passing the orders, the same have not been complied with and pursuant to that the show cause notice (Annexure-P-3) issued by the respondent no. 6 competent Authority of the Adhiniyam 1974, is also not sustainable and deserves to be set aside and prayed for quashment of all aforesaid orders Annexure-P-1 to P-3 by admitting and allowing this petition.

2. Keeping in view his arguments, I have carefully gone through the papers placed on the record along with the impugned order so also the concerning rules referred by the petitioner's.

3. It is undisputed fact that the abovementioned plots bearing no. 24/A and 24/B having total area 45,000 sq. feet situated in Sector-C, Industrial Area, Mandideep District Raisen, was transferred on lease for Industrial purpose to the petitioner-firm through transfer order no. 122-123 dated 10.1.2005 by the Nigam and in this regard, the lease deed had also been executed between the parties on 12.1.2005 and on the same date, the physical possession of the plots were handed over to the petitioner. Subsequent to it, neither any manufacturing Industry nor its process was started by the petitioner-firm for years together on which, a registered notice bearing no. 3095-99 dated 28.5.2011 to comply the terms and conditions of the lease deed within 60 days was given on behalf of the Nigam to the petitioner-firm. In spite service of the notice, the same was neither

replied within the prescribed period nor any production process according to the terms of the lease was started by the petitioner-firm on such plots. Besides this, the dues of Corporation tax of such plots for the period between 2005 to 2012 Rs. 1,81,431/- were also not paid. In this regard also the petitioner was intimated by the aforesaid notice to deposit the same within 30 days with a further intimation that in default of depositing the same, shall be recovered as arrears of the land revenue. When the directions of the aforesaid notice were not complied with by the petitioner, then, by virtue of Clause 7, 22, 18 and 2 and 4 of the aforesaid transfer order dated 10.1.2005 the aforesaid lease dated 12.1.2005 was cancelled by the Managing Director of the Nigam vide dated 29.8.201 (Annexure-P-2). Pursuant to it, by virtue of Clause 23 of the terms of the lease, the petitioner firm was intimated to handover the vacant possession of the plots to the Nigam by removing the properties/material and goods with the information that in default of it, the possession of such plots shall be taken by confiscating the property, laying on the plots in favour of the Nigam. Simultaneously by virtue of Clause 29 of the lease deed, on account of violation of the terms and conditions of the lease, the sum of the security deposit Rs. 25,092/- was also forfeited.

4. Being dissatisfied with the aforesaid order (Annexure-P-2) of the Managing Director of Nigam on behalf of the petitioner-firm under the above-mentioned rules, the appeal was preferred before the appellate Authority. After filing the appeal inspite giving the intimation of the dates of hearing i.e. 20.9.2012 and 8.10.12 to the petitioner, no one was appeared on it's behalf to prosecute the same before the appellate Authority. In such circumstances, the Managing Director of the Nigam Shri Rajiv Jain, on dated 8.10.2012, has considered the matter on merits and by affirming the order Annexure-P-2, dismissed the appeal vide impugned order Annexure-P-1.

5. In the aforesaid circumstances, even after going through the entire papers placed on the record along with the concerning rules (Annexure-P-8), I have not found any material documents or the circumstance showing that subsequent to allotment of such plots to the petitioner-firm at any point of time the same was utilized by it for which the same was given on lease. It appears that before cancellation of the allotment order of the alleged lease deed, time to time in accordance with the rules the intimations to comply the terms and conditions of the lease deed were given to the petitioner on behalf of the respondent-Nigam, but none of them has been complied with. It also appears from the record that till deciding the appeal by the appellate Authority vide Annexure-P-1, neither any industry was developed on such plots nor any production was started.

6. It is also apparent that before passing the impugned order Annexure-P-2, the Managing Director of the Nigam vide dated 29.8.2011, sent a registered notice dated 28.5.2011, to the petitioner to comply the terms and conditions of the lease deed within 60 days and for depositing the entire arrears of the dues but inspite the service, the same was not complied with within the prescribed period.

7. In view of aforesaid, the violations of the aforesaid rules and the terms and conditions of the lease deed, are apparent and in such premises, there was no option with the Nigam except to cancel the allotment order of the lease deed with a direction to the petitioner to handover the vacant possession of the plots to the Nigam and forfeit the security deposit, and the same was carried out.

8. It is also apparent that any point of time inspite intimation any representative or the Office bearer of the petitioner-firm, has not given any co-operation or the assistance to the Managing Director in response of the aforesaid registered notice dated 28.5.2011.

9. After filing the appeal, it is apparent that inspite extending the repeated two opportunities to the petitioner to appear and prosecute the appeal, no one was appeared on it's behalf to assist the appellate Authority. So, in such premises, it could not be said that the respondent no. 2 Managing Director or the appellate Authority have decided the matter contrary to the principles of natural justice and without extending the opportunity of hearing to the petitioner. It is well settled proposition of law that inspite extending the opportunities, if party does not want to appear and prosecute/defend the matter, then there is no option with the authorities, except to decide the matter on merits after hearing the parties present on the basis of the available record and same was done by the authorities of the respondents in the impugned case.

10. It is also apparent that in compliance of the notice dated 28.5.2011 the requisite sum were not deposited by the petitioner, accordingly the petitioner-firm is also defaulter in making the payment of requisite sum. In such premises, the direction of the impugned order to forfeit the security deposit could not be said to be contrary to law. So in such premises, I have not found any substantial material or the legal question in the matter on which, the impugned order Annexure-P-1 & P-2 could be interfered by this Court under Article 227 of the Constitution of India or, in any case, under Article 226 of the Constitution of India. It is settled proposition of law that whenever any subordinate authority has passed any order taking into consideration the available record and the circumstances under the vested discretionary jurisdiction, then in normal course such order could not be interfered under the Superintendent jurisdiction of this Court vested under Article 227 of the Constitution of India or in any case, under the inherent powers vested under Article 226 of the Constitution of India.

11. Mere perusal of the impugned orders Annexure-P-1 and P-2, it is apparent that the same are not only speaking but are self explanatory also. The same are showing the entire conduct of the petitioner-firm from the date of allotment of the plots till passing such orders. So, in such premises, I have not found any scope in the matter even for admission against the order Annexure-P-1 and P-2. Consequently, this petition on such count deserves to be dismissed at the stage of motion hearing.

12. In view of the aforesaid findings, the show cause notice (Annexure-P-3)

being issued u/s 4 of the Adhiniyam 1974 in pursuance of Annexure-P-1 and Annexure-P-2 and asking the petitioner to vacate the aforesaid plots under the provisions of the Adhiniyam 1974, could not be said to be contrary to the existing legal position or the procedure prescribed under the law. When the authority has cancelled the allotment order of the aforesaid plots as stated above, then the competent authority is empowered to evict the person like petitioner from the concerning premises in accordance with the procedure prescribed under the Adhiniyam and it's Rules. Even otherwise, at the stage of show cause notice, the petitioner has a remedy to defend his case before the competent authority under the Adhiniyam 1974. So in such premises also, no interference is called for in the present writ petition for quashment of such show cause notice Annexure-P-3.

13. In view of the aforesaid discussions, this petition being devoid of any merit is hereby dismissed at the initial stage of motion hearing. There shall be no order as to the costs.