(2017) 05 OHC CK 0011

In the Orissa High Court

Case No : 247 of 2012 AND 66 of 2013

M/s.World Vision Enterprises & another — APPELLANT

Vs

Orissa Industrial Infrastructure Development Corporation & another — RESPONDENT

Date of Decision : 12-05-2017

Acts Referred:

Code of Civil Procedure, 1908, Section 114, Order 47Rule 1 - Review
Orissa Industrial Infrastructure Development Corporation Act, 1980, <a href=13127-35>Sec

Citation : (2017) 05 OHC CK 0011

Hon'ble Judges : S.K.Mishra, Biswanath Rath

Bench : DIVISION BENCH

Advocate : P.Mohanty, D.M.Mohapatra, J.Mohanty, P.K.Nayak, S.N.Dash, J.Patnaik, B.Mohanty, B.S.Rayguru, A.Patnaik, S.Patnaik, R.P.Roy

Judgement

1. Review Petition No.247/2012 has been filed by M/s.World Vision Enterprises and M/s.S.N.Mohanty (M/s.SNM Towers), the writ petitioners involving W.P.(C) No.13101/2012 disposed of as against the petitioners by order of this Court dated 7.8.2012, whereas Review Petition No.66/2013 has been filed at the instance of the Orissa Industrial Infrastructure Development Corporation (herein after called as, "IDCO"), the O.P.1 in the writ petition indicated herein above. Both the Review Petitions being intended for a common direction/relief and for being arising out of one writ petition, are taken up together and decided by this common judgment.

2. W.P.(C) No.13101/2012 was filed by M/s.World Vision Enterprises being the original allottee and the proposed transferer as well as by M/s.S.N.Mohanty being the proposed transferee with the following prayer :-

"It is, therefore, prayed that this Hon''ble Court may graciously be pleased to issue Rule Nisi in the nature of writ of Mandamus and/or any other appropriate writ/writs, direction/directions, order/orders calling upon the opp.parties to show cause as to why they shall not be commanded to take decision on the joint application and the documents filed by the petitioners, as per Annexure-4 series, for approval and permission to the proposed mutual transfer of the IDCO Plot No.F-13 at Chandaka Industrial Estate by the petitioner no.1 in favour of petitioner no.2 within a particular reasonable time...."

Facts, as contained in the writ petition indicated herein above is that petitioner no.1 was originally allotted with the IDCO Plot bearing no.F-13 corresponding to Revenue Plot No.7(P) of the Industrial Estate, Chandaka Mouza, Chandrasekharpur, Bhubaneswar area of Ac.1.00 by the O.P.1 in the writ petition executing a registered lease deed on 31.10.203 for the purpose of establishing a Software Development Unit. Since the petitioner no.1 in the writ petition was unable to run its industrial activities and business in the allotted land in question due to various constraints including financial difficulties as well as personal problems intended to transfer the allotted land in question to the petitioner no.2, who came forward to take over the same for the purpose of establishing a business centre-cum-commercial complex on the said plot with the understanding of exchange of land between them. Permission and approval were sought for from the O.Ps. in the writ petition, submitting necessary documents and making prescribed deposit. Finding no progress on the request of both the petitioners at the end of the O.Ps. and in spite of repeated reminders, the petitioners in Review Petition No.247/2012 filed the writ petition with the prayer indicated herein above. Upon hearing the petitioners at the admission stage, a Division Bench of this Court by order dated 7.8.2012 dismissed the writ petition after observing that the prayer of the petitioner for mutual transfer of the land allotted by the IDCO cannot be granted for no provision in the Orissa Industrial Infrastructure Development Corporation Act, 1980 further also for no such provision in the contract between the lessee and the lessor. This Court in disposing of the writ petition also observed that for the suit land already sub-leased in favour of the petitioners by the IDCO, there is no possibility of a second sub-lease in favour of a third party.

3. Referring to the Review Petition No.247/2012, Sri P.Mohanty, learned senior counsel for the petitioners sought for review of the order dated 7.8.2012 on the premises that the factual aspect as well as point of law already on record, despite due diligence of the Counsel, could not be properly canvassed resulting the order under review contrary to the materials available on record. Taking resort to Clause-4 and Clause-5 of the agreement between the parties, Sri Mohanty, learned senior counsel submitted that no assignment or transfer or encumber or part with his interest either in part or in whole is permissible without the prior approval of the lesser, and thus contended that the lesser had a right to accede to the request of the petitioners for mutual transfer of the land. Further referring to the documents, vide Annexure-3, Sri Mohanty, learned senior counsel submitted that the lease agreement has clear provision for mutual transfer of the land and this aspect could not be canvassed property during

course of argument for admission of the matter. On the premises that for the provisions contained in Sections 32 & 33 of the Act, Sri Mohanty also contended that the IDCO has the authority for transfer and disposal of the land under its possession even on mutual transfer, and thus contended that the observation of the Bench that there is no scope for mutual transfer under the Act is erroneous. Taking aid of certain decisions in the case of Gopabandhu Biswal vrs. Krushna Chandra Mohanty & others, 89(1998) CLT 738 (SC), State of Orissa vrs. Benudhar Das & others, 98(2004) CLT 337, A.P.Bhatta vrs. Nehru Paribesh Surakhya, 94(202) CT 337 and State of Orissa & others vrs. Shri Balaji Chuda Mills, 82(1996) CLT 83, Sri Mohanty, learned senior counsel contended that not only this Court has ample power to review its own order for being remaining contrary to the materials available on record but also contended that non-consideration of entire industrial policy and relevant factors amount to error apparent on the face of record and it is on the above premises, Sri Mohanty, learned senior counsel prayed this Court for interfering with the order passed in the writ petition and to modify the same suitably.

4. Sri J.Patnaik, learned senior counsel for the IDCO pressing Review Petition No.66/2013 at the instance of the IDCO referring to Section 4 of the Act attempted to explain the provision involving constitution of Board of Directors, the General Superintendence, direction and management of the affairs and business of the Corporation vested in the Board of Directors, which shall with the aid of the Executive Committee and a Managing Director may exercise all the powers and discharge all the functions, which may be exercised or discharged by the Corporation. Referring to Section 14 of the Act explaining the functions and powers of the Corporation to acquire and hold such property both moveable and immovable as the Corporation may deem necessary for the purpose of any of its activities and to lease, sale, exchange or otherwise transfer any property held by it on such conditions, as may be deemed proper by the Corporation. Referring to Section 15 of the Act, Sri Patnaik, learned senior counsel, explained the general powers of the Corporation in the matter of allotment of plots, factory sheds or buildings or part of buildings including residential tenements to suitable persons in the industrial estate established or developed by the Corporation and also having the power to modify or rescind including the rights and powers to effect the allottees concerned on breach of any of the terms and conditions of the allotment. Similarly, referring to Section 35 of the Act, Sri Patnaik, learned senior counsel, demonstrated the supplementary and miscellaneous provisions in the hand of the Corporation. Similarly, referring to Section 33 of the Act, Sri Patnaik attempted to convince that the Corporation has the power of disposal of its properties in any manner whether by way of sale, mortgage, exchange or lease or by the creation of easementary right or privileged or otherwise. Referring to the provisions made in the aforesaid Sections of the Act, Sri Patnaik, learned senior counsel, contended that had the provisions been brought to the notice of the Court effectively, then decision passed in the writ petition would have been otherwise. Sri Patnaik thus contended that the order passed in the writ petition

being contrary to the statutory provisions remain against law and can be reviewed in exercise of plenary review power of the High Court. Concluding his submission, Sri Patnaik, learned senior counsel, also submitted that since the writ petition was disposed of at the stage of admission and as the IDCO also gets affected by the order passed in the writ petition, the writ petition should not have been disposed of in absence of opportunity of hearing to the IDCO, i.e., the review petitioner in Review Petition No.66/2013.

5. Considering the contentions of both the review petitioners, this Court finds that both the petitioners have a common cause intending for review of the order passed in the writ petition. Looking to the provisions referred by Sri J.Patnaik, learned counsel, particularly the provisions contained in Sections 4, Section 14, Section 15 and Section 33 of the Act, this Court finds, there is no quarrel over the powers of the Corporation in the matter of discharge of its functions dealing with its properties in the interest of the Corporation keeping in mind the development of the industrial infrastructure in the State but the question remains here to be considered is whether there is any provision for mutual transfer of lands already allotted to different parties and none of the provisions referred to by the learned senior counsel for the parties brings forth any provision authorising the Corporation to enter into a request for mutual transfer of the land in favour of a third party of the land already allotted by virtue of an agreement in between the parties. Considering the submission of Sri Mohanty, learned senior counsel appearing in the first Review Petition and whole scan of the conditions contained in the agreement between the parties, this Court also nowhere finds any scope for mutual transfer involving a third party. The statute and also the agreement are wholly silent on this aspect. The provision contained in the Act deals only with the exchange of its land and dealing with the power of the Corporation in the matter of exchange of its land with the land held by outsiders, which is not the case here. None of the provisions referred to herein above provides power of exchange of land between the allottees even forgetting any scope for mutual transfer involving a third party. This being the admitted position, this Court finds, the Legislature apprehending misuse of land has deliberately did not make any provision authorizing the Corporation for third party transfer. Similarly, the Corporation has also very sincerely drafted the model contract agreement/lease agreement normally being executed in the case of allotment of land in favour of the entrepreneurs interested in establishing industrial infrastructural establishments. This Court has also the occasion perusing the lease deed/agreement appended to the writ petition at Annexure-1 and the lease deed is wholly silent on the aspect of mutual exchange of the land already allotted in favour of an entrepreneur involving a non-allottee.

6. This Court finds, the lease in respect of the suit land was granted on 31.10.2007 with specific rider at Clause-3 that the lessee shall construct the factory building and install the plant and machinery which within 12 (twelve) months and go into commercial production within 11 (eleven) months from the date of taking possession of the property. From the pleading in the writ petition a

well as both the Review Petitions, it appears the petitioner no.2 in the writ petition is the petitioner no.2 in Review Petitioner No.247/2012 and the O.P.2 in the Review Petition No.66/2013 is not able to run its industrial activities as well as business in the allotted land due to various constraints and there is an attempt at the instance of petitioner no.2 in the Review No.247/2012 for transfer of the allotted land in question to the O.P.3. For O.P.3 not being an allottee, the case at hand is not a case of mutual transfer even. In the above paragraphs dealing with the provisions in the Orissa Industrial Infrastructure Development Corporation Act and for the conditions in the agreement, this Court has already observed that there is no scope for either transfer or exchange of land by an allottee in favour of a third party. There is also no scope for further sub-lease of the suit land, as has been rightly observed by the division Bench in dismissing the writ petition. Under the circumstance, this Court finds, the division Bench has rightly declined the prayer of the petitioners by dismissing the writ petition.

7. Considering the submission of Sri J.Patnaik, learned senior counsel that even though the IDCO was a party in the writ petition but for the disposal of the writ petition in absence of an opportunity of hearing to IDCO, the order passed therein has a far reaching consequence on the IDCO, and therefore, the order passed in the writ petition ought to be recalled and the writ petition should be disposed of only after hearing the IDCO, the petitioner in the Review Petition No.66/2013, this Court finds, the writ petition was filed by M/s.World Vision Enterprises & another vrs. Orissa Industrial Infrastructure Development Corporation & another and the IDCO was merely an opposite party there. Further, on the dismissal of the writ petition, the claim of the petitioners has been denied. Thus, there is no scope for the IDCO preferring a Review Petition praying for review of the order dated 7.8.2012 passed in W.P.(C) No.13101/2012. Under the circumstance, neither the IDCO has any locus standi to file such Review Petition nor the Review Petition No.66/2013 is maintainable in the eye of law.

8. From the perusal of the disposal order of the division Bench, there appears, the division Bench passed the order considering the submissions and materials available on record and this Court in considering the Review Petition finds no error apparent on the face of record involving the disposal order leaving any scope to bring the request under the fold of Order 47 Rule 1 of the Code of Civil Procedure. The Hon''ble apex Court in the case of Lily Thomas etc. vrs. Union of India & others, reported in AIR 2000 SC 1650 in clear and categoric terms resolved that mistake apparent on the face of record cannot mean error which has to be fished out and searched. In the case of Meera Bhanja (Smt.) vrs. Nirmala Kumari Choudhury (Smt.) reported in (1995)1 SCC 170, the Hon''ble apex Court even has gone to the extent that Review must be confined to error apparent on the face of record and must be apparent on mere looking without requiring a long drawn process. The case at hand does not satisfy the above tests.

9. We have perused the final order passed in W.P.(C) No.13101/2012 and for the detailed discussions and the observations made therein coupled with the observation herein above, we are of the view that the case does not fall within the ambit of Order 47 Rule 1 or Section 114 of the Civil Procedure Code leaving any scope, for which we dismiss the Review Petition No.247/2012 for having no merit and the Review Petition No.66/2013 for being not maintainable. However, there is no order as to cost.

