

(2015) 03 BOM CK 0169

In the Bombay High Court

Case No : Writ Petition No. 6235 of 2013

Paramhari Engineers

APPELLANT

Vs

The Maharashtra Industrial Development Corporation and
Others

RESPONDENT

Date of Decision : 30-03-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 4 ALLMR 745

Hon'ble Judges : A.P. Bhangale, J.;B.P. Dharmadhikari, J.

Bench : Division Bench

Advocate : M.G. Bhangde, Senior Advocate and R.M. Bhangde, for the Appellant; S.P. Dharmadhikari, Senior Advocate and M.M. Agnihotri, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—Rule is made returnable forthwith and heard finally with the consent of Shri M.G. Bhangde, Senior Advocate with Shri R.M. Bhangde, learned counsel for the petitioner and Shri S.P. Dharmadhikari, Senior Advocate with Shri M.M. Agnihotri, learned counsel for the respondents. This Court has on 23.12.2013 called upon the petitioner to deposit an amount of Rs.32,42,500/- with the Registry of this Court. Accordingly, that amount is already deposited by the petitioner

2. The communication dated 20.11.2013 sent by the respondent demanding an amount of Rs.32,42,500/- only towards nonrefundable additional premium as a condition for grant of extension of time limit up to 27.02.2014 for approval of revised building plans, completion of factory building and obtaining Building Completion Certificate (B.C.C.) is assailed by the petitioner - Industrial unit before this Court under Article 226 of the Constitution of India.

3. The question raised by the petitioner before this Court is about the date from which period of five years for completing the above mentioned task should be

computed. According to it, said period begins to run after registration of ATL (agreement to lease) i.e. from 30.03.2009. According to the respondents, the period must be computed from the date on which the petitioner was placed in possession i.e. from 28.02.2008.

4. The order of allotment of land to petitioners is dated 23.01.2008. The possession has been handed over on 28.02.2008 and since then the petitioner is in possession of plot No. A26/ 7. the Agreement to Lease was to be signed within 30 days from the date of receipt of balance occupancy premium amount from the petitioner. The agreement to lease has been executed by the parties on 26.03.2009 and it has been registered on 30.03.2009. Petitioner has no grievance about these dates.

5. Inviting attention to this agreement to lease, Shri Bhangde, learned Senior Advocate for the petitioner submits that by said agreement only license has been given to the petitioner to enter upon the said plot and as such the petitioner is not expected to start any activity of construction on it. He further submits that as per clause 3(a) plans, specifications, elevations etc. along with details of factory building are to be submitted within three years from the date of possession to the Executive Engineer. Our attention is also drawn to a communication dated 08.10.2013 sent by the Executive Engineer to the petitioner informing it that while submitting the building plans for sanction, Agreement to Lease is essential and as per letter dated 31.12.2008 sent by the Chief Executive Officer of M.I.D.C., without such agreement to lease, building plan cannot be sanctioned. Appendix IX, Form No. 1, which is format of application for submitting such plan is relied upon to show that it is required to be accompanied by a document showing ownership title. Email dated 03.05.2013 is relied upon to submit that the petitioner was called upon to supply extension letter from the Regional office of the respondents, consent of Maharashtra Pollution Control Board and other similar documents to process his request for approval.

6. The petitioner submitted the building plan on 26.04.2013 ie after expiry of the period and it was not approved because he could not produce extension letter. Our attention is also drawn to communication dated 09.07.2013 sent by the Regional Officer to the petitioner whereby the petitioner was informed that as possession was handed over on 28.02.2008, last date for obtaining building completion certificate in his case was 27.02.2013. The documents placed by the petitioner with its surrejoinder are also relied upon to show the contention of the respondents that advance possession of plot is dealt with by Circular dated 12.05.1998 and limited purpose of handing over advance possession is to entrust the obligation of keeping said plot encroachment free to the allottee. It is submitted that this circular expressly stipulates addition of a condition by which allottee is warned that though it has received physical possession, legal title to the plot would pass only after documents as prescribed by the M.I.D.C. are duly completed. The possession receipt therefore does not pass on legal title to the allottee.

7. The similar stipulation and its implementation in the case of three units viz., Satyapratap Engineering Private Limited, M/s. Neeta Kandelwal and unit of Mr. Siddharth Khosla is relied upon by Shri Bhangde, learned Senior Advocate to show that there the completion of construction is sought within a particular time from the date of agreement to lease. This language and arrangement has been changed only in the case of petitioner and the respondents have also not disputed this assertion of discrimination the petitioner. The reply of respondents alleging negligence on the part of the petitioner between 28.02.2008 till 26.03.2009 is read out to explain that draft agreement to lease was sent to the petitioner on 11.06.2008 and the petitioner applied for the evaluation of stamp duty on 12.06.2008. The said request remained under consideration till 19.12.2008 and on that date stamp duty exemption certificate No. 509/501 was forwarded to the petitioner. After receipt of this certificate, the petitioner on 10.02.2009 applied to the Registrar of Stamps for adjudication of stamp duty and it was done on 13.03.2009. This adjudication was submitted to Respondent No. 2 on 26.03.2009 and thereafter the agreement was signed on 26.03.2009 itself. It was registered on 30.03.2009. It is submitted that thus, for this time taken by the authority to grant exemption certificate and for adjudication, cannot be used to the detriment of the petitioner.

8. Shri Dharmadhikari, learned Senior Advocate for the respondents has relied upon the relevant clauses dealing with time limit for commencement and completion of construction work as contained in agreement to lease. Our attention is invited to the fact that initial period for completion was only three years but vide Rectification Deed executed on 13.02.2013, it has been increased to five years. It is further submitted that extension of time is not automatic and the authorities have been given discretion to extend the time for completion of factory building. The petitioner submitted his first plan on 26.04.2013 i.e. after expiry of five years of handing over of possession without any extension order. The petitioner explained in his communication dated 23.10.2013 at the most period of one year. It is further urged that even if the period taken by the Government officers for adjudication of stamp duty is excluded, still the petitioner has not explained remaining time.

9. Shri Dharmadhikari, learned counsel submits that the petitioner indirectly wants modification of terms and conditions of bilateral contract through this Court. The limited scope of intervention with this Court in such matters is explained by pointing out the judgment in the case of The Rajasthan State Industrial Development and Investment Corporation and Another Vs. Diamond and Gem Development Corporation Ltd. and Another, and Orissa State Financial Corporation Vs. Narsingh Ch. Nayak and Others, . He submits that the petitioner could have raised challenge to clause 3(a) and 6 of Agreement to Lease when he signed it. The application dated 28.12.2007 submitted by the petitioner to the respondents accepting that lease would commence from the date from which possession of plot is offered to it and liabilities under Agreement to Lease be deemed to have commenced from that date, is also pressed into

service by the learned Senior Advocate. He states that the document on which the petitioner has placed reliance about need of agreement to lease while seeking building permission is not official record or document of M.I.D.C. and it is work of an exemployee, which has no legal sanctity. This communication dated 08.10.2013 sent to the petitioner is assailed as incorrect.

10. In reply arguments Shri Bhangde, learned Senior Advocate submits that format of application is not a mutual contract between the parties and the grant of lease is provided for vide clause 7 of Agreement to Lease. The lease is for a period of 90 years "from the date hereof" i.e. from the date of ATL execution namely 26.03.2009. He further submits that insofar as violation of Article 14 of the Constitution of India is concerned, hostile treatment and discrimination made only in the case of the petitioner, has not been explained. Our attention is invited to Dias on Jurisprudence, Fifth Edition, page 285 to explain how word possession needs to be understood differently in different circumstances. According to the learned Senior Advocate, in present matter, possession means physical possession after Agreement to Lease and this being the requirement of law, there is no question of this Court modifying the contract. The possession with the petitioner has to be with some permanent character so as to enable it to construct.

11. Before us, the initial application by which the petitioner sought allotment of plot in its favour on 28.12.2007 is not in dispute. There the petitioner has expressly undertaken that lease would commence from the date on which the possession of plot is offered to it. Thus, handing over of possession was not seen as the starting point but offer of possession itself triggers clock for computation of said period of three years or five years. In the very same clause, the petitioner has also accepted that the obligations and liabilities under the Agreement to Lease commence from the date on which such possession is offered. It is in this background that perusal of letter of allotment assumes importance. In said letter dated 23.01.2008, the petitioner has accepted that agreement to lease was to be signed by the parties within 30 days from the date of receipt of balance occupancy premium amount, thus allotment was not to be the lease. Possession receipt dated 28.02.2008 is also available on record.

12. Agreement to lease in its opening para is on grant of license. As per said clause (1), during the period of three years from the date of possession, licensee (allottee) has license and authority only to enter upon the place of land for the purpose of building and executing works thereon as provided in the agreement to lease and only for said purpose and for no other purpose whatsoever. Until the grant of such lease to the licensee, it is deemed to have bare license only of premises at the same rent and subject to same terms as if the lease had been actually executed. The agreement to lease vide clause 3(a) required petitioner to submit plans for approval within three years from the date of possession. Clause 3(d) prescribes time limit for commencement and completion of construction work. As this clause originally stood, the construction was to be commenced and

finished within a period of three years from the date of possession. This period of three years has been altered to five years because of change in policy on 15.11.2010. The details of this change figures in Rectification Deed dated 13.02.2013. Thus, these documents also expected petitioner to start construction within three years and to complete it within three years or then within five years.

13. The communication dated 08.10.2013 forwarded by the Executive Engineer to the petitioner is with reference to the petitioner's letter dated 06.10.2013. It points out that building plans cannot be approved without agreement to lease in favour of allottee. However, this letter is after expiry of period of three years or five years from the date of possession, as the case may be. The petitioner has signed lease deed on 26.03.2009 and communication is also more than three years thereafter. On 09.07.2013 itself, the petitioner was informed that he ought to have obtained completion certificate by 27.02.2013. Petitioner, therefore, can not fall back on this letter dated 08.10.2003.

14. The petitioner's reliance upon circular dated 12.05.1998 is misconceived in present facts. The said circular takes note of unwillingness of allottee to take possession even after signing agreement to lease because guidelines framed by M.I.D.C. for extension of time limit become applicable immediately after possession is handed over. Therefore, the said policy decision prescribed addition of one more condition after observing that possession should be handed over during the process for signing agreement to lease. As that process can go on separately, it therefore, points out to allottee that legal title would pass on to him only after fulfillment of necessary steps and legal requirements as prescribed by M.I.D.C.

15. The petitioner was called upon to submit a letter of extension on 03.05.2013 as period of five years had expired on 27.02.2013. We have already noted supra that it submitted building plan on 26.04.2013 i.e. beyond said period of five years and hence it could not have been processed further in the absence of extension letter. The time taken by the office of the Collector for adjudication of stamp duty or by the respondents for grant of exemption between 11.06.2008 to 26.03.2009 is, therefore, not very important here. The respondents have urged that the petitioner was negligent between 28.02.2008 till 26.03.2009 and was not keen to have Agreement to Lease executed. The petitioner was very much aware of the time limit of three years or five years operating against him and hence he could have taken timely steps to curtail this period from 11.06.2008 to 19.12.2008. Even after 19.12.2008 i.e. receipt of stamp duty exemption from General Manager, District Industry, Nagpur, the petitioner took next step only on 10.02.2009. This conduct of the petitioner, therefore, does not show that the petitioner was keen in getting the Agreement To Lease registered immediately.

16. The petitioner has in rejoinder filed on 18.09.2014 pointed out that the treatment extended to three units. Those details can be mentioned below in the shape of chart as submitted by the petitioner itself.

The grievance of the petitioner, therefore, is though these three allottees were placed in possession in advance i.e. before Agreement to Lease, period for procuring building completion certificate has been computed from the date of Agreement to Lease itself. The respondents have not specifically denied this assertion. They have not come up with any explanation also therefor. They have not pointed out any other instance in which for the words "from the date hereof" the words "from the date of possession" have been used. The words "from the date of possession" appear in clause 3(a) and (d) of Agreement to Lease dated 26.03.2009 in favour of the petitioner. However, we cannot forget that we are dealing with a contract which was entered into between the parties with open eyes. The petitioner has not come up with a case of fraud. Therefore, on 26.03.2009 with open eyes, he accepted the obligation to obtain building completion certificate within three years from the date of possession. His belated effort to get these words substituted by words from the date hereof, therefore, cannot be appreciated in writ jurisdiction.

17. On 10.07.2013, petitioner wrote to Area Manager of the respondent for grant of N.O.C. for 60 days for obtaining building completion certificate. In it, the petitioner has stated that if it failed to obtain the Building Completion Certificate within 60 days from the date of sanction given by the respondent, it would pay additional charges. In other communication dated 25.11.2013, on subject of demand note by the respondents for 25% as time limit extension charges, the petitioner, while seeking clarification has submitted that

"1. From 28th Feb. 2013 till 4th Sept. 2013, I should be given extension at rate of this period at Rs.520 x 5% (which is given to all).

2. From 4th Sept. till 30th Oct. there is extension of the same scheme where free extension is given 30th Aug. till 30th Oct. as per MIDC circular of 60 days as per MIDC circular.

3. From 1st Nov. to period seeked extension 25% extension charges at current rate of Rs.1150 x 25% x Area x Days should be levied as applicable to all."

Thus, even on 25.10.2013, the petitioner did not make any grievance about using date of possession as a starting point for computing period of five years. It appears that on 11.11.2013, for the first time he made that grievance. In that grievance also, this contention has not been raised. On the contrary, it sought a correct demand note quantifying the extension charges.

18. A perusal of judgment of the Hon''ble Apex Court in the case of Rajasthan Industrial Development and Investment Corporation and Anr. vs. Diamond and Gem Development Corporation Limited and Anr., (supra), shows that contract being creature of agreement between two parties, needs to be interpreted giving literal meaning unless there is some ambiguity therein. It is not permissible for the Courts to make a new contract, however, reasonable it may be, if parties have not made it themselves.

19. In the case of Orissa State Financial Corporation vs. Narsingh Ch. Nayak and Ors., (supra) in para 6, the Hon''ble Apex Court noted that the High Court while quashing the notice of auction sale, has passed an order drawing up a fresh contract between the parties and issued further directions in the matter. The directions noted by the Hon''ble Apex Court expected Orissa State Financial Corporation to advance fresh loans to writ petitioner to enable him to purchase new truck; to enter into agreement for realization of the balance loan amount in accordance with law; to right off the remaining amount of Rs.16,500/- and to order waiving of interest etc. It has observed that the High Court could not have entered the field pertaining to contractual obligations between the parties and issue directions annulling the existing contract and introducing a fresh contract in its place.

20. The consideration by us (supra) shows that the petitioner was aware from day one that period of obtaining Building Completion Certificate in its case was to be computed from the date of possession. The petitioner did not challenge this stipulation in contract at any point of time from 26.03.2009 and even allowed rectification in it on 13.02.2013. When rectification was entered into, period of five years computed from 28.02.2008 was to expire just after 14 days. Even then, no grievance was made by it. The later correspondence dated 10.07.2013, 25.10.2013 and 11.11.2013 also does not contain any such grievance by the petitioner. Therefore, merely because while entering into contract with three other industries, respondents have agreed to compute the time from the date of Agreement to Lease and not from the date of possession, that by itself cannot be a decisive factor in his favour. Petitioner has not come with the case that he was reasonably expecting similar treatment and therefore, an extension. Petitioner has also not placed on record any material to demonstrate efforts made by it to undertake or to complete the building construction after taking possession or even after date of registration of ATL. It is not the plea that it faced some difficulties in that respect. As per the precedents noted supra, parties have full freedom to chalk down the terms and conditions of the contract between them. It is not permissible for this Court to add a new term to such contract, however, reasonable it may appear to it, when petitioner and respondents have not made it themselves.

21. In the light of discussion above, we find no case warranting interference in writ jurisdiction. Writ Petition is accordingly dismissed. Rule is discharged. Amount of Rs.32,42,500/- in deposit with the Registry of this Court and interest upon it is allowed to be withdrawn by the Respondents. However, in the facts and circumstances of the case, there shall be no order as to costs.

At this stage, Shri Bhangde, learned Senior Advocate for the petitioner seeks stay of the judgment for a period of nine weeks. The request is being opposed by Shri Agnihotri, learned counsel for the respondents. He submits that in any case amount should be allowed to be appropriated. Shri Bhangde, learned Senior Advocate is opposing this request also.

In this situation, status quo as on today for a period of nine weeks. The same shall cease to operate thereafter automatically.