

(1996) 07 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No. 10958 of 1992

P.K. Appanna

APPELLANT

Vs

The Karnataka Industrial Areas Development Board,
Bangalore

RESPONDENT

Date of Decision : 26-07-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Industrial Areas Development Act, 1966 — Section 14
Transfer of Property Act, 1882 — Section 111(H)

Citation : (1997) 7 KarLJ 517

Hon'ble Judges : Tirath S. Thakur, J

Judgement

1. This petition calls in question the validity of an order dated 12th February, 1992 issued by the respondent-Board proposing to resume an Industrial Plot allotted to the petitioner on account of his failure to implement the project within the period granted to him for the purpose.

2. Industrial Site No. 17/E, situate in the Peenya Industrial Estate at Bangalore, was allotted in favour of the petitioner in terms of a letter of allotment dated 24/30th of January, 1985. A lease-cum-sale agreement was also executed between the parties according to which the petitioner was supposed to complete the civil construction works upto 7th October, 1989. Since however the plans for construction of the Unit were according to the petitioner sanctioned only on 2nd of November, 1990 the construction could not be completed within the time granted. The petitioner applied for an extension, which was granted by the Board vide its order dated 2nd of July, 1990 extending the period upto 31st of December, 1990. In February, 1992, however, the Board came out with the resumption order impugned in this petition and proposed to resume the site in question on account of the petitioner's failure to implement the project within the extended period and even 13 months thereafter. In the resumption order issued by the Board, it was pointed out that the petitioner had simply constructed a shed upto the roof level and stopped the work at that stage leaving

no alternative for the Board except to resume the land together with the structures standing thereon in terms of Clause 4 of the lease-cum-sale agreement. The petitioner was asked to present himself on the spot on 16-3-1992, to witness the resumption. Aggrieved, the petitioner has come up with the present writ petition questioning the said order as already indicated earlier.

3. Learned Counsel appearing for the petitioner argued that the decision to resume the site in question had been taken without due regard to the facts of the case and the issue of a proper notice to the petitioner or providing a reasonable opportunity of being heard to him against the making of any such order. It was urged that the petitioner had already paid 99% of the price fixed for the site in question and spent considerable amount on the construction of the building which had reached the roof level as in the month of November, 1991. The delay in the commissioning of the project, it is urged was on account of reasons beyond the control of the petitioner and mainly due to violence that hit Bangalore as a sequel to the dispute over Cauvery Waters. Given an opportunity to explain the failure on the part of the petitioner to commission the project in time, argued the learned Counsel, the petitioner would have satisfactorily explained the reasons which prevented him from doing so, in order to entitle him to a further extension. In substance the argument was that the impugned order was in violation of the principles of natural justice and therefore unsustainable.

4. On behalf of the respondent-Board Mr. Hinchgeri strenuously argued that the petitioner had failed to commission the project despite sufficient time granted to him for the purpose. He contended that a proper notice in terms of Clause 4 of the lease-cum-sale agreement had been issued to the petitioner and while extending the period for commissioning of the project till 31st of December, 1990, he was specifically warned that in the event of his failure to implement the project within the extended period, the plot in question shall be resumed without issuing any fresh notice to him. In the light of the said stipulation, argued Mr. Hinchgeri, there was no need for issuing any further notice or providing any further opportunity to the petitioner to explain his conduct before ordering the resumption of the site. Alternatively, it was argued that the respondent-Board was entitled to assert its right of re-entry over the land in question under the provisions of the contract executed between the parties without resort to the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act and that any dispute arising out of any such assertion of the Board could be appropriately raised only in a civil action brought before a competent Civil Court. Reliance in support was placed by the learned Counsel upon a Division Bench Judgment of this Court in W.A. No. 111 of 1991, decided on 10th April, 1991 and that in W.A. No. 2416 of 1990, decided on 21-3-1991.

5. I have given my anxious consideration to the submissions made at the Bar.

6. The respondent-Board is constituted to discharge its functions under the Karnataka Industrial Areas Development Act, 1966, Section 14 of the Act

prescribes the general powers of the Board and includes the power to allot to suitable persons factory sheds, buildings or parts of buildings including residential tenement in Industrial areas established or developed by the Board and to modify or rescind such allotments on breach of the terms and conditions thereof. Section 35 makes a provision for re-entry by any Member of the Board or any member generally or specially authorised on that behalf for purposes of inspection, survey, measurement, or any other things necessary for the efficient implementation of the Act. The regulations framed under the Act also make provisions for allotments and empowers the Executive Member to execute agreements with the allottees in the prescribed form. Form 4 prescribed by the regulations inter alia contains a stipulation, according to which, the Board has the right to re-enter upon the plot allotted to a lessee in the situations mentioned therein and subject of course to the service of a notice issued in that regard upon the lessee. The provision also envisages extension of period of lease on payment of the rents stipulated in that regard. A conjoint reading of all these provisions contained in the Act, the Rules as also the Statutory Forms prescribed for execution of the lease-cum-sale agreements no doubt reserves in favour of the Board a right to re-enter upon the property allotted by it in the event of the default on the part of the allottee concerned, in fulfilling any one of the terms and conditions. The fact that the rights of the parties based on the allotments made by the Board are crystalised in the form of a proper lease-cum-sale agreement can also not be disputed. It may also be possible to say that the rights of the parties are governed by the stipulations contained in the said agreement. To the same effect is the view taken by this Court in W.A. No. 2416 of 1996 referred to earlier and relied upon by Mr. Hinchgeri. The question however is whether a statutory body like the respondent which is a undoubtedly an instrumentality of the State can in exercise of its powers reserved under Section 35 of the Act or those reserved in its favour under the terms of the agreements statutorily prescribed for the purpose, act arbitrarily and in defiance of the minimum requirement of the principles of natural justice. In fairness to Mr. Hinchgeri, it must be mentioned that he did not argue that the Board in exercise of its powers of re-entry or resumption has the prerogative to act arbitrarily or in violation of the principles of natural justice, even when the power to re-enter is according to Mr. Hinchgeri relatable to a contractual provision executed between the parties. If that be so, as indeed it appears to be, it would follow as a natural corollary that even when the rights of the parties are incorporated in a contract document, the respondent-Board would be duty bound to act fairly and in consonance with the doctrine of *audi alteram partem*. It cannot possibly arrogate to itself the power or a prerogative to act unfairly, unreasonably or in a fashion which may suggest discriminatory treatment as between two lessees, similarly situate. As an agency and instrumentality of the State, its action would be open to judicial review at least to the limited extent of examining whether or not the same have been taken by adoption of a process which is in itself fair, reasonable and non-discriminatory in nature. Once the decision making process adopted by the Board is found to be reasonable, fair and objective, the ultimate

result of such a process may not be open to question for in any such case this Court may not look into the merits of the decision, its concern being limited only to the decision making process. This is precisely what appears to have transpired in the case relied upon by Mr. Hinchgeri where even after this Court held that the rights of the parties are regulated by contract, this Court went on to interfere and fix a time schedule for approval of the plans and the construction by the allottee. This Court observed that beyond the pale of law, must be introduced an element of humanity for otherwise decision of law would mean nothing but dry bones".

7. Let us then examine in the backdrop of the above, the position in the instant case. The petitioner's version is that time for completion of the project had been extended by the Board itself till 31st of December, 1990. This extension is not in dispute nor is it disputed that this extension was granted by the Board upon being satisfied that the failure of the petitioner to commission the project was for good and acceptable reasons, for otherwise there was no room for the grant of any such extension. The question however is whether after the expiry of the said period the petitioner would be entitled to a fresh notice before a decision to resume the land was taken. According to Mr. Hinchgeri this was not necessary and he cited two reasons in support. Firstly, it was urged that a fresh notice was unnecessary, as an earlier notice granting him time in terms of Clause 4 had already been issued which according to the learned Counsel would suffice till such time an order of resumption was eventually passed. Secondly, because the order extending the period for completion of the project itself warned the petitioner that no further notice would be issued to him before resumption. Neither of these reasons can however stand closer scrutiny. The very fact that a notice had been issued to the petitioner earlier in terms of Clause 4 did not mean that such a notice would suffice for all times to come. As a matter of fact, the service of any such notice would pale into insignificance once the Board on its own or at the request of the petitioner decided to extend the period for completion of the project. With the extension of the period the entire lease-cum-sale agreement between the parties would be deemed to have been validated and continued till 31st December, 1990 and all previous developments or failures given a burial. The legal relationship between the parties being of a lessor and lessee till the sale is effected a notice to quit or termination of the tenancy would stand waived upon the extension of the lease or acceptance of the rent after the service of such a notice. Equally untenable is the other reason advanced by Mr. Hinchgeri. Merely because the extension order itself warned the petitioner that the resumption would not in future be preceded by a notice, did not make a fresh notice or opportunity optional. An authority discharging a statutory or other duty which has the potential of affecting the rights of the citizens cannot make the application of the principles of natural justice to its actions discretionary at its sweet will. The application of the doctrine is in all such situations necessary not because the authority who takes the action has voluntarily agreed to be bound by the same but because failure on its part to abide by the said principles would

be unfair and repulsive to the concept justice and fairplay in action. The very fact that the Authority had on its own decided not to issue a fresh notice to the petitioner before issuing the resumption order impugned, is therefore wholly inconsequential.

8. There is however a distinction between a notice in terms of Clause 4 and that demanded by the principles of natural justice. A notice in terms of contractual stipulation may be generous beyond the requirements of the doctrine, and would not entitle the party concerned to enforce it in the writ jurisdiction of this Court. A grievance based upon the non-adherence to any such stipulation may however be permissible in a civil action. What this Court is concerned with is to see whether the bare minimal requirement of a hearing and notice has been complied with by the authority. The requirement of any such hearing and notice does not necessarily extend to a 4 months notice as contemplated by Clause 4 of the lease-cum-sale agreement. No such shorter notice was also ever issued to the petitioner at any time after 31st of December, 1990 till the date the issue of the resumption order. The resumption order is in the circumstances on the face of it in violation of the principles of natural justice and hence unsustainable.

9. There is yet another angle to which I must advert at this stage. According to the respondent a local mahazar of the site in question was prepared by the Assistant Engineer concerned on 12th of July, 1996 which has been produced as Annexure-R1 to the statement of objections. The mahazar shows that the allottee has constructed a factory building over an area of 236.80 sq. mts. and the premises carries a Sign Board of M/s. Peenya Industrial Techniques. The mahazar further records that as per local enquiries made, the factory building was completed during 1993-94. It is therefore apparent that a factory building does exist on the site in question as on date, no matter according to the respondent-Board and the enquiries said to have been made by its Assistant Engineer, the same was built in the year 1993-94. The question however is whether any such local enquiry as to when was the factory built, made apparently behind the back of the petitioner, is sufficient to support the Board's case that the factory was a subsequent development. If one were to go to the petitioner's version the factory had reached the roof level in November 1991 itself. Suffice it to say that even according to the respondent-Board there is a factory premises standing on the site as on date as against which the resumption order impugned suggests as if no progress had ever been made towards the construction of the factory. A notice to the petitioner in these circumstances would have given him an opportunity to show as to when was the factory actually constructed and to explain the delay beyond 31st of December, 1991. Absence of any such notice has obviously deprived the petitioner of any such opportunity which in fairness ought to have been granted to him.

10. In the result, this petition succeeds and is hereby allowed. The impugned order dated 12th February, 1992 is quashed, reserving liberty for the respondent-Board to pass a fresh order on the subject after giving to the petitioner an

opportunity of being heard against the same and keeping in view the observations made hereinabove. In the circumstances of the case I leave the parties to bear their own costs.