
(1986) 07 MAD CK 0031
In the Madras High Court

Plastubes

APPELLANT

Vs

The Tamil Nadu Small Industries Development Corporation

RESPONDENT

Date of Decision : 22-07-1986

Acts Referred:

Citation : (1987) 100 LW 13 : (1987) 1 MLJ 324

Hon'ble Judges : Shanmukham, J

Bench : Division Bench

Judgement

Shanmukham, J.—The petitioner is the allottee of the respondent in respect of Developed Plot Number 28 (North Phased) with an extent of

Order 42 acre at Developed Plot Estate, Guindy, Madras-32. The conditions of the allotment are incorporated in the deed of assignment dated

21st February, 1975. He has approached this Court under Article 226 of the Constitution of India seeking the relief of calling for and quashing the

respondent's Order dated 30th July, 1985 bearing Ref. No. 58599/N3/84 by issue of a Writ of Certiorari or such other proper direction or Order

because under the said Order the respondent refused to revoke its earlier Order of cancellation made in Ref. No. 41448/N3/77, dated 3rd

December, 1979.

2. The relevant facts to be noticed are set out below : The deed of agreement is dated 21st February, 1975. The petitioner was put in possession

of the allotted site on 19th June, 1975. No objection certificate regarding the approval of the plan was issued on 27th October, 1976 by the

respondent. It is now convenient to refer to Clause 12(1) of the agreement. It runs as follows:

On taking possession of the plot construction of factory buildings will have to be

commenced within six month from the date of approval of the plans by the party of the first part and be completed within two years. Before commencing such construction of works on the allotted plot, the allottee should strictly follow the following building regulations prescribed, among other things:

(i) All buildings to be constructed should be in conformity with the bye-laws of the local body and regulations in force from time to time as well as

any other laws, rules and regulations in force relating to the construction and use of the premises. No construction work shall be commenced until

the party of the second part submits to the party of the first part the building plans and elevations and also proof of having obtained clearance for

the same from the various authorities like Directorate of Town Planning, the Local Authority, Public Health Authorities, Inspectorate of Factories

and such other approvals which may be required under any law for the time being in force. The party of the first part reserves the right to suggest

such, notifications and alterations which may be in the common interest.

Thus, it is clear that the construction of factory buildings will have to be commenced within six months from the date of approval of the plans by the

party of the first part (respondent herein) and be completed within two years from the commencement of such construction of work on the allotted

plot. Immediately, it is useful to refer to the respondent's Order of cancellation made by his letter dated 3rd December, 1979. In paragraph 3, it is

stated as follows:

As per Clause 7 of the Allotment Order, the construction of building should be commenced within six months from the date of taking possession of

the plot, after getting approval of the Building plan by this Corporation.

In this letter, the respondent refers to Clause 7 quoted in their letter dated 21st February, 1975. But it is common ground that subsequently the

parties entered into a regular deed of agreement dated 21st February, 1975 and also duly registered. Then the only reasonable conclusion is that

the rights and liabilities of the parties have to be only in the deed of agreement dated 21st February, 1975. It is nowhere found either in the

respondent's letter dated 21st February, 1975 or in the deed of agreement which is a, supplement to the earlier covenant agreed to between the

parties in the respondent's letter dated 21st February, 1975. If there is no such

indication either expressly or at least impliedly, as already pointed out by me, the reasonable interpretation is that the parties are governed by the terms contained in the deed of agreement alone. Besides, if there is any conflict between the conditions referred to in the respondent's letter dated 21st February, 1975 and those incorporated in the deed of agreement, it is reasonable to presume that the later agreement entered into between the parties alone should prevail.

3. Coming to Clause 12 of the agreement construction of factory buildings will have to be commenced within six months from the date of approval

of the plan by the party of the first part (respondent herein) and be completed within two years from such commencement. I have already referred

to the fact that the date of approval of the plan by the respondent was on 21st October, 1976. In the teeth of such covenant, the cancellation of the

agreement made by the respondent by their letter dated 3rd December, 1979 under Ref. No. 41448/N3/77 on the ground that the construction of

building was not commenced within six months from the date of taking possession of plot is not valid. As a matter of fact that the respondent was

conscious of this position is evident from the averments in paragraph 4 of the counter affidavit filed on behalf of the respondent. It is stated that No

Objection Certificate regarding the approval of the plan was issued on 27th October, 1976, by the respondent Corporation and that the writ

petitioner should have commenced construction within six months from 27th October, 1976, i.e. on or before 26th April, 1977 and should have

completed the construction by 26th October, 1978. Thus, on their own showing the cancellation of the allotment by the respondent on the ground

that it is in violation of Clause 7 of the allotment Order is contrary to the agreement entered into between the parties.

4. Secondly, the time factor by which the petitioner shall commence construction and shall complete the same has to be determined with reference

to all the terms agreed to between the parties. In the instant case, it is Clause 12 of the agreement which plays a vital role. I have already extracted

Clause 12 of the agreement. It is clearly stipulated therein that all buildings to be constructed should be in conformity with the byelaws of the local

body and regulations in force from time to time as well as any other laws, rules and regulations in force relating to the construction and use of the

premises. It is further made clear that no construction work shall be commenced until the petitioner submits to the respondent the building plans and elevations and also proof of having obtained clearance for the same from the various authorities like Directorate of Town Planning, the Local Authority, Public Health Authorities, Inspectorate of Factories and such other approvals which may be required under any law for the time being in force. Thus, the parties have specifically stipulated that before any building were to be constructed, the petitioner shall obtain necessary plan from all the authorities concerned and that until the petitioner submits that the building plans and elevations to the respondents with proof of having obtained clearance from all relevant statutory bodies, construction work shall not commence. In other words, the petitioner shall not commence construction till he obtains necessary sanction from all the statutory authorities concerned and that till he submits the plan after such compliance, to the respondent. It is true that in the opening part of Clause 12 there is a stipulation that the building should be completed within two years from the commencement of such construction. But Clause 12 has to be read as a whole to perceive what really the parties intended and if so read, it follows that the two years period stipulated in the opening part of Clause 12 is not a definite period, but then the parties agreed that the petitioner shall comply with the bye-laws of the local bodies and building regulations and any other Regulations in force, both relating to the construction and use of the premises. When the parties entered into such a stipulation, it is reasonable to presume that both must have been conscious to the delay in the petitioner obtaining such sanction from several statutory authorities. In this case, the petitioner, has stated that he applied for licence to build a superstructure not only to the Corporation of Madras, but also to the Madras Metropolitan Development Authority on 25th November, 1977. The said application was rejected by the Corporation of Madras in January, 1978 on the ground that necessary clearance from the Competent Authority under Urban Land Ceiling Act was not obtained. Thereafter, the petitioner applied to the Urban Land Tax Authorities on 29th September, 1978. On 27th February, 1984 sanction was accorded to the petitioner by the Urban Land Ceiling Authority. In the meanwhile the respondents by their letter dated 15th November, 1978 warned the petitioner that "if no reply from the petitioner is received before 5th December,

1978 and also if the terms and conditions are not fulfilled by the petitioner before 5th December, 1978 action will be taken to cancel the allotment

and to resume the plot". Ultimately, as already referred to by their letter dated 3rd December, 1978 the respondent has cancelled the allotment.

5. It is convenient at this stage to refer my Order made in W.M.P. No. 2 725 of 1986. That, was an application by the petitioner herein for

injunction restraining the respondent from interfering with his possession and enjoyment of the plot of land bearing No. 28 pending disposal of the

writ petition. The said application was resisted by the respondent on the ground that they had resumed possession on 18th April, 1985. Finally, I

accepted the above interim petition filed by the petitioner. Learned Counsel for the respondent could not place any other additional factor for me

to change my conclusion that the respondent ever resumed possession on 18th April, 1985 I have to therefore rely on my finding that there was no

resumption as alleged by the respondent.

6. From a fair reading of the Calsue 12, it is manifest that no construction of the building can be commenced until the petitioner obtains sanctioned

plan, complying with all the formalities and after complying with the several regulations, in particular, the Urban Land Ceiling and until he submitted

the duly sanctioned plan to the respondent. No doubt there has been delay in the petitioner making his application to the Urban Land Ceiling

Authorities. But had the respondent relied only on such laches on the part of the petitioner and cancelled the agreement, the position might have

been different. Unfortunately, the respondent stuck to their position as found explicit in their letter dated 3rd December, 1979 and reiterating in

the" impugned ordei dated 30th July, 1985, Besides, the respon dent had not properly understood the condition No. 12 in the agreement. It is the

misreading of this provision which has misled the respondent to interpret that because the building was not constructed within six months from the

date of possession and because the same was not completed within two years therefrom, there is a contravention of the agreement between the

parties, which enabled the respondent to resume possession. There was an opportunity to the respondent to understand the real design in Clause

12 and to charge the petitioner with not having complied with the conditions; that was on 30th July, 1985. Unfortunately, the respondent did not

avail of that opportunity but stuck to the old position reflected in their letter dated 3rd December, 1979. Even in the counter affidavit, the present

contention i.e., that there was delay on the part of the petitioner in making necessary applications to several statutory authorities is not taken. Then

it is no more open to the respondent to put forth such an objection. Further, had they raised such an objection, the petitioner would have had an

opportunity of meeting such a case. Such an opportunity is now denied to the petitioner. It is therefore, I am to reiterate, that the respondents are

not entitled, in the circumstances of the case, to rely upon the laches on the part of the petitioner in the latter making applications to several

authorities, and to cancel the agreement on that score.

7. I have already pointed out that the cancellation of the allotment to the petitioner is quite contrary to Clause 12. It would therefore follow that

such cancellation is arbitrary and cannot be held valid in law.

8. Nevertheless, Learned Counsel relied upon the decision of the Supreme Court in Radhakrishna Agarwal and Others Vs. State of Bihar and

Others, and Chandrika v. Divisional Railway Manager, Southern Railway Madras (1984) W.L.R. 190 to contend that the petitioner is not entitled

to invoke to his aid Article 226 of the Constitution of India because the rights claimed by it arise out of contract between the parties and because it

has no complaint that there is any violation of any statutory rules by the respondent.

9. As Nainar Sundaram, J. has followed the Supreme Court's decision reported in Radhakrishna Agarwal and Others Vs. State of Bihar and

Others, : it is correct to quote certain passages from his judgment:

The Supreme Court approved the following division of the types of cases involving breaches of alleged obligations by the State or its agents, as

done by the Patna High Court from whose decision the matter had come before the Supreme Court:

(1) Where a petitioner makes a grievance of breach of peace on the part of the State in cases where no assurance or compromise is made by the

State he has acted to his prejudice and predicament but the agreement is short of a contract within the meaning of Article 226 of the Constitution;

(2) Where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or Rules

framed thereunder and the petitioner alleges a breach on the part of the State; and

(3) Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities

on the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State.

According to the learned Judge, the law is well settled that if there is a violation of the rights of a contract simpliciter which has neither a source

under a statute nor is circumscribed by statutory terms or obligations, such violation of contractual obligations cannot be remedied by writ petition,

merely on the ground that one of the contracting parties happens to be the Government or a Governmental Agency or a Statutory Corporation and

that in contractual sphere, even if one of the parties to the contract is a Government or a Governmental Agency or a statutory corporation, there is

no scope for importing the principles of natural justice unless it is found that the very source "of the contract is the statute or it contains or is

circumscribed by statutory terms or obligations. But for a later pronouncement of the Supreme Court in *Ramana Dayaram Shetty Vs. International*

Airport Authority of India and Others, . I am bound to respect the pronouncement of my learned brother. The ratio laid down in *Radhakrishna*

Agarwal and Others Vs. State of Bihar and Others, , as extracted in the judgment of my learned brother, is that no party is entitled to invoke to his

aid. Article 226 of the Constitution of India, where the contract entered into between the State and the person aggrieved is non-statutory and

purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of

such contract by the State. In view of the later pronouncement in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*,

the ratio laid down by the Supreme Court in *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, has to be understood on the facts

in that case. It is, therefore, necessary to refer to the facts in the later decision of the supreme Court. In that case, on or about 3rd January, 1977 a

notice inviting the tender for putting up and running a second class restaurant and two snack bars at the International Airport of Bombay was issued

by the International Airport Authority of India, which is a corporate body constituted under the International Airport Authority Act"" 43 of 1971.

As per the notice, the tenderer shall comply with certain conditions. There were six tenders received by the said Authority. Ultimately the Authority

accepted the tender of Kumaria, A.S. Irani, the fourth respondent therein. Admittedly, he did not satisfy the conditions imposed in the tender.

None the less, his tender was accepted. It is in these circumstances, the petitioner challenged such acceptance of the tender of the fourth

respondent by the said Authority complaining of arbitrariness on the part of the said Authority. A three member Bench of the Supreme Court, as in

the case of Radhakrishna Agarwal and Others Vs. State of Bihar and Others, , held that the action of the authority in accepting the tender even

though it did not satisfy the prescribed condition of eligibility, was clearly discriminatory, since, it excluded other persons situated similarly, from

tendering and persons aggrieved by exclusion are entitled to challenge the arbitrary action by means of writ petition. Even though it was merely a

tender there was no concluded contract as such. Such tender is not relatable to any statutory provision of rule; in other words, if the tender was

accepted there would have come into existence a simple contract between International Airport. Authority of India and the person whose tender is

accepted. Even then the Supreme Court interfered with such action on the part of the International Airport Authority of India. Immediately, I have

to point out that this later ruling of the Supreme Court was not brought to the notice of my learned brother. Had it been brought to the notice of my

learned brother, it may be he would have taken the decision as he had done in Ramana Dayaram Shetty Vs. International Airport Authority of

India and Others, . I must also reiterate that the law is not static, but is always progressing depending upon the advancement made in the society.

In my view, therefore, the contention advanced by Mr. M.R. Narayanaswami, learned senior Counsel for the petitioner, that if the action of any

statutory body coming within Article 12 of the Constitution is found to be arbitrary, this Court is entitled to interfere with such action and grant

relief to the petitioner, exercising writ jurisdiction under Article 226 of the Constitution of India. The principle underlying Radhakrishna Agarwal

and Others Vs. State of Bihar and Others, is when there is an effective and alternative remedy, the Court shall not readily exercise its jurisdiction

under Article 226. In this case it will be not in the interest of the respondent to refer the petitioner to a suit on the peculiar facts, because the

respondent would only be involved in a long drawn litigation.

10. In the result, the petition succeeds and the rule nisi is made absolute. I make no Order as to costs.