

(2016) 07 JH CK 0002

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4034 of 2008.

**Poly Chem Udyog, a Proprietorship Firm, District Saraikela Kharswan -
Petitioner @HASH Adityapur**

Date of Decision : 20-07-2016

Acts Referred:

Citation : (2017) 2 AIRJharR 99 : (2016) 4 JBCJ 442 : (2016) 4 JLJR 122

Hon'ble Judges : Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mrs. A.R. Choudhary, Advocate, for the Petitioner; M/s. V.P. Singh, Sr. Advocate, R. C. P. Sah, C. A. Bardhan, Advocates, for the Respondent-A.I.A.D.A

Final Decision : Disposed Off

Judgement

Mr. Aparesh Kumar Singh, J. - Heard learned counsel for the parties.

2. Petitioner's allotment of land no. NS 24, 1st Phase, Adityapur Industrial Area on 18th August, 1993, having an area of 5000 Sq. Ft. for the approved project of manufacture of "Detergent Power, was cancelled by the impugned order bearing no. 1476/ADA dated 9th July, 2008 (Annexure-5/1) passed by Managing Director, Adityapur Industrial Area Development Authority, Jamshedpur (hereinafter referred to as "AIADA"), inter alia on the following grounds:

- (i) petitioner had let out the allotted piece of land to four different Units;
- (ii) an amount of Rs. 87,274.00 is due to A.I.A.D.A which has not been paid;
- (iii) it has also encroached upon adjacent area and
- (iv) it had not started the industrial activity, for which plot was allotted to the unit, which is in violation of terms and conditions of allotment.

Petitioner has approached this Court being aggrieved thereof.

3. The matter remained pending and no interim protection was granted earlier by this Court to the petitioner. Respondent-A.I.A.D.A also did not choose to take

steps for its eviction even after cancellation of its allotment on 5th July, 2008 itself.

4. When the matter was taken up earlier on 25th August, 2015, a Coordinate Bench of this Court directed the respondent-A.I.A.D.A to submit inspection report as to physical status of unit. The inspection report has been filed by way of affidavit dated 16th October, 2015 as Annexure-C. Perusal of inspection report dated 19.9.2015 inter alia reveals the following facts:

(i) Unit has constructed a new shed of 121"x 47" with total area now coming to 5687 sq. ft.

(ii) toilets etc. are also being constructed over an area of 152. 2 sq. ft. (iii) a guard room and temple have also been constructed on an area of 117.6 sq. ft. to the right of main gate of unit.

The following equipments were found:

1.

Generator 63 KVA

: 01 Nos.

2.

Welding Machine Make Alaid 400 amp

: 01 Nos.

3.

Calton welding machine 400 amp

: 01 Nos.

4.

Calton welding machine 200 amp

: 05 Nos.

5.

Pipe bending CNC machine

: 01 Nos.

6.

Power press machine

: 01Nos.

7.

Hand grinding machine

: 03 Nos.

8.

Power coating machine

: 01 Nos.

9.

Drill machine

: 01 Nos.

5. It is also reported that the Unit was given allotment for manufacturing of Detergent Power, but presently it is engaged in the activity of Sheet Metal Auto Components & Job Work, which is contrary to the allotment order. No permission for change of industrial activity has been taken. Therefore, the action is contrary to Rules. Petitioner Unit was originally allotted 5000 sq. ft. of land, but it has encroached 2003 sq. ft. of land on adjacent road and undertaken construction of temple, toilets and guard room etc. Earlier at the time of passing of the order of cancellation, the unit was found to have been encroached 1800 sq. ft. of land.

The following papers were furnished during inspection by Unit:

(i) Invoice for the period May, 2015 to September, 2015,

(ii) electricity bill for the period July, 2015 and November, 2015,

(iii) documents relating to machine equipments lying in the unit

(iv) certain receipts of payment to Municipal Corporation and Bank statements were not furnished.

The inspections were carried out by officials of Respondent-A.I.A.D.A.

6. It is pleaded by counsel for the petitioner and also evident from the records that though the petitioner Unit did not start industrial activity as per the approved project of manufacturing of detergent power earlier and notices were issued upon it on 23rd May, 1997, 27th October, 1997 and 11th July, 2006, but the Respondent-A.I.A.D.A chose to cancel the allotment only on 5th July, 2008 by the impugned order at Annexure-5. It is submitted that petitioner unit could not manufacture detergent power as it was unviable despite serious efforts were made. Thereafter, it started undertaking the machining work. The inspection made now has also found it to be currently engaged in the manufacturing activity of Sheet Metal Auto Components & Job Work. It is further stated that petitioner has given an undertaking by way of supplementary affidavit dated 20th June, 2016 that it would vacate any encroached land as alleged by A.I.A.D.A beyond allotted piece of land of 5000 sq. ft.

7. Counsel for the petitioner submits that at this stage when industrial activity has been found on inspection being carried out by the petitioner, one opportunity may be granted to it to seek change of approved project from manufacturing of detergent power to that of machining work, which in fact is a viable activity in the industrial area because of existence of related industries in the vicinity of Jamshedpur. No purpose would be served to evict the petitioner after almost 23 years of his allotment when a viable industrial activity is being carried out by it in consonance with the aims and object of Industrial Area Development Authority Act, 1970. Petitioner is ready to prove its bona fide and submit all requisite documents as also clear any outstanding dues in relation to the allotted unit, if A.I.A.D.A is ready to reconsider the request of the petitioner. It is also submitted that present Industry's employs about 50 workmen and if the project is approved by A.I.A.D.A, then at least 100 persons would have permanent job in the industry. Therefore, counsel for the petitioner has prayed for reconsideration of the matter at the ends of respondent-A.I.A.D.A

8. Counsel for respondent-A.I.A.D.A submits that petitioner Unit had all along been defaulting in execution of approved project as has also been found during earlier inspection and in the present inspection carried out in the month of September, 2015. In fact, the Unit had indulged in subletting piece of land to different entrepreneurs without authority of law. It had also failed to pay the outstanding arrears of A.I.A.D.A. The terms and conditions of allotment and lease have been violated. The impugned order of cancellation of plot was passed in those circumstances after giving due opportunity to the petitioner. He further submits that there can be reconsideration of the petitioner's case, if directed by this Court only if the petitioner removes the encroachment within a specific time frame.

9. Counsel for the respondent-A.I.A.D.A however is not able to dispute that even after issuance of notices way back in 1997 and in 2006 relating to alleged violation respondent-A.I.A.D.A chose to pass the order of cancellation only in July, 2008 after almost 15 years of the original allotment and even thereafter has failed to evict the petitioner all along till date. Learned senior counsel has also not disputed the current status of the Unit borne out on inspection carried out on 19.9.2015 by the authorities of A.I.A.D.A pursuant to the interim order passed earlier. It shows manufacturing activity relating to Sheet Metal Auto Components & Job Work being carried out by the petitioner Unit.

10. I have considered the submission of the parties in the light of the relevant material facts pleaded. As has been noticed in the sequence of facts herein above that though the petitioner Unit was apparently not conforming to the terms and conditions of the allotment order and had not carried out the approved project for long, respondent-A.I.A.D.A chose to issue show cause notices in 1997 and thereafter only in 2006 before passing of the impugned order in July, 2008. The Unit was allowed to continue even thereafter though there was no interim order in its favour. Petitioner Unit has not been evicted from the plot in question

thereafter. Now the inspection carried out by officials of A.I.A.D.A have revealed that industrial activity relating to manufacture of Sheet Metal Auto Components & Job Work is being carried out by the petitioner and that presence of machines etc. have also been found. The aims and object of Industrial Development Authority Act, of course is to encourage industrial activity by serious entrepreneurs. In that case, if petitioner is carrying out an industrial activity and the provisions of the Act and Regulation made thereunder permit change of approved project to a new project and that petitioner is able to show his bona fide with all supporting documents that the proposed project is viable in nature, one opportunity should be granted to petitioner and the matter can be reconsidered by respondent-A.I.A.D.A. However, while observing as above, it is equally imperative on the part of the petitioner to vacate any area found encroached beyond allotted 5000 sq. ft. of its original allotment within a period of 3 weeks from today. Respondent-A.I.A.D.A upon being satisfied that all such encroachments have been removed, would entertain the application of petitioner for approval/change of the new project proposed by the petitioner. Needless to say, during such reconsideration, petitioner has to fulfil all requirements of law, submit all supporting documents, clear all outstanding dues and also able to establish that the proposed project is viable in nature. Needless to say on such reconsideration, it would be open for the AIADA to take a decision in accordance with law on all such objective considerations.

In view of what has been observed herein above, the impugned order dated 9th July, 2008 would not stand in the way of respondent-A.I.A.D.A to undertake such reconsideration. However, if the petitioner fails to remove the encroachment within the aforesaid time, the respondent-AIADA would be free to take steps for removal of the encroachment and eviction of the petitioner in terms of the order dated 9th July, 2008 in accordance with law.

11. Accordingly, the writ petition is disposed of with the aforesaid observations and directions.