

(2013) 12 JH CK 0022

In the Jharkhand High Court

Case No : L.P.A. No. 80 of 2013 with W.P. (C) No. 5395 of 2012

Ranchi Industrial Area Development Authority and Another APPELLANT
Vs

M/s. Fillfured Marketing and Manufacturing Corporation and RESPONDENT
Others
 M/s. Sharda Enterprises Vs The State of
Jharkhand and Others

Date of Decision : 10-12-2013

Acts Referred:

Citation : (2013) 12 JH CK 0022

Hon'ble Judges : R. Banumathi, C.J.;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : V.P. Singh, in L.P.A. No. 80 of 2013, Mr. Ashok Kumar Yadav, Mr. Indrajeet Sinha, Mr. Sumeet Gadodia for Writ Petitioners, for the Appellant; Rajeev Ranjan, for the Respondent

Judgement

1. Being aggrieved by the order dated 16.1.2013 passed in W.P. (C) No. 7124/2012, by which learned Single allowed the writ petition quashing Annexure-9, show cause notices of alleged violation of the terms and conditions of allotment of lease deed, the appellant, Ranchi Industrial Area Development Authority (RIADA), filed this appeal. The appellant/RIADA is a statutory body created under the Bihar Area Development Authority Act, 1974. The appellant allotted plot to various allottees for industrial purpose. The appellant alleges that instead of using the allotted land for industrial purposes, in violation of the terms and conditions of allotment order/lease deed, the allottees used the allotted land partially or fully for residential purposes, which are in clear violation of the terms and conditions of the allotment order. On 14.7.2012, vide letter no. 728, the appellant issued a general notice which was published on 16.7.2012 in the newspaper, the "Prabhat Khabar", Ranchi, against 80 units calling upon them for placing their cases in writing along with evidence, if any, stating therein as to why their allotment orders be not cancelled for violation of terms and conditions. Challenging the said notice published in the newspaper, the "Prabhat Khabar", Ranchi, some of the allottees had filed W.P. (C) No. 7124/2012. Learned Single

Judge held that before taking any harsh penal action against the allottees/lessees, they should be put to notice specifying the alleged violation so that individual allottees may furnish their explanation. Learned Single Judge quashed the impugned notice on the ground that it is vague and ambiguous and does not stand in the eye of law.

2. Challenging the order passed in W.P. (C) No. 7124/2012, the appellant-RIADA has filed this LPA. On being mentioned, with the consent of the learned counsel for the parties, other connected writ petitions, being W.P. (C) Nos. 5395/2012, 5496/2012, 5510/2012 and 5687/2012, were also taken and tagged with this L.P.A. and the matters were heard together.

3. In the L.P.A., learned Senior Counsel appearing for the appellant submitted that learned Single Judge was not right in saying that the notice was vague and ambiguous and the notice should have specifically pointed out the allegation. Learned Senior Counsel for the appellant further submitted that out of 80 units, some of allottees appeared before the authorities and submitted their explanation and those cases were disposed of. The learned Senior Counsel contended that sufficient notice had been given to the allottees before passing order cancelling allotment and while so, learned Single Judge was not right in quashing the public notice itself.

4. Learned counsel for the respondents, Mr. Rajiv Ranjan, submitted that there cannot be a general notice alleging violation of the terms and conditions of the allotment order/lease deed and allottees ought to have been issued individual notices to enable the allottees to submit their explanation. Learned counsel contended that in the general notice dated 16.7.2012, it was alleged that the allottees committed violation by either partially or wholly utilizing the allotted plots for residential purposes and the notice issued is vague and ambiguous and therefore, learned Single Judge rightly quashed the impugned notice on the ground of vagueness.

5. We have heard Mr. Ashok Kumar Yadav, Mr. Indrajeet Sinha and Mr. Sumeet Gadodia, learned counsel appearing for the writ petitioners in W.P. (C) Nos. 5395/2012, 5496/2012 5510/2012 and 5687/2012. In writ petitions, it was contended that in furtherance of the paper publication of the notice dated 16.7.2012 and also of individual notices, some of the writ petitioners appeared and submitted their statements on 25.8.2012 and on the same day, i.e. on 25.8.2012, the authority, RIADA, passed order hastily cancelling the allotment which showed that there was non-application of mind on the part of the RIADA. It was also submitted that even though in the notices, it was alleged that the allotted plots were partially used for residential purposes, the final orders of cancellation of allotment was passed on a different ground, namely, units were nonfunctional and closed and the orders passed by the authority is vitiated on this ground also.

6. We have carefully considered the submissions of the learned Senior Counsel

appearing for RIADA and also of the learned counsel for the respondents-allottees.

7. The RIADA allotted the plots to the allottees in the year in or about 1972-1982. Since then the allottees have established various industrial units and also are said to be running the industries. As per the terms and conditions of allotment, the allotted plots should be used only for industrial purposes. Alleging that the allottees have violated the terms and conditions of allotment by partially using the allotted plots for residential purposes, a general notice was published in the newspaper, the "Prabhat Khabar" on 16.7.2012, Ranchi, against 80 units for their appearance before the RIADA for placing their cases as to why their allotment orders be not cancelled for violation of terms and conditions of not utilizing the land as per approval of the project. As against all the 80 allottees, the alleged violation is one and same. After the general notice, individual notices were sent to the allottees on 18.8.2012 calling upon them to appear before the Director, RIADA, along with documents/details as indicated in the individual notices. As rightly pointed out by the learned Single Judge, cancellation of allotment is a harsh penal action against the allottees/lessees and the allottees should have been put to a notice specifying the alleged violation. The impugned notice issued in the newspaper, the "Prabhat Khabar", is very vague and the notice dated 18.8.2012 issued to individual allottees are stereotype ones without specifically indicating the alleged violation.

8. Cancellation of allotment is a harsh action, for which issuance of show cause notice must be effective indicating the specific violations. Individual notices to the allottees must have preceded the public notice. But the public notice was issued in the "Prabhat Khabar" on 16.7.2011 and only thereafter individual notices were issued to the allottees on 18.8.2012, which, in our considered opinion, cannot be said to be an effective show cause notice.

9. Be that as it may, in the year 2011 notices were issued to the allottees alleging that the units are not functional and the allottees have committed violation of the terms and conditions. In the year 2011, allottees have also submitted their explanation but no orders were passed at that time.

10. Learned Senior Counsel appearing for RIADA submitted that in furtherance of the general notice published in the "Prabhat Khabar" and also individual notices, some of the allottees appeared and submitted their show cause and orders were also issued by the authorities and while so, it was not open to the allottees to approach the High Court challenging the notices.

11. Of course, the writ petitioners have appeared before the authority and submitted their explanation on various dates, 25.8.2012 or 29.8.2012. It is pertinent to note that the RIADA, on the same day on which the allottees submitted their statements, passed the orders cancelling the allotment, indicating thereby that the show cause submitted by the individual allottees were either not considered or orders were hastily passed cancelling the allotment.

There ought to have been proper application of mind with regard to the materials placed before passing the orders cancelling the allotments.

12. According to the writ petitioner (W.P. (C) No. 5687/2012), it had no knowledge of the general notice issued in the "Prabhat Khabar" on 16.7.2012, nor had knowledge about the date fixed for appearance of the petitioner on 25.8.2012. According to the writ petitioner, it came to know only through memo no. 991 dated 29.8.2012 that a sum of Rs. 20054.24 was outstanding and the petitioner immediately paid the said amount of Rs. 20054.24, vide receipt no. 19471 dated 8.9.2012 and the petitioner also filed representation on 7.9.2012. According to the petitioner, without affording any opportunity by the proceedings dated 29.8.2012, the order of allotment was cancelled which is in violation of the principles of natural justice.

13. According to the writ petitioner, (W.P. (C) No. 5395/2012), it appeared before the authority on 25.8.2012 and filed its written representation explaining that the petitioner-unit was not being used for residential purposes and its unit was a functional one and the RIADA had passed order on 25.8.2012 itself cancelling the allotment with a further direction to vacate the land including removal of fixture, plants and machineries from the plot.

14. Likewise in W.P. (C) NO. 5496/2012, the writ petitioner appeared on 25.8.2012 explaining that it had not violated any terms and conditions and on 30.8.2012, on the same day, order was passed cancelling the allotment and the petitioner received the order dated 25.8.2012 communicated through letter no. 995 dated 29.8.2012 cancelling the allotment made in favour of the petitioner with a direction to vacate the allotted land situated at plot no. 25.

15. In W.P. (C) No. 5510/2012, on receipt of the order dated 18.8.2012, the writ petitioner appeared before the Managing Director, RIADA, on 31.8.2012 and filed a detailed show cause by letter dated 31.8.2012 and on the same day, i.e. on 31.8.2012, the order was passed cancelling the allotment made in favour of the petitioner with a further direction to vacate the land within 15 days from the date of receipt of the order.

16. By a reading of the averments made in all the writ petitions and also considering the contentions of the writ petitioners, it is seen that the order cancelling the allotment was passed by the RIADA on the same day on which the writ petitioners appeared and filed their detailed show cause. In our considered view, the detailed show cause filed by the writ petitioners were not duly considered and the order of cancellation of allotment had been hastily passed. Cancellation of allotment is the harsh penal action taken by the RIADA. After the allottees have shown cause, there has to be proper application to the materials placed and orders must have also due consideration. The fact that cancellation order was passed on the same day of submitting the detailed show cause indicates that there was no proper application of mind and the authority, RIADA, proceeded in a pre-determined manner.

17. It is also pertinent to note that the notices were issued alleging violation on the ground that the allotted plots are partially used for residential purposes, but the orders of cancellation of allotment were issued on a different ground that the units are non-functional and that again indicates non-application of mind by the authority, which, in our considered view, vitiates the order of cancellation.

18. According to the respondents/writ petitioners, the allotted plots are only used for industrial purposes and only a small portion is used for residential purpose for housing the workmen, security guards and also for office purpose and the same cannot be said to be in violation of the terms and conditions of the order of allotment. We are, thus, of the view that adequate opportunity is to be afforded to the respondents/writ petitioners to explain their show cause before any order of cancellation of allotment being passed.

19. Learned Single Judge was right in quashing the impugned notices dated 14.7.2012/16.7.2012 and L.P.A. is dismissed. Orders dated 25.8.2012 (passed in W.P. (C) No. 5395/2012), 29.8.2012 (passed in W.P. (C) Nos. 5687 & 5496 of 2012) and 31.8.2012 (passed in W.P. (C) No. 5510/2012) are quashed and the writ petitions are to be allowed. In the result, L.P.A. (arising out of W.P. (C) No. 7124/2012) is dismissed and the writ petitions, being W.P. (C) Nos. 5395/2012, 5496/2012 5510/2012 and 5687/2012 are allowed. The RIADA is directed to afford sufficient opportunity to the respondents of L.P.A. as well as to the writ petitioners and consider the same and pass orders in accordance with law. It is made clear that the order passed by this Court is only in respect of those who approached this Court by filing writ petitions.