

(2005) 09 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 49342 of 2004

Sage Enterprises

APPELLANT

Vs

Karnataka Industrial Area Developmental Board (KIADB) and
Another

RESPONDENT

Date of Decision : 16-09-2005

Acts Referred:

Citation : (2005) ILR (Kar) 5985 : (2006) 5 KarLJ 123 : (2005) 4 KCCR 288 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : K.C. Shivasubramanian, for the Appellant; B.R. Srinivasa Gowda, for R-1 and R-2, for the Respondent

Final Decision : Dismissed

Judgement

V. Gopala Gowda, J.—The petitioner is a Partnership firm. The Karnataka Industrial Areas Development Board (hereinafter referred to as "the Board") allotted 9992 sq.mtrs in Plot No. 1 (A) in Sy. Nos. 17, 18 and 19 of Veerasandra Industrial Area for establishing a factory. Lease-cum-Sale agreement as per Annexure- A dated 25-6-1983 was executed in favour of the petitioner for a period of 11 years commencing from 25-2-1983. Possession Certificate as per Annexure-B dated 26/28-2-1983 was also issued. Clause 2(n) (ii) of the agreement reads as under:

"(n). To use the demised premises only for the purpose of Porcelain, L.T. Insulators, Sanitary wares and polishing of granite stones and light fabric factory/ industry and not to use the demised premises or any part thereof for any other purpose nor for the purpose of any factory which may be obnoxious, or offensive by reason of emission of odour, liquid, "fluvia" dust, smoke gas noise, vibrations or fire hazards.

(ii) To commence the civil construction works within three months from the date of approval of the blue prints, after obtaining license from the Chief Inspector of

Factories and Boilers of Karnataka State".

In paragraph 4 of the writ petition the petitioner claims to have complied with the above clause by stating as under:

"4. Pursuant to the Agreement the petitioner invested huge amount and completed Civil Construction and erection of factory within the stipulated extended time in a portion of the allotted land and the Petitioner also commenced production activities, in fabrication unit. The Petitioner on 1-8-1984 sent a letter to the 1st Respondent informing the completion of construction of factory and commencement of fabrication unit/production. The same is produced herewith as Annexure-D".

It is further stated by the petitioner that in Annexure-E dated 2/6-4-1985 the Board has accepted the claim of the petitioner regarding commencement of production. The grievance of the petitioner is that since there were some unauthorized occupants, at the time of taking over possession, the entire plot allotted in its favour could not be taken and the respondents assured to remove the unauthorized occupants. The Board sent letter at Annexure-G dated 7-4-1986 to the 2nd respondent seeking details of acquisition. Nothing happened. After 10 years, the Board informed through its Development Officer as per Annexure-H dated 12-8-1997 to fix the boundaries of the plot allotted to the petitioner. In the meantime, one M/s. Bulgarian Foods Pvt. Ltd., the allottee of adjacent plot, encroached upon petitioner's plot and in that regard the Board informed the said firm to refrain from encroaching upon petitioner's portion. The Board also issued show cause notice to the petitioner as per Annexure-M dated 28-10-1996 stating that as to why the lease of the allotted industrial plot, should not be determined on the ground that petitioner has not constructed the factory building and commenced its production, for which the plot in question was allotted in its favour. The same was replied by the petitioner as per Annexure-N dated 25-11-1996 pointing-out the letter of the Board at Annexure-E dated 2/6-4-1985 accepting the commencement of production by the petitioner. Thereafter, the impugned order at Annexure-T dated 16-11-2004 was passed terminating the lease of the industrial plot made in favour of the petitioner. Being aggrieved by the same, the petitioner has filed this writ petition seeking to quash Annexure-T and to direct the respondents to fix the boundaries and to give actual physical possession of the allotted land excluding the portion acquired by the Government for widening of the road.

2. Learned Counsel for the petitioner Mr. Shiva Subramanyam, has filed additional Affidavit along with some documents to show that petitioner has constructed factory building and commenced the production. He contends that determination of lease of industrial plot invoking Clause 4 of the agreement is illegal, bad in law and violative of principles of natural justice. He further submitted that respondents have not taken into consideration the various representations and the explanation to the show cause notice furnished by the petitioner, including the letter dated 2/6-4-1985 vide Annexure-E addressed by

the Board to it. Therefore, he seeks to quash the impugned order and to direct the respondents to fix the boundaries of the plot allotted to the petitioner.

3. Per contra, Learned Counsel for the Board Mr. Srinivasa Gowda, has produced the original file and justified the impugned order by pointing-out the lapses on the part of the petitioner.

4. After hearing the Learned Counsel for the parties and perusing the documents, this Court proceeds to examine the merits of the case. The reasons assigned in the impugned order for termination of the lease are extracted hereunder:

"Whereas the allottee has constructed a small temporary shed measuring 8.10 Mtrs x 12.30 Mtrs with AC sheet roof, but failed to implement the project and utilize the land for the purpose for which it is allotted. There is also no construction activity in the plot, and land remains utilized.

In spite of time frame prescribed in the lease agreement and extension of time granted vide this office letter No. IADB/2824/15632/83-84, dated 18-2-1984 the allottee has committed the breaches of the agreement as detailed below:

- a) Failed to utilize the land for the purpose for which it is allotted. .
- b) Not established the Porcelain, LT Insulators, Sanitary Wares and Polishing of Granite stones and light steel fabrication unit, for the purpose of which the land was leased and the plot is kept vacant, even after lapse of more than 20 years from the date of handing over possession of land.

The obligations of the petitioner as per the terms of the lease agreement are also mentioned in the impugned order and they are:

- a) Submit the blue prints of the plan of the civil construction to the Lessor for prior approval within one month from the date of agreement.
- b) Commence the civil constructions works within three months from the date of approval of the blue prints, after obtaining license from the Chief Inspector of Factories and Boilers of Karnataka State.
- c) Commence the Civil construction works and erect machineries and commence production within twenty-four months from the date of taking possession of demised premises i.e. Twenty Fifth day of February month One thousand Nine Hundred and Eighty Three

The lease of the allotted plot was for a period of 11 years commencing from 25-2-1983. The lease period came to an end in the year 1994. So far the petitioner has not sought execution of absolute sale deed in its favour. Since the terms of the lease-agreement, as stated supra, are not complied with by the petitioner, it has no locus standi to seek any relief as it has no right whatsoever. On this ground alone the writ petition is liable to be dismissed.

5. The extent of Plot allotted was 9992 sq.mtrs. In the impugned order it is stated that petitioner has utilized only 8.10 x 12.30 meters and the remaining

land is vacant. There may be some encroachment upon the plot allotted by others as alleged by the petitioner. Petitioner should have utilized the available land to the full extent excluding the encroached portion. That is not done by the petitioner for which no explanation is forthcoming. Therefore, in the impugned order it is rightly concluded by the Board that petitioner has not utilized the plot for the purpose for which it was allotted to it. That is a finding of fact recorded on the basis of undisputed fact which has to be accepted. When petitioner is unable to utilize the allotted land, the Board is justified in terminating the lease in its favour. Viewed thus, the impugned order is legal and valid and warrants no interference by this Court.

6. As already extracted in the first paragraph of this order, in paragraph 4 of the petition the petitioner categorically asserted that factory has been erected and production was already commenced. Reliance is placed upon the letter Annexure-D and acceptance of the same by the Board in Annexure-E dated 2-4-1985. That pertains only to the fabrication unit to the extent indicated in the impugned order and not in respect of the remaining plot allotted. In fact, the claim of the petitioner cannot be accepted in view of what has been stated in paragraph 6 of the writ petition, the relevant portion is extracted hereunder:

"The possession certificate issued remained only as paper possession and actual possession as (sic) not really delivered to the petitioner."

7. In view of this admitted fact, the assertion of the petitioner that factory has been erected and production was started, cannot be believed. Construction of a small building and commencement of mere fabrication unit will not amount utilization of plot for the purpose for which it was allotted. The purpose for which the plot was allotted to the petitioner is extracted in the first paragraph of this order.

8. The petitioner has not produced the License obtained from the Chief Inspector of Factories and Boilers mentioned in Clause 2(n)(i) of the agreement. Even the sanctioned plan and license for construction of the factory building is not produced by the petitioner in support of its contention. As per the terms of the Allotment Letter dated 10/13-7-1981 produced along with the additional Affidavit, time for completion of works and erection of factory was 20 months and commencement of production was 24 months from the date of Allotment Letter. Petitioner has not produced any document to show that the said time schedule was adhered to by it. The petitioner has stated in Annexure-D dated 18-8-1984 that production in the Fabrication Unit was started on 16-8-1984. The Plot was allotted for the manufacture of Porcelain, LT Insulators, Sanitary Wares, Polishing of Granite Stones and light steel fabrication. Except the steel fabrication unit, petitioner has not commenced any other process. The obvious reason is, requisite factory building to accommodate the other units is not erected. Consequently, there is no manufacturing or production of other products as claimed in its application submitted to the Board for allotment of Industrial plot. The resultant position is, the very purpose for which the plot was allotted, is

defeated. In such a situation, the respondents were justified in terminating the lease of the petitioner and resume the plot. Therefore, no fault can be found with the Board for passing the impugned order.

9. Petitioner has not approached this Court seeking a direction to the respondents either to fix the boundaries of the plot allotted or to give possession of the entire plot within the reasonable time. It simply goes on corresponding with the respondents without fulfilling with the terms or complying with the conditions of allotment as also the lease agreement. The petitioner is not entitled for the reliefs as prayed at this belated stage. After the expiry of the lease period, in the absence of extension or execution of absolute sale deed, petitioner has no right whatsoever in respect of the plot allotted and also to seek quashing of the impugned order. Strangely, the petitioner has not sought for issuance of a direction to the respondents to execute the absolute sale deed. Therefore, petitioner is not entitled to any relief as prayed in this petition.

10. Not only there are serious laches and lapses on the part of the petitioner, even there are laches on the part of the Board also. The lease in favour of the petitioner ought to have been terminated long ago. That was not done. The impugned order is passed too belatedly. Steps should have been taken by the Board to evict the petitioner from a portion of the allotted plot in exercise of its power under the provisions of Karnataka Public Premises (Eviction of Unauthorized Occupants) Act.

11. From the original records it is seen that the petitioner has not paid even the fixed yearly rentals as per the time schedule. It has also allowed the rentals to accumulate and even paid equal amount of interest thereon. The same is evident from Annexure-J. The petitioner has disputed only the rate of interest of 17% and under Annexure-K it has calculated interest at 4% and paid the amount. Thus, the fact remains that petitioner was due in a sum of Rs. 71,212/- towards principal as on that date. In fact petitioner has expressed non-payment of instalments in Annexure-F dated 24-2-1986 and relevant portion reads as under:

"10. Therefore, we are not in a position to pay the third lease instalment and its interest amounts and we would like to reiterate here that we will not make any further instalments unless our requests are conceded xx xx:

12. By letter dated 8/11-6-1981 (available in Page 38 of original file) the Board offered three options to petitioner as under:

i. A ten year Lease-cum-sale with payment of 99% of the cost of developed plot and the balance of 1 % in ten annual instalments.

ii. A ten year lease-cum-sale with 20% payment on allotment and the balance in ten equal annual installments. In allotment under this mode the cost of the plot will be increased by 10%.

iii. A thirty year lease-cum sale with 20% payment on allotment and the balance in equal annual instalments. In allotments under this mode the cost of the

developed plot shall be increased by 20%".

The petitioner in its letter dated 24-1-1981 (page 39) opted for 10 years lease-cum-sale. As per the lease agreement at Annexure-A dated 29-6-1983 petitioner was required to pay yearly rent of Rs. 8902. But the petitioner failed to pay 8 yearly instalments ($8902 \times 8 = 71216$) referred to above. That apart, the rate of interest in the lease agreement is 13% p.a. but petitioner paid the same at 4% in Annexure-K. Thus the petitioner has committed breach of conditions of lease.

13. Petitioner's only grievance is possession of entire extent of plot allotted was not handed over to it. But the Possession Certificate at Annexure-B indicates that the petitioner has taken possession of entire plot. No endorsement is made that "possession is taken subject to eviction of unauthorised occupants on the plot". Once possession of plot is accepted as taken; it was for the petitioner to get those unauthorised occupants evicted: it cannot unilaterally decide not to pay the yearly installments.

14. The Board was not diligent in the matter in this regard, thereby the public interest is suffered for not utilizing the property by the petitioner as the purpose for which the land was acquired from the holder of the land is defeated. At present the value of the plot allotted to the petitioner has gone-up considerably. Such valuable plot should have been resumed when the petitioner failed to pay the yearly instalments or implement its project in full swing. Having got the huge plot allotted in the guise of starting a factory compiling various units, the petitioner cannot hold a portion of the plot by starting merely one fabrication unit and acclaim that it has completed construction of factory and started production. What has been done is a mere fraction of the thing that was required to be done. Petitioner cannot gain huge plot, by starting a small unit contrary to its Project Report. As per the decision of the Apex Court reported in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, largesse cannot be conferred upon an individual without following the procedure or norms prescribed under the provisions of the KIADB Act, 1966 and Regulations.

15. The plot allotted to the petitioner being a public property, the Board should have taken every care to safeguard the same by resuming it and the same should have been allotted in favour of an eligible person by strictly adhering to the provisions of the Regulations or followed the law as laid down by the Apex Court in the case of *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, or it should have seen that allotted site was utilized by the petitioner to the fullest extent for the purpose for which it was allotted.

16. It is hoped and trusted that at least from here afterwards the Officers and officials of the Board will be diligent in respect of the industrial plots that are allotted to various persons for the purpose of establishment of industries either within the stipulated period or extended period and complying with other conditions, if they have not complied with the terms and conditions of either allotment order or lease/sale agreement strict action should be taken and such

plots should be resumed by it and allot the same in accordance with the provisions of the Act, Regulations and law laid down in this regard in favour of eligible persons.

17. For the reasons stated above, Writ Petition is dismissed, but no costs.