
(2011) 03 JH CK 0107

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1634 of 2008

Sanderson Industries Limited

APPELLANT

Vs

Adityapur Industrial Area Development Authority and Another

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Bihar Industrial Area Development Authority Act, 1974 — Section 3(4), 6(2)
Bihar Industrial Area Development Authority Rules, 1981 — Rule 3(1)

Citation : (2011) 2 JCR 522

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Judgement

R.K. Merathia, J.—Heard the parties finally.

2. Mr. Pasari, learned Counsel appearing for the Petitioner, submitted as follows. 5.92 acres of land was leased to the Petitioner in the year 1985. Thereafter for expansion, another piece of adjoining 08 acres of land was allotted to it in the year 1993, possession of which was given and expansion was carried out, but formal agreement was not entered into. In 1998, due to some dispute between the Petitioner and TISCO, the leased land was attached and therefore, the Petitioner could not carry out expansion work also. In the judgment of the Patna High Court in the case of Deepak Paints (P) Ltd. and Others Vs. The State of Bihar and Others etc. etc., , it has been held that the Managing Director has got no power to cancel the leased land. In view of the judgment of the Patna High Court in the case of The Gait Public Library and Institute v. The State of Bihar 1995 (1) PLJR 585, for cancellation of the leased land, AIADA could at best file a civil suit. But the Managing Director alone has cancelled the leased land as well as the allotted land by the impugned order dated 5.9.2007, and that too without giving opportunity of hearing to the Petitioner.

3. Mr. Manjul Prasad, learned senior counsel appearing for the Respondent No. 1-AIADA, submitted as follows. The Petitioner did not use the 08 acres allotted land. An appeal being LPA No. 353 of 2008 is pending before the Patna High

Court, though there is no order of stay of the judgment passed in the case of Deepak Paints (Supra). He relied on the judgment of Hindustan Tin Box Industry v. Adityapur Industrial Area Development Authority delivered on 16.04.2002 in LPA No. 155 of 1996 (R) and submitted that Authority had power to cancel the lease in terms of the provisions of Section 6(2)(a) of the Industrial Area Development Authority Act, 1974 (hereinafter to be referred as "Act"). Section 3(4) of the Act was not taken into consideration in the case of Deepak Paints (Supra) under which the Managing Director was authorized to perform any other duty that may be assigned by the authority or the State Government from time to time. He also relied on the minutes of the meeting of the Board of Director of AIADA held on 24.12.2008.

4. Mr. A.K. Das, learned Counsel appearing for the Private Respondent No. 3-M/s Sri Raj Durga Ispat Industries Pvt. Ltd, submitted as follows. The allotment of the said 08 acres of land to the Petitioner was cancelled and it was allotted to Respondent No. 3. The lease deed was executed on 23.11.2007. Industry was established and is running in full swing. From the pleadings, it will appear that the Petitioner is concerned mainly with the 5.92 acres of leasehold land. He referred to paragraph-23(4) of the judgment of Deepak Paints (Supra), which reads as follows:

23(4). The power of allotment and cancellation of land under Rule 3(1) of 1981 Rules is vested in the Managing Director only to the extent of initial allotment and cancellation and not beyond. This exercise of power vested in the Managing Director under the Rule cannot be read to confer on him and all inclusive power or authority exercisable under the Act much less Section 6(2).

He lastly submitted that a right has been created, in Respondent No. 3, in view of (2008) 1 SCC 633 State of Haryana v. Aravali Khanij Udyog. The only remedy available to the Petitioner, is by way of a civil suit claiming damages or compensation if the same are permissible under the law.

5. The first question is whether the Managing Director had power to cancel the lease of 5.92 acres of land?

Section 3(4) of the Act stipulates that the Managing Director shall perform any duty that may be assigned to him by the Authority or the State Government from time to time. This provision cannot be read to mean that the Managing Director has been vested with the power for cancellation of the leased land. It is not in dispute that the Managing Director has got the power to make initial allotment and cancellation in accordance with law, but in view of the judgment passed in the case of Deepak Paints (Supra), it has to be held that he has got no power to cancel the leased land. It further appears that after the judgment was passed in the case of Deepak Paints (Supra), the meeting of the Board of Directors was held on 24.12.2008 inter-alia authorizing the Managing Director to act on behalf of the authority and its Board of Directors in discharge of the power vested in the Authority. But, no provision could be shown under which the power to cancel the

lease could be delegated by the authority/Board of Directors to the Managing Director. Further, no provision could be shown under which even the AIADA could cancel leased land. In view of the judgment of Gait Public Library (Supra), the lease can be cancelled only after following the due process of law, in that regard. The judgment of Hindustan Tin Box Industry (Supra) is of no help to AIADA. In the circumstances, the impugned order dated 05.09.2007, so far as 5.92 acres of leased land is concerned, is set aside.

6. It was pointed out by Mr. Pasari that it is written in the said order dated 05.09.2007 that AIADA has taken possession of 5.92 acres of land also.

In reply, Mr. Manjul Prasad, submitted that it is clearly stated in the counter-affidavit that AIADA has not taken possession of 5.92 acres of land.

This position thus stands clarified.

7. It goes without saying that the Petitioner, if so advised, may seek appropriate legal remedies, if available to it under the law so far as cancellation and grant of lease of 08 acres of land in favour of Sri Raj Durga Ispat Industries Pvt. Ltd. is concerned.

8. The Managing Director will serve the calculation/demand of the charges due, if any, against the leased land and against the allotted land (till it's cancellation). Petitioner may file it's objection. After giving opportunity to the Petitioner, to explain, the dues will be decided by the Managing Director, which the Petitioner will pay. This exercise should be completed by the parties within three months from today.

With these observations and directions, this writ petition stands disposed of.