

(2003) 11 JH CK 0031

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4592 of 2003

Santosh Narayan @ Santosh Kumar and Another	APPELLANT
Vs	
Steel Authority of India Ltd. and Others	RESPONDENT

Date of Decision : 04-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 663

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : S. Srivastava, for the Appellant; P.K. Sinha and Rajiv Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard Mr. S. Srivastva, learned counsel for the petitioners and Mr. P.K. Sinha, learned Sr. counsel appearing on behalf of the respondents.

2. The petitioner have prayed for quashing the letters dated 17.7.2003 and 16.7.2003 as contained in Annexures-8 and 8/A to the writ application whereby the respondents he demanded development cost of the land failing which the agreement for lease shall be terminated.

3. The petitioner, in pursuant of an advertisement made by the respondents in. 1986 applied for allotment of plots in the City Centre of Bokaro Steel City. The petitioners having fulfilled the terms and conditions for allotment, were allotted the plots and lease deeds were duly executed and registered in 1902 for a period of 33 years petitioner"s case is that after investing huge amount, they constructed houses as per plan approved by the respondents and they were residing and carrying on their business. It is sated that in 1993 when the petitioners asked for basic facilities like water and electricity, the respondents insisted for a undertaking on non-judicial stamp paper. To the utter surprise of the petitioners, the respondents have issued the impugned demand letters in

2003 asking them for payment of an amount of Rs. 2,73,968/- towards the land premium and development charges on the basis of the undertaking given by the petitioners, under coercion and duress. The petitioners have filed representations which were also rejected.

4. From perusal of the impugned letters it transpires that the said demand has been made by the respondents as per the terms and conditions of the original deed of agreement coupled with the undertaking submitted by the petitioners regarding payment of development cost. Admittedly the plots were allotted to the petitioners for a period of 33 years by registered deed of lease which contains several terms and conditions. The question whether the respondents are entitled to realize and/or the petitioners are liable to pay development cost in terms of the lease agreement cannot be decided by this Court in exercise of writ jurisdiction. No constitutional or statutory right has been created under the lease agreement and, therefore, the reciprocal obligation of the parties can be determined only by a Civil Court of competent jurisdiction.

5. In the case of Radhakrishna Agarwal and Others Vs. State of Bihar and Others, , the State of Bihar leased out some forest land to the appellant to collect and exploit shal sheets for fifteen years on payment of royalty at certain rates. The State Government subsequently under the terms of the lease revised the rate of royalty and, thereafter, cancelled the lease for breach of the conditions. The petitioner-appellant challenged the order of revision of rate and cancellation of the lease as illegal by a writ proceeding under Article 226 of the Constitution of India. The Apex Court deciding the question of as to whether Article 226 of the Constitution is an appropriate remedy held as under :--

"In the cases before us the contracts do not contain any statutory terms or conditions or obligations and no statutory power or obligation which could attract the application of Article 14 of the constitution is involved here. Even in cases where the question is of choice or consideration of competing claims before an entry into the field of competing claims before an entry into the field of contract facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be rested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. Such proceedings are summary proceedings reserved for extra ordinary cases where the exceptional and what are described as, perhaps and quite accurately, "prerogative" powers of the Court are involved. We are certain that cases before us are not such in which powers under Article 226 of the Constitution could be involved."

6. The Apex Court in the aforesaid decision affirmed the principles laid down by this Court to the effect that where the contract entered between the State and the person is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract and the petitioners

complains about the breach of such contract by the State, then the remedy is not available by invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

7. In the case of *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, , the Apex Court was considering a similar question and observed as under :--

"The rest of the questions relate truly to the civil rights of the parties flowing from the lease deed. These questions cannot be effectively disposed of in this petition under Article 32 of the Constitution. The question arising out of the lease, such as, whether there has been, breach of the covenants under the lease, whether the lease can be forfeited, whether relief against forfeiture can be granted etc., are foreign to the scope of Article 32 of the Constitution. They cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceeding. One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the will of an officer or a minister or a Ltd. Governor but they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of them except in accordance with law. The stakes in this case are very high for both the parties and neither of them can take law into his own hands."

8. In the case of *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, , the petitioner-leasee under the State Government in respect of the land challenged the notice issued by the State Government in cancelling the lease and also challenging the order passed by the Lucknow Development Authority cancelling its earlier order dated 31.1.1985 granting permission to the lessee to develop the lease hold property by erecting thereon a multistoried building. The Apex Court following the principles laid down in the case of the *Express Newspapers Pvt. Ltd. (supra)* held that the question whether the purported forfeiture and cancellation of lease were valid or not should not be allowed to be agitated in a proceeding under Article 226 of the Constitution.

9. Having regard to the facts and circumstances of the case and the law settled by the Supreme Court, in my opinion, the writ proceeding is not an appropriate proceeding for the grant of the relief sought for by the petitioners. The petitioners may move the civil Court of competent jurisdiction for the appropriate relief.

10. For the aforesaid reasons no relief can be granted to the petitioners in this writ application which is, accordingly, dismissed.