
(2005) 12 DEL CK 0135

In the Delhi High Court

Case No : Writ Petition (C) No. 2723 of 2000

S.C. Chemicals

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2005) 12 DEL CK 0135

Hon'ble Judges : Markandeya Katju, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : Yakesh Anand and Nilesh Sharma, for the Appellant; Rajiv Nayar Ajay Jha and Maneesha Dhir, for the Respondent

Final Decision : Dismissed

Judgement

Markandeya Katju, C.J.

1.This Writ petition has been filed with a prayer for a mandamus directing the respondents to allot the petitioner a plot measuring 40,000 sq. mts., at Kandla Port Trust for erection of storage, handling and pipeline facilities for export of castor oil and manufacturing derivatives of castor oil through its 100% export oriented unit.

2.The Writ Petitioner has prayed for quashing the order of the Chairman, Kandla Port Trust dated 05.02.2000.

3.Heard counsel for the parties and perused the record.

4.The petitioner had earlier filed Writ Petition No.309/1997 for a similar relief. The said petition was disposed of by the Order dated 18.11.1999, by which the Court directed the respondents to decide the petitioner's application in accordance with law.

5.By means of the impugned Order dated 05.02.2000, the petitioner's application for allotment of land was rejected.

6. Aggrieved, the present writ petition has been filed.

7. Kandla Port Trust was constituted under the Major Port Trust Act, 1963.

8. Counter-affidavits have been filed by the Respondents No.1, 2 & 3, and we have perused the same. Preliminary Objections have been raised by the respondents as follows:-

(a) This Court does not have the jurisdiction in the matter as the land in question is situated at Kandla in Gujarat, the Petitioner has his office at Kandla, the tender was floated in Kandla, and the impugned order has also been passed in Kandla.

(b) The petition is barred by laches. The petition has been filed in the year 2000 for getting relief claimed with effect from 1989.

9. In our opinion, both these preliminary objections are well founded.

10. In our opinion, the ratio of the decision of the Supreme Court in *Union of India and Others Vs. Adani Exports Ltd. and Another*, applies to the facts of this case. Since the land in question is at Kandla (Gujarat), the petitioner's office is at Kandla, and the impugned order has been passed at Kandla, in our opinion, only the Gujarat High Court has jurisdiction in the matter. The Petitioner neither has any office at Delhi nor carries on any business activities at Delhi. The petitioner's office is in Gujarat. Hence we are satisfied that no part of the cause of action arises within the jurisdiction of this Court.

11. Due to lack of territorial jurisdiction as stated by the respondent No.3 in Para 2, we are satisfied that there is a lack of jurisdiction for this Court in the matter.

12. The learned counsel for the appellant invited our attention to the decision of the Supreme Court in *Kusum Ingots and Alloys Ltd. Vs. Union of India (UOI) and Another*, . In paragraph 10 of the decision, the Supreme Court observed that:

Even if a small fraction of cause of action accrues within the jurisdiction of the court, the court will have jurisdiction in the matter.

However, in paragraph 30 of the judgment, Supreme Court observed:-

We must, however, remind ourselves that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, the same by itself may not be considered to be a determinative factor compelling the High Court to decide the matter on merit. In appropriate cases, the Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum convenient .

13. In our opinion even if small part of the cause of action does arise within the jurisdiction of the court, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution in this case, as the land in question is situated in Gujarat and the petitioner carries out its business activities and resides in Gujarat.

14.The petitioner, as mentioned in paragraphs 11 to 23 of the writ petition, has referred to various correspondences from the year 1987 onwards requesting therein for allotment of land. We fail to understand why the petitioner did not earlier approached the courts for legal redress, but kept on writing letters for 12-13 long years and filed the writ petition in the year 2000 only. Writ jurisdiction ordinarily is not to be exercised when the party approaches the court after unreasonable delay. The plea of laches has been discussed by us in Sambolo International H. K. v. Union of India & Ors. WP (C) No.8837/2005 dated 8th November 2005, and hence we are not repeating the same. We are satisfied that this petition deserves to be dismissed on the ground of laches.

15.The respondents have also stated that the petitioner has not made any application in the prescribed format. It is stated that writing a letter is no substitute for giving an application in a proper format.

16.Apart from the above, we are of the opinion that public property cannot be transferred to anyone only on the basis of an application. It can be given ordinarily only by public auction/public tender after advertisement in well-known newspapers having wide circulation otherwise Article 14 of the Constitution of India will be violated. The entire case law on the point has been referred to in our recent decision in HBL Nife Power Systems Ltd. v. Union of India, LPA No.2448/2005 dated 27.10.2005 and hence we are not repeating the same.

17.As stated in the Para 12 of the respondent No.3, initially, the petitioner requested for allotment of 10,000 sq. mts. of land but the same could not be allotted as the plot specified by the petitioner was within 500 meters from the waterfront. The petitioner then revised his request and sought allotment of 40000 sq. mts. of land. It is evident that the petitioner did not want to participate in the process of Tender and wrote letters to the respondent No.3 for allotment of land on nomination basis. In our opinion, no such allotment can ordinarily be made as that would be violative of Article 14 of the Constitution of India, vide HBL Nife Power Systems Ltd. v. Union of India (supra).

18.In the impugned letter dated 05.02.2000, the Chairman, Kandla Port Trust, has stated that if the petitioner is interested in acquiring land, it can apply through public advertisement, which is likely to be issued, and their applications will be considered on merits. We see no infirmity in the Order as it is in accordance with Article 14 of the Constitution. Public land has to be given ordinarily by public auction/ public tender and not on a mere application as it is not largesse. Merely because some illegality may have been committed earlier does not mean that, that illegality should be perpetuated.

19.There is no force in this writ petition and hence it is dismissed.