
(2014) 01 PAT CK 0070
In the Patna High Court
Case No : CWJC No. 4532 of 2009

Scope Sales Pvt. Ltd.

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-01-2014

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2014) 1 PLJR 370

Hon'ble Judges : Ajay Kumar Tripathi, J

Bench : Single Bench

Advocate : Jitendra Singh, Satyabir Bharti, Alok Chandra and Harsh Singh, Advocate for the Appellant; Rajesh Singh for the State, Lalit Kishore and Piyush Lall for the BIADA, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ajay Kumar Tripathi, J.—Petitioner is a Private Limited Company, which wants quashing of an order dated 4.4.2009 passed by the Managing Director of Bihar Industrial Area Development Authority (hereinafter referred to as BIADA). By virtue of this order contained in Annexure-9, an allotment of land having 2.55 acres made in favour of the petitioner located at Plot No. C-34 in the Industrial Area of Patliputra has been cancelled. This land was initially allotted to the petitioner company for setting up of a commercial complex like a Mall-cum-Multiplex for which, according to the petitioner, all the formalities had been completed and the demand raised for such allotment was also met by timely payment to BIADA. Fact as such relating to allotment of land by BIADA in favour of the petitioner is not a matter of dispute. There was an advertisement issued on 6.6.2007 in daily Newspaper inviting persons interested in auction of the plots in the industrial area. Petitioner became the highest bidder for Plot No. C-34 and a total sum of Rs. 2,32,20,000.00 was the bid amount. The land was settled in favour of the company for construction of a multiplex-cum-shopping mall.

2. Though initially area indicated for the said plot was 1.80 acres, however, on

final measurement at the time of delivery of possession it turned out to be 2.55 acres for which additional demand was raised as well as deposited amounting to Rs. 3,38,98,000.00.

3. It is the contention of the counsel for the petitioner that after the allotment petitioner invested a large sum of money in construction of site plan drawing as well as business development which has been assessed at rupees five crores. While this process was going on, a letter was issued to the petitioner on 29.3.2008 restraining him from making any further construction till a final decision was taken on the issue. This communication is Annexure-5. The Executive Director of BIADA has issued this letter on a directive issued by the Department of Industry. Petitioner made request for withdrawing the restraint order for which a recommendation was also made in his favour by the Managing Director of BIADA. However, instead of withdrawing the order of restraint, show cause notice dated 10.11.2008 and 4.3.2009 annexed as Annexures-7 and 7/1 came to be issued indicating therein that since the plot of land is now required for setting up of Indian Institute of Technology, Patna, a larger public interest needed to be addressed so why the allotment be not cancelled and possession be resumed by BIADA.

4. Annexures-7 and 7/1 gives adequate indication as to the compulsion upon the State authorities to have a re-look at the allotment made in favour of the petitioner, especially since the State of Bihar was chosen as one of the States to set up an IIT and the Union of India had laid down some kind of a time-frame as well as commitment which the State had to make to ensure its timely establishment so that the golden opportunity awaiting the students from across the country including the State of Bihar would not be lost.

5. From the pleadings and materials it is evident that the primary reason why the respondent authorities decided to cancel the allotment and resume possession was the immediate proximity and continuity of the land where IIT campus was temporarily set up and started functioning. The State authorities were of the opinion that the requirement of additional land for the smooth functioning of the IIT and other facilities related thereto could be readily provided as the location of this plot of land is right next to the Polytechnic Institute building in which IIT was set up was only practical option.

6. Ultimately, after considering the reply to the show cause contained in Annexure-8, a cancellation order contained in Annexure-9 came to be passed on 4.4.2009.

7. Petitioner wants quashing of this order labeling it to be arbitrary and irrational act especially when the authorities themselves had accepted the offer of the petitioner and the petitioner having fulfilled all the requirements was granted delivery of the land.

8. The cancellation order talks in terms of the background under which allotment of land was made to the petitioner. A part of the cancellation order, which is

reproduced hereinbelow, gives the core reason why the respondent-BIADA was compelled to pass the cancellation order:--

Later with the establishment of IIT in the adjacent Government Polytechnic for at least 5-7 years, the site was visited by a committee of Senior Officers of Government of Bihar. After site inspection, the committee was fully satisfied that the land in question should not be allowed to be developed as a commercial organization as it is contiguous to the prestigious institution of IIT which itself would require additional land for many of its activities such as a playground etc. Also, IIT is in possession of the hostel which is across the land in question. A meeting was held at the level of the Principal Secretary, Department of Industries, Government of Bihar. The matter was also referred to learned Advocate General, Bihar. The Government then vide its letter dated 16.9.2008 directed BIADA to take action as per the advice dt. 27.8.2008 of learned Advocate General whereby the opinion of learned Advocate General, Bihar was quoted. It was advised that the unit may be communicated that, in larger public interest, i.e., for facilitating development of IIT, Patna Campus, BIADA intends to resume the possession of land and refund the payment made with interest, for the period during which money has remained with BIADA. It was further advised that after having issued notice, and taking into consideration the response of the allottee, BIADA may resume possession after refunding the consideration amount received by it alongwith interest.

Under such circumstances, notice vide Letter No. 5060/L, dated 10.11.2008 was sent to the allottee whereby it was asked to reply as to why the land allotment not be cancelled and possession be resumed on ground of larger public interest upon refund of the payment made by allottee with interest for the period during which money has remained with BIADA. However, no reply was received to the said notice. Again another notice was sent vide letter No. 724/D dated 4.3.2009 stating therein that the reply be submitted within 15 days of the said letter.

The Unit replied by its letter dated 16.3.09. Accordingly, an Agenda No. 4 was put up before the Board of Directors" in its 30th meeting held on 27.3.09.

The Board of Directors after due consideration of the objections raised by the unit in its reply resolved that the interest of the public overrides upon the objection of the unit concerned. Hence it was decided to cancel the allotment, return the amount with interest to the unit and resume the land in the public interest. Board authorized Managing Director, BIADA to take decision on the rate of interest. As to the assessment of damage as claimed by the unit, a committee was constituted by the Board.

Accordingly, in view of the direction of the Government as stated and the resolution of the Board of Directors" in its 30th meeting, the land allotment to M/s. Scope Sales Pvt. Ltd., Patliputra Industrial Area, Patna is hereby cancelled. The Executive Director, Patna, BIADA is directed to resume possession of the land. The cost of land originally deposited by the unit amounting to Rs. 3,38,98,000/-

(Rupees three crore thirty eight lacs and ninety eight thousand only) is hereby returned alongwith 5% interest. This is based on prevailing rate of interest charged upon dues of BIADA from the allottees. So far as damage assessment is concerned, it shall abide by separate orders.

9. There is some controversy in the circumstances under which the possession of land was taken by BIADA alleging that some kind of force was also used unilaterally to divest the petitioner of its rightful possession as well as even mala fide has been alleged because the reason for cancellation, according to the petitioner, was basically a camouflage.

10. Learned senior counsel representing the petitioner has many a submissions to make, primary amongst them being that the cancellation order was de hors the power under the Act, which is Bihar Industrial Area Development Authority Act, 1974. The cancellation order is de hors the terms of the allotment because no just compensation has been made over to the petitioner after cancellation though the respondents indicated so in their order of cancellation. The repossession by BIADA was a paper possession which is no possession in the eye of law. Petitioner would be deemed to be in possession since possession was given on 19.9.2007 and the same was unilaterally repossessed on 8.4.2009.

11. Other submission of the learned senior counsel for the petitioner is that 90 years lease which was envisaged under the allotment order is a property and nobody can be divested of his right of property since Article 300A of the Constitution guarantees so. Taking of unilateral possession by the respondent authorities amounts to confiscation and therefore, hit by law. It is also urged that the cancellation is for extraneous reasons and considerations and, therefore, the action vitiated.

12. Learned senior counsel representing the respondents, however, resists the writ application on many a grounds, primary amongst them being that the power to cancel the allotment is very much provided in Section 6(2) of the BIADA Act. The cancellation was not a punitive cancellation as envisaged u/s 6(2)(a) and, therefore, it is not forfeiture. There is a general power of allotment as well as cancellation provided in Section 6(2) of the Statute itself. The power of cancellation was exercised by the State u/s 9(3) of the Act. The State has also sovereign power to take decision in larger public interest. The individual interest must yield to larger societal interest. There is sovereign right of eminent domain. It is not a case of deprivation of the property of the petitioner. The property was of the State. Utmost petitioner was given a right of use by the allotment letter and may be right to use it for a period if the lease agreement was finally signed which was not done so far.

13. This Court after hearing the arguments of the parties to the dispute examined the matter in quite a detail to satisfy itself whether cancellation of the allotment letter by virtue of Annexure-9 was done for extraneous reasons or was a bona fide exercise in larger public good as also if it was a case of camouflage in

the name of public good for some other extraneous reasons and consideration.

14. The Court is not required to really get into an investigative mode merely at the asking by the petitioner. The reason for cancellation which has been quoted in extenso in the earlier part of the order speaks for itself. The sudden development of allotment of a prestigious institution like IIT at Patna compelled the respondent State authorities to do some out of the hat thinking to provide immediate infrastructure by way of a temporary campus, before the main campus could be developed for which identification of land and acquisition was a cumbersome and time taking process. If the State authorities waited for completing the formality of setting up of a permanent campus the time-frame and the continuance of such allotment of an IIT to the State of Bihar would have been lost for ever. It was in this background that an earlier running institute known as Polytechnic at Patliputra Industrial Estate was chosen as the temporary campus for the IIT, Patna. It is not in dispute and it cannot be that the land allotted to the petitioner is an adjacent land situated next to the Polytechnic and even the Science and Technology Department had serious reservation in allotting this land for any other purposes, lest it came in future expansion and upgradation of the Polytechnic into an ITI at Patna.

15. That is another aspect of the matter. The primary issue for consideration is whether the reasons for cancellation as indicated in the letter of cancellation are borne out from the pleadings which are on record.

16. The Court comes to a considered opinion and finding that the reason for cancellation of the allotment letter and repossession was not for any other extraneous reason which this petitioner wanted this Court to believe but for the object and purpose which compelled the State to rethink its earlier decision to alienate the land for commercial exploitation by the petitioner.

17. It cannot be a case of the petitioner that IIT, Patna has not been set up, the land which was allotted to the petitioner by the respondents is not an adjoining land and that the mere size of such institute and the facilities which are expected to be provided for the campus with future spill over cannot be a matter of argument. However, it has been extraneously urged that even till date the said land has not been utilized or used by the IIT, Patna and the State Government. The status quo as it then was still continues.

18. Such contention of the petitioner is required to be negated because when the present writ application was filed, an order of status quo came to be passed on 10.4.2009. Since the issue remained sub-judice, there would have been no occasion for either the authorities of the IIT, Patna or the State to violate the order of status quo during the pendency of the writ application, since the order continues to operate till date.

19. BIADA is a creature of statute and it was created by virtue of Bihar Industrial Area Development Authority Act, 1974 with the object of development of industrial areas and promotion of industries. This Authority is a limb of the State.

The present dispute relates to a plot of land which is located in what is known as Patliputra Industrial Area.

20. The general duties and powers of the authority for planned development of industrial areas including preparation of master plan for promotion of industries and providing other amenities appertaining thereto is vested in Section 6 of the Act. Section 6(2) also places responsibility upon the authority for planning development and maintenance of industrial areas as well as power for allotment of land, execution of lease and cancellation of such allotment or lease, realization of fees, rent charges and matters connected thereto. There is an additional provision in Section 6(2)(a) for cancellation of allotment if effective steps are not taken within a fixed time-frame to establish an industry. There is also power u/s 6(2)(b) to take possession of the plot or shed after due consideration.

21. This Court does agree with the submission of the learned senior counsel representing the petitioner that it is not a case of cancellation on failure to take effective steps after allotment within a fixed specified period.

22. Learned senior counsel representing the respondents fairly submits that the cancellation order is not due to failure of the petitioner to carry out or take effective steps for establishment of the industry for which allotment was made but this power has been duly exercised u/s 6(2) read with Section 9(3) of the Act. Section 9(3) is reproduced hereinbelow:--

If any land so placed at the disposal of the Authority under sub-section (2) is required at any time by the State Government, the Authority shall restore it to the State Government.

23. It is also very fairly accepted on behalf of the respondents that the order contained in Annexure-9 came to be passed by the authorities of BIADA at the intervention of the State Government in the circumstances indicated in the letter of cancellation in the larger public interest or good for which decision has been taken and it is a bona fide exercise of power. The State Government does not loose control over BIADA as a reading of Section 9(3) would indicate that if any land so placed at the disposal of the Authority under sub-section (2) Is required at any time by the State Government, the Authority will restore it to the State Government. The State Government did come a considered opinion that the land was required to be restored for establishment and effective functioning of IIT, Patna and, therefore, a decision was taken, not with the object of hurting the financial interest of the petitioner but a larger public purpose of quick and effective establishment of a branch of IIT, Patna. The Court, therefore, opines that the respondent State authorities did have the requisite power to direct the Authority to restore any land in favour of the State. This power is not an absolute power but can be exercised if the State Government can satisfy the Court that the decision has been taken for larger public good and for a bona fide reason, which test stands satisfied in the present case.

24. Learned senior counsel representing the respondents Mr. Lalit Kishore draws

the attention of this Court to a decision rendered in the case of Kasinka Trading and another, etc. etc. Vs. Union of India and another, . The relevant portion of para. 14 of the judgment is reproduced hereinbelow:--

Prof. S.A. De Smith in his celebrated treatise "Judicial Review of Administrative Action", 3rd Edn. at p. 279 sums up the position thus: "Contracts and Covenants entered into by the Crown are not to be construed as being subject to implied terms that would exclude the exercise of general discretionary powers for the public good. On the contrary they are to be construed as incorporating an implied term that such powers remain exercisable. This is broadly true of other public authorities also. But the status and functions of the Crown in this regard are of a higher order. The Crown cannot be allowed to tie its hands completely by prior undertakings is as clear as the proposition that the Courts cannot allow the Crown to evade compliance with ostensibly binding obligations whenever it thinks fit: If a public authority lawfully repudiates or departs from the terms of a binding contract in order to have been bound in law by an ostensibly binding contract because the undertakings would improperly fetter its general discretionary powers the other party to the agreement has no right whatsoever to damages or compensation under the general law, no matter how serious the damages that party may have suffered.

25. There is some force in the proposition which has been noted above especially in the given facts and circumstances, which led to issuance of Annexure-9. It cannot be anybody's case that setting up of an Institute like IIT at Patna cannot be given primacy over setting up of a multiplex-cum-mall for which the initial allotment was made in favour of the petitioner. The setting up of the NT was a kind of sudden development after the allotment of land was made in favour of the petitioner. It cannot be the case of the petitioner that the whole reason has been conjured up either by the State or BIADA to cancel the allotment letter of the petitioner.

26. Learned senior counsel for the petitioner thereafter submits that the petitioner is willing to wait patiently till the IIT, Patna is located in its regular campus for which land has been acquired and construction started.

27. Mr. Lalit Kishore representing the respondents submits that it cannot be the basis for interfering with the order of cancellation because the construction in the main campus is at a very nascent stage. It is likely to take time before the campus is set up and relocation can be done. In addition to that, the question still stands whether the action of the respondents can be held to be arbitrary, taken for any other extraneous reason or for a public good, which now stands established not only from reading of the cancellation order but also on exchange of pleadings and materials brought on record.

28. Coming to the question of failure on the part of the respondents to adequately compensate the petitioner, which was one of the conditions indicated in the order of cancellation, Mr. Lalit Kishore does submit that the State

authorities still stand by the commitment indicated in the letter of cancellation. However, since the issue was in a state of flux and the matter was sub-judice, any exercise done in this regard during the pendency of the writ application, especially when an order of status quo had been passed, could have been wrongly interpreted by the petitioner. However, if the Court does permit the State authorities would be more than willing to carry out the exercise on damage and quantification as to the compensation the petitioner would be entitled to. He also reinforces the bona fide of the conduct of the respondents by pointing out from the letter of cancellation that not only the entire money deposited by the petitioner against cost of land amounting to Rs. 33,98,000/- has been returned but even interest @ 5% has been paid to the petitioner. As a goodwill gesture the State is still willing to consider the damage assessment component provided the dispute comes to rest.

29. After detailed hearing and consideration of the material including a hard look at the cancellation order contained in Annexure-9, the Court does come to a considered opinion that there were compelling reasons arising out of larger public good to effect cancellation of the order of allotment and take possession as a natural corollary of the land. There is neither any mala fide nor extraneous considerations which compelled the respondent authorities to deny to the petitioner the benefit of allotment of land, which was initially decided by the BIADA authority. Since setting up of an IIT, Patna was not even in the horizon when the decision to auction the land with the petitioner was taken, the hands of the respondents were forced.

30. No case, therefore, has been made out for interference with the impugned order contained in Annexure-9. Writ application has no merit. It is dismissed for the reasons indicated above.