(2023) 09 KL CK 0071

In the High Court Of Kerala

Case No : Writ Petition (C) No. 14407 Of 2021

S.Radhakrishnan APPELLANT

Vs

Director Of Industries And Commerce RESPONDENT

Date of Decision : 11-09-2023

Acts Referred:

Citation : (2023) 09 KL CK 0071

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : Rajesh Sivaramankutty, P.Santhosh Kumar

Final Decision : Allowed

Judgement

T.R. Ravi, J

1. The petitioner has approached this Court challenging the proceedings initiated by the respondents for the resumption of an industrial plot that had been allotted to him. The relevant facts are as follows:

2. The 3rd respondent had issued Ext.P1 Rules to govern the allotment of lands in the development areas on hire purchase, for industrial purposes. As per the Rules, the Director of Industries and Commerce shall have the power to resume land if the allottee contravenes any of the provisions of the Rules or any of the provisions of the agreement executed by the allottee or in the event of the concern belonging to the industrialist being wound up or transferred to another person, company or group of persons or if, in the opinion of the Director of Industries and Commerce, there is a misuse of the allotted land. Even though the land is to be allotted on a hire-purchase basis, there is also a provision for outright purchase if requested by the allottee. The cost of the land allotted is to be fixed by the Director of Industries and Commerce. The allottee is to utilise the land within six months from the date of allotment, and the said period can be extended in deserving cases by the Director of Industries and Commerce. In the event the allottee does not require the plot for the purpose for which it is

allotted, he should inform the Director of Industries and Commerce in writing within six months, and the Director may dispose of the plot of land in accordance with the provisions of the rules. On completion of payment to the Government for the full cost of the plot of land allotted, the Director is to make arrangements for assigning the land to the allottee. The rule further says that the Government shall have complete title and ownership to the land till the land is assigned to the allottee.

3. The petitioner and the 2nd respondent entered into Ext.P2 agreement on 09.02.2011. It is seen that the petitioner had paid a sum of ☐ 27,920/- representing 20% of the total value of the property. The balance 80% amounting to ☐ 1,11,680/- is to be paid within ten years in equal instalments with 6.5% interest. The instalments were to begin on 08.02.2012. Ext.P3 is the proceedings whereby 50 cents of land was allotted to the petitioner. Ext.P4 series of photographs show the functioning of the industry in the building constructed in the land. Ext.P5 is the certificate issued by the 2nd respondent certifying that the petitioner has paid the entire amount payable for the outright purchase of 50 cents and also stating that the 2nd respondent has no objection to the petitioner mortgaging the land and building thereon for the purpose of availing financial assistance. By Ext.P6 proceedings dated 14.12.2016, permission was granted to the petitioner to change the constitution of the partnership and to continue the unit as a proprietary concern.

4. On 16.02.2018, the 2nd respondent issued Ext.P7 proceedings whereby the 50 cents of land were resumed for the reason that the petitioner was not utilising the plot for industrial purposes. The order of resumption was challenged by the petitioner in WP(C) No.7670/2018. Pending the writ petition, the petitioner preferred an appeal before the Director of Industries and Commerce against the order of resumption. By Ext.P12 judgment, this Court disposed of WP(C) No.7670/2018, directing the Director of Industries and Commerce to dispose of the appeal. On 01.03.2020, the petitioner preferred Ext.P13 representation before the Director of Industries and Commerce seeking permission for transfer of the Industrial land in favour of Mr.G.Gopakumar, Managing Director, M/s.Becomfortable Industries Pvt. Ltd. Ext.P14 is the detailed argument note submitted in the appeal, which had been preferred against the order of resumption. This was followed by another argument note submitted for the video conferencing on 21.04.2021. Ext.P15 is the argument note. By Ext.P16 order dated 09.07.2021, the Director of Industries and Commerce rejected the appeal confirming the order dated 16.02.2018 issued by the 2nd respondent. The petitioner has hence filed this writ petition challenging Exts.P7 and P16 orders.

5. The contention of the petitioner is that after paying the full cost, he has become the full owner with the power of alienation and that he is hence entitled to transfer the land. It is submitted that there was no power to resume after the entire amount had been paid. Reference was made to Ext.P8 letter from the Director of Industries to the 2nd respondent, which says about the transfer of

land of defunct/closed/sick entrepreneurs. Ext.P8 has been issued on 06.01.2009. It is submitted on the basis of Ext.P8 that the petitioner is entitled to transfer the unit since his unit is a sick industrial unit and that the said aspect has not been considered while ordering resumption. It is further contended that it is not a case where the petitioner never utilised the land or kept it idle. It is submitted that Exts.P7 and P16 have been issued overlooking the factor that the case of the petitioner is that of an outright purchase and not hire purchase, where the Government retains the ownership till the entire hire amount is paid. The petitioner has produced additional documents and Exts.P18, P19 and P20 are orders whereby permissions were granted to other persons.

6. The 2nd respondent has filed a counter affidavit. It is stated that Ext.P8 has been subsequently cancelled as is evidenced by Ext.P9. It is further stated that the petitioner did not request for a transfer till the order of resumption was issued. Regarding Exts.P19 and P20 it is submitted that those were units which were functioning unlike the case of the petitioner where the unit had already stopped functioning. However, regarding Ext.P18, it is admitted that though the unit was defunct, considering the overall situation, transfer was allowed.

7. Petitioner has filed a reply affidavit producing Exts.P21 to P24. It was stated that at no point of time was the unit wound up. According to the petitioner, after the demonetization he had difficulties to run the unit, and the unit became a sick unit. It is hence submitted that Rule 11 of Ext.P1 could not have been invoked. Ext.P21 is the letter issued on 31.01.2017 by the petitioner before the resumption, to which, according to the petitioner, there was no response. It is further submitted that there was no show-cause notice preceding the resumption except for the issuance of a meeting notice dated 12.05.2017, which has been produced as Ext.P22. Ext.P23 is the reply submitted by the petitioner to Ext.P22. It is specifically stated that the unit was running even at that point of time and that at the time of the visit by the 2nd respondent, the shutter was closed for the lunch break. It is also pointed out that stock statements were regularly being sent to the Bank, and VAT returns were also being filed. Ext.P24 is the minutes of the meeting held on 28.06.2017 wherein it is noticed that the petitioner had submitted that the unit is not closed and production has temporarily been stopped due to marketing problems. The minutes will also show that the petitioner has submitted that the entire land dues had been paid. Ext.P22 does not indicate that there was a proposal for resumption.

8. During the hearing, the Standing Counsel for the respondent submitted that even for granting permission for transfer, it can only be in accordance with the priority in the waiting list.

9. As per clause 3 of Ext.P1, Government land in development areas is to be allotted for industrial purposes only as per the Rules. As per Ext.P4, the land had been used only for industrial purposes. Ext.P11 gives the power to the Director of Industries and Commerce to resume the land if the allottee contravenes any of the provisions of the Rules or any provisions of the agreement or in the event of

the concern being wound up or transferred to another person. Rule 12 provides for outright purchase. The only reason that is stated for resuming the land is that the unit was not functioning. It is the specific case of the petitioner that the unit is not wound up and it has only become sick. It is hence submitted that the contingency that was stipulated in Ext.P1 Rules for ordering a resumption has not yet arisen at the time when Ext.P7 was issued. It is in the above circumstances that the petitioner submitted Ext.P11 seeking permission to transfer. Rule 12 provides that an allottee can opt for an outright purchase. A reading of Rule 18 of Ext.P1 Rules suggests that on resumption, the allottee shall be permitted to remove the improvements or the Director can arrange for the same to be removed at the cost of the allottee and dispose of the materials by public auction. The Rule further states that if the amount that is received on public auction is more than the amount due to the Government, the excess is to be given to the allottee after adjusting what is due to the Government. Rule 18 thus can apply only in cases where amounts are still due to the Government, unlike a case of an outright purchase. The Rules, it would appear, relate to the resumption of land that has been allotted and where the assignment is not yet complete. Rule 28 specifically says that on completion of the payment to the Government of the entire cost of the plot of land allotted to the allottee, arrangements shall be made to get the land assigned to the allottee. Thus, by operation of Rule 28, an allottee becomes an assignee after the entire payment is made. Rule 30 makes the situation more clear when it says that the Government shall have complete title and ownership to the land till the land is assigned to the allottee. This would specifically mean that once the assignment is over, the complete title and ownership of the Government ends. Ext.P1 does not provide for a case where a resumption can be made after the entire assignment is over or after the entire amount is paid and there are no further dues to the Government with respect to the allotment.

In such circumstances, Ext.P7 order whereby the 2nd respondent has sought to resume the land for the sole reason that the unit was found locked cannot be sustained. There is no case for the respondents that there can be no transfer of the undertaking. The only concern for the respondents in case of such transfers is that the transferee should also be running an industrial unit since the area comes within the development area. The respondents cannot, at any rate, refuse to consider the request for transfer. Ext.P16 merely confirms Ext.P7 order and does not consider the question of transfer from the correct perspective. Ext.P7 cannot be a final order on resumption since an appeal is preferred against the same. As such, merely for the reason that Ext.P7 has been issued, the request for transfer could not have been denied.

In such circumstances, the writ petition is allowed. Exts.P7 and P11 are quashed. The respondents are directed to consider Ext.P13 request in accordance with law at the earliest, at any rate, within three months from the date of receipt of a certified copy of this judgment.