
(2015) 02 JH CK 0048

In the Jharkhand High Court

Case No : Writ Petition(C) No. 2138 of 2006

Sripada Engineering Paper Company

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Citation : (2015) 02 JH CK 0048

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Ayush Aditya and Shashank Shekhar, for the Appellant; Amit Kumar Verma, J.C. to S.C. (L and C), Advocates for the Respondent

Final Decision : Disposed off

Judgement

S. Chandrashekhar, J.

I.A. No. 3558 of 2007

1. The present application has been filed seeking impleadment of respondent No. 6-intervenor in the matter.

For the reasons stated in the application, I.A. No. 3558 of 2007 is allowed.

Let necessary correction be carried out during the course of the day.

W.P.(C) No. 2138 of 2006

Seeking quashing of order dated 31.10.1994, 20.12.2005 and 21.01.2006, the present writ petition has been filed.

2. The brief facts of the case are that, the petitioner-Company namely, M/S Sripada Engineering Paper Company is a Small Scale Industry which applied for allotment of land for establishing its factory for manufacture of Special Coated papers and Ammonia papers. The petitioner-Company was allotted Plot No. NS 27 and NS 28 (Part) measuring an area of 7500 Sq. ft. in the Industrial Area

Adityapur, Phase-I and the possession of the same was delivered on 13.12.1988. A registered lease deed was executed on 25.04.1989 for 99 years. The petitioner-Firm applied for loan for the project which was costing Rs. 30.67 Lacs and a sum of Rs. 20.52 Lacs was sanctioned by the Bihar State Financial Corporation however, the sanctioned amount was not disbursed to the petitioner-Company on the ground that the Corporation was undergoing financial crisis. A show-cause notice was issued to the petitioner on 01.07.1991 which was replied by the petitioner discussing reasons for not starting the project. An additional area of 3500 Sq. ft. of land was sanctioned by the respondent-AIADA thereafter and, the possession of the same was delivered on 20.05.1992. Another show-cause notice was issued on 04.11.1993, to which the petitioner replied on 01.12.1993 however, vide order dated 31.10.1994 the allotment was cancelled by respondent-AIADA. The petitioner submitted a representation on 04.11.1994 disclosing its difficulties and seeking permission of the respondent-AIDA to induct a financial partner for setting up a Mineral Grinding and Beneficiation Plant. The respondent-AIADA invited the petitioner for discussion and approved induction of a financial partner. The petitioner was directed to submit a project report vide letter dated 09.07.1996 which was submitted by the petitioner and fee was also deposited for regularisation of the allotment. Though, the representations dated 12.08.1999, 17.08.2000, 14.05.2003 and 16.08.2005 of the petitioner remained pending, vide order dated 03.10.2005 a direction was issued for taking possession of the land allotted to the petitioner. The petitioner challenged order dated 03.10.2005 by preferring appeal which was allowed vide order dated 19.10.2005 and a direction was issued to the Managing Director-respondent No. 4 to pass a fresh order after hearing the petitioner. In compliance of order dated 19.10.2005, the Managing Director passed order dated 20.12.2005 directing the petitioner and its managing financial partner to vacate the land in question. Aggrieved, the petitioner preferred appeal before the Secretary, Department of Industries, Government of Jharkhand-respondent No. 2 and the same has been dismissed vide order dated 21.01.2006.

3. A counter-affidavit has been filed on behalf of respondent No. 2 stating that the petitioner failed to make use of the land within stipulated period and therefore, the lease executed in its favour has been cancelled. A separate affidavit has been filed on behalf of respondent Nos. 3-5 stating that the project for manufacturing of Special Coated Papers and Ammonia papers was approved in December, 1988 however, the plant was never set up by the petitioner and therefore, a show-cause notice dated 04.11.1993 was issued to the petitioner. It is stated that the petitioner could not set up the industry for more than five years and the respondent-AIADA could not have waited for an entrepreneur to set up its unit for indefinite period, and therefore, vide order dated 31.10.1994 allotment in favour of the petitioner was cancelled. The petitioner never submitted project report rather, one M/S Rewa Impexo wanted allotment of land and it continued to illegally occupy the land for which the allotment was already cancelled. Though, the partnership deed indicates that the partnership business

would continue in the name of Sripada Engineering Paper Company however, the application for allotment was made by M/S Rewa Impexo which continued to illegally occupy the land and therefore, it is liable to be evicted.

4. Heard the learned counsel for the parties.

5. The learned counsel for the petitioner submits that, the proposal of the petitioner for inducing financial partner was approved by the respondent-AIADA and it was directed to produce project report which it submitted to the respondents. The petitioner-company was allotted additional land measuring about 3500 Sq. ft. and various communications between the petitioner and respondent- AIADA clearly indicate that delay in execution of project was condoned by the respondent- AIADA however, the respondent-Managing Director arbitrarily cancelled the allotment vide order dated 20.12.2005 which has been affirmed by the appellate authority. It is further submitted that in partnership with M/s Rewa Impexo, the petitioner-company is conducting business for about 10 years and at this stage, if the petitioner is evicted from the land allotted by the respondent-AIADA, it would suffer irreparable loss and injury.

6. As against the above, the learned counsel appearing for the respondent-AIADA reiterates the stand taken in the counter-affidavit and submits that the partnership with M/s Rewa Impexo was never approved by the respondents and M/s Rewa Impexo has illegally occupied the land which was originally allotted to the petitioner. The petitioner has allegedly entered into a partnership with M/s Rewa Impexo which appears to be suspicious.

7. Mr. V. Shivnath, the learned Senior counsel for the respondent No. 6 submits that, the application for restoration of the land and other communications have been made by M/s Rewa Impexo which is not the petitioner before this Court. The land in question was allotted to the M/s Eshwar Enterprises.

8. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

9. It is not in dispute that initially 7500 Sq. ft. was allotted by the respondent-AIADA in favour of the petitioner--M/s Sriprada Engineering Paper Company and additional area of 3500 Sq. ft. of land was subsequently allotted to the petitioner-company. The petitioner-company could not commence the project within time, is also an admitted fact. The petitioner has taken a plea that due to delay in disbursement of loan from the Bihar State Financial Corporation, it could not commence the project in time. It is not in dispute that the petitioner did not start the project within time and thus, committed breach of condition of allotment. The allotment in favour of the petitioner has been cancelled on 31.10.1994. In compliance of order dated 19.10.2005 passed by the appellate authority-Secretary, Department of Industries, the Managing Director after hearing the parties affirmed the order of cancellation. Thus, in subsequent proceeding also, the cancellation dated 31.10.1994 has been affirmed. The plea of the petitioner that it could not start the project because loan amount was not disbursed cannot

be a ground for challenging the cancellation order dated 31.10.1994 which was earlier not challenged by the petitioner by filing appeal. Since, order dated 31.10.1994 was not challenged by the petitioner, mere exchange of certain communication between the petitioner and respondent-AIADA, is of no consequence. I am not inclined to interfere with the impugned orders. It appears that vide order dated 19.04.2006, this Court restrained the respondents from taking possession of the plant, machinery, factory premises etc. belonging to the petitioner-company. The petitioner has pleaded that in partnership with one M/s Rewa Impexo it is running business since last about 10 years, after investing huge amount of money. The respondents have questioned genuineness of the partnership with M/s Rewa Impexo. The learned counsel for the respondent-AIADA informs that allotment in favour of respondent No. 6 has also been cancelled on 27.07.2013.

10. Considering the above facts, liberty is granted to the petitioner to approach the Authority as defined under Section 6(2) of the Bihar Industrial Area Development Authority Act, 1974, within a period of 8 weeks for a fresh allotment in favour of the partnership firm constituted with M/s Rewa Impexo. It is made clear that the question of genuineness of the partnership has not been gone into by this Court and it is open to the Authority to examine the genuineness of the partnership. For this purpose, the Authority may require the petitioner and/or M/s Rewa Impexo to produce documentary evidence. If the partnership firm by the petitioner with M/s Rewa Impexo is found genuine and it is also found that the said partnership is running business over the land allotted to the petitioner for the last about 10 years, a decision may be taken by the Authority for a fresh allotment on the prevailing terms and conditions. If a representation is submitted by the petitioner within the period of 8 weeks, necessary decision would be taken by the Authority within next 3 months. In the meantime, the petitioner shall not be dispossessed from the property in question.

11. The writ petition is disposed of in the aforesaid terms.