

(2003) 04 JH CK 0020

In the Jharkhand High Court

Case No : Writ Petition (C) No. 3583 of 2001

Star Boots Company

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2004 Jhar 39 : (2003) AIR Jhar HCR 819 : (2003) 3 JCR 678 : (2003) 2 JLJR 642

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

Bench : Single Bench

Advocate : Anil Kumar, for the Appellant; R.C.P. Sah, for the Respondent Nos. 3 and 4 and P.R. Bhagat, for the Respondent No. 5, for the Respondent

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—In this writ application the petitioner has prayed for quashing the order as contained in memo No. 176 dated 7.2.98 issued by the respondent No. 4 Development Officer, Adityapur Industrial Area Development Authority, Jamshedpur (AIADA) whereby the allotment of the land which was made in favour of the petitioner in the year 1993 has been cancelled.

2. The facts of the case in brief is that the petitioner was allotted a land by AIADA measuring an area of 12,346 sq. ft. in industrial area for the purpose of starting a project and a registration certificate was also issued for carrying on manufacturing activity of safety boots. Pursuant to the said allotment a registered lease deed was executed in the year 1995. It is contended by the petitioner that he started manufacturing of safety boots but in the meantime the petitioner went to USA for doing export import training courses. In the year 1997 the respondent AIADA issued notices for cancellation of allotment of land. The petitioners case is that although representative of the petitioner requested the authority to consider the case after return of the petitioner from USA but respondent No. 4 cancelled the allotment, by the impugned order dated

7.2.1998. After cancellation of lease the respondent entered into the premises and handed over possession of the land to respondent No. 5.

3. The respondents case in the counter affidavit is that although the petitioner started manufacturing activities but it continued till June 1995 and after that production was completely stopped. The petitioner constructed several shades and rented it to unauthorized persons and illegally collected rent from them. It is contended that after continuous closure of production and on not getting satisfactory reply from the petitioner, the respondent authority gave ample opportunity before cancellation of the allotment. The respondent's further case is that on 1.4.1998 the petitioner made an application and admitted that the unit was closed for more than 2 years and in response to the said application the respondent authority gave one more opportunity to regularize the allotment of land but nothing was done. Ultimately the allotment was cancelled and the land was re allotted to respondent No. 5.

4. A separate counter affidavit has been filed by respondent No. 5 wherein it is stated that on his application made to AIADA for allotment of land a decision was taken by the authority for allotment of the same land and for that the petitioner deposited a sum of Rs. 87,122/- in cash towards the cost of the land. It is contended by the respondent No, 5 that in June 2001 the cost of the land was deposited and thereafter possession of the land was given to him. After getting physical possession of the land he invested sufficient amount for raising and setting infrastructure.

5. I have heard Mr. Anil Kumar, learned counsel for the petitioner and Mr. K.C.P. Sah, learned counsel for the respondent Nos. 3 and 4 and P.R. Bhagat, learned counsel for respondent No. 5.

6. From perusal of the affidavit filed by the parties and hearing the argument advanced by the learned counsel, the admitted facts emerge are that in 1993 the land in question was allotted to the petitioner vide allotment order No. 1487 dated 6.10.1993. It appears from the said document that the respondent-AIADA allotted the land in question in favour of the petitioner for setting of an industry and it will be on the basis of 30 years lease. Clause 1.7 of the allotment order (Annexure- 2) provides that the status of the Unit over the allotted land will be that of a licence till the lease deed is executed and registered. Admittedly pursuant to the said allotment order, lease deed was finally executed and registered on 3.5.2003. A copy of the registered lease deed has been annexed as Annexure-5 to the writ application. The lease was in consideration of specific amount and also proportionate cost of the development of leasehold land. In terms of the lease deed, it was specifically provided that if at any time the land or part thereof shall no longer be required by the lessee for the purpose from which it is leased out to him the lessee shall surrender the same to the Adityapur Industrial Area Development Authority. In case of surrender of the land to the Government authority the lessee may get refund of the land in proportion to the period for which the lessee continued possession.

7. In paras 17 and 18 of the writ petition, it has been categorically stated that when the show cause notice was sent by the respondents, petitioner was undergoing training in USA and the representative of the petitioner made an application on 8.11.1997 to respondent No. 3 informing the same and requesting to consider the case after returning the petitioner from USA. It is stated that immediately when petitioner returned to Jamshedpur, she came to know about the cancellation order passed by the respondent-authority and accordingly she made request for reconsideration of the cancellation order.

8. In reply to paragraph 17 and 18 of the writ petition, respondents have admitted in paragraph 5 of the counter affidavit that during the relevant time when the show cause notice was given she was in the USA. It is simply stated that when the petitioner returned from USA she did not take any step to start production. It is therefore, clear that admittedly show cause notice was issued by the respondents for cancellation of the allotment, when the petitioner was undergoing training in USA. She came to know about the cancellation order when she returned from USA. In that view of the matter, cancellation order cannot be said to have complied the requirements of principle of natural justice. Moreover, admittedly, the petitioner was holding land by virtue of registered deed of lease for a period of 30 years and the lease of the land has not been terminated by the respondents in accordance with the law governing lease and in accordance with terms and conditions of the lease deed. Merely, because of the cancellation of the allotment, the lease cannot be said to have been cancelled in accordance with law. In my considered opinion, therefore, the impugned order of cancellation of allotment cannot be held to be justified.

9. For the reasons aforesaid, this writ application is allowed and the impugned order of cancellation of allotment is set aside. The matter is remitted back to the competent authority to pass fresh order after giving opportunity of hearing to the petitioner.