

(2003) 11 JH CK 0025
In the Jharkhand High Court
Case No : WPC No. 4587 of 2003

Suraj Prasad

APPELLANT

Vs

Steel Authority of India Ltd. and Others

RESPONDENT

Date of Decision : 04-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2004 Jhar 52 : (2004) AIR Jhar HCR 359 : (2003) 3 BLJR 2279 : (2003) 1 JCR 127

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

Bench : Single Bench

Advocate : S. Srivastava, for the Appellant; P.K. Sinha and Rajiv Ranjan, for the Respondent

Judgement

M.Y. Eqbal, J.—Heard Mr. S. Srivastava, learned counsel appealing for the petitioner and Mr. P.K. Sinha, learned senior counsel appearing for the respondent.

2. In this writ application the petitioner has prayed for quashing the letter dated 29.11.2002 and 20.3.2003 whereby the respondents have directed the petitioner to furnish an undertaking to the effect that he will pay the development cost of the leased hold plot pursuant to advertisement issued by the respondents in 1980. The petitioner applied for plot in the City Centre of the Bokaro Steel City. The respondents allotted a plot to the petitioner and a lease agreement was executed and registered on 29.3.1993 for a period of 33 years. After the allotment of the plot the petitioner constructed a house as per the plan approved by the respondents and is presently residing and carrying on his business. The petitioners case is that when he asked for completion certificate the respondents insisted for an undertaking to the effect that he will pay the development cost as demanded by the respondents.

3. Mr. S. Srivastava, learned counsel appearing for the petitioner submitted that the demand of development cost and insisting the petitioner to give an

undertaking is dehorse the lease agreement and that cannot prevail over the terms and conditions of the lease deed.

4. Mr. P.K. Sinha learned senior counsel appearing for the respondents on the other hand beside raising the question of maintainability of the writ petition submitted that the demand of development cost has no concern with the terms and conditions of the lease agreement in as much as the respondents are not changing the premium fixed in the lease agreement. Learned counsel drawn my attention to para 19 of the lease agreement which states inter alia that in case of development of land is to be made the allottee would be to pay the same.

5. Admittedly the respondents for the purpose of establishing a township allotted various plots to the allottees and a lease deed was executed and registered by and between the parties. The lease deed contains various terms and conditions. There are various reciprocal obligations created under the lease. The question whether the respondents are entitled to claim development cost for the development of the entire area from the petitioner is a question to be decided in the light of the terms and conditions of the agreement. The lease agreement is neither creating any constitutional or statutory right upon the parties nor the lease deed has come into existence pursuant to any statutory duty of the respondents. In such circumstances this Court in the exercise of writ jurisdiction cannot decide the contractual obligations and to enforce the agreement.

6. In the case of Radhakrishna Agarwal and Others Vs. State of Bihar and Others, the State of Bihar leased out some forest land to the appellant to collect and exploit Shal sheets for fifteen years on payment of royalty at certain rates. The State Government subsequently under the terms of the lease revised the rate of royalty and, thereafter, cancelled the lease for breach of the conditions. The petitioner-appellant challenged the order of revision of rate and cancellation of the lease as illegal by a writ proceeding under Article 226 of the Constitution of India. The Apex Court deciding the question of as to whether Article 226 of the Constitution is an appropriate remedy held as under :--

"In the cases before us the contracts do not contain any statutory terms or conditions or obligations and no statutory power or obligation which could attract the application of Article 14 of the Constitution is involved here. Even in cases where the question is of choice or consideration of competing claims before an entry into the field of competing claims before an entry into the field of contract facts have to be investigated and found before the question of a violation of Article 14 could arise. If those facts are disputed and require assessment of evidence the correctness of which can only be tested satisfactorily by taking detailed evidence, involving examination and cross-examination of witnesses, the case could not be conveniently or satisfactorily decided in proceedings under Article 226 of the Constitution. Such proceedings are summary proceedings reserved for extra ordinary cases where the exceptional and what are described as, perhaps not quite accurately, "prerogative" powers of the Court are invoked. We are certain that the cases before us are not such in which powers under

Article 226 of the Constitution could be invoked."

7. The Apex Court in the aforesaid decision affirmed the principle laid down by this Court to the effect that where the contract entered between the State and the person is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract and the petitioners complains about the breach of such contract by the State, then the remedy is not available by invoking the jurisdiction of this Court under Article 226 of the Constitution of India.

8. In the case of *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, the Apex Court was considering a similar question and observed as under :--"The rest of the questions relate truly to the civil rights of the parties flowing from the lease deed. These questions cannot be effectively disposed of in this petition under Article 32 of the Constitution. The question arising out of the lease such as, whether there has been breach of the covenants under the lease, whether the lease can be forfeited, whether relief against forfeiture can be granted etc., are foreign to the scope of Article 32 of the Constitution. The cannot be decided just on affidavits. These are matters which should be tried in a regular civil proceedings. One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the will of an officer or a minister or a Ltd. Governor but they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of them except in accordance with law. The stakes in this case are very high for both the parties and neither of them can take law into his own hands."

9. In the case of *State of Uttar Pradesh and Others Vs. Maharaja Dharmander Prasad Singh and Others*, the petitioner-lessee under the State Government in respect of the land challenged the notice issued by the State Government in canceling the lease and also challenging the order passed by the Luck-now Development Authority canceling its earlier order dated 31.1.1985 granting permission to the lessee to develop the lease hold property by erecting there on a multi-storied building. The Apex Court following the principles laid down in the case of the *Express Newspapers Pvt. Ltd. (supra)* held that the question whether the purported forfeiture and cancellation of lease were valid or not should not be allowed to be agitated in a proceeding under Article 226 of the Constitution.

10. Having regard to the facts and circumstances of the case and the law settled by the Supreme Court, in my opinion, the writ proceeding is not an appropriate proceeding for the grant of the relief sought for by the petitioners. The petitioners may move the civil Court of competent jurisdiction for the appropriate relief.

11. For the aforesaid reasons no relief can be granted to the petitioners in this writ application which is, accordingly, dismissed. Petition dismissed.