

(2017) 02 RAJ CK 0142
In the Rajasthan High Court
Case No : 830 of 2017

The Small Industries Development Bank of India Vs Rajasthan State Industrial Development and Investment Corporation Ltd. & Ors.

Date of Decision : 03-02-2017

Acts Referred:

Constitution of India, Article 226 -
Securitization and Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002, Section 13(2) -
Disposal of Land Rules, 1979, Rule 24(1)

Citation : (2017) 02 RAJ CK 0142

Hon'ble Judges : Sangeet Lodha

Bench : SINGLE BENCH

Advocate : Sunil Beniwal

Judgement

1. By way of this petition, the petitioner The Small Industries Development Bank of India ("the Corporation"), has questioned legality of order dated 3.6.15 issued by the Regional Manager, Rajasthan State Industrial Development & Investment Corporation Limited (RIICO), Abu Road, whereby the plot allotted in favour of the third respondent Neesa Agritech and Foods Ltd. in Industrial Area Growth Centre, Second Phase, Abu Road, has been cancelled and the lease deed executed stands determined. That apart, the petitioner has also challenged action of the RIICO in refunding the amount of development charges a sum of Rs.18,15,271/- to the third respondent.

2. The relevant facts are that on being selected in draw of lot, the third respondent was allotted a plot measuring 10,000 sq. meter at Industrial Area Growth Centre, Abu Road for establishing a food industry vide allotment letter dated 21.4.10, issued by the Senior Regional Manager, RIICO, on the terms and conditions specified. On depositing the development charges quantified at Rs.25,00,000/-, the possession of the plot was handed over by RIICO to the third respondent and lease deed was executed between the parties on 31.3.11.

3. The petitioner Corporation sanctioned/disbursed various credit facilities to Neesa Group of Companies which includes the third respondent. To secure the

loan, the petitioner Corporation had taken certain properties as primary securities and collateral securities. The plot no.B-2, Industrial Area Growth Centre, Phase II, Abu Road, allotted by RIICO in favour of the third respondent as aforesaid, was taken by the petitioner Corporation as collateral security and for this purpose, no objection certificate was obtained from RIICO.

4. The third respondent failed to set up the industry within the stipulated period as per the terms and conditions of the lease and therefore, since the third respondent was financed by the petitioner Corporation, as per clause 3(a) of the lease agreement, the RIICO issued a notice dated 25.11.14 to the petitioner Corporation in terms that the breach may be remedied within a period of 90 days from the date of issue of the notice, failing which RIICO will have to cancel/re-enter the plot, building and erections standing on the demised premises and all materials thereof shall vests in RIICO. The petitioner Corporation in its turn advised the third respondent to remedy the breach within a period of 90 days. The third respondent was warned by the petitioner Corporation that on failure to remedy the breach within the said period, it would be construed that the company and its promoters do not intend to regularise the observation and in that case, the petitioner Corporation will have no other option but to initiate proceedings both civil and criminal against the company and its promoters.

5. The third respondent failed to set up the industry within the stipulated period and therefore, the RIICO vide communication dated 3.6.15 proceeded to determine the lease and directed the third respondent to hand over the possession.

6. On account of failure of the third respondent in repayment of the loan, the petitioner Corporation served the third respondent with a notice under Section 13(2) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short "the SARFAESI Act").

7. Vide communication dated 8.9.15, the petitioner Corporation requested the RIICO not to take any adverse action against the property in question, which was followed by the communication dated 2.11.15 and 1.3.16.

8. Vide communication dated 21.4.16, the RIICO informed the petitioner Corporation that the allotment of the plot in question has already been cancelled vide order dated 3.6.15 and in view of condition mentioned in NOC dated 25.4.11, RIICO was fully justified in taking action against the allottee, the third respondent herein. It was further clarified that since lease agreement stands determined, the original lease agreement which is in possession of the petitioner Corporation has lost its legal value. Thereupon, vide communication dated 24.5.16, the petitioner Corporation intimated to RIICO that the proceedings under SARFAESI Act having been initiated in order to protect the interest of the petitioner Corporation, the RIICO may not proceed further. However, RIICO proceeded to pass an order dated 22.7.16 refunding the amount of development charges to the third respondent. The copy of the order was endorsed to the

petitioner Corporation as well. Hence, this petition.

9. Learned counsel appearing for the petitioner contended that impugned cancellation order passed by the RIICO is in violation of Rule 24(1) of RIICO Disposal of Land Rules, 1979 (for short "the Rules of 1979"). Learned counsel submitted that before cancelling the lease, 30 days notice envisaged under Rule 24(1) of the Rules was not given to the third respondent. Learned counsel submitted that the action of RIICO in cancelling the allotment without notice is violative of principle of natural justice. Learned counsel submitted that clause 3A of the lease agreement is for different purposes and thus, in the garb of clause 3A, the RIICO could not have proceeded under Rule 24(1) of the Rules of 1979 without giving the requisite notice. Learned counsel submitted that Rule 24 provides for extension of time for raising construction and thus, instead of granting time, the RIICO has seriously erred in straight away cancelling the allotment. Learned counsel submitted that the action of the RIICO in refunding the amount of Rs.18,15,271/- to third respondent after determination of lease ignoring the factum of outstanding dues of the petitioner Corporation is ex facie arbitrary.

10. I have considered the submissions of the learned counsel and perused the material on record.

11. It is true that so as to obtain the loan/credit limit from the Bank/Financial Institution, no objection was sought by the third respondent from RIICO for mortgaging the original lease agreement of plot no.B-2 at Industrial Area Growth Centre, Phase II, Abu Road as collateral security to any Bank/Financial Institution by creating charge/equitable mortgage but then, the RIICO in its turn had granted no objection subject to the condition as per clause 1(c) of the lease agreement that the Financial Institution shall keep a specific clause in mortgage deed that the breach of any of the condition of lease agreement shall be treated as breach of condition of their mortgage deed. A perusal of the mortgage deed placed on record reveals that no such condition was incorporated in the mortgage deed as per the conditional no objection given by the RIICO. Moreover, as per clause 3(a) of the lease agreement, the breach of any of covenants or conditions the lease agreement was liable to be determined. Of course, by virtue of second proviso to clause 3(a), the right to re-entry and determination of lease of the industry was not open to be exercised if the breach is remedied by the financing body or bodies within a period of 90 days from the date of notice issued or served by the RIICO on the financing body or bodies regarding the breach or breaches. It is not disputed before this court that violating the condition of lease agreement, the third respondent failed to erect industrial unit and complete the construction activities on the demised premises in accordance with the site plan within the stipulated period of two years and failed to start production within a period of three years. It has come on record that the RIICO vide communication dated 25.11.14 (Annex.7) while pointing out the breach of conditions on the part of third respondent, informed the petitioner Corporation to

remedy the breach within a period of 30 days in terms of clause 3(a) of the agreement but, the petitioner Corporation failed to remedy the breach within the stipulated period. In this view of the matter, after expiry of period of 90 days, the action of the RIICO in determining the lease deed vide communication dated 3.6.15 is in conformity with the clause 3(a) of the lease agreement and the consequential action taken, cannot be faulted with. In any case, if the petitioner Corporation claims preferential charge over the property subject matter of lease agreement and is entitled to enforce the security interest against the RIICO, nothing prevented it from taking the appropriate proceedings in this regard before the Debts Recovery Tribunal.

12. No case for interference by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India is made out.

13. The writ petition is therefore, dismissed in limine.