
(1999) 04 PAT CK 0066
In the Patna High Court
Case No : C.W.J.C. No. 529 of 1998

Ujjawal Coal Pvt. Ltd.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 19-04-1999

Acts Referred:

Citation : (1999) 2 BLJR 974

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The petitioner has filed the present writ application for quashing the order dated 20.10.97 (Annexure-15) passed by the Managing Director, Darbhanga Industrial Area Development Authority (hereinafter referred to as the Diada) whereby a direction has been issued to the Officer-in-charge of Samastipur Police Station to deliver the physical possession of Plot Nos. III, 112, 113, 116 and 117(p) situate in Industrial Area, Samastipur to respondent No. 5, for directing the respondents to hand over the vacant possession of the land in question to him and to grant provisional registration certificate to establish an industry.

2. The facts necessary for disposal of the present writ application are that the Diada was established for industrial development in the districts of Darbhanga, Muzaffarpur, Samastipur, Begusarai, Saharsa, Madhepura, Madhubani and Katihar. It has developed the industrial estate/area in all the aforesaid districts and allotted plots to the entrepreneurs for getting up new industries and for expansion of existing industries. The petitioner applied for allotment of plot in the industrial area at Samastipur for establishing a plant for special smokeless fuel plant based on coal. The Managing Director of the Diada granted provisional registration for establishment of industry for a period of one year. The aforesaid authority of the Diada allotted 1.50 acres of land in the aforesaid industrial area vide memo dated 28.2.89 (Annexure-2) for a period of 33 years on payment of

Rs. 90,000/-. Later on at the request of the petitioner 0.5 acres of land was also allotted on payment of Rs. 30,000/-. On 13.11.90, a lease deed was registered with regard to the aforesaid areas in favour of the petitioner for 33 years. According to the terms between the parties Rs. 24,000/- was to be deposited before the execution of the lease and the remaining amount was to be deposited in instalments. The petitioner deposited Rs. 24,000/- and thereafter, the lease deed was executed. The physical possession was also given to the petitioner on 9.10.90.

3 The petitioner applied for loan before the Bihar State Financial Corporation for establishing the industry. The loan was to be sanctioned on the basis of the recommendation letter issued by the Director of Industry. The matter was delayed by the Director of Industry. Lastly on 27.1.92, he recommended for grant of loan and thereafter on 20.10.92 a term of loan of Rs. 40 lacs was sanctioned to the petitioner. The aforesaid loan was sanctioned on fulfilment of certain conditions mentioned in the letter of sanction. The petitioner took steps but due to delay committed by the authority of the Diada in recommending the case for grant of loan to the petitioner the registration lapsed as a result of which the loan was also cancelled.

4. In September 1993, the Government of India came out with a new industrial policy decision which provided that the period of provisional registration certificate may be extended to the period of five years and if the unit is not set up within that period, a fresh application for registration has to be filed. Thereafter, the Managing Director of the Diada informed the petitioner on 23.3.94 that the period of his provisional registration has expired and if he wants to establish a new industry then he may apply for a fresh provisional registration and thereafter, the petitioner applied for the same and accordingly, his application was placed before the Project Clearance Committee wherein it was decided that the project of the petitioner will be considered after submission of the commitment letter for coal linkage from the Coal India and commitment letter from the financial institution. The petitioner complied with the aforesaid direction.

5. It appears that on 4.10.94 the lease deed was cancelled, a copy of which has been annexed as Annexure-A to the counter-affidavit of respondent No. 3 but the copy of the same was not served upon by the petitioner. However, during the course of argument learned Counsel for the petitioner has also challenged the cancellation of lease deed. Thereafter, the petitioner again applied for provisional registration and allotment of another plot by filing an application, a copy of which has been annexed as Annexure-B to the counter-affidavit. On 21.4.97, the respondent No. 5 who was already allotted a land in the industrial area and was running a small scale industry applied for additional land and also agreed to deposit 50% of the development cost. On 16.8.97 a meeting of the authority was held and two acres of land, which was allotted earlier to the petitioner, was allotted to respondent No. 5 and thereafter, he deposited Rs. 1,41,000/- on

22.9.97. The respondent No. 5 also executed a bond, a copy of which has been annexed as Annexure-14 and thereafter, a direction was issued to the Officer Incharge to hand over the possession by order dated 20.10.97, a copy of which has been annexed as Annexure-16, which has been challenged in this writ application.

6. The Counsel for the petitioner has raised two points; firstly, he submitted that the lease has been cancelled without notice to him and secondly, he submitted that even if the lease is treated to have been cancelled, the possession cannot be given to the respondent No. 5 in an unauthorized and illegal manner. Elaborating this submission, learned Counsel for the petitioner submitted that even if the lease is cancelled the lessor has to take possession in accordance with law and not by force. In support of his submission he relied upon the judgment of the Apex Court in the case of State of Uttar Pradesh and Ors. v. Maharaja Dharminder Pd. Singh etc. 1989 SC 997 and judgment of this Court in the case of Gait Public Library & Institute. Gardanibagh Patna through its President v. State of Bihar and Ors. 1995 (1) PLJR 585.

7. Learned Counsel appearing for the respondent No. 3 and 5 combated both the submissions and submitted that a notice was issued to the petitioner stating therein that his provisional registration has expired due to non-establishment of the industry within the stipulated time and dues against him has not been cleared. When the petitioner did not reply to the said notice, the lease has been cancelled in terms of the lease deed which provides cancellation of lease if the industry is not established within the stipulated time. They also submitted that the petitioner had knowledge of cancellation of the lease and but he did not challenge the order of cancellation and on the other hand, on 24.1.95 filed an application that his lease has been cancelled on 4.10.94 and as no loan was disbursed by the financial corporation, he has not made construction over the land allotted to him and prayed for grant of fresh registration and for allotment of land. In that view of the matter, now he cannot be allowed to challenge the cancellation of lease deed. They have also submitted that after the cancellation of lease deed the respondent No. 5 applied for allotment of land as additional land as the same was needed in connection with industrial unit. The said matter was considered in a meeting of the DIADA wherein it was decided to allot two acres of land. The respondent No. 5 agreed to deposit 50% of the development cost. Thereafter, the allotment of land was made to him and he deposited Rs. 1,41,000/- on 22.9.97 and thereafter, he also spent about Rs. 11 lacs over the construction of the land. In that view of the matter, at this stage if the direction is given to hand over the possession of the aforesaid land to the petitioner then that will cause injustice to the respondent No. 5. They have also submitted that 12 acres of land are still existing vacant in the industrial area. On granting of provisional registration to the petitioner and on fulfilment of other conditions, the authority is ready to settle if two acres of land.

8. The facts which are not in dispute are that in terms of lease deed the Unit was

to be established within six months but that was not done by the petitioner. The petitioner had to deposit the remaining amount in instalments but admittedly he did not deposit the single farthing in spite of notice served upon him. In terms of lease deed in case of non-fulfilment of terms and conditions or in breach of the conditions the lease is liable to be cancelled without notice. Though the petitioner has stated that no notice was issued on him but his assertion does not appear to be correct one as the respondent authority informed the petitioner by letter dated 23.3.94 that his provisional registration has expired and he has not paid the outstanding dues and thereafter the impugned order of cancellation has been passed. The petitioner admits that he had received the aforesaid letter, a copy of which has been Annexure-10. In that view of the matter, cancellation of lease cannot be said to have been done without notice to the petitioner.

9. Admittedly, the petitioner did not fulfil the terms and conditions of the lease deed and in that view of the matter even assuming that there was no notice prior to cancellation order no ground to interfere with the impugned order in this case is made out for the simple reason that application of principles of natural justice cannot be fixed in a straitjacket jacket formula.

10. In this case, according to the own assertion of the petitioner his provisional registration had expired and he did not pay the dues. In that view of the matter, no case to interfere with the cancellation order is made out. There is another ground not to interfere with the cancellation order. The order was passed on 4.10.94 but the petitioner did not challenge the same and thereafter, he applied for grant of fresh provisional registration as well as allotment of land. In the said application, he has clearly mentioned that his land has been cancelled on 4.10.94.

11. The materials on the record show that after cancellation of sale deed, the respondent No. 5 applied for allotment of land in question and thereafter, the said matter was considered and allotment of 2 acres of land was made to it. He deposited Rs. 1,41,000/- and also spent over the land about Rs. 14 lacs. As such the equity lies in favour of respondent No. 5 at the stage.

12. The respondent No. 5 asserts that he same in possession over the land in question on 2.10.94 before passing of the interim order by this Court on 21.1.98.

13. No doubt even after cancellation or expiry of the term of lease the authority cannot take possession forcibly but in this case possession has already been given to the respondent No. 5 and he has spent the amount, as stated above, over the land in question. As such the equity does not lie in favour of the petitioner as admittedly, he is a defaulter and accordingly, it is not a fit case where a direction can be issued to give possession of the plot in question to the petitioner.

14. It appears that after the expiry of the period of provisional registration the petitioner applied for fresh provisional registration and he was informed by the authority vide letter dated 19.12.97 that the Government has put a ban on granting of registration and as such the authority is not competent to grant

registration. However, if the petitioner obtains permission from the Director of Industry, Government of Bihar, for new registration then the authority will consider the question of grant of registration as well as allotment of the land. A copy of the said letter has been annexed as Annexure-13 to the writ application. In that view of the matter, it will be open for the petitioner to approach the Director of Industry, Government of Bihar, for grant of new registration. If the petitioner approaches the Director then he will take a final decision in the matter within two months from the date of filing of the petition by the petitioner. If the permission for grant of registration is granted then the respondent-authority is directed to consider the case of the petitioner for grant of registration as well as allotment of land in the industrial area within six weeks thereafter. It is made clear that if the petitioner approaches the Director of Industry, Government of Bihar, for fresh registration then it will inform the authority within a week of filing of the petition before the Director so that the two acres of land is kept vacant till the matter is finally decided by the Director of Industry. In case of grant of permission for registration to the petitioner, the land may be allotted to it on fulfilment of other terms and conditions.

15. With the aforesaid observation, this writ application stands dismissed.