

Behar Engineering Corporation Vs. State of Bihar and ors.

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Court : Patna

Decided On : Aug-19-2005

Judge : S.K. Katriar, J.

Acts : Bihar Industrial Area Development Authority Act, 1974 - Sections 6 and 16(2); Bihar State Industrial Area Development Authority (Amendment) Act 1991; Income Tax Act

Appeal No. : C.W.J.C. No. 2056 of 2004

Appellant : Behar Engineering Corporation

Respondent : State of Bihar and ors.

Disposition : Petition dismissed

Prior history : S.K. Katriar, J. 1. Heard Mr. Samrendra Pratap Singh for petitioner, Mr. Manoj Kumar Jha, Learned JC to Standing Counsel No. I for respondent Nos. 1 to 4 (State of Bihar and its functionaries), Mr. Umakant Singh for respondent No. 5 (Managing Director, Bihar State Small Industries Corporation), Mr. Madan Mohan for respondent Nos. 6 to 9, and Mr. Chittaranjan Sinha for respondent No. 10 (M/s. Paras Febritek through its own Kanti Kumar). This writ petition is directed against the order bearing I

Judgement :

S.K. Katriar, J.

1. Heard Mr. Samrendra Pratap Singh for petitioner, Mr. Manoj Kumar Jha, Learned JC to Standing Counsel No. I for respondent Nos. 1 to 4 (State of Bihar and its functionaries), Mr. Umakant Singh for respondent No. 5 (Managing Director, Bihar State Small Industries Corporation), Mr. Madan Mohan for respondent Nos. 6 to 9, and Mr. Chittaranjan Sinha for respondent No. 10 (M/s. Paras Febritek through its own Kanti Kumar). This writ petition is directed against the order bearing letter No. 1091-D, dated 16.10.2001 (Annexure-3), issued by the Patna Industrial Area Development Authority (hereinafter referred to as 'the Authority'), whereby the lease-hold rights in favour of the petitioner with respect to the industrial plot in question situate in the township of Patna has been cancelled on account of violation of the terms and conditions of the lease deed. It is further directed against order bearing memo No. 34-D, dated 7.1.2003 (Annexure-F), whereby the said industrial plot has been allotted in favour of respondent No. 10.

2. According to the writ petition, respondent No. 5 (Bihar State Small Industries Corporation) had executed a lease deed on 1.6.1973 (Annexure-1), assigning lease-hold rights with respect to the industrial plot in question in favour of the petitioner for industrial purposes and on the terms and conditions detailed in the lease deed. Possession of the same was made over to the petitioner on 2.6.1973. The petitioner unit came in production on 1.12.1980 and went on upto 1990, whereafter it was closed in 1983 for circumstances beyond the petitioner's control. The State Government had in the meanwhile transferred ownership of the plot in question in favour of respondent No. 6 (Bihar Industrial Area Development Authority) for Administrative reasons. The Authority had issued show-cause notice dated 21.7.1988 (Annexure-A) to the petitioner to resume production failing which the lease deed shall be cancelled. It is further stated that the affairs in question are governed by the Bihar Industrial Area Development Authority Act. The same was amended by the Bihar State Industrial Area Development Authority (Amendment) Act 1991, a photocopy of the gazette notification whereof is marked Annexure-A to the counter affidavit of respondent Nos. 2 to 4. The Authority ultimately came to the conclusion that the petitioner has although acted in violation of the terms and conditions of the lease by not setting up the industry for which the lease was

granted leading to the impugned orders. The writ petition has, therefore, been preferred with the prayer to quash the impugned orders and to restore the petitioner's possession. -

3. The respondents have placed on record their separate counter affidavits except respondent No. 5, wherein strenuous efforts have been made to justify the impugned action, and have opposed the writ petition.

4. I have perused the materials on record and considered the elaborate submissions of learned counsel for the parties. I must first of all consider the petitioner's submission that the statutory appeal preferred by the petitioner vide the memorandum of appeal dated 22.10.2001 (Annexure-7) has remained pending although and may be directed to the disposed of. Learned counsel for the respondents submits that the same (Annexure-7) is not really a memorandum of appeal, not having been filed in the prescribed proforma nor the prescribed stamps were affixed. The objection is stated only to be rejected. Counsel for the respondents have not been able to bring to my notice as to which provision of law prescribes the proforma and the provision for payment of Court-fee. Furthermore, it is an established procedure in judicial and quasi-judicial proceedings that a document initiating an adjudication is not dismissed at the inception for such defects. If such defects are noticed, then time is allowed to the petitioner to remove the same. No such order passed by the prescribed authority has been brought to my notice.

5. The next limb of this argument advanced on behalf of the respondents deserves serious consideration. It is stated in the counter affidavits that the memorandum of appeal dated 22.10.2001 (Annexure-7) has never been filed by the petitioner, and is a got-up document for the purposes of this case. Learned counsel for respondent Nos. 1 to 4, and respondent No. 10, are right in their submission that the writ petition nowhere states that such an appeal has been preferred and is pending. Paragraph-17 of the writ petition states that soon after receipt of the impugned order dated 16.10.2001 (Annexure-3), the petitioner had approached respondent No. 6 (Managing Director, Patna Industrial Area Development Authority), and respondent No. 7 (the Development Officer, Patna Industrial Area

Development Authority), and explained to them that cancellation of the lease was not in accordance with law, the terms and conditions of the lease-deed, and request was made to recall the same. It does state that the petitioner had filed representation (Annexure-7/A) before respondent No. 6 and respondent No. 7. The representation dated 22.10.2001 (Annexure-7/A) is not addressed to the prescribed appellate authority, and also does not refer to the alleged memorandum of appeal dated 22.10.2001 (Annexure-7).

(5.1) Section 6 of the said Bihar Act 16 of 1974, inserted Sub-section (2) of Section 16 of the Act, and is set out hereinbelow for the facility of quick reference
;-

(2-a) In case of necessary effective steps are not taken within the fixed period to establish the industry, the authority shall in such condition, cancel the allotment of allotted plot shed and also forfeit the amount deposited in this connection. The authority shall, before cancelling the allotment allow one month time to the allottee to put up his case. The allottee on being dissatisfied with the order of the authority may file an appeal to the State Government within one month and the State Government shall, after due consideration dispose it of within two months from the date of receipt of the appeal.

It is thus manifest that allotment of the plot (shed) can be cancelled if its lessee has failed to establish the industry within the fixed period. It further appears that before cancelling the allotment, the allottee shall be allowed one month time to put up his case. It further provides for an appeal before the State Government within, one month from the date of order of cancellation. It is stated in the counter affidavit of the Bihar Industrial Area Development Authority, that head of the department concerned, namely, Industrial Development Commissioner, is the prescribed appellate authority, and has to receive and dispose of the appeal. It is stated in paragraph-4 of the counter affidavit of respondent Nos. 1 to 4 that the petitioner has not preferred any appeal.

(5.2) It thus appears to me on a consideration of the materials placed on record that the petitioner never preferred appeal in terms of the aforesaid provisions before the State Government and the alleged memorandum of appeal is

apocryphal and a got-up document for the purposes of the case. In that view of the matter, the writ petition is not maintainable on two counts. The petitioner has by-passed the statutory remedy available to him under the Act. Furthermore, the petitioner has not approached this Court with clean hands and has tried to mislead the Court by creating a document to take it down the garden path. He has thus disentitled himself from any relief. Learned counsel for respondent No. 10 has placed reliance on the judgment of a learned Single Judge of this Court reported in 2000 (2) PLJR 189 Parimal v. State of Bihar, the relevant portion of which is set out hereinbelow for the facility of quick

25. Therefore, in my view, it is not a case of mere violation of the terms of the agreement but the very display of the hoardings without the permission of the District Engineer of the District Board was wholly illegal and unauthorised. No document has been filed nor there was any averments before this Court that the prior permission of the District Engineer was obtained to erect the hoarding on the land of the District Board. Therefore, I am constrained to hold that the petitioner has not approached this Court with clean hands. Thus, such conduct on the part of the petitioner does not entitle him to any relief under the writ jurisdiction. This position is well settled that when an applicant approaches a Court for a discretionary and equitable relief he must approach the Court with clean hands and must display most clarity. There must not be any misrepresentation of vital facts in the writ petition. Reference in this regard can be usefully made to a decision of the Apex Court in the case of Dr. Vijay Kumar Kathuria v. State of Haryana and Ors. : [1983]2SCR1037 and yet other case of Welcome Hotel and Ors. v. State of Andhra Pradesh and Ors. : [1983]3SCR674 . Similar was the view taken by a Division Bench of this Court in the case of Baidyanath Mahto and Ors. v. The Agricultural Produce Market Committee and Anr. 1996 (2) PLJR 345.

I am also reminded of the judgment in the case of The King v. The General Commissioners for the Purposes of the Income Tax Acts for the district of Kensington 1917 Vol. 1 Law Reports King's Bench Division 486, wherein it has been held that a petitioner disentitles himself from consideration of the matter on merits if it is guilty of fraud, misrepresentation, or suppression of vital materials. It has been held as follows :-There having been a suppression of material facts by

the applicant in her affidavit, the Court would refuse a writ of prohibition without going into the merits of the case.

6. Learned counsel for respondent No. 10 is further right in his submission that the writ petition is hit by delay, laches, negligence and acquiescence. Law is well settled that an aggrieved person must approach the writ Court before parallel rights are created and allowed to be entrenched by lapse of time and acquiescence. Running out of physical time is one of the factors. In the present case, the order was passed on 16.10.2001 (Annexure-3), whereby the petitioner's show cause was rejected and allotment of the industrial plot in question was cancelled. That provided the cause of action to the petitioner. The plot of land in question was allotted in favour of respondent No. 10 on 7.1.2003 (Annexure B/10 to the counter affidavit, of respondent No. 10). The petitioner was deprived of possession of the plot in question on 22.10.2003, and was made over to respondent No. 10 on the same date, vide order dated 22.10.2003 (Annexure D/10 to the same counter affidavit). The writ petition was indeed filed on 16.2.2004. Had the petitioner filed the writ petition soon after the said order dated 16.10.2001 (Annexure-3) was passed, allotment of the plot in favour of respondent No. 10 and dispossession may have has been taken place. I am, therefore, of the view that the petitioner approached this Court belatedly, much after the cause of action had arisen in favour of the petitioner, and this allowed parallel rights to be created in favour of respondent No. 10, which was entrenched by lapse of time, laches, negligence and acquiescence attributable to the petitioner.

7. It appears to me on a perusal of the materials on record that the petitioner never took the lease in question seriously and wanted to retain it, more as an immoveable property, rather than as a lease for the avowed objective mentioned in the lease deed violation of which can validly lead to cancellation of the same. The materials on record show that he put it to minor/inconsequential industrial use in 1980 i.e. seven years after commencement of the lease. Photo copies of the electricity bills placed on record by the petitioner illumine this position. The low consumption of electricity speaks volumes that no industry was being run there. The same can at best be the bills for a small house-hold. The respondents have placed on record various letters which are annexed to the counter affidavit,

whereby show-cause notices were being issued to the petitioner over a protracted period saying that the respondent authorities had found that the plot in question was not being used for industrial purposes, was really lying idle, and ultimately led to the impugned order. The electric supply line was disconnected on 30.12.1995 and was never resumed. The petitioner seems to be unmindful of the position that the plot of land has been leased on a nominal payment, and with the avowed objective of industrial purposes detailed in the lease deed. I am, therefore, convinced that there are adequate materials on record to justify the impugned order.

8. There is no merit in this writ petition. It is accordingly dismissed.

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