

Automatrix Private Ltd. and anr. Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Jul-27-2006

Judge : S.N. Hussain, J.

Acts : Bihar Industrial Area Development Authority Act, 1974 - Sections 6 and 6(2)

Appeal No. : C.W.J.C. No. 7827 of 2005

Appellant : Automatrix Private Ltd. and anr.

Respondent : The State of Bihar and ors.

Advocate for Def. : Piyush Lall, J.C. to AAG-III, Madan Mohan, Sr. Adv., Rita Verma and Niraj Madan, Advs. for Respondent No. 3, R.S. Pradhan, Sr. Adv. and M.D. Singh, Advs.

Advocate for Pet/Ap. : Manik Ved Sen and Vikash Kumar, Advs.

Disposition : Petition dismissed

Judgement :

S.N. Hussain, J.

1. I.A.No. 6160 of 2005 has been filed by the M/s Amrapali Automobiles through one of its partners for being impleaded as party respondent to the instant case.

2. Considering the averments made in this application and the facts and circumstances, the applicant has only applied before the authorities concerned for the area in question to be allotted to it and hence it cannot at this stage claim any right over the same. Furthermore since this case is very seriously contested by the respondents, I do not see any necessity to add the said intervenor as respondent in the instant case and accordingly the above interlocutory application is dismissed.

3. Heard learned Counsel for the petitioners and learned Counsel for the State and also learned Counsel for the Patna Industrial Area Development Authority (respondent No. 3).

4. This writ petition has been filed against order dated 06.6.2005, by which the Industries Development Commissioner (respondent No. 2) dismissed the appeal of the petitioners and affirmed order dated 22.9.2004 (Annexure-1) passed by the Executive Director of Patna Industrial Area Development Authority (hereinafter referred to as 'P.I.A.D.A.' for the sake of brevity), by which the allotment of the premises of the petitioners in question was cancelled and they were directed to return the ownership letter to the authority concerned.

(a) Learned Counsel for the petitioners submits that Plot No. 24 in the Patliputra Industrial Estate, Patna was allotted in the year 1964 to the partnership firm of the petitioners by the Bihar State Small Scale Industries Corporation in the name of proprietary firm M/s Ancillary Industries. He further submits that in the year 1974 the Bihar Industrial Area Development Authority Act (hereinafter referred to as 'the Act' for the sake of brevity) came into force and the authorities were appointed under the provisions of the said Act. He further submits that subsequently constitution and name of the firm was changed and it had become limited company under the name and style of Automatrix Pvt. Limited and the petitioners applied for the change of name before the authorities concerned. He further states that in the year 1990 a fresh lease was executed by the P.I.A.D.A. in favour of petitioner No. 1 with respect to the said plot for the purposes of development of the industries. He also states that without service of show cause notice upon the petitioners a proceeding was initiated by the Director, P.I.A.D.A. and without

hearing the petitioners the Director passed the impugned order dated 22.9.2004 (Annexure-1) cancelling allotment of the petitioners and also directing them to return the ownership letter. He also contends that after coming to know about the said order they challenged the same before the Industrial Development Commissioner, Bihar, who by his order dated 06.6.2005 rejected the appeal on frivolous consideration and hence the petitioners had no option but to move this Court in the instant writ petition.

(b) Learned Counsel for the petitioners raises several points against the impugned orders. He submits that the provisions of Section 6 of the Bihar Industrial Area Development Authority Act, 1974 as amended by Bihar Act 27 of 1992 provides that:

(2-a) In case 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.

(2-b) The authority shall, after cancellation of allotment of the plot/shed take possession of the said plot shed.

He thus submits that according to the said proviso only when no effective steps are taken to establish the industry within a fixed period, the authority can take such action but here in the instant case from the impugned order dated 22.9.2004 (Annexure-1) it appears to have been found that inspite of repeated reminders sent by Idcal office as well as head office the petitioners had failed to re-start production in the factory, hence he states that the authorities were fully aware that earlier the petitioners had been making production, which clearly shows that industries had already been established and hence the aforesaid provision will not be applicable and in absence of the applicability of the said provision the impugned order is illegal, arbitrary and perverse.

(c) The other point taken by the petitioners is that no show cause notice was sent to the petitioners and the impugned order dated 22.9.2004 (Annexure-1) was passed ex-parte behind their back and hence they should not have been sustained in the eye of law. Learned Counsel for the petitioners also points out that the petitioners had already taken working capital loan and had mortgaged their leasehold right for the premises and hence they had been taking effective steps even for starting production as the shed had already been constructed in the premises in question. He also raises the point that the said provision of law is not applicable to a sick unit and the petitioners' factory can at best be said to be a sick unit and in the said circumstances they have already applied before the authorities to allow diversification as they intended to use the said land for petrol pump and to sell other accessories but the said matter has also not been considered. He, thus, submits in the aforesaid facts and circumstances that the impugned orders are absolutely illegal, arbitrary and perverse and cannot be sustained in the eye of law.

5. On the other hand, learned Counsel for the respondents submits that no step had ever been taken by the petitioners to establish the industries, nor any industry has been established since 1964 i.e. more than 40 years. He further submits that paragraph-6(xiv) of the deed of lease of 1990 specifically provided that the lessee shall use the land for the specified purpose within a period of six months from the date of the lease failing which lease may be terminated and lessee may be evicted from the land without notice. He also avers that in the aforesaid facts and circumstances the provision of Sub-section (2-a.) of Section 6 of the Act is also fully applicable to the instant case and the authorities were quite justified in passing the impugned orders. He also states that two notices were sent to the petitioners in terms of the aforesaid provisions of the Act but no reply was given thereto, which fact is denied by the learned Counsel for the petitioners, and when the petitioners did not appear in spite of the said notice the authorities had no option but to pass the impugned orders. Learned Counsel for the respondents further avers that the shed on the plot in question was constructed by the P.I.A.D.A. itself and only thereafter plot with shed was handed over to the petitioners and hence the petitioners cannot take any advantage of the construction of the said shed. He also submits that by order dated 11.7.2005 this

Court had specifically directed the petitioners to deposit 'the arrears as mentioned in the show cause notice within a period of one week and they shall 'continue to pay a11 charges/rant as per the lease agreement within the period as stipulated therein but although the petitioners complied the first part of the order, they have not paid any charges/rent as per the lease agreement within the period as stipulated therein and hence the petitioners have also violated the specific directions of this Court.

6. Considering the facts and circumstances of the case as well as materials on record and the averments of the parties, it is quite apparent that Sub-section (2-a) of Section 6 of the Act specifically provided that in case necessary effective steps are not taken within the fixed period to establish the industry the allotment shall be cancelled by the authority concerned, where-as clause 6(xiv) fixes the said period to be six months and hence the petitioners were to take necessary effective steps to establish the factory within six months. But from the materials on record, it is quite apparent that only a shed was there on the plot in cuestion but mere construction of shed cannot be legally held to be any effective steps with regard to establishment of any industry. No reliable material has been produced to show that any industry had been (established and was functioning at any period after the allotment. Only being the ancillary of Telco will not show that any industry had been established or any effective step has been taken for the said purpose. So far the words used in the impugned order dated 22.9.2004 (Annexure-1) i.e. 're-start the production' is concerned, a proper reading of the entire order mentioned above, makes it quite clear that the Executive Director had clearly found that the land and shed were never used since allotment till the date of the order and no industry had been established within the prescribed period, which was found to be not only violation of the terms of the agreement but also violation of the specific provisions of law. Similarly, the appellate authority in the impugned order dated 06.6.2005 (Annexure-2) has specifically found that the petitioners had not taken any step for the establishment of industry and when appellate authority put a question before the petitioners that in case the land is re-allotted to them what time they will take to pay due amount and establish the industry for commercial production but even after considerable time the petitioners failed to give any such proposal, due to which the appellate authority had no option but to dismiss the

appeal and even on that date the petitioners were not ready to start taking steps for establishment of the industry.

7. So far the question of notice is concerned, it is specific claim of the respondents that the notices were sent to the petitioners, which fact is denied by the learned Counsel for the petitioners but the fact remains that after the impugned order of the Executive Director dated 22.9.2004 (Annexure-1) the petitioners availed opportunity of challenging the same before the appellate forum and after considering the facts and circumstances and even after giving opportunities to the petitioners to give a proposal to re-start the industry after re-allotment the petitioners did not come with any concurrent proposal, which clearly proves that neither any industry was established nor the petitioners were agreed to give a proposal for re-starting the industry. In this connection it may be stated here that the petitioners have filed a petition before the authorities concerned for diversification of the available land for starting his petrol pump etc. and whereas some other persons also filed applications for the same purpose but Industrial Area of the Patliputra Industrial Estate has been developed in view of the specific industrial policy and before allowing such an application of any person, the authorities will have to see as to whether such an application could be legally allowed in the specific requirements and terms of the industrial policy.

8. In the aforesaid facts and circumstances, I do not see any illegality in the impugned orders and accordingly this writ petition is dismissed.

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