

Premi Printing Press Vs. the Patna Industrial Area Development Authority and anr.

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Court : Patna

Decided On : Apr-19-1995

Judge : Ashok Kumar Ganguly, J.

Acts : [Constitution of India](#) - Article 226; Bihar Industrial Area Development Authority Act, 1974 - Sections 6(2)

Appeal No. : Civil Writ Jurisdiction Case No. 718 of 1995

Appellant : Premi Printing Press

Respondent : The Patna Industrial Area Development Authority and anr.

Advocate for Def. : R.B. Mahto, Nirmal Kumar and Uday Chand Prasad, Adv.

Advocate for Pet/Ap. : Arshad Alam and A. Amanullah, Adv.

Disposition : Petition dismissed

Judgement :

Ashok Kumar Ganguly, J.

1. This writ petition has been filed, inter alia, with a prayer for quashing the Order dated 15th September, 1994 passed by respondent No. 2, the Managing Director,

Patna Industrial Area Development Authority by which the allotment of land made in favour of the petitioner has been cancelled.

2. Mr. Arshad Alam, learned Advocate appearing for the petitioner, stated that a lease of 99 years was granted to it in respect of 1500 sq. ft. open space in the Industrial Estate, Biharsharif in the year 1978. Thereafter further additional open land was allotted to the petitioner. The said allotment of land was given to the petitioner for manufacturing exercise copy books and for the said purpose it took loan from the Bihar State Financial Corporation. The case of the petitioner is that it functioned till 1981 when due to a communal flare up its Unit was burnt and the assets were destroyed. Thereafter in 1991 the Project Officer, CSIR suggested certain alternative plans to the petitioner-Company and the petitioner's case is that it submitted a plan to the respondent-Authority for granting permission to establish a hotel. The further case is that the said project was duly recommended by the Area Officer of the respondent-Authority in 1991 and 1992 and the petitioners had submitted a project report along with a map which makes provisions for shops and the said project report was sanctioned. At this juncture the petitioner received a show cause notice on 4-3-1994 asking them to show cause why the allotment of land made by the said Patna Industrial Area Development Authority (hereinafter called the said Authority) should not be cancelled as the petitioner is not carrying on industrial activities on the said plot of land. The allegation in the show cause notice is that the said plot of land is being misused.

3. In reply to the said show cause, the petitioner in paragraph 15 of the said reply, admitted that it had established Saloon, Laundry, Tea stall and Stationery shop. According to the petitioner, the establishment of those shops is part of its industrial activities to be carried on in connection with Hotel industry. Thereafter on consideration of the said reply to the show cause notice, the respondent-Authority passed the impugned Order dated 15th September, 1994 cancelling the allotment of land given to the petitioner. The further grievance of the writ petitioner is that on 25-11-1994, the authorities with the help of the District Administration forcibly locked the premises. Against the said Order of cancellation, the petitioner has filed a representation dated 3-10-1994 in which he has prayed for the review of the order relating to the said cancellation.

4- Mr. Ram Balak Mahto, learned Senior Counsel appearing on behalf of the respondents-Authorities, apart from raising other objections, raised a preliminary objection to the maintainability of the writ petition by stating that the petitioner has an alternative remedy of filing an appeal under the Act and that not having been filed; the instant writ petition is not maintainable. In the counter-affidavit filed by his client, the contentions raised in the writ petition have been substantially controverted. It has been stated in the counter-affidavit that the said Authority has acquired 10.60 acres of land at Ram Chanderpur, Biharsharif for the establishment and development of Industries. With that end in view 39 plots and 15 sheds have been constructed and the same were distributed through lease to various entrepreneurs for the development of the Industry. The authorities thereafter got information that on the plot of land allotted to the petitioner, it has constructed about 25 shops and let out the same to different persons and the industrial activities of this petitioner had come to an end since 1981. In the counter-affidavit the respondents also disclosed a report from the Government Undertakings Committee dated 17-8-1994 wherein it has been stated that the petitioner-Unit has constructed 25 shops and there is no industrial activities. On getting the said report, the said authority went a Committee of five persons for an on-spot inquiry of various Units including that of the petitioner and on the spot inquiry, the said enquiry team also supported the contents of the report. Both the report of the Government Undertaking Committee and the report given by the said Committee of five persons have been disclosed in the counter-affidavit.

5. There is no specific denial of the contents of those documents in the rejoinder affidavit filed by the petitioner. The only case which the petitioner made out at the time of their submission before this Court is that in the map submitted by the petitioner, there was mention of the said shop and the said map has been approved by the said authority when they approved the project of the petitioner for running of a Hotel. The said fact that the petitioner submitted a map about the shops to the authority was specifically denied in paragraph 17 of the Counter-affidavit.

6. One fact is admitted that the original industrial activity of the petitioner in running the printing press is no longer in operation. The petitioner's proposed Hotel

industry has not yet come up even when the petitioner had submitted his reply to the show cause notice inasmuch as in the said reply to the show cause notice the petitioner has said that the construction of the Hotel industry is in progress. As such the stand of the respondents-Authorities that the petitioner-Unit has failed to take necessary effective steps to establish Hotel industry does not, prima facie, appear to be either unreasonable or arbitrary. I may hasten to add that I am arriving at any finding on that score for the reasons given below:

7. The entire matter rests on disputed questions of fact whether in the name of running an industry the petitioner has converted the place to a different use by constructing various shops and by letting them on rent. The said factual questions which are hotly disputed between the parties cannot be effectively decided by a writ court under Article 226 of the [Constitution of India](#) especially when there is a special forum created for the same.

8. In that view of the matter, this writ petition cannot be entertained at this stage as the petitioner has not filed any appeal under the provisions of Section 6(2a) of the Bihar Industrial Area Development Authority Act, 1974.

9. The requirement of filing an appeal under the provisions of the said Act is all the more necessary inasmuch as here the right of the petitioner to get allotment of the said Industrial Estate is a special right created under the said Act. Normally the petitioner is not entitled to get such a lease. In order to encourage and develop industry various plots of land are acquired and then distributed on lease to the deserving applicants. Therefore, the petitioner has no common law right to get such a lease. The said right of the petitioner is created under the Act and as such the infringement of the said right, if any, must be redressed in accordance with the remedy provided for under the Act which creates the right. In this connection, the decision of the Supreme Court in the case of S.T. Muthusami v. Natarajan, reported in AIR 1988 SC 616 may be looked into. While considering the question of alternative remedy before coming to a writ Court, their Lordships of the Supreme Court relying on various judgments came to the following conclusion at page 623 of the said report:

'It is now well-recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This Rule was stated with great clarity by Willes, J., in *Wolverhampton New Water Works Co. v. Hawkesford*, (1859) 6 CB (NS) 336, at p. 356, in the following passage :

'There are three classes of cases in which a liability may be established founded upon statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and a peculiar form of remedy which existed at common law; there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy; there, the party can only proceed by action at common law. But there is a third class, viz., where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it.....The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.'

The Supreme Court in the said decision in the case of *Section T. Muthusami*, AIR 1988 SC 616 (supra) further noted in page 623 of the report as follows :--

'The Rule laid down by this passage was approved by the House of Lords in *Neville v. London Express Newspaper Ltd.*, 1919 AC 368, and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant & Co.*, 1935 AC 532, and *Secy, of State v. Mask & Co.*, 44 Cal WN 709 : (AIR 1940 PC 105), and it has also been held to be equally applicable to enforcement of rights (See *Hurdutrai v. Off. Assignee of Calcutta*, (1948) 52 Cal WN 343 at p. 349.'

10. In that view of the matter, I hold that this writ petition, without exhausting the remedy provided under the Statute, is not maintainable and as such it is dismissed.

11. It is open to the petitioner to file an appeal as provided under Section 6(2) of the said Act within a period of two weeks from today. If such an appeal is filed, the appellate authority will hear the same and dispose it of on merits within a period of four weeks thereafter. It is further made clear that nothing said in this judgment will be treated as any expression of opinion on the merits of the case of either of the parties.

12. With the above observation, this writ petition is dismissed. There will be no Order as to costs.

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