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Court : Karnataka

Decided On : Feb-05-1986

Reported in : [1986]59CompCas706(Kar)

Judge : M.P. Chandrakantaraj, J.

Acts : Karnataka Industrial Areas Development Act, 1966 - Sections 14;
[Constitution of India](#) - Article 12

Appellant : Mysore Cements Ltd. and anr.

Respondent : Karnataka Industrial Areas Development Board

Advocate for Pet/Ap. : Sunder Murthy, Adv.

Judgement :

Chandrakantharaj Urs, J.

1. Petitioner No.1 is a public limited company incorporated under the Companies Act of 1956. The company is aggrieved by the letter addressed to it by the executive member of the Karnataka Industrial Areas Development Board, an undertaking of the Government of Karnataka (respondent). That letter is annexure 'L' and is dated November 27, 1985/December 2, 1985. It sets out the background

in which the letter has come to be written. An extent of 36,352 sq.mts. of land in Plots NOs. 92,92 and 94 of Mysore-Belangola industrial area was lease in favour of the company subject to certain terms and conditions. The object of the lease was to erect a factory building to produce cement asbestos sheets. The time stipulated at the time of the lease was extended. Despite the extension, nothing had been down by the assessee company to fulfill the condition of the lease. Therefore, the letter ends with following paragraph:

'Plots Nos. 92, 93 and 94 of Mysore-Belangola industrial area lease in your favour will be resumed on February 6, 1986, at 11 a.m. for your failure to implement the project within the extended period by virtue of powers delegated to me by the Board in its meeting held on June 3, 1982. I request you to please be present at the spot on the above date and time to witness the resumption. However, if you do not choose to be represent, the plot will be resumption in your absence and the forfeiture clauses 4 and 11 of the lease agreement will become operative.'

2. Therefore, the petitioner have presented the present writ petition, inter alia, contending that the Board has no power to resume the vacant lands as the relevant statute, namely, the KARNATAKA Industrial Areas Development Act, 1966 ('the Act'), specifically provides for resumption only in respect of constructed factory building or sheds, as seen from clause (f) of section 14 of the Act.

3. The thrust of the argument is that the Board is not conferred with the power of resumption or eviction in respect of vacant lands leased by it. I do not think that the argument is well-founded.

4. The respondent-Board is a creation of the statute and is a 'State' as defined under article 12 of the Constitution.

5. Section 14(a) of the Act provides that the board may acquire and hold property, both movable and immovable, as the Board may deem necessary for the performance of any of its activities, which are generally to develop performance of such activities, it is open to the Board under the said provision to lease, sell, exchange or otherwise transfer any property held by it.

6. The lease deed, produced at annexure - A to the petition, clearly shows that the Board is the owner of the immovable property which it has leased as such owner, it has always the right under the Transfer of Property Act to resume the demised land and that cannot be taken away by the provision made in clause(f) of section 14 of the Act. It relates to rescinding of allotments and to evict the allottees concerned for breach of any of the terms and conditions of the allotment, the allotment necessarily having relation to what is mentioned in clause (d) of section 14 of the Act.

7. Therefrom the argument must necessarily fail because clause (f) of section 14 of the Act cannot be read so as to mean that the right of an owner under the Transfer of Property Act is taken away.

8. In any event, Mr.Sundaramurthy pointed out that the company has had difficulties in conforming to the time-limit agreed to in the lease deed for erecting the factory and that the Board was at all times aware of them. He has even pointed out that even after the time specified in the lease deed has lapsed, enhanced rate of rent was demanded and received by the Board and, therefore, it is stopped from exercising its right under the lease.

9. In support of the first and the second arguments, he relied upon a decision of the Calcutta High Court in the case of Santibhusan Mukherjee v. Corporation of Calcutta, AIR 1949 Cal 20. In that case, it has been held that a corporation cannot indirectly do, by placing itself under the disability of estoppel, what it could not have directly done by reason of statutory prohibitions. The application of the ratio, according to the counsel, is when there is a prohibition under clause (f) of section 14 of the Act to resume and evict from vacant land, the board cannot do the same as indicated in annexure-L.

10. I have held that clause (f) of section 14 of the Act refers undoubtedly to buildings. But, there is no prohibition in respect of vacant lands. The power of the Board to evict or resume the demised premises flows from the power conferred on it by clause (a) of section 14 of the Act as owner of the property. Therefore, the decision is not of much assistance to the petitioner-company.

11. Lately, it is seen that the letter impugned is no more than a request.

12. The company is free to adhere to the request and hands over possession or it may resist to hand over possession and it is expected that the Board will taken reoccurs to dispossess the petitioner only in accordance with law and not be use of physical threat or force. This has been the consistent view taken by this court.

13. The petition is, therefore, rejected.

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