

Bifr Vs. Hec Ltd.

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Court : Jharkhand

Decided On : Jun-20-2008

Reported in : [2008(4)JCR402(Jhr)]

Judge : R.K. Merathia, J.

Appellant : Bifr;hec Ltd.

Respondent : Hec Ltd.;bifr

Judgement :

ORDER

R.K. Merathia, J.

1. I.A. No. 2974 of 2007--This application has been filed by the Heavy Engineering Corporation Limited. Dhurwa, Ranchi (HEC for short) for permitting it to sublease about 31.70 acres of land for 90 years to Jharkhand State Cricket Association (JSCA for short) for building of International Sports Complex Centre befitting international venue for international matches. It is submitted that if the Court permits HEC to grant sub lease, there will be development of township and it will benefit the public and the Company also.

2. Mr. Rajiv Ranjan, appearing for the HEC, submitted that such permission is required in view of the order dated 4.11.2004, the relevant portion of which reads as follows:

(i) The parties to the case, including HEC: State of Jharkhand and Union of India are prohibited from selling/acquiring/leasing/subleasing/transferring any land/building/structure of HEC without prior permission of the Court.

3. The JSCA intervened and submitted that the Board of Control for Cricket in India (BCCI) has agreed to grant subsidy to the tune of Rs. 25 crores for construction of the said Sports Complex to JSCA provided the construction is completed by September, 2009, but in spite of several attempts, the State Government has not been able to give land and then HEC was requested for giving land on lease. Mr. Jitendra Singh appearing for JSCA further submitted that apart from Rs. 7.5 crores, as one time premium, and Rs. 1 lac as yearly rental, 5% of the Gate Money will also be paid to HEC, and even if one test match is held in two years, from Gate Money alone HEC will get will get about Rs. 25 lacs per match. It is also said by JSCA that the said Sports Complex will also be available for several other games and will be open to public use, as per the rules made in that behalf.

4. Mr. Sumeet Gadodia, learned Counsel appearing for the State, raised the following objections. Against the order dated 22.2.2007, passed in this Company petition, an appeal being L.P.A. No. 178/2007 is pending in this Court and moreover the final decision on the Revival Package is expected in couple of months. If the prayer of HEC is allowed, it may effect the said L.P.A. and/or the Revival Package. HEC cannot sublease land for the said purpose as per Clauses 1 and 5 of the deed of conveyance dated 26.2.1996. As per Clauses 2 and 6 of the said conveyance, the HEC is required to surrender the land sought to be subleased, being surplus land, to the State Government and then the State Government may consider grant of lease to JSCA on its own terms and conditions. He lastly submitted that this Court had fixed Rs. 50 lacs per acre for liquidating the dues of CISF and State Government, whereas the lands for Sports Complex is sought to be transferred @ Rs. 25 lacs per acre.

5. Mr. Rajiv Ranjan in reply submitted that the scope of the said L.P.A. and the Revival Package is entirely different with the present prayer. He further submitted that the said purpose of grant of sub lease, is fully covered under the deed of

conveyance and therefore it cannot be said that the land sought to be subleased is surplus.

6. Thus, two questions are involved. Whether during pendency of the said L.P.A. or the final decision on the Revival Package, HEC can be permitted to sublease lands to JSCA; and whether the said purpose of granting sublease is covered within the purposes contemplated in the deed of conveyance.

7. The first question first. The said L.P.A. was filed against the order dated 22.2.2007, passed in this Company Petition. The question before the Court was, whether the revival scheme dated 30th December, 2005 of the Central Government should be approved pending settlement of the matter regarding the extent of land to be given to the State of Jharkhand by HEC for liquidating the dues. The said order dated 22.2.2007 reads as follows:

Heard the parties.

2. Mr. Vikash Singh, learned Addl. Solicitor General appearing for the Union of India and HEC, referring to the order dated 17.2.2006 submitted that the Central Government had approved a Revival & Financial Restructuring Package for the Company (M/s. HEC Ltd.), vide its letter dated 30th December, 2005, incorporated in the said order. He further submitted that the Central Government acted pursuant to the said package and has done everything needed and in continuation thereof regarding item (iv), has earmarked an area of 1581.66 acres for transferring to the Government of Jharkhand against the outstanding dues and the proposed financial assistance, totaling to Rs. 781.75 crores as per the valuation fixed and agreed between the Central Government and the State Government, which is shown in the map placed on the record on 15.2.2007. Regarding item (v), he submitted that on 27.4.2006, this Court allowed to transfer proportionate land in favour of C.I.S.F. to liquidate their outstanding dues as on 31st March, 2006 on the valuation of Rs. 50 lakhs per acre. Accordingly, an area of 158 acres of land has been earmarked for transferring to CISF as per the said map.

Mr. Vikas Singh with all responsibility made a statement that now the Company is functioning better than targeted but the bad name of sickness is causing hindrance

in its progress. The Company which is a mother industry and is dream of founders of nation is facing difficulties in securing orders and this tag of sickness is creating other problems also in its functioning. He therefore submitted that the revival scheme of HEC be approved, pending settlement of the matters relating to lands.

3. Mr. Gadodia, appearing for the Government of Jharkhand, submitted that a tripartite agreement between the Central Government, State Government and the HEC has not been arrived at as yet for one reason or the other. He further submitted that he is not in a position to say whether the Company is functioning well or not. He also submitted that if the Company has been functioning as sick industry so far, it can continue as such till all the matters regarding land is settled. He further submitted that the Government will consider about the said offer of land.

4. The question is as to whether the said revival scheme dated 30.12.2005 should be approved pending settlement of the matters regarding lands? After hearing the parties, I am satisfied that the revival scheme incorporated in the order dated 17.2.2006 should be approved pending the settlement of the matters regarding lands, so the HEC can progress well and may overcome other problems, it may be facing due to the tag of sickness. This industry has recovered due to intervention of this Court and the co-operation of all concerned. In the interest of this State and in national interest, also it should be allowed to speed up its progress. HEC should assess its requirement of land keeping in view the future prospect, and furnish the details thereof to the State Government. The competent authorities of the Central Government, the Government of Jharkhand and HEC are required to sit together and try to resolve the matters with regard to land.

Pending such settlement, the revival scheme of the Central Government is approved.

Mr. Singh and Mr. Gadodia jointly assures that the parties will sit together and try to resolve the dispute as early as possible.

5. Mr. Mokhtar Khan, appearing for CISF, submits that he has filed I.A. No. 2951 of 2006 on 2.11.2006 for approval of the draft lease.

I see no difficulty in allowing such prayer in view of the earlier orders passed by this Court specially on 27.4.2006. However, the HEC and CISF will check typographical mistakes, if any.

In the circumstances, the draft lease is approved. HEC can transfer 158 acres of land to CISF as shown in the said map.

Put up this case on 26th April, 2007.

8. Thus, it will appear that pending settlement between the State Government and the HEC with regard to the extent of land for liquidating the dues; the revival scheme of the Central Government was approved so that HEC can progress well and may overcome the problems it has been facing due to the tag of sickness.

Even according to the Revival Package of the State Government dated 26.12.2007, HEC has been asked to transfer 2342 acres of land to the State Government and 158 acres to CISF. Moreover, this Revival Package of the State Government itself says that it has been prepared in view of the said Revival Package of Central Government dated 30.12.2005 and the said order of this Court dated 22.2.2007. The State Government is not claiming/cannot lay claim on the entire lands of HEC. Thus the objection that during pendency of the said L.P.A. filed against the order dated 22.2.2007, and till a final decision is taken on the Revival Package of the State Government dated 26.12.2007. the HEC cannot sublease the land, cannot be accepted.

9. Now the next question is whether HEC is entitled to grant sublease, for the purpose in question, as per the terms of conveyance. The relevant portion of Clauses 1, 2, 5 and 6 of the Schedule-1--'Terms and Conditions' reads as follows:

1. That the Grantee shall not sue the land hereby demised or any part thereof, for any purpose other than the specific purpose for which the land is granted, namely, for the construction and establishment of Foundry Forge Plant, the Heavy Machine Building Plant, the Heavy Machine Tools Plant, the Township of Hatia and other ancilliary and allied purposes, such as the establishment of shops, canteens, Cinema Houses, petrol filling stations and Garages, educational, social and

cultural institutions and other establishments necessary for the life of the community including using the constructed buildings/structure so constructed by the Grantee for the purposes of human dwelling, opening of offices and other establishment by any such person to whom such building may be allotted or demised by the Grantee under tenancy license or lease.

2. That if the land or any part or parts thereof be at any time or times be necessary to be possessed by the Grantor for the purposes connected with the administration of the State or for other public purposes (of which matter the Grantor shall be the sole judge), the Grantor shall be entitled to resume the land or such part or parts thereof.

Provided that before resuming the land or any part or parts thereof, it shall be necessary for the Grantor to seek consent of the Grantee,

5. HEC will have to obtain prior per mission of the Government for any type of transfer of land and for any period, except in the cases where for obtaining Loan, Mortgage to Government/Reserve Bank of India or its recognized institutions is done.

However, the Grantee may sublet and/or grant short term or long term lease of the lands and buildings or any part or parts thereof for periods not exceeding 90 (Ninety) years, for ancillary and allied purposes mentioned in Clause-1.

6. If at any time the said lands or any part or parts thereof shall no longer be required by the Grantee for the works and purposes set forth above, the Grantee shall re-convey the demised land or such part or parts thereof as may be excess of its requirement to the Grantor on payment....

10. Thus, it is clear from the said clauses that HEC is authorized to use lands for the purpose of development of township and other ancilliary and allied purposes, such as establishment of social and cultural institutions and other establishments necessary for the life of the community. In my opinion, construction of Sports Complex is covered under the purposes mentioned in Clause 1 aforesaid and therefore it cannot be said that the lands sought to be sub leased are no longer

required by HEC or the same is surplus. Thus, HEC is not required to take prior permission or surrender the same to the State Government. Construction of such Sports Complex will be in public interest also.

11. In the circumstances, HEC is permitted to grant sub lease of 31.70 acres of lands for 90 years to JSCA, but on minimum premium of Rs. 50 lacs per acre which was fixed by this Court earlier, apart from Rs. 1 lac rental per year and 5% of Gate Money. JSCA has already said that the Sports Complex will be allowed to be used for different games and by the general public, as per the rules in that behalf.

I.A. No. 2974 of 2007 filed by HEC and LA. No. 3183 of 2007 filed by the JSCA, both are disposed of.

12. Put up I.A. No. 986 of 2008 on 27.6.2008.

Let a copy of the order be given to Advocate General, as prayed.

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