

Modular Structurals Private Ltd. Vs. State of West Bengal and Ors.

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Court : Kolkata

Decided On : Jul-18-2016

Judge : Biswanath Somadder

Appellant : Modular Structurals Private Ltd.

Respondent : State of West Bengal and Ors.

Judgement :

ORDER

SHEET WP No.694 of 2016 IN THE HIGH COURT AT CALCUTTA Constitutional Writ Jurisdiction ORIGINAL SIDE MODULAR STRUCTURALS PRIVATE LTD.Versus STATE OF WEST BENGAL & ORS.BEFORE: The Hon'ble JUSTICE BISWANATH SOMADDER Date : 18th July, 2016.

MRS.Manju Agarwal, Mr.B.Manot, Advocates for the petitioner.

Mr.Pranab Kr.

Dutta, Sr.Advocate, Mr.Naba Kr.

Das, Adv.for the State.

Mr.P.S.

Basu, Mr.S.Talukdar, Advocates for KMDA.

The Court : Let the affidavit of service filed in Court today be taken on record.

The petitioner has approached this Court once again, this time in a fifth round of litigation.

The subject matter of challenge in the instant writ petition is an order dated 15th January, 2016 passed by the Special Secretary, Kolkata Metropolitan Development Authority.

The genesis of the impugned order lies in the order dated 4th December, 2015 passed in the last writ petition moved before this Court by the writ petitioner, being W.P.No.1273 of 2014.

The facts of the case which gave rise to the last writ petition have been succinctly stated in the order dated 4th December, 2015.

In order to avoid prolixity, this Court refrains from reproducing the same.

While passing the order dated 4th December, 2015, this Court made the following observation : The order impugned dated June 12, 2014 cannot be sustained.

First, the primary basis of the order is no longer relevant since the petitioner company has categorically withdrawn the word Commercial from the name of the project.

Secondly, the Special Secretary has indicated that the proposed use of the land is at variance with the draft project report without specifying the manner or degree of the variance.

It is not necessary to dwell any further on the matter since the reasons recorded in support of the decision of June 12, 2014 cannot be accepted.

Accordingly, WP No.1273 of 2014 is allowed by setting aside the order impugned on the ground of the lack of reasons contained therein and by permitting the Special Secretary to consider the matter afresh in its entire perspective and render a rational decision thereon after affording a hearing to any authorised representative of the petitioner company.

Such exercise should be completed by the concerned official within eight weeks from date. The only issue that falls for consideration in the instant case is whether the impugned order dated 15th January, 2016 passed by the Special Secretary, Kolkata Metropolitan Development Authority is in conformity with the above order of this Court rendered on 4th December, 2015.

Even a plain reading of the impugned order reveals that the same has been rendered in conformity with the observations/directions given by this Court as contained in the order dated 4th December, 2015.

The Special Secretary has clearly stated in the impugned order dated 15th January, 2016 the degree of variance with regard to the proposed use of the land with that of the draft project report.

That apart, the Special Secretary, who was directed to consider the matter afresh in its entire perspective and render a rational decision thereon after affording a hearing to any authorised representative of the petitioner company, has done exactly as he was directed.

It is quite evident from the reasons supplied by the Special Secretary, Kolkata Metropolitan Development Authority that the main project of Integrated Modular Food Park at Dankuni having become obsolete, the question of permitting the writ petitioner for constructing a city office at Kolkata on the said land does not arise at all.

The Kolkata Metropolitan Development Authority had allotted the land measuring 0.85 acres in favour of the petitioner keeping in mind the detailed project report as was submitted by the writ petitioner for getting allotment of the land in question for setting up a corporate office in Kolkata which was closely linked with the proposed Modular Food Park at Dankuni and was to be regarded as the nucleous component of the Modular Food Park network.

Since there was no notable progress in the implementation of the project due to various factors as noticed from time to time, in the meanwhile it was decided that Modular Industrial Infrastructure Limited was no longer implementing the Food

Park Project at Dankuni.

As such, it was not necessary to set up an office at Kolkata for that purpose.

It has also been specifically stated by the Special Secretary in the impugned order that when the proposed Integrated Modular Food Park at Dankuni - which was the fundamental project - had itself become unviable and was abandoned, therefore, the question of allotting the writ petitioner to set up a city office at Kolkata on the said land, which was closely connected and linked with the main project at Dankuni could not be entertained at all.

That apart, the Special Secretary, Kolkata Metropolitan Development Authority, has also referred to the introduction of a land and flat allotment policy with effect from 16th March, 2012, whereby any land, small or big, to be settled in favour of any individual or a corporate house will have to be made through public auction which eradicates the earlier practice of allotting land from its discretionary quota.

There are several other reasons which have been supplied by the Special Secretary, Kolkata Metropolitan Development Authority in the order dated 15th January, 2016, which order, as observed hereinbefore, has been rendered in clear conformity with the directions of this Court, as contained in the order dated 4th December, 2015 passed in W.P.No.1273 of 2014.

That apart, the impugned order, which is supported with cogent reasons, can neither be held to palpably wrong or arbitrary or perverse or smacks of any mala fide motive.

This Court, in *Amarendranath Mandal -versus State of West Bengal & ORS.* reported in AIR2011 Calcutta 56, has observed inter alia as follows : The writ Court ought not to transpose itself as an appellate authority over a particular authority which has performed its obligation to abide by the specific directions given by a Court and rendered a decision in a matter supported with cogent reasons.

The discretionary jurisdiction of this Court under Article 226 of the Constitution of India ought not to be invoked in such cases, unless of course, the decision so

rendered by the concerned authority was palpably wrong or arbitrary or perverse or smacked of mala fide motive or was rendered without adhering to the specific directions given by the Court. Since none of the exceptions as carved out in the said judgment are noticed in the facts of the instant case, there is no scope for interfering with the impugned order dated 15th January, 2016 passed by the Special Secretary, Kolkata Metropolitan Development Authority and the writ petition is liable to be dismissed and is accordingly dismissed.

(BISWANATH SOMADDER, J.) per

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