

(2014) 08 JH CK 0018

Jharkhand High Court

Case No: Writ Petition (Civil) Nos. 1181 and 1273 of 2014

P.P.G. Steel Pvt. Limited

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Aug. 6, 2014

Citation: (2014) 4 AJR 490

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Advocate: Sumeet Gadodia, Indrajit Sinha, Navin Kumar and P.P. Roy, Advocate for the Appellant; Anil Kumar, J.C. to A.G., Kumar Sundaram, J.C. to A.A.G. and V.P. Singh, Sr. Advocate, Advocate for the Respondent

Judgement

Rakesh Ranjan Prasad, J.

Since the issue involved in these cases is incidental to each other, both the cases were heard together and are being disposed of by this common order.

2. One M/s. Fancam Engineers Hindustan Building, Jamshedpur was allotted Plot No. M-8, 6th Phase, Adityapur Industrial Area, Gamharia having an area of 1.5 acres by the respondent-Adityapur Industrial Area Development Authority (for short "AIADA") vide its Letter No. 2577 dated 30.8.1976. Accordingly, the possession of the said plot was delivered to M/s. Fancam Engineers Hindustan Building on 9.11.1976 who after taking loan from the Bihar State Financial Corporation (in short "BSFC") had established its factory. Since M/s. Fancam Engineers Hindustan Building failed to repay the loan amount, the mortgaged/hypothecated assets of it were put to auction by the BSFC which was purchased in the year 2000 by M/s. Gyan Press Metal Pvt. Ltd. (Proforma respondent in W.P. (C) No. 1181 of 2014), whereas he is the petitioner in W.P. (C) No. 1273 of 2014.

3. After the hypothecated/mortgaged assets were purchased by petitioner-M/s. Gyan Press Metal Pvt. Ltd., the said land of Plot No. M-8, 6th Phase was allotted to it vide Letter No. 1693/ADA dated 1.8.2005, possession of which was given to it on

4.12.2008. However, a lease deed was executed on 22.3.2010 in favour of petitioner-M/s. Gyan Press Metal Pvt. Ltd. Said M/s. Gyan Press Metal Pvt. Ltd. failed to run its industrial unit for one reason or the other. In that event, M/s. Gyan Press Metal Pvt. Ltd. in terms of clause 6(v) of the lease deed executed the deed of surrender on 7.9.2010 in favour of AIADA for re-allotment of the land, in question, in favour of M/s. P.P.G. Steel Pvt. Limited (petitioner in W.P. (C) No. 1181 of 2014). At the same time, M/s. Gyan Press Metal Pvt. Ltd. vide its letter dated 7.9.2010 informed the AIADA about the execution of deed of surrender in its favour with a request to re-allot the plot, in question, to M/s. P.P.G. Steel Pvt. Limited. Simultaneously, the petitioner-M/s. P.P.G. Steel Pvt. Limited also wrote a letter to the AIADA on 8.9.2010 requesting therein to re-allot the land, in question, in its favour. According to petitioner-M/s. P.P.G. Steel Pvt. Limited, when the land was surrendered with a request to re-allot to the petitioner, the petitioner, who was having an industrial unit, wanted to export it, submitted a detailed project report, which was placed before the Project Clearance Committee (in short "PCC") on whose clearance the matter was placed before the Land Allotment Committee (in short "LAC") for allotment of land in favour of the the petitioner-M/s. P.P.G. Steel Pvt. Limited who had been nominated under the deed of surrender.

4. Further case of the petitioner - M/s. P.P.G. Steel Pvt. Limited is that its case was considered in the PCC/LAC meeting of AIADA and the project of the petitioner was approved and then recommendation was made for transfer of lease hold right/allotment of land in favour of petitioner - M/s. P.P.G. Steel Pvt. Limited. While the matter was under process of settlement, the AIADA held its 100th meeting on 23.2.2011 wherein a decision was taken by the Board of Directors of AIADA not to allot the land on the basis of deed of surrender. At that time, altogether 17 cases were there like that of petitioner - M/s. P.P.G. Steel Pvt. Limited seeking allotment on the basis of deed of surrender. However, the Board of Directors again held its 101st meeting on 30.9.2011 and reconsidered the cases of 17 industrial units, including the petitioner's unit, and thereby they came to a decision to consider to re-allot the land, in question, in favour of 17 industrial units, as the deeds of surrender in all 17 cases were prior to 23.2.2011, when the Board of Directors had taken decision of not allotting the land pursuant to deed of surrender.

5. Further case of the petitioner is that in spite of such decision being taken for allotment of land by the Board of Directors, a notice dated 8.2.2012 was issued by the AIADA to petitioner-M/s. Gyan Press Metal Pvt. Ltd. to show cause as to why the allotment of land be not cancelled, as it had failed to utilize the land, in question, for the purpose for which it was allotted to it. That notice was replied with on 18.2.2012 by petitioner-M/s. Gyan Press Metal Pvt. Ltd. stating therein that it had already executed the deed of surrender in favour of petitioner-M/s. P.P.G. Steel Pvt. Limited on 7.9.2010 and even a request was made to allot the said land in its favour. The Managing Director of AIADA vide its order dated 7.9.2013, as contained in Annexure-6 of W.P. (C) No. 1273 of 2014 which is Annexure-12 in W.P. (C) No. 1181 of

2014, cancelled the lease deed of petitioner-M/s. Gyan Press Metal Pvt. Ltd. on the ground that the terms and conditions of the land allotment order as well as the lease deed and also of the Jharkhand Industrial Policy, 2012 have been contravened. At the same time, the prayer made by the petitioner - M/s. P.P.G. Steel Pvt. Limited for re-allotment of land in its favour was also rejected.

6. Being aggrieved with that order, petitioner-M/s. P.P.G. Steel Pvt. Limited preferred an appeal bearing Appeal No. 17 of 2013 before the Secretary, Department of Industries. That appeal was dismissed by the Secretary, Department of Industries on 28.1.2014 holding therein that the appeal is not maintainable at the instance of the petitioner-M/s. P.P.G. Steel Pvt. Limited, as it never happened to be the allottee of the land.

7. On the other hand, the petitioner-M/s. Gyan Press Metal Pvt. Ltd. being aggrieved with the order dated 7.9.2013, under which Managing Director had cancelled the lease deed/allotment order, which had been made in its favour, has filed a writ petition before this Court for quashing of the said order dated 7.9.2013 whereas petitioner-M/s. P.P.G. Steel Pvt. Limited has also filed a writ petition for quashing of the said order dated 7.9.2013, whereby prayer made to re-allot the land to it, has been rejected. At the same time, order dated 28.1.2014, under which appeal filed by the petitioner-M/s. P.P.G. Steel Pvt. Limited was dismissed, was challenged.

8. Mr. Sumeet Gadodia, learned counsel appearing for the petitioner-M/s. P.P.G. Steel Pvt. Limited, submits that admittedly the land had been allotted to petitioner - M/s. Gyan Press Metal Pvt. Ltd. by the AIADA on 1.8.2005, possession of which was given to it on 4.12.2008, whereas the lease deed was executed on 22.3.2010.

9. Since petitioner-M/s. Gyan Press Metal Pvt. Ltd. was unable to run its industrial unit, it executed the deed of surrender in favour of AIADA on 7.9.2010 for re-allotment of said land in favour of petitioner-M/s. P.P.G. Steel Pvt. Limited in terms of clause 6(v) of the lease deed. By executing the said deed of surrender, a request was made to re-allot the said land to the petitioner-M/s. P.P.G. Steel Pvt. Limited. In terms of said clause and also in view of the request made by petitioner-M/s. Gyan Press Metal Pvt. Ltd., a decision was taken to re-allot the said land to petitioner-M/s. P.P.G. Steel Pvt. Limited after the project of the petitioner-M/s. P.P.G. Steel Pvt. Limited was found clearance from the PCC. However, the Board of Directors in its 101st meeting held on 30.9.2011 again considered the case of the petitioner-M/s. P.P.G. Steel Pvt. Limited and 16 other similarly situated industrial units for re-allotment of the said land in their favour, as all the deeds of surrender relate to the dates prior to 23.2.2011 when the Board of Directors in 100th meeting had taken decision not to allot the land pursuant to deed of surrender. The Board of Directors in its 101st meeting has taken such decision keeping in view clause 6(v) of the lease deed and thereby it was absolutely in accordance with law but the Managing Director of AIADA by passing the decision, taken by the Board of Directors, has passed an order for cancellation of lease deed,

as petitioner-M/s. Gyan Press Metal Pvt. Ltd. had not utilized the land within time as stipulated under the lease deed, which was taken to be the contravention of the conditions of the lease and also on the ground of contravention of the condition of the Jharkhand Industrial Policy, which decision is absolutely illegal, as the Managing Director had no authority to overrule the decision of the Board of Directors and secondly when petitioner-M/s. Gyan Press Metal Pvt. Ltd. has exercised its option in terms of clause 6(v) of the lease deed for surrendering the land in favour of AIADA with a request to re-allot the said land to petitioner-M/s. P.P.G. Steel Pvt. Limited, it cannot be said to have contravened the terms and conditions of the lease deed particularly when PCC had given clearance for allotment of the land in favour of petitioner-M/s. P.P.G. Steel Pvt. Limited.

10. Learned counsel further submits that the appellate order has been passed in contravention of the principle of *Nemo debet esse iudex in propria causa*, as it was the same person who in the capacity of Managing Director had passed the order for cancellation of lease deed and in the capacity of the Secretary, Department of Industries has passed the appellate order and on this ground alone, the appellate order is fit to be set aside.

11. Mr. Indrajit Sinha, learned counsel appearing for petitioner-M/s. Gyan Press Metal Pvt. Ltd., by adopting the submission advanced on behalf of the petitioner-M/s. P.P.G. Steel Pvt. Limited, submits that once it had exercised its option in terms of clause 6(v) of the lease deed, any order cancelling the lease deed on the ground of not utilizing it for the purpose for which it has been taken within time stipulated under the lease deed, would be quite bad particularly when option, exercised by the petitioner by surrendering the land in favour of AIADA with a request to re-allot it to petitioner-M/s. P.P.G. Steel Pvt. Limited, has been processed with not only by examining the feasibility of the report of M/s. P.P.G. Steel Pvt. Limited but also by making recommendation of re-allotment by the Board of Directors and thus, the order impugned dated 7.9.2013 being bad is fit to be set aside.

12. As against this, Mr. V.P. Singh, learned senior counsel appearing for AIADA, submits that admittedly the lease deed for allotment of land was executed on 22.3.2010 in favour of petitioner-M/s. Gyan Press Metal Pvt. Ltd. on certain terms and conditions whereby one of the clauses namely clause 6(xiv) of the lease deed does stipulate that the lessee will utilize the land for the specified purpose it was allotted within a period of six months from the date of the lease failing which the lease was liable to be terminated and would be evicted from the lands without notice. Further stipulation was that grant of extension was subject to the discretion of the lessor. Admittedly, petitioner-M/s. Gyan Press Metal Pvt. Ltd.-lessee did not comply the said condition, meaning thereby that it did not utilize the land, which had even been admitted by the lessee, and thereby a notice was issued on 8.1.2012 asking the lessee-M/s. Gyan Press Metal Pvt. Ltd. to explain as to why not its

allotment be cancelled. Show cause was submitted by M/s. Gyan Press Metal Pvt. Ltd. wherein it has been admitted that on account of non-availability of fund, project could not be set up and thereby it is evident that clause 6(xiv) of the lease deed has been violated.

13. Further, it was submitted that the transfer of lease hold property in terms of clause 6(v) of the lease deed is permissible only with prior approval of the AIADA, but here in the instant case, no such prior approval of AIADA had been taken before the deed of surrender was executed with a condition to allot the land to petitioner-M/s. P.P.G. Steel Pvt. Limited.

14. Further, it was submitted that the Managing Director of AIADA has passed the order on 7.9.2013, as contained in Annexure-6 of W.P. (C) No. 1273 of 2014, which is Annexure-12 of W.P. (C) No. 1181 of 2014, primarily keeping in view that there should not be improper transfer of the land which belongs to AIADA and thereby the authority has not committed any illegality in cancelling the deed of lease which had been executed in favour of petitioner-M/s. Gyan Press Metal Pvt. Ltd. and also in rejecting the prayer of allotment of the said land in favour of petitioner-M/s. P.P.G. Steel Pvt. Limited.

15. After hearing learned counsel for the parties, it does appear that the AIADA has cancelled the deed of lease executed in favour of M/s. Gyan Press Metal Pvt. Ltd. by taking resort to one of the conditions, as contained in clause 6(xiv) of the lease deed, whereas on the other hand, the petitioners of both the cases have taken stand that when the option has been exercised in terms of condition, as laid down under clause 6(v) of the lease deed, any decision, taken by the authority in terms of condition of clause 6(xiv) of the lease deed, would be bad. In that event, one needs to take notice of the aforesaid terms and conditions of the lease deed as contained in clause 6(xiv) and also in clause 6(v) of the lease deed read as follows-

"6(xiv). 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 the lease may be terminated and the lessee shall be evicted from the lands without notice. In case extension is required it can be granted within the desecration of the lessor.

6(v). If at any time the said land to any part or part thereof shall no longer be required by the lessee for the purpose for which it is leased out to him, the lessee shall surrender the same to the Adityapur Industrial Area Development Authority or with the prior approval of Adityapur Industrial Area Development Authority the lessee may transfer the lease hold right to any other party only for industrial purpose for the remaining period of the lease. In case of surrender of the land to Government/Authority the lessee may get refund of the cost of the land in proportion to the period for which the lease is made out and the actual possession of the lessee, but in case of forfeiture, the lessee shall not be entitled for any refund.

It is also clarified that such sale be allowed only for industrial purpose and in case purchaser wished to utilize the land for any industry other than allotted for earlier and/or changes the name and style of the unit, the Lessor shall charge the new rates prevailing at the time for land from the purchase before allowing such and making a fresh lease deed."

16. Clause 6(v) of the lease deed does stipulate that at any time during subsistence of the lease period, if the lessee does not require the land for the purpose for which it was leased out, he may surrender the same to AIADA or with prior approval of the AIADA, lessee may transfer the lease hold right to any other party only for industrial purpose for the remaining period of lease.

17. Here in the instant case, the deed of lease had been executed in favour of petitioner-M/s. Gyan Press Metal Pvt. Ltd. on 6.3.2010. Just on expiry of six months petitioner-M/s. Gyan Press Metal Pvt. Ltd. executed a deed of surrender in favour of AIADA on 7.9.2010 for re-allotment of said land to petitioner-M/s. P.P.G. Steel Pvt. Limited. One of the clauses of the said deed of surrender reads as follows:-

"That first party has surrendered the aforesaid premises standing on industrial Plot No. M-8, 6th Phase morefully described in the schedule below in favour of second party-AIADA free from all encumbrances and liabilities to re-allot the said plot to M/s. P.P.G. Steel Pvt. Limited."

18. Thus, it is evident that while executing the deed of surrender, the fact relating to request for allotment of the land to petitioner-M/s. P.P.G. Steel Pvt. Limited was incorporated in it. Further, it does appear that subsequent to it the petitioner-M/s. Gyan Press Metal Pvt. Ltd. and also the petitioner-M/s. P.P.G. Steel Pvt. Limited made request to AIADA to re-allot by submitting its project which project seems to have been approved by the PCC which is evident from Annexure-7 of W.P. (C) No. 1181 of 2014, which is a Minute of the meeting of the Board of Directors held on 23.2.2011. However, under that resolution, decision was taken not to allot the land pursuant to the deed of surrender. That decision seems to have been reviewed by the Board of Directors in its 101st meeting held on 30.9.2011, wherein it was decided to re-allot the land in a case where the lessee has failed to start its project for which the land was allotted for any other reason and the asset has been transferred to the other unit whose project has been found to be viable by the PCC. That decision was taken in terms of clause 6(v) of the lease deed. In spite of that, the Managing Director issued a notice to petitioner-M/s. Gyan Press Metal Pvt. Ltd. on 8.2.2014 asking it to show cause as to why not its lease be cancelled which was replied with on 18.2.2012 stating therein that the deed of surrender had already been executed in favour of AIADA with a request to an order was passed on 7.9.2013 holding therein that the terms of condition of the lease deed had been violated, as the petitioner failed to start its unit within time as stipulated under the lease deed but before the notice had been issued, petitioner-M/s. Gyan Press Metal Pvt. Ltd. had already exercised its option for surrendering the land in terms of clause 6(v) of the lease deed with a

request to re-allot it to petitioner-M/s. P.P.G. Steel Pvt. Limited which option of re-allotment seems to have been processed with and in that event, the respondent-AIADA certainly committed illegality in resorting to the provisions, as contained in Section 6(xiv) of the lease deed, and thereby the order passed on 7.9.2013, as contained in Annexure-6 of W.P. (C) No. 1273 of 2014, which is Annexure-12 in W.P. (C) No. 1181 of 2014, is hereby quashed.

19. Now the question does arise as to whether the petitioner-M/s. P.P.G. Steel Pvt. Limited is entitled to be settled with the land which has been surrendered by M/s. Gyan Press Metal Pvt. Ltd.? Answer to this question would be straightaway no in view of the decision rendered in a case of M/s. Accropoly Metal Industries Private Limited Vs. The State of Jharkhand and others (L.P.A. No. 204 of 2011). Said L.P.A. had been arisen almost on similar facts, wherein also the land had been surrendered by M/s. Jamshedpur Steel Private Limited to be settled to M/s. Hardrock Fabrication Private Limited. Their Lordships having found that no rule or regulation has been framed under the Act in respect to allotment of the land and thereby there has been no transparency/fairness in the matter relating to the settlement/allotment of the land to the entrepreneur. Therefore, this Court passed the following order:-

"40. Now the question arises to think over the directions which have been given by the learned Single Judge. We are of the considered opinion that since presently the dispute is in relation to one plot and for that this process can be applied because the land is available and buyers are also available and therefore, this process is only for the present alienation of the plot by the AIADA. However, in view of the stand taken by the State and even after going through the Industrial Policy as shown by the learned counsel for the non-petitioner-appellant, we are of the considered opinion that in a matter of implementation of the industrial policy to give effect to the provisions of the Act of 1974 and the Rules of 1981, the State be directed and is hereby directed to frame uniform guidelines for allotment of industrial land by any of the authorities constituted under the Act of 1974 and to ensure that all the authorities constituted under the Act of 1974 and Rules of 1981 shall make regulation under the provisions of section 15 of the Act of 1974 and shall publish the regulation in the official gazette. The respondent AIADA shall not alienate and process allotment of any of its land till it frames appropriate regulation and publishes in the official gazette and the AIADA henceforth shall deal with the lands of the AIADA strictly in accordance with the guidelines of the State. Government which may be issued under Rule 10 of Rules of 1981 and shall proceed to deal with the AIADA lands only in accordance with the regulation which may be framed by the AIADA and without such guidelines and such regulations, AIADA shall not alienate and transfer any of its land. We are passing this order because of the reason that such guidelines and regulations can be framed by no loss of time and if during this period, AIADA is allowed to proceed to deal with the transfer of land, then there is no procedure and AIADA has no authority to deal with the land without any

procedure by taking help of the procedure which we have already discussed above, which is totally unfair, arbitrary and unjust and clearly deprives the public from fair competition in the matter of getting benefit of National as well as State Policies and which favours a few."

20. Since there has been order that respondent-AIADA shall not alienate and process allotment of any of its land till it frames appropriate regulation and publishes in the official gazette and the AIADA shall deal with the lands of the AIADA strictly in accordance with the guidelines of the State Government which may be issued under Rule 10 of Rules of 1981 and shall proceed to deal with the AIADA lands only in accordance with the regulation which may be framed by the AIADA and without such guidelines and such regulations, AIADA shall not alienate and transfer any of its land.

21. Under the circumstances, the petitioner-M/s. P.P.G. Steel Pvt. Limited is not entitled to get relief as claimed, rather its case would also be dealt with in accordance with the aforesaid direction given by this Court.

22. Thus, W.P. (C) No. 1273 of 2014 (M/s. Gyan Press Metal Pvt. Ltd.) stands allowed, whereas W.P. (C) No. 1181 of 2014 stands disposed of in terms of the observation made hereinabove.