

GAHC010142302017



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5881/2017

JYOTI PRINTING INDUSTRY
REP. BY ITS PROPRIETOR MAINUL HAQUE, S/O. LT. ABDUL HAQUE, R/O.
VILL. KADIMAN, P.O. BADARPURGHAT, P.S. BADARPUR, DIST.
KARIMGANJ, ASSAM, PIN-788806.

VERSUS

THE STATE OF ASSAM and 6 ORS.
REP. BY THE COMM. and SECY. TO THE INDUSTRIES and COMMERCE
DEPTT., DISPUR, GUWAHATI-06.

2:THE DIRECTOR
INDUSTRIES and COMMERCE
ASSAM

BAMUNIMAIDAM
GUWAHATI-21.

3:THE MANAGING DIRECTOR
ASSAM INDUSTRIAL DEVELOPMENT CORPORATION LTD.

R.G. BARUAH ROAD
GUWAHATI-24.

4:THE MANAGING DIRECTOR
ASSAM SMALL INDUSTRIES CORPORATION LTD.

BAMUNIMAIDAM
GUWAHATI-21.

5:THE GENERAL MANAGER
DIST. INDUSTRIES and COMMERCE CENTRE

KARIMGANJ
ASSAM
PIN-788710.

6:THE OFFICER-IN-CHARGE

ASSAM SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD. ASIDC
ZONAL OFFICE
INDUSTRIAL ESTATE
BADARPURGHAT
P.O. BADARPURGHAT
DIST. KARIMGANJ
ASSAM.

7:THE DEPUTY COMMISSIONER OF KARIMGANJ DIST.

DIST. KARIMGANJ
ASSAM
PIN-788710

Advocate for the Petitioners : Mr. H. R. Choudhury, Advocate

Advocate for the Respondents : Mr. N. Kalita, Advocate
Mr. S. Das, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 07.02.2024

Date of Judgment : 07.02.2024

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioner seeking the following reliefs:

- (i) To rectify the lease deed by re-fixing the rent @ 0.6 paisa per sq. feet as per the order issued by the Government of Assam.

(ii) To furnish fresh bill after revision of rent as per Govt. letter dated 14.03.2002 w.e.f. 08.01.2000.

(iii) To issue No-Objection Certificate to the petitioner for drawing up of electric connection.

(iv) To give effect of the order of revision of rent w.e.f.08.01.2000 in respect of the revision of rent.

2. The facts of the instant case are that the petitioner was granted an allotment of land at the Industrial Estate, Badarpurghat subsequent to an application filed by the petitioner on 06.01.2000. This aspect was informed to the petitioner vide the communication dated 07.07.2001. In the said communication, it was specifically mentioned that the land rent of the area of 7056 sq. feet would be at @ Rs.0.35 paise per sq. feet per month subject to revision and enhancement of rates as fixed by the Government from time to time. The petitioner was also directed to execute a lease deed in that respect. Accordingly, on 17.07.2001, a lease deed was entered into by and between the Assam Small Industries Development Corporation Ltd. and the petitioner. In the said lease deed, it was specifically mentioned that the lease was valid for a period of 10 years from the date of execution of deed of lease provided that at the expiry of the present term, the lease may be renewed with the mutual consent of both the parties subject to the execution of legally valid documents. In the said lease deed, it was also stipulated that the amount to be paid as lease rent would be 0.35 paise per sq. feet.

3. Subsequent to the entering into the lease deed, the General Manager, District Industries and Commerce Centre, Karimganj has issued a communication to the petitioner informing that the Government has newly revised the rent of the open space at the Industrial Estate vide the communication dated 05.09.2001 whereby within the Municipal area, the revised rent was 0.06 paise per sq. feet per month w.e.f. 01.01.2000 and for outside the Municipal area, it was 0.30 paise per sq. feet per month w.e.f from 01.01.2000. On the basis of the said communication, the petitioner submitted various

representations to the concerned respondent authorities for the purpose of revising the terms of allotment as well as also in the lease deed. However, the respondent authorities did not take any steps in that regard and on the other hand, raised bills on the basis of the lease rent as stipulated in the lease deed. In the said process, the petitioner also did not pay the lease rent although demanded.

4. It is also relevant to take note of that as the lease deed was valid for a period of 10 years, the petitioner submitted an representation on 07.02.2001 to the General Manager, District Industries and Commerce Centre, Karimganj requesting for renewal of the lease deed. It is however, relevant to take note of that in the said communication, it was mentioned about a writ proceedings being WP(C) No.4672/2004. In addition to the said representation to the General Manager, District Industries and Commerce Centre, Karimganj, the petitioner also submitted another representation on 11.03.2011 to the in-charge Zonal Officer, Assam Small Industries Development Corporation Ltd. requesting for renewal of the lease deed at the revised rate of 0.06 paise per sq. feet.

5. The record further reveals that the respondent authorities did not respond to the said communication for which the petitioner filed a suit before the Court of the Munsiff No.2 at Karimganj being Title Suit No.160/2011. The reliefs sought for in the said suit are reproduced herein under:-

- (a) for a declaration that the plaintiff is entitle to get rectification of lease deed dated 17.7,2001 @ Rs, 0.06 paise per sq. feet as per Govt. order dated 01.01.2000 in respect of the schedule land .
- (b) for a declaration that the plaintiff is entitle to get a bill of rent for scheduled mentioned allotted land as per Govt. amended revised rate of rent from the defendants, after adjustment of already paid up bill to the defendants,
- (c) for a declaration that the deed of lease dated 17.07.2001 be renewed after expiry of present terms for another terms.
- (d) for granting permanent injunction restraining the defendants not to pass any

order in respect of the suit schedule mentioned land or in any way cause loss and suffering to the plaintiff.

(e) for any other relief or reliefs as the court may deem fit and proper.

(f) for cost and compensation of the suit.

6. The said suit was duly contested and thereupon vide the judgment and decree dated 29.06.2013, the said suit was dismissed with costs.

7. The petitioner being aggrieved preferred an appeal before the Court of the Civil Judge, Karimganj being Title Appeal No.35/2013 and the said appeal was dismissed by the judgment and decree dated 16.06.2014. The petitioner thereupon preferred a Second Appeal before this Court which was registered and numbered as RSA No.161/2017. However, the said second appeal was withdrawn on 29.05.2017 with liberty to move any appropriate forum subject to the prevailing law. Thereafter, the instant writ petition has been filed on 11.08.2017. This Court vide an order dated 20.09.2017 issued rule.

8. The record further reveals that the respondent Nos.4 & 6 have filed an affidavit-in-opposition challenging the maintainability of the writ petition on the ground that the reliefs which have been sought for have already been rejected by the Civil Court and the decree so passed therein had attained finality. It was also mentioned that the petitioner was given various notices for payment of the outstanding amount of Rs.30,62,393/- and was also given the notice to the effect that if the petitioner failed to make the payment, the allotment would be cancelled. In spite of that, the petitioner did not pay the said amount for which vide the order dated 01.02.2023, the said allotment was cancelled for violation of the prime condition of allotment made for establishing and running the industrial unit in the said allotted premises.

9. In the backdrop of pleadings, this Court has also heard the learned counsel for the parties and given due consideration. From the respective submissions as well as the pleadings, two points for determination arise for consideration:

(i) Whether the instant writ petition is maintainable and

(ii) Whether the parties herein are entitled to any reliefs as has been sought for.

10. This Court in the foregoing paragraphs of the instant judgment has already quoted the reliefs which are sought for in the instant writ petition as well as the reliefs which have been sought for in the plaint of the Title Suit No.160/2011.

11. This Court finds it relevant to take note that the parties in the instant proceedings as well as the parties in the said suit are one and the same. From the reliefs which have been quoted herein above, it would be seen that except the reliefs in the present writ petition pertaining to the issue of No Objection Certificate to the petitioner for drawing up an electric connection, all the other reliefs were part of the civil suit so filed by the petitioner which was dismissed and the same attained finality.

12. Under such circumstances, it is therefore the opinion of this Court that other than the reliefs sought for in the writ petition, i.e. to issue a No Objection Certificate to the petitioner for drawing up of an electric connection, all the other reliefs have already been decided by the Civil Court and the said judgment and decree had attained finality. Under such circumstances, this Court under Article 226 of the Constitution cannot grant the reliefs which have been sought for in the instant proceedings, more particularly the reliefs at Sl. No. (i), (ii) & (iv) in as much as granting the said reliefs would amount to sitting over a judgment and decree passed by the Civil Court which has already attained finality.

13. As regards the reliefs pertaining to issue of No Objection Certificate to the petitioner for drawing up of electrical connection, it is the opinion of this Court that as the lease deed was valid for a period of 10 years w.e.f. 17.07.2001 to 16.07.2011 and there has been no fresh lease deed executed, any direction so passed would be in essence extending the said lease deed which has also been rejected by the Civil Court in the judgment and decree. Further to that, even the allotment of the petitioner was cancelled

on 01.2.2023 as could be seen from the Annexure-C to the affidavit filed by the respondent Nos.4 & 6 and the said order has not been set aside by any competent court of jurisdiction. Under such circumstances also, the question of granting a relief to the extent of directing the respondents to issue a No Objection Certificate to the petitioner for drawing up of the election connection does not arise.

14. Consequently, the instant writ petition is meritless for which the instant writ petition stands dismissed. No costs.

JUDGE

Comparing Assistant