

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 266 of 2015**

M/s. Paposa Engineering Works, Bhilai, through Proprietor Samser Singh S/o Late Charan Singh, aged about 58 years, Plot No. 100, Industrial Estate, Bhilai, District Durg, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, through the Secretary, Department of Industries, DKS Bhawan, Raipur, Chattisgarh
Present address: Mahanadi Mantralaya, Naya Raipur, Post Office and Police Station Naya Raipur, District Raipur, Chhattisgarh.
2. The Director of Industries, Life Insurance Campus, Pandri, Raipur, Chhattisgarh.
3. The Chief Managing Director, District Vyapar and Udyog Kendre, Durg, Chhattisgarh.

---- Respondents

For Appellant	:	Shri B.D.Guru, Advocate.
For Respondents	:	Shri UNS Deo, Government Advocate.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****14/05/2015**

1. The present appeal arise from order dated 15.1.2015 dismissing Review Petition No. 49 of 2011 seeking review of the order dated 18.11.2010 passed in Writ Petition (C) No. 5031 of 2008.
2. I.A. No. 1 of 2015 has been filed to condone delay of 1551 days in filing the appeal. We have heard Learned Counsel for the parties.
3. In view of the orders dated 27.04.2011 in Writ Appeal No. 47 of 2011 and the subsequent order in Review Petition No. 49 of 2011 dated 15.1.2015, delay is condoned.

4. Learned Counsel for the Appellant submits that the appeal filed by the Appellant before the Appellate Authority has not been decided on merits. Even if the Appellant did not appear before the Appellate Authority, the grounds taken in the memo of appeal were required to be decided by a reasoned order. The Appellant disputes that it has not complied with the conditions of the lease by commencing permissible user of the leased lands within the time prescribed.

5. Learned Counsel for the State opposing the appeal submitted that if two authorities have arrived at concurrent findings of fact with regard to non-compliance of the conditions of lease by commencement of permissible user of the lands within the time prescribed, the Court may not interfere under Article 226 of the Constitution. He next submits that looking at the conduct of the Appellant both in the original writ petition in not producing a copy of the original lease despite several opportunities and its also not appearing before the Appellate Authority, this Court may not interfere with the impugned order in the facts of the case.

6. We have considered the submissions on behalf of the parties.

7. The Appellant was granted lease of certain lands by the General Manager, District Commerce and Industries Centre, Durg in March/April, 1981. In accordance with the conditions of the lease, it was required to commence production on the plot within a period of one year. On his failure to do so, notice was issued culminating in order dated 26.11.2002 cancelling the allotment preceded by due notice. The Appellant preferred an appeal against the same before the Special Secretary-cum-Appellate Authority. The order of the Appellate Authority dated 12.6.2007 discloses that on the scheduled date, no one appeared for the Appellant while the departmental representative asserted that the lands were not being used in accordance with the lease and on the contrary was being utilized for parking of trucks as the Appellant was primarily engaged in the business of transportation. The Appellate Authority

noticed that even on earlier dates fixed for hearing of the appeal, no one had appeared. On consideration of the records, the Appellate Authority arrived at a conclusion that the Appellant had been allotted prime lands in an industrial area covering two acres and even after 15 years, he had failed to commence any production from the said plot. The Appellate Authority therefore affirmed the order for cancellation of the lease dated 26.11.2002.

8. Aggrieved by the appellate order, the Appellant preferred Writ Petition (C) No. 5031 of 2008. The writ petition was dismissed on 18.11.2010 noticing that the application for reconsideration of the appellate order had also been rejected on 2.2.2008. Despite the fact that the impugned orders were based on the lease deed dated 3.4.1981, notwithstanding repeated opportunities the Appellant failed to produce a copy of the lease deed leading the Court to hold that in absence of a very relevant and crucial document, it was not possible to adjudicate the matter.

9. The Appellant preferred Writ Appeal No. 47 of 2011 against the same and withdrew it on 27.4.2011 contending that it now had the lease deed available and desired to file a review application. Review Petition No. 49 of 2011 was filed pursuant thereto and has been dismissed declining interfere with the concurrent findings of facts for failure of the Appellant to utilise the lands within the time prescribed in the lease deed.

10. Having considered the entirety of the matter, we are satisfied that no interference is called for by us in the appeal. The Appellant has only itself to blame for its conduct in not abiding by the conditions of the lease and failing to appear before the Appellate Authority on more than one date. These two grounds alone leave us satisfied that its claim and contentions are not genuine as otherwise it would have been more vigilant for protection of its interests. Before the Learned Single Judge, despite grant of repeated opportunities the lease deed on which the cause of action was founded was not produced. Nonetheless, a half-baked appeal was preferred which was subsequently

withdrawn claiming that the lease deed was now available invoking the review jurisdiction. Interference in the review jurisdiction was rightly declined as mere availability of a document not produced earlier by a party to the litigation, for no justifiable reason is not a ground for review. The lease deed was the very foundation of the claims of the Appellant. It was not a third party document but a document to which it was a signatory. Furthermore, the writ jurisdiction or the review jurisdiction cannot be exercised to interfere with the concurrent findings of facts arrived at by the original authority and Appellate Authority regarding non-fulfillment of the conditions of the lease by the Appellant, leading to its cancellation.

11. We therefore find no merit in this appeal. It is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P.Sam Koshy)
JUDGE