

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH
(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF JUNE

TWO THOUSAND AND FIFTEEN

PRESENT

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT PETITION No.11466 of 2015

BETWEEN

ADM Agro Industries Latur & Vizag Pvt Ltd.

... PETITIONER

AND

Board of Trustee of Port of Visakhapatnam, Rep. by its Deputy Secretary and Alternative Attorney, Administrative Building, Port Area, Visakhapatnam and two others.

...RESPONDENTS

The Court made the following:

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ORDER:

Petitioner is a lessee of the second respondent – Visakhapatnam Port Trust (VPT) on a long term lease of 30 years was executed in its favour on 17.10.1995. The purpose of the said lease was to set up a mechanized cargo handling facilities and to modernize the shed within 15 months of entering the shed. Petitioner was permitted to utilize the transit shed identified as T6.

2. It appears that there was some dispute between the petitioner and the second respondent relating to shortfall on Minimum Guarantee Traffic required to be maintained by petitioner and demands and claims on either side were ultimately subject matter of arbitration and were adjudicated under award dated 27.08.2003. The said award was challenged by the petitioner in AOP.No.429 of 2004 and by the second respondent in AOP.No.1848 of 2003 before the District and Sessions Judge, Visakhapatnam. Ultimately, both the said AOP's were disposed of by the learned Sessions by dismissing AOP.No.429 of 2004 and by partly allowing AOP.No.1848 of 2003. The same was again subject matter of CMA.Nos.921 and 922 of 2010 before this Court and are pending. However, those aspects are not subject matter of the present writ petition.

3. While the matter remained as such, on 29.12.2012, the second respondent has intimated the petitioner that it requires crucial modernization of the port area and for that purpose, petitioner would be required to handover vacant possession of the leased premises. There was, therefore, correspondence between the petitioner and the second respondent wherein the petitioner had sought for allocation of alternative land outside the port area in lieu of the leased area under its representation dated 30.01.2013. It, however, appears that there was no response to the said representation. Later, the Government of India, through the approve of Union Cabinet form the '**Policy Guidelines for Land Management by Major Ports, 2014**' was formulated in January 2014, reference to that would be shortly made hereafter. Ultimately, the petitioner received the impugned notice from the second respondent dated 27.01.2015 informing the petitioner that in terms of condition No.3 of General Provisions of the lease agreement, the second respondent is in immediate and dire need of the land in the port area to accomplish its plans for modernization of the port area. Therefore, the petitioner was notified to handover vacant possession of the subject T6 shed back to the second

respondent within three months from the date of receipt of the notice in terms of condition No.3 of the General Provisions of the lease agreement to enable the second respondent to take up immediate developmental activities.

4. Questioning the said notice the present writ petition is filed, *inter alia*, on the ground that the notice is discriminatory, arbitrary and the second respondent having not responded to several representations of the petitioner, the long term lease could not be determined in such a manner seriously affecting and causing commercial hardship to the petitioner. It is also alleged that the newly formed policy guidelines for land management for major ports were also not followed wherein alternative land in lieu of the existing land was required to be allotted.

5. When this writ petition came up on 29.04.2015, this Court passed the following order:

“Heard the learned counsel for the petitioner.

The case of the petitioner – ADM Agro Industries Latur & Vizag Pvt. Ltd is that respondent No.1 had entered into a memorandum of understanding with it on 13.05.1994 and respondent No.2 leased out the premises to the petitioner on 23.11.1994 for a period of 30 years for development purpose. While so, the 1st respondent through its Chief Engineer issued the impugned notice dated 27.01.2015, directing the petitioner to vacate the said premises, on which the petitioner made applications for allotment of alternative site and the same is pending.

Guideline No.17(J) of Police Guidelines for Land Management by Major Ports, 2014, issued by the Government of India, Ministry of Shipping, reads as under:

“The Port Trust Board shall have the right to resume possession of the leased land in public interest before expiry of lease period. In such cases, subject to availability of land, the lessee may at the discretion of the Port Trust Board be given an option to relocate activities in another suitable location to be offered by the Port,
as per the land use plan.”

Though the petitioner issued notice to the 2nd respondent, no appearance is made on behalf of the 2nd respondent. Since it is stated that the application of the petitioner for allotment of alternative land is pending and since the lease period is existing for

another 10 years, there shall be interim stay, as prayed for till 04.06.2015.

Post on 04.06.2015 in motion list.”

6. Respondents 1 and 2 have filed counter affidavit along with vacate petition. At this stage, I have heard the learned counsel for the petitioner and learned senior counsel appearing for respondents 1 and 2.

7. Learned counsel for the petitioner has placed before this Court the land policy, referred to above, particularly, relied upon relevant clause 17 (J), which is extracted hereunder:

“The Port Trust Board shall have the right to resume possession of the leased land in public interest before expiry of lease period. In such cases, subject to availability of land, the lessee may at the discretion of the Port Trust Board be given an option to relocate activities in another suitable location to be offered by the Port, as per the land use plan.”

Learned counsel would contend that as has been pleaded, the petitioner has been repeatedly requesting respondents 1 and 2 right from 30.01.2013 to consider its representations for allotment of alternative land but there was no response whatsoever from respondents 1 and 2. Learned counsel also states that by such abrupt termination of the lease and demanding the petitioner to vacate within a period of three months would seriously affect the entire operation of the petitioner, particularly, when the allotment of alternative land is not being considered by respondents 1 and 2. Learned counsel would also draw the attention of this Court to one of the latest representations dated 11.09.2014 wherein the request for allotment of alternative land was reiterated in lieu of surrender of leased area demanded from the petitioner. However, learned counsel submits that while there is apparently no response from respondents 1 and 2, petitioner is being insisted upon removing the structures erected on T6 shed. It is, therefore, urged that in order to advance equity and fair play, the petitioner may be permitted to continue on the leased area until the allotment of alternative land is made and petitioner is given time to shift the structures to the alternative land.

8. Per contra, Mr. C.V. Mohan Reddy, learned senior counsel appearing for respondents 1

and 2, has seriously disputed the allegations and conduct of the petitioner and submits that the relief sought for by the petitioner, as is evident, is contrary to the express terms of the lease agreement regarding which there is no controversy. Learned senior counsel points out that the lease agreement specifically provides that any time during the term already granted, if the lessor considers that the premises is required for the development of the Visakhapatnam port area or in the interest of public use, the lessor shall be entitled to give three months previous notice in writing to the lessee and on expiry of the said notice, the present lessee shall vacate and deliver the possession of the premises to the lessor.

Learned senior counsel submits that in terms of the said agreed condition in the lease and keeping the requirement of respondents

1 and 2 to accomplish the modernization of port area, the three months notice was, however, given, which is impugned herein. Learned senior counsel submits that even earlier thereto in 2012 itself, the petitioner was informed of the said requirement and it is not as if that the impugned notice is given all of a sudden. Learned senior counsel would also point out the correspondence between the petitioner and second respondent, particularly, the letter of the petitioner dated 30.03.2015 wherein the petitioner himself gave two proposals including the proposal to vacate the leased area of T6 subject to certain conditions. Learned senior counsel, therefore, points out that having agreed to the terms of the lease and having been conscious of an eventuality contemplated by the said clause, it is not open for the petitioner to resist vacation of the leased area after expiry of three months period and as such, seeks interim order to be vacated.

9. In my view, the relief sought for in the present writ petition challenging the premature determination of long term lease and the mandamus sought for would be directly against the terms of the lease dated 17.10.1995, clause 3 of the General Provisions whereof, referred to above, is extracted hereunder:

“3. That if the Lessor shall at any time during the said term hereby granted consider that the said premises is required for the development of the Visakhapatnam Port or in the interest of the public using and resorting thereto and shall be desirous on that ground of determining this present lease and of such his desire shall give three months previous notice in writing to the Lessee then and in such case immediately on expiration of the said notice this present lease and everything herein contained shall cease and be void and the Lessee shall vacate and deliver the possession of the premises developed and modernised to Lessor and the said decision of the Lessor is final and binding on the Lessee.”

A plain reading of the said clause would itself clarify that the lessor and the lessee contemplated a situation and had agreed upon the right of the lessor to seek surrender of leased area subject to giving of three months previous notice in writing and such decision of the lessor shall be treated as final and binding on the lessor. In terms of the said clause, therefore, the petitioner cannot seek a Mandamus contrary thereto nor this Court under Article 226 of the Constitution of India would use its discretion so as to permit the petitioner to wriggle out of the said binding nature of the clause. The relief sought for in the present writ petition, therefore, *ex facie* being contrary to the long term lease dated 17.10.1995, as above, is impermissible.

10. Secondly, the implementation of the land policy guidelines is subject to availability of the land and it is left to the discretion of the port trust to give an option to the lessee to relocate its activity in another suitable location to be offered by the port as per the land use plan. Thus, even if alternative land is to be allotted to the petitioner to enable it to relocate, the same cannot be linked nor can be made conditional for the lessee to vacate the leased area. As stated above, the applications of the petitioner for allotment of alternative land in lieu of surrendered area are stated to be pending with respondents

1 and 2. While the petitioner would be justified in seeking consideration of the said request for allotment of alternative land, the refusal of the petitioner/lessee to vacate leased area in spite of expiry of three months notice cannot be countenanced. The three months period as per the impugned notice has already expired by end of March 2015 and petitioner has overstayed for more than two months. The proposed modernization and development activity to be undertaken by the port trust cannot, therefore, be withheld indefinitely till the proposal of alternative land is finalized. In view of the express contractual clause between the parties, it is not possible to extent any equitable consideration in favour of the petitioner.

12. Hence, the main relief sought for in the writ petition cannot be granted. Consequently, the petitioner is liable to vacate the leased area in terms of the impugned notice. However, petitioner's request for consideration of its request for allotment of alternative land in terms of the Policy Guidelines for Land Management by Major Ports, 2014 shall be considered by respondents 1 and 2 and appropriate decision be taken expeditiously.

The writ petition is disposed of with the limited relief, as above. Consequently, the interim order dated 29.04.2015 shall stand vacated. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

June 8, 2015

DSK