

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.13086 of 2006

ORDER:

In the present writ petition, challenge is to the order, dated 31.03.2006, passed by the Court of the learned IX Additional District and Sessions Judge (FTC), Visakhapatnam, in A.S.No.246 of 2001.

Petitioner herein is a State Government undertaking registered as a company under the Companies Act, 1956. The petitioner Corporation allotted an extent of Ac.4.10 cents equivalent to 19,844 square yards of land situated in industrial development area in Sy.Nos.9/4 (part) and 10/1 (part) of Venkatapathirajupeta Village, Visakhapatnam District in favour of the 1st respondent vide allotment order, dated 16.08.1991, subject to the conditions stipulated therein for the purpose of setting up of an industry for manufacture of Bita Napthanelene Bonacid. The 1st respondent company paid 50% of the provisional cost of the land, entered into an agreement on 10.06.1992 and executed a promissory note on the same date with an agreement to pay the balance provisional cost of the land within six months. It is the specific case of the petitioner Corporation that the agreement, dated 10.06.1992, stipulated that the time would be the essence of contract and it is pleaded further that it was agreed that the 1st respondent company would commence

construction of factory buildings within 6 months and complete the same not later than 24 months from the date of handing over possession of the land to it. It is the further case of the petitioner that the 1st respondent company failed to commence construction of factory building within 6 months from the date of taking possession of the land; failed to complete the same within 2 years as agreed; failed to set up the proposed factory and also failed to utilize the land for industrial purpose. It is averred in the writ affidavit that after affording opportunity to the 1st respondent company, the petitioner Corporation by issuing show cause notices and after examining the explanation submitted by the 1st respondent, the petitioner cancelled the allotment of land vide letter, dated 02.01.1999, with a request to the 1st respondent company to surrender possession of the subject land.

As the 1st respondent failed to surrender the vacant land, the petitioner referred the matter to the 2nd respondent, Estate Officer, to initiate appropriate proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act (for short, "the Act"). The 2nd respondent initiated proceedings by issuing show cause notice on 17.07.2001 under Section 4(1) of the Act, calling upon the 1st respondent to show cause as to why eviction under the provisions of Section 5 of the Act should not be made against it. In response to the said show cause notice the 1st respondent submitted its explanation on 26.11.2001. Eventually, the 2nd respondent passed an order

of eviction under Section 5(1) of the Act on 30.11.2001 and directed the 1st respondent and any person claiming under it to vacate from the premises. Aggrieved by the said order of eviction, the 1st respondent preferred an appeal before the appellate authority i.e., learned IX Additional District and Sessions Judge (FTC), Visakhapatnam, who, under the Act, passed an order on 31.03.2006, allowing the said appeal in the following manner.

“In the result the appeal is allowed with the following reliefs:

1. The eviction order No.106/REC/2001, dt.30.11.2001 passed by Estate Officer is hereby set aside.
2. The matter is remanded to Estate Officer for fresh consideration.
3. In view of subsequent events, the Estate Officer is directed to give fresh opportunity to file the explanation with all necessary documents to appellant.
4. The appellant is directed to attend before the Estate Officer on 15.5.2006 with explanation and all necessary documents without any further notice from Estate Officer and
5. In view of facts and circumstances of the case, both parties are directed to bear their respective costs throughout.”

Challenging the validity and legal sustainability of the above order, dated 31.03.2006, passed by the appellate authority, the present writ petition came to be filed.

Heard Smt. A. Jayanthi, learned Standing counsel for the petitioner Corporation and perused the material available before the Court. Despite service of notice on the 1st respondent, there is no representation on its behalf.

According to the learned Standing counsel for the petitioner, the order passed by the learned Additional District Judge is erroneous, contrary to law and is opposed to the very

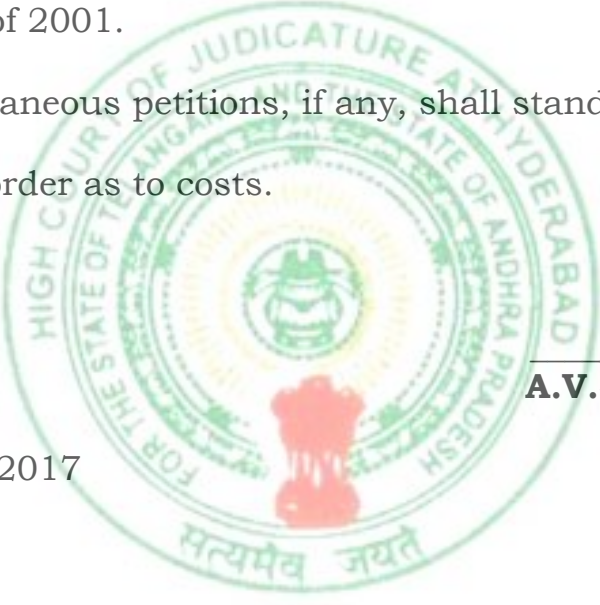
spirit and object of the provisions of the Act. It is also the submission of the learned Standing counsel that since the order of cancellation of allotment, dated 02.01.1999, became final, there is no justification on the part of the appellate authority in remanding the matter to the primary authority for fresh disposal. In elaboration, it is submitted by the learned Standing counsel for the petitioner that though the petitioner Corporation, after giving notice and affording opportunity to the 1st respondent company, cancelled the allotment made to it because of non-compliance of the allotment conditions, by way of order, dated 02.01.1999, the 1st respondent did not question the validity of the same and allowed the same to become final and so long as the said order of cancellation is intact, the 1st respondent cannot claim anything with regard to the subject property.

There is absolutely no dispute on the reality that the allotment made by the petitioner Corporation in favour of the 1st respondent came to be cancelled by the petitioner by way of an order, dated 02.01.1999, after giving notice and affording opportunity to the 1st respondent. There is also no controversy on the fact that the 1st respondent did not question the validity of the said order of cancellation, dated 02.01.1999 and that the said order admittedly became final. Therefore, as rightly pointed out by the learned Standing counsel for the petitioner Corporation, this Court does not find any justification on the part of the appellate authority in

remanding the matter to the 2nd respondent, primary authority, for fresh disposal. In these circumstances, this Court is of the opinion that the order impugned in the present writ petition passed by the appellate authority under the Act cannot be sustained in the eye of law.

For the aforesaid reasons, the writ petition is allowed, setting aside the order, dated 31.03.2006, passed by the appellate authority-cum-the Court of the IX Additional District and Sessions Judge (FTC), Visakhapatnam, in A.S.No.246 of 2001.

Miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.



A.V.SESHA SAI, J

Date: 24.07.2017
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