

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Mr. JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.4547 OF 2000

ORDER: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

The relief sought for in this Writ Petition is for a writ of certiorari to quash the proceedings of the Zonal Manager, A.P.I.I.C., dated 20.10.1998, to consequently set aside the order passed by the 6th respondent-Manager (Recoveries) & Estate Officer dated 27.11.1998, and to declare the notice dated 28.12.1998 as without jurisdiction.

The facts, to the limited extent necessary, are that the 2nd petitioner is a company registered under the Companies Act, 1956 and is represented by its Chairman, the 1st petitioner herein. They were allotted Ac.73.36 cents of land initially vide G.O.Ms.No.468 dated 20.3.1963, and subsequently vide G.O.Ms.No.212 dated 14.2.1964. A sale agreement was executed in favour of the 2nd petitioner by the Government of Andhra Pradesh on 31.08.1965. An extent of Ac.6.88 cents of land was resumed by the State Government from the petitioner in 1966, and was allotted to M/s. Jeevan Foods. When they sought to resume the remaining extent of Ac.66.47 cents of land also, the petitioners filed W.P.No.1497 of 1967 and this Court, by its order dated 24.11.1967 directed the 1st and 2nd respondents therein to refrain from giving effect to the notice of eviction dated 17.12.1966, and from assigning any portion of the land covered by the agreement dated 31.8.1965 to any other person. In W.P.No.1497 of 1967, the jurisdiction of the Director of Industries to cancel allotment of Government land was put in issue. The petitioners had contended that, since the subject land was allotted to them by the Government, the power

of cancellation, if any, could only be exercised by the Government, and not by the Director of Industries. This contention found favour with this Court and, consequently, respondents Nos.1 and 2 therein were restrained from giving effect to their notice.

While matters stood thus, a notice was issued by the A.P.I.I.C. on 14.8.1998 calling upon the petitioners to show cause why the remaining extent of Ac.44.48 cents, not having been put to use by the petitioners, should not be resumed. The petitioners submitted their reply thereto. They were afforded a personal hearing. Thereafter, an order of resumption was passed on 20.10.1998, and a notice for eviction was issued on 22.10.1998. A notice was issued on 28.12.1998 calling upon the petitioners to show cause why the remaining extent of around Ac.17.00 cents of land should not also be resumed. It is submitted by the Learned Special Government Pleader that, during the pendency of this writ petition, the petitioners made a representation to the Government on 12.11.2005 assuring them that they would utilize this extent of Ac.17.00 to establish an I.T. park, the State Government had considered their request favourably, and had executed a sale deed in their favour on 27.1.2007 for an extent of Ac.17.00 of land. The dispute, in the present writ petition, is therefore confined only to an extent of Ac.44.48 cents of land which was resumed by proceedings dated 20.10.1998.

The submission of Sri E.Ajay Reddy, learned Counsel for the petitioners, is that, since the subject land was allotted in the year 1964, it was not open to the A.P.I.I.C to resume the land more than 34 years thereafter; and the right, if any, of resumption could only have been exercised within the two year period within which the 2nd petitioner was required to establish a factory. Learned Counsel would rely on **M/s. Hind**

Construction Contractors by its sole Proprietor Bhikam Chand Mulchand Jain (dead) by L.Rs. Vs. State of Maharashtra¹ and Teri Oat Estates (P) Limited Vs. U.T. Chandigarh and others².

On the other hand, the learned Special Government Pleader, appearing on behalf of the learned Additional Advocate General, would submit that, in accordance with the conditions of allotment which confers power on the Government to resume the land, and since the Government had issued G.O.Ms.No.1162, dated 4.12.1973 transferring Industrial areas in Andhra Pradesh (which formerly vested with the Government of Andhra Pradesh) to the A.P.I.I.C, the Corporation, as the successor of the Government, was entitled to enforce the conditions of the earlier allotment; and as Uppal Kancha is one such industrial areas, it was transferred by the Government in favour of the Corporation. Learned Special Government Pleader would rely on the judgments of the Supreme Court in **Indu Kakkar Vs. Haryana State Industrial Development Corporation Limited and another³**; and a Division Bench of this Court in, **Estate Officer and Manager (Recoveries), A.P.I.I.C., Hyderabad and others Vs. Recovery Officer, Debts Recovery Tribunal, Bangalore and others⁴.**

The agreement, entered into between the Government of Andhra Pradesh and the 2nd petitioner herein on 31.8.1965, prescribes the terms and conditions upon which the land is to be held by the company. Clause 3 (a) requires the company to use the land for the purpose of putting up a factory or factories, housing colonies for staff and workers or any other such building as may be required in connection therewith; for the purpose

¹ (1979) 2 SCC 70

² (2004) 2 SCC 130

³ AIR 1999 SC 296

⁴ 2003(5) ALD 599 (DB)

of the expanded activities of the company, and for no other purpose. Clause 3(b) requires the company, within about two years of being put in possession of the said land, to erect and lay out such buildings and factories as aforesaid, and to maintain the same at its own expense. Clause 3 (d) stipulates that, if the subject land is no longer required by the company for the aforesaid purpose, then the company shall forthwith relinquish and restore the same in favour of the Government; and the compensation paid by the company for the land, less 15% solatium, shall be refunded to the company. Clause 3 (e) stipulates that, if the company commits a breach of any of the covenants contained in the agreement, it shall be lawful for the Government to re-enter upon the said land, take possession thereof and also of any buildings standing thereon; thereupon, the transfer made in favour of the company shall become null and of no effect; and all rights of the company in the said land, and in any buildings standing thereon, shall at once cease to be determined.

A show cause notice was issued to the petitioners for their failure to utilize an extent of Ac.44.48 cents of land, and as noted herein above, after they were given an opportunity to furnish their reply and were afforded a personal hearing, the impugned proceedings dated 20.10.1998 came to be passed by the Zonal Manager, A.P.I.I.C. The said order dated 20.10.1998 records that the 2nd petitioner, even after a lapse of more than 30 years of the judgment of this Court, in W.P.No.1487 of 1967 dated 24.11.1967, had failed to utilize the remaining extent (apart from Ac.5.00 of land utilized as on 24.11.1967) till date. Though they had kept a large extent of land without utilizing it for industrial purposes for more than 30 years, neither was the petitioner-company utilizing the land, nor had they surrendered it to the Government for allotment to the needy entrepreneurs as stipulated

in the sale agreement dated 31.8.1965. They had also committed breach of the conditions of the agreement by not utilizing the land for the purpose for which it was allotted. They had sought to blame their failure, to utilize the land for the avowed object, to global recession, and because of the financial constraints the petitioner-company had. The 5th respondent, thereafter, observed that he had caused an inspection of the unit on 14.10.1998 along with the representatives of the 2nd petitioner, and it was found that the allottee continued to utilize only Ac.5.00 of land, keeping a large extent of Ac.66.47 cents unutilized in violation of the terms and conditions of the allotment, and the sale agreement dated 31.8.1965. The impugned order deals with all the contentions raised by the petitioners including the plea that the impugned proceedings was barred by limitation.

It is not even contended before us, by the petitioners herein, that the finding recorded in the impugned order, that they had failed to utilize the land apart from Ac.5.00 of land, is incorrect. The only contention advanced is that any action, which could have been taken, must have been within a period of two years. As noted herein above, the two year period, prescribed in clause 3(b) of the agreement dated 31.8.1965, is for the petitioners to erect and build factories, and to maintain the same at their expense. It is clause 4(e) of the agreement which confers power on the Government to re-enter upon the subject land, and take possession thereof, if the petitioners commit breach of any of the covenants contained in the agreement. The petitioners had violated the conditions stipulated in clause 3(a) and (b), and had failed to put up a factory in the subject land, even after 30 years from the date on which the sale agreement was executed on 31.8.1965. As all these lands were transferred in favour of the A.P.I.I.C by the State Government, vide G.O.Ms.No.1162, dated 14.12.1973, the

A.P.I.I.C. was entitled to issue a notice, and seek resumption of the subject land for failure of the petitioners to abide by the terms and conditions of the allotment.

In **Indu Kakkar**³, the Supreme Court, while dealing with a similar condition prescribed in the agreement, observed thus:

“.....Here the Agreement was entered into between the Corporation and the allottee as a sequel to the request made by the allottee to give him an industrial plot for the purpose of setting up an industry. Corporation reciprocated to the request on being satisfied that the allottee was able to carry out the obligations so as to accomplish the purpose of allotment. The assurance given by of the allottee that he shall start construction of the building for setting up the industry within a period of six months and complete the construction thereof within two years from the date of issue of allotment letter was verified and found acceptable to the Corporation and then only the Corporation has chosen to enter into the agreement with the allottee. It is a matter of confidence which the Corporation acquired in the promise made by the allottee that the latter would perform such obligations. If the allottee evacuates from the scene after inducing someone else into the plot without consent of the Corporation it is not legally permissible for the inductee to compel the Corporation to recognize him as the allottee.....”

A Division Bench of this Court in **Estate Officer and Manager (Recoveries)**⁴, while dealing with a more or less identical condition in the sale agreement, held that the order of cancellation of allotment of land was on the ground of non-utilisation of land by the company for the purpose for which it had been allotted to it. In the present case there is a clear reference, in the order of cancellation of allotment of land, to the breach of the covenants. Exercise of the right of resumption, by the A.P.I.I.C, for the admitted failure on the part of the petitioner, to utilise the land for the purpose for which it was allotted, is justified. Once the resumption order is upheld, the land reverts to and vests in the A.P.I.I.C.

As resumption of land, by the APIIC, is for breach of the covenants of the agreement dated 31.8.1965 by the petitioners herein, the law declared by the Supreme Court in **Indu Kakkar**³ and the Division Bench of this Court in **Estate Officer and Manager (Recoveries)**⁴, would require this

Court to refrain from interference. The subject lands, after resumption, have been allotted to various industrial units including respondents Nos.7 and 8, who are said to have established their units which are functioning as on date. Reliance placed by the petitioners, on **Hind Construction Contractors¹**, is of no avail. In the said judgment, the Supreme Court observed that the question which arose for consideration was whether rescission of the contract, in the circumstances of the case, was wrongful and illegal; if time was not the essence of the contract, or if the stipulation as to the time fixed for completion had, by reason of waiver, ceased to be applicable, then the only course open to the respondent-defendant was to fix some time making it the essence; and if, within the time so fixed, the appellant-plaintiff had failed to complete the work, the respondent-defendant could then have rescinded the contract.

In the case on hand, while the terms and conditions of the agreement dated 31.8.1965 required the petitioners to set up a factory within two years i.e., by 1967, they had failed to utilize an extent of Ac.44.48 cents of land, for more than three decades thereafter, necessitating the A.P.I.I.C. having to issue a notice for resumption of land on 14.8.1998, and in passing the order of resumption dated 20.10.1998. The judgment in **Hind Construction Contractors¹** is therefore of no avail.

In **Teri Oat Estate (P) Limited²**, the constitutional validity of Section 8A of the Capital of Punjab (Development and Regulation) Act, 1952 was under challenge, as also the exercise of power of resumption and forfeiture. The Supreme Court observed that the subject land, for all intent and purport, had been transferred in favour of the appellants. They were merely to pay the balance amount of the consideration in instalments. Penalty was levied by the Appellate Authority and the revisional authority

and, therefore, the appellants should deposit a further sum with the Estate Officer for retaining the subject land. The Supreme Court, however, made it clear that they were not laying down the law that the statutory right of the respondent should never be resorted to, and there could not be any doubt whatsoever that, if the intention of the allottee was dishonest or with an ill motive, and if the allottee did not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then, recourse to the provisions of the Act could be resorted to.

As stated above, cancellation of allotment, and the consequent resumption of land, is for breach of the covenants of the agreement dated 31.8.1965, and not for non-payment of the entire consideration. The judgment in **Teri OAT²** is also of no assistance to the petitioners herein.

Viewed from any angle, we are satisfied that the action of the respondents-A.P.I.I.C, in resuming an extent of Ac.44.48 cents of land and in allotting the same to others for industrial development, can neither be said to be illegal nor to be arbitrary.

The writ petition fails and is, accordingly, dismissed. Consequently, all the applications, in the writ petition, are also dismissed. No costs.

(RAMESH RANGANATHAN, ACJ)

(ABHINAND KUMAR SHAVILI,J)

16th November, 2017
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THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE Mr. JUSTICE ABHINAND KUMAR SHAVILI

Writ Petition No.4547 of 2000

(Delivered by the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

16.11.2017

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