IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.17603 of 2018
and W.M.P.Nos.20881, 20882 and 22343 of 2018

Alps Industries Limited,
Plot No.B-160 and B-161,
PIPDIC Industrial Estate,
Mettupalayam, Puducherry-605 009,
rep. By its Company Secretary and
General Manager (Legal)
Ajay Gupta .. Petitioner

Vs.

The Pondicherry Industrial Promotion Development
and Investment Corporation Limited (PIPDIC)
represented by its General Manager (Development),
No.60, Romain Roland Street,
Puducherry-605 001. .. Respondent

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for records pertaining to the order of the respondent vide No.F31-08/10-11/Dev/795-IV/1140, dated 27.06.2018 cancelling the lease of the allotted plots B-160 and B-161 at Mettupalayam Industrial Estate, Puducherry, and quash the same, as illegal and without jurisdiction and to direct the respondent to deseal the factory premises bearing Plot No.B-160 and B-161, PIPDIC Industrial Estate, Mettupalayam, Puducherry-605 009.

For Petitioner : Mr.R.Amizhdhu

For Respondent : Mr.D.Ravichander
Additional Government Pleader
(Puducherry)

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O R D E R

Seeking to quash the order of the respondent dated 27.06.2018 and seeking a consequential direction to deseal the factory premises bearing Plot No.B-160 and B-161, PIPDIC Industrial Estate, Mettupalayam, Puducherry-605 009, the petitioner is before this Court.

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2. The facts of the case, in a nutshell, is as follows :

(i) The petitioner is a lessee under the respondent qua an industrial land of 1296 sq.ft. in the petition mentioned property. It has been carrying its business from Gaziabad, while having factories in various places. The lease deed was executed on 15.05.1995 for a period of 99 years. The petitioner erected a factory and allied superstructure in the said premises and commenced its operations in 1996.

(ii) There was a slowdown in the business of the petitioner in 2010 leading to unusual loss thereby forcing the petitioner to file a reference with the Board for Industrial and Financial Reconstruction (BIFR) in terms of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA). Subsequently, the petitioner was declared as a sick industrial company.

(iii) In such circumstances, the petitioner restricted its operations in the subject factory. However, steps have been taken to mobilise funds for reviving the company.

(iv) While so, the respondent claiming that when they have conducted surprise inspection in the subject premises, the unit was kept closed without any industrial activity, served a Show Cause Notice (SCN) dated 14.10.2010 on the petitioner as to why the premises should not be taken over by them. The petitioner sent a letter dated 21.10.2010 seeking extension of time to submit its explanation. In the said letter, the petitioner informed the respondent that there is no responsible official posted at the subject premises. Though the respondent gave time till 01.12.2010, the petitioner submitted its reply vide letter dated 18.11.2010 expressing its difficulties to suspend the operations temporarily and their attempts to recommence the same at the end of 2010 or January 2011.

(v) In pursuance to the letter of the respondent dated 08.12.2010 calling for a meeting, the petitioner met the official of the respondent and submitted a letter dated 16.12.2010 seeking to drop the further proceedings. The petitioner was served with a letter dated 18.02.2011 by the respondent asking to produce (i) monthly returns filed in the Commercial Tax Department; (ii) EPF contributions ; and (iii) Electricity Bill Receipts for the period from December 2010 to January 2011 to prove their claims of recommencing the operations, which was returned with the endorsement “left”.

(vi) Again, the petitioner was served with second SCN dated 19.02.2015, which was replied on 02.03.2015 again expressing the same difficulties and their lower level operations and also their prompt filing of VAT and Excise returns. On the same day, the petitioner was asked to submit those returns for the preceding twelve months and to pay the arrears of the maintenance and water charges. After a reminder dated 21.07.2016, the petitioner replied on 22.08.2016.

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(vii) The respondent also sent a communication dated 30.09.2016 to the petitioner seeking to submit returns and to pay the maintenance and water charges, which was followed by the letter dated 30.01.2017 calling upon the petitioner to show cause as to why the premises should not be taken over by the respondents. Though the petitioner claimed that they did not receive the letters, they have paid the said charges on 06.12.2017 and 26.02.2018.

(viii) The petitioner was served with a third SCN dated 30.04.2018 and they had submitted their reply dated 15.05.2018. Consequently, the impugned order dated 27.06.2018 came to be passed cancelling the allotment made in favour of the petitioner and authorizing the Officer (Works) of the respondent Corporation to take over possession within a time frame.

(ix) Consequent to the impugned order, the petitioner made a representation dated 03.07.2018 seeking to withdraw the impugned order and filed the instant writ petition.

3. When this writ petition came up for hearing on 16.07.2018, this Court directed the respondent to de-seal the factory premises. Seeking to vacate the said interim order, the respondent filed W.M.P. No.22343 of 2018.

4. Heard Mr.R.Amizhdhu, the learned counsel appearing for the petitioner and Mr.D.Ravichander, the learned Additional Government Pleader (Puducherry) appearing for the respondent.

5. The question to be determined is as to whether the act of the respondent in passing the impugned order is justified?

6. The learned counsel appearing for the petitioner submitted that the petitioner-Company had financial crunch and hence, it could not operate the industry for a while and it was slowly revamping. Proceedings were also initiated before the BIFR. According to the petitioner, though the production level had slowly declined and it did not stop absolutely, the respondent had assumed that the production was completely stopped and there was no business and the facilities were lying idle and sent notices to the petitioner. It is also stated that the impugned order is liable to be set aside, as the same is in violation of clauses 6(i) and 33 of the Lease Deed between the petitioner and the respondent. It is further alleged that the unilateral act to cancel the lease deed and to take possession of the land on the part of the respondent, despite the petitioner-Company being in operation, is against the principles of natural justice and is detrimental to the interest of the

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Company, besides jeopardising the rehabilitation process of the sick industrial Company which is making sincere efforts to regain the business.

7. The learned counsel for the respondent contended that the Writ Petition challenging the impugned order is first of all not maintainable and that there is absolutely no pleading in the Writ Petition and there are only grounds of mala-fide and arbitrary action. Even presuming that the act of the respondent is arbitrary, it will not hold water, because the respondent had issued various notices requesting the petitioner to commence the industrial activity and also several reminders and show cause notices as a follow up. Despite the above, the petitioner did not commence its activities and the respondent, left with no other alternative, had to issue the impugned order.

8. According to the petitioner, the impugned order is passed in violation of Clauses 6(i) and 33 of the Lease Deed. Clauses 6 (1) and 33 of the Lease Deed dated 15.05.1995 read as follows:

> 6(i) It shall be open to the party of the FIRST PART to determine the lease deed during the period of the lease and take possession of the said allotted plot together with the factory and other buildings located on the same, for any violation of any conditions of this deed, provided that in such an event, the party of the SECOND PART shall not be entitled to any compensation for any of the constructions on the allotted plot or any refund of any amount that may have been paid by it to the party of the FIRST PART under or by virtue of this deed.
>
> 33. During the currency of the lease the ownership of the property which is vested in the party of the first part shall not be liable to be questioned in any manner and if at all any such question is raised by the party of the SECOND PART, the lease will be terminated forthwith and the party of the FIRST PART will enter the land including the buildings and other op 15.05.1995 and other appurtenances situated thereon and resume the possession of the plot at any time."

9. From the explanation given by the petitioner to the show cause notice issued by the respondent, it is clearly understood that the action was initiated against the petitioner only to re-possess the land in view of non-functioning of the petitioner-Company and that the notice was issued only for the violation of Clause 8(ii), which was wrongly mentioned as Clause 7(B)(II) in the said explanation.

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10. The respondent is a State Finance and Industrial Development Corporation. Thus, any action of the respondent has to be meticulous in a fair manner without being arbitrary by following the principles of natural justice. The entire dispute revolves around a contract entered into between the parties and invocation of Article 226 of Constitution of India is limited, in the absence of any pleadings of mala fideness or arbitrariness or even violation of natural justice on the part of the respondent. A perusal of the records would go to show that the show cause notices were issued thrice calling upon the petitioner to give the explanation. The petitioner had also replied to the respondent stating that the Company would be revived shortly and the operations are only going slow. The allegation of the learned counsel for the petitioner is that there was no proper service of notice, even for which, it is pointed out by the learned counsel for the respondent that the petitioner, in its reply letter dated 21.10.2010, mentioned as follows:-

> "In the meantime, if you need any other documents/information please inform to undersigned and send all the communication to our registered office situated at B-2, Loni Road Industrial Area, Opp.Mohan Nagar, Ghaziabad - 201007 only, as presently we don't have any reasonable official at the unit at Pondicherry".

11. Even according to the petitioner, since there is no responsible official in its unit at Puducherry, all communications may be sent to the Delhi Office. It is pointed out that the said letter itself would lead to a rational conclusion that there is no operation, as there cannot be any functioning or operation of the Unit in the absence of any responsible Official. Though the fact that the Company is not functioning in the said place, the same was disputed by the petitioner. Hence, the respondent had directed the petitioner, vide letter dated 18.02.2011 and also letter dated 30.09.2016, calling upon them to furnish the copies of the commercial tax receipts, audited reports of the petitioner-Company, VAT Returns and Electricity consumption charges, receipts for payment of the same to establish the factum of operation of the Unit. Though the petitioner had replied to the same, but failed to produce any of those documents sought for by the respondent as mentioned above. According to the respondent, the respondent had left with no other alternative, but to draw adverse inference against the petitioner-Company, which was not operational.

12. A perusal of the records would go to show that from the year 2010, the respondent had given various opportunities to the petitioner-Company for revival of the Company. Only after giving

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them a long rope, after a passage of eight years, expecting the petitioner-Company to revive its operations, the impugned order was issued on 27.10.2018.

13. The learned counsel for the respondent placed relied on the decision of Hon'ble Supreme Court reported in KARNATAKA STATE INDUSTRIAL INVESTMENT AND DEVELOPMENT CORPORATION LTD -VS- CAVALET INDIA LTD AND OTHERS reported in (2005) 4 SCC 456, in which, it is stated that for the parties where there is a dispute between the Corporation and its debtors, the powers of the Writ Court is limited and the same can be interfered with only when there is a statutory violation on the part of the Corporation or when the Corporation acted unfairly or unreasonably. It is useful to extract the relevant portions of the said judgment as follows:-

> "19. From the aforesaid, the legal principles that emerge are :
>
> (i) The High Court while exercising its jurisdiction under Article 226 of the Constitution does not sit as an appellate authority over the acts and deeds of the financial corporation and seek to correct them. The Doctrine of fairness does not convert the writ courts into appellate authorities over administrative authorities.
>
> (ii) In a matter between the corporation and its debtor, a writ court has no say except in two situations;
>
> (a) there is a statutory violation on the part of the corporation or
>
> (b) where the corporation acts unfairly i.e., unreasonably.
>
> (iii) In commercial matters, the courts should not risk their judgments for the judgments of the bodies to which that task is assigned.
>
> (iv) Unless the action of the financial corporation is mala fide, even a wrong decision taken by it is not open to challenge. It is not for the courts or a third party to substitute its decision, however more prudent, commercial or businesslike it may be, for the decision of the financial corporation. Hence, whatever the wisdom (or the lack of it) of the conduct of the corporation, the same cannot be assailed for making the corporation liable.
>
> (v) In the matter of sale of public property, the dominant consideration is to secure the best price for the property to be sold and this could be achieved only when there is maximum public participation in the process of sale and everybody has an opportunity of making an offer.

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(vi) Public auction is not the only mode to secure the best price by inviting maximum public participation, tender and negotiation could also be adapted.

(vii) The financial corporation is always expected to try and realize the maximum sale price by selling the assets by following a procedure which is transparent and acceptable, after due publicity, wherever possible and if any reason is indicated or cause shown for the default, the same has to be considered in its proper perspective and a conscious decision has to be taken as to whether action under Section 29 of the Act is called for. Thereafter, the modalities for disposal of seized unit have to be worked out.

(viii) Fairness cannot be a one-way street. The fairness required of the financial corporations cannot be carried to the extent of disabling them from recovering what is due to them. While not insisting upon the borrower to honour the commitments undertaken by him, the financial corporation alone cannot be shackled hand and foot in the name of fairness.

(ix) Reasonableness is to be tested against the dominant consideration to secure the best price.

20. True, the exercise of the right by a financial corporation under Section 29 of the Act should be fair and reasonable. Ultimately, whether the action of the financial corporation is bona fide or not would depend on the facts and circumstances of each case."

14. From the above decision, it is clear that the power of the lender to realise the amount lent either by enforcing charge or hypothecated property and proceedings issued simultaneously or independently against the surety or the guarantor is a statutory right. Here, when the respondent had given more than 10 years for the petitioner to revive and revamp its activities and to start business and in the absence of any progress, the act of the respondent is correct. When there is no allegation of mala fideness, arbitrariness or even violation of principles of natural justice and the respondent having given them sufficient opportunities, which are acknowledged by the petitioner, this Court cannot be called upon to interfere with the impugned order.

15. It appears that an undertaking affidavit dated 16.08.2018 was also filed by the Managing Director of the

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petitioner-Company, in which, it is stated that the business operations is going on low scale due to the financial difficulties and they are negotiating with the bankers/financial institutions to provide adequate funds to restructure the debt of the Company to do the business in full swing and the same is under active consideration by the bankers / financial institutions. In paragraph 5 of the said affidavit, it is stated that the petitioner would bring the business operations and will start the regular production in the above said Unit within six months period by deploying the required number of workmen and increase the production activities at Puducherry factory site within a period of six months from the date of the said affidavit. Even going by the said affidavit, the Company has come to a standstill. Clause 8(ii) of the Lease Deed states that "if during the lease period the whole or any portion of the allotted land is kept unutilised by the party of the SECOND PART, the party of the FIRST PART shall have the right to terminate the lease forthwith in respect of the whole or the portion, as the case may be and resume possession with all the consequences".

16. The undertaking affidavit filed on 16.08.2018 by the Managing Director of the petitioner-Company would vouch safe the fact that the Company is not operational. It is stated that on 06.07.2018, the premises has been sealed. The learned counsel for the petitioner submitted that they are not in default, as the maintenance charges of Rs.64,185/- upto to 2017-2018 had already been paid by them. But, the learned counsel for the respondent stated that the said amount was returned to the petitioner. The show cause notices issued were addressed only to the Puducherry Unit and the claim of the petitioner of non-receipt of the same would once again go to show that the Unit is closed and there are no workers or any responsible officials placed there. The respondent-Corporation is not willing to accept the explanation given by the petitioner, in the absence of any supporting documents as demanded by them.

17. In the absence of any industrial activities happening in the plot allotted to the petitioner, having not utilised more than eight years, the petitioner does not deserve any sympathy and the respondent is entitled to gain re-possession of the same. Mere payment of maintenance charges alone would not absolve the liability of any utilisation of the plot by the petitioner-Company. It is also relevant to mention that the petitioner had availed a loan to the tune more than 17 hundred crores of rupees, which are still outstanding. The assets of the Company are also lying with the Asset Reconstruction Company. Thus, the financial hardship faced by the petitioner are irretrievable and expecting them to recommence its operation in its Puducherry Units is far fetched. The respondent, being the

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Corporation, in developing and promoting industrial units, has to recover the plot from the petitioner and allot it to the productive entrepreneurs, who are waiting in their queue for their chance. Thus, permitting the petitioner to continue in their premises would not only incur loss to the respondent but also would hamper the interest of any prospective industry. Thus, in the absence of any merits in the case of the petitioner, the Writ Petition fails.

18. Accordingly, the writ petition is dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The General Manager (Development),
The Pondicherry Industrial Promotion Development
and Investment Corporation Limited (PIPDIC)
No.60, Romain Roland Street,Puducherry-605 001.

+1cc to M/S.R.Amizhdhu, Advocate sr.79323
+1cc to M/S.D.Ravichander, Advocate Sr.79808

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