

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2413 of 2018**

- M/s Renuka Plaster Works Plot No. 67 B, Sector B, Sirgitti Industrial Area Bilaspur, Through Shri Chandrakant Palorkar Aged About 78 Years. Attorney Residence Flat No. 501, Fifth Mala Hars Heavens R. K. Petrol Pump Ke Pichhe, Seepat Road Thana Sarkanda Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. Secretary Vyapar And Udyog Mantralaya, Mahanadi Bhawan Naya Raipur, Chhattisgarh
2. Chhattisgarh State Industrial Development Corporation Ltd. Through Prabandh Sanchalak, Udyog Yan Telibandha Ringroad No. 01 Sonakhan Bhawan Ke Samne Raipur, Chhattisgrh

---- Respondents

For Petitioner	:	Shri Alok Dewangan, Advocate with Shri Chandrakant Palorkar, petitionr in person
For Respondent/State	:	Ms. Deepti Shukla, PL
For Respondent No.2	:	Shri Anumeh Shrivastava, Advocate with Shri Akash Shrivastava, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****30/08/2019**

1. Petitioner in person appears before the Court and on the earlier occasion made a prayer that his case may be heard as he is already 79 years old, therefore, during his lifetime the case may be decided. Therefore, the case is taken up today when the final hearing list is taken up.
2. Heard.

3. Challenge in this petition is to the cancellation of a lease, which was affirmed by the first appeal and second appeal, filed under Chhattisgarh Audyogic Bhumi Avm Bhawan Prabandhan Niyam, 2015 (for short 'the Niyam, 2015'), whereby the cancellation of the said lease was affirmed.

4. Shri Chandrakant Palorkar, petitioner in person, though he was given the assistance from the legal aid, but he himself made the submission along with his counsel. It is contended that the petitioner was given a lease to establish a factory by the Chhattisgarh State Industrial Development Corporation at Sirgitti area Bilaspur (CSIDC). It is stated that directly a cancellation of lease was issued to him on 20.07.2015 and prior to it no show-cause notice was ever served to him. Petitioner further submits that due to natural calamity/storm which took place on 09th of June, 2015, the factory shed of the petitioner was completely blown away. The storm followed by the rain resulting into loss of entire materials i.e. Plaster of Paris materials etc. which was kept inside the shed. It is further stated that because of such problem the unit made default of different payment. It is further stated that however, the cancellation of lease was for non-payment of lease rent, but no notice was ever served. The petitioner stated that cancellation of lease was made for non-payment of an amount of Rs.25,452/-, which was alleged to be due over the petitioner for non-payment of lease charges and other taxes has resulted in closure of the unit. The petitioner further stated that because of such cancellation of the lease subsequently, the insurance claim though was partly paid and though Bank agreed to revive the unit by extension of loan as it was damaged due to natural calamity, but the loan could not be extended for non-existence & no objection from CSIDC, which resulted into termination of more than 17 employees. It is

further stated that there might have been non-payment of lease, but he should have been given some time by notice to pay the amount as otherwise this day would not have resulted. It is stated that presently for non-payment of the loan, the Bank has pursued for recovery of the amount before the Debt Recovery Tribunal, which is pending and the symbolic possession has been taken over. It is further stated that, however, the petitioner has not been vacated till date from the actual possession.

5. It is further submitted that against the cancellation of the lease, the petitioner had filed the first appeal under the Niyam, 2015, wherein he was not given any hearing, therefore, he filed a writ petition before this Court, wherein the High Court by order dated 04.09.2017 had directed to give opportunity of hearing to the petitioner. The petitioner would further submit that on 17.10.2017 when the petitioner appeared before the first appellate authority before the Managing Director of State Industrial Development Corporation, pursuant to the order of the High Court, that day being the day of *Dhanteras*, there was a huge rush in the office of the Managing Director and the people were standing in a queue to give the gift, in the mids when the petitioner appeared, he was assured that his matter would be looked into and orders would be passed. Subsequently, the order dated 27.11.2017 was passed virtually without hearing to the petitioner. It is further submitted that subsequently, the statutory second appeal was preferred before the State Government, wherein too no virtual hearing was given to him and the order dated 26.07.2018 has been passed. He submits that because of the fact that the respondent officer did not follow the mandate of statutory hearing, the natural justice was defeated and the original order as also the order passed subsequently may be canceled.

6. Per contra, learned counsel for the respondent No.2 would submit that initially notice was served to the petitioner for breach of clause No.2, 6 & 23 of the lease deed, which purports that the lessee has to pay the lease rent and other dues on 10th of January of every year and the clause 6 purports that the commercial production to start with should have been reported in the prescribed format to the respondent which is EM Part – II and clause 23 purports that if the factory is closed for six months without seeking any permission from lessee, the lease is required to be terminated. It is further contended that the notice dated 14.01.2015 was served giving him an opportunity of hearing to reply within 60 days and after expiry of 60 days since no response was received, the lease was canceled. He would further submit that subsequently the statutory first appeal and the second appeal was filed, wherein both the authorities after going through the record have passed the order, which are well merited which do not call for any interference.
7. I have heard learned counsel for the parties at length.
8. Since the petitioner is appearing in person, the original case file of the petitioner with the department when produced before the Court is perused. The original case file of the petitioner contains both the note-sheets and the entire order-sheets and the correspondence. The lease deed copy is also produced. The photocopy of the said lease deed is taken on record so as to form part of the record. Clause 38 of the lease speaks about the Industries Commissioner or any other officer to whom the power of allotment have been delegated will also be competent to terminate the lease deed. Clause 26 of the lease deed purports that when there is non-payment of any dues or any non-observance by the lessee of any of the conditions and covenants, sixty days notice shall be

given to the lessor and if he failed to answer the same within such stipulated time the lease shall be deemed to have been terminated. The respondent claims that in pursuance to clause 26 of the lease, the notice dated 14.01.2015 was sent to the petitioner which remained unattended. The copy of said notice dated 14.01.2015 is on record. Along with such notice, though it shows that it was sent by registered post, there is no such document or acknowledgement is on record. On inspection of the entire file, such registered receipt or acknowledgement could not be found.

9. Note-sheet of the case file of the petitioner's case is also perused. It contains a remark that on 07.01.2015 the notice was issued to the petitioner. There is no document on record to hold that the notice dated 14.01.2015 was ever served to the petitioner. When it is the case of the respondent that after issuing the notice to the petitioner on 14.01.2015 when he did not turn up, the cancellation of lease was effected. The service of such notice would be of extreme relevance. The copy of notice dated 14.01.2015 on record purports that the demand of Rs.25452/- was made along with two other clauses of the lease are said to have been flouted. When the lease deed purports that after notice such action of cancellation can be set into motion, then service of notice would be mandatory. Even otherwise, by following the rules of natural justice if an order or any action results into civil consequences, then rules of natural justice are required to be followed. In the instant case, apparently after inspection of the entire record, the case file and the note sheet do not substantiate the fact that the petitioner was ever served with a notice before the termination of the lease. Consequently, on the basis of the fact that the petitioner did not reply to the notice, the subsequent cancellation of the lease would be illegal as it failed to

follow the rules of natural justice.

10. In a consequence, when the original cancellation itself has been held bad by this Court, then subsequent finding by the first appellate authority and the second appellate authority would be of no significance. The authorities also failed to take notice of the fact whether the petitioner was served with the notice dated 14.01.2015 before the cancellation was effected. The further submission of the petitioner that he was not heard by the first and second appellate authority, this Court would not go into the issue at this stage considering the finding arrived at. In a result, the cancellation order dated 20.07.2015 is set aside. The petitioner shall be at liberty to make deposit the arrears as would be due as on date, which would be intimated to him by the respondent within a period of 30 days and the petitioner shall be at liberty to make payment within a further period of 30 days. Accordingly, the original cancellation of the lease has been quashed. The consequence would follow.
11. The petition stands allowed. No order as to costs.

Sd/-

Goutam Bhaduri
Judge

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