

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.89 OF 2019

M/s Prasad Enterprises
by and through Proprietor
Mr. Kiran Shirsat
Proprietor, Plot 282,
Kundaim Industrial Estate,
Kundaim, Ponda Goa. ... Petitioner

Versus

1. State of Goa,
Through its Chief Secretary,
having office at the Secretariat,
Porvorim Goa 403 521.
2. The Goa Industrial Development Corporation
through its Managing Director,
Address: Patto Plaza,
Panaji Goa 403 001 ... Respondents

Mr. Venkatesh Ameya Nayak Salatry, Advocate for the Petitioner.

Ms. P. Bhandari, Additional Government Advocate for Respondent No.1.

Mr. H. D. Naik, Advocate for Respondent No.2.

***Coram : M. S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 26th February, 2019

Oral Judgment (Per M. S. Sonak, J)

Heard Mr. V. Nayak Salatry, learned counsel for the Petitioner, Ms. P. Bhandari, learned Additional Government Advocate for Respondent No.1 and Mr. H. D. Naik, learned counsel for Respondent No.2.

2. Rule. With the consent and at the request of the learned counsel for the parties, rule is made returnable forthwith.

3. The learned counsel appearing for the respective Respondents waive service on Rule.

4. There is no dispute that in the year 2016, the Respondent No.2 which is a statutory corporation established under the Goa Industrial Development Act, 1965 issued an advertisement dated 23rd November, 2015 inviting applications for allotment of 20 plots at Kundaim Industrial Estate. The Petitioner, was one of the applicants, whose case was considered by the screening committee and ultimately,

vide allotment order dated 29th August, 2016 was allotted plot No.B25-26/08 admeasuring 1050 square metres on the basis of sub-lease. The Petitioner states that the Petitioner has complied with the terms of the allotment order dated 29th August, 2016 and even completed the construction of the industrial unit on the said plot. Mr. Salatry, learned counsel for the Petitioner points out that the Petitioner in fact has manufacturing unit in the very adjacent plot. The Petitioner contends that there is unreasonable delay in execution of the lease deed and issuance of occupancy certificate, on account of which the Petitioner is unable to commence the manufacturing activities in the industrial unit so set up on the plot in question.

5. Mr. H. D. Naik, learned counsel for Respondent No.2 submits that there was some dispute as to whether the Petitioner is an industrial undertaking set up as manufacturing industry or whether the Petitioner is required to be classified as service industry. He submits that in order to resolve this issue, by letter dated 27th August, 2018, a reference is made to the Under Secretary (Industries) Government of Goa and since the response is awaited, there was delay in execution of the lease deed and the issuance of occupancy certificate. Mr. Naik refers to the affidavit filed by Mr. S. V. Naik, Managing Director of Respondent No.2 which states same position as

articulated by him.

6. The Petitioner has made a statement that the Petitioner is an industrial unit concerned with manufacture of packing material of sanitary napkins. The record indicates that this was the precise purpose indicated by the Petitioner at the time he applied for allotment of the plot in question. The record also indicates that this was the material which was considered by the screening committee which recommended the allotment of plot in favour of the Petitioner. Ultimately, even the allotment order which was issued to the Petitioner states that the plot has been allotted for "*manufacture of packing of sanitary napkins*".

7. Section 3(h) of the Goa Industrial Development Corporation Allotment Regulations, 2014 defines the "*Industrial Undertaking*" to mean as follows :

- “(i) *Manufacturing Industry related to manufacture of all types of goods except liquor and tobacco products;*
- (ii) Captive warehousing means warehousing required for storage of its own raw material or finished goods by a manufacturing unit, provided such a manufacturing unit is located within the State of Goa;*
- (iii) Information Technology, Units including ITES & BPO Services employing a minimum of 50 persons;*
- (iv) Research & Development Centre's employing a*

minimum of 25 persons;
(v) Automobile repair & services with showroom area not exceeding 10% of the built up area;
(vi) Solid Waste Management & treatment facilities including hazardous waste management facilities as per the directives of the Government;
(vii) Scrap yards as per the directives of the Government;
(viii) Any other Special Project approved for land allotment as per the directions of the Government of Goa or the Investment Promotion Board other than those defined under clauses 3(i), (j), (k) & (l)."

8. Similarly, Section 3(j) of the Goa Industrial Development Corporation Allotment Regulations, 2014 defines the expression "*Service Industry*" to mean the following :

"Service Industry" for the purpose of these regulations shall mean and include Logistics and Warehousing other than captive warehousing."

9. According to us, it is very clear that the Petitioner's unit is included within the definition of "*Industrial Undertaking*" as defined under Section 3(h) of the Goa Industrial Development Corporation Allotment Regulations, 2014. In fact, in the record placed before us and the statements in the affidavit made by Mr. S. V. Naik, Managing Director of Respondent No.2, we find that this matter was referred to the Board of Respondent No.2 and even the Board of Respondent

No.2 was satisfied that the Petitioner's unit is an Industrial Undertaking. The Board, in fact resolved that necessary lease deed be executed with the Petitioner.

10. Despite the aforesaid, a reference has been made to the Under Secretary (Industries). According to us, such a reference was wholly unnecessary in the facts and circumstances of the present case.

11. The allotment in favour of the Petitioner was on the basis that the Petitioner's unit is an Industrial Undertaking. The Petitioner affirms that he intends to manufacture of packing material of sanitary napkins. Taking into consideration the provisions of Section 3(h) of the Goa Industrial Development Corporation Allotment Regulations, 2014, we are satisfied that the Petitioner's unit is an Industrial Undertaking for the purpose of manufacture of packing material of sanitary napkins.

12. Accordingly, we find no reason as to why Respondent No.2 should not be directed to execute the lease deed and issue occupancy certificate to the Petitioner.

13. We accordingly direct the Respondent No.2 to execute the

lease deed with the Petitioner as per the terms of the allotment set out in the allotment order dated 29th August, 2016. Similarly, we also direct the Respondent No.2 to issue necessary occupancy certificate since no other impediments in the issuance of the same were pointed out to us. The exercise of execution of lease deed and issuance of occupancy certificate to be completed as expeditiously as possible and in any case within a period of six weeks from today.

14. Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

Prithviraj K. Chavan, J.

M. S. Sonak, J.

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