

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 4848 of 2007**

- Bilaspur Spinning Mills and Industries Limited, a company registered under Companies Act 1956, through its authorized signatory, Bilaspur Spinning Mills & Industries Limited, Lalkhadan, Bilaspur (Chhattisgarh), having Regd. Office at 12, Government Place East, Kolkata 700069. **---- Petitioner**

Versus

1. State Of Chhattisgarh, through the Secretary, Department of Industries & Commerce, Mantralaya, D.K.S. Bhawan, Raipur (Chhattisgarh).
2. Director, Directorate of Industries, Industries & Commerce, 2nd Floor, Life Insurance Corporation of India Limited-Campurs, Pandari, Raipur Chhattisgarh.
3. The General Manager, District Industries & Trade Centre, collectorate, Bilaspur Chhattisgarh.
4. The Chhattisgarh State Industries Development Corporation, through its Executive Director, Raipur, Chhattisgarh. **---- Respondent**

For Petitioner : Shri Sourabh Sharma, Advocate
For Respondent/State : Smt. Fouzia Mirza, Addl. A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****20/11/2020**

Heard.

1. By this petition under Article 226 of the Constitution of India, the petitioner seeks to assail the high handed action of the respondent authority in taking away

possession of 16 acres out of 28 acres of land, which was granted by way of lease deed dated 25.08.1964 to the petitioner.

2. Factual matrix of the case, giving rise to present controversy and necessary for determination of the case are that the petitioner company, in the name and style as “Bilaspur Spinning Mills & Industries Limited” applied before the erstwhile Government of Madhya Pradesh for grant of lease of land for establishing manufacturing unit for industrial purposes. The Government of Madhya Pradesh granted lease of an area ad-measuring 28 acres in favour of the petitioner company by executing a lease deed on 25.08.1964 and the lease was granted for a period of 99 years.
3. It appears that long after establishing the industrial unit, the petitioner prayed for utilization of a part of the land comprised in the lease deed, lying vacant outside the shed of the industrial structure, by diverting the land for educational purpose. A letter was therefore written by the petitioner on 14.7.2006 to the Minister of Industries of Chhattisgarh, seeking permission to divert 16 acres of land comprised in industrial area of lease, granted earlier. The Government, however, did not allow the petitioner to divert that 16 acres of land, for any other purposes. But the request letter was made a basis for the authority to presume that 16 acres of land are not being used by the petitioner. This followed issuance of letter on 3rd of January, 2007 by the State Government, in the Department of Commerce and Industries, addressed to Managing Director, Bilaspur Mills & Industries Limited to return the surplus land ad-measuring 16 acres, so that it could be used for some other purposes. The letter issued by the State Government finally culminated in

issuance of communication dated 21st June, 2007 by Directorate of Industries Chhattisgarh, Raipur, addressed to General Manager District Industries Centre, Bilaspur to take possession of 16 acres of land from the petitioner. Aggrieved by the order, the petitioner has filed this petition.

4. Learned counsel appearing for the petitioner would argue that once lease was granted to the petitioner, without termination or cancellation of lease by following the procedure prescribed under the law, respondent could not have regained the possession of land and direct the General Manager, District Industrial Centre, Bilaspur to take back the possession of 16 acres of land forming part of the lease granted in favour of the petitioner. He would argue that the period of lease has not come to end nor the lease can be said to have been automatically cancelled under forfeiture clause under any of the terms of lease. He would submit that present is not a case where the lease has been determined by any notice of termination given by the respondents to the petitioner. He would further argue that not only that, no procedure of law has been followed before issuance of letter on 21st June, 2007 and the respondents have prepared a document for taking back possession of the land from the petitioner, whereas, according to the petitioner, it still continues to be in possession on the aforesaid dispute land ad-measuring 16 acres. In support of submission, counsel for the petitioner placed reliance upon decisions in **Modern Hotel, Gudur Represented By M.N. Narayanan Vs. K. Radhakrishnaiah & Others** AIR 1989 SC 1510, **ITC Limited Vs State of Uttar Pradesh & Others** 2011 (7) SCC 493 and **S. Kumar Vs Commissioner And Others**, 2019 (5) SCC 244.

5. Per Contra, learned counsel for the respondents would argue that it is for the

petitioner to show that he is utilizing 16 acres of land out of 28 acres of land, which was given under the lease for the purpose of establishing manufacturing unit. At this stage, the petitioner is not using 16 acres of land, therefore, on this admitted position, the respondent authority, while rejecting petitioner's prayer for diversion of land, decided to regain the land and therefore, steps for taking back possession of the disputed land were taken and later on, possession of the land has also been taken, which is clear from memorandum dated 09.07.2007. He would argue that the arguments raised by the petitioner are more or less technical in nature. Once the petitioner himself has come out by saying that he is not using 16 acres of land and the same is lying vacant, the petitioner cannot be permitted to grab the land and the respondents are justified to regain the land and take possession from the petitioner.

6. Having heard learned counsel for the parties and perusing the records, this Court is of the considered opinion that the action of the respondents is against the law.
7. The petitioner was granted lease of 28 acres of land for a period of 99 years by lease deed dated 25th of August, 1964 executed by the Director of Industries under the authority of the Governor of the Madhya Pradesh. The lease contained various terms and conditions, which have been mentioned in lease deed. Clause 15 and 16 thereof states conditions in which, the lease could either be treated as cancelled or determined. Clause 15 and 16 are quoted below.

“15.If the rent hereby reserved or any part there of shall at any time be in arrears and unpaid for six calendar months next after the date whereon the same shall have become due whether the same shall

have been lawfully demanded or not or there is a breach or non observance by the lessee of any of the conditions and covenants therein contained and the lessee fails to remedy the breach within 6 (six) months of the notice in writing given by the lessor or becomes insolvent or enters into an agreement with his creditors for composition of the industry, this lease will be deemed to have been terminated and the lessor may not withstand in the waiver of any previous cause or right of re-entry and without prejudice to any right or remedy of the lessor for recovery of rent remaining due under the lease enter upon the said land and repossess the same as if this demise had not been made.

16. On expiration or sooner determination of the terms hereby granted the lessee shall peaceably surrender and yield up the said land to the lessor and the lessor have the option of (a) taking over the said land and the construction thereon on payment of their cost or value on the date of re-entry as estimated by the Chief Engineer, Public Works Department (B&R) Madhya Pradesh, whichever is less, or (b) requiring the lessee to remove the constructions thereon and to restore the said land to its original condition within such period not less than six (6) months as may be fixed by the lessor. Should the lessee failed to comply with such requisition within the period so fixed the said construction shall lapse to the lessor.”

8. The recitals of the clause 15 and 16 unequivocally provide that lease could be terminated in certain contingencies, which are, non payment of rent for stipulated

period, despite demand or when there is breach by the lessee of any of the conditions and covenant contained in the lease, which the lessee fails to remedy within six months from the notice in writing or when lessee become insolvent or when enters into agreement with his creditors for composition of the industry.

9. In the present case, it is not the case of the respondent that the present is case which falls under any of the contingencies exhaustively enumerated in clause 16 of the lease.

10. Learned State counsel however, sought to convince this Court that the present case would be covered under Clause 16 of the lease deed. This submission is without any merit. Clause 16 provides that on expiration or sooner determination of the term and conditions, the lessee shall peaceably surrender lease of the land to the lessor. This particular part of the Clause 16 is followed by certain terms and conditions of the lease. However, the first part as noted above, is because of expiration of the lease or sooner determination of the lease. Admittedly, the lease is for 99 years. There is no notice given by the respondent to determine the lease. Moreover, learned counsel for the state/respondent could not bring to the notice of this Court, any provisions contained in law, in force and applicable in relation to the parties, which leads to determination of the lease by operation of law. Therefore, in view of above legal position, it is quite apparent that application of Clause 16 could not pressed into service on the basis of the stand taken by the respondent/state.

11. Thus, the conclusion is that the action of the respondents is based on presumption without ascertaining rights and obligations of the parties under the lease. Learned

State counsel, despite repeatedly asked, could not bring to the notice to this Court that the procedure adopted by its Officer, was in consonance with the authority to recover the possession in the manner it has been done in the present case.

12. Nobody is above the law. Even if, the State alleges that as the petitioner is not using that 16 acres of land and is lying vacant, nevertheless, it is obliged under the law to take recourse to appropriate legal proceedings as are permissible under the law towards determination of the lease. Even after determination of lease and despite requisition, the petitioner does not hand over possession of the land, then also, the State could take back the land only in accordance with law and not by use of force. The State muscle power could not be used to take possession of the land as it is done in the present case.

13. The power and authority of State is circumscribed by the Constitution at limits and is not unlimited. Determination of lease and taking back possession of the land both are governed by law and it is not in the hands of Executive Authority to forcefully take over the possession by use of State power, without taking recourse to procedure of law.

14. It is a case, where act of the State is demonstrably illegal, unauthorized by the law, therefore, it has to be set aside by exercise of extraordinary jurisdiction. It is accordingly done.

15. Action of respondent in respect of 16 acres of land is declared illegal and inoperative under the law and all consequential action including dispossession, if

any, of the petitioner from the land is declared illegal. The communication dated 21.06.2007 (Annexure P/8) annexed in this petition, is also declared illegal and inoperative in law.

16. This Court had already protected the petitioner by interim order passed way back on 21.08.2007, when the effect and operation of the impugned order dated 21st June, 2007 (Annexure P/8) was stayed until further orders.

17. Though, the petitioner claim that he is continuing in possession of the said disputed land, respondents claim otherwise as per communication dated 09.07.2007 (Annexure R/5), that the possession of the land has been taken. In view of the decision of this Court, the possession of the land has to remain in the hands of the petitioner and a document of handing over of the land, panchnama of handing over the disputed land in favour of the petitioner will have to be executed by the respondents within a period of three months from the date of receipt of copy of this order.

18. Before parting with the case, it has to be observed that liberty is reserved to the State/respondents to act in accordance with law towards determination of lease and to take possession by drawing appropriate proceedings. No order as to costs.

Sd/-

(Manindra Mohan Shrivastava)

Judge