HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.A. No.992/2020

State of M.P. & others

-Versus-

M/s Hindustan Engineering

W.A. No.993/2020

State of M.P. & others

-Versus-

M/s Surya Sales Corporation

W.A. No.994/2020

State of M.P. & others

-Versus-

M/s Deepa Enterprises

W.A. No.995/2020

State of M.P. & others

-Versus-

M/s Shashi Enterprises

W.A. No.998/2020

State of M.P. & others

-Versus-

M/s B.C.S. Corporation

W.A. No.999/2020

State of M.P. & others

-Versus-

M/s Electrocom

Shri Swapnil Ganguly, learned Deputy Advocate General for the appellants/State.

Shri Siddharth Gulatee, learned counsel for the respondent.

CORAM :

Hon'ble Shri Justice Sanjay Yadav, Acting Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

J U D G M E N T
(Jabalpur dt.: 03.12.2020)

Per : Vijay Kumar Shukla, J.-

The present intra-court appeal is filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalay (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 arising out of the order dated 16.12.2019 passed by learned Single Judge in W.P. No.22782/2017 and in connected writ petitions.

2. This order shall govern disposal of W.A. No.992/2020, W.A. No.993/2020, W.A. No.994/2020, W.A. No.995/2020, W.A. No.998/2020 and W.A. No.999/2020 as they are arising out of common order passed by the learned Single Judge in the connected writ petitions and they involve common issues of payment of amount of premium, development fee, administration charges and advance annual rent. For the sake of convenience, the facts as narrated in W.P. No.22782/2017 (*M/s Electrocom vs. State of M.P. & others*) are being considered.

3. The writ petition was filed by the respondent/petitioner

under Article 226 of the Constitution of India challenging the order dated 1.11.2017 passed by the Commissioner, Industry, Directorate of Industries, Bhopal as also the order dated 17.11.2017 passed by the General Manager, District Trade and Industries Centre, Bhopal whereby the respondents have proposed to allot an industrial plot to the petitioner subject to payment of amount of premium, development fee, administration charges and advance annual rent, which, according to the petitioner is contrary to the lease agreement earlier executed between the parties in the year 2008.

4. The brief facts of the case are that the petitioner unit made an application for allotment of land for the purposes of setting up its industrial unit at Bhopal to the General Manager, District Commerce and Industry Centre, Bhopal. Subsequently, after finding the petitioner eligible for allotment of the land, a letter of allotment was issued on 19.12.2008 and thereafter a registered lease deed was executed in favour of the petitioner for a period of 30 years. However, before possession of the land in question could be handed over to the petitioner and other similarly situated persons, their lease was suddenly cancelled by the respondent No.2 vide its order dated 6.1.2011. The said order was challenged in W.P. No.3061/2011 which was decided by order dated 10.8.2015 and subsequently the petitioner also filed W.P. No.13287/2015 assailing the order dated 6.1.2011 and the said writ petition was also allowed by this Court vide order dated 24.8.2015 in the light of the earlier order dated 10.8.2015 passed in W.P. No.3061/2011. After, the petition was so allowed, the petitioner made a representation for regularizing his lease and for issuance of NOC in the matter. The

contention of the petitioner was that after the order of cancellation was set aside by this Court, the respondents were bound by the said order and were required to initiate further proceedings to regularize the lease of the petitioner but no action was taken by the respondents and therefore, again another W.P. No.15270/2016 was preferred before this Court which was disposed of on 9.11.2016 directing the competent authority to take a decision in the matter of regularization of the lease of the petitioner and also take note of the order passed in the case of M/s Rupali Enterprises. Finally, on 1.11.2017, the impugned order was passed by the respondent No.2 deciding the petitioner's representation by observing that although the lease deed of the petitioner has already been executed and only possession of the plot could not be handed over, directed the respondent No.3 to initiate fresh proceeding for allotment of plot in question by issuing fresh LOI. Pursuant to which, the order dated 17.11.2017 was passed by the respondent No.3 demanding deposit of fresh premium, development fee, administration charges as also advance annual rent. The aforesaid two orders dated 1.11.2017 and 17.11.2017 were challenged before this Court. The aforesaid orders were challenged on the ground that there is no such condition in the lease deed dated 24.12.2008 executed earlier by the petitioner with the respondents which may provide for revised lease rent or to claim any premium on development fee as also administration charges and advance annual rent. It was contended that after execution of the lease deed, both the parties were bound by the terms and conditions of the lease and the respondent No.3 had no power or authority to unilaterally change the conditions of the lease deed. It was further submitted that during the pendency of this

entire litigation right from the date of cancellation of the lease deed on 24.12.2008 till today, the plot in question has remained in possession of the respondents, thus, it cannot be said that there was any violation of Clause 6(a) & (b) and 8 of the lease agreement.

5. The respondents filed their reply and submitted that there is no illegality in the impugned order, as admittedly, the order of cancellation of lease was set aside by this Court on 6.11.2011, but, since after execution of the lease deed the delivery of possession was not handed over to the petitioner, and the petitioner has completely failed to implement the project and to go on production and the petitioner has also completely failed to get possession of the plot in question with effect from the date of execution of the lease deed till the date of cancellation of allotment dated 6.1.2011. It is submitted that the petitioner itself has breached the condition of the lease, which has resulted into forfeiture or lapse of the lease. Thus, it is submitted that the respondents were within their rights to pass the impugned orders under Clause 6(a) and 8 of the lease agreement.

6. Both the parties have been heard.

7. Learned Single Judge has perused the record and found that admitted facts of the case are that the lease was registered in favour of the petitioner on 24.12.2008 and subsequently, vide order dated 11.6.2009, the entire allotment process was stayed by the Commissioner, Industry, Madhya Pradesh and vide order dated 6.1.2011, the allotment of the lease deed was cancelled. Thereafter, the petitioner's writ petition was allowed by this Court on 24.8.2015 setting aside the cancellation of the lease

order dated 6.1.2011. Thus, the order of cancellation of lease was quashed by the Court and therefore, the respondents were under obligation to pass the proper order in the line with the lease agreement earlier executed between the parties on 24.12.2008. It is also admitted fact that till the order was passed by this Court setting aside the order of cancellation of lease deed, the possession of the plot in question was never handed over to the petitioner.

8. To appreciate the submissions, it would be apposite to refer Clause 6(a) and 8 of the agreement, which reads as under :-

> "6(a) The lessee hereby agrees that he shall within a period of one year, in the case of small scale industry, and within a period of three years, in the case of large and medium scale industry, from the date of his taking over possession of the land implement the project and go into production.
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> .....
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> 8. The lessee further agrees that if he is unable to utilize the complete land leased out to him within the period prescribed in clause 6 or the lessor shall have the right of re-entry in the unutilised land without any payment or compensation, after giving due opportunity for representing his case."
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> (emphasis supplied).

9. A perusal of the aforesaid Clause 6(a) of the agreement clearly reveals that it would be applicable only after possession of the plot is given to the petitioner whereas admittedly, the possession of the plot was never given to the petitioner. Thus, Clause 6(a) would not be applicable in the present case and Clause 8 which is dependent upon Clause 6(a) of

the agreement, would also not be applicable. Thus, the order passed by the respondents charging additional premium, development fee, administration charges etc. is not sustainable in the eyes of law. Once, the lease agreement is entered into between the parties through a registered lease deed, the parties are bound by the same and none of the parties can unilaterally change the conditions of the agreement.

10. In view of the aforesaid, we do not perceive any illegality in the order passed by the learned Single Judge dismissing the writ petitions. Accordingly, all the writ appeals fail and are hereby dismissed.

(Sanjay Yadav)
Acting Chief Justice

(Vijay Kumar Shukla)
Judge

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