

Judgment delivered on 05/01/2021

---- Appellant

---- Respondents

Hon'ble Shri Parth Prateem Sahu, J

1. Challenge in this writ appeal is to the order dated 04.11.2020 passed by the learned Single Judge in WPC No.2605/2020 dismissing writ petition filed by

the petitioner/appellant for the reasons recorded therein.

2. Facts relevant for disposal of this appeal are that the petitioner/appellant company incorporated under the Indian Companies Act, 1956, is established in the year 1985-86. The then Madhya Pradesh Audyogik Kendra Vikas Nigam Limited, Raipur vide lease deed dated 1.5.1985 granted two plots bearing No.26 & 30 situated at Urla Industrial Area, Raipur to the petitioner/ appellant on lease for a period of 99 years. Lease deed in respect of plots bearing No.25 & 27 was executed in favour of the petitioner/ appellant on 3.3.1989. Aforementioned four plots were granted on lease to petitioner/ appellant for establishing factory of production of soft drinks and other ancillary purposes. Lease deeds were initially executed in the name of M/s Chhattisgarh Beverages Private Limited but later on vide deed of amendment the name of lessee has been changed to M/s SMV Beverages Pvt. Ltd. After reorganization of the State of Madhya Pradesh and formation of new State of Chhattisgarh, the industrial area has come within the control of the respondent Chhattisgarh State Industrial Development Corporation Limited (CSIDC), who issued a show-cause notice (Annexure P-4) to the petitioner /appellant on 19.4.2012 mentioning therein that production in the factory of appellant established on

the land in question i.e. Plots No.25, 26, 27 & 30 total area 1,02,500 sq. ft., is since last six months, which amounts to breach of provisions of Clause-18 of the lease deed executed between the parties. In the said notice the appellant has been called upon to cure the breach complained of within a period of 60 days and to submit satisfactory certificate in the office of respondent No.2. Subsequently, on 22.2.2013 the order of cancellation of lease deed was issued vide Annexure P-5 on the ground that appellant failed to restart production in the factory in order to cure the breach complained of in the show-cause notice.

3. Feeling aggrieved by the order of cancellation of lease, the appellant preferred an appeal before respondent No.2, which came to be decided on 25.9.2013. Respondent No.2 upon considering the grounds raised by petitioner/ appellant in appeal has partly allowed the same and granted six months' time to restart production in the factory with a condition that failure to restart factory and production within six months would automatically bring into force the order dated 22.2.2013.

On 9.2.2016 respondent No.2 again issued notice mentioning therein that the factory is closed/ not in running condition for the last more than six months and further that there is non-payment of dues

in terms of lease deed. Respondent No.2 granted 60 days time for payment of entire dues and to cure all other defects/breaches. Thereafter, in the month of April, 2019 respondent No.2 issued a letter (Annexure P-12 to writ petition) to the appellant for handing over vacant possession of the plots in question. The order directing appellant to hand over possession of plots in question was put to challenge by petitioner/appellant before the respondent No.1-Secretary, Department of Commerce & Industries, Govt. of Chhattisgarh, Raipur by filing second appeal. Respondent No.1 while considering second appeal preferred by the petitioner/appellant, has passed the order on 11.8.2020, dismissed the second appeal and affirmed the order dated 22.2.2013. This made the petitioner / appellant to file writ petition bearing WPC No.2605/2020 before the High Court. The learned Single Judge upon considering the grounds raised therein dismissed writ petition vide impugned order.

4. Mr. Ravindra Agrawal, learned counsel for the appellant submits that after execution of the lease deeds, the appellant established the factory and started production of soft drinks etc., but due to difference of opinion between the Pepsi Foods Private Limited and the appellant, the production of soft drinks in the factory of appellant stopped. Even after best efforts made by appellant, the business relations

with Pepsi Foods Pvt. Ltd. could not be reactivated, hence the appellant has decided to start production of soaps, toiletries etc. in the factory and accordingly, entered into an agreement with M/s Jaipuriya Health Care & Products Private Limited, which is the sister concern of the appellant. But, unfortunately it took some time to make arrangements for new business. Respondent No.1 has not taken into consideration the facts and grounds mentioned in the appeal preferred by the appellant and dismissed the same vide order dated 11.8.2020. Respondent No.1 erroneously arrived at a conclusion that appellant is unable to offer satisfactory explanation and documents of machineries and other required infrastructure for the purpose of manufacturing of new product. Respondent No.1 further erred in holding that the appellant is giving the plots in question for its use to another industrial unit i.e. by way of sub-letting, which is not correct. Learned Single Judge has also not taken into consideration that M/s Jaipuriya Health Care & Products Pvt. Ltd. is sister concern of appellant and not a third party. Since the date of issuance of first notice i.e. on 19.4.2012, several correspondences between the parties had taken place and erroneously recorded that appellant failed to restart production in the factory for last about 10 years. Appellant has shown reasons for the closure of

factory activities / not making any production for last more than six months from the date of issuance of notice dated 19.4.2012, but reply submitted by the petitioner has not been considered in an objective manner and order of cancellation of lease deed was passed in very haste manner. Appellant has made all the arrangements for starting business of production of soap, toiletries etc. In alternate, learned counsel submits that the learned Single Judge ought to have granted atleast six months time to the petitioner / appellant to hand over vacant possession of the premises to respondent No.2, which has been allotted to petitioner/appellant for commercial purpose in an industrial area. Some more time is required to remove heavy plant & machineries and to shift it at appropriate place. He further submits that in view of agreement entered with M/s Jaipuriya Health Care & Products Pvt. Ltd. for restarting production in the factory, the impugned order and other consequential orders dated 11.8.2020, 25.9.2013 & 22.2.2013 be set aside.

5. Per contra, Mr. Anumeh Shrivastava, learned counsel for respondents No.2 & 3 submits that the appellant while entering into agreement (Annexure P-1) has understood the clauses mentioned thereunder. Clause 18 in very specific terms mentions that if it is found that the factory is closed for the period

exceeding six months without proper reason to the satisfaction of the allotting authority, it will be treated as breach of condition of contract/lease deed. Appellant is neither running the factory nor was there any production since last more than three years from the date of issuance of first notice dated 19.4.2012. Even after issuance of notice, appellant failed to submit satisfactory explanation with regard to closure of factory which made the authorities to pass the order dated 22.2.2013 cancelling lease granted to the petitioner / appellant. The Appellate Authority considering the grounds raised by appellant that on account of disconnection of electricity supply by the Electricity Department, the factory was found to be closed during that period and the dispute between Pepsi Foods and appellant, has granted six months' time for restarting factory and production, but even after grant of extension of six months' time, the appellant failed to restart factory and production. The order passed by the First Appellate Authority i.e. respondent No.2, was a conditional order wherein it is specifically mentioned that appellant's failure to restart production in the factory will bring the order dated 22.2.2013 automatically into force i.e. order of cancellation of lease granted in favour of petitioner/appellant. After coming into force of order of cancellation of lease deed, the same has not been

challenged by appellant till the date of filing of appeal before the respondent No.1, which came to be filed only in the year 2019. He further submits that even in the agreement, which is said to be executed between the appellant and M/s Jaipuriya Health Care & Products Pvt. Ltd., it is specifically mentioned that appellant has only offered use of land to said M/s Jaipuriya Health Care and the entire business is to be run by M/s Jaipuriya Health Care. There is no involvement of the appellant in running the business or factory. The agreement clearly shows that the appellant has sub-let the land in question to said M/s Jaipuriya Health Care & Products Pvt. Ltd., which amounts to breach of terms and conditions of lease agreement/deed. He submits that the appellant is not entitled for any relief and the learned Single Judge after taking into consideration the overall facts and circumstances of the case has passed the impugned order which does not call for interference.

6. We have heard learned counsel for the parties and perused the documents placed on record along with writ petition and this appeal.
7. Perusal of lease deed executed between appellant and respondent No.2 would clearly show that there is specific mention in Clause 18 that closure of factory continuously for a period exceeding six months

without any proper reason will be considered to be breach of conditions of lease deed. Admittedly, the appellant's factory is closed since 2009 or prior to it. Notice in terms of lease deed has been issued to the appellant on 19.4.2012, but no acceptable or reasoned reply was filed by appellant which made the authorities to pass the order dated 22.2.2013 cancelling the lease deed. In order dated 25.9.2013 passed in first appeal filed by appellant, respondent No.2 while partly allowing the appeal granted six months' time to appellant to restart factory and production, but the appellant has not utilized the said opportunity granted to him by respondent No.2. More so, when the order passed in first appeal by respondent No. was a conditional order making it clear that if the factory and production is not restarted within six months, then the order of cancellation of lease deed dated 22.2.2013 will automatically come into force. As per submission of appellant himself, factory and production could not be started within the period of six months, hence the order of cancellation of lease deed came into force and lease of lands allotted to the appellant cancelled after expiry of six months from 25.9.2013 w.e.f. 22.2.2013 itself. It appears that the appellant has accepted cancellation of lease deed, which made the appellant not to deposit lease rent or any other amount due to

respondent No.2 which is apparent from the notice dated 9.2.2016.

8. Appellant again became active when respondent No.2 sent notice to appellant in the month of April, 2019 for handing over possession of land bearing Plots No.25 26, 27 & 30, which is subject matter of dispute, and filed appeal before respondent No.1 which was also dismissed. Respondent No.1 has considered the grounds of appeal raised by appellant ; conditions of lease deed executed in favour of appellant by respondent No.2; the agreement i.e. Conducting Agreement, executed between the appellant and M/s Jaipuriya Health Care & Products Pvt. Ltd. (said to be sister concern of appellant) and recorded categorically that upon making specific query with regard to grounds mentioned in the appeal, appellant failed to supply the materials with regard to new product; the agreement entered between appellant and M/s Jaipuriya Health Products & Care Pvt. Ltd. is only because the appellant is in possession of the land leased out by respondent No.2, but the factory is to be run and managed by M/s Jaipuriya and there will be no involvement of appellant in running the factory.
9. Learned Single Judge while considering grounds raised in the writ petition and taking into consideration the entirety of facts and circumstances of case and

also 'Conducting Agreement' executed between appellant and M/s Jaipuriya Health Products & Care Pvt. Ltd., so called sister concern of appellant, has rightly taken into account the terms and conditions of original lease agreement executed between appellant and respondent No.2 and dismissed writ petition by impugned order recording reasons.

10. Admittedly, appellant has not challenged the order dated 25.9.2013 till the issuance of possession notice in the year 2019. Hence, the order dated 25.9.2013 has attained finality. Respondent No.1 has taken into consideration all the factual aspects of the case and considered the grounds mentioned therein with utmost circumspection and dismissed the appeal. We do not find any error in the order passed by respondent No.1 and also by learned Single Judge upholding the same. Appellant is not entitled for the relief of quashment of the orders dated 22.2.2013 & 11.8.2020. The appeal is accordingly dismissed.

11. So far as alternate submission made by learned counsel for appellant that some breathing time may be granted to the appellant so as to shift heavy plant & machinery, and super-structure constructed over the disputed property, to hand over vacant possession to the respondent No.2, is concerned, even though much time has been lapsed since 2013 till date, but looking

to the fact that possession notice has been issued to appellant in the month of April, 2019 only and thereafter it was put to challenge before respondent No.1, who dismissed the appeal only on 11.8.2020, the prayer made by learned counsel for appellant appears to be reasonable, more so when the land which is to be handed over to respondent No.2 has been allotted on lease to appellant for commercial purposes i.e. for establishment of a factory, over which huge infrastructure might have been erected and heavy machines might have been installed. Hence, we find it appropriate to grant four months time to the appellant to hand over vacant possession of the plots in question to respondent No.2 from the date of order.

Sd/-

(P. Ramchandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge

roshan/-