

IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Krishna Rao

WPA 20245 of 2021

Srilab Polymers Pvt. Ltd. & Anr.

Versus

The State of West Bengal & Ors.

Mr. Ashok Banerjee, Senior Advocate

Mr. S. R. Saha

....For the petitioners

Mr. Samrat Sen

Ms. Manali Ali

.....For the Respondent No. 1

Mr. Probal Kumar Mukherjee, Senior Advocate

Mr. Amit Kumar Nag

Mr. Maharnab Roy

.....For the Respondent Nos. 2 to 5

Mr. Sarajit Sen

Mr. Tapas Singha Roy

.....For the Respondent No. 6

Heard on : 25.02.2022

Judgment on : 10.03.2022

Krishna Rao, J.: The petitioner has challenged the communication dt. 07.12.2021 issued by the Secretary, West Bengal Industrial Infrastructure

Development Corporation whereby approval of proposed Animal Husbandry Project and transfer of lease in respect of lay out plot nos. U (part) and V/2 (part) measuring 0.6377 acres of land allotted to M/s. Bani Packaging Private Limited within Kalyani Industrial Park, Phase-III was disallowed.

On 24.04.2017, the petitioner no. 1 had informed the Secretary, West Bengal Industrial Infrastructure Development Corporation (hereinafter called WBIIDC) that the petitioner intend to diversify their business from plastic related products to animal husbandry products and further they required two bighas of land in addition to the land held by the petitioner. It has been further informed that the Managing Director Mr. Sambhu Nath Bose is the promoter of the petitioner's company as well as the proforma respondent company and therefore, requested for approval of;

- (a) Permission of starting the animal husbandry product at Kalyani Industrial Sector, Phase-III, Kalyani.
- (b) Permission to buy the land of M/s. Bani Packaging (P) Ltd. at plot No. U(part) and V-2(part), Phase-III, Kalyani Industrial Sector, Kalyani, District:Nadia.
- (c) The amount, which is required, to be deposited by the petitioner company for approval of 0.6377 acres of land from Bani Packaging Private Limited in favour of the petitioner.

On receipt of the request of the petitioner, the Secretary West Bengal Industrial Infrastructure Development Corporation (WBIIDC) requested the petitioner no. 1 to submit detailed project report along with the plant lay out as per guidelines, application in schedule format as given in the annexure.

It has been mentioned only on acceptance of DPR and evaluation charge, the prayer for transfer/assignment of the land will be taken into consideration.

In reply to the letter dt. 23.06.2017, the petitioner had sent two sets of detailed project report to the Secretary, West Bengal Industrial Infrastructure Development Corporation (WBIIDC). The plot which is to be transferred from the proforma respondent to the petitioner has been mentioned in the reply of the petitioner which is V-2 (part), U (part), K-25 (part), Post Office-Kalyani, District-Nadia.

The Executive Engineer (Civil), Headquarter, West Bengal Industrial Infrastructure Development Corporation (WBIIDC) requested the petitioner to sent soft file in AutoCAD format for plant layout in 2010 or lower version. As per the request of the Executive Engineer, the petitioner had submitted draft plan layout. The West Bengal Industrial Infrastructure Development Corporation (WBIIDC) vide letter dt. 30.11.2017 requested the petitioner to deposit Rs. 1,28,620/- in favour of the West Bengal Industrial Infrastructure Development Corporation (WBIIDC) with respect to the application for assignment of land at Kalyani Industrial Growth Centre, Phase-III. The petitioner had also submitted an application for assignment of 0.6377 acres of land in triplicate along with site plan and structural design of the proposed project at Kalyani.

Inspite of the request made by the petitioners and the amount deposited by the petitioners, the respondents have not taken any steps for grant of approval in favour of the petitioner and accordingly, the petitioner has filed a writ application being W.P. No. 1131 (W) of 2019. The writ petition was disposed of on 28.01.2019 by directing the West Bengal

Industrial Infrastructure Development Corporation (WBIIDC) to consider and decide the application made by the petitioner in accordance with law. After the order passed by the Coordinate Bench of this Court, the respondent authorities vide communication dt. 12.06.2019 directed the petitioner and the proforma respondent to appear before the Secretary, West Bengal Industrial Infrastructure Development Corporation (WBIIDC) on 10.07.2019. The petitioner as well as the proforma respondents have appeared before the authority and the respondent no. 5 had passed an order on 12.09.2019 and concluded that the prayer made by the proforma respondent for permission of West Bengal Industrial Infrastructure Development Corporation (WBIIDC) allowing an assignment of the leasehold right in respect of the plot in question was rejected.

After order of rejection, the petitioner rectified the defects for which the application was rejected by the respondent no. 5 and thereafter the respondent no. 6 approached before the National Company Law Tribunal, Kolkata Bench by filing an application under Section 252 (3) of the Companies Act, 2013 for reviving the company that M/s. Bani Packaging Private Limited to its original position. The National Company Law Tribunal had disposed of the proceeding by passing the following order:-

“(a) The Registrar of Companies, West Bengal, the respondent herein, is directed to restore the original status of the company as if the name of the Company had not been struck off from the register of Companies with the resultant and consequential actions like changing status of applicant Company from **‘struck off’** to **‘Active’**;

(b) The Company is directed to file all pending statutory document(s) for all the pending years 2016-2017, 2017-2018, 2018-2019 along with prescribed fees/ additional fee/fine as decided by Registrar of Companies, West Bengal within 45 days from the date on which its

name is restored on the register of companies maintained by the Registrar of Companies, West Bengal;

- (c) The restoration of the Company's name is also subject to the payment of cost of **Rs. 30,000/- (Rupees Thirty thousand Only)** through online payment in www.mca.gov.in under miscellaneous fee by mentioning particulars as **"Payment of cost for revival of company pursuant to orders of NCLT in CP No. 743/KB/2020"**;
- (d) The Applicant is directed to deliver a certificate copy of this order with Registrar of Companies, West Bengal within thirty days of the receipt of this order;
- (e) On such delivery and after due compliance with the above directions, the Registrar of Companies, West Bengal, is directed to publish the order in the Official Gazette under his office name and seal;
- (f) This order is confined to the violations, which ultimately led to the impugned action of striking off the name of the Company, and it will not come in the way of Registrar of Companies, West Bengal to take appropriate action(s) in accordance with law, for any other violations/offences, if any, committed by the company prior to or during the period the name of the company required struck off."

The order passed by the Ld. NCLT dt. 23.12.2020 was communicated to the respondent no. 5 and requested for reconsideration the assignment of the land and to approve the proposed project which was submitted by the petitioner. In spite of receipt of the request the respondent no. 5 has not taken any steps and accordingly, again a reminder was issued on 20.08.2021 requesting the Secretary, West Bengal Industrial Infrastructure Development Corporation (WBIIDC) for reconsideration of for assignment of the lease to M/s. Bani Packaging Private Limited which is the sister concern of the petitioner company. The petitioner had also paid the pending bills of the West Bengal Industrial Infrastructure Development Corporation (WBIIDC) and requested to consider the proposal for diversification of their land which is pending for the last several years and requested for approval of the project.

Inspite of the request made by the petitioner the authorities have not considered the same and accordingly, the petitioners have again filed a writ petition before this Court being WP No. 18662 (W) of 2021. During the pendency of the writ petition, on 10.12.2021, the petitioner no. 1 received a letter dt. 07.12.2021 issued by the respondent no. 5 wherein it was informed to the petitioner that the corporation i.e. the respondent no. 2 has decided not to approve the proposed animal project within the allotted land to the petitioner and also within the allotted of M/s. Bani Packaging Private Limited on the following ground:-

“(i) As per our approved policy of the Corporation, vacant lands are not transferable. In that case, land will be resumed back by WBIIDC. The land allotted to M/s. Bani Packaging Pvt. Ltd. is lying vacant.

(ii) Rearing of animals may cause disturbance in the area. Also, the maintaining of health conditions of the animals that will remain there is a serious concern considering the area is lying within an industrial estate.

The matter being a public policy, the transfer of lease as prayed for cannot be allowed.”

The Ld. Senior Counsel Mr. Ashok Banerjee representing the petitioner submitted that the respondents authority have already accepted an amount of Rs. 1,28,620/- from the petitioner as a pre-condition of granting transfer and other approval and also the pending bills which has been paid by the petitioner.

Mr. Banerjee further submitted that because of delay in starting the project and keeping the land vacant, the respondent authorities have collected a sum of Rs. 3,45,848/- from the proforma respondent on account of penal charges, seven years rent and twenty years advance lease rent from the respondent no. 6 which is going to be expired on 2035.

The Ld. Senior Counsel further submitted that in the said industrial estate several other animal husbandry projects are being run by the other units of Government of West Bengal but the respondent authorities by not allowing the petitioner or granting approval is nothing but violation of the principle of natural justice.

The Ld. Counsel further submitted that the respondent authorities without considering the action taken by the petitioner and without considering the fact that the respondent authorities have already accepted a sum of Rs. 1,28,620/- as pre condition for granting of transfer and other approval as well as also pending bills which was paid by the petitioner is violation of Article 14, 19 (1) (g) and other Provisions of the Constitution of India.

Per contra, the Ld. Senior Counsel Mr. Probal Kumar Mukherjee for the respondents no. 2 to 5 relied upon Clause 7 (ii) of the scheme which reads as follows:-

“In case of vacant land/space no assignment/transfer is allowed. If less than 10 percent construction work as per sanctioned Building Plan is not completed, allotted land/ built-up space will be considered as vacant”

By referring the said Clause, the Counsel for the respondents no. 2 to 5 submitted that admittedly, the land of the proforma respondent is lying vacant and as such the respondent authorities have not committed any error by rejecting the request made by the petitioner.

The Ld. Senior Counsel for the respondent no. 2 to 5 further submitted that no land under Kalyani Industrial Estate is entitled to carry out goatery project of Black Bengal Goat and piggery as the same would

cause disturbance in the industrial zone and would also serious concern of the health conditions of the animals in an industrial estate. The respondent no. 6 has also violated the terms and conditions of lease by not completing construction and carry out the approved project under lease.

It is further urged that the respondents have never collected any transfer fees for transfer of the leasehold rights of the original lessee. The fee realised by the respondents was only the application fee for transfer of leasehold rights of the original lessee. It is further submitted that the charges for evaluating the Detailed Project Report submitted for the proposed project and the said payment neither gives any right nor makes the respondents liable to transfer of leasehold right.

The Ld. Senior Counsel further submitted that Clause 7 (ii) (supra) is the pre condition for transfer of the landed property. But in the instant case, the proforma respondent has not made any construction over the said land.

The Counsel for the respondents further submitted that the respondents have rejected the request of the petitioner by taking into consideration of the scheme which the petitioner has not fulfilled the same.

The Ld. Counsel for the proforma respondent submitted that by under an agreement with the BPL, the West Bengal Industrial Infrastructure Development Corporation (WBIIDC) granted sub-lease for 99 years upon payment of agreed land premium in favour of the BPL. In terms of the agreement, the Corporation has handed over the physical possession of the same to the proforma respondent on 12.03.2009. It is further submitted that in the year 2011, the Promoter Director of the proforma respondent

suffered severe heart attack and subsequently eye stroke for which he was continuous under medical treatment due to which he could not implemented the project.

The Ld. Counsel for the proforma respondent further submitted that when the Promoter Director started living normal life, three sets of drawing of the Factory Plan with respect of the said land was submitted to the Chief Engineer of the respondent authorities on 27.08.2014 for grant of sanction. On 08.04.2015 for the purpose of Industrialization, the State regularized the matter subject to compliance of other instructions, payment of penal charges and annual rent amounting to Rs. 3,45,848/- by the proforma respondent to the Corporation.

It is further submitted that the proforma respondent has made the payment in the month of June, 2015 and thereafter the proforma respondent had submitted the declaration to commence the project along with the payment receipt but the request made by the proforma respondent for commencing the project but the authorities have not taken any decision.

The Counsel for the proforma respondent further submitted that the petitioner Company is the sister concern of the proforma respondent. The allotted land of the petitioner and the proforma respondent are situated adjoining to each other.

It is further submitted that as the respondent authorities failed to grant sanction to the proforma respondent and accordingly, it was decided between the petitioner and the proforma respondent to convert the business of plastic related product to that of Animal Husbandry products over their land which would generate good number of employment of more than 50

person but for the Animal Husbandry Project about three Bighas of land would be required out of two Bighas of vacant land would be necessary for grass generation and movement of goats and additionally two Bighas of land is available in the adjacent premises of the proforma respondent and accordingly, the petitioner has requested for grant of permission from the respondent authorities.

The Counsel for the proforma respondent further submitted that the Project of the proforma respondent was ready since the year 2014 but non-grant of sanction by the respondent authorities, the Project could not be started by the proforma respondent and as such the land was lying vacant and if the authorities would have granted permission/sanction to the proforma respondent in the year 2014-2015 itself, the proforma respondent ought to have been started the Project by making of construction over the said land. The Counsel for the respondents further submitted that on the fault of the respondents the land of the proforma respondent is lying vacant.

Considered the rival submissions of the parties and the documents available on record. The petitioner Company and the proforma respondent are the sister concern. The West Bengal Industrial Infrastructure Development Corporation (WBIIDC) had allotted two plots being plot No. K-25 (part), U (part), V-2 (part) and plot no. U (part) & V-2 (part) respectively to the petitioner and the proforma respondent. In the month of April, 2014 the petitioner had informed the West Bengal Industrial Infrastructure Development Corporation (WBIIDC) that the petitioner intent to diversify the business from plastic related product to animal husbandry product and for the said related business the Company required further two Bighas of land

in addition to the land allotted to the petitioner. The petitioner Company requested for grant of permission for starting Animal Husbandry Product in the said land. The petitioner also prayed for permission to buy the land of the proforma respondent and also informed that the amount required will be deposited by the petitioner.

Vide communication dt. 07.12.2021, the respondents have rejected the request made by the petitioner Company on the ground that as per the approved policy of the Corporation, vacant lands are not transferable.

Admittedly, the land of the proforma respondent is lying vacant. As per record it reveals that in the year 2014, the proforma respondent had submitted drawings of the Factory Plan in their land to the respondent authorities for grant of sanction. As per the instructions of the authorities, the proforma respondent had also paid the charges of Rs. 3,45,848/-. After payment of the said amount, the proforma respondent had submitted declaration to commence the project but inspite of the receipt of the project and payment of the charges the respondents have not allowed the proforma respondent to commence their Project and as such the proforma respondent could not able to commence their project in the landed property allotted to them. In the mean time the petitioner Company who is the sister concern of the proforma respondent made of its mind for conversion of business from plastic related product to animal husbandry product for which further land is required and as such the petitioner Company requested for transfer of the land of the proforma respondent in favour of the petitioner Company for starting of the animal husbandry project.

The respondents have rejected the request of the petitioner relied upon Clause 7 (ii) of the policy but in view of the circumstances mentioned above this Court is of the view that 7 (ii) is not applicable in the case of the petitioner as the proforma respondent had applied for start the project in the year 2014 itself and had also paid the charges as required by the respondents but the respondents have not allowed the proforma respondent to commence the project due to which no construction was made.

As regard the second ground of rejection is concern the respondents have not produced any documents to show that there is any prohibition to carry out the business of animal husbandry project in the said area or the same will cause any disturbance or would be effected the health condition of animals. The specific case of the petitioner that in the said industrial estate area other animal units are being run by the other units of Government of West Bengal and thus this Court is of the view that the same is in violation of principles of natural justice.

In view of the discussion made above the impugned communication dt. 07.12.2021 issued by the Secretary, West Bengal Industrial Infrastructure Development Corporation (WBIIDC) is hereby set aside and quashed.

The respondents authorities, particularly the respondent no. 5 is directed to re-consider the proposal of the petitioner for approval of animal husbandry project within the land allotted to the petitioner and to the proforma respondent after giving an opportunity of hearing to the parties and by passing a reasoned and speaking order within a period of four (4) weeks from the date of receipt of the copy of this order.

WPA 20245 of 2021 is thus **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)