IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :-
The Hon'ble Justice Moushumi Bhattacharya

WPO 2021 of 2022

Continental Chemical Corporation Limited & Anr.
Vs.
West Bengal Small Industries Development Corporation Limited & Ors.

For the petitioners : Mr. Ashok Pincha (appears in person)

For the respondents : Mr. Jaydip Kar, Sr. Adv.
Mr. Debdeep Sinha, Adv.
Mr. Tanjir Ali, Adv

Last Heard on : 07.06.2023.

Delivered on : 23.06.2023.

Moushumi Bhattacharya, J.

1. The petitioner no. 1 is a partnership firm carrying on business from 2 Plots and 1 Shed at the Behala Industrial Estate, 620 Diamond Harbour Road, Kolkata. The petitioner no. 2 is a partner of the petitioner no. 1. The

respondents are the West Bengal Small Industries Development Corporation Limited and its Chairman, Managing Director and other Officers.

2. The petitioners are aggrieved by a communication from the respondent no. 1 Corporation dated 15.12.2021 whereby the petitioner no. 1 was asked to comply with orders dated 4.5.2015 and 29.5.2015 passed by the Managing Director of the Corporation and to execute and register a lease deed as mentioned in the said orders with immediate effect. The first of the two orders appears to be that of 6.4.2015 (and not 4.5.2015) as would appear from the petitioners' response to the same dated 29.4.2015 and the subsequent order was passed by the Corporation on 29.5.2015. The cumulative effect of the two orders is that the petitioners were directed to execute a fresh lease deed for the Plots occupied by the petitioners in the Behala Industrial Estate by 15.6.2015 by taking necessary steps in that regard. The Corporation was given the right to examine the arrears of dues of the petitioners and take steps against the petitioner no. 1 if the petitioner no. 1 failed to comply with the directions.

3. The petitioners' case, as argued by the petitioner no. 2 appearing in person, is that the petitioners should be given some relief from payment of arrears of charges as the petitioner no. 2 is an old and existing entrepreneur of the Industrial Estate. The petitioners rely on a Minutes of meeting of the Corporation held on 13.10.2020 where the Chairman of the Corporation indicated that a Special Scheme would be introduced for old and existing entrepreneurs with long term lease for 75 years and a market price of Rs.30 lacs/katah as per valuation. The petitioners say that the petitioners are liable to get the concession available under the Scheme and that the Scheme provides

for a mechanism for settlement of arrears of lease rent. The petitioners also say that the petitioners were not communicated with the quantum of arrears which was to be paid to the Corporation. The other contention is that the petitioners have been discriminated against and that the Corporation has given special concessions to certain other lessees who are on the same footing as that of the petitioners.

4. Learned counsel appearing for the respondents/Corporation relies on the proceedings filed by the petitioners including orders passed by the Court as also the petitioners failing to pay occupational charges for the Plots since August, 2014. Counsel submits that several of the issues raised have already been dealt with by an order dated 10.3.2015. It is further submitted that the points urged are governed by the contract between the parties and the Corporation. Counsel submits that the writ petition does not involve any public law element.

5. The undisputed facts, as would appear from the material placed before the Court, are as follows.

6. The petitioner no. 1 is presently in occupation of Shed no. 6/1, Plot no. 1/1 and Plot no 1/2 at the Behala Industrial Estate. The cumulative area of the 3 Plots is approximately 8000 sqft. Shed no. 6/1 was allotted to the petitioner no. 1 from 6.2.1984 - 5.2.1993. Plot no. 1/1 was let out to the petitioner no. 1 for 9 years from 6.7.1984 – 5.7.1993. Plot no. 1/2 was allotted to the petitioners on 8.8.1994 but was later cancelled since the petitioners could not produce a No Objection Certificate (NOC) from the West Bengal Pollution Control Board. The petitioners filed a writ petition being WPO 426 of 1997 against such

cancellation as well as for Plot no. 1/4A and an order was passed on 1.4.1997 directing *status quo* with regard to the possession for a period of 4 years.

7. The petitioners failed to pay the rent of the Plots namely 6/1, 1/1 and 1/2 as well as 1/4A from August, 2014 which prompted the Corporation to issue several notices to the petitioners under the provisions of the West Bengal Government (Tenancy Regulation) Act, 1976 on account of default in payment of rent. The rent of the Plots in the Industrial Estate were revised thereafter and the petitioners were asked to pay revised enhancement rate by way of letters issued in 2003/2004. The petitioners challenged the enhancement of rent by way of a second writ petition WPO 1812 of 2004 which was disposed of by an order dated 6.10.2004 with a direction to the parties to execute the lease deed within a certain time period. The petitioners carried the order of 6.10.2004 in appeal being APOT 13 of 2005 which was disposed of with a direction on the Chairman of the Corporation to consider and decide the representation made by the petitioners.

8. Pursuant to the order of the Appeal Court the Chairman of the Corporation passed a reasoned order dated 4.5.2005 fixing the rent of the petitioners. The calculation of the rent was clearly given in the said order. The Chairman was also of the view that the petitioners had encroached on the land without authority since 10.2.1992. The petitioners however failed to execute the lease deed even thereafter. The Corporation issued a letter on the petitioners 3 years later on 16.6.2008 requesting the petitioners to execute a lease agreement on terms and conditions stated in the said letter. The letter

mentions the 3 Plots which the petitioners continued to occupy namely 1/1, 6/1 and 1/2.

9. The petitioners filed a writ petition being WPO 786 of 2014 for cancellation of the bills raised by the Corporation for August, 2014 in respect of Plot nos. 1/1, 1/2 and Shed no. 6/1 and for grant for NOC for obtaining electrical connection from CESC. The said writ petition was disposed of by an order dated 10.3.2015 holding that the writ petition did not contain any element of public law. The Court granted liberty to the petitioners to make a representation to the Chairman, Managing Director of the Corporation who would then consider the same and communicate the decision to the petitioner within a limited time frame.

10. The Managing Director of Corporation passed a reasoned order dated 6.4.2015 pursuant to the direction of the Court. The petitioners were directed to execute a lease deed for the Plots on the terms and conditions stated in the said order. The petitioners however filed an application for review of this order which was heard by the Managing Director and a decision was made on 29.5.2015. The Managing Director of the Corporation reduced the tenure of the lease to 30 years and directed the Estate Manager to determine the amount to be paid by way of occupational charges and also to renew the lease deed by 30 years by 15.6.2015.

11. The orders dated 6.4.2015 and 29.5.2015 form the crux of the impugned letter of 15.12.2021 which is under challenge in this proceeding.

12. The petitioners however failed to execute the lease agreement in terms of the order of the Managing Director of the Corporation dated 29.5.2015 or to

clear outstanding dues which was communicated to the petitioners on several occasions both before and after the said order including by a letter of the Corporation dated 19.4.2018 indicating the break-up of the outstanding dues up to 31.3.2018 in respect of Shed no. 6/1, Plot no. 1/1 and Plot no. 1/2.

13. On 13.10.2020, at a meeting between the Corporation and entrepreneur of Behala Industrial Estate, the Corporation decided to introduce a special scheme for old and existing entrepreneurs. The petitioners rely on these Minutes and seek settlement of their accounts in terms thereof. The request of the petitioners in the aforesaid terms was rejected by the Corporation by the impugned communication dated 15.12.2021. The petitioners have come to the Court challenging this letter.

14. The petitioners' case proceeds on the basis of the petitioners being "old and existing entrepreneurs" (used in the Minutes of 13.10.2020) and the allegation that the petitioners have been discriminated against.

15. The first case, namely the old and existing entrepreneurs, stands demolished by the undisputed facts of the petitioners not paying the occupational charges since 2014 for the two plots and 1 shed which the petitioners continued to occupy. This would appear not only from the statement of facts indicated in the foregoing paragraphs but also from the demands for rent issued by the Corporation including that of 19.4.2018 which gave the break-up of the amounts due up to 31.3.2018. The petitioners were also communicated the quantum to be paid by way of a subsequent letter of 11.2.2022.

16. The petitioners have resisted payment of the outstanding dues despite occupying two plots and 1 shed in the Industrial Estate by filing one proceeding after another. The petitioners' alleged defense of being an old and existing entrepreneur loses relevance in the face of the petitioners' staunch resistance to pay the arrears for almost 10 years. The petitioners failing to execute a lease deed in spite of repeated direction for such, is also wholly unreasonable. The petitioners did not have any defense for failing to execute a lease deed in respect of the 3 plots occupied by the petitioners at least from 1984. The Corporation has been most reasonable in this regard and the petitioners' status as an existing entrepreneur was considered every time the petitioners went before the Corporation.

17. The order dated 10.3.2015 passed by a learned Single Judge of this Court in WPO 786 of 2014 clearly recorded that the petitioners had stopped paying rent from August, 2014 and that there were serious factual disputes between parties. The Court was also view that the writ petition did not involve any element of public law.

18. The facts presented to this Court are no different and the dispute between the parties on the factual score remains. It is also arguable whether the petitioners have any case against the Corporation under Article 226 of the Constitution since the dispute is essentially in the realm of contract. This Court also accepts the statement made on behalf of the Corporation that periodical enhancement of rent is incidental to the terms of the contract and the petitioners cannot avoid the same. Further, a writ court cannot determine the quantum of rent to be paid by a party who comes to the Court seeking relief.

The requirement of the larger canvas of violation of fundamental rights of an aggrieved party with an element of public law is absent in the facts of the present case.

19. It is also significant that the petitioners have not challenged the order dated 29.5.2015 whereby the petitioners were directed to execute a fresh deed of lease for 30 years by 15.6.2015 and to pay the arrear dues.

20. The petitioners' reliance on the Minutes dated 13.10.2020 is misplaced since the alleged benefit of the Special Scheme for old and existing entrepreneurs was made conditional upon previous dues being cleared. The writ petitioners do not qualify for the said scheme as the writ petitioners failed to clear the arrears and hence remained a defaulter also in terms of the earlier order passed by the Managing Director on 6.4.2015 and 29.5.2015. The contention that the Corporation did not communicate the amounts to the petitioners is incorrect as would appear from numerous notices issued by the Corporation to the petitioners both before and after the Minutes dated 13.10.2020. Reference in this regard may be made to the notices of 19.4.2018 and 11.2.2022. The petitioners cannot seek any benefit under the new Scheme while continuing to remain defaulters. The petitioners have stalled not only payment of arrears but also execution of a lease deed with the respondent no. 1 while enjoying the benefit of the 3 Plots. The arrears are due from August, 2014.

21. The petitioners have not been able to make out any case of discrimination. There is no evidence on record to show that other allottees have been given special treatment or benefits which have been denied to the petitioners. Even if it is assumed that other existing allottees have been given

the benefit of a Scheme, the petitioners continuing default with regard to payment of occupational charges makes the alleged discrimination irrelevant.

22. Further, the orders passed in the earlier proceedings filed by the petitioners show that the plea of discrimination is being raised for the first time in the present writ petition and may therefore be seen as a buffer against settling the outstanding dues of the Corporation. The allegations with regard to violation of Article 14 of the Constitution are also vague and without particulars. The statements made on behalf of Corporation that the Corporation will take steps against persons who are on the same footing as the petitioners is recorded.

23. *Modified Voluntary Retirement Scheme of 2002 of Azam Jahi Mill Workers Association v. National Textile Corporation Limited; 2021 SCC OnLine SC 972* involved totally different facts. In that case, after closing of the Azam Jahi Mill in 2002, 318 of the 452 employees of the Mill, who had worked for 20 years, were asked to vacate / were forcefully evicted from the quarters by a way of a Notice dated 17.7.1986. 134 of the employees however continued to stay in the respective quarters despite service of the Notice asking them to vacate the premises. It was in these facts that the Supreme Court referred to the concept of equality under Article 14 of the Constitution and found that 318 employees had been treated on a different footing to the 213 employees. This decision therefore does not help the petitioners.

24. The facts stated above and the conduct of the petitioners disentitles the petitioners to any equitable relief. The petitioners were given several opportunities to rectify the gaps in their dealings by way of execution of lease

deed and payment of arrears rent. The petitioners however stood resolute in their stand and failed to comply with the directions. This Court hence finds no arbitrariness in the impugned communication dated 15.12.2021 or any other ground to interfere with the same. No case has been established in fact or in law for grant of relief.

25. WPO 2021 of 2022 is accordingly dismissed. There shall be no order as to costs. All connected applications are disposed of.

Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)