

August 6, 2024
Sl. No.A 20
Court No.9
s.biswas

WPA 9076 of 2024

*Shark Detergent and Cakes Product Private
Ltd. and another*
vs.
*West Bengal Industrial Infrastructure Development
Corporation and others*

Mr. Pingal Bhattacharyya
Mr. Rajdeep Sinha

... for the petitioners

Mr. Amit Kr. Nag
Mr. Partha Banerjee
Ms. Pritha Bhowmik

... for the respondent nos.1 to 6

1. The writ petition has been filed challenging the resumption notice dated March 15, 2024 issued by the Chief Executive Officer, West Bengal Industrial Infrastructure Development Corporation. The petitioners was allotted a piece of land being Shed No.3/9/C measuring 0.0692 within Uluberia industrial park, Howrah. The possession was handed over on April 2, 2004, following execution of an agreement dated April 2, 2004. The deed of lease was executed on May 27, 2004. The shed was allotted to the petitioners for utilization of the same, only for setting up of tar and bituminous projects.
2. According to the authorities, the petitioners failed to use the shed for the purpose for which the agreement was entered into. Accordingly, by invocation of a clause in the lease deed, a show

cause notice was issued to the manager of the petitioner company, asking him to show cause as to why the agreement for lease shall not be terminated and the land shall not be resumed.

3. It was also alleged that the petitioners were not paying the user's service charge to the corporation, for a long time. This was also in violation of the agreement. An amount of Rs.2,59,665/- was due and payable by the petitioners, towards such charge. The unit was allegedly closed for 10 years and the project was abandoned.
4. The petitioners replied to the show cause notice and submitted that the project could not commence, as the use of bitumen for construction of metal road had stopped since 2015. This resulted in heavy loss of business. Some bituminous products were stored at the shed, which were ultimately sold. The petitioners prayed that some more time may be given to start a new business. The petitioners also alleged that the bills/service charges were inflated. The petitioners' specific request was that the show cause notice should be dropped and opportunity should be provided to the petitioners to set up a new project relating to tar and bitumen. Rectified

and modified invoices should also be supplied to the petitioners.

5. A hearing notice was given to the petitioners. At the hearing, the petitioners once again made a request that they may be allowed sometime to start a new business. The law officer intimated the view of the authority concerned and asked the petitioners to provide some documents so that the matter could be resolved, by allowing the petitioners to start a new project.
6. It was specifically contended that in the event the petitioners failed to submit the documents within the time frame, the corporation would cancel the allotment, terminate the lease and resume the land. The corporation intimated the petitioners that an indefinite period could not be allowed. The letter mentioned that a last chance was being given to the petitioners to initiate a new project and failure to do so would not be condoned. Immediate termination would follow. Thereafter, the deed was cancelled and the lease was terminated, as the petitioners failed to show any inclination to start a new project. As the petitioners failed to deliver the land, the order of resumption was passed. The said order is impugned before this court.

7. Mr. Bhattacharhaya, learned advocate for the petitioners submits that another show cause notice should have been given to the petitioners, as the earlier proceedings were dropped. An opportunity should have been given to the petitioners to submit a new project report for an upcoming project on the said land.
8. It is next contended that the bills were erroneous and should have been rectified. The authority should have taken a lenient view before resuming the land, as the petitioners were unable to start a new project on the ground of the loss of business and due to the COVID 19 pandemic.
9. The learned advocate for the corporation submits that the petitioners were allotted the shed only for the purpose of setting up a tar and bituminous project. The petitioners failed to do so. The petitioners used the shed for storage. Ultimately, no activity was available in the said shed for many years. Such fact is also accepted by the petitioners in the answer to the said show cause notice. The shed remained unused for almost twenty years.
10. The lease deed provides, that in the event of failure of the lessee to use the premises or any portion thereof, for the purpose for which the lease was granted, termination of lease would be

the natural consequence. The lease could be terminated, upon granting 30 days notice. In this case, the entire procedure had been followed and the authority had also acceded to the request of the petitioners to allow a further chance to start a new project in view of the fact that the petitioners had confessed that the tar and bitumen project could not be started on account of financial hardship.

11. This court is of the view that the lease deed provides for termination of the lease if the shed was not used for the purpose for which the lease was granted. The lease deed provides that 30 days notice was to be issued to the lessee before termination.

12. In this case, the show cause notice was duly issued on October 1, 2021. The petitioners answered to the show cause and confessed their inability to start a tar and bituminous project. The petitioners made a request to allow setting up of a new project. The petitioners also requested for modification of the bills which were raised on account of unpaid service charges. Notice of hearing was given to the petitioners. At the hearing, the petitioners again made a request for an opportunity to set up a new business or any other project. A letter was issued to the

petitioners by the Law Officer, West Bengal Industrial Infrastructure Development Corporation communicating the decision of the authority. The petitioners were asked to submit the following documents:-

1. DPR of any new project.
2. An undertaking in a non-judicial stamp paper, that commercial production of proposed project would start within six months.
3. Declaration that in case of failure in implementation of the proposed project, the land will be surrendered without any further conditions and consideration.”

13. The petitioners failed to comply with all the above requirements. Accordingly, the lease was terminated on February 7, 2023. 30 days was allowed to the petitioners to hand over peaceful possession of the land. As the petitioners did not obey the directions and also violated the commitment and written assurances, the authority resumed the land by the letter dated March 15, 2024. The letter of resumption is a consequence of termination. The termination has not been challenged by the petitioners.

14. In my opinion, the show cause notice, answer to the show cause notice, the opportunities given to the petitioners to start a new business or a new project of tar and bitumen and assurances given

by the petitioners, all indicate that adequate opportunity as per the lease agreement was given to the petitioners. The authority also relaxed the conditions and asked the petitioners to submit a DPR to show that they had the intention to start any other new project, in case the tar and bituminous project, was not viable. All such opportunities were lost by the petitioners, when the petitioners allegedly failed to comply with the decision of the authority.

15. It appears that a notice of cancellation and/or termination was also issued to the petitioners. He was allowed sufficient time to hand over possession. The petitioners were also informed that he may be entitled to get refund if any land premium was paid by the petitioners in advance.
16. The allegations have been proved against the petitioners. The land was kept vacant for 20 years, without any utilization. The industrial project was abandoned. There was breach of the lease deed. The premises was left idle and hence the authority acted on the basis of the clauses of the deed of lease.
17. Repeated show cause notices were not required to be served. A show cause notice was issued and the petitioners answered. The petitioners admitted that they had left the land idle for a long

time. The petitioners prayed for an opportunity for setting up a new project, which was also given. The termination/cancellation of the lease deed and resumption of the land are only consequence of the proceedings which were initiated in 2021 by issuing a show cause notice. The court does not find that the authority had abandoned the proceeding. The authority had given six months time to the petitioners to come back with the proposal for a new project, which the petitioners failed to initiate.

18. Under such circumstances, no further protection can be granted. The contractual obligations of the petitioners under the deed of lease with the West Bengal Industrial Development Corporation, cannot be the subject matter of judicial review, unless it can be established from the records that the authority had either acted illegally or contrary to law or with malice. There is no arbitrariness in the action taken by the corporation. Adequate opportunity was given. The petitioners has not challenged the order of termination.

19. Hence, the writ petition is disposed of without any interference.

20. All the parties shall act on the basis of the server copy of the order.

(Shampa Sarkar, J.)