

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Side
WPA 2248 of 2024
Amjad Hossain
versus
State of West Bengal & Ors.**

Mr. Bhaskar Roy Mohasoi,
Ms. Madhushri Dutta

... for the petitioner.

Mr. Momenur Rahman,
Mr. Bikash Singha

....for the State.

Mr. Amit Kumar Nag,
Ms. Pritha Bhaumik,
Ms. Riya Agarwala

.....for the respondent nos.2 to 4.

The petitioner entered into an agreement for lease dated 12th February, 2019 with West Bengal Industrial Infrastructure Development Corporation (in short, WBIIDC) in respect of a plot of land, more particularly defined in the schedule of the agreement to lease. Subsequently, a deed of lease was executed on 18th March, 2019 in respect of the said property. The lease was specifically granted to the petitioner for setting up an aluminium utensils manufacturing unit. The construction of the factory was required to be completed by 31st January, 2019 and the commercial production thereof was to commence within 24 months from 31st January, 2019. The petitioner instead of setting up an aluminium utensils manufacturing unit intended to set up a cold storage at the said plot of land, and, therefor, applied for change in user. This prayer was turned down by WBIIDC. It also appears

that the petitioner had made further representation for withdrawal of the termination notice and to permit him to set up aluminium utensils manufacturing unit. This letter is dated 27th January, 2024.

WBIIDC on 11th August, 2023 issued a show cause notice calling upon the petitioner to attend a hearing on 31st August, 2023. The show cause notice was issued as the petitioner failed to implement the project and kept the land vacant when the possession was delivered on 14th January, 2018. The petitioner did not attend the hearing. Subsequently, by an order dated 18th December, 2023, the lease was terminated and the petitioner was directed to hand over peaceful vacant possession of such property to the Executive Engineer (Civil), Cooch Behar Industrial Park within 30 days from the date of receipt of the said notice. The said notice had been admittedly received by the petitioner, but he did not hand over peaceful vacant possession as directed by the order of termination dated 18th December, 2023.

The petitioner in paragraph 8 of the writ petition has stated that pursuant to the show cause notice, the petitioner had applied for permission to set up a cold storage by the name Khusi Cold Storage at the said property. The termination is subsequent to such representation for permission to set up cold storage instead of aluminium utensils manufacturing unit. The

petitioner on 31st January, 2024 applied for withdrawal of the termination notice. The said application was considered and the prayer for withdrawal of the termination notice was turned down by WBIIDC by the letter dated 6th February, 2024.

After all these incidents had taken place, the petitioner had filed the writ petition, being WPA 380 of 2024, which was dismissed by an order dated 5th March, 2024.

On 5th March, 2024, a notice for resumption of land was issued by the Chief Executive Officer, WBIIDC.

The petitioner in this writ petition prays for consideration of his representation dated 27th January, 2024 and permit him to proceed to set up the business in terms of the lease agreement. The petitioner has also sought for withdrawal of the memoranda dated 6th February, 2024 and 5th March, 2024.

After hearing the parties and considering the materials on record, I find that the petitioner was given sufficient opportunity to set up the aluminium utensils manufacturing factory on the leased out land. The factory was required to be set up by 31st January, 2019. There was no impact of covid pandemic up to 31st January, 2019 being the main reason for which petitioner says he could not set up the aluminium utensils manufacturing unit. The petitioner was unable

to set the factory and thereby has committed breach of one of the conditions of the lease deed. The petitioner was required to start the commercial production within 24 months from 31st January, 2024. There is no iota of even *prima facie* evidence that the petitioner had made some construction for setting up the factory on the leasehold property prior to the pandemic.

Assuming without admitting that due to pandemic which intervened from March, 2020, the petitioner was unable to start commercial production then also the failure on the part of the petitioner for setting up the factory prior to such covid pandemic remains unexplained. Records reveal that the land had remained vacant at the time when resumption was ordered in December, 2023. The petitioner's request to recall the order of termination has been considered and turned down in February, 2024.

There is no further scope of directing any representation of the petitioner to be considered. That apart and in any event, the representation or the orders which the petitioner seeks for being recalled had been issued and/or passed prior to dismissal of the previous writ petition, being WPA 380 of 2024.

In the aforesaid facts and circumstances, I do not find any merit in the petitioner's case. The writ petition is accordingly dismissed.

The petitioner is directed to comply with the termination order dated 18th December, 2023 and the notice of resumption dated 5th March, 2024, failing which it will be open for WBIIDC to take appropriate steps in accordance with law.

(Arindam Mukherjee, J.)