# IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

**BEFORE**

**HON'BLE SHRI JUSTICE VIVEK JAIN**

**WRIT PETITION NO. 10530 OF 2012.**

**BETWEEN** :-

**M/S. ANANT PRE-FAB CONSTRUCTORS LTD. THROUGH: ITS DIRECTOR SHRI I.B. SHASTRI S/O LATE SHRI ANANT MARAL SHASTRI AGED ABOUT 63 YEARS. E-1/157, ARERA COLONY, BHOPAL**

….**PETITIONER**

*(BY SHRI ASHISH SHROTI -ADVOCATE)*

**AND**

1 **MADHYA PRADESH, AUDYOGIK KENDRA VIKAS NIGAM BHOPAL LIMITED THROUGH: ITS MANAGING DIRECTOR TAWA COMPLEX, 1st FLOOR, BITTAN MARKET, BHOPAL.**

2. **MADHYA PREDESH STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD. THROUGH ITS MANAGING DIRECTOR "AVN TOWER" 192 ZONE-I M.P. NAGAR BHOPAL 462011.**

….**RESPONDENTS**

*(RESPONDENT NO. 1 BY SHRI SAHIL SHARMA - ADVOCATE)*

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| Reserved on | : | 04/12/2023 |
| Pronounced on | : | 30/01/2024 |

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*This petition having been heard and reserved for judgment/order, coming on for pronouncement this day, this Court passed the following:*

**ORDER**

The present petition has been filed challenging the order Annexure P/5 dated 12.07.2011 which has been confirmed vide order dated 05.06.2012 Annexure P/11 in appeal. By the aforesaid orders the lease of Industrial Plot dated 14.10.1998 granted in favour of the petitioner has been cancelled.

2. Learned counsel for the petitioner submits that the petitioner was granted lease of Industrial Plot vide lease deed Annexure P/2 for a period of 99 years. The petitioner was visited with a show-cause notice Annexure P/3 dated 30.11.2009 whereby it was alleged against the petitioner that upon spot inspection of the Unit it was found that the land has not been utilized and also that the unit is not functional. The same is stated to be in violation of terms of the lease deed. The petitioner thereafter, submitted reply vide Annexure P/4 dated 01.02.2010 and it was stated that due to thunder squall in June-2009, the roof of factory shed was uprooted and the water also damaged the machinery, it would take around six months more to restart the production in the factory.

3. The termination of lease was thereafter ordered vide Annexure P/5 dated 12.07.2011 wherein it was recorded that the unit has failed to restart production and also entire land has not been utilized.

4. The petitioner has filed appeal against the said order stating it to be erroneous and during the course of hearing of the appeal, it is contended by learned counsel for the petitioner, that the appellate authority passed an interim order dated 27.01.2012 (Annexure P/8). By the said order it was recorded by the appellate authority that the unit should submit the relevant documents in respect of electricity bills, DIC registration, payment of sales

tax, commercial tax, central excise tax etc. Learned counsel for the petitioner submits that thereafter such documents were submitted before the appellate authority despite which appellate authority has erroneously passed the order Annexure p/11 and rejected the appeal of the petitioner and confirmed the cancellation order.

5. Learned counsel for the petitioner contends that there was no provision in the lease-deed to utilize a particular proportion of the land with actual construction. It is contended that in the absence of such condition in the lease deed such condition cannot be enforced on the petition. Learned counsel for the petitioner also submits that the show cause notice did not mention that how much area was required to be utilized for actual construction of building and factory shed. Despite that the authority has wrongly cancelled the lease deed. It is also stated that later on production in the factory has been started and by filing certain documents by way of I.A. No. 10153/2012 and by way of rejoinder, it is sought to be illustrated that the unit is now functional.

6. Per contra learned counsel for the respondent submits that the petitioner had violated the clause 23 of the lease deed which stipulates that 'lessee' shall continuously run the factory for the period of lease. It is further submitted that the purpose of grant of lease is for establishment or running the factory. If the factory established is not run there is no point is continuing the lease. It is also submitted that Clause 22 of the leas deed clearly stipulates that lessee shall comply with the all the rules enforced from time to time. The requirement of construction being made on a minimum proportion of the total land allotted is provided under Rule 6 of Madhya Pradesh Industries Allotment of Sheds , plots and land ) Rules, 1974. It is contended that subsequently the new rules known as Madhya Pradesh Rajya Audyogik Bhoomi Avam Audyogik Bhavan Prabandhan Niyam 2008 has been enforced and as per clause 7 of the said rules, there

is a provision of carrying out construction on minimum proportion of allotted land area. Thus, it is contended that the petitioner cannot wriggle out of its default and the lease cancellation order is valid and proper.

7. Heard learned counsel for parties and perused the record.

8. The records of the case shows that the petitioner was granted lease for the purpose of "construction and establishment thereon" a factory for manufacture of prefabricated wall, ceiling, foundation beam, pillars, doors and windows for civil construction purpose and ancillary thereto.

9. The lease deed further stipulated in clause 22 that the lessee shall comply with all Acts, Rules and Regulation enforced from time to time.

10. The clause 23 of the lease deed further provided that lessee shall continuously run the factory during period of lease and closure of factory for a continuous period exceeding period of six months without proper reasons to the satisfaction of the allotting authority shall be considered as breach of this condition.

11. When the petitioner was visited with show cause notice against cancellation vide Annexure P/3, two allegations were levelled in the said show-cause notice. The first allegation is that the factory is closed since more than six months. Second allegation was that the land utilization is not complete.

12. During the course of hearing it was not disputed by the parties that the area of land allotted is 52,000 sq.ft. and the actual construction is on an area of 5200 sq. ft or so. Thus construction has been raised on an area of 10-12% of the allotted land area

13 So far the question of closure of factory ic concerned, by way of filing reply to the show cause notice vide Annexure P/4, the petitioner had admitted closure of factory but had stated that the factory shed of the unit was uprooted in thunder squall and it would take another six months to

restart the unit. It was also stated in reply that the work of production is carried out only upon receiving work orders.

14 The cancellation order Annexure P/5 records that up to June 2011 no production on the spot has been started. The appellate authority vide interim order dated 27.01.2012 (Annexure P/8) granted an opportunity to the petitioner to show that the production has in fact been restarted. The petitioner submitted certain bills of miscellaneous iron items and certain electricity bills. The appellate authority thereafter, passed a final order Annexure P/11 dated 05.06.2012 and it was recorded in the final order that the unit is not carrying out the production of prefabricated wall, ceiling, foundation beam, pillars, doors and windows etc., but is carrying out some fabrication on job work basis This amounts to change of product for which no permission has been taken.

15. Even upon a perusal of the covering letter/ documents submitted to appellate authority which is on record as Annexure P/9, it is seen that the petitioner had replied that it is not paying any sales tax, commercial tax and excise duty. It was stated that production has started only in July 2011. It was also stated that they are doing only job work of orders received from one customer i.e. GEI power limited The bills placed on record along with letter shows that the petitioner has received iron material for iron fabrication work On the contrary in reply to show-cause notice, it was contended by the petitioner that it required much more open area because it is required to store sand, metal for the purpose of concrete prefabrication work.

16 Thus, the authority of the respondent appears to have correctly reached to a conclusion that the production in the factory of the petitioner has been closed down for the period of more than six months without any reasonable cause.

17. Certain documents have been filed along with rejoinder to show that subsequently, some production work has been started in the factory and electricity consumption was also going on during the year 2015-16. However, such documents were not placed before the authority who passed the order Annexure P/5 and P/11. Such subsequent documents cannot be taken into consideration to decide the aspect of legality of impugned orders.

18. The next aspect is non utilization of the land allotted to the petitioner. Admittedly the petitioner was allotted 52000 sq.ft. of land but petitioner had utilized 5300 sq.meter of land for the purpose of construction of factory shed. The counsel for the petitioner has argued that there was no requirement in the lease deed to utilize a particular proportion of land allotted for the purpose of construction.

19. As per the allotment Rules of 1974, rule 6 contains specific provision that the land would normally be allotted not exceeding 4 times the built up area. Rule 6(1) specifically provides that if built up area is less than 10,000 sq. ft., then allotment upto 4 times of built up area may be made.

20. The said rules were replace by the subsequent allotment Rules of 2008. The land allotted to the petitioner in hectare is about 0.45 hectare. Rule 7 of Rules of 2008 provides that in case the area of allotted land between 0.2 to 1.00 hectare, then the constructed area should be 45%.

21 In the present case admittedly the petitioner is allotted 10 times the area on which actual construction has been made.

22. So far the argument that there is no provision in the lease-deed to raise minimum construction over the certain land area is concerned, clause 22 of the lease-deed is very clear on the aspect in providing that all Rules and Regulation would be complied with by the allottee.

23. Even, in the reply to show-cause notice, the petitioner had given a justification that for concrete fabrication work it required much larger land area for storing sand, metal etc. However, it has come on record that subsequently, the petitioner is only doing some iron fabrication work, that too on job work basis for orders received from one single company. Even this work has been shown to have started in 2012 itself.

24. Thus, the very substratum of the justification offered by the petitioner for not raising construction over the requisite land percentage has gone away. The petitioner was allotted land when the Rules of 1974 were enforced. The petitioner has not carried out construction over the minimum land area even as per Rules of 1974.

25. In view of the above, the cancellation order and the appellate order having been passed on the basis of finding of fact that the petitioner has committed a breach of terms and conditions agreed upon, the same cannot be found fault warranting interference of this Court in exercise of writ jurisdiction

26. In the result, the petition deserves to be and is **hereby dismissed**.

**(VIVEK JAIN)**
**JUDGE**

*MISHRA*

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