

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 174 of 2011

Adityapur Industrial Area Development Authority & Anr. ...Appellants
 Versus
 M/s Sanderson Industries Limited & Ors. Respondents

For the Appellants : M/s V.P.Singh, Sr. Advocate
 R.C.P.Sah, Advocate
 C.A. Bardman, Advocate

For the Respondent : Mr. N.K. Pasari, Advocate
 For the Intervenor : M/s Rajesh Kumar, M.K.Sinha, Advs.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE JAYA ROY

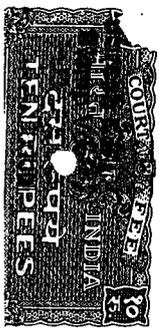
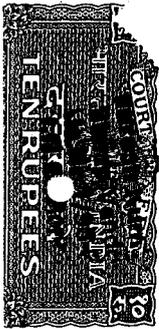
Reportable

Dated : 24th July, 2012

By Court: Heard learned counsel for the parties.

The appellant, Adityapur Industrial Area Development Authority(AIADA) has preferred this appeal against the judgment dated 28.3.2011 passed in W.P.(C) No.1634 of 2008 whereby the learned Single Judge set aside the order passed by the Managing Director of AIADA vide order dated 5.9.2007 cancelling the lease of 5.92 Acres of land and allotment of 8 acres of land made in favour of the writ petitioner by the AIADA on 3.11.1985 and in the year 1993 respectively. So far as cancellation of allotment of land of 8 acres is concerned, that is not under challenge and that cancellation has attained finality so far as it relates to the allotment of 8 acres of land to the writ petitioner.

The learned Single Judge has set aside the order of cancellation of the lease of 5.92 acres of the land on the ground that the Managing Director of the appellant-AIADA has no power and jurisdiction to cancel the lease as the power has not been delegated to the Managing Director for cancellation of the lease. The learned Single Judge was also of the view that in view of the judgment delivered in case of **Deepak Paints (P) Limited Versus The State of Bihar,**



case of **Deepak Paints (P) Limited Versus The State of Bihar**, reported in **2008 (2) PLJR 293** and in the case of **The Gait Public Library and Institute Versus The State of Bihar** reported in **1995 (1) PLJR 585**, the Authority has no right to cancel the **lease** and power of the Authority in the matter of cancellation of the plot is confined to the cancellation of the initial **allotment** and not the **lease** for which the Authority can avail the remedy by way of civil suit.

Learned counsel for the AIADA has vehemently submitted that under Clause (d) of Section 4 of the Bihar Industrial Area Development Authority Act 1974, the Managing Director is full time officer and the Chief Executive of the Authority and is bound to perform amongst the others all the duties assigned to him which has been provided under Clauses (a) to (d) of Section 4 of the Act of 1974. Clause 4 (d) clearly provides that the Managing Director shall perform any order and duty that may be assigned to him by the Authority or the State Government from time to time. It is submitted that the Board of the AIADA took a resolution in its meeting of the Board of Directors on 24.12.2008 that the Managing Director of the AIADA shall be authorized to ensure compliance of the terms and conditions of the allotment and lease of Industrial plots/ sheds. He has been given further power to initiate legal action in the matter of breach of terms of allotment and lease and pass necessary orders in terms of Section 6(2)(a) and (b) of the Act of 1974. Not only this, that such power was given to the Managing Director of the AIADA by resolution dated 24.12.2008, but it was further resolved in the meeting that all prior orders passed by the Managing Director stand ratified by the Board of Directors of AIADA. Therefore, after 24.12.2008, the Managing Director is vested with the powers referred in the resolution dated 24.12.2008 and the action taken by the Managing Director of the AIADA prior to that date has been

ratified by the Board of Directors. Therefore, the Managing Director had and has power to pass the appropriate orders like the order under challenge and the learned Single Judge has committed serious error of law in holding that such power does not vest in the Managing Director of AIADA in spite of the fact that the resolution dated 24.12.2008 has not been challenged and has not been quashed. It is also submitted that the resolution has been misinterpreted and therefore it has wrongly been held that the power does not vest in the Managing Director for cancellation of the lease.

Learned counsel for the appellant further submitted that under Section 6(2), the power has been given to the authority not only for cancellation of the **allotment**, but specific power has been given to the authority even to cancel the **lease**. In view of the above, the statutory power given to the authority, the lease also can be cancelled and it is not necessary for the AIADA to file a suit before the Civil Court for cancellation of the lease deed and for taking possession. -

Learned counsel for the appellants further submitted that the judgments delivered in the cases of **Deepak Paints** and **The Gait Public Library (Supra)** do not lay down correct law in view of the recent judgment of Hon'ble Supreme Court delivered in the case of **I.T.C. Limited Versus State of U.P** reported in **2011 (7) SCC 493**.

Learned counsel for the appellant has relied upon yet another judgment of Hon'ble Supreme Court delivered in the case of **Maharashtra State Mining Corporation Versus Sunil** reported in **AIR 2006 SC 1923**, wherein, in a service matter, has held that even in a case where the Managing Director had no competence to pass the order, but if the competent authority having power to pass the order has ratified the action of the Managing Director then that is a valid and legal order and it will relate back from the order passed by the Managing

Director. Here in this case, the order passed by the Managing Director prior to 24.12.2008 has been ratified by the Board of Directors, therefore, the impugned order stands ratified and therefore, that is a legal order.

Learned counsel for the respondent writ petitioner has vehemently submitted that the land in question specifically, the land measuring 5.92 Acres, was allotted to the writ petitioner -respondent as back as on 3.11.1985. The respondent-petitioner started commercial production in the said unit and it continued for a long period but because of some dispute in the year 1998 with the private party, the writ petitioner's factory was attached by the order of the Civil court. The said attachment continued till 2008, therefore, the writ petitioner -respondent could not continue with the production in the said unit during this period. It is also submitted that the writ petitioner -respondent has already paid the allotment price and cost of land and lease charges to the appellant AIADA. However, learned counsel for the writ petitioner -respondent submitted that some of the dues of the betterment charges and facility charges have not been paid. It is submitted that those charges have not been paid because of the attachment of the industrial unit of the writ petitioner, but the writ petitioner was ready and willing to pay such charges which has been disclosed by the petitioner before the writ bench also and still the writ petitioner is ready to pay the charges. It is also submitted that for any default, the AIADA could have cancelled the allotment and according to the learned counsel for the writ petitioner after execution of the lease deed, lease cannot be cancelled and what to say by the Managing Director even AIADA has no jurisdiction to cancel the **lease** deed. However, if the court comes to the conclusion that the Managing Director has power to cancel the lease then in that situation, the writ

petitioner was not served with any notice demanding any amount of default and without demanding due amount from petitioner, the AIADA could not have terminated the lease, much less to cancellation of lease.

Learned counsel for the writ petitioner further vehemently submitted that the alleged notices dated 17.6.2007 and 27.7.2007, are ante dated documents and were never served upon the writ petitioner. It is submitted that it has been alleged by the AIADA that these notices were sent on the address of the petitioner's industrial plot whereas admittedly, according to the AIADA itself, the unit was closed in the year 1998 and nobody could have been there to receive the notice on behalf of the writ petitioner and therefore, endorsement of delivery of notice is false and also only to justify the action of cancellation of the lease deed for ulterior motive.

Learned counsel for the writ-petitioner submitted that though there were dues against the plot of 8 acres which was allotted to the writ petitioner in the year 1994 but that has been cancelled by the AIADA and that is not the subject matter and the alleged notice to the petitioner was with respect to the dues of that plot only which plot's cost may not have been deposited by the writ petitioner. The petitioner is not seeking any relief for said 8 acre plot. There is no notice for any default committed for the lease granted for 5.92 acres of land except betterment charges.

Learned counsel for the respondent also submitted that the resolution dated 24.12.2008 has not been published in official gazette as required under Section 15 of the Act of 1974. Therefore, that notice cannot authorise the Managing Director of AIADA to act as delegate of AIADA.

We have considered the submissions of the learned counsel for the parties and perused the record of the case and the relevant statutory provision.

The AIADA was established and incorporated under the Bihar Industrial Area Development Authority Act 1974 at the time of unified Bihar. Section 3 of the Act provides for establishment of "Authority" which can be body corporate by name which shall have power to acquire and dispose of the property both movable and immovable and has right to enter into contract. Such Authority shall consist of Chairman and the Managing Director and five other Directors which shall be appointed by the State Government and who shall hold office on terms and conditions to be prescribed in this behalf at the pleasure of the State Government. The Chairman of the Authority is necessarily be a Government servant not below the rank of Commissioner or any other person who may be nominated by the Government. As per Sub Section 4 of Section 3, the Managing Director is full time officer and Chief Executive Officer of the Authority. He is required to perform all duties and is to follow instructions and guidelines given by the Chairman. Clause (b) in Sub Section 4 of Section 3 it has been specifically provided and Managing Director shall perform any order, duty, that may be assigned to him by the Authority or by the State Government from time to time, therefore, the Managing Director can be directed to perform any of the duties which can be performed by the Board of Directors i.e. Authority.

In view of the above reason, we are of the considered opinion that the Act itself provides for assignment of the duties to the Managing Director of the Board itself, meaning thereby, by the Authority.

The Board has passed the resolution on 24.12.2008 which is as under :

"1. "RESOLVED" that the Managing Director of AIADA (Adityapur Industrial Area Development Authority) be and accordingly hereby authorized to :-

i) Act on behalf of the Authority and its Boards of Directors in discharge of the power vested in the authority by the Jharkhand Industrial Area Authority Act, 2001 in relation to the land allotted and leased to entrepreneurs specially for the purpose of ensuring compliance of the terms and conditions of allotment and lease of industrial Plots /Sheds.

ii) Initiate necessary legal action by issuing of notice to defalcating parties and conducting consequential proceeding arising out of instances of breach of the terms and conditions of allotment and lease and pass necessary order in terms of Section 6 (2)(a) and (b) of the above said Act.

FURTHER Resolved that such order, as and when passed by the Managing Director, will be placed before the Board of Directors in the next Board Meeting for ratification.

FURTHER Resolved that all such orders, in all cases where passed prior to the present resolution are hereby being ratified by the present Board as valid actions taken under law on behalf of the Authority and its Board of Directors."

A bare perusal of above Clause (i) under Clause I indicate that the Managing Director of the AIADA has been authorized to act on behalf of the Authority and its Board of Directors in discharge of the powers vested in the Authority by the Act of 2001 in relation to the land allotment and lease to the entrepreneurs. This Clause specifically provides that this power has been given for the purpose of "ensuring compliance of the terms and conditions of the allotment and lease of industrial units/sheds". A bare perusal of the lease deed executed

between the parties namely, between AIADA and the writ petitioner, will indicate that in the lease deed several conditions have been prescribed which are required to be obeyed by the lessee and in default thereof. The Authority has power to not only cancel the allotment of the land but by virtue of power given under Section 6(2) of the Act of 1974 has power to cancell the lease of the leased land. Therefore, authorizing the Managing Director for ensuring compliance of terms and conditions of the allotment and lease of industrial plots /sheds includes all powers including the power of cancellation of allotment of plots and cancellation of lease also which is the power specifically vested in the authority by virtue of Sub Section 2 of Section 6 of the Act of 1974.

Sub Section 2 of Section 6 of the Act of 1974 is as under:-

" 6(2). The Authority shall be responsible for planning, development and maintenance of the Industrial Area and amenities thereto and allotment of land, execution of lease and cancellation of -such allotment or lease, realisation of fees, rent charges and matters connected thereto".

It will be relevant to mention here that earlier there were different views with respect to the power of such authorities, may be statutory authority, who allotted the land on certain terms for specified purposes and then grants lease which may be statutory lease. The debatable question was, whether those authorities had power to cancel the lease in addition to power of cancell the allotment of plot. In some of case view was that the such authorities may have the power to cancel the allotment of plots and that power can be exercised at initial stage, i.e. such power can be exercised before execution of the lease deed. After the execution of the lease deed between the parties, the parties shall be governed by the provisions made in the lease deed as well as

under the general civil law i.e. Transfer of Properties Act which deals with the subject of the lease and its termination. Therefore, earlier view was that the allotment can be cancelled but lease cannot be cancelled and the lease can only be terminated on the happening of the eventualities provided in the lease deed itself. The same view was taken in the case of **Deepak Paints** and **The Gait Public Library** (Supra).

The above issue has been considered by the Hon'ble Supreme Court in the case of I.T.C. Limited (Supra) and Hon'ble Supreme Court has specifically framed the question in the case of I.T.C. Ltd. The relevant question is question No.1 mentioned in paragraph 25 of the case of the ITC Ltd. Question no.1 framed by the Supreme Court in I.T.C. Limited is as under :

"1. Where allotment has been followed by grant of lease (which is duly executed) and delivery of possession in favour of the lessee, whether the leases could be unilaterally cancelled by the lessor?"

The Hon'ble Supreme Court answered the above question in paragraph 30, which is as under :

"30. A lease governed exclusively by the provisions of the Transfer of Property Act, 1882 (the "T.P.Act", for short) could be cancelled only by filing a civil suit for its cancellation or for a declaration that it is illegal, null and void and for the consequential relief of delivery back of possession. Unless and until a court of competent jurisdiction grants such decree, the lease will continue to be effective and binding. Unilateral cancellation of a registered lease deed by the lessor will neither terminate the lease nor entitle a lessor to seek possession. This is the position under private law. But where the grant of lease is governed by a statute or statutory regulations, and if such statute expressly reserves the power of cancellation or revocation to the lessor, it will be permissible for an

authority, as the lessor, to cancel a duly executed and registered lease deed, even if possession has been delivered, on the specific grounds of cancellation provided ion the statute." (Emphasis supplied).

In view of this decision of the Hon'ble Supreme Court, now the issue is no more res-integra with respect to the power of the statutory authority in relation to their right to cancel the lease granted where the grant of lease is governed by statutory provision and such statute expressly reserves the power of cancellation or revocation of the lease to the lessor. If so is provided in the statute, it will be permissible for an authority, as lessor to cancel duly executed lease.

In the case in hand before us, the AIADA has been constituted and incorporated by the statutory provision of Act of 1974. It has power to make Rules and Regulations and also has right to enter into contract, and therefore, in discharge of its duties it may enter into contract of lease which is a statutory contract of lease. The Act of 1974 vest the 'Authority' with power to cancel the lease. Sub Section(2) of Section 6 has done so and has given power to the Authority to cancel the lease also. By Sub Section (2) of Section 6 of the Act, the Authority (AIADA) has been given power not only for cancellation of allotment of plot but it gives power of cancellation of lease. Sub Section 2(a) and (b) though deals with respect to cancellation of the allotment of the plots and do not deal with the cancellation of the lease but that power is already in the authority by virtue of the Sub Section (2) under Section 6 of the Act of 1974. Therefore, non mention of "lease" in Sub Section 2(a) and (b) of Section 6 in the Act of 1974 is not relevant for our purpose because of the reason that the such power to cancel lease vests in the Authority by virtue of of Sub -Section (2) of Section 6.

Learned counsel for the respondent-petitioner submitted that the resolution dated 24.12.2008 also empowered the Managing Director for taking action in terms of the Section 6(2)(a) and (b) and has not delegated power of the Board of Directors or the Authority for exercise of power under Sub Section (2) of Section 6. The petitioner may have mis-interpreted the resolution dated 24.12.2008 as in the Clause 1 of the Resolution of the Board of Directors all the power of the Authority and the Board of Directors which are vested in the Authority by the Act of 1974 and specifically the power which are related to the land allotted to the entrepreneurs on lease and for the compliance of the terms and conditions of the allotment and lease of industrial plot have been given to the Managing Director of the AIADA. As we have observed that "ensuring compliance of terms and conditions of allotment and lease of industrial plots/sheds" includes the powers given under Sub Section (2) of Section 6 which specifically deals with the matter of execution of lease, cancellation of allotment as well-cancellation of lease also. Therefore, by the resolution dated 24.12.2008, the M.D has been given all the powers referred above in the resolution dated 24.12.2008 including right to cancel the lease.

By the resolution dated 24.12.2008, the Board of Directors has already ratified the orders passed by the Managing Director which includes the order impugned, and therefore, in view of this ratification and in view of the judgment of the Supreme Court delivered in case of *Maharashtra State Mining Corporation Versus Sunil* (Supra), we are of the considered opinion that the ratification has validated the order of the Managing Director of the AIADA by which he has cancelled the lease of the plot of the writ petitioner, and therefore, that ratification is from the date the order passed by the Managing Director of the AIADA. This is

the legal aspect of the matter with respect to power of AIADA and Managing Director in cancellation of lease.

Next coming to the factual aspect of the case, it will be appropriate to mention here that, for an industrial plot for which lease was granted by the Managing Director of the AIADA as back as in the year 1985 admittedly, the unit was started by the writ petitioner and this fact cannot be disputed by the AIADA in view of the fact mentioned in their own alleged notices dated 17.6.2007 and 27.7.2007 as well as the fact mentioned in the impugned order dated 5.9.2007 wherein it has been specifically admitted that the industrial unit was established and it was running and it has been stated that it was closed in the year 1994. However, it is also admitted that even in the year 1998, there was serious gas leakage and further in the year 2000, there was another case of gas leakage. Therefore, in that situation, it cannot be said that the petitioner committed any default initially in construction of unit or in its running so as to render his allotment cancelled. Obviously, for this reason, the petitioner's allotment was not cancelled. Not only this, in the year 1994 the petitioner was allotted a further land of 8 acres which fortified that the petitioner was running unit, and therefore, this additional land must have been allotted to the petitioner. Be that as it may, it is a matter of record that the petitioner's unit was closed in the year 1998 in view of the order of attachment passed by the civil court and this attachment continued till 2008. Therefore, in this fact and situation coupled with the fact that copies of two notices have been placed on record which alleged to have been sent to the petitioner-unit on 17.6.2007 and then on 27.7.2007, we are of the considered opinion that these notices have been sent on the address of the petitioner's industrial plot which cannot be treated to be sufficient notice to petitioner and we have reason to believe that these notices may not

have been served upon the writ petitioner. Cancellation of lease of an established industry has a serious consequence, therefore, in such a matter where huge investment has already been made by the industrial entrepreneurs, then it is required from the lessor that it should serve the notice upon defaulter in proper manner. Therefore, we are of the considered opinion that the notices dated 17.6.2007 and 27.7.2007 are not in compliance to the principles of natural justice, and therefore, because of this reason, we are of the considered opinion that the order impugned which was set aside on the ground of want of power of the Authority is liable to be set aside because of the reason that impugned order was passed in violation to principle of natural justice. Therefore, we are of the considered opinion that the order impugned cannot be sustained even when it has been held that the Managing Director of the Authority has power to cancel the lease in terms of Sub Section (2) of Section 6 and the Resolution of the Board of Directors.

So far as the requirement of publication of Resolution of Board of Director of AIADA under Section 15 is concerned, this requirement applies to only to any Resolution of the Authority, framed to carry out the purpose of the Act. The every decision which the Authority can take by virtue of the powers given by the Act of 1974 and taken for its administrative working and for the purpose of delegation of power in view of Sub Section (4) of Section 3 it does not require that every such decision should be only by way of a resolution requiring its gazette publication. For this, we may recollect that the Authority constituted under Section 3 of the Act of 1974 and that very Section has provided for giving the power to the Managing Director and he is full time officer and Chief Executive of the Authority. He is required to perform all the duties assigned to him by the Authority, therefore, the Authority has independent power to manage its affairs internally for

which there is no requirement of doing all its business by making a Resolution and its publication under Section 15 of the Act of 1974.

In view of the above reasons, the minutes of the meeting of the Board of Directors cannot be held to be a resolution requiring its publication, otherwise, it will mean that every minute of the meeting of the Board of Directors will be required to be published in official gazette that will make the whole thing unworkable and particularly when the specific provision has been made to delegate the power of the Authority and the Board of Directors can delegate this power and do its function through the Managing Director of the AIADA.

In view of the above reasons, this L.P.A. is partly allowed. The impugned judgment dated 28.3.2011 deciding the two legal issues, that the lease cannot be cancelled by the AIADA is set aside. The decision of the learned Single Judge that the Managing Director is not authorized to cancel the lease, is also set aside. However, on other grounds the impugned order of cancellation of lease remains set aside. So far as the dues of the respondent-writ petitioner is concerned, for that purpose, sufficient directions have already been given by the learned Single Judge, which directions are upheld.

However, in the circumstances, we direct the writ petitioner to appear before the Managing Director of the AIADA on 25th September, 2012. On or before that date, the AIADA will serve the notice as well as demand notice upon the writ petitioner and thereafter, the writ petitioner may submit his objection and after hearing the writ petitioner, the Managing Director will determine the dues which shall be paid by the writ petitioner within three months from that date.

sd/- Prakash Tatia, C.J

sd/- Jaya Roy, J.

Notified to the Copy

Dr. Bhagat
6191K
Copying Officer

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