

SUPREME COURT OF INDIA

Andhra Pradesh Indl. Infrastructural Corporation Ltd.

Vs.

M/S. Shivani Engineering Industries

C.A.No.2426 of 2015
(V.Gopala Gowda and R. Banumathi JJ.)

25.02.2015

JUDGMENT

V.GOPALA GOWDA, J.

1. Leave granted.

2. The appellant-Andhra Pradesh Industrial Corporation Ltd. (for short "the Corporation") is aggrieved by the judgment and order dated 20.8.2013 of the High Court of Judicature of Andhra Pradesh at Hyderabad passed in Writ Appeal No. 1273 of 2013 whereby the High Court dismissed the writ appeal and affirmed the judgment and order dated 26.4.2013 of the learned single Judge passed in Writ Petition No.11978 of 2012. This appeal is filed by the Corporation seeking for setting aside the impugned judgment and orders passed in the writ appeal and writ petition by allowing this appeal, urging various facts and legal contentions.

3.The brief facts are stated in this judgment for the purpose of appreciating the rival legal contentions urged on behalf of the parties, with a view to find out as to whether the impugned judgments and orders passed by both the Division Bench of the High Court and the learned single Judge are required to be interfered with by this Court.

4. The Corporation (which is one of the State Undertaking Corporations established to promote the industrial growth and development in the State of Andhra Pradesh) on the application filed by M/s Shivani Engineering Industries- the respondent herein for allotment of industrial plot measuring 10,000 sq. mtrs., allotted plot No.181 of Phase-III, Industrial Park at Pashamylaram to an extent of 12000 sq. mtrs. at a price of Rs.72,00,000/- in its favour and the said amount was to be paid by the respondent within 90 days of the receipt of the provisional allotment and required to implement the project within 2 years from the date of possession of the allotted plot of land, failing which the plot was liable to be

cancelled by the Corporation as per terms and conditions enumerated in the provisional allotment letter dated 20.6.2006. The relevant clauses from the provisional allotment order read thus:-

"2. You should pay the cost of land which works out to Rs.72,00,000/- within Ninety days from the date of receipt of the allotment order, EMD already paid.

XXX XXX XXX

7. If payment as stipulated in condition (2)above is not made within 90 days of receipt of this allotment letter, this allotment letter shall stand cancelled and EMD paid shall remain forfeited.

XXX XXX XXX

18. You should implement the project envisaged within two years of taking possession of the plot. If within two years from the date of final allotment and taking possession of the plot the project is not implemented, the allotment will be cancelled."

5. It is the case of the Corporation that the respondent has committed default in making said payment to it within stipulated time as payment should have been made within 90 days from the date of receipt of the allotment letter which was not done by the respondent, but on the other hand on 18.9.2006, the respondent sought for extension of time for making payment of the allotted industrial plot by 30.11.2006.

6. On 22.9.2006, it was found by the Corporation that the industrial plot allotted in favour of the respondent was more than the area mentioned in the provisional allotment, the area of the industrial land was revised as 14046 sq. mtrs. and the cost payable by the respondent was re-fixed at Rs.84,27,600/-. Despite having extended the time by the Corporation for making payment of land cost with interest @18% p.a. till 30.11.2006, the respondent again did not make the payment for the plot which resulted in cancellation of the provisional allotment of industrial plot made in favour of the respondent by the Corporation vide its letter dated 16.12.2006. Being aggrieved by the said action of the Corporation, the respondent made representation on 3.2.2007 for restoration of the provisional allotment of land in favour of the respondent. The Corporation acceded to its request and it has informed on 21.2.2007 to the respondent stating that the restoration of allotment of plot of land will be done subject to payment of total cost of the allotted land with interest on belated payment and penalty of 10% of the land cost at the prevailing

rate and after making the payment the suit plot can be registered in favour of the respondent. The respondent made the payment on 2.3.2007 for the industrial plot allotted in its favour and an agreement of sale was executed on 13.3.2007 between the Corporation and the respondent and possession of the industrial plot was given to the respondent on the same day. The relevant clause Nos. '3 and 9c' of agreement of sale read thus :-

"3. Only on the Party of the Second Part implementing the scheme in the allotted plot, the sale deed will be executed and registered.

XXX XXX XXX 9c.The party of the Second Part shall implement the project within two years of being put in possession of the said plot as detailed at clause 3 above."

7. The respondent on 2.9.2008 has sought for change of manufacturing activity from mosquito coils to heavy engineering project and bus-body manufacturing unit. The respondent made an application for loan to the State Bank of India for setting up the industry. On 23.9.2008, the State Bank of India has asked the Corporation for issuing NOC for mortgaging the plot allotted to the respondent for sanction of the loan in its favour. On 25.9.2008 the Corporation approved the change of manufacturing activity after receiving requisite fees.

8. On 21.1.2009 the Corporation was intimated by the respondent that it has completed the construction of a shed, office accommodation and stores and asked for registration of the allotted plot in its favour. On 12.3.2009, the period of two years stipulated for the completion of the project in the agreement was expired. Further, Andhra Bank also sent a letter on 6.11.2009 to the Corporation requesting it for issuing NOC for mortgage of the allotted plot of land for sanctioning the loan in favour of the respondent for setting up the project. According to the respondent, in the month of November, 2010, there was installation of plant and machinery and commencement of production on 1.12.2010.

9. On 7.1.2011, a Circular Notice was issued to the respondent by the Corporation for charging fee @ 2% upto 1 year and 3% after 2 years as fee for condonation of delay in implementation of the project for which purpose the plot was allotted in its favour. On 10.8.2011 the respondent wrote a letter to the Corporation asking them for registration of the plot in its favour. On 8.11.2011, the Corporation asked the respondent to pay an amount of Rs.8,42,760/- being 3% of the allotted plot cost towards condonation fee for delay in implementation of the project.

10. Being aggrieved on the demand of condonation fee by the Corporation, the respondent filed writ petition No. 11978 of 2012 before the High Court of

Judicature of Andhra Pradesh at Hyderabad, challenging the validity of demand of condonation fee from the respondent and prayed for issuing a direction to the Corporation to execute registered sale deed of the allotted plot in its favour. The said writ petition was opposed by the Corporation by filing its counter affidavit justifying the demand of condonation fee from the respondent for non-implementation of the project. The learned single Judge of the High Court has recorded the finding holding that the plea of the respondent that the project was implemented within a period of two years was not accepted, however it has allowed the writ petition on 26.4.2013 with a direction to the Corporation to execute the registered sale deed in favour of the respondent in respect of the allotted plot within two months without charging any condonation fee of Rs.8,42,760/- as demanded by the Corporation from the respondent for the delay caused for implementation of the project.

11. Aggrieved of the said judgment and order of the learned single Judge, Writ Appeal No. 1273 of 2013 was filed by the Corporation before the Division Bench of the High Court seeking for setting aside the said judgment and order of the learned single Judge, urging various legal contentions. The Division Bench of High Court vide its judgment and order dated 20.8.2013 dismissed the writ appeal of the Corporation holding that the penalties for restoration of allotment as well as the interest has already been collected by the Corporation apart from the full cost of the land from the respondent. The allotment of plot made at Rs.600/- per sq. mtr. was increased substantially on account of the additional amount collected from the respondent and therefore, it is held that having collected the entire cost of land, penalty, interest and further demand of fee by describing it as delay condonation fee from the respondent is wholly unjustified and the same would amount to unjust enrichment by the Corporation. As the respondent already implemented the project with the approval of the Corporation, it is not open for the Corporation to demand any additional amount now, in the name of delay condonation fee. It is further held by the High Court that clauses of the agreement for sale relied upon by the learned senior counsel on behalf of the Corporation do not support its claim and as such the finding was recorded by the learned single Judge by allowing the writ petition and given direction to the Corporation as per para 15 of the judgment of the learned single Judge. The Division Bench of the High Court has dismissed the writ appeal by affirming the judgment and order of the learned single Judge. The correctness of the judgment and order of the Division Bench of the High Court is challenged in this appeal, urging various legal contentions and prayed to set aside both the judgments and orders of the learned single Judge and the Division Bench of the High Court.

12. Mr. P.P. Rao, the learned senior counsel appearing on behalf of the Corporation sought to justify the demand of condonation delay fee of the allotted plot from the respondent for non-implementation of project within two years as agreed by it which was impugned in the writ petition before the learned single Judge urging untenable grounds.

13. It was further contended by the learned senior counsel that both the learned single Judge as well as the Division Bench of High Court have set aside the demand of condonation of delay fee for delay caused in implementation of the project as per the rates at 2% and 3%, holding that the same is not permissible in law without noticing the clauses in the provisional allotment letter dated 20.6.2006. The clause 7 of the provisional allotment letter states that if payment of Rs.72,00,000/- as stipulated in condition number two extracted above is not made within 90 days from the date of receipt of allotment letter, the provisional allotment of plot shall stand cancelled and EMD paid shall remain forfeited by the Corporation. Clauses 18, 18A and 18B of the provisional allotment letter read thus :-

"18. You should implement the project envisaged within two years of taking possession of the plot. If within two years from the date of final allotment and taking possession of the plot the project is not implemented, the allotment will be cancelled.

IMPLEMENTATION MEANS:

18A. You should have implemented the project in full as envisaged. Where for bonafide reason, there is some delay in implementation, at least you should have implemented the project substantially. **SUBSTANTIAL IMPLEMENTATION MEANS;**

18B. You shall have completed Civil Works and also completed erection of most of the plant and machinery(at least 80% of the Project Cost)..."

14. Despite the aforesaid clauses, the Corporation was liberal in not cancelling the provisional allotment of plot made in favour of respondent for non-compliance of the aforesaid conditions rather it extended the period upto 30.11.2006 for making cost of allotted plot in its favour. For non-payment of the revised cost of Rs.84,27,600/- of the allotted plot to the Corporation and the non-compliance of the said conditions by the respondent, the Corporation on 16.12.2006 cancelled the provisional allotment of plot made in favour of the respondent. Further, the Corporation was also liberal in giving permission to the respondent to change the manufacturing activity originally proposed with further terms and conditions

imposed upon the respondent, the same also have not been complied with by the respondent.

15. Further, the learned senior counsel on behalf of the Corporation has contended that the learned single Judge has erroneously set aside the demand of 3% condonation fee for delay in implementation of the project by the respondent. If the respondent was not willing to pay the condonation delay fee for implementing the project, then the High Court should have seen that the Corporation had liberty to exercise its right and resume the land after cancelling the allotment of plot made in favour of respondent as per terms and conditions of the provisional allotment letter. The learned single Judge without examining the above relevant aspects and the terms and conditions incorporated in the provisional allotment letter and the agreement of sale between the parties, has erroneously held that the Corporation is not empowered to collect the condonation of delay fee at 3% from the respondent as it has already collected the penalty of 10% with interest on the belated payment made by the respondent and further directed the Corporation to execute the registered sale deed in favour of the respondent in respect of the allotted plot. The said order is affirmed by the Division Bench without noticing that the respondent is bound by the terms and conditions of the provisional allotment letter, agreement between the parties and earlier cancellation order passed by the Corporation for non-compliance of the condition i.e. not paying the amount within 90 days from the date of receipt of the allotment letter. Even after the restoration of allotment, further period was extended and even it was permitted to change its project, even though it has not implemented the original project within that period and the extended period, therefore, the Corporation keeping in view the extension of period granted, condonation of delay fee at 3% was demanded for non-implementation of the required project, if that was not acceptable to the respondent then the High Court should not have interfered with the demand made by the Corporation and it should have permitted the Corporation to invoke its right under clauses 2, 7 and 18(A) and 18(B) of the provisional allotment letter and clauses 3 and 9(c) of the Agreement of Sale extracted above and permitted the Corporation to resume the land from the respondent.

16. On the contrary Mr. Annam D.N. Rao, the learned counsel on behalf of the respondent sought to justify the finding and reasons recorded by the High Court in the judgment and order of the learned single Judge holding that there is no justification on the part of the Corporation to demand 3% condonation of delay fee from the respondent for non-implementation of the required project within the stipulated time for the reason that the delayed payment with interest and 10% penalty has already been collected by the Corporation in respect of the allotted plot. The same has been rightly set aside by the learned single Judge and the same

is affirmed by the Division Bench of High Court by assigning valid and cogent reasons in the impugned judgment and therefore, he submits that the impugned judgment does not call for interference by this Court.

17. Further, it is contended by the learned counsel for the respondent that the Corporation has extended time for similarly placed 150 allottees, for non-implementation of project within two years and collected interest and 10% penalty amount from them on the provisional allotment. Therefore, there is no justification on the part of the Corporation to demand penalty of 3% from the respondent towards the condonation of delay fee for non- implementation of the required project, which is unlawful on the part of the Corporation and its action is actually arbitrary and unreasonable, and the demand is not traceable to any legal provisions and the terms and conditions of the provisional allotment letter issued to the respondent by further extending the period by the Corporation in its favour including the change of manufacturing activity by revising its earlier project. We have very carefully examined the rival legal contentions urged on behalf of the parties with a view to find out as to whether the impugned judgments and order warrant interference of this Court. We have to consider the relevant clauses of the provisional allotment letter, which are extracted as above, particularly, the original allotment of plot was made in favour of the respondent on 20.6.2006 subject to payment of Rs.72,00,000/- within 90 days from the date of receipt of the allotment letter. Further, clause 7 of the said provisional allotment letter provides if the above said plot cost is not made within 90 days of receipt of the allotment letter the allotment of plot shall stand cancelled and the EMD paid shall remain forfeited by the Corporation. It is an undisputed fact that on 22.9.2006 the allotted plot in favour of the respondent was found to be more than the area mentioned in the provisional allotment letter and the area was revised as 14046 sq. mtrs. as also the cost payable was revised at Rs.84,27,600/- and despite the Corporation extending time for making payment by the respondent till 30.11.2006, the same was not paid. Therefore, the provisional allotment was cancelled by the Corporation for not making the payment within stipulated time. The representation was given on 3.2.2007 by the respondent for restoration of allotment of the plot and the same was accepted by the Corporation by informing the respondent that the restoration of the provisional allotment of plot will be done subject to the payment of total cost of plot with interest on belated payment and penalty of 10% of the land cost at the prevailing rate. The same is the concession given by the Corporation to the respondent as it could not have restored the provisional allotment of the plot as the said restoration of allotment was totally impermissible in law. The concession was made in favour of the respondent by executing the agreement of sale of the plot on 13.3.2007 and the possession of the plot was also given on the same day and within

two years from the date of possession of the said plot the project should have been implemented by the respondent. Despite the change of manufacturing activity from mosquito coil to heavy engineering project and bus-body manufacturing unit, the project was not implemented by the respondent within the said period. Therefore, the terms and conditions of the provisional allotment letter and the agreement of sale executed on 13.3.2007 are violated by it, therefore, the Corporation was entitled to cancel the allotment of plot and resume the land from the respondent, instead of doing so, the Corporation has again made concession by calling upon the respondent to pay the condonation fee at 3% which is totally impermissible in law. The same was challenged by the respondent taking untenable stand that it is not liable to pay the same in view of the fact that the plot cost with interest on delayed plot cost and 10% penalty has already been paid to the Corporation and the Corporation is not empowered to levy 3% of the land cost as condonation fee for delay in implementation of the revised project. If that condition was not acceptable to the respondent, the only course left open for Corporation was to cancel the allotment and resume the land and allot the same in favour of an eligible applicant in accordance with the rules prevailing in law in this regard by giving advertisement in the newspapers and inviting applications for allotment of the project in public auction, as the property is required to be sold in the above manner to get the market value of the industrial plot in the absence of allotment Rules is the law laid down by this Court in catena of cases. Instead of doing so, the Corporation has proceeded with to issue the demand notice of 3% of the plot cost towards the condonation fee for delay in implementation of the project. The same was not acceptable to the respondent and therefore it has approached the High Court seeking to quash the same contending that the Corporation has no right to demand such fee and therefore, it is not liable to pay condonation fee to the Corporation. The High Court should not have passed the impugned judgment and order quashing the demand notice and giving direction to the Corporation to register the sale deed in respect of the plot in favour of the respondent, undisputedly the respondent has not implemented the revised project within 2 years from the date of agreement though it was put in possession of the plot and granting permission to change the manufacturing activity and extended the period. Hence, the impugned judgment and order of the single Judge which was affirmed by the Division Bench of the High Court is liable to be set aside. Liberty is also given to the Corporation to take necessary action to invoke the relevant clauses of agreement of sale to cancel the allotment of allotted plot and resume the same by issuing notice to the respondent. It is also brought to our notice by the learned counsel Mr. Annam D.N. Rao on behalf of the respondent that the Corporation has extended time in favour of nearly more than 150 similarly placed plot allottees for not implementing the projects within 2 years and extending period by collecting

interest and 10% penalty amount on the allotment cost on provisional allotment of land but no condonation of delay fee for non- implementation of the project was levied and collected from them and therefore, the action of the Corporation is arbitrary and discriminatory. In view of above submissions, we are of the view that the Corporation is not diligent in disposing of the industrial plots acquired by it in accordance with law in favour of the eligible applicants keeping in view after acquiring the land of the owners for the purpose of the development of industrial estate and allot the same in favour of eligible persons to start industries on the allotted plots to generate employment to provide employment to the unemployed youth in the State. Having regard to the facts and circumstances of the case, the Corporation and its officers are very generous in extending time in favour of the allottees for implementing the projects on the allotted plots and not invoking its right for cancellation and resuming the plot for non-compliance with the terms and conditions of allotment letter and agreement and re-allot the same in public auction in favour of eligible persons. Therefore, it is a fit case for this Court to give direction to the CoD of the Telangana State to conduct a detailed investigation in the matter against all the officers who are involved in the cases of allotment of plots and extending the period in favour of the allottees for implementation of the projects for which purpose the plots are allotted and not cancelling the allotments made by the Corporation and resumed the plots and dispose of the same in accordance with law by taking steps. The CoD, Police must investigate the cases in the Corporation and take suitable action in this regard against officers involved in such cases.

18. With the aforesaid observation and direction to the State Government and CoD, Police, the appeal is allowed, the impugned judgments and orders of both the learned single Judge and the Division Bench of the High Court are set aside. The Corporation is directed to withdraw the demand of condonation of delay fee issued to the respondent and take further action for resumption of the plot allotted to the respondent. The CoD/CID of the State Government of Telangana represented by its Inspector General of Police or Director General or whomsoever concerned, is directed to conduct investigation and conclude the same and submit the report before the jurisdictional court within four months from the date of receipt of the copy of this judgment. The Registry is directed to send the copies to them and submit its compliance report for perusal of this Court.