

# RAJASTHAN HIGH COURT

Modern Syntex (India) Ltd.

Vs.

Rajasthan State I. D. I. Corpn. Ltd.

C.W.P. Nos. 5043 of 1991, 6222 of 1993 and 877 of 1996

(Shiv Kumar Sharma, J.)

19.10.2005

## ORDER

**Shiv Kumar Sharma, J.**

1. The petitioner in these writ petitions seeks to quash show cause notice issued by the respondent-Corporation to the petitioner in regard to payment of enhanced compensation. Since identical questions of law and facts are involved in all these three matters. I proceed to decide them by a common order.

2. For the convenience the facts of Writ Petition No. 5043/1991 are taken up. In the year 1976 vast chunks of land situated in villages near *Delhi-Alwar* Highway in *Alwar* District was handed over by the State Government to the Rajasthan State Industrial Development and Investment Corporation Ltd. (hereinafter to be referred as 'Corporation'). On December 14, 1976 a communication was issued by the Corporation to the petitioner regarding allotment of undeveloped land at Alwar and on May 10, 1977 a lease deed was executed between the Corporation and the petitioner and land measuring 2,38,714 square meters situated in Matsya Industrial Area was handed over to the petitioner. Clause 2(a) of the lease deed was as under:-

"2(a). The lessee will bear, pay and discharge all taxes, rates, charges and assessment which may during the lease term be assessed, charged or imposed in respect of the demised premises or the building to be erected thereupon."

The petitioner constructed a factory complex and installed machinery for the purpose of conducting its manufacturing operations in the year 1977 on the said land. In the meanwhile some land owners, not feeling satisfied with the compensation awarded by the Land Acquisition Officer, filed a reference before the concerned Court that

allowed the claim partly and increased the compensation payable towards the acquisition of the claimant's land. The appeal filed by the Corporation against the said order was dismissed on May 1, 1989. Prior to filing the appeal, the petitioner was informed by the Corporation that since the land had been acquired for the petitioner, therefore, the petitioner shall have to bear the expenses for filing appeal against the order of enhancement of compensation.

3. The petitioner, however, through its counsel informed the Corporation on April 23, 1983 that the terms and conditions of the lease were crystallized and stipulated in the lease deed which did not provide for enhancement of the lease rent or development charges in the event of enhancement of compensation for land acquired by the Government for the Corporation. The Corporation vide letter dated May 3, 1983 reiterated its earlier stand and stated that the petitioner was liable to bear the consequences of enhancement of compensation in view of Clause 2(a) of the lease deed. In response thereto the petitioner vide letter dated May 10, 1983 informed that though the petitioner was not liable or bound under the lease deed to pay any additional compensation, however, to maintain cordial relations it was prepared to bear the expenses for filing the appeal against the enhancement of compensation but the same should not be construed as an admission or acceptance of liability to pay additional compensation. Thereafter the Corporation asked the petitioner to give undertaking that it was prepared to accept the liability of enhanced compensation. In answer thereto the petitioner sent letter dated June 4, 1983 to the Corporation that the lease deed did not stipulate any such condition yet with the view to maintain cordial relations it prepared to undertake that it would abide by any decision that may be given by Arbitrator to be appointed as per Clause 3(h) and the matter could be referred for resolving the question as to whether the petitioner was liable for compensation so enhanced. The Corporation again asked the petitioner vide letter dated January 15, 1985 to pay the enhanced compensation. In response thereto the petitioner vide letter dated January 17, 1985 stated that the lease deed did not envisage any payment by the petitioner other than what was stipulated therein, however, the petitioner was prepared to undertake that it would abide by any decision that may be taken by the Arbitrator to be appointed under Clause 3(h) of the lease deed.

4. After the dismissal of appeal the Corporation wrote letter to the petitioner on July 24, 1990 asking the petitioner to deposit the amount, paid by the Corporation as enhanced compensation. Similar demand was made vide letter dated August 23, 1990,

which was followed by another letter dated August 30, 1990, wherein it was stated that in case the petitioner failed to pay the amount of enhanced compensation action would be taken against it in terms of the lease deed and the allotment letter. Aforementioned demand for payment of enhanced compensation was repeated by the Corporation vide letter dated June 4, 1991, wherein it was further stated that in the event of failure of petitioner to make payment of the said amount the Corporation would file a suit for cancellation of allotment and taking back the possession of the land. The petitioner again reiterated its earlier contention that the matter could be referred to Arbitrator and the petitioner was prepared to abide by any decision that may be given by the Arbitrator. The Corporation then informed the petitioner vide letter dated July 5, 1991 that the Corporation would be taking action in accordance with law for recovering its said dues. Thereafter issued show cause notice dated July 15, 1991 stating that the petitioner has not deposited the amount Rs. 58,004,05 as demanded by the Corporation vide letter dated June 4, 1991. On the said premise it was stated that the Corporation in exercise of powers under Clause 3(a) of the lease deed decided (a) to cancel the allotment and determine the lease deed; (b) to re-enter the premises and take back the possession of the land; (c) forfeit the amount paid so far. Thirty days' time was granted to petitioner to show cause. The petitioner did not choose to file reply to the show cause notice but filed the instant writ petitions with the following prayer:-

(a) The impugned notice orders dated July 15, 1991, July 5, 1991, June 4 1991, August 23, 1990, August 30, 1990 and July 24, 1990 may kindly be declared illegal, invalid, *ultra vires* and unconstitutional and may be quashed and set aside and the Corporation may be directed not to take recourse to any coercive measures like determination of lease deed, re-entry into the demise premises and forfeiture of the amount for realising the impugned demand. In case any such action is taken during the pendency of the writ petition the same may kindly be declared as illegal and unconstitutional and may be quashed and set aside;

(b) The respondent-Corporation may be directed to refer the dispute in question for arbitration in terms of Clause 3(h) of the lease deed dated May 10, 1977.

5. Respondent in its return pleaded that the Corporation was trying to recover the amount which it had paid to the cultivators for the land on which the petitioner-company has installed factory. It was further stated that the action of the Corporation

was neither arbitrary nor violative of Article 14 of the Constitution.

6. Mr. Sunil Nath, learned counsel for the petitioner, vehemently canvassed that the compensation paid by the Corporation to the cultivators was the liability of the Corporation and Clause 2(a) of the lease deed does not say that if any compensation is paid by the Corporation that shall be payable by the petitioner. It is further contended that the writ petition under Article 226 of the Constitution against the arbitrary action of the Corporation is maintainable and the petitioner was not bound to go before the Arbitrator in view of Clause 3(h) of the lease deed. It is also urged that since the writ petitions were admitted long back, the petitioner now cannot be asked to avail the alternative remedy. Learned counsel in support of its contentions placed reliance on *M/s. Man Industrial Corporation v. RSEB* <sup>1</sup> *L. Hirday Narain v. Income-tax Officer, Bareilly* <sup>2</sup> *Modern Steel Industries v. State of U.P.* <sup>3</sup> *Koshy Varghese v. Hindustan Paper Corporation Ltd.* <sup>4</sup> *Harbans Lal Sahnia v. Indian Oil Corporation Ltd.* <sup>5</sup> *M/s. Samrat Bottlers Pvt. Ltd. v. State of Rajasthan* <sup>6</sup> *Ceat Tyres of India Ltd. v. Union of India* <sup>7</sup> *Tata Yodogawa Limited v. Union of India* <sup>8</sup> *Thressiamma v. Union of India* <sup>9</sup> *Modi Carpets Limited v. Union of India* <sup>10</sup> *Calcutta Discount Co. Ltd. v. Income-tax Officer* <sup>11</sup> and *M/s. East India Commercial Co. Ltd. Calcutta v. Collector of Customs, Calcutta* <sup>12</sup>

7. Per contra, Mr. Ajeet Bhandari and Mr. S. K. Lahari, learned counsel for the respondent urged that Clause 2(a) of the lease deed includes the amount of compensation paid by the Corporation. It is further contended that the writ petitions are not maintainable in view of the ratio indicated in *ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.*, <sup>13</sup>

8. I have pondered over the rival submissions and carefully scanned the material on record.

9. As already noticed the lessee in accordance with Clause 2(a) of the lease deed is to bear, pay and discharge all taxes, rates, charges and assessment which may during the lease term be assessed, charged or imposed in respect of the premises handed over to the petitioner or the building to be erected thereupon. Unquestionably the land was acquired by the State Government for the petitioner and the petitioner gave his consent to bear the expenses of the appeal that was filed in the High Court by the State against the order whereby compensation was enhanced. Since the enhanced compensation was paid by the State for the land utilized by the petitioner, the demand raised by the

Corporation in regard to enhanced compensation from the petitioner cannot be termed as unjustified.

10. As stated earlier the Corporation granted thirty days' time in the impugned notice to the petitioner to show cause against the proposed action but the petitioner did not choose to reply the notice and approached this Court seeking quashing of the said notice. A further prayer is also made to refer the dispute to Arbitrator in terms of Clause 3(h) of the lease deed. I am of the opinion that the petitioner ought to have taken shelter under the provisions of Arbitration Act, 1940 which was in force at that point of time. Under Article 226 the matter cannot be referred to Arbitrator. Their Lordships of the Apex Court in *ABL International Ltd. v. Export Credit Guarantee Corporation of India Ltd.* (supra) indicated that if the parties to a dispute had agreed to settle their dispute by arbitration and if there is an agreement in that regard, the Courts will not permit recourse to any other remedy without invoking the remedy by way of arbitration, unless of course both the parties to the dispute agree on another mode of dispute resolution. In *M/s. Bisra Stone Lime Co. Ltd. v. Orissa State Electricity Board*,<sup>14</sup> the Apex Court observed in para 24 as under :-

"It is then submitted that this Court should not use its discretion in favor of arbitration in a matter where it is a pure question of law as to the power of the Board to levy a surcharge. This submission would have great force if the sole question involved were the scope and ambit of the power of the Board under Sections 49 and 59 of the Act to levy a surcharge, as it was sought to be initially argued. The question in that event may not have been within the content of Clause 23 of the agreement. But all questions of law, one of which may be interpretation of the agreement, need not necessarily be withdrawn from the domestic forum because the Court has discretion under Section 34 of the Arbitration Act or under Article 226 of the Constitution and that the Court is better posted to decide such questions. The arbitration Clause 23 is a clause of wide amplitude taking in its sweep even interpretation of the agreement and necessarily, therefore, of Clause 13 therein. We are therefore, unable to accede to the submission that we should exercise our discretion to withhold the matter from arbitration and deal with it ourselves."

11. Coming to the cases cited by Mr. Sunil Nath, I noticed that in *Modern Steel Industries v. State of U.P.* (supra) the question of vires of Regulation 17(ii) was on the

avail for scrutiny, but the High Court without addressing itself to the vital questions has observed that the appellant may seek the remedy by way of arbitration. In *L. Hirdaya Narain v. Income-tax Officer, Bareilly*, (AIR 1971 Supreme Court 33) (supra) without filing the mandatory revision the writ petition was moved and High Court entertained the writ petition. It was held that High Court was not justified in dismissing the petition, which was entertained and was heard on the merits, as not maintainable.

12. It is not necessary for me to discuss other authorities cited by learned counsel for the petitioner. Suffice it to say that after pendency of the writ petition for more than a decade the petitioner cannot be asked to avail alternative remedy. But even on merits. I do not find these cases fit for invoking the powers under Article 226 of the Constitution.

13. For these reasons, the writ petitions being devoid of merit stand dismissed without any order as to costs. Interim orders passed during pendency of writ petitions stand vacated.

Petitions dismissed.

Cases Referred.

1. (1985 RLR 830): (AIR 1986 Raj137)
2. (AIR 1971 SC 33)
3. ((2001) 10 SCC 491
4. (AIR 2000 Kerala 363)
5. ((2003) 2 SCC 107: (AIR 2003 SC 2120)
6. (1988 (2) RLR 577)
7. (1992 (62) ELT 517 (Bom))
8. (1987 (32) ELT 521 (Pat))
9. (2000 (120) ELT 602 (Ker))
10. (1997 (91) ELT 285 (Delhi))
11. (AIR 1961 SC 372)
12. (AIR 1962 SC 1893)
13. (2004) 3 SCC 553
14. (AIR 1976 SC 127)