

L.MOHAPATRA, J & B.P.RAY, J.

O.J.C. NO.4023 OF 2001(Decided on 22.04 2010)

M/S. FERRO ALLOYS CORPORATIONPetitioner
LTD & ANR

.Vrs.

STATE OF ORISSA & ORSOpp.Parties

CONSTITUTION OF INDIA, 1950 – ART.226.

For Petitioners – M/s. A.K.Parija, S.P.Sarangi, B.C.Mohanty,
& P.P.Mohanty.

For Opp.Parties – Advocate General &
Additional Standing Counsel.

L.MOHAPATRA, J. Petitioner No.1 is a Company and petitioner No.2 is the Resident Manager thereof. They have filed this writ application assailing the legality of the order dated 15.3.2001 in Annexure-7 passed by the Government of Orissa in General Administration Department resuming the land allotted in favour of the petitioner No.1 in Mouza Jaydev Vihar, Bhubaneswar and directing the petitioner to remove the structures and materials from the demised premises within a specified time.

2. The petitioner No.1 is a Public Limited Company having its plant at Randia, in the district of Bhadrak. It has also chromite mines granted on lease by the State Government at different places. In order to have a better coordination with different functionaries of the State, the office of the petitioner-Company was established in Bhubaneswar in the year 1972. The said office was running in a rented house. The State Government during mid 80's started granting lease to established industrial houses for construction of their own office buildings in Bhubaneswar and accordingly the petitioner No.1 approached the State Government for allotment of a piece of land for construction of its Company office and Guest House. The State Government was pleased to allot a piece of land measuring 237 ft./274ft. in Mouza Jaydev Vihar, Bhubaneswar over Plot No.GD-2/10 on long term lease basis. The lease deed was executed on 19.1.1988 and a premium of Rs.14,90,000/- had been paid by the petitioner No.1 before execution of the lease deed. Possession of the said land was handed over to the petitioner No.1 on 24.5.1988 and in terms of the lease, the petitioner No.1 was required to construct its office and Guest House within a period of three years. During the said period the Ferro Alloys Industry had gone into a severe depression and all Companies producing Ferro Alloys were sustaining huge loss as that of the petitioner. Therefore, it was not possible on the part of the petitioner No.1's Company to invest money for construction of its office and Guest House in Bhubaneswar and consequently there was delay. Though the petitioner had obtained approved plan from the Bhubaneswar Development Authority for construction of the house, the same could not be constructed because of the financial stringency. Applications were filed before the Bhubaneswar Development Authority for extending the validity of the approved plan from time to time. The last extension was granted on 9.3.1998 which was valid up to 29.3.2001. While the matter stood thus, the petitioner received a letter on 20.9.1999

requiring it to show cause as to why the lease should not be determined and the land should not be resumed for non-compliance of the provision contained in the lease deed which requires the petitioner to make the construction within three years from the date of execution of the lease deed. A reply to the said notice was submitted by the petitioner explaining the reasons for delay but without considering the reasons assigned in the reply, the impugned order in Annexure-7 was passed for resumption of the land. In course of hearing, it was submitted by the learned Senior Counsel Shri A.K. Parija that before resumption of the land in Annexure-7, the construction work had already started and without verifying the same, the order in Annexure-7 was passed illegally without any further enquiry.

3. A counter affidavit has been filed by the opposite parties wherein execution of the lease deed in favour of the petitioner No.1 is admitted. It is the stand of the opposite parties in the counter affidavit that the petitioner No.1 was required to complete the building on the allotted plot in every respect within 36 months from the date of execution of the lease deed or within the extended time, if permitted. However, the petitioner No.1 did not start the construction work for 13 years from the date of execution of the lease deed. On the request of the petitioner, when a joint enquiry was made on 30.12.2000 in presence of petitioner No.2, Land Officer, G.A. Department and the concerned Revenue Inspector, it was found that the land was lying vacant and there was only a boundary wall and an out house. The petitioner No.1, therefore, having violated the conditions of the lease, notice was issued to show cause as to why the land shall not be resumed and on consideration of the reply given by the petitioner No.1, a decision was taken to resume the land on the ground of non-compliance of the conditions of the lease deed. Learned Advocate General appearing for the opposite parties contended that there being clear violation of the conditions of the lease deed, there was nothing wrong in resuming the land after due notice to the petitioner.

4. Annexure-1 is the deed of lease which was executed on 19.1.1988. Clause 2(iii) of the lease is as follows:

“(iii) That he shall, at his own expense and with the previous permission in writing of the lessor, erect upon the land leased in a substantial and workmanlike manner with new and sound materials and to the satisfaction of lessor or his authorized representative, a building for use as a residential house with all requisite and proper walls, sewers drains and other conveniences as shall be approved by the lessor or his authorized representative, and shall complete the same in all respects fit for occupation within thirty-six months from the date hereof or within such further time, if any as the lessor may allow.”

As is evident from the said clause, the petitioner was required to complete the construction of the building within 36 months from the date of execution of the lease deed or within such further time, if any, as the lessor may allow. Admittedly the office building and the Guest House had not been constructed during this period even though approval of the Bhubaneswar Development Authority had been obtained for the purpose. The reason assigned by the petitioner is that the demand of Ferro Alloys manufactured by the petitioner-Company was not there and the Company was passing through severe financial crisis for which it was not possible to invest money for construction of office and Guest House at Bhubaneswar. But there is no dispute that the boundary wall and the out house had already been constructed within the said period. Though the State Government was aware of the fact that the office building and the

Guest House had not been constructed within the time stipulated in the lease deed, they could have also initiated proceeding for resumption much earlier instead of 2001 and therefore the conduct of the State Government in not initiating a proceeding for resumption of the land immediately after expiry of the period of 36 M/S. months otherwise proves that the lessor never intended to terminate the lease and presumption is that time was extended for construction of the building which was within the competency of the lessor. Apart from the above, it is also found that though the order of resumption was passed on 15.3.2001, the construction of the office building and the Guest House had already started in January, 2001 and this fact was within the knowledge of the lessor. Therefore, without considering the fact that the construction of the office building and Guest House had already been started, the order of resumption could not have been passed. The further admitted position is that in the meantime the office building and the Guest House have been completed, occupied and are being used. Will it not be justified on our part to sustain the order of resumption when the building has been completed and the same has been put to use for almost eight years by now. We are of the view that it would cause great prejudice to the petitioner No.1 if the said order of resumption is sustained.

5. The learned Advocate General in support of the order of resumption submitted that this Court should not interfere in a contractual matter in exercise of its jurisdiction under Article 226 of the Constitution of India. It is true that under the agreement, the petitioner was required to complete the construction within 36 months from the date of execution of the lease deed and it had not done so excepting constructing the boundary wall and out house. But the State Government in the appropriate Department also did not take any step for resumption for 13 years thereby giving an impression to the petitioner that it could construct the office building and the Guest House even in the year 2000-2001. Admittedly the construction work had started in January, 2001 and without taking this fact into consideration, the order of resumption was passed in March, 2001. Now that the entire building has been completed and has been made to use, we are of the view as stated earlier that great prejudice would be caused to the petitioner if the order of resumption is allowed to stand which had been passed without considering the fact that by the time the order was passed, the construction of the office building and the Guest House had already started.

6. We, therefore, allow this writ application, set aside the order in Annexure-7 directing resumption of the land.

Writ petition allowed.