



IN THE HIGH COURT OF SIKKIM AT GANGTOK

(Civil Extra Ordinary Jurisdiction)

DATED : 04-12-2013

CORAM
HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

Writ Petition (C) No.23 of 2013

M/S SNOWLION AUTOMOBILE P.LTD.,
FORMALLY KNOWN AS M/S DENZONG
AUTOMOBILES (P) LIMITED,
TADONG, P.O. & P.S. GANGTOK,
SIKKIM.

Petitioner

VERSUS

THE DEPARTMENT OF COMMERCE
AND INDUSTRIES,
GOVERNMENT OF SIKKIM

Respondent

FOR THE PETITIONER : MS. LAXMI CHAKRABORTY WITH
MS.ROGENA GURUNG, ADVOCATES

FOR THE RESPONDENT : MR. J. B. PRADHAN, ADDITIONAL
ADCOATE GENERAL WITH MR. S.
K. CHETTRI, ASSISTANT GOVT.
ADVOCATE.
MR. UGEN D. BHUTIA, LEGAL
RETAINER FOR THE COMMERCE
AND INDUSTRIES DEPARTMENT,
GOVT. OF SIKKIM.



ORDER (ORAL)

Wangdi, J.

Heard learned Counsel for the parties.

2. Shorn of other facts which are not germane for determining the questions involved in the case, it is the petitioner's case that it had been allotted with a plot of land measuring 0.56 acres situated at Tadong, East Sikkim, by the State Respondent by letter bearing No. 730 dated 24.06.1981 under the terms and conditions of a Lease Agreement dated 15.02.1989 for a period of 30 years. After such allotment, considerable development was made by him on the land by erecting structures to set up an automobile workshop. We find the relevant averments in this regard at paragraph 6 of the Writ Petition.

3. On the expiry of the period of lease, the Respondent State by resorting to Clause 4(2)(xi) thereof opted not to renew the lease and to take over the land. This decision of the Respondent was conveyed by letter bearing No.8/SGO/38/DI/96-97/105 dated 17.05.2011. By the said letter addressed to the Managing Director of the petitioner



company, it was conveyed that the request on behalf of the company for renewal of lease/further extension of lease period could not be entertained and that the land be handed over on or before 22.06.2011 and to pay the arrear lease rent for the period 01.01.2011 to 22.06.2011. It is against this that the present Writ Petition has been preferred.

4. The Respondent has contested the Writ Petition by filing a counter affidavit by which it has been stated that their action is an exercise of its option provided under the Lease Agreement. That the issues raised by the petitioner in the Writ Petition is purely contractual and, therefore, the Writ Petition deserves to be dismissed as not maintainable. It is further averred that the petitioner shall be entitled to the remedy as sought for by it. It is submitted that even relief sought for by the petitioner in the Writ Petition is for reasonable compensation after proper valuation of the developments made and the constructions raised on the land as provided under Clause 4(2)(xi) of the Lease Agreement.



5. Before entering into the merits of the case, it is relevant to note that on 02.08.2013 this Court had stayed the operation of the impugned order until further orders. This was later on modified to the extent that the Respondent shall be at liberty to proceed with the valuation of the compensation entitled to the petitioner under the terms and conditions of the Lease Deed filed as Annexure P1 to the Writ Petition.

6. Upon consideration of the pleadings, the Annexures to the Writ Petition and the counter affidavits and, the oral arguments advanced during the course of arguments, I am of the view that the Writ Petition would not be maintainable. In substance the petitioner seeks for specific performance of the Lease Deed particularly, the terms and conditions contained in Clause 4(2)(xi). Clause 4(2)(xi) is reproduced below for convenience :-

“4(2)(xi) The Lessee shall, on the termination of this lease, peaceably yield up the industrial plot and the buildings thereon unto the Lessor, if not, renewed by the Lessor, provided that reasonable compensation as mutually agreed upon by the parties is paid to the Lessee by the Lessor on development of land and construction of buildings.”



8. The primary reliefs sought for by the petitioner in the Writ Petition are also reproduced below :-

“B (i) A writ of or in the nature of Mandamus directing the Lessor (Respondent) to determine reasonable compensation payable to the Lessee (Petitioner) on development of land in being and construction of buildings thereon.

B(ii) A writ in the nature of mandamus declaring that the Lessee (Petitioner) is not bound to yield up industrial plot and the buildings until reasonable compensation is agreed upon the parties and paid to the Lessee by the Lessor on development of land and construction of building thereon.

B (iii) An order restraining the Respondent, its servants or agents giving effect and further effect to the order dated : 05.07.2013 passed by the District Collector, East at Gangtok until reasonable compensation is calculated on terms mutually agreed upon Lessor and Lessee and such payment is made to the Lessee by Lessor for development of land and construction of buildings thereon.

.....”

9. As would be evident from paragraph B(i), B(ii) and B(iii), all that the petitioner seeks is for reasonable compensation against development of the land as well as the constructions raised. In so far as B(iv) is concerned, I am of the firm view that it cannot be granted in the present proceedings as it falls within the domain of contract and, in terms of Clause 4(2)(xi) of the lease deed, clearly a matter



of discretion falling within the jurisdiction of the Respondent.

10. The State Respondent in their counter affidavit have not denied that the petitioner is entitled to a reasonable compensation and that in order to assess the compensation, necessary steps in terms of order dated 12.11.2013 have already been taken. This fact is also not denied on behalf of the petitioner.

11. Ms. Laxmi Chakraborty, learned Counsel for the petitioner, submits that apart from what would have been placed in the writ petition she has nothing further to state and that she would abide by the decision of this Court.

12. In view of the stated position on behalf of both the parties, as have been alluded to, nothing further remains to be determined in the Writ Petition except to direct the Respondent that the compensation that they would assess be made reasonable and that during process of valuation the presence of either the petitioner or his representative



be ensured by issuing necessary notice indicating the date and time the valuation will be done.

13. It is further directed that Considering the proviso contained in Clause 4(2)(xi), the petitioner shall not be compelled to hand over possession of the land in question and the buildings unless reasonable compensation as mutually agreed upon is paid to the petitioner.

14. The entire exercise of valuation shall be completed within a period of 30 days from today. The petitioner shall give all assistance in ensuring that the order is complied with within the period stipulated.

15. With these directions, the Writ Petition stands disposed of.

16. No order as to costs.

Sd/-
(**S. P. Wangdi**)
Judge
04.12.2013

Approved for Reporting : Yes

Internet : Yes

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