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Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 1349 OF 2012

PETITIONERS :

1. M/s A.S. Fun Private Limited, a company incorporated under the relevant provisions of the Companies Act, 1956 having its head office at Agrawal Bhawari, Vidya Nagar, Bilaspur - 495 001 (CG) through its Director, Shri Ashok Kumar Agarwal.
2. Ashok Agarwal, aged about 44 years, son of Late Jagmohan Dos Agarwal, resident of Agarwal Bhawan, Vidya Nagar, Bilaspur (CG), Shareholder and Director of M/s A.5. Fun Pvt. Ltd., Bilaspur (CG).

J.R.No. WP(C) 1349/12
Presented by Shri V.K. Agarwal
dated 23-7-12

Versus

RESPONDENTS :

1. State of Chhattisgarh, through the Secretary, Department of Industries, D.K.S. Bhawan, Secretariat, Raipur (C.G.)
2. Chhattisgarh State Industrial Development Corporation Limited, a public sector undertaking of the State of Chhattisgarh and a company incorporated under the Companies Act, 1956 having its registered office at Jeevan Bima Marg, Pandri, Raipur-492 004, through its Managing Director.



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3. M/s Grand Motors, a partnership firm having its principal office, near Tifra Railway Crossing, Bilaspur (CG).
4. Station House Officer, Police Station Civil Lines, Bilaspur (CG).

WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA



327

HIGH COURT OF CHHATTISGARH : BILASPUR

S.B.:HON'BLE SHRI JUSTICE MANINDRA MOHAN SHRIVASTAVA

Writ Petition (C) No.1349/2012

Petitioners

M/s. A.S. Fun Private Limited and
another

Versus

Respondents

State of Chhattisgarh and others

ORDER

POST ON 31st OCTOBER, 2014

Sd/-
Manindra Mohan Shrivastava
Judge

30 / 10 / 2014

228

HIGH COURT OF CHHATTISGARH : BILASPUR

S.B.:HON'BLE SHRI JUSTICE MANINDRA MOHAN SHRIVASTAVA

Writ Petition (C) No.1349/2012

Petitioners

M/s. A.S. Fun Private Limited and another

Versus

Respondents

State of Chhattisgarh and others

Appearance:

Shri Vijay Hansariya, Senior Advocate along with Shri B.D. Guru, counsel for the petitioner.

Shri Satish Gupta, Govt. Advocate for the State/respondent No.1 & 4.

Shri Ayaz Naved, counsel for respondent No.2.

Shri R.K. Singh, counsel for respondent No.3

ORDER

(Passed on 31st October, 2014)

1. This petition under Article 226 of the Constitution of India is preferred by the petitioner, a Company incorporated under the Companies Act, 1956, praying for issuance of writ of mandamus to 2nd respondent to immediately resume possession of the subject land from 3rd respondent, restrain it from starting or continuing any construction over the subject leasehold land. The petitioner has further prayed for issuance of writ of mandamus commanding 2nd respondent to deliver actual physical possession of the lease hold land to the petitioner. The petitioner has also prayed for an order to restrain 3rd respondent from raising any construction over

329

the subject leasehold land and has also prayed for a direction to State Authority to decide appeal of 3rd respondent.

2. Factual matrix leading to filing of instant petition by the petitioner, which are relevant for adjudication of controversy involved in the petition, as adumbrated in the pleadings of the respective parties, are stated infra.

Respondent No.2 Chhattisgarh State Industrial Development Corporation (in short "CSIDC") is a public sector undertaking of the State of Chhattisgarh, incorporated as Company under the Companies Act, 1956. CSIDC has been established as an instrumentality and Agency of the State with an object to regulate and develop industrial area/estate over the land allotted/transferred to it by the State for these purposes. CSIDC is engaged in developing basic infrastructure necessary for development of industrial area and has the authority to allot industrial plots within the industrial area to entrepreneurs who are desirous of setting up industrial unit/factory/industries.

3rd respondent made an application on 18th January, 2005 for allotment of an industrial plot admeasuring 2.42 acres situated at Sector-C Industrial Area Sirgitti, Bilaspur, for establishing a car dealership showroom for sales and service. A lease deed was executed in favour of 3rd respondent on 3rd January, 2006 granting lease for a period of 30 years. Possession of the leasehold land was handed over to it on 22.7.2006. It was, however, alleged by CSIDC that the 3rd respondent has violated terms and conditions of lease. This led to issuance of notice requiring it to submit a satisfactory reply, failing which lease may be cancelled. According to CSIDC, respondent No. 3 failed to come out with any plausible explanation /clarification, which eventually led to cancellation of lease granted in favour of respondent No.3 vide

330

order dated 27.7.2007 (Annexure R-2/3). Aggrieved by cancellation, 3rd respondent preferred an appeal before the Chairman, CSIDC, wherein, the Chairman passed an order on 19.9.2007, granting 6 months time to the 3rd respondent to start commercial activity. Vide communication dated 8.10.2007, 3rd respondent was informed regarding decision that if it fails to start commercial activity within the extended period, the cancellation order dated 27.7.2007 shall come into force and effect. It is the case of CSIDC that when the site was inspected, it was found that work was not completed and inspection report was communicated vide letter dated 9.6.2008 (Annexure R-2/7) to the General Manager, Land Allotment, CSIDC by the Manager, CSIDC Branch Office Tifra, Bilaspur. Further case of the CSIDC is that even during extended period of 6 months, 3rd respondent failed to construct showroom and start commercial activity, but it again filed and appeal on 3.6.2008 before the Chairman, CSIDC, praying for grant of further time of one year to start commercial activity, taking cognizance of which, the Chairman passed an order on 18.6.2008 on its note-sheet granting further time of 6 months. The Minister for Commerce and Industries, Govt. of Chhattisgarh, however, called for the records of CSIDC and after examining the records, recorded in the order sheet that as the 3rd respondent failed to start commercial activity within the extended period of 6 months, the cancellation order dated 27.7.2007 has come into force and, therefore, possession be taken back from 3rd respondent. According to CSIDC, in exercise of its power of re-entry under Clause 27 of the lease deed, a notice was given to 3rd respondent on 3.9.2008 (R -2/11) informing that as the lease cancellation order dated 27.7.2007 has become enforceable, CSIDC through its officer has taken back the possession of the land and the building, plant and machinery are now required to be removed. A panchnama (Annexure R-2/12) is also said to have

331

been prepared on 27.12.2008 that a display board stating that the land is under the possession of the CSIDC has been installed in presence of witnesses.

3. In the meantime, the petitioner had applied for allotment of 2.42 acres of land in response to which a Letter of Intent (for short "LOI") was issued to it on 9.9.2008 (Annexure R-2/13). It is the case of the petitioner that the entire amount as per LOI was deposited by it.

However, thereafter the Chairman, CSIDC again called for the records relating to allotment of said land to 3rd respondent and ordered on the note sheet on 30th September, 2008 that its earlier order dated 18.6.2008 granting further extension of 6 months in favour of respondent No.3 is reiterated and also recorded in the note sheet to cancel LOI issued in favour of petitioner. This order on note sheet was placed before the Minister concerned who also approved, as reflected from relevant note sheet (Annexure R-2/14). However, no orders were issued much less communicated to any of the parties.

4. While matter stood thus, the petitioner filed a Writ Petition (C) No.6199/08 aggrieved by inaction on the part of CSIDC towards execution of lease deed, despite issuance of LOI, wherein orders was passed on 7.11.2008 disposing of writ petition with a direction to CSIDC to decide petitioner's representation regarding execution of lease deed. CSIDC, thereafter, moved an application seeking extension of time for compliance of order dated 7.11.2008. Thereafter, a lease deed was executed on 22.12.2008 in respect of land admeasuring 2.42 acres, in favour of petitioner. 3rd respondent was informed vide letter dated 23.12.2008 (Annexure R-2/15) that the possession of the said plot has already been taken from it on 3.9.2008 and any construction made thereon by respondent No.3 would be illegal. Vide letter dated 29.12.2008



332

(Annexure R-2/16) CSIDC required 3rd respondent to remove its construction.

At this stage, 3rd respondent preferred a representation/appeal to the Govt. on 29.12.2008. Petitioner, thereafter, filed this writ petition ventilating his grievance that despite execution of lease deed and deposit of huge amount of premium with the CSIDC, the possession of the land is not being handed over to it. The petitioner has come out with a case that once lease has been executed in its favour which still subsists and has not been cancelled, CSIDC is obliged under the law to act in a just and fair manner and hand over the possession of the leasehold land to it and delivery of possession cannot be deferred indefinitely merely because the 3rd respondent has filed an appeal/representation and the same has remained pending. As, according to the petitioner, 3rd respondent, despite cancellation of its lease and possession having been taken back by the CSIDC on 3.9.2008, has trespassed over the land in dispute, started raising constriction without any authority, a proper direction be issued to the CSIDC to take action against respondent No.3 and at the same time, 3rd respondent be restrained from carrying out any construction over the leasehold land.

5. Learned senior counsel appearing for the petitioners argued in extenso before this Court and raised manifold submissions in support of prayer made in the writ petition. It has been contended that 3rd respondent failed to commence commercial activity as per the terms and conditions of lease granted in its favour which led to rightful cancellation of lease deed by CSIDC vide order dated 27.7.2007. Appeal preferred by 3rd respondent was allowed granting him further time of 6 months to start commercial activity. Yet respondent No.3 failed to comply with the same. Therefore,

immediately after expiry of 6 months, the lease cancellation order dated 27.7.2007 came into force and became effective. He further contended that without there being any provision for further appeal under the governing rules relating to allotment of industrial plot, further appeal/representation was made before the Chairman CSIDC and the Chairman without any competency recorded in the note-sheet for further extension of 6 months which never fructified into any order passed by the competent authority and remained there only on the note sheet, incapable of taking any effect in the eye of law . In any case, that was not approved by the Minister who directed possession to be taken back pursuant to which CSIDC informed 3rd respondent and took back the possession on 3.9.2008. The 3rd respondent without any authority and sanction of law, trespassed over the leasehold land in respect of which LOI was already issued to the petitioners. Learned senior counsel for the petitioners also submitted that 3rd respondent, while completely failing to act in accordance with terms and conditions of lease deed which was granted to it, kept on making representations to the Chairman and to the Authorities of the State Govt. and both the Chairman as well as the Minister of the concerned department acting contrary to provision of rules relating to allotment and without there being any further provision of appeal, recorded in the order sheet granting further extension which was wholly impermissible under the law. Relying upon the several authorities of the Supreme Court in the case of **Bachhittar Singh Vs. State of Punjab and another** (AIR 1963 SC 395), **Sethi Auto Service Station and another Vs. Delhi Development Authority and Ors**, [(2009) 1 SCC 180] and **Shanti Sports Club and another Vs. Union of India and Ors.**[(2009) 15 SCC 705], it has been vehemently urged that the decision taken in the note-sheet and files were never translated into action by issuance of any order by any of the those authorities viz.

Chairman, CSIDC, Minister concerned of the State Govt., nor ever communicated to any of the authorities much less to the petitioners. Therefore, the decision taken on the note-sheet which never fructified into any order have no existence in the eye of law and such decision taken on note sheet do not come in the way of petitioner nor it provide any justification to CSIDC to withhold delivery of possession to the petitioner. Learned senior counsel concluded his submissions by submitting that as there exists and subsists a valid lease granted in favour of the petitioner by CSIDC which has not been cancelled till date and the petitioner has complied with each and every term and condition of lease deed and has deposited huge amount towards premium, CSIDC, as an instrumentality of the State, is obliged under the law to handover the possession by removing illegal possession of 3rd respondent.

6. Learned counsel for the State submitted, in brief, that the dispute is mainly amongst the petitioner and CSIDC as also 3rd respondent and submits that as far as the State Govt. is concerned, the State has only acted in compliance of judicial order passed in Writ Petition (C) No.7644/11. Learned counsel for the State further submitted that pursuant to direction given by the Minister in- charge, CSIDC has taken back the possession from 3rd respondent and as the lease has been granted in favour of the petitioner which subsists, it is the duty of CSIDC to handover the possession of the land to the petitioner after following due procedure. At the same time, it has been submitted that representation dated 29.12.2008 of the 3rd respondent submitted before the Govt. has been treated as appeal and the proceedings are yet not completed nor final orders have been passed and the note sheet are only part of the proceedings and cannot be said to be an order. Learned counsel for the State further submitted that complete copies of note sheets have not been filed by the 3rd

respondent and the 3rd respondent is trying to mislead the Court by submitting that appeal has been decided in his favour, whereas the matter is still pending with the State Govt. However, as the lease has been granted in favour of petitioner, it is for the allotting authority/CSIDC to make necessary arrangement for handing-over possession of the land to the petitioner. Learned counsel for the State while submitting that no final order has so far been issued by the State in the matter of appeal/representation of 3rd respondent, has also submitted that the order and action of CSIDC is justified as respondent No.3 has violated terms and conditions of lease deed, it failed to commence commercial activity within the extended time granted to it.

7. Learned counsel for the respondent-CSIDC has contended that the 3rd respondent was granted lease with the specific terms and conditions that it will have to commence commercial activity within a period of one year, but the respondent No.3 failed. Thereafter, a notice was given to it and when no plausible explanation was put forth, lease was canceled on 27.7.2007. On appeal being filed, 3rd respondent was granted further time of 6 months to commence commercial activity and when an inspection was got made it was found that respondent No.3 has failed to commence commercial activity within further extended period. Thereafter, the order of cancellation of lease deed has been enforced and made effective and possession of the plot was taken on 3rd September, 2008. Thereafter, respondent No.3 has made various representation /appeals and though certain decisions were taken on note sheet and file, no orders have been passed in favour of respondent No.3, but respondent No.3 has again illegally trespassed over the leasehold land for which various notices have been given to it. It is further submitted that lease of the petitioner has not been cancelled . Respondent No.3 is falsely claiming that

it is not a small scale industry. The order of cancellation dated 27.7.2007 is just, legal and proper. It is further submitted that as respondent No.3 has filed a suit for declaration and permanent injunction seeking injunction of lease deed executed in favour of petitioner and the matter is pending before the civil Court, the writ petition is not maintainable. It has also been submitted that the appeal filed by respondent No.3 is still pending with the State Govt. Therefore, the possession cannot be handed over to the petitioner. Learned counsel for CSIDC contend that even though CSIDC has granted lease in favour of the petitioner and cancelled lease of respondent No.3, because of pendency of appeal before the State Govt. and pendency of civil dispute before the Civil Court, the possession cannot be handed over to the petitioner.

8. Learned counsel for respondent No.3, earlier allottee, has opposed the prayer made in the writ petition on the preliminary objection with regard to maintainability of writ petition by submitting that the petitioner has filed a writ petition seeking enforcement of terms and conditions of lease for which the proper remedy is civil suit and not writ petition. He contended that the petitioner through this writ petition has claimed recovery of possession of a plot which could be granted to it only by way of decree of possession in a validly constituted civil suit. Learned counsel for respondent No.3 further contended that respondent- CSIDC has acted in most unfair manner while cancelling lease granted in its favour. He submits that respondent No.3 is not a small scale industry, therefore, requiring respondent No.3 to commence commercial activity within a period of one year was not just and proper. He further submits that before expiry of one year, a notice was issued by the CSIDC as early as on 28.4.2007 and thereafter the lease deed was illegally and arbitrarily cancelled on 27.7.2007. He further submits that even though an extension of 6 months

337

was granted, respondent No.3 had valid justification and therefore it again applied for grant of further extension of 6 months to which it is entitled under the terms and conditions of lease granted in its favour. The Chairman, CSIDC passed an order on 18.6.2008 in its favour granting further extension of 6 months, but in the meantime, CSIDC illegally proceeded to issue LOI in favour of petitioner though further period of 6 months of extension granted to respondent No.3 was not over. Respondent No.3 further contended that the Chairman CSIDC has again reaffirmed and reiterated its earlier order dated 18.6.2008 vide its order dated 30th September, 2008 that respondent No.3 is entitled to further period of 6 months and LOI granted in favour of petitioner was cancelled. Learned counsel for the respondent No.3 also submitted that the 3rd respondent was entitled to further extension, therefore, it preferred a representation to the Govt. on 29.12.2008, followed by another representation dated 6.3.2009 and on the said representation/appeal, an order has been passed by the Minister, Department of Commerce and Industries on 10.2.2012 by which further time has again been granted to respondent No.3 to commence commercial activity by the appellate authority. It is contended that within the time so extended by the Chairman CSIDC and then by the Appellate Authority vide order dated 10.2.2012, it has proceeded to commence commercial activity by raising construction. Therefore, only on the basis of illegal lease deed executed in favour of the petitioner, petitioner is not entitled to any relief. Lastly, it is submitted that the writ petition is not maintainable, because respondent No.3 has already filed a civil suit and the issue with regard to cancellation of lease deed of respondent No.3, legality and validity of grant of lease in favour of petitioner is to be examined and decided after recording evidence of the parties as determination of the issue involves seriously

disputed question of fact which cannot be gone into the writ petition. Therefore, it is submitted, writ petition may be dismissed.

9. I have considered the rival submissions made by learned counsel for the parties and perused the records.
10. Serious objection to the very maintainability of the writ petition has been raised at the instance of 3rd respondent by contending that the petitioner seeks to enforce through this writ petition, contractual right to enjoy possession of leased premises granted to it under lease deed which could be claimed by filing a civil suit, but the petitioner did not file suit and now when the period of limitation for filing suit has expired, this writ petition has been filed which is not maintainable. Maintainability of the petition has been opposed by submitting that 3rd respondent has filed civil suit challenging allotment of lease in favour of the petitioner which is pending consideration before the Civil Court. It has also been submitted that seriously disputed question of facts are involved in the petition and, therefore, for all these reasons, the writ petition deserves to be dismissed.
11. In the case of **ABL International Ltd. and another Vs. Export Credit Guarantee Corporation of India Ltd. and Ors.** [(2004) 3 SCC 553], dealing with a dispute arising out of contractual matter between the parties, wherein, one of the parties was a State under Article 12 of the Constitution of India, the Supreme Court observed:

“13.....This Court in the case of *LIC of India* proceeded on the facts of that case and held that a relief by way of a writ petition may not ordinarily be an appropriate remedy. This judgment does not lay down that as a rule in matters of contract the court's jurisdiction under Article 226 of the

Constitution is ousted. On the contrary, the use of the words "court may not ordinarily examine it unless the action has some public law character attached to it" itself indicates that in a given case, on the existence of the required factual matrix a remedy under Article 226 of the Constitution will be available...

23. It is clear from the above observations of this Court, once the State or an instrumentality of the State is a party of the contract, it has an obligation in law to act fairly, justly and reasonably which is the requirement of Article 14 of the Constitution of India. Therefore, if by the impugned repudiation of the claim of the appellants the first respondent as an instrumentality of the State has acted in contravention of the abovesaid requirement of Article 14, then we have no hesitation in holding that a writ court can issue suitable directions to set right the arbitrary actions of the first respondent.".....

12. The law propounded by the Supreme Court in the case of **ABL. International Ltd.** (supra), has been reiterated in the case of **Karnataka State Forest Industries Corporation Vs. Indian Rocks** [(2009) 1 SCC 150], in following words :

"38. Although ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract qua contract, it is trite that when an action of the State is arbitrary or discriminatory and, thus, violative of Article 14 of

24/10

the Constitution of India, a writ petition would be maintainable. (See *ABL International Ltd. Vs. Export Credit Guarantee Corpn. of India Ltd.*)”

13. In yet another decision in the case of **Sushila Chemicals Private Ltd. and another Vs. Bharat Coking Coal Limited and Ors.**[(2010) 10 SCC 388], the aforesaid principles have been reiterated in following words:

“20. It is settled by a series of decisions of this Court starting from *Shrilekha Vidyarthi v. State of U.P.* that even in the domain of contractual matters, the High Court can entertain a writ petition on the ground of violation of Article 14 of the Constitution when the impugned act of the State or its instrumentality is arbitrary, unfair or unreasonable or in breach of obligations under public law.”

14. The grievance of the petitioner in the writ petition is that even though a lease deed has been registered in favour of petitioner granting lease of 2.42 acres of land and the petitioners have deposited Rs.36,05,276/- towards premium rent etc., the CSIDC has not handed over possession of the leased premises to it. Present is not a case where petitioners are seeking a direction to respondents to execute lease deed in their favour nor present is a case where the lease granted in favour of the petitioners has been cancelled. CSIDC, as disclosed by its return, is an instrumentality of the State and, therefore, being a State as defined under Article 12 of the Constitution is obliged to act in a just and fair manner free from arbitrariness. To a limited extent, the grievance of the petitioner arising on account of alleged inaction to handover possession of leased premise despite

subsistence of a lease deed can always be examined by a writ Court, within the permissible limits of public law domain in order to examine whether the action or inaction is arbitrary, unfair, irrational being violative of Article 14 of the Constitution. At the same time, it has to be noted that writ Court would not assume the role of civil Court to examine the violation of contractual obligations *qua* contractual right without there being any public law element involved therein. The scope of interference by a writ Court even in contractual matters is not limited, merely because it is a dispute of contractual nature, but because writ Court ordinarily, do not enforce ordinary civil rights *qua* terms of contract. However, in a case where one of the parties to the contract is a State under Article 12 of the Constitution, arbitrariness of the action can be examined confining consideration to public law domain aspect. Present is a case where the petitioner has taken recourse to extraordinary remedy seeking to invoke writ jurisdiction of this Court alleging arbitrary inaction on the part of CSIDC in making available the lease premises to the petitioner despite there being a lease executed in favour of the petitioner. In the case of **Kisan Sahkari Chini Mills Ltd. And Ors. Vs. Vardan Linkers and Ors.**, (2008) 12 SCC 500, while entertaining challenge to order passed by the authority, staying operation of allotment letter and subsequent cancellation of allotment, the Supreme Court observed as under :

“18. Ordinarily, the remedy available for a party complaining of breach of contract lies for seeking damages. He will be entitled to the relief of specific performance, if the contract is capable of being specifically enforced in law. The remedies for a breach of contract being purely in the realm of contract are dealt with by civil courts. The public law remedy, by way of a writ petition under Article

226 of the Constitution of India, is not available to seek damages for breach of contract or specific performance of contract. However, where the contractual dispute has a public law element, the power of judicial review under Article 226 of the Constitution of India may be invoked.

The scope of interference in a writ petition arising out of contractual dispute was explained as below:

"23. If the dispute was considered as purely one relating to existence of an agreement, that is, whether there was a concluded contract and whether the cancellation and consequential non-supply amounted to breach of such contract, the first respondent ought to have approached the civil court for damages. On the other hand, when a writ petition was filed in regard to the said contractual dispute, the issue was whether the Secretary (Sugar), had acted arbitrarily or unreasonably in staying the operation of the allotment letter dated 26-3-2004 or subsequently cancelling the allotment letter. In a civil suit, the emphasis is on the contractual right. In a writ petition, the focus shifts to the exercise of power by the authority, that is, whether the order of cancellation dated 24-4-2004 passed by the Secretary (Sugar), was arbitrary or unreasonable. The issue whether there was a concluded contract and breach thereof becomes secondary. In exercising writ jurisdiction, if the High Court found that the exercise of power in passing an order of cancellation was not arbitrary

and unreasonable, it should normally desist from giving any finding on disputed or complicated questions of fact as to whether there was a contract, and relegate the petitioner to the remedy of a civil suit. Even in cases where the High Court finds that there is a valid contract, if the impugned administrative action by which the contract is cancelled, is not unreasonable or arbitrary, it should still refuse to interfere with the same, leaving the aggrieved party to work out his remedies in a civil court. In other words, when there is a contractual dispute with a public law element, and a party chooses the public law remedy by way of a writ petition instead of a private law remedy of a suit, he will not get a full-fledged adjudication of his contractual rights, but only a judicial review of the administrative action.”...

15. In view of the settled judicial pronouncement which have been referred to above, I am not inclined to dismiss the petition only on the ground of existence of an alternative remedy, without examining the merits of submission, that inaction on the part of respondent CSIDC in handing over possession of lease premises is arbitrary, irrational and unfair being violative of Article 14 of the Constitution.
16. It is not in dispute that respondent- CSIDC initially granted lease and allotted an industrial plot admeasuring 2.42 acres situated at Sector -C Industrial Area, Sirgitti, Bilaspur to 3rd respondent and the lease deed was executed on 3rd January 2006 for a period of 30 years. It has also not been disputed that the possession was also handed over on 22nd July, 2006. It appears that CSIDC was

not satisfied with the progress of the project for which the lease was granted. Therefore, a notice dated 28th April, 2007 (Annexure R-2/2) was issued requiring 3rd respondent to submit satisfactory reply failing which lease shall be cancelled. Managing Director, CSIDC, however, finding no satisfactory explanation proceeded to pass order of cancellation of lease on 27.7.2007 (Annexure R-2/3). An appeal against the said order was preferred by 3rd respondent on 17.8.2007, which was decided by the Chairman CSIDC vide order dated 8.10.2007 and an order of extension was passed in favour of 3rd respondent by granting him further time of 6 months w.e.f. 19.9.2007. The order stated that if the production is not started within the time limit, the order of cancellation of lease passed on 27.7.2007 shall become effective. This period of 6 months was to expire on 19.3.2008. A letter dated 9.6.2008 was addressed by the Manager, Branch Office, Tifra to the Managing Director, Land Allotment, CSIDC, Head Quarter-Raipur, informing that the extended period of 6 months has expired and upon inspection, it has been found that boundary wall has been constructed and work of leveling is going on. On 11.6.2008, respondent No.3 submitted a letter in the office of CSIDC, Branch Office Tifra, Bilaspur addressed to the Chairman CSIDC bearing dated 3.6.2008 requesting extension for a period of one year. The contents of the letter shows that the respondent No.3 was granted time to finish the work and start work within one year. This obviously means that by that time, the work had not commenced. An order on note-sheet was passed by the Chairman CSIDC on 18.6.2008, wherein it has been recorded that further time of 6 months has been granted. But no order was passed much less communicated to 3rd respondent or to any other officer much less the Manager of CSIDC Branch Office, Tifra, Bilaspur. There is no material placed on record by any of the respondents to prove that the decision taken on note sheet culminated in passing of an

order, its communication to parties concerned. From contents of the note sheet of the Minister of the concerned Department placed on record as Annexure R-2/10, it is revealed that a direction was issued for recovery of possession whereafter the CSIDC recovered possession from 3rd respondent and communicated this fact to respondent No.3 vide its letter dated 3.9.2008 (Annexure R-2/11). A panchnama is also said to have been prepared on 27.12.2008 which shows that a Board was affixed at the spot showing that the disputed land is now in possession of the CSIDC.

17. In the meantime, LOI was issued in favour of petitioner on 9.9.2008 (Annexure R-2/13) as the petitioner had also applied for grant of lease in respect of the same plot which was earlier allotted to 3rd respondent and later on cancelled. The records placed by CSIDC before this Court, however, show that though the LOI was issued to the petitioner on 9.9.2008, the Chairman CSIDC called for the records relating to allotment of land to respondent No.3 and recorded on note sheet (Annexure R-2/14) on 30th September, 2008 that earlier order dated 18.6.2008 passed by it granting 6 months time to respondent No.3 shall remain in force and it also recorded to cancel LOI issued in favour of petitioner, but there is nothing on record to show that such a decision taken on note sheet culminated in issuance of any order passed by any competent authority of CSIDC much less the Chairman, CSIDC.
18. The petitioner, it seems, was vigorously pursuing its own remedy and it filed a writ petition WP (C) 6199 /08 which was disposed off vide order dated 7.11.2008 directing CSIDC to decide petitioner's representation complaining inaction towards execution of lease deed pursuant to LOI. Thereafter, CSIDC applied for extension of time to decide representation, on which application,



extension was granted. Thereafter, respondent CSIDC proceeded to execute lease deed in favour of the petitioner on 23.12.2008.

19. The aforesaid factual background reveals that after lease granted in favour of 3rd respondent was canceled vide order dated 27.7.2007, on appeal filed, an extension of 6 months was granted by CSIDC vide order dated 8.10.2007 by the Chairman which period expired on 19.3.2008. Vide order on note sheet recorded on 18.6.2008, Chairman again extended period of 6 months but no order was passed and a LOI was issued to the petitioner on 9.9.2008. The Chairman again, on note sheet, prepared and signed on 30th September, 2008, reiterated its earlier order dated 18.6.2008, but no order was again issued by any of the competent authority and on 22nd December, 2008 a lease deed was executed in favour of petitioner. This lease deed has not so far been cancelled by the CSIDC nor has been set aside or its effect or operation stayed or any injunction order passed by any of the Court of competent jurisdiction or any other authority having an appellate or revisional jurisdiction in the matter.

It has been contended before this Court by respondent No.3 that the lease granted in favour of the petitioners has been challenged by filing a civil suit in which a declaration for cancellation of lease has been sought. However, neither the copy of plaint has been placed on record nor it has been stated that any order of injunction has been passed in favour of respondent No.3 by the Civil Court or by any higher Court.

20. Respondent No.3 has heavily relied upon the order passed on note sheet on 10.2.2012 by the Appellate Authority being the Minister of the concerned Department of the State Govt. who has allowed petitioner's appeal against lease cancellation order dated 27.7.2007. The respondent No.3 has placed the note sheet which

is stated to have been obtained under Right to Information Act. However, there is nothing on record, placed by any of the parties, to show that the decision taken on note sheet culminated in issuance of order passed by the State Govt. in its capacity as the Appellate Authority. At this stage, it is relevant to refer to the submission made by learned senior counsel for the petitioners that any decision taken on note sheet, unless followed by an order passed by a Competent Authority, is incapable of being given any effect to under the law. In support of this submission, learned senior counsel has relied upon the judgment of the Supreme Court in the case of **Bachhittar Singh** (supra) as also two subsequent decisions of the Supreme Court in the cases of **Sethi Auto Service Station** (supra) and **Shanti Sports Club** (Supra).

21. In the case of **Bachhitar Singh** (supra), the issue which arose for consideration before the Supreme Court was whether remarks or the order of the Revenue Minister Pepsu could be given effect to when no order followed thereafter. The legal position was examined by the Supreme Court with reference to the provision contained in Article 166 (1) of the Constitution and relevant rules of business and it was held as under:

“8. What we have now to consider is the effect of the note recorded by the Revenue Minister of PEPSU upon the file. We will assume for the purpose of this case that it is an order. Even so, the question is whether it can be regarded as the order of the State Government which alone, as admitted by the appellant, was competent to hear and decide an appeal from the order of the Revenue Secretary. Article 166(1) of the Constitution requires that all executive action of the Government of a State shall be expressed in the name

of the Governor. Clause (2) of Article 166 provides for the authentication of orders and other instruments made and executed in the name of the Governor. Clause (3) of that article enables the Governor to make rules for the more convenient transaction of the business of the Government and for the allocation among the Ministers of the said business. What the appellant calls an order of the State Government is admittedly not expressed to be in the name of the Governor. But with that point we shall deal later. What we must first ascertain is whether the order of the Revenue Minister is an order of the State Government i.e. of the Governor. In this connection we may refer to Rule 25 of the Rules of Business of the Government of PEPSU which reads thus:

“Except as otherwise provided by any other Rule, cases shall ordinarily be disposed of by or under the authority of the Minister in charge who may by means of standing orders give such directions as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Rajpramukh and the Chief Minister.”

According to learned counsel for the appellant his appeal pertains to the department which was in charge of the Revenue Minister and, therefore, he could deal with it. His decision and order would, according to him, be the decision and order of the State Government. On behalf of the State reliance was, however, placed on Rule 34 which required certain classes of cases to be submitted to the Rajpramukh and the Chief Minister before the issue of orders. But it was conceded during

the course of the argument that a case of the kind before us does not fall within that rule. No other provision bearing on the point having been brought to our notice we would, therefore, hold that the Revenue Minister could make an order on behalf of the State Government.

9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than

an adviser and that the head of the State, the Governor or Rajpramukh, is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the *State of Punjab v. Sodhi Sukhdev Singh*:

"Mr Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon

by him by issuing an order in that behalf to the respondent.”

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.

11. We are, therefore, of the opinion that the remarks or the order of the Revenue Minister, PEPSU are of no avail to the appellant.”

22. In the case of **Sethi Auto Service Station** (supra), a question arose for consideration as to whether recommendation of the Technical Committee vide minutes dated 17.5.2002 for reinstatement of petrol pump constitute an order/decision binding on Delhi Development Authority. The Supreme Court relying upon the decision in the case of *Bachhittar Singh* (supra), held as under:

“14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties,

only when it reaches the final decision-making authority in the department, gets his approval and the final order is *communicated* to the person concerned.”

23. The aforesaid settled legal position was again reiterated by the Supreme Court in the case of **Shanti Sports Club** (supra) wherein it was held:

“52. As a result of the above discussion, we hold that the notings recorded in the official files by the officers of the Government at different levels and even the Ministers do not become decisions of the Government unless the same is sanctified and acted upon by issuing an order in the name of the President or Governor, as the case may be, authenticated in the manner provided in Articles 77(2) and 166(2) and is communicated to the affected persons. The notings and/or decisions recorded in the file do not confer any right or adversely affect the right of any person and the same can neither be challenged in a court nor made basis for seeking relief. Even if the competent authority records a noting in the file, which indicates that some decision has been taken by the authority concerned, the same can always be reviewed by the same authority or reversed or overturned or overruled by higher functionary/authority in the Government.”

24. The aforesaid settled legal position leaves no iota of doubt that what has been recorded in note sheet on 10.2.2012 or for that matter the decision taken on note sheet by the Chairman, CSIDC on 18.6.2008 and 30th September, 2008 have no sanctity of law and are incapable of being given any effect for the simple



reason that those decisions taken on note sheet never culminated into the order passed by a Competent Authority much less communicated to any of the parties including those who are affected by this order.

25. Curiously enough, the note sheet on which the appeal is said to have been decided by the concerned Minister bears date 10.2.2012 and the return has been filed by the State in the present case on 1.10.2012, but there is no whisper in the return of the State to the aforesaid order recorded by the Minister on the note sheet on 10.2.2012. The State has come out with a stand that the dispute is essentially between the petitioner, CSIDC and respondent No.3 and no relief has been sought against the State. In the written submission filed by the State before this Court, it has been stated that respondent No.3 has not filed complete copy of note sheet and it is misleading the Court by stating that appeal has been decided in favour of respondent No.3. The aforesaid stand taken by the Govt. and the legal position as examined hereinabove, leads to inescapable conclusion that there is no order passed in favour of respondent No.3 till date by the State Govt. so as to show that the order of cancellation of lease has come to an end and its lease has been revived or that lease granted in favour of the petitioner has been either cancelled, stayed or any direction issued by the State Govt. to CSIDC to cancel lease of the petitioners.

26. From the stand taken by CSIDC, it is borne out that the possession of the subject land was taken back by CSIDC which was recorded in its communication dated 3.9.2008 (Annexure R-2/11), yet respondent No.3 claims to have continued in possession, whereas, the text and tenor of letters dated 23.12.2008 (Annexure R-2/15) and dated 29.12.2008 (Annexure

R-2/16) shows that respondent No.3 has again trespassed over the plot and has raised certain construction also.

27. It was vehemently contended by learned senior counsel for the petitioner that so called appeal filed by respondent No.3 before the State is wholly incompetent as there is no such remedy of appeal available to respondent No.3 against order dated 27.7.2007. It has been argued that the remedy of appeal available to respondent No.3 had already been exhausted by filing appeal before the Chairman CSIDC who granted 6 months extension and an order to that effect was passed on 8.10.2007. Respondent No.3 did not take any further remedy against that order either before the State Govt. or before any Court of law, but after expiry of 6 months, firstly it sought to invoke favour of Chairman, who took a decision on notes sheets on 18.6.2008 and 30th September, 2008 which never culminated into an order and thereafter when a lease was granted in favour of the petitioner and letter were issued to remove illegal construction and possession of taken back by the CSIDC, a representation was preferred before the Govt. which cannot be treated as appeal as no such right exists under the relevant rules.
28. The petitioner has filed this writ petition wherein the petitioner has prayed for direction to the State to decide appeal of respondent No.3. It is not the case set up by the petitioner in the writ petition that appeal filed by respondent No.3 is incompetent or not available to him under the Allotment Rules of 1974 or terms and conditions of lease. The petitioner has come out with a new case for the first time in its rejoinder, as adumbrated in page 6 & 7 thereof. These pleadings in the rejoinder are contradictory and inconsistent with the relief sought by the petitioner in the writ petition. The petitioner has not sought any relief for

quashing appellate proceedings on the ground of maintainability of the appeal. Therefore even if such contention may have some merit, this Court is not inclined to exercise its discretion to go into the aforesaid aspect in these proceedings.

There is yet another reason why it will be against propriety and against the spirit of orders and proceedings of this Court. In the note sheet dated 10.2.2012 filed as Annexure R-3-A-1 by respondent No.3 with an application for taking document on record dated 23.11.2012, mention of order dated 15.12.2011 passed by this Court in WP(C) No.7644/11 has been made. Relevant part of order dated 15.12.2011 passed in WP(C) No.7644/11 have been reproduced in the said note sheet. During the course of arguments, learned counsel for the party did not dispute that on the statement made by the parties, Writ Petition (C) No.7644/11 was disposed off by the High Court and it was pursuant to observation and direction by the High Court that appeal was taken up for consideration. For this purpose a reference has been made to power available to the State Govt. under Rule 22 A of the Allotment Rules, 1974.

Be that as it may, in the aforesaid circumstances, I am not inclined to examine the merits of the submission with regard to the maintainability of appeal preferred by 3rd respondent before the State Govt.. However as has been concluded hereinabove, there is no order passed so far by the State Govt. on the so called appeal preferred by respondent No.3. It is interesting to note that the State has come out with the case that there is no decision on appeal and it gone to the extent of submitting that by filing incomplete note sheet dated 10.2.2012 respondent No.3 has attempted to mislead this Court . Similar is the plea taken by CSIDC also. Therefore, the so called appeal/representation

filed by 3rd respondent before the Govt. on 29.12.2012 (Annexure R-2/17) is still pending with the State Govt.

29. It has also not been disputed by any of the parties that respondent No.3 has, later on, filed a suit seeking a declaration and injunction against CSIDC as also against the petitioner. None of the parties have placed on record copy of the plaint. However, the petitioner in its rejoinder has reproduced the prayer made in the suit which shows that respondent No.3 has sought a declaration that lease deed dated 23.12.2008 executed in favour of petitioner may be declared illegal, inoperative under law. At the same time, it is also not disputed by any of the parties that in that suit, no injunction order so far has been passed either by the trial Court or by any other higher Court restraining CSIDC from handing over possession of the subject land to the petitioner pursuant to lease deed executed on 23.12.2008 by CSIDC in favour of the petitioner.
30. The aforesaid examination and analysis of the case leads to conclusion that the lease granted in favour of respondent No.3 was cancelled on 27.7.2007 and on appeal being preferred an order was passed on 8.10.2007 granting extension of 6 month which also expired on 19.3.2008. On another application made by respondent No.3, certain decision were taken by the Chairmen on 18.6.2008 and 30th September, 2008 approved by the Minister on note sheet but this decision never culminated in issuance of any order. While the Chairman CSIDC had taken certain decision on 18.6.2008 and 30th September, 2008 in the note sheet, the orders which were issued by CSIDC from time to time gave representation to the petitioner that the lease of respondent No.3 has been cancelled and in exercise of power of re-entry under clause 27 of the lease deed, possession has also

been taken back from respondent No.3 as reflected from letters issued by CSIDC and its official on 3.9.2008, 23.12.2008 and 29.12.2008. As a matter of fact, LOI was also issued to the petitioner on 9.9.2008. Panchnama dated 27.12.2008 (Annexure R-2/12) refers to memo dated 27.12.2008 of the Managing Director, CSIDC. Thus, it is clear that the orders which were being passed by the CSIDC were against respondent No.3. This Court is constrained to observe that the petitioner was not treated fairly by the CSIDC and its officials. LOI was issued to the petitioner and thereafter the petitioner deposited huge amount of Rs.36,05,276/-. But thereafter it did not proceed to hand over the possession even though it had caused re-entry on the land which is reflected from its own letter dated 3.9.2008, 23.12.2008, Panchnama dated 27.12.2008, letter dated 23.12.2008 and letter dated 29.12.2008. Lease deed has been finally executed in favour of the petitioner on 23.12.2008 only which still subsists and has not been cancelled by the CSIDC nor any order passed in that regard by any Court of law.

31. In the above conspectus of facts and circumstances of the case and to protect the competing interest of the petitioner as well as respondent No.3, the interest of justice demands that the appeal/representation which is pending consideration before the State Govt. be decided at the earliest. Taking into consideration that the lease has been granted in favour of the petitioner on 23.12.2008 before filing of appeal/representation before the State Govt. and further taking into consideration the serious objection with regard to maintainability of the appeal before the State Govt. raised by the petitioner though in its rejoinder, it would only be fair to the petitioner that the petitioner is also heard by the State Govt. before taking final decision in the appeal of respondent No.3. In the hearing, it would be open for

the petitioner to raise all the grounds with regard to maintainability of appeal which has been submitted by the petitioner before this Court. The State Govt. is directed to decide appeal and pass final orders on its own merits and in accordance with law within a period of 3 months from the date of receipt of copy of this order. In the event order is passed against respondent No.3, the CSIDC shall proceed to deliver the possession of the subject land in accordance with the terms and conditions of lease granted in favour of petitioner. It is made clear that mere pendency of civil suit will not come in the way of CSIDC towards delivery of possession in the above proceeding in accordance with terms and conditions of lease unless there is any order/interim order passed by the Civil Court in the suit filed by respondent No.3.

32. The petition is accordingly partly allowed. No order as to costs.

Sd/-
Manindra Mohan Shrivastava
Judge