

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1015 of 2017

Date of Decision : August 31, 2017

M/s Anand Auto Care Pvt. Ltd.

...Petitioner

versus

State of H.P. and others

...Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Acting Chief Justice.

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

Whether approved for reporting? Yes.

For the Petitioner : Mr. G.C. Gupta, Senior Advocate,
with Ms Meera Devi, Advocate.

For the Respondents : Mr. Mr. Anoop Rattan, Mr. Romesh
Verma, Additional Advocates
General and Mr. J.K. Verma, Deputy
Advocate General, for respondents-
State.

Mr. Arvind Sharma, counsel for
respondent No.3.

Mr. Chandranarayana Singh,
Advocate, for respondent No.4.

Sanjay Karol, ACJ

Petitioner approached this Court, inter alia,
praying for the following relief:

“That a writ in the nature of mandamus be issued directing the respondents No.1 & 2 to execute a formal lease deed in favour of the petitioner with respect to Plot No.4, Industrial Area, Shoghi, Tehsil and District Shimla immediately and after the lease deed is executed, the amount which petitioner is prepared deposited in this Hon'ble court may be directed to be released in favour of respondent No.3 and respondent No.3 be directed to hand

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over the possession of the Plot to the petitioner.”

2. Certain facts are not in dispute. M/s Techno Impex Electronic, a proprietorship concern of Shri Rupinder Ahuja (respondent No.4), was an allottee of Industrial Plot No.4 at Industrial Area, Shoghi, State of H.P. The ownership, undisputedly, is that of the State of Himachal Pradesh (Department of Industries) and status of the allottee was that of a lessee, in relation to which Lease Deed dated 28.10.1994 was executed.

3. On the said industrial plot, the lessee established a flour mill, which he was able to run for a particular duration. The lessee had availed certain credit facilities, i.e. advances by way of loan from the State Bank of India (respondent No.3). On account of serious defaults by him, in the repayment of the loan, his assets and liabilities were taken over by the Bank.

4. In order to liquidate part of the liability, a decision was taken by the lessor and the Bank to transfer the leasehold rights, that of the lessee, in Plot No.4, Industrial Area Shoghi, in favour of the present writ petitioner, namely M/s Anand Auto Care Private Limited. Communication dated 23.3.2017 (Annexure P-4), in this regard, is reproduced as under:

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“This is with reference to your office letter No.SARB/2015-16/372 dated 3.1.2017 and meeting held in this regard on 27.2.2017 at 11 AM under the Chairmanship of Director of Industries, H.P.

In this regard it is submitted that the Director of Industries vide letter No.Ind Dev. F(13) Plots/SML-754/91-X dated 22.3.2017 has agreed in principle to consider the transfer of lease hold rights of Plot No.4 from M/s Techno Impex Electronic to M/s Anand Auto Care Pvt Ltd. He has further directed the undersigned to process the case as per provisions of lease deed & Incentive Rules in force for according formal approval to transfer of lease hold rights of Plot No.4 from M/s Techno Impex Electronic to M/s Anand Auto Care Pvt. Ltd.

In view of above, SBI, M/s Techno Impex Electronic and M/s Anand Auto Care Pvt. Ltd. are requested to submit the following documents:

(i) A joint request letters from Sh. Surinder Seth (original allottee of Plot No.4) and Sh. Rupinder Ahuja addressed to the undersigned for transfer of lease hold rights of this plot from M/s Techno Impex Electronic to M/s Anand Auto Care Pvt. Ltd. in accordance with the Memorandum of Understanding executed on 20.12.2016 between Sh. Rupinder Ahuja and Sh. Vishal Anand/ S/o Sh. Satish Anand Director M/s Anand Auto Care Pvt. Ltd. or any other MOU/Agreement to Sell if any executed thereafter.

(ii) Affidavit/legal undertaking from M/s Anand Autocare Pvt. Ltd. to pay the present and past liabilities of M/s Techno Impex Electronic and M/s Swaran Flour Mill in respect of all Govt. departments/undertakings like Department of Excise and Taxation, HPSEB Ltd. Industrial Area Development Agency (IADA), Shoghi etc. and amount settled between State Bank of India and

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M/s Techno Impex Electronic/Swaran Flour Mill
or M/s Anand Auto Care Pvt. Ltd.

(iii) Affidavit/legal undertaking by M/s Anand Auto Care Pvt. Ltd. to pay un-earned increase in premium payable to IADA Shoghi and outstanding premium if any to Industries Department before execution of supplementary lease deed.

(iv) The supplementary lease deed would be executed with M/s Anand Auto Care Pvt. Ltd. after receipt of formal approval for the transfer of lease hold rights of plot No.4 from M/s Techno Impex Electronic to M/s Anand Auto Care Pvt. Ltd. and submission of No due Certificate from SBI, present and past liabilities of M/s Techno Impex Electronic and M/s Swaran Flour Mill in respect of all Govt. departments/undertakings like Department of Excise and taxation, HPSEB Ltd., Industrial Area Development Agency (IADA), Shoghi etc.

(v) Possession of the qua property would be handed over by SBI to M/s Anand Auto Care Pvt. Ltd. after execution of supplementary lease deed with M/s Anand Auto Care Pvt. Ltd.

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(Emphasis supplied)

5. Thus, an arrangement was worked out between the lessor and the Bank, whereby petitioner was required to pay a sum of ₹59,74,033/- and also liquidate liabilities of (a) Himachal Pradesh State Electricity Board (HPSEB), (b) Department of Excise and Taxation, Himachal Pradesh, (c) Department of Industries, Himachal Pradesh.

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6. It is not in dispute that the amount payable to the bank was deposited, pursuant to orders passed by this Court on 21.6.2017.

7. It is not in dispute that insofar as all liabilities are concerned, they stand liquidated and the amounts deposited by the writ petitioner. In fact, pursuant thereto, Bank issued a No Objection Certificate for transfer of leasehold rights in favour of the writ petitioner and the lessor also granted permission, in terms of communication dated 1.5.2017 (Annexure P-8), which reads as under:

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This is with reference to the Assistant General Manager, S.B.I letter No.SARB/2017-18/07 dated 06/04/201, letter dated 5/4/2017 of M/s Anand Auto Care Pvt. Ltd., joint undertaking dated 28/3/2017 given by Sh. Surinder Seth and Sh. Rupinder Ahuja both partner of M/s Techno Impex Electronics, on the subject referred to above.

In this regard it is submitted that the Director of Industries vide letter No.Ind. Dev. F(13) Plots/SML-754/91-X, dated 29/4/2017 has accorded approval for the transfer of lease hold rights of Plots No.4, I.A., Shoghi from M/s Techno Impex Electronics to M/s Anand Autocare Pvt. Ltd subject to fulfillment condition contain in this letter dated 29/4/2017 (copy enclosed).

M/s Techno Impex Electronic and M/s Anand Autocare Pvt. Ltd are requested submit the following within the 15 days of issuance of this letter positively:-

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- (1) Bank draft of Rs.8,94,001/- (Eight lacs ninety four thousand and one only) in favour of Chairman, IADA, Shoghi towards unearned increase in premium as per the provision made under rule 6.13(a)(iii) of Incentives Rules-2004 as amended upto 12/3/2015 {Rs.2,10,776 as unearned increase already deposited by Sh. Rupender Ahuja stand adjusted against the applicable unearned increase as per the provision made under rule 6.13(a)(iii) of Incentives Rules-2004, which works out as Rs.11,04,745/-}.
- (2) Maintenance charges of Rs.30164/- and water charges of Rs.20881/- (Total Rs.51,045/-) in the shape of bank draft in the name of Chairman, IADA, Shoghi.
- (3) No dues certificate from SBI against the loan raised by M/s Techno Impex Electronics power by M/s Swaran Flour Mills.
- (4) No dues certificate from the Department of Excise and Taxation regarding VAT and CST if any in respect of M/s Techno Impex Electronics or M/s Swaran Flour Mills.
- (5) No dues certificate from HPSEB, Ltd, in respect of liabilities if any of M/s Techno Impex Electronics or M/s Swaran Flour Mills.

After the receipt of aforesaid dues and certificates the supplementary lease deed would be executed for the remaining period of lease deed. The SBI will handover physical possession of the plot of M/s Swaran Flour Mills.

M/s Anand Autocare Pvt. Ltd will utilize this plot for setting up of Automobile Showroom/Service Station and will start the unit within a period of one year failing which the proceedings will be initiated for the cancellation and resumption of plot as per the provisions of

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lease deed/supplementary lease deed to be
executed with M/s Anand Autocare Pvt. Ltd.
.....”

8. However, despite the petitioner having fulfilled all the conditions, so stipulated (reproduced supra), and there being no objection on the part of the Bank, the lessor did not take steps for executing formal Lease Deed and handover possession of the plot in question, forcing the writ petitioner to file the instant petition.

9. While justifying the action for not executing the Lease Deed, Mr. Anoop Rattan, learned Additional Advocate General, invites our attention to communication dated 29.4.2017, that of Director of Industries, copy whereof is taken on record. Relevant portion thereof is extracted as under:

“That the present lessee of plot or the Industrial Enterprise in whose favour the permission for transfer of lease hold rights of plot No.4 is being accorded, will pay to the lessor i.e. Department of Industries, the differential cost as per the provisions made under Rule 6.13(a)(iii) of Rules Regarding Grant of Incentives Concessions and Facilities to Industrial units in H.P.-2004 as amended upto 12/03/2015 and other outstanding dues, including 58.00 lacs as Bank loan, past and present liabilities of Govt. Departments like Excise and Taxation Department, HPSEB and IADA Shoghi due for payment before the execution of supplementary lease deed of plot.”
(Emphasis supplied)

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10. Taking clue from the words “Govt. Departments like Excise and Taxation Department, HPSEB and IADA Shoghi”, it is contended that dues and liabilities that of the ‘Department of Food, Civil Supplies & Consumer Affairs’ are also to be read into the words “liabilities of Govt. Departments”, so referred to in communication dated 29.4.2017.

11. Language of the letter is unambiguously clear. It specifies Departments and that being Excise and Taxation Department, HPSEB and IADA, but word “like” cannot be read to include any other liability, more so which is not statutory in nature. Liability that of the Department of Food, Civil Supplies & Consumer Affairs is contractual and not statutory. It is totally unrelatable to the leasehold rights.

12. There is yet another reason for us to reject the contention of the State. Communication dated 29.4.2017, is that of the Director of Industries, and not of the Department of Food, Civil Supplies & Consumer Affairs. Not only that, we find that subsequent to the said communication dated 29.4.2017, the General Manager, District Industries Centre, Shimla, while referring to said communication, itself clarified to all, including the writ

petitioner, Bank as also the lessee, that permission for transfer of leasehold rights stands accorded, subject to the petitioner or the lessee depositing the dues that of IADA, Bank, the Excise and Taxation Department, that too relating to VAT/CST and HPSEB.

13. It is a matter of record that even pursuant to the negotiations, which the writ petitioner had had with the Department of Industries, Director of Food, Civil Supplies & Consumer Affairs, did not raise any objection. In fact, such objection came to be raised, for the first time, only during the pendency of the present petition. As such, we do not find action of respondents No.1 and 2, in withholding execution of the Lease Deed and handing over possession of the plot in question, in favour of writ petitioner, more so, in terms of Annexure P-8, to be tenable.

14. Hence, we direct respondents No.1 and 2 to forthwith handover possession of the plot and execute the Lease Deed in favour of the writ petitioner. Mr. G.C. Gupta, learned Senior Advocate, states that all steps for execution of the Lease Deed shall be taken by the petitioner within a period of one week.

15. However, the matter cannot be allowed to rest here. There is yet another issue, which we find, in public

interest, needs to be resolved and that being the outstanding dues payable by the lessee, i.e. M/s Techno Impex Electronic/Swaran Flour Mills (respondent No.4) to the Department of Food, Civil Supplies & Consumer Affairs. In this regard, we find from affidavit dated 19.8.2017, that of the Director, Department of Food, Civil Supplies & Consumer Affairs, who was impleaded as a party during the course of the proceedings, that on account of certain contractual obligations, i.e. supply of wheat for processing, more than ₹1,82,09,991/- was due and payable by the lessee, in relation to which, Office Order dated 1.7.2013, was passed. Assailing the same, lessee filed a statutory appeal, which was dismissed on 7.4.2014. As on 22.7.2015, a sum of ₹2,36,72,923/- was recoverable from M/s Swaran Flour Mills, another proprietorship firm of Shri Rupinder Ahuja, Proprietor of M/s Techno Impex Electronic (respondent No.4).

16. To a specific query, as to how this amount would be cleared, Shri Rupinder Ahuja has filed two affidavits dated 30.8.2017 and 31.8.2017, stating that subject to his exhausting all remedies for adjudication of liability, civil in nature, he would pay the amount, eventually adjudicated by the authorities, within a period of four months from the date

of such final adjudication. It stands clarified that there is a statutory provision for assailing the order passed by the Appellate Authority, which he (proprietorship concern) undertakes to take recourse, positively within a period of four weeks from today. Mr. Anoop Rattan, learned Additional Advocate General, states that any such proceedings initiated by the lessee, shall be considered and decided, on merits, without insisting on the issue of limitation. We clarify that thereafter the only remedy available with the lessee would be to approach the constitutional Court, under Article 226/227 of the Constitution of India and not by way of Civil Suit.

17. Undertaking of Shri Rupinder Ahuja, to the effect that with final adjudication of his liability, civil in nature, he shall deposit the entire amount, which may be adjudicated to be due and admissible, within a period of four months thereafter, is accepted and taken on record. He has been explained the consequences of breach of undertaking, including initiation of proceedings of contempt.

18. Insofar as proceedings, criminal in nature, so initiated against Shri Rupinder Ahuja (his concern), we commend to the State to reconsider withdrawing the same, in view of the undertaking so furnished. The fact that the FIR

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came to be registered during the pendency of the present writ petition, we are hopeful that the State shall take a favourable view. For these proceedings, liberty also reserved to the lessee to take recourse to such remedies as may be available to him, if so required and advised.

Petition stands disposed of in the aforesaid terms, so also pending application(s), if any.

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(Sanjay Karol),
Acting Chief Justice

August 31, 2017_(sd)

(Sandeep Sharma),
Judge.