

Civil Review No. 29 of 2020

With

Civil Review No. 30 of 2020

[Against the judgment and order dated 03.02.2020 passed in C.M.P. No. 47 of 2020 and the order dated 09.01.2020 passed in L.P.A. No. 379 of 2016]

.....

M/s. Highco Industries Private Limited, Industrial Area, Adityapur, P.O. & P.S. Adityapur, District- Saraikela-Kharsawan, through its Director, Sanjay Kumar Singh, R/o Duplex No. 33, Phase-5, Vijaya Heritage, Kadma, P.O. & P.S. Kadma, Jamshedpur- 831005, District East Singhbhum

... .. **Petitioner**
(In both Cases)

Versus

1. Shankar Bhagwan Mishra, R/o Qr. No. 30/2/3, Road No. 20, Housing Colony, Adityapur-1, P.O. & P.S. Adityapur, District Saraikela-Kharsawan

2. The State of Jharkhand

3. The Secretary, Industry, Mines and Geology Department, Government of Jharkhand, Ranchi.

4. Adityapur Industrial Area Development Authority, through its Secretary, Adityapur, P.O. & P.S. Adityapur, District Saraikela-Kharsawan, now JIADA

5. Managing Director, Adityapur Industrial Area Development Authority, Adityapur, P.O. & P.S. Adityapur, District Saraikela-Kharsawan now JIADA

... .. **Respondents**
(In both Cases)

.....

P R E S E N T

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE DEEPAK ROSHAN

THROUGH VIDEO CONFERENCING

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For the Petitioner : Mr. Sumeet Gadodia, Advocate
For the Respondent No.1 : Mrs. Ritu Kumar, Advocate
For the Respondent Nos. 2 & 3 : Mr. Ashok Kumar Yadav, G.A.-I
For the Respondent Nos. 4 & 5 : Mr. V.P. Singh, Sr. Advocate

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C.A.V. on 25/08/2021

Pronounced on 06/09/2021

R. Mukhopadhyay, J.: Heard Mr. Sumeet Gadodia, learned counsel for the petitioner in both the cases, Mrs. Ritu Kumar, learned counsel appearing for the respondent no. 1, Mr. Ashok Kumar Yadav, learned G.A.-I for the respondent nos. 2 and 3 and Mr. V.P. Singh, learned senior counsel for the respondent nos. 4 & 5.

2. Since the prayers made in both these applications are interrelated and intertwined both the matters are being disposed of by this common order.

3. In Civil Review No. 29 of 2020, the petitioner has prayed for recall / review of the judgment and order dated

03.02.2020 passed by this Court in C.M.P. No. 47 of 2020 to the extent that the writ petitioner (respondent no. 1 herein) has been given an opportunity to match his bid with the bid of the highest bidder and further direction has been given to extend preference to him in allotment of the plot in question.

4. In Civil Review No. 30 of 2020 the petitioner has sought for review / recall of the order dated 09.01.2020 passed by this Court in L.P.A. No. 379 of 2016 by which direction has been given to Adityapur Industrial Area Development Authority (respondent no. 4 herein) to give preference to the writ petitioner in allotment of the plot in case he competes with the highest bidder.

5. The case of the writ petitioner as enumerated in W.P.C. No. 4266 of 2016 reveals that the writ petitioner is one of the proprietors of M/s. Shankar Enterprises which is involved in the business of manufacturing of Auto Body Building, Machines, fabricated Items, Steel Furniture and repairing works.

The writ petitioner came to know in the year 2007 that his lease has been cancelled in the year 2005. On obtaining the order as contained in Memo No. 719 dated 31.03.2005 by which the lease of the writ petitioner was cancelled, the same was challenged before this Court in W.P.C. No. 1423 of 2007, which however was dismissed on 26.04.2013. The writ petitioner thereafter preferred L.P.A. No. 199 of 2013 which however was disposed of as withdrawn with a liberty to the writ petitioner to avail other remedies before an appropriate forum vide order dated 15.01.2015.

The writ petitioner availed the liberty and preferred an appeal before the Appellate Authority which was registered as Appeal No. 02 of 2015. However, vide order dated 29.07.2016 the appeal was dismissed as being not maintainable. This led to a challenge by the writ petitioner by instituting W.P.C. No. 4266 of 2016. The said writ petition was dismissed vide order dated 16.08.2016. A Letters Patent Appeal followed being L.P.A. No. 379 of 2016 which was disposed of on 09.01.2020 with certain observations. Subsequent thereto an application for modification of the order dated 09.01.2020 passed in

L.P.A. No. 379 of 2016 was preferred by the writ petitioner being C.M.P. No. 47 of 2020 which was partly allowed vide order dated 03.02.2020 by making certain clarifications / modifications in the said order.

6. In all the aforesaid proceedings the review petitioner was conspicuously absent as it is claimed that he was unaware about the various orders passed by this Court more specifically the orders dated 09.01.2020 passed in L.P.A. No. 379 of 2016 and 03.02.2020 passed in C.M.P. No. 47 of 2020 and having subsequently come to know about the presence of these orders it has accordingly sought for review of the same.

7. To appreciate the case of the review petitioner the factual aspects as noted in the petition have been visited and which is encompassed herein below:

The review petitioner is a company registered under the Companies Act, 2013 and is an existing industrial unit having its unit at Industrial Area, Adityapur over a plot of land which has been allotted in its favour by AIADA. The review petitioner is engaged in the business of manufacture of HR Goods and CR Goods.

Since the review petitioner was in dire need of additional land it had applied online with the respondent-JIADA (Originally Adityapur Industrial Area Development Authority) along with a Detailed Project Report for establishment of its unit over Plot No. A-24, Phase-2, Industrial Area, Adityapur pursuant to a public notice issued on 12.03.2019 for allotment of the said plot of land.

The project report submitted by the review petitioner was duly considered by the Project Clearance Committee and the same being approved, the review petitioner became eligible for participating in the closed bid auction process if, there was more than one applicant for the plot in question.

The review petitioner through its Director was communicated by the respondent-JIADA that online application for allotment of the plot has been accepted and there would be online auction by way of closed bid to be held on 03.02.2020 and the review

petitioner was intimated that it can participate in online bidding by login in the single window. The online bidding process was accordingly undertaken on the appointed day and though the review petitioner was the highest bidder but no communication was made to it by JIADA which compelled the review petitioner to make a request for intimation to it as to whether it was the highest bidder and the further procedure necessary to be undertaken for allotment of the plot. Consequent to such letter intimation was given to the review petitioner by JIADA on 19.02.2020 that though it was the highest bidder but in view of the directions passed in L.P.A. No. 379 of 2016 the writ petitioner (respondent no. 1 herein) was to be given preference if he competes with the highest bidder in the manner of allotment of the plot. JIADA had also made communication to the Head Office to implement the order of this Court by issuing provisional land allotment order in favour of the writ petitioner with a direction for paying online the amount equal to the amount of the highest bidder within 30 days from the date of issuance of the land allotment order.

The review petitioner had come to know of the final order passed in L.P.A. No. 379 of 2016 and the subsequent modification / clarification of the said order in C.M.P. No. 47 of 2020 which had necessitated the review petitioner in preferring two separate review petitions being Civil Review No. 29 of 2020 and Civil Review No. 30 of 2020 and which are being dealt with in this common order.

8. Having enunciated the factual aspects of the case and the claim of both the aspirants let us now delve into the submissions advanced by the respective counsels.

9. Mr. Sumeet Gadodia, learned counsel for the review petitioner has submitted that the order dated 09.01.2020 passed in L.P.A. No. 379 of 2016 and the clarificatory order dated 03.09.2020 passed in C.M.P. No. 47 of 2020 has adversely affected the petitioner as the petitioner was not given an opportunity to put forward his claim which in the teeth of the provisions of Jharkhand Industrial

Area Development Regulations, 2016 has virtually made the claim of the writ petitioner redundant. While referring to the relevant provision of the Regulations of 2016, Mr. Gadodia, submits that allotment should be made by closed bid and the land is to be allotted to the highest bidder and in the event of a tie allotment shall be made through lottery amongst the highest bidders. The orders for which review has been sought for, according to Mr. Gadodia, runs contrary to the Regulations of 2016. It has been submitted that the Regulations of 2016 was never brought to the knowledge of the Court during the hearing of L.P.A. No. 379 of 2016 and C.M.P. No. 47 of 2020. He adds that the writ petitioner is not a bonafide applicant as he had failed to utilize the land for industrial purposes and was found indulging in sub letting the land in question. It has further been submitted by the learned counsel for the review petitioner that the writ petitioner had taken a leverage from the order dated 09.01.2020 passed in L.P.A. No. 379 of 2016 and had prayed for a preferential right though the same was not the issue in appeal. In this context, learned counsel for the petitioner has referred to the case of "*V.K. Majotra versus Union of India & Others*", reported in 2003 (8) SCC 40. Mr. Gadodia, has submitted that even if the writ petitioner was in possession of the plot in question the same would not attract any compassion in absence of a legal right accruing in favour of the writ petitioner. Reference has been made to the case of "*Teri Oat Estates (P) Ltd. versus UT, Chandigarh and Others*", reported in 2004 (2) SCC 130. Learned counsel thus submits that an over all view of the case would clearly demonstrate an error apparent on the face of the record and, in order to set it right the same, these review applications deserves to be allowed.

10. Mrs. Ritu Kumar, learned counsel for the writ petitioner (respondent no. 1 herein) has submitted that the review petitioner was not a necessary party in L.P.A. No. 379 of 2016 and C.M.P. No. 47 of 2020 simply on account of the fact that at that point of time it was not an aggrieved party. Learned counsel submits that the Regulations of 2016 was not brought on record either by JIADA /

AIADA or by the State Government. She submits that in L.P.A. No. 379 of 2016 a report was submitted by the PDJ, East Singhbhum at Jamshedpur pursuant to an order passed by this Court and the said report was indicative of the possession of the writ petitioner over the plot in question. Mrs. Ritu Kumar, further submits that an error manifest on the face of the record would be a condition precedent for reviewing a judgment which though in the present case is conspicuous by its absence. None of the grounds raised by the learned counsel for the review petitioner, according to Mrs. Kumar, will obliterate the findings recorded in the orders dated 09.01.2020 passed in L.P.A. No. 379 of 2016 and 03.02.2020 passed in C.M.P. No. 47 of 2020. In support of her contentions that the scope of review is narrow, reference has been made to the case of "*Parsion Devi and Others versus Sumitri Devi and Others*", reported in (1997) 8 SCC 715, and "*Thungabhadra Industries Ltd. versus Govt. of A.P.*", reported in AIR 1964 SC 1372.

11. Mr. V.P. Singh, learned senior counsel appearing for the respondent nos. 4 and 5 has submitted that the process for allotment of the land in question be directed to be undertaken expeditiously.

12. In order to appreciate the rival contentions the orders dated 09.01.2020 passed in L.P.A. No. 379 of 2016 and the order dated 03.02.2020 passed in C.M.P. No. 47 of 2020 have been visited. In L.P.A. No. 379 of 2016 the relevant portion of the order dated 09.01.2020 is extracted hereinbelow:

“8. *Having heard the rival contentions advanced by the learned counsels for the parties, we are of the considered view that since the appellant had already been allotted the plot in question, and even in the report submitted by the learned Principal District Judge, East Singhbhum, Jamshedpur, pursuant to the order dated 28.2.2017, it appears that the appellant is still in possession of the land in question, this appeal can be disposed of with the direction that the bid be held for the plot in question, and in case the appellant competes with the highest bidder, preference be given to the appellant in allotment of the plot.*

9. *We accordingly, direct the respondent Nos. 3 and 4, to hold the bid for the plot in question at an early date, and in case the appellant competes with the highest*

bidder, preference be given to the appellant in allotment of the plot. We make it clear that if the appellant is not the highest bidder in the bid to be held, no claim of the appellant for allotment of the plot in question shall be entertained.”

13. A clarification was sought for by the writ petitioner of the order dated 09.01.2020 passed in L.P.A. No. 379 of 2016 through a civil miscellaneous petition numbered as C.M.P. No. 47 of 2020. In it, a prayer was made that the writ petitioner may be allowed to participate in the bid and also be given an opportunity to match the amount quoted by the highest bidder and to make the payment in installments. This prayer of the writ petitioner was allowed though discounting the prayer for making of payment in installments and ultimately the order dated 09.01.2020 passed in L.P.A. No. 379 of 2016 was modified thus:

“9. In that view of the matter, we clarify the order dated 09.01.2020, passed by this Court in LPA No.379 of 2016, that when we had stated that “in case the appellant competes with the highest bidder, preference be given to the appellant in allotment of the plot”, it shall mean that the appellant also be given the opportunity to match with the highest bidder. As such, if the petitioner agrees to deposit the amount quoted by the highest bidder, in one lump sum, the preference be given to the appellant in allotment of the plot. The last sentence of the order, “We make it clear that if the appellant is not the highest bidder in the bid to be held, no claim of the appellant for allotment of the plot in question shall be entertained.”, stands deleted.”

14. When the aforesaid orders were passed the review petitioner was not in the frame as he had taken part in the closed bid for allotment of the land in question held on 03.02.2020 itself. Even being the highest bidder the allotment of the plot of land in its favour was forestalled by the orders passed in L.P.A. No. 379 of 2016 and C.M.P. No. 47 of 2020.

15. None of the parties in L.P.A. No. 379 of 2016 and C.M.P. No. 47 of 2020 had brought to the knowledge of the Court the Jharkhand Industrial Area Development Regulation, 2016. It is under the aegis of this Regulation of 2016 that the entire process of

allotment of land is made. Chapter VI of the Regulations of 2016 deals with land allotment procedure and Clause 6 reads as follows:

CHAPTER-VI

“6. Land Allotment Procedure

Jharkhand Industrial Area Development Authority is committed for planned development of industrial area and promotion of industries and matters appurtenant thereto under its command area. After acquisition of land either through the route of land acquisition laws or otherwise, the Authority shall determine the rate for allotment to the intending applicants keeping in view the land cost, expenditure incurred and expected expenditure to be incurred towards contour survey and plan layout, levelling of land and erection of boundary wall, construction of roads, sewerage and drainage, installation of street lighting, administrative cost and interest on capital investment, at the prevalent rate of the year in which the land vested in Jharkhand Industrial Area Development Authority. The rate for allotment shall be revisable upward @ 5 % per annum or Board may enhance the rate if it thinks fit subject to demand for concerned plot/ area.

For allotment of land, the following procedure shall be followed by the Authority and shall form part of this Regulation:

i. *The allotment of land shall be only for the purposes of setting up industry, as per the actual requirement, and subject to the provisions of Jharkhand Industrial Area Development Authority Act-2001, as amended from time to time, Jharkhand Industrial Area Development Authority Rule, 2001 and the Industrial Policy, as applicable on the relevant date.*

ii. *The allotment of land/plot shall be made subject to availability and approval of project by the Project Clearance Committee (PCC), Allotment of land/industrial shed within the industrial area shall be as per the following procedure:-*

(a) *Availability of land shall be notified on the notice board of Jharkhand Industrial Area Development Authority, two leading newspapers having wider circulation and website of the Authority or website of the Single Window System.*

(b) *The application for land allotment/shed can be done online only in the website of the Authority or Single Window System website.*

(c) *If more than one applicant make application for a particular plot, Jharkhand Industrial Area*

Development Authority shall take steps for allotment by way of closed-bidding process and highest bidder shall be allotted subject to fulfilment of other conditions. In case of tie after closed-bid auction process, the successful applicant will be decided through lottery.

(d) *Jharkhand Industrial Area Development Authority shall also encourage mega investors in IT/ITES for setting up IT industries, IT Park, IT SEZ and other Sector Specific park in private, Joint Venture or under PPP mode. IT industries and bio-technology industries/units may be accorded priority in allotment of land. In case, land allotment to mega IT industries deferred payment of land premium may be allowed up to five equal instalments in a spread over period of three years. For deferred payment Jharkhand Industrial Area Development Authority shall charge interest on balance amount @ 15% p.a. subject to revision except Clause 15(a) of this Regulation. For such projects FAR relaxation including special incentives for IT/Bio Technology industry etc. shall be applicable as per extent industrial policy of the State.*

(e) *Jharkhand Industrial Area Development Authority shall also encourage development of other mega projects in focus sectors which includes electronics hardware (electronics systems, design and manufacturing), semiconductor and industries having nano technology applications, food and feed processing and such other projects as may be decided by the State government.*

(f) *The Chief Executive Officer shall complete land allotment process within 75 days from the date of publication of notification of vacant plot.*

(g) *The Project Clearance Committee meeting shall be held on 15th of every month or next working day.*

iii. *All land available with Jharkhand Industrial Area Development Authority shall be treated at par for the purpose of allotment. No discrimination shall be made amongst available land with Jharkhand Industrial Area Development Authority on the basis of source of availability, except for such cases which are covered under any of the paragraphs of the Regulation and of the clauses of Industrial Policy.”*

Sub Clause (ii)(c) of Clause 6 envisages that in case of a tie in a closed bid auction process the successful applicant will be decided through lottery. The process for selection of an applicant is thus clearly spelt out in the Regulations of 2016 and any deviation

would be contrary to such provisions. There cannot be any preferential treatment to an applicant which is dehors the Regulation of 2016. The same would undermine the claim of the highest bidder which in the present case is the review petitioner as in view of the order dated 03.02.2020 passed in C.M.P. No. 47 of 2020 whatever be the highest bid and / or whosoever be the highest bidder the writ petitioner will have an opportunity to match the highest bidder and if the writ petitioner agrees to deposit the amount quoted by the highest bidder preference for allotment of the land has to be extended to him. Such direction / modification / clarification on the face of the Regulations of 2016, which we must hasten to reiterate was not brought on record earlier would clearly jeopardize the claims of a deserving applicant.

16. In the case of “*Union of India and Others versus Concord Fortune Minerals India Pvt. Ltd.*”, reported in (2018) 12 SCC 279, it was held that “Ordinarily writ jurisdiction cannot be invoked for directing the authorities to act contrary to law”.

17. A similar view was taken in the case of “*Union of India versus Kirloskar Pneumatic Co. Ltd.*”, reported in (1996) 4 SCC 453, wherein it was held as follows:

“10. According to these sub-sections, a claim for refund or an order of refund can be made only in accordance with the provisions of Section 27 which inter alia includes the period of limitation mentioned therein. Mr Hidayatullah submitted that the period of limitation prescribed by Section 27 does not apply either to a suit filed by the importer or to a writ petition filed by him and that in such cases the period of limitation would be three years. The learned counsel refers to certain decisions of this Court to that effect. We shall assume for the purposes of this appeal that it is so, notwithstanding the fact that the said question is now pending before a larger Constitution Bench of nine Judges along with the issue relating to unjust enrichment. Yet the question is whether it is permissible for the High Court to direct the authorities under the Act to act contrary to the aforesaid statutory provision. We do not think it is, even while acting under Article 226 of the Constitution. The power conferred by Articles 226/227 is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in

accordance with law. It cannot be invoked for directing the authorities to act contrary to law. In particular, the Customs authorities, who are the creatures of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. Maybe the High Court or a civil court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived. We are, therefore, of the opinion that the direction contained in clause (3) of the impugned order is unsustainable in law. When we expressed this view during the hearing Mr Hidayatullah requested that in such a case the matter be remitted to the High Court and the High Court be left free to dispose of the writ petition according to law.”

18. Mr. Sumeet Gadodia, learned counsel for the petitioner has referred to the case of “*V.K. Majotra versus Union of India & Others*” (supra) in support of his contention that the orders sought to be reviewed had given directions in issues which were not the point for determination. The relevant extract of the above noted judgment as relied upon by him is quoted hereinunder:

“8. We have perused the pleadings of the writ petition and the counter-affidavits filed by the respondents before the High Court. Counsel for the parties are right in submitting that the point on which the writ petition has been disposed of was not raised by the parties in their pleadings. The parties were not at issue on the point decided by the High Court. Counsel for the parties are also right in contending that the point raised in the writ petition was neither adverted to nor adjudicated upon by the High Court. It is also correct that vires of Sections 6(2)(b), (bb) and (c) of the Act were not challenged in the writ petition. The effect of the direction issued by the High Court that henceforth the appointment to the post of Vice-Chairman be made only from amongst the sitting or retired High Court judge or an advocate qualified to be appointed as a judge of the High Court would be that Sections 6(2)(b), (bb) and (c) of the Act providing for recruitment to the post of Vice-Chairman from amongst the administrative services have been put to naught/obliterated from the statute-book without striking them down as no appointment from amongst the categories mentioned in clauses (b), (bb) and (c) could now be made. So long as Sections 6(2)(b), (bb) and (c) remain on the statute-book such a direction could not be

issued by the High Court. With respect to the learned Judges of the High Court, we would say that the learned Judges have overstepped their jurisdiction in giving a direction beyond the pleadings or the points raised by the parties during the course of the arguments. The writ courts would be well advised to decide the petitions on the points raised in the petition and if in a rare case keeping in view the facts and circumstances of the case any additional points are to be raised then the concerned and affected parties should be put to notice on the additional points to satisfy the principles of natural justice. Parties cannot be taken by surprise. We leave the discussion here.”

19. Reference has also been made to the case of “*Teri Oat Estates (P) Ltd. versus UT, Chandigarh and Others*” (supra) to buttress his submission that sympathy and compassion could not have been extended to the writ petitioner in the facts and circumstances of the case and the same reads as follows:

“36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extraordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order which would be in contravention of a statutory provision.”

20. Mrs. Ritu Kumar, learned counsel for the writ petitioner (respondent no. 1 herein) has relied upon the judgments in the case of “*Parsion Devi and Others versus Sumitri Devi and Others*”, reported in (1997) 8 SCC 715, and “*Thungabhadra Industries Ltd. versus Govt. of A.P.*”, reported in AIR 1964 SC 1372, wherein it was held that a review is by no means an appeal in disguise whereby an erroneous decision is reversed and corrected but lies only for patent error. That is precisely the issue raised by the review petitioner. This Court at the time of hearing of L.P.A. No. 379 of 2016 and C.M.P. No. 47 of 2020 did not have the occasion to consider the provision of Regulations of 2016 as it was not brought on record by either of the parties but existence of such regulations and the definite parameters having been laid down in case of a tie between two aspirants in a close bidding process would point to a manifest error on the face of the record.

21. We must also indicate herein that though the review petitioner was not made a party in L.P.A. No. 379 of 2016 and C.M.P. No. 47 of 2020 as it would have been perhaps pre-mature to do so but the orders which are under review have clearly affected the legal right of the review petitioner with respect to allotment of the land in question and consequently it became an aggrieved party and the assertion of the learned counsel for the writ petitioner that the review petitioner was not aggrieved by the aforesaid orders does not have any legs to stand.

22. In view of the various factual and legal aspects as discussed above, we conclude and hold that the review petitioner has made out a case for review of the order dated 09.01.2020 passed in L.P.A. No. 379 of 2016 and the order dated 03.02.2020 passed in C.M.P. No. 47 of 2020.

23. Accordingly, the orders dated 09.01.2020 passed in L.P.A. No. 379 of 2016, so far as it relates to preference being given to the writ petitioner in allotment of the plot in case the writ petitioner competes with the highest bidder which is at paragraph 9 of the said order as well as the clarification / modification / direction encompassed in para 9 of the order dated 03.02.2020 passed in C.M.P. No. 47 of 2020 is reviewed and recalled with a further direction to JIADA to proceed further with respect to allotment of the land in question expeditiously and in accordance with law.

24. Both these review applications stand allowed.

25. Pending I.As, also stand disposed off.

(Rongon Mukhopadhyay, J.)

I Agree

(Deepak Roshan, J.)

(Deepak Roshan, J.)

High Court of Jharkhand at Ranchi

Dated, the 06th day of September, 2021.

Alok/NAFR