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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

**BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL**

ON THE 21st OF DECEMBER, 2023

WRIT PETITION No. 5686 of 2008

BETWEEN:-

OSWAL AGRO MILLS LIMITED A COMPANY REGISTERED UNDER THE PROVISIONS OF THE COMPANIES ACT, 1956 HAVING ITS OFFICE AT NEAR JAIN COLONY, VIJAY INDER NAGAR, DHABA ROAD, LUDHIANA (PUNJAB) THROUGH MR. B.N.GUPTA S/O SHRI R.D. GUPTA, AGED ABOUT 58 YEARS, DIRECTOR, OSWAL AGRO MILLS LIMITED, NEAR JAIN COLONY, VIJAY INDER NAGAR, DHABA ROAD, LUDHIANA (PUNJAB)

.....PETITIONER

(BY SHRI BRIAN D'SILVA - SENIOR ADVOCATE ASSISTED BY SHRI AVINASH ZARGAR - ADVOCATE)

AND

- 1. THE STATE OF MADHYA PRADESH THROUGH THE SECRETARY, COMMERCE INDUSTRY & EMPLOYMENT, MANTRALAYA, BHOPAL (MADHYA PRADESH)**
- 2. MADHYA PRADESH AUDYOGIK KENDRA VIKAS NIGAM (BHOPAL) LTD. A GOVERNMENT OF MADHYA PRADESH UNDERTAKING (A SUBSIDIARY OF MPSIDC LTD. THROUGH ITS CHAIRMAN, MADHYA PRADESH AUDYOGIK KENDRA VIKAS NIGAM (BHOPAL) LTD. TAWA COMPLEX, FIRST FLOOR, BITTAN MARKET, E-5 ARERA COLONY, BHOPAL (MADHYA PRADESH)**
- 3. THE MANAGING DIRECTOR, MADHYA PRADESH AUDYOGIK KENDRA VIKAS NIGAM (BHOPAL) LTD., TAWA COMPLEX, FIRST FLOOR, BITTAN MARKET, E-5 ARERA COLONY, BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

**(SHRI ATUL DWIVEDI - PANEL LAWYER FOR THE RESPONDENT NO.1-
STATE AND SHRI K.C. GHILDIYAL - SENIOR ADVOCATE ASSISTED BY
SHRI SAHIL SHARMA - ADVOCATE FOR THE RESPONDENTS NO.2 AND 3)**
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This petition coming on for orders this day, the court passed the following:

ORDER

Heard on I.A. No.14230/2023, an application for amending the record.

2. Same is allowed. Let necessary corrections be carried out during the course of the day.
3. Also, heard on I.A. No.14244/2023, an application for taking the order of Debt Recovery Tribunal on record.
4. Same is allowed and documents are taken on record.
5. This writ petition is filed challenging order dated 10.09.2023 (Annexure P-9) and order dated 09.03.2005 (Annexure P-11) passed by the Managing Director of MPAKVN and Managing Director of MPSIDC, respectively, whereby lease deed which was executed in favour of the petitioner for the purpose of establishment of oil extraction unit, as contained in Annexure P-1, on 20.05.1982 has been cancelled for violation of the terms of conditions of the agreement.
6. It is evident from Annexure P-1 that 26 acres of land situated in village Mandideep, Tehsil Gauharganj, District Raisen was allotted in favour of the petitioner for the purpose of establishment of industry for manufacturing of solvent extracted oil and deoiled cake, refined oil, vanaspati and protein isolate for a period of 99 years.
7. Shri Brian D'Silva, learned Senior Counsel submits that as per Clause 9 of the lease deed, the land was allotted not only for industrial purposes but for ancillary purposes also and, therefore, petitioner after closing down of the

production unit, is since running its warehouse, the petitioner cannot be evicted, nor the order of allotment of land for 99 years can be cancelled.

8. Shri Brian D'Silva, learned Senior Counsel drawing attention to para 23 of the said lease deed, submits that there is no stipulation in the lease deed that if the industry fails then the lease will be terminated. It is submitted that in fact petitioner has mortgaged this land with the bank and now they cannot be evicted from the said land.

9. Attention is drawn to I.A. No.7118/2020 to point that an application for change of land use was made to the competent authorities. Attention is also drawn to I.A. No.11923/2019. Drawing attention to Clause 2.1(ix) of the Industrial Promotion Policy, as has been appended by the petitioner along with I.A. No.11923/2019, it is pointed out that now the new Industrial Promotion Policy, 2014, as amended on December, 2018, permits use of land for warehousing purpose and, therefore, petitioner being in the business of warehousing, such land use be permitted and order of cancellation of lease and the appellate order passed by the Managing Director, MPSIDC, be set aside.

10. Shri K.C. Ghildiyal, learned Senior Counsel assisted by Shri Sahil Sharma, learned counsel for the respondents No.2 and 3 submits that petitioner is trying to misread the provisions. It is submitted that the first order was passed on 10.09.2003. Policy of 2018 is not having any retrospective application. Appellate order was passed on 24.08.2008. Clause 2.1(ix) of the new Industrial Promotion Policy deals with objectives of Industrial Promotion Policy and provides to encourage growth in Madhya Pradesh's thrust sectors (Agribusiness and Food processing, Textiles, Automotive and Auto components, Tourism, Pharmaceuticals, Bio-technology, IT/ITeS, Healthcare and Logistic & Warehousing). It is submitted that they may be the thrust area

but it does not provide for interchangeability of land meant for industrial production to be used for the purpose of warehousing.

11. After hearing learned counsel for the parties and going through the record, it is necessary to refer to Clause 9 of the lease deed on which lot of emphasis is placed by Shri Brian D'Silva, learned Senior Counsel. Clause 9 of Lease Deed (Annexure P-1) reads as under:-

"9. The lessee shall use the said premises land and building structures and works, erected or constructed thereon only for the purpose of the said business of manufacturing of Solvent Extracted Oil & deoiled cake and other allied products and for construction of offices, administrative building, Godowns and shall not use the same or any other part thereof or permit to be used for any other purpose without the previous permission in writing of the lessor."

12. Thus, it is evident that erection of administrative building, offices and godowns is not the primary object of the lease. It is ancillary to the business of manufacturing of solvent extracted oil & deoiled cake and other allied products. Therefore, once the primary activity for which lease was granted has been closed then ancillary activity cannot substitute the purpose of the lease because the main purpose of lease was manufacturing and once it has come to an end then petitioner is duty bound to surrender the land, unless he is able to demonstrate that his manufacturing activity is still going on.

13. Shri Brian D'Silva fairly admits that manufacturing activity is not going on but the land is being used for the purposes of warehousing. He adds that equal number of employment is being generated as was generated through manufacturing activity but that cannot be a consideration for continuing to enjoy the lease land, once the main purpose of lease has come to an end with the

closure of the manufacturing business.

14. Clause 23 of the lease deed on which Shri Brian D'Silva has placed reliance is in regard to the right of re-entry over the land/premises on termination of the lease or expiry of the lease period or due to breach of the conditions of the lease deed.

15. In the present case, respondents have rightly exercised their right to re-entry by passing impugned orders Annexure P-9 and Annexure P-11, respectively, inasmuch as, the basic purpose for which lease was granted, has not been fulfilled.

16. As far as Industrial Promotion Policy as amended in 2018 is concerned, that may have an objective of promoting certain businesses including logistics and warehousing but that does not mean that the policy permits use of industrial plots for the purpose of warehousing and logistics. They being two separate categories and the object of promoting industry and logistics being different, they may have a close nexus but they are not supplemental to each other, so to permit use of industrial land for the purposes of warehousing. If petitioner is in requirement of a land for the purposes of warehousing, he can apply afresh under the policy of 2018 and the State will be free to allot such piece of land as per the piece of land so identified for the specific purpose of logistics and warehousing. But that will not entitle the petitioner to continue with the leased industrial plot.

17. In case of **Afshar M.M. Tacki v. Dharamsey Tricamdas, AIR 1947 Bom 98**, it is held that while construing a contract, the Court is entitled and bound to take into consideration the surrounding circumstances which must have been present in the minds of the parties at the time of entering into the contract. But the rule as to the "surrounding circumstances" cannot be extended

to enable a party to prove that when he wrote one thing he meant and understood to mean, something totally different. To allow such evidence in a suit other than a suit for rectification would involve a plain violation of Section 92 of the Evidence Act.

18. In case of **Timblo Irmaos Ltd. Vs. Jorge Anibal Matos Sequeira**, **AIR 1977 SC 734**, it is held that the well-known principles of interpretation of a document are: "(i) a word used in a document has to be interpreted as a part of or in the context of the whole;". The mode of construing a document and the rules to be applied to extract its meaning correctly depend not only upon the nature and object but also upon the frame, provisions, and language of the document.

19. In case of **State of Madhya Pradesh Vs. Orient Paper Mills Ltd.**, **AIR 1977 SC 687**, it is held that the true import of the document may be gathered from its terms, not from rulings or other documents. There is a serious limitation on the service of case law in this area. It depends firstly on the actual issue in each case and the angle of vision adopted and secondly on the clauses, purposes and surrounding circumstances of each transaction.

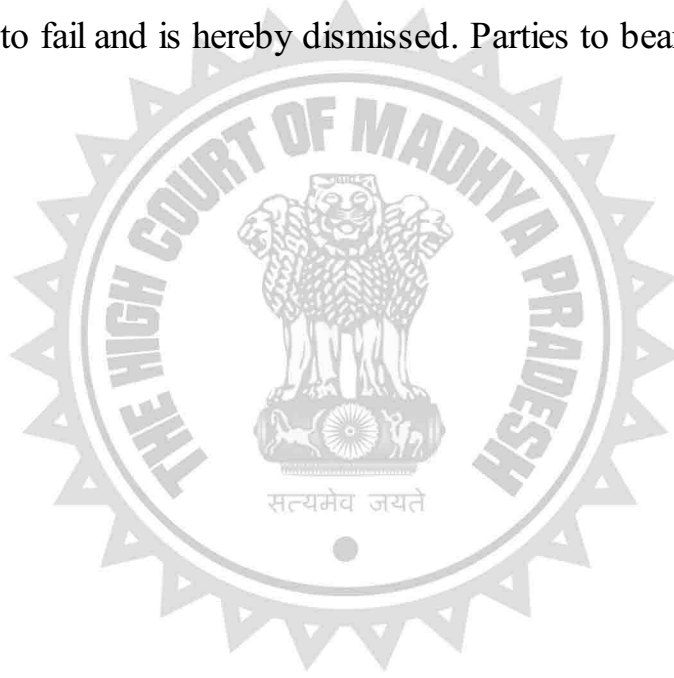
20. When these aspects are taken into consideration, then there is no iota of doubt that agreement is for the purpose of manufacturing and other activities like construction of administrative building, godown, etc. is supplemental to the main purpose of manufacturing and, therefore, once the main purpose has failed then for ancillary purposes, industrial plot cannot be retained.

21. Thus, it is evident that when admittedly manufacturing has come to an end, for ancillary purpose which, by no stretch of imagination, can be said to be a manufacturing industry, petitioner cannot be allowed to retain the leased land.

22. As far as mortgage of the said plot is concerned, that is between the bank and the petitioner and once this lease has been terminated, petitioner will be required to furnish other collateral in favour of the bank, which is not a dispute before this Court, and, therefore, there is no need for consideration of this aspect.

23. This Court has already dealt with similar issue in case of **Vemaa Equipments Limited Vs. M.P. Audyogik Kendra Vikas Nigam, Bhopal Ltd.** in W.P. No.19263 of 2016, decided on 2nd November, 2023 and, therefore, in view of the said ratio of law, I am of the opinion that petition deserves to fail and is hereby dismissed. Parties to bear their own costs.

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(VIVEK AGARWAL)
JUDGE