

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 28TH DAY OF APRIL, 2026

PRESENT

THE HON'BLE MR. VIBHU BAKHRU, CHIEF JUSTICE

AND

THE HON'BLE MR. JUSTICE C.M. POONACHA

WRIT APPEAL NO. 499 OF 2024 (GM-KIADB)

BETWEEN:

IDBI BANK LIMITED
A COMPANY INCORPORATED AND
REGISTERED UNDER THE COMPANIES
ACT, 1956 AND A BANKING COMPANY
WITHIN THE MEANING OF
SECTION 5(C) OF THE BANKING
REGULATION ACT 1949
AND HAVING ITS REGISTERED OFFICE AT
IDBI TOWER, WTC COMPLEX
CUFFEE PARADE, MUMBAI - 400 005
AND ITS ZONAL OFFICE AT
IDBI HOUSE, 58
MISSION ROAD, BENGALURU - 560 027
REPRESENTED BY ITS
AUTHORIZED SIGNATORY
MR. VENUGOPAL N

...APPELLANT

(BY SRI K G RAGHAVAN, SENIOR ADVOCATE FOR
SRI TEJAS S R, ADVOCATE)

AND:

KARNATAKA INDUSTRIAL AREAS
DEVELOPMENT BOARD
HAVING IT OFFICE AT 14/3,
2ND FLOOR, R.P BUILDING,
NRUPATHUNGA ROAD
BENGALURU-560 001



REPRESENTED BY ITS
CHIEF EXECUTIVE OFFICER AND
EXECUTIVE MEMBER
MR MAHESH M IAS

...RESPONDENT

(BY SRI K. SHASHI KIRAN SHETTY, ADVOCATE GENERAL/
SENIOR ADVOCATE FOR
SRI B.B. PATIL, ADVOCATE FOR C/R-1 &
SRI UDAYA HOLLA, SENIOR ADVOCATE FOR
SRI AJAY J NANDALIKE, FOR IMPLEADING APPLICANT
IN I.A. No.3/2024)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT PRAYING TO CALL FOR
RECORDS FROM THE FILE OF THE LEARNED SINGLE JUDGE
OF HON'BLE COURT IN W.P No. 29319/2023 AND SET ASIDE
THE ORDER DATED 06.03.2024 PASSED BY ALLOWING THIS
APPEAL.

THIS WRIT APPEAL HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT, COMING ON FOR
PRONOUNCEMENT THIS DAY, JUDGMENT WAS
PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. VIBHU BAKHRU ,CHIEF JUSTICE
and
HON'BLE MR. JUSTICE C.M. POONACHA

C.A.V. JUDGMENT

(PER: HON'BLE MR. JUSTICE C.M. POONACHA)

1. The present *intra* Court appeal is filed by the writ petitioner
impugning the order dated 06.03.2024 [**impugned order**] passed

in Writ Petition No.29319/2023 [**subject writ petition**] whereunder, the writ petition filed by the petitioner was dismissed by the learned Single Judge. The said petition was filed seeking to quash the communication dated 20.12.2022 whereunder, the respondent - Karnataka Industrial Areas Development Board [**KIADB**] cancelled the allotment of land made in favour of the petitioner. In the said petition, a direction was also sought to the KIADB to execute a lease-cum-sale agreement in favour of the petitioner in terms of the allotment letter dated 15.02.2013.

2. The relevant facts in a nutshell are that the appellant had made an application for allotment of 10 acres of land for the purpose of utilizing the same for construction of buildings to accommodate its Regional Processing Unit, Currency Chest Training Centre, Call Centre, Staff Quarters, etc. Vide the allotment letter dated 15.02.2013, the KIADB allotted 4.5 acres of land in Plot No.11 of the Bengaluru Hardware Park [**subject plot**] on a lease-cum-sale basis for a period of 10 years. The tentative cost of the plot was ₹1.80 crores per acre. 20% of the tentative cost of the subject plot was to be paid within 30 days of the allotment and 80% was to be paid within 180 days, i.e., on or before 13.08.2013. The appellant paid a sum of ₹1.80 crores on

26.07.2012 being 20% of the tentative cost of the subject plot and ₹6.30 crores towards the balance 80% of the tentative cost of the plot on 27.09.2013. Thereafter, KIADB issued a confirmatory letter of allotment dated 12.08.2014 and also put the appellant in possession of the subject plot vide Possession Certificate dated 27.12.2014. Vide the terms of the allotment, the appellant was *inter alia* required to take possession of the land within 30 days of making full payment; execute the lease-cum-sale agreement within 30 days of the Possession Certificate; and commence production within 24 months from taking possession of the plot.

3. The KIADB vide letter dated 23.03.2016 enclosed a copy of the draft lease-cum-sale agreement [**agreement**], requiring the appellant to have the same duly signed. However, the appellant responded to the same requesting certain changes to be made in the draft of the said agreement sent by KIADB. Various correspondences were exchanged between the parties with regard to finalization of certain clauses in the said agreement. However, there was no resolution with regard to the same. KIADB, vide letter dated 27.01.2018 informed the appellant that modifications as sought for in the said agreement cannot be considered. The appellant, vide letter dated 17.05.2022 sought for further extension

of 3 years for implementation of the project. The KIADB vide communication dated 20.12.2022 [**impugned communication**] cancelled the allotment made in favour of the appellant due to non-adherence of the time schedule of the terms and conditions of allotment i.e., not executing the said agreement and implementing the project within the stipulated time. The appellant, being aggrieved by the impugned communication filed the subject writ petition.

4. The appellant had, *inter alia*, contended before the learned Single Judge that the notice under Section 34-B of the Karnataka Industrial Areas Development Act, 1966 [**KIAD Act**] was required to be issued, which was admittedly not done. The learned Single Judge held that the procedure contemplated under Section 34-B of the KIAD Act is to be followed after execution of the lease-cum-sale agreement and not prior to. The learned Single Judge also held that the appellant was not agreeable to clause 5.2(iii) and clause 10(1)(a) of the lease-cum-sale agreement as also clause 20(b) of the said agreement and hence, admittedly, the lease-cum-sale agreement had not been executed for more than 10 years since the issuance of the letter of allotment. Accordingly, the learned Single Judge dismissed the writ petition.

5. The learned Senior Counsel Sri.K.G.Raghavan appearing along with Sri Tejas S.R., for the appellant contends that the procedure under Section 34-B of the KIAD Act was required to be followed and the appellant ought to have been issued a notice before cancellation of the allotment. It is further contended that the finding of the learned Single Judge that the appellant was not in possession of the allotted plot, is erroneous being contrary to the material on record. That the KIADB had admittedly put the appellant in possession of the subject plot. Hence, the learned Senior counsel seeks the allowing of the writ petition and quashing of the impugned communication.

6. *Per contra*, Sri Shashi Kiran Shetty, learned Advocate General appearing for the respondent - KIADB submits that the learned Single Judge was justified in dismissing the writ petition having regard to the admitted position that the appellant had not executed the lease-cum-sale agreement despite nearly 10 years having elapsed from the date of the allotment. It is further contended that the learned Single Judge had rightly dismissed the writ petition, which order ought not to be interfered with by this Court in the present appeal.

7. The essential factual matrix is undisputed, inasmuch as the appellant was allotted the subject plot vide allotment letter dated 15.02.2013. Consequent to the appellant paying the cost of the subject plot, the KIADB issued a confirmatory letter of allotment dated 12.08.2014 whereunder, the appellant was, *inter alia*, called upon to take possession of the subject plot and Possession Certificate dated 27.12.2014 was issued.

8. As per the terms of the allotment letter dated 15.02.2013 the appellant was required to adhere to the time schedule indicated in the standard conditions attached to the allotment letter. The said time schedule is as under:

| | |
|---|--|
| (a) For taking over possession of land | 30 days from the date of full payment towards tentative cost of land |
| (b) For execution of Lease-cum-Sale Agreement | 30 days from the date of receipt of Possession Certificate |
| (c) For commencement of Production | 24 months from the date of taking possession of land. |

9. The aforesaid time schedule indicates that the possession of the land was to be taken 30 days from the date of making full payment; the lease-cum-sale agreement was to be executed within 30 days from the date of receipt of Possession Certificate; and production was to be commenced 24 months from taking possession of the land.

10. Admittedly, vide letter dated 23.03.2016, the KIADB enclosed a draft lease-cum-sale agreement requiring the appellant to sign and to complete the execution of the same.

11. The appellant vide letter dated 27.06.2016 sought for modifications in certain clauses of the lease-cum-sale agreement. The said modifications/changes as sought for by the appellant are as under:

| <i>"Existing Clause no</i> | <i>Description</i> | <i>Proposed clause by Bank</i> |
|----------------------------|--|---|
| <i>Clause No.5.2(iii)</i> | <i>The lessee shall complete civil construction works, erect machineries and commence production within <u>twenty four months from the date of taking possession of the schedule property, that is the twenty seventh day of December month two thousand fourteen, after obtaining necessary / licenses/ clearance / approvals from the concerned such as Government of India, State Government, Local bodies, Statutory bodies etc., wherever it is required.</u></i> | <i>The lessee shall complete civil construction works, erect machineries and commence production within <u>sixty months from the date of registration of the schedule property, after obtaining necessary licenses / clearances / approvals from the concerned such as Government of India, State Government, Local bodies, Statutory Bodies etc., wherever it is required.</u></i> |
| <i>Clause No.10.1(a):</i> | <i><u>12 months without revising the tentative price of land if the lessee has taken steps to the satisfaction of the lessor for implementation of the project and has started civil construction works and</u></i> | <i><u>24 months without revising the tentative price of land if the lessee has taken steps to the satisfaction of the lessor for implementation of the project and has started civil construction works and</u></i> |

| | | |
|---------------------------|---|--|
| | <i>has spent at least 25% of the cost towards civil construction which should be evidenced by a certificate of investment issued by financial institution/Bank/Chartered Accountant.</i> | <i>has spent at least 15% of the cost towards civil construction which should be evidenced by a certificate of investment issued by financial institution/Bank/Chartered Accountant.</i> |
| <i>Clause No.10.1(b)</i> | <i><u>At the end of the third year, a further extension of six months time by levying an amount equivalent to 25% of the prevailing allotment price for the land at the time of such extension after being satisfied that the lessee has invested a minimum of 25% of the project cost (excluding the land cost) which should be evidenced by a certificate of investment from the financial institutions/banks/chartered Accountant.</u></i> | <i><u>At the end of the seventh year, a further extension of six months time, by levying an amount equivalent to 5% of the prevailing allotment price for the land at the time of such extension, if the lessee has not by then invested a minimum of 20% of the project cost (excluding the land cost) which should be evidenced by a certificate of investment from the financial institutions/banks/chartered Accountant.</u></i> |
| <i>Clause No.10.1(c):</i> | <i>Further extension of six months time by levying an amount <u>equivalent to 25% of the prevailing allotment price</u> for the land at the time of such extension after being satisfied that the lessee has invested a minimum of 50% of the project cost(excluding the land cost) which should be evidenced by a certificate of investment from the financial Institutions / Banks / Chartered accountant.</i> | <i>Further extension of six months time, by levying an amount <u>equivalent to 5% of the prevailing allotment price</u> for the land at the time of such extension, if the lessee has not by then invested a minimum of 25% of the project cost(excluding the land cost) which should be evidenced by a certificate of investment from the financial institutions/Banks/Chartered accountant</i> |
| <i>Clause No.10.1(d):</i> | <i>No further extension shall be granted beyond a total period of <u>four years from the date of lease-cum-sale</u></i> | <i>No further extension shall be granted beyond a total period of <u>eight years from the date of lease-cum-sale</u></i> |

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|-------------------|--|---|
| | <u>agreement or possession certificate whichever is later</u> , provided the opportunity for remedying the breach is afforded in terms of clause-34-b(i) & (ii) of the KIAD Act. This agreement shall automatically stand terminated, if the lessee has not completed the civil construction work, erected machinery and commenced production at the end of the period of four years. | agreement, provided the opportunity for remedying the breach is afforded in terms of clause-34-b(i) & (ii) of the KIAD Act. This agreement shall automatically stand terminated, if the lessee has not completed the civil construction work, erected machinery and commenced production at the end of the period of eight years. |
| Clause No.12(i) | The original applicant / partners / promoter directors/shareholders shall continue to hold a minimum of 51% interest /shareholdings in the lessee's firm/company till the end of the lease period/ execution of sale deed, whichever is later. | As of now our Bank is classified as Other public sector. Bank with Govt. ownership of 74%. Government has the discretionary power to reduce holdings below 51%. The clause may be removed. |
| Clause No.12.(ii) | The lessee shall not change the constitution/ status of its firm/company (proprietary or partnership (registered or unregistered) or private limited company or public limited company) without the previous written consent of the lessor or any other officer authorized by the lessor and such consent shall be granted by the lessor subject to the condition that the original applicant/partners/promoter directors/shareholders should continue to hold a minimum 51% of the interest/shares in the newly | As of now our Bank is classified as Other public sector Bank with Govt. ownership of 74%. Government has the discretionary power to reduce holdings below 51%. The clause may be removed. |

| | | |
|--------------------------|---|--|
| | <i>constituted firm/company till the end of the lease period/execution of sale deed, whichever is later.</i> | |
| <i>Clause No.12(iii)</i> | <i>In the event of lessee reducing its interest/share holdings either in the lessee's firm/company or in the newly constituted firm/company below 51% of the total shareholdings of the company, the lessee shall pay to the lessor a penalty or revised cost of land as decided by the lessor from time to time in this regard, provided that such relaxation shall be permissible if the lessee has substantially implemented the project.</i> | <i>As of now our Bank is classified as Other public sector Bank with Govt ownership of 74%, Government has the discretionary power to reduce holdings below 51%. The clause may be removed</i> |
| <i>Clause No.20(a)</i> | <i>The lessee, in the industrial units to be established in the schedule property, shall create maximum possible employment opportunities and provide minimum of 80% of the employment to the Kannadigas on an overall basis. However, the lessee shall reserve 100% of the jobs to kannadigas in case of group C and D categories(persons who are living in the state for the past fifteen years and who possess the knowledge of reading and writing of Kannada are considered Kannadigas).</i> | <i>IDBI Bank is a public sector Bank, with recruitment being centralised. It will not be an industrial unit. The clause may be removed.</i> |
| <i>Clause No.22</i> | <i>As soon as it may be convenient the lessor will fix the price of the said</i> | <i>The clause is open ended without any ceiling on price. KIADB is requested to fix a</i> |

| | | |
|----------------------------|--|---|
| | <p><i>premises at which it will be sold to the lessee and communicate it to the lessee and decision of the lessor in this regard will be final and binding on the lessee. The lessee shall pay the balance of value of property. If any, after adjusting the allotment consideration and earnest money deposit excluding rents and interest and penalties and maintenance charges levied and paid by the lessee within one month from the date of receipt of communication by the lessor. On the other hand, if any sum is determined as payable by the lessor to the lessee after adjustment as aforesaid, such sum will be refunded to the lessee before the date of execution of sale deed.</i></p> | <p><i>cap on the price at which land will be sold to the lessee rather than an open ended price</i></p> |
| <p><i>Clause No.23</i></p> | <p><i>The lessor shall sell the schedule property to the lessee during the currency of the lease period or at the end of TEN years referred to in clause 1 [C] <u>or the extended period, if any,</u> if the lessee has performed all the conditions herein contained and committed no breach thereof. All attendant expenses in connection with the sale, such as stamp duty, registration charges etc., shall be borne by the lessee</i></p> | <p><i>The lessor shall sell the schedule property to the lessee during the currency of the lease period or at the end of TEN years referred to in clause 1 [C] if the lessee has performed all the conditions herein contained and committed no breach thereof. All attendant expenses in connection with the sale, such as stamp duty, registration charges etc., shall be borne by the lessee</i></p> |

12. Various communications have been exchanged between the parties with regard to the modifications sought for by the appellant. It is further forthcoming from the record that the Reserve Bank of India brought the appellant under the ambit of 'Prompt Corrective Action Framework' and all capital expenditure was frozen from 05.05.2017 and was released on 10.03.2021.

13. The KIADB vide letter dated 27.01.2018 communicated to the appellant that the modifications sought for by the appellant vide its letter dated 27.06.2016 cannot be considered. The KIADB vide its letter dated 03/04.09.2018 also intimated the appellant regarding the decision taken in the meeting of the Board of the KIADB held on 18.08.2018 wherein the request of the appellant for extension of time was considered. The appellant was informed that in terms of the decision of the Board Meeting held on 18.08.2018, the appellant was requested to obtain the approval from the State Level Single Window Clearance Committee [SLSWCC]. Subsequently, the appellant vide its letter dated 14.06.2019 sought the opinion of the KIADB on: a) The amount that may be payable by the appellant for further extension; b) The amount likely to be foregone if the appellant decides to back out; and c) whether the appellant can sell the land either fully or partially in future. The

Board vide its letter dated 07.05.2020 responded to the clarifications as under:-

| Sl. No. | Clarifications sought | Reply |
|----------------|--|---|
| 1 | Amount that may be payable by the Bank for further extension | As per clause 10(1) (a) to 10 (1) (c) of the draft lease cum sale issued on 23-03-2016. |
| 2 | Amount likely to foregone if Bank decides to back out | Office order dtd.31-08-2015 is enclosed to this letter. |
| 3 | Whether Bank can sell the land either fully or partially in future | There is no provision for selling of the land. |

14. The KIADB vide its letter dated 28/31.12.2021, once again requested the appellant to obtain approval from SLSWCC for extension of time for implementing the project. Despite the said communications dated 28/31.12.2021, neither did the appellant approach the SLSWCC seeking for extension of the project nor did the appellant come forward for execution of the lease-cum-sale agreement. Subsequently, the KIADB vide the impugned communication dated 20.12.2022 cancelled the allotment made in favour of the appellant.

15. In the present case, admittedly, the lease-cum-sale agreement was not executed within the time specified in the conditions of the allotment, nor has the appellant commenced

production in compliance with the terms and conditions of the letter of allotment.

16. It is pertinent to note here that the KIAD Act has been enacted to promote the establishment and orderly development of industries. The allotment of industrial land in industrial areas is for the purpose of industrial development of the State. Despite the appellant having been allotted the land on 15.02.2013 and the appellant having been put in possession of the land on 27.12.2014, the appellant has not come forward to complete the execution of the lease-cum-sale agreement despite the said agreement having been sent to it by the KIADB vide its letter dated 23.03.2016. Further, in terms of the conditions of allotment, the appellant was also required to commence production within 24 months from the date of taking possession of the land. Although the appellant was put in possession of the property, vide possession certificate dated 27.12.2014, the appellant has not commenced production till date.

17. The aspect of allotment of land is stipulated in Regulation 10 of the Karnataka Industrial Areas Development Board Regulations, 1969 [**Regulations**] which has been made in exercise of the powers conferred under Section 41(2)(b) of the KIAD Act, which reads as under:-

"10. Allotment.- (a) The Board, on being satisfied that the person, firm or company who has made an application is likely to start production within a reasonable period, and is not one which is declared obnoxious under Regulation 14 may make an allotment in his/their favour;

(b) The Board may constitute sub-committees for considering allotment of plots and also delegate its power to the Executive Member, if necessary:

(c) The Executive Member shall notify such applicant to whom an allotment is made to execute the agreement in Form 3 or 4 or 5 as the case may be with such modification as may be necessary in each case on such date, time and place as may be fixed by the Executive Member and to pay the consideration for the occupancy of the land as fixed by the Board within the time fixed by the Board;

(d) Failure to execute the agreement or to pay the sums demanded by the Executive Member as per the notice given under Regulation 10(c) will render the allottee to have deemed to have declined the allotment;

(e) The Board or with the authority of the Board, the Executive Member will have the discretion to grant extension of time for complying with the terms of the notice issued under Regulation 10(c) with or without payment of interest at nine per cent on the sums payable in terms of the said notice for the extended period."

(emphasis supplied)

18. It is also relevant to notice Regulation 15, which reads as under:-

"15. Allottee as a Licensee.- Till the agreement for lease, sale or lease-cum-sale is executed, the allottee will be considered as a mere licensee who shall have licence and authority only to enter upon the land allotted to him and to start construction of buildings or works and will have no power to legally alienate his interest except to the extent allowed by the Board for

raising loans. No sub-division of the plot will be allowed without the permission of the Board given in writing"
(emphasis supplied)

19. It is clear from a plain reading of Regulation 10(d) that 'a failure to execute the agreement will render the allottee to have deemed to have declined the allotment'. Further, a plain reading of Regulation 15 would indicate that prior to the execution of the agreement, 'the allottee will be considered as a mere licensee' and it was entitled to 'enter upon the land allotted to start construction'. It is clear from the aforementioned that the appellant has been put in possession of the subject plot as a licensee only for the limited purpose of commencing construction. Further, default of the licensee in executing the agreement is to be construed as the allottee having declined the allotment.

20. A learned Single Judge of this Court in the case of **M/s Imperial Constrafin Pvt. Ltd. v. Chief Executive Officer and Executive Member, Karnataka Industrial Areas Development Board and others.**¹ clearly held that the payments not having been made in terms of the letter of allotment, cancellation of the allotment is automatic and issuance of notice under Section 34-B of

¹ dated 17.03.2021 passed in WP No.33257/2019

the KIAD Act does not arise. The said view of the learned Single Judge has been upheld by the Division Bench².

21. With regard to the contention put forth on behalf of the appellant that the procedure under Section 34-B of the KIAD Act was required to be followed and the appellant was required to be given notice before the allotment was cancelled, it is pertinent to note that the learned Single Judge noticed the judgment rendered by another learned Single Judge of this Court in the case of ***M/s Kamalalayya Real Estates LLP v. The Karnataka Industrial Areas Development Board***³ wherein, it was held that Section 34-B of the KIAD Act is to be followed only after execution of the lease-cum-sale agreement.

22. Section 34B of the KIAD Act reads as under:

“34B : Resumption of the possession of premises including the residential tenements on breach of terms and conditions of lease or holding without authority:

(1) Where the Board is of the opinion that an allottee of any premises or part thereof or residential tenement in an industrial area or industrial estate has violated any of the terms or conditions of allotment or holds it without any authority it may, without prejudice to Section 25 give notice to such allottee and Banks or Financial Institutions, in whose favour the Board has permitted the mortgage or leasehold rights of the

² Order dated 19.08.2021 passed in WA No.533/2021

³ Writ Petition No.279/2024 decided on 12.01.2024

premises, or residential tenement specifying the breaches of the terms and conditions of the allotment calling upon the allottee to remedy such breaches within a time stipulated in the notice.

(2) If the allottee fails to remedy the breaches within the time so stipulated, the Board shall serve a notice upon the allottee under intimation to such Bank or Financial Institutions to show cause within thirty days from the date of service of notice, why the possession of the premises or part thereof or residential tenement should not be resumed.

(3) After considering the cause, if any, shown by the allottee and after giving him an opportunity of being heard, the Board may pass such orders, as it deems fit.

(4) Where the Board passes an order under subsection (3), for resuming possession of the 50 premises or part thereof or residential tenement in the industrial area it may, by notice in writing, order any allottee to surrender and deliver possession thereof to the Board or any person dully authorized in this behalf within the date specified in the notice.

(5) If any allottee refuses to surrender or deliver the possession of the premises or part thereof or residential tenement within the time specified in the notice, the Board or any officer authorized by it in this behalf may resume the possession of the premises or part thereof or residential tenement free from all encumbrances and for that purpose may use force as may be necessary”.

23. The opening sentence of Section 34-B of the KIAD Act clearly indicates that the same were to be applicable for resumption of possession for breach in the terms and conditions of lease or holding without authority. The said provision indicates a situation where the allottee has been put in possession of the property and

an agreement of lease has been executed. However, in the present case, no agreement for lease has been executed. The said provision also contemplates a situation of holding possession without authority, which is not so in the present case as the allottee has been put in possession pursuant to the letter of allotment and is bound by the terms and conditions of the said letter of allotment.

24. It is forthcoming from the material on record that the appellant was put in possession of the subject plot vide Possession Certificate dated 27.12.2014, it is clear that the said possession is only for the limited purpose of commencing construction and no other right would accrue to the appellant by virtue of being put in possession of the subject land. Further, as noticed above, the failure of the appellant to have got the lease-cum-sale agreement executed is to be construed as the appellant having deemed to have declined the allotment.

25. The reliance placed by the appellant on the Judgment of a Co-ordinate Bench of this Court in the case of **Karnataka Industrial Area Development Board, rept. by its Executive Member v. Electromobiles (I) Ltd.**⁴ would not aid the case of the appellant, as the factual matrix in the said case is completely

⁴ 2001 SCC Online Karnataka 839

different from the facts of the present case. In the said case, the subject matter of challenge before the Division Bench was an order passed by the learned Single Judge in the course of a winding up proceedings. The allottee under the KIADB was a company which was being wound up. The allottee had been allotted a property by the KIADB and possession of a portion of the property was also handed over. However, the allottee failed to implement the project and hence, the KIADB cancelled the allotment. The official liquidator, in the course of the winding up proceedings sought to challenge the cancellation of the allotment which was granted by the learned Single Judge. In the said facts, the Division Bench, while adjudicating upon the nature of possession has clearly noticed that neither the allotment letter, possession certificate nor any other document to demonstrate the power of the KIADB to cancel the allotment had been produced. In the said facts, this Court held that the allottee had entered into possession lawfully and has been in lawful possession of the land. Further, this Court held that, even in the absence of the execution of lease-cum-sale agreement since the allottee is in possession pursuant to the possession certificate, the said possession is to be construed as that of a lessee.

26. However, in the present case various documents i.e., letter of allotment, possession certificate, etc., have been placed on record. The terms and conditions of allotment are clear and forthcoming, inasmuch as the appellant was required to execute the lease-cum-sale agreement within 24 months from taking possession of the plots. The consequence of not executing the lease-cum-sale agreement is clearly stipulated in Regulation 10(d) of the Regulations. The Regulations have also not been noticed in the case of **Electromobiles (I) Ltd.** (*supra*). Hence, the said judgment in the case of **Electromobiles (I) Ltd.** (*supra*) would not aid the case of the appellant.

27. Reliance is also placed by the respondent - KIADB on the judgment of the Supreme Court in the case of **Orissa Industrial Infrastructure Development Corporation v. Mesco Kalinga Steel Ltd., & ors.**,⁵. The relevant portion of which reads as under:

"13. Aforesaid Condition No. 18 never came into force and remained inoperative in the facts of the instant case as lease deed itself had not been executed. Even otherwise, more than three months' time was given to Mesco to remedy the breach inasmuch as notice for resumption was initially given in 1997 and for more than 5½ years till resumption in July 2003, breach was not remedied. In spite of receiving the advance possession, there was failure on the part of Mesco to execute the

⁵ (2017) 5 SCC 86

lease deed though draft lease deed was sent to it in January 1996 for execution. The relationship of lessor and lessee never came into being, in the absence of execution of lease deed. The execution of lease deed was necessary as the State Government had only accorded in principle approval and advised IDCO to allot the land that could only be done by execution of lease deed. As a matter of fact, IDCO ought not to have handed over advance possession of the land to Mesco without execution of lease deed. However, for the reasons best known to IDCO, advance possession was given. The allotment letter itself contemplated the execution of the lease deed as a condition precedent. As provided in Section 33 of the Orissa Industrial Infrastructure Development Corporation Act, 1980 (for short "the Act"), the Corporation can dispose of the land subject to directions given by the State Government in such a manner and subject to such terms and conditions as may be necessary. The condition precedent was that of execution of lease deed, and as it was so directed by the State Government also, in our considered opinion, no concluded contract came into being and the transaction became void due to failure on the part of Mesco to execute a formal lease deed.

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17. IDCO is a statutory authority and it can act only on the basis of written lease deed. The execution of lease deed is necessary and it is in public interest to prevent unauthorised leasing out of property on its behalf. Lease is required to be executed in a prescribed format in the shape of formal document which is sine qua non. In the absence thereof, it would not be permissible to hold that relationship of lessor and lessee came into being. A situation arose under Section 175(3) of the Government of India Act, 1935 a formal document was required to be executed which provision was in pari materia with Article 299 of the Constitution, this Court held in *Bhikraj Jaipuria v. Union of India* [*Bhikraj Jaipuria v. Union of India*, AIR 1962 SC 113] that for a contract between Government and private individuals, formal document is necessary and where it is required that a thing shall be done in the prescribed manner or form but does not set out the consequences of non-compliance, the question whether the provision was mandatory or directory has to be judged in the light of the intention of the legislature

as disclosed by the object. If the provisions of statute are mandatory, the thing done not in the manner or form prescribed, can have no effect or validity. This Court also observed that it is in the interest of the public that the question whether a binding contract has been made between the State and a private individual should not be left to dispute and litigation.

18. It is apparent that there is a manner of executing the lease deed with the Corporation. The prescribed form of draft lease deed had been sent by IDCO to Mesco but it failed to execute it. Thus, there was no contract which could have been enforced and it became void due to inaction of Mesco itself."

28. As noticed above, the appellant having been allotted with the subject plot on 15.02.2013 and having been put in possession of the same vide Possession Certificate dated 27.12.2014, till date has not commenced the project. The allotment of the industrial plot by the KIADB to the appellant was for the purpose of commencing of the project and carrying out its business activities which has not fructified despite passage of nearly a decade.

29. Further, although the KIADB has sent a draft of the lease cum sale agreement vide its letter dated 23.03.2016, the same has not yet been executed. The KIADB vide its letter dated 27.1.2018 has categorically communicated to the appellant that the changes sought in the draft lease cum sale agreement cannot be considered. Despite the same, the appellant has not taken any tangible steps or measures so as to have the lease cum sale

agreement executed and to commence its business operations. The KIADB after passage of nearly five years of the said letter dated 27.1.2018, issued the impugned communication dated 20.12.2022 and cancelled the allotment.

30. As notice above, although the appellant had enquired with the KIADB with regard to seeking for extension of time for completion of the project, despite the KIADB communicating to the appellant vide its letter dated 03/04.09.2018, to approach the SLSWCC with a request to extend the time for completion of the project, there is no material on record to indicate that the appellant made such a request with the SLSWCC. The aforementioned aspects clearly indicate that the appellant has been lax in implementing the project in the subject plot.

31. In the facts of the present case, the contention of the appellant that the impugned communication is bad for want of issuance of notice as contemplated under Section 34-B of the KIAD Act is not liable to be accepted as despite the KIADB communicating to the appellant vide its letter dated 27.1.2018, that the modifications sought for cannot be considered, the allotment was cancelled nearly five years thereafter vide the impugned communication dated 20.12.2022. It is clear that the present case

is not one where the appellant's allotment was suddenly, without having an adequate opportunity of being notified as to the reason, cancelled.

32. In view of the aforementioned, we find no infirmity with the decision of the learned Single Judge in declining to interfere with the impugned communication dated 20.12.2022.

33. Accordingly, the above appeal is dismissed as being devoid of merit.

**Sd/-
(VIBHU BAKHRU)
CHIEF JUSTICE**

**Sd/-
(C.M. POONACHA)
JUDGE**

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