

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&**

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 10TH DAY OF APRIL 2015/20TH CHAITHRA, 1937

WA.No. 582 of 2015 (P)

(AGAINST THE JUDGMENT IN WP(C).NO. 3541/2013 DATED 16-01-2015)

APPELLANT/ADDL.10TH RESPONDENT:

**K.RAMACHANDRAN, S/O.RAMAN NAIR,
PULUKUNNIMADATHIL HOUSE, KULAPPULLY,
SHORANUR, PALAKKAD DISTRICT, PIN - 679 121.**

**BY ADVS.SRI.KALEESWARAM RAJ
SRI.K.B.ARUNKUMAR**

RESPONDENT(S)/PETITIONER & RESPONDENTS 1 TO 9:

- 1. ABOOBAKER HUSSAIN,
PARTNER, M/S.CEDICOM ELECTRONICS, SHORNUR,
PALAKKAD - 679 121.**
- 2. M.USMAN, MANAGING PARTNER,
M/S.CEDICOM ELECTRONICS, SHORNUR,
PALAKKAD - 679 121.**
- 3. KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD.
P.B.NO.50., HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM - 695 001.
REPRESENTED BY ITS MANAGIND DIRECTOR.**
- 4. THE MANAGING DIRECTOR,
KERALA SMALL INDUSTRIES DEVELOPMENT
CORPORATION LTD. P.B.NO.50,
HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM - 695 001.**
- 5. THE ASSISTANT GENERAL MANAGER,
KERALA SMALL INDUSTRIES DEVELOPMENT
CORPORATION LTD. P.B.NO.50,
HOUSING BOARD BUILDING, SANTHI NAGAR,
THIRUVANANTHAPURAM - 695 001.**
- 6. THE MANAGER/OFFICE -IN-CHARGE, SIDCO INDUSTRIAL PARK,
INDUSTRIAL ESTATE, KARAKKAD, SHORANUR - 679 122.**

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7. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001
 8. THE SHORNUR MUNICIPALITY, MUNICIPAL OFFICE,
SHORNUR - 679 121, REPRESENTED BY ITS SECRETARY.
 9. THE SECRETARY,
THE SHORNUR MUNICIPALITY, MUNICIPAL OFFICE,
SHORNUR - 679 121.
 10. THE ASSISTANT DIVISIONAL OFFICER,
FIRE AND RESCUE DEPARTMENT, NEAR CIVIL STATION,
PALAKKAD- 678 001.
 11. THE ENVIRONMENT ENGINEER,
KERALA POLLUTION CONTROL BOARD,
DISTRICT OFFICE, NEAR DISTRICT PANCHAYAT OFFICE,
PALAKKAD - 678 001.
- R1 & R2 BY SRI.K.K.CHANDRAN PILLAI, SENIOR ADVOCATE
ADVS. SRI.ARUN ANTONY
SMT.S.AMBILY
SMT.K.V.SHENU
- R3 TO R6 BY ADV. SRI.R.T.PRADEEP
R7 & R10 BY SR GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
R8 & R9 BY SRI.P.P.THAJUDHEEN, SC, SHORNUR MUNICIPALITY
R11 BY SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION
ON 09-04-2015, THE COURT ON 10-04-2015 DELIVERED
THE FOLLOWING:

sts

W.A.NO.582/2015

APPENDIX

PETITIONER'S ANNEXURES: **NIL**

RESPONDENT'S ANNEXURES:

ANNEX R1(A) COPY OF THE I.A.NO.2074/14 IN WP(C).NO.3541/13 WITH AFFIDAVIT.

ANNEX R1(B) COPY OF THE ORDER DATED 18/2/2014 IN WP(C).NO.3541/13.

/TRUE COPY/

P.A.TO JUDGE

sts

**ASHOK BHUSHAN, CJ
& A.M.SHAFFIQUE, J.**

*** * * * ***

W.A.No.582 of 2015

Dated this the 10th day of April 2015

J U D G M E N T

Shaffique,J

The additional 10th respondent in W.P.C No.3541 of 2013 is the appellant who challenges judgment dated 16/01/2015, by which the writ petition filed by respondents 1 and 2 herein, who are hereinafter referred to as the petitioners, has been allowed quashing Ext.P13, an order passed by the 4th respondent cancelling the lease in favour of the petitioners and directing the Kerala Small Industries Development Corporation Limited (SIDCO) and its Managing Director to consider the representation submitted by the petitioners after hearing all the affected parties including the appellant.

2. The short facts involved in the case indicates that the petitioners got allotment of certain item of property having an extent of 11.67 cents in an industrial park as per

letter of allotment dated 10/12/2007, pursuant to which a lease deed was also executed on 30/09/2008 on payment of premium as well as the petitioners agreeing to pay yearly rent. The lease was for a period of ninety years. According to the petitioners, on account of certain factors beyond the control of the petitioners, they were unable to construct the building and to commence operation of the unit within the time stipulated in the lease deed and they have been requesting for time for commencing the industrial activity. Notice dated 28/4/2011 was served on the petitioners calling upon them to take appropriate steps to set up the industrial unit for which a reply had been sent on 12/05/2011 narrating the practical problems faced by them. However SIDCO issued show cause notice dated 16/06/2011 calling upon the petitioners to explain why the land should not be resumed for non-compliance of the terms of agreement. Petitioners submitted a reply stating that they have already started certain works in the land. Again notice dated 16/07/2011 has been served on the petitioners directing them to submit the

building plan within 15 days. Petitioners complied with the said request by letter dated 28/07/2011. By another letter dated 10/08/2011, SIDCO sanctioned construction of the buildings based on the plan submitted by the petitioners on certain conditions. Still further, another notice dated 11/07/2012 was served on the petitioners to show cause why the land should not be resumed for having kept the plot idle. It seems that the petitioners did not opt to send any reply which resulted in the resumption order dated 01/09/2012 produced as Ext.P13. Petitioner thereafter submitted a representation dated 30/10/2012, Ext.P14 to the Managing Director of SIDCO for cancelling the resumption order and to permit the petitioners to proceed with the contemplated project. In the meantime, a notice dated 20/10/2012 came to be published for re-allotment of the aforesaid land. At that stage, the writ petition is filed challenging Ext.P13, inter alia contending that the petitioners were not given proper opportunity for hearing, that the materials placed before the officers of SIDCO were

not considered by the Managing Director while issuing Ext.P13 and that all necessary steps for construction of the building for setting up the industrial unit is in progress, that notice in terms of clause 19 which provides three months notice for determination of lease have not been served on the petitioners and that no steps were taken to assess the compensation as provided under clause 3 of the lease deed.

3. Counter affidavit has been filed on behalf of SIDCO inter alia stating that as per the terms of the agreement, the allottees will have to commence production within a period of two years from the date of execution of the lease deed. It is stated that petitioners kept the plot idle despite several notices being served to start the unit. It is further stated that sufficient notice had already been given to the allottee to explain why the lease need not be cancelled. The reply given was not satisfactory. However, the building plan was approved and sanctioned on 10/08/2011. It is further submitted that the petitioner, as per the letter dated 14/03/2012 have agreed to start an industry in the allotted

plot by 15/04/2012. Exhibit R2(a) is the said letter. Despite such an undertaking, no action has been taken and accordingly notice was issued on 11/07/2012 for which there was no response and therefore resumption order was passed on 01/09/2012 and Ext.P13 order was acknowledged by the petitioners on 21/09/2012. The plot was resumed as per mahazar dated 12/10/2012 and notified for allotment on 20/10/2012. It is further submitted that the land was re-allotted to the additional 10th respondent as per order dated 21/01/2013.

4. It is also contended that when the writ petition came up for admission, the learned Standing counsel had undertaken before this Court on 05/02/2013, that further proceedings shall be dropped if the functional operation of the unit commences within one month.

5. The 10th respondent, who is the appellant herein, has also filed counter affidavit inter alia stating that the writ petition is not maintainable as the issues projected by the petitioners involved consideration of disputed facts in regard

to contract obligations between the parties. That apart, the allotment has already been made in favour of the 10th respondent, and he has paid the provisional lease premium. Hence there was no necessity to quash Ext.P13 resumption order.

6. The petitioners had also filed a reply affidavit supporting their stand in the matter.

7. The learned Single Judge, after considering the issues involved in the matter, formed an opinion that since the petitioners have already proceeded further in regard to setting up of the unit, Ext.P13 is liable to be cancelled and accordingly the directions have been issued.

8. The learned counsel for appellant, relying upon the judgment in **Rajasthan State Industrial Development and Investment Corporation v. Diamond & Gem Development Corporation Ltd.** [(2013) 5 SCC 470] contended that Court should not exercise its writ jurisdiction to enforce the contractual obligations. Reference is made to paragraphs 20 to 23 which reads as under:

“20. *In Kerala SEB v. Kurien E. Kalathil this Court held that a writ cannot lie to resolve a disputed question of fact, particularly to interpret the disputed terms of a contract observing as under: (SCC pp. 298-99, paras 10-11)*

“10. ... The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition. ... If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract.

11. ... The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil court or in arbitration if provided for in the contract. ... The contractor should have relegated to other remedies.”

21. *It is evident from the above that generally the Court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito*

justitiae). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. *Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in good faith. Additionally, the applicant must make a*

demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.

IV. Interpretation of the terms of contract

23. *A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it*

themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without any outside aid. The terms of the contract have to be construed strictly without altering the nature of the contract, as it may affect the interest of either of the parties adversely. [Vide United India Insurance Co. Ltd. v. Harchand Rai Chandan Lal and Polymat India (P) Ltd. v. National Insurance Co. Ltd.]

9. Reliance is also placed on the judgment in **Narayanan v. State of Kerala** [1993 (1) KLT 461] for the purpose of contending that the documents relied upon and not forming part of the original petition cannot be relied upon. Paragraph 2 is relevant which reads as under:

"2. Before proceeding to state the facts of the case or dealing with the contentions raised by the parties, I must mention a feature that has been noted in many of the original petitions that have come up before me for hearing. Leave is often granted by this court for amending the original petitions incorporating new averments and new prayers besides producing new documents. Very often the amendments are not carried out in the original petition; nor copies of the amended original petition produced with the result the court has to wade through various petitions to get a true picture of the amended original petition. Such a

situation exists in this original petition also, the petitioner not having chosen to carry out the amendment allowed by CMP.No. 15954 of 1992 in the original petition. Nor has he chosen to produce copies of the amended original petition. Normally this should have entailed refusal to look into the amendment. But I am refraining from doing so to avoid a failure of justice. It is necessary that all amendments to an original petition either in the averments or the prayers in the original petition or by way of production of new documents should be carried out in the original petition besides producing copies of the amended original petition for the use of the court and for service on the contesting respondents. However, as stated earlier I am treating the petition as one amended by CMP.No.15954 of 1992 and dealing with it as such despite the default on the part of the petitioner in carrying out the amendment. I must also mention that in between the original petition and C.M.P.No.15954 of 1992 a document had been introduced as Ext.P15 along with CMP.No. 14019 of 1992, a petition for direction. Having regard to the numbering of this annexure, it is clear that the petitioner intended that also to be treated as part of the original petition. But it has made its appearance in a petition for direction without being followed by any petition for amendment of the original petition. Production of such documents

along with applications for interim relief to be treated as exhibits in the main petition also causes difficulties to the court when such production is not followed up by appropriate amendment. One of the problems that may arise is that the exhibit in question will remain unexplained and unanswered in any counter affidavit that may be filed by the respondents as it does not form part of the original petition itself, though that contingency does not arise so far as this case and Ext.P15 produced along with CMP.No.14019 are concerned. With these prefatory remarks I shall proceed to state the facts and deal with the matter on merits".

10. Reliance is also placed on the judgment of this Court in WPC No.13889 of 2013 which was confirmed in W.A. No.1648 of 2014 for the proposition that once third party rights had already been created and the allotment of land is made in the name of another person, petitioners cannot have any further right to claim it back.

11. On the other hand, learned counsel for the petitioners supported the judgment and contended that the petitioners have already invested huge amounts for setting up of the unit and since the lease is for a period of ninety

years, sufficient time ought to have been granted by SIDCO for setting up of the industrial unit. Materials produced before this Court would prove that substantial investment has already been made by the petitioners and if sufficient time is granted, the unit can be set up as early as possible. It was also pointed out that the delay in setting up of the unit was properly explained to the concerned officers, the reasons of which have not been considered by the Managing Director while issuing Ext.P13 order. Further it is also argued that lease could be cancelled only on giving three months notice in writing which is conspicuously not given and therefore there is violation of principles of natural Justice and breach of the terms of contract. It is also pointed out that the petitioners had made substantial investments on the basis of the undertaking by the counsel for SIDCO that the order could be reviewed if steps are taken immediately for setting up the unit, based on which the petitioners have proceeded further by purchasing additional machineries which are kept in godowns and will be available for

installation as soon as appropriate directions are issued by SIDCO as per the judgment of this court.

12. Learned counsel appearing for SIDCO contended that sufficient opportunity had been given to the petitioners to ensure that the unit is set up within a time frame, but they have failed to comply with the terms of the lease and the lease was cancelled invoking the power available under the terms of contract. It is also pointed out that the materials produced by the petitioners do not indicate that they have invested any amount, as alleged.

13. Perusal of the judgment of the learned Single Judge would indicate that the learned Single Judge proceeded on the basis that the petitioners have proceeded with the establishment of the unit during 2013 itself and after filing the writ petition, they have expended Rs.18 lakhs for purchasing various machineries to make the unit functional and further amounts had been spent. It is based on the undertaking and representation of respondents 1 to 4 that the amounts had been spent. It was therefore observed

that since the petitioners moved forward to a considerable extent under the belief that Ext.P13 would be cancelled, a fresh look into the matter is required by SIDCO, especially on account of the fact that Ext.P14 was pending.

14. In fact, the learned Single Judge did not consider the issues raised by the parties on merits. Ext.P13 resumption order had been quashed only on the ground that the petitioners had invested certain amounts subsequent to the resumption order and that the representation of the petitioners was pending consideration.

15. Ext.P13 is an order passed by the Managing Director of SIDCO cancelling the lease deed in favour of the petitioners. Of course, the parties are bound by the terms and conditions of a contract and under normal circumstances this Court shall not interfere with the cancellation of a contract which gives rise to allegations of breach by one party against the other party. In other words, disputed questions of fact which require evidence to be adduced will not be decided by this Court in a writ petition.

In contractual matters, if materials relied upon by the parties are available on record and without anything further if the dispute can be decided, of course, the Court may exercise its jurisdiction, but the same depends upon the facts and circumstances of each case.

16. In the present case, the petitioners had a grievance that there is violation of the principles of natural justice and that sufficient opportunity by way of three months notice was not issued in terms with the contract.

17. In instances where there is allegation of violation of the principles of natural justice, of course, the Court can exercise its jurisdiction under Article 226 of the Constitution and issue appropriate orders. However, the learned Single Judge did not feel it necessary to adjudicate on such issues and had only proceeded on the basis that the petitioners have invested substantial amounts after filing the writ petition. This approach, according to us, is erroneous as even in contractual matters, the question to be looked into is whether the order cancelling the contract is justifiable and

legal on well settled principles of law. That, subsequent to the filing of the writ petition, petitioners have proceeded to procure certain machineries or equipments on the basis of an offer made before this Court by the learned Standing counsel for SIDCO, cannot be matters which could be relied upon for the purpose of quashing Ext.P13 order, which is passed on a set of facts available as on the said date. Therefore, the learned Single Judge was not justified in quashing Ext.P13 merely for the reason that the petitioners' grievances in Ext.P14 requires to be addressed.

18. Though it is argued by the learned counsel for the petitioners that there is violation of the principles of natural Justice, the terms of the contract enables the SIDCO to terminate the contract. Ext.P2 is the allotment letter. Clause 7 indicates that production should be commenced within a period of two years from the date of license agreement. Clause 9 indicates that construction of factory building shall be started with prior approval of SIDCO and should be as per the prevailing rules of Local Authority. Clause 10 further

indicates that the prior sanction of all statutory and local authorities have to be obtained by the allottee. Clause 13 indicates that if the allottee fails to comply with any of the conditions within the stipulated time, the allotment order will automatically cease to be valid without further notice. Ext.P3 is the lease deed, which also contains various terms and conditions. The lease is for a period of 90 years from 10/01/2008. Clause 4 indicates that the lessee shall commence commercial operation within 24 months from the date of agreement, in default of which, the lessor shall have the right to terminate the lease and to enter and take possession of the demised land and structures and the lessee shall forfeit 25% of the payment made by the lessee to the lessor. Clause 19 further indicates that if the lessee violates the conditions in the lease, or such other rules and regulations framed by the lessor, the lessor has the right to terminate the lease and evict the lessee from the demised premises after giving registered notice of three months.

19. One of the clear stipulations in the lease deed is

regarding commencement of commercial operation, which is within 24 months from the date of the lease deed. In such an event, clause 4 applies and it shall be open for the lessor to terminate the lease and take possession of the demised land.

20. The argument of the learned counsel for the petitioners is based on Clause 19 which apparently applies to non-compliance of the terms and conditions mentioned in the lease deed or the rules and regulations of SIDCO, in which event, three months notice to terminate the lease is required. It is also worthwhile to note that notice is issued to the petitioners as per Ext.P4 notice dated 28/04/2011 which refers to an earlier notice dated 16/02/2011. Ext.P6 is a notice dated 16/06/2011 calling upon the petitioners to show cause within 30 days and informing the petitioners that the plot has been kept idle and why the land should not be taken without further notice. Ext.P12 is a notice dated 11/07/2012 calling upon the petitioners to explain within 15 days why the occupants in the land should not be resumed,

which ultimately resulted in the resumption order dated 01/09/2012. Ext.P6 and P12 are notices dated 16/06/2011 and 11/07/2012, to which the petitioners' reply is dated 28/07/2011 wherein they requested for six months extension of time to complete construction. It is therefore evident that sufficient notice had been given to the petitioners, and ultimately the resumption order was passed only on 01/09/2012. In fact, in between, petitioners submitted certain plans which were approved by SIDCO as per their letter dated 10/08/2011. But, still, when there was no progress, the official respondents had issued orders of resumption and possession also has been taken. Therefore it is clear that clause 19 had been substantially complied with before terminating the lease.

21. The petitioners have a case that they were not heard in the matter. In fact, there is no procedure for personal hearing as the factual matter is undisputed. Petitioners were given sufficient time to commence operation and the failure is evident from their own admission

that they were unable to proceed with the project on account of certain circumstances. Whether such an explanation offered by the petitioners were genuine or not are not matters which this Court should consider at this stage of the proceedings. At any rate, the learned Single Judge also did not feel it necessary to consider the validity or otherwise of the explanation offered by the petitioners.

22. The petitioners have, of course, narrated certain reasons in Ext.P14 indicating the circumstances under which they were unable to commence operation. Whether such reasons are genuine or not and whether the Managing Director of SIDCO should consider the same is the only question that is required to be decided.

23. It is true that a re-allotment has already been made, but in view of the order of stay granted by this court, the additional 10th respondent, the appellant herein was unable to proceed further in the matter. Hence we are of the view that it is for the Managing Director of SIDCO to decide whether the order at Ext.P13 requires to be revised

or reviewed in the light of the statements made in the representation at Ext.P14. In fact, Ext.P14 is dated 30/10/2012 and the allotment is made in favour of the appellant on 21/01/2013.

24. Under such circumstances, it is always open for the Managing Director of SIDCO to consider Ext.P14, and to find out whether any of the circumstances or reasons stated in Ext.P14 warranted revision or review of Ext.P13 order. Further, the consequence of revising Ext.P13 may eventually lead to cancellation of allotment made in favour of the appellant. Therefore, the appellant is also required to be heard in the matter before a final decision is taken. Though the allotment was made in favour of the appellant before filing the writ petition, the agreement was executed only during the pendency of the writ petition. It is for the Managing Director to decide whether Ext.P13 requires reconsideration in the light of Ext.P14 and consequently whether the allotment in favour of the appellant requires to be cancelled.

Under such circumstances, we allow the appeal setting aside the judgment of the learned Single Judge and modify the same to the following extent:

i) The direction of the learned Single Judge quashing Ext.P13 is set aside.

ii) The Managing Director of SIDCO shall consider Ext.P14 representation and verify whether the resumption order, Ext.P13 requires to be reviewed or revised in the light of the circumstances mentioned in Ext.P14 after hearing the petitioners as well as the appellant.

lii) A final decision shall be taken within a period of two months from the date of receipt of a copy of this judgment, and the decision shall be intimated to the parties concerned.

(ASHOK BHUSHAN, CHIEF JUSTICE)

(A.M.SHAFIQUE, JUDGE)

jsr

