

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 16TH DAY OF JANUARY 2015/26TH POUSHA, 1936

WP(C).No. 3541 of 2013 (P)

PETITIONER(S):

- 1. ABOOBAKER HUSSAIN,
PARTNER, M/S.CEDICOM ELECTRONICS, SHORNUR,
PALAKKAD DISTRICT -679 121.**
- 2. M.USMAN,
MANAGING PARTNER, M/S.CEDICOM, ELECTRONICS,
SHORNUR, PALAKKAD DISTRICT- 679 121.**

**BY SRI.K.K.CHANDRAN PILLAI,SENIOR ADVOCATE
ADVS. SRI.THOMAS JAMES MUNDACKAL
SRI.BOBBY THOMAS
SRI.ARUN ANTONY**

RESPONDENT(S):

- 1. KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD.,
P.B NO.50, HOUSING BOARD BUILDING, SANTHINAGAR,
THIRUVANANTHAPURAM- 695 001
REPRESENTED BY ITS MANAING DIRECTOR.**
- 2. THE MANAGING DIRECTOR,
KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD.,
P.B.NO.50, HOUSING BOARD BUILDING, SANTHINAGAR,
THIRUVANANTHAPURAM -695 001**
- 3. THE ASSISTANT GENERAL MANAGER,
KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD.,
P.B.NO.50, HOUSING BOARD BUILDING, SANTHINAGAR,
THIRUVANANTHAPURAM- 695 001**
- 4. THE MANAGER/OFFICE-IN-CHARGE,
SIDCO INDUSTRIAL PARK, INDUSTRIAL ESTATE, KARAKKAD,
SHORANNUR -679 122.**
- 5. THE STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM- 695 001.**

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***ADDL.R6 TO R9 IMPEADED**

***Addl.R6. THE SHORNUR MUNICIPALITY ,
MUNCIPAL OFFICE, SHORNUR - 679 121,
REPRESENTED BY ITS SECRETARY.**

***Addl.R7. THE SECRETARY,
SHORNUR MUNICIPALITY, MUNCIPAL OFFICE,
SHORNUR-679 121.**

***Addl.R8. THE ASST. DIVISIONAL OFFICER,
FIRE AND RESCUE DEPARTMENT,
NEAR CIVIL STN, PALAKKAD - 678 001.**

***Addl.R9. THE ENVIRONMENT ENGINEER,
KERALA POLLUTION CONTROL BOARD,
DISTRICT OFFICE,NEAR DISTRICT PANCHAYAT OFFICE,
PALAKKAD - 678 001.**

***ADDL. R6 TO R9 ARE IMPEADED AS PER ORDER DATED 12/02/2013 IN
IA NO.2315/2013.**

****ADDL.R10 IMPEADED**

****Addl.R10. K.RAMACHANDRAN,
S/O.RAMAN NAIR, PULUKUNNIMADATHIL (H),
KULAPPULLY,SHORANUR, PALAKKAD DISTRICT.**

****ADDL. R10 IS IMPEADED AS PER ORDER DATED 15.07.2013 IN IA.NO. 6697/2013.**

**R1 TO R4 BY ADV. SRI.R.T.PRADEEP
R5 BY GOVERNMENT PLEADER SRI.NOUSHAD THOTTATHIL
ADDL.R6 & R7 BY ADV. SRI.P.P.THAJUDEEN
SMT.C.SEENA
R9 BY ADV. SRI. M.AJAY, SC, KERALA STATE POLLUTION CONTROL BOARD
ADDL.R10 BY SRI.K.RAMAKUMAR,SENIOR ADVOCATE
ADV. SRI.K.B.ARUNKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-11-2014, THE COURT ON 16-01-2015 DELIVERED THE
FOLLOWING:**

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APPENDIX

PETITIONER(S) EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE RECONSTITUTED PARTNERSHIP DEED
DATED 1/8/2009**
- EXHIBIT P2 COPY OF THE ORDER DATED 10/12/2007 ISSUED BY THE 1ST
RESPONDENT.**
- EXHIBIT P3 TRUE COPY OF THE LEASE DEED DATED 3/9/2008 BETWEEN THE 1ST
RESPONDENT AND THE PETITIONER.**
- EXHIBIT P4 COPY OF THE NOTICE DATED 28/4/2011 ISSUED BY THE 4TH
RESPONDENT.**
- EXHIBIT P5 TRUE COPY OF REPLY TO EXT.P4 DATED 12/5/2011 ADDRESSED TO
THE 4TH RESPONDENT.**
- EXHIBIT P6 TRUE COOPY OF LETTER DATED 16/6/2011 ISSUED BY THE 3RD
RESPONDENT.**
- EXHIBIT P7 TRUE COPY OF REPLY TO EXT.P6 DATED 15/7/2011 TO THE 3RD
RESPONDENT.**
- EXHIBIT P8 TRUE COPY OF ANOTHER NOTICE DATED 16/7/2011 ISSUED BY THE
4TH RESPONDENT.**
- EXHIBIT P9 TRUE COPY OF REPLY DATED 28/7/2011 ADDRESSED TO THE 4TH
RESPONDENT ENCLOSING PLAN AND DEMAND DRAFT FOR RS.1,000/-**
- EXHIBIT P10 TRUE COPY OF THE RECEIPT ISSUED BY THE 4TH RESPONDENT
DATED 28/7/2011**
- EXHIBIT P11 TRUE COPY OF THE LETTER DATED 10/8/2011 ISSUED BY THE 3RD
RESPONDENT APPROVING THE PLAN FOR THE FACTORY BUILDING.**
- EXHIBIT P12 TRUE COOPY OF NOTICE DATED 11/7/2012 ISSUED BY THE 3RD
RESPONDEDNT.**
- EXHIBIT P13 TRUE COPY OF RESUMPTION ORDER DATED 1/9/2012 ISSUED BY THE
2ND RESPONDENT.**
- EXHIBIT P14 TRUE COOPY OF THE REPRESENTATION FILED BY THE PETITIONER
BEFORE THE 1ST RESPONDENT DATED 30/10/2012**
- EXHIBIT P15 TRUE COOPY OF NOTIFICATION PUBLISHED BY THE 1ST
RESPONDENT DATED 20/10/2012 IN THE WEB SITE.**
- EXHIBIT P16 TRUE COPY OF THE PERMIT ISSUED BY THE ADDITIONAL 6TH
RESPONDENT DATED 01/6/2013.**

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- EXHIBIT P17 TRUE COPY OF THE NO OBJECTION CERTIFICATE ISSUED BY THE FIRE AND RESCUE DEPARTMENT DATED 25/4/2013.**
- EXHIBIT P18 TRUE COPY OF THE CONSENT LETTER DATED 10/6/13.**
- EXHIBIT P19 TRUE COPY OF THE REPLY FILED BY THE PETITIONER TO EXT.P12 DATED 8/8/2012**
- EXHIBIT P20 TRUE COPY OF THE MINUTES OF THE MEETING DATED 20/3/2012 OF CEDICOM ELECTRONICS**
- EXHIBIT P21 TRUE COPY OF THE MINUTES OF THE MEETING OF CEDICOM ELECTRONICS DATED 30/5/2012**
- EXHIBIT P22 TRUE COPY OF THE MINUTES OF THE MEETING OF CEDICOM ELECTRONICS DATED 7/6/2012**
- EXHIBIT P23 TRUE COPY OF THE MINUTES OF THE MEETING OF CEDICOM ELECTRONICS DATED 7/7/2012**
- EXHIBIT P24 TRUE COPY OF THE MINUTES OF THE MEETING OF CEDICOM ELECTRONICS DATED 13/8/2012**
- EXHIBIT P25 TRUE COPY OF THE MEETING OF CEDICOM ELECTRONICS DATED 12/9/2012**
- EXHIBIT P26 TRUE COPY OF THE MINUTES OF THE MEETING OF CEDICOM ELECTRONICS DATED 2/3/2013**
- EXHIBIT P27 TRUE COPY OF THE PURCHASE ORDER DATED 15/10/13**
- EXHIBIT P28 TRUE COPY OF THE PURCHASE ORDER DATED 15/10/13**
- EXHIBIT P29 TRUE COPY OF THE PURCHASE ORDER DATED 15/10/13**
- EXHIBIT P30 TRUE COPY OF THE PURCHASE ORDER DATED 15/10/13**
- EXHIBIT P31 TRUE COPY OF THE PURCHASE ORDER DATED 14/12/13**
- EXHIBIT P32 TRUE COPY OF THE PURCHASE ORDER DATED 20/12/13**
- EXHIBIT P33 TRUE COPY OF THE LETTER DATED 21/10/13 SENT BY CEDICOM ELECTRONICS TO CANARA BANK**
- EXHIBIT P34 TRUE COPY OF THE LETTER DATED 22/10/13 SENT BY CEDICOM ELECTRONICS TO CANARA BANK**
- EXHIBIT P35 TRUE COPY OF THE LETTER DATED 22/10/13 SENT BY CEDICOM ELECTRONICS TO CANARA BANK.**
- EXHIBIT P36 TRUE COPY OF THE LETTER DATED 13/11/13 SENT BY CEDICOM ELECTRONICS TO CANARA BANK.**

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EXHIBIT P37 TRUE COPY OF THE FIXED ASSETS OF CEDICOM ELECTRONICS AS PER PROJECT REPORT.

RESPONDENTS' EXHIBITS AND ANNEXURES:

- EXT.R2(A) COPY OF THE LETTER DATED 14/03/2012**
- EXT.R2(B) COPY OF THE ACKNOWLEDGMENT CARD DATED 21/09/2012**
- EXT.R2(C) COPY OF THE MAHAZAR DATED 12/01/2012**
- EXT.R2(D) COPY OF THE NOTIFICATION DATED 20/10/2012 FOR RE ALLOTMENT OF PLOT.**
- EXT.R2(E) COPY OF THE ALLOTMENT ORDER DATED 21/01/2013 IN THE NAME OF ADDITIONAL 10TH RESPONDENT.**
- EXT.R10(A) COPY OF THE ORDER DATED 21/01/2013 ISSUED BY THE 4TH RESPONDENT HEREIN.**
- EXT.R10(B) COPY OF THE AGREEMENT ENTERED INTO BETWEEN THE PETITIONER AND THE SIDCO.**
- EXT.R10(C) COPY OF THE RECEIPTS EVIDENCING THE PAYMENT OF LEASE PREMIUM.**
- EXT.R10(D) COPY OF THE LEASE DEED ENTERED INTO BETWEEN THE KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION LIMITED AND THIS PETITIONER ON 14/02/2014.**
- ANNEX R9(A) COPY OF THE CONSENT TO ESTABLISH.**

/TRUE COPY/

P.A.TO.JUDGE

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A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 3541 of 2013

Dated this the 16th day of January, 2015

JUDGMENT

The petitioners are the partners of M/s.Cedicom Electronics, which is a partnership firm established for the manufacture, purchase, sale, import, export etc., of all types of electronics and electrical products and also for the manufacture of ceramic discs, capacitors, metal oxide varistors etc. The unit was functioning in a rented premises. While so, the petitioners applied before the 1st respondent for allotment of an area in the Industrial Park at Shoranur. This was allowed as per Ext.P2 and accordingly, 11.67 cents in the Shoranur Industrial Park was allotted to the petitioner.

2. One of the conditions of the allotment was that production should be started within two years and License Agreement would be executed within 30 days. Ext.P3 lease deed was executed for a period of 90 years and full consideration amounting to Rs.2,40,402/- was also paid. As per Ext.P2 and P3, the petitioners are responsible for obtaining permissions from all

the statutory bodies. The petitioners also had to get the plan approved by the 1st respondent also. Petitioners allege that the Shoranur Municipality objected to the approval of the plan stating that the plan should conform with the Kerala Municipality Building Rules. The matter was directly taken up by the 1st respondent to the various other Municipalities also where the same problem was there. In view of the non-acceptance of the plan, the petitioners could not apply for getting NOC from the Fire Department since the application for the same has to be forwarded through the Municipality; the petitioners alleged. The certificate from the Pollution Control Board also could not be obtained by the petitioners.

3. Ultimately, the plan was approved by the 1st respondent as per Ext.P11 dated 10.08.2011. Even before that, respondents 1 to 3 issued notices to show-cause as to why action should not be taken for not starting production. The petitioners point out that they have submitted replies stating the above problems. However, thereafter, while the petitioners were taking steps for obtaining statutory clearance, Ext.P12 was issued stating that the respondents are going to resume the allotted plot after rejecting the explanations. The petitioners further alleged that

ultimately, Ext.P13 was issued informing that respondents 1 to 3 are resuming plot. Petitioners submitted Ext.P14 stating that all the relevant matters were not considered by the 2nd respondent while issuing Ext.P13. The representation is still pending. The petitioners alleged that they were given to understand from Ext.P15, that the respondents 1 to 3 have already notified for reallocation of the plot allotted to the petitioners. They further alleged that no opportunity was given to them for presenting the matter before the 2nd respondent who had issued Ext.P13. Therefore, the writ petition is filed challenging Ext.P13 and also for a direction for disposal of Ext.P14.

4. The 2nd respondent filed a counter affidavit. The stand taken by them was that, the petitioners are legally precluded from seeking any relief in the wake of the non-commencement of the functioning of the unit within the time granted by the 1st respondent. According to them, there is not even a remote possibility for the petitioners to start the unit. The 10th additional respondent filed a counter affidavit contending as follows:

“The functioning of industrial unit have to be started on or before 10.12.2009 as stipulated in Exhibit P2.

There were serious lapses on the part of the writ petitioner in taking diligent steps for the commencement of factory as per their plan within the two years time stipulated in Exhibit P2 and P3. Exhibit P4 letter was issued by the 4th respondent only on 28.04.2011. That too nearly after 1 ½ years of the time stipulated in Exhibit P2 and P3. So the writ petitioners cannot contend now that no reasonable time was granted by the SIDCO. The SIDCO authorities have given sufficient reminders to the writ petitioners stating the proceedings that they were proposing to initiate for the non utilization of the plot allotted to the writ petitioners. The contentions that the writ petitioners were not heard before passing Exhibit P13 is unfounded because sufficient opportunity was given to offer explanation as evident from Exhibit P4, P6 and P8.

It was the duty of the writ petitioners to approach the concerned authorities within reasonable time if there was any delay as alleged. The writ petitioners cannot claim benefits now alleging lapses on the part of concerned authorities for which the writ petitioners are also responsible.

As per Exhibit P15, the 1st respondent invited application for the allotment of plots in Industrial Park in Moodadi (Kozhikode District), Athani (Thrissur District) and Shoranur (Palakkad District).

Pursuant to Exhibit P15, the 10th respondent made application for allotment of plots. By Exhibit R10(a) order dated 21.01.2013, the 1st respondent had allotted Plot No.14 in Industrial Park, Shoranur (Palakkad District) to the 10th respondent. Subsequent to Exhibit R10(a), the 10th respondent had executed agreement with the 3rd respondent and remitted Rs.1,80,000/- towards provisional lease premium. The 10th respondent had taken all possible steps to start a manufacturing unit of agricultural implements in the name and style of Akshya Implements, in the Plot No.14 in the Industrial Park, Shoranur. If Exhibit P13 is set aside by this Hon'ble Court, the same would cause fathomless hardship to the 10th respondent."

5. Arguments have been heard.

6. The main argument advanced by the learned senior counsel for the petitioners is that the petitioners tried to get necessary permission from the various statutory authorities and the failure on their part to commence the functioning of the unit was beyond their control. Ext.P12 is the letter dated 11.07.2012 issued by the 3rd respondent directing the petitioners to submit explanation within 15 days. The learned senior counsel for the petitioners submits that on receipt of Ext.P12, petitioners had

discussions with respondents 3 and 4 and the situation was explained to them and as suggested by them, Ext.P12 was replied against on 08.08.2012. Ext.P19 is the copy of the reply. According to the petitioners, the office of the Assistant General Manager had agreed to forward the above to respondents 1 and 2. It was further submitted that before the issuance of Ext.P12, basement work of construction of boundary wall has been started. It was also submitted that the difficulties in the matter of obtaining the permission for construction from the Municipality was taken up with respondents 1 to 4 and they have agreed to do the needful. Therefore, according to the petitioners they were not able to start construction of the building. However, they were taking all steps for establishing the industry. To substantiate the case of the petitioners that the partners were meeting on intervals to discuss the issue, they have produced Exts.P20 to Ext.P25 which are the copies of the minutes of the meeting held on different dates. While things were going as above, notices were issued and replies were submitted. The learned senior counsel points out that on receipt of every notice, the petitioners used to go and discuss with the respondents who were satisfied with their explanations and therefore they have

proceeded with the establishment of the unit as could be seen from the minutes of the meeting. However, subsequently by Ext.P13, the plot was resumed. The petitioners filed Ext.P14 representation before the 2nd respondent for reconsideration. It was subsequent thereto that the writ petition was filed on 05.02.2013. The petitioners argued that they were under the firm belief that they would get favourable orders from the 2nd respondent and they were proceeding further. It was further argued that on the basis of the undertaking made by the respondents 1 to 4, they have proceeded further. In this connection, the petitioners have produced Ext.P26, which is the copy of the minutes dated 02.03.2013.

7. The contention taken by respondents 1 to 4 was that petitioners were not taking any steps even after filing the writ petition. However, the learned senior counsel for the petitioners pointed out that the petitioners were moving fast and on the basis of the belief that the respondents would be withdrawing Ext.P13, the petitioners have proceeded with the establishment of the unit and during 2013 itself and after filing the writ petition, the petitioners have spent more than 18 lakhs for purchasing various articles, parts machineries etc. It is also

submitted that as per Exts.P27 to P32 purchase orders, they had ordered for machineries also to make their unit functional. According to the petitioners, payment given to various parties were evidenced by tele-transfers and the amount covered by tele-transfers would come to Rs.9,63,000/-. According to the petitioners, all these payments were made in the month of October 2013. Copies of the requests are produced and marked as Exts.P33 to P36. According to the petitioners, it is believing the undertaking and representation of respondents 1 to 4 that petitioners have undertaken all these exercises. The learned senior counsel would further point out that the additional 3rd respondent in whose favour the re-allotment was made has not even received the basic permission from the statutory authorities and they have not expended any substantial amount for the establishment of the the unit. It was also pointed out that the 10th respondent was aware of the undertaking made by the respondents 1 to 4 before this Court and therefore, no prejudice would be caused to the additional 10th respondent even if permission is granted to the petitioners to continue with the establishment. It was further submitted that for meeting the product cost, the petitioners have applied for credit facility from

Canara Bank, Shornur Branch and the bank have sanctioned a term loan facility of Rs.1.5 crores in January 2014. According to the learned senior counsel for the petitioners, if relief is not granted to the petitioners, entire expenses incurred by petitioners and the troubles taken by them would become futile and they would be irreparably in prejudice and much loss would be caused to them. It was further pointed out that when compared with this inconvenience, the inconvenience caused to the 10th respondent even if at all any, would be negligible. In the reply affidavit, the petitioners have stated that the production would be started within a short period. The machineries, the purchase of which orders are given both internal and external are all for establishment of the unit as at present envisaged ; so submitted the learned senior counsel for the petitioners.

8. Though it was strenuously argued by the learned counsel for the 10th respondent that the petitioners were chronic and persistent defaulter and the terms of Ext.P3 has given only a civil right to the petitioners to seek their remedies before a competent civil court , this Court is not inclined to accept the same. According to the learned senior counsel for the 10th respondent, the attempt of the petitioners is to get the time for

commencement extended. Taking into account that the petitioners have moved forward to a considerable extend under the belief that Ext.P13 would be cancelled, this Court is of the view that the matter requires a re-look by the respondents 1 and 2 especially because of the fact that Ext.P14 was pending before the respondent when the writ petition was filed.

In the result, the writ petition is allowed. Ext.P13 is quashed and respondents 1 and 2 are directed to consider Ext.P14 after affording the petitioners as well as the 10th respondent an opportunity of being heard. While considering Ext.P14, respondents 1 to 3 shall give due regard to the steps taken by the petitioners for the commencement of the project. This exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

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Sd/-
A.V. RAMAKRISHNA PILLAI,
JUDGE