

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

WEDNESDAY, THE 18TH DAY OF NOVEMBER 2015/27TH KARTHIKA, 1937

WP(C).No. 10955 of 2012 (T)

PETITIONER:

**PRETHISH KOVOOR, AGED 49 YEARS,
S/O.GEORGE KOVOOR, MANAGING PARTNER,
M/S.G.K.CHLORITES AND CHEMICALS,
KOVOOR HOUSE, LF LANE,
ALUVA - 683 101, ERNAKULAM DISTRICT.**

**BY ADVS. SRI.SAJU.S.POONTHODATH
SMT.K.MALINI
SRI.N.SUBRAMANIAM
SRI.M.S.NARAYANAN
SRI.P.T.GIRIJAN
SMT.USHA NARAYANAN**

RESPONDENT(S):

- 1. THE SECRETARY TO GOVERNMENT OF KERALA,
INDUSTRIES DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE DIRECTOR OF INDUSTRIES & COMMERCE,
VIKAS BHAVAN, THIRUVANANTHAPURAM - 695 033.**
- 3. THE GENERAL MANAGER,
DISTRICT INDUSTRIES CENTRE, PALAKKAD - 680 020.**

BY GOVERNMENT PLEADER SRI.P.M.JOSEPH

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 18-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

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APPENDIX

PETITIONER(S) EXHIBITS:

- EXT.P-1: COPY OF ORDER NO.1/6665/2007 OF 3RD RESPONDENT DATED 01-12-2007.
- EXT.P-2: COPY OF PROJECT WITH COVERING LETTER DATED 17-02-2010 SUBMITTED BY PETITIONER TO 3RD RESPONDENT.
- EXT.P-3: COPY OF PROCEEDINGS NO.1/6665/2007 DATED 27-06-2011 OF R3.
- EXT.P-4: COPY OF AGREEMENT BY PETITIONER AND 3RD RESPONDENT DT.02-08-2011.
- EXT.P-5: COPY OF RECEIPT NO.8887/11 DATED 07-09-2011 ISSUED BY PUTHUSSERY GRAMA PANCHAYATH, KANJIKKODE.
- EXT.P-6: COPY OF CONSENT LETTER DATED 04-04-2012 ISSUED BY KERALA STATE POLLUTION CONTROL BOARD WITH BUILDING PLAN.
- EXT.P-7: COPY OF QUOTATION OF KIMKEE ENGINEERING WORKS DATED 25.03.2012.
- EXT.P-8: COPY OF RECEIPT DATED 28.03.2012 ISSUED BY M/S.KIMKEE ENGINEERING WORKS TO THE PETITIONER.
- EXT.P-9: COPY OF LETTER NO.GKCC/2012-13/DIC/1000 DATED 02.04.2012.
- EXT.P-10: COPY OF PARTNERSHIP DEED BY PETITIONER AND WIFE DT.165.04.2012.
- EXT.P-11: COPY OF LETTER NO.GKCC/2012-13/DIC/1000 DATED 02.04.2012.
- EXT.P-12: COPY OF LETTER NO.GKCC/2012-13/SBI/1001 DATED 02.04.2012
- EXT.P-13: COPY OF LETTER NO.GKCC/2012-13/DIC/1011 DATED 11.04.2012.
- EXT.P-14: COPY OF LETTER OF M/S.KIMKEE ENGINEERING WORKS, DT.25.04.2012.
- EXT.P-15: COPY OF ORDER OF 3RD RESPONDENT NO.1/6665/2007 DATED 28.04.12.
- EXT.P-16: COPY OF REPRESENTATION DT.05.05.12 BY PETITIONER TO 2ND RESPONDENT.
- EXT.P-17: COPY OF BUILDING PLAN AND LETTER DATED 23.5.2011.
- EXT.P-18: COPY OF COMMUNICATION DATED 15.6.2012 ISSUED BY THE 3RD RESPONDENT.

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- EXT.P-19: COPY OF PROJECT REPORT.
- EXT.P-20: COPY OF LAY OUT PLAN.
- EXT.P-21: COPY OF QUOTATION NO.2012#5641 DATED 1.5.2012.
- EXT.P-22: COPY OF CASH BILL NO.217 DATED 12.6.2012 ISSUED BY VIJAYAN.
- EXT.P-23: COPY OF CASH BILL NO.218 DATED 12.6.2012 ISSUED BY VIJAYAN.
- EXT.P-24: COPY OF THE LETTER DATED 25.10.2012 ISSUED BY M/S.KIMKEE ENGINEERING WORKS.
- EXT.P-25: COPY OF THE INVOICE NO.215 DATED 17.1.2015 ISSUED BY M/S.KIMKEE ENGINEERING WORKS.
- EXT.P-26: COPY OF THE INVOICE NO.216 DATED 6.2.2015 ISSUED BY M/S.KIMKEE ENGINEERING WORKS.

RESPONDENTS' EXHIBITS: NIL.

//TRUE COPY//

P.S. TO JUDGE

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A.M. SHAFFIQUE, J.

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Dated this, the 18th day of November, 2015

J U D G M E N T

Petitioner challenges Ext.P15 order by which the General Manager, District Industries Centre, Palakkad had directed resumption of 50 cents of land from out of 100 cents of land which was allotted to the petitioner in the New Industrial Development Area, Kanjikode.

2. The short facts involved in the writ petition would disclose that the petitioner was allotted 100 cents of land in the Industrial area for setting up of an industrial unit for manufacturing Copper Oxy Chloride. An agreement was executed on 3/12/2007. According to the petitioner, he was unable to start the unit on account of a ban imposed by the Central Government for manufacturing Copper Oxy Chloride.

3. Petitioner therefore requested the 3rd respondent for change in use of the allotted space. Petitioner claimed that he should be permitted to put up a new project for manufacturing hollow bricks. The 3rd respondent after taking into consideration

the request made by the petitioner, allowed the same as per proceedings dated 27/6/2011. He was called upon to set up the unit within a period of three months. In the meantime, petitioner requested for change of constitution of the unit as partnership by including his wife as a partner. The same was allowed by respondents 2 and 3.

4. Since no action was taken by the petitioner for commencing operation of the unit within the time allowed, show cause notice was issued on 2/4/2012 calling upon the petitioner to explain why the allotment should not be cancelled. Petitioner was heard and thereafter a decision has been taken to resume 50 cents of land from the 100 cents which was allotted in favour of the petitioner. It is impugning the aforesaid order that this writ petition has been filed.

5. The contention urged by the petitioner is that after Ext.P3 order by which change of approval has been granted, petitioner had taken all necessary steps for starting the unit. Reliance is placed on Ext.P6, consent to establish issued by the

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Pollution Control Board which was valid from 4/4/2012 to 3/4/2015. Petitioner submits that the entire land is required for setting up of the unit and if some portion of the land is taken, petitioner will not be in a position to proceed with the construction of the unit. It is also contended that the vacant land is required for storing raw materials, parking of vehicles, for loading and unloading activities and for other ancillary purposes.

6. Counter affidavit has been filed by the 3rd respondent *inter alia* stating that though 100 cents of land was allotted in the year 2007, no steps were taken by the petitioner for starting the unit and accordingly show cause notice was issued to him on 27/1/2010 to show cause why the land should not be resumed. It was during the hearing that the petitioner submitted that he intended to change the project to manufacturing of hollow bricks. He submitted a new project report and building plan on 17/2/2010. It is stated that the plan submitted by him was exactly the same that was submitted for the earlier project. Though clarification was sought for, he did not respond.

7. The Industries Extension Officer by letter dated 30/3/2011 reported that the allottee has not utilized the land. Therefore, final notice was issued on 8/4/2011. He was again given an opportunity to be heard on 25/5/2011 and allowed three months time for starting the new project. The new activity was approved on 27/6/2011 and an agreement was executed on 2/8/2011. A report regarding the status of the project was called for on 12/4/2012 from the Industries Extension Officer, who as per report dated 16/4/2012 stated that the unit have completed compound wall and foundation work of the factory shed only and almost 60% of the plot is kept vacant. In the meantime, the petitioner sought for change of constitution of the unit. He was heard on 11/4/2012 and it was decided to consider the request and was allowed two more months time to complete the project. It was also decided to resume the unutilized portion of the land as the District was facing scarcity of industrial land.

8. It is also stated that Ext.P15 resumption order had been issued as per report of the Industries Extension Officer that

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around 60% of the land is kept unutilized. Further, the respondents contend that the petitioner has obtained consent to establish from the Pollution Control Board in which it is stated that the capital investment of the unit is only ₹7,90,000/- and the production capacity is 150 numbers hollow brick per day and 350 numbers solid bricks per day. The 50 cents of land which is in possession of the petitioner is sufficient for a hollow brick unit having an investment of ₹7,90,000/- and production capacity of 500 numbers of hollow/solid brick per day in total. Therefore, the respondents justify the action in resuming 50 cents of land.

9. Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing on behalf of the respondents.

10. In the reply affidavit filed, petitioner produced certain documents and controverted the stand taken in the matter. According to the learned counsel for the petitioner, the entire land is required for the aforesaid purpose of setting up the hollow brick unit. But the facts available on record clearly indicates that the

respondents have taken note of the fact that the petitioner has not utilized the entire land though it was given for the purpose of putting up the hollow brick unit as per Ext.P3 dated 27/6/2011. It is stated that 60% of the land is unutilized. In the counter affidavit also, it is contended that the Industries Extension Officer has reported about the non utilization of the land. The land is given for industrial purposes and it is the contractual obligation of the allottee to comply with the covenants in the agreement unless there are specific reasons for non utilization of the same. It is evident from the facts available in the case that the land was allotted in the year 2007. Though initially the petitioner was unable to start the unit of manufacturing Copper Oxy Chloride on account of the ban imposed by the Central Government, it was incumbent on the part of the petitioner either to start any other project or to surrender possession of the premises. Industrial land being scarce has to be utilized in full by entrepreneurs failing which it will not be possible for the Government to take care of the need expressed by other entrepreneurs.

11. When the allotting authority had come to a conclusion that the 50 cents of land will be enough for establishing the hollow brick unit in the light of the capacity now projected by the petitioner in the consent to establish and that 60% of the land is unutilized, I do not think that this Court will be justified in interfering with the said decision making process. It is always open for the 3rd respondent to ensure that the land allotted in favour of an allottee is utilized to the maximum extent possible. This is an instance where the land has been allotted in the year 2007, which remains unutilized even now. Petitioner has only constructed the compound wall and certain structures.

12. Learned counsel for the petitioner submits that the delay in commencement of the unit is only on account of the instruction issued by the District Industries Centre and as the petitioner was unable to obtain electricity connection.

13. I do not think that such issues are required to be considered at present. The only question to be considered is whether Ext.P15 had been issued in an arbitrary manner.

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Petitioner does not have a case that he was not heard before issuing Ext.P15. Under such circumstances, when the DIC had come to a conclusion that there is non utilization of the land, I do not think that this Court will be justified in sitting in judicial review to set aside the said finding of fact. When land remains unutilized, even in terms of the contract, it is open for the District Industries Centre to resume such land.

In the light of the aforesaid circumstances, I do not think that any grounds are made out to interfere with Ext.P15 and accordingly this writ petition is dismissed.

Sd/-

A.M. SHAFFIQUE, JUDGE

Rp

19/11/2015

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P.S to Judge