

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 20703 of 2015 (K)

PETITIONER(S):

**PREMIUM FERRO ALLOYS LIMITED,
EDAYAR, BINANIPURAM,
ALWAYE, (REPRESENTED BY ITS MANAGING DIRECTOR).**

**BY ADVS.SRI.K.LAKSHMINARAYANAN
SMT.SATHYA SHREEPRIYA**

RESPONDENT(S):

- 1. STATE OF KERALA,
SECRETARIAT,
THIRUVANANTHAPURAM - 695 001,
(REPRESENTED BY CHIEF SECRETARY)**
- 2. DEPARTMENT OF REVENUE,
(REPRESENTED BY ITS ADDL. CHIEF SECRETARY (REV),
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.**
- 3. DEPARTMENT OF INDUSTRIES & COMMERCE
REPRESENTED BY ITS SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 4. DISTRICT INDUSTRIES CENTRE,
(REPRESENTED BY ITS SECRETARY) GANDHI NAGAR,
ERANKULAM - 682 020.**

BY GOVERNMENT PLEADER SMT.C.K.SHERIN

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

P1: TRUE COPY OF PATTA DATED 18/5/02.

P2: TRUE COPY OF NO DUES CERTIFICATE ISSUED BY KSIDC.

P3: TRUE COPY OF LETTER DATED 15/1/2006 BY THE PETITIONER TO THE FOURTH RESPONDENT.

P4: TRUE COPY OF THE LETTER DATED 10/11/2009 ISSUED BY THE DISTRICT COLLECTOR, ERNAKULAM.

P5: TRUE COPY OF THE LETTER DATED 18/8/2011 SENT BY SBT TO THE PETITIONER.

P6: TRUE COPY OF THE JUDGMENT DATED 20/11/2013 IN WPC 27901/13.

P7: TRUE COPY OF THE G.O. DATED 29/03/2014 ISSUED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT.

P8: TRUE COPY OF THE DRAFT TRIPARTITE AGREEMENT.

P9: TRUE COPY OF THE LETTER DATED 20/03/2015 SENT BY THE PETITIONER TO THE THIRD RESPONDENT.

RESPONDENT(S)' ANNEXURES:

ANNEXURE R4(a): TRUE COPY OF THE COMMUNICATION DTD.4.11.2013.

//TRUE COPY//

P.A.TO JUDGE.

Msv/

K. VINOD CHANDRAN, J.

=====

W.P.(C) No.20703 of 2015 - K

=====

Dated this the 7th day of August, 2015

J U D G M E N T

The petitioner is concerned with the mortgage of a property, which the petitioner had obtained by way of allotment, specifically for an industrial purpose, from the 4th respondent. Ext.P1 patta has been issued by the Revenue Department, by which the petitioner has an alienable right over the property but however, subject to the conditions specified in Ext.P1, that the property be put to use only for industrial purposes. The petitioner wants to mortgage the above property with a financial institution, so as to obtain a loan. The petitioner approached the District Industries Centre and the Revenue Department for a No Objection Certificate. Alleging non-consideration of the same, the petitioner was before this Court earlier by W.P.(C) No.27901 of 2013, which was evident at Ext.P6 judgment, dated 20.11.2013.

2. The Revenue Department granted NOC as per Ext.P7 and directed the Industries Department to mortgage the land subject to the conditions in the patta, that it shall be used only for industrial purposes. The petitioner, to create such mortgage has to execute a tripartite agreement as is evident at Ext.P8. The petitioner in the above writ petition is concerned with clause (8) of the agreement, which reads as follows:

8) The third party shall remit any amount due to the first party, if any excess amount over and above the dues owned by the second party is recovered through auction sale of the industrial assets of the second party.

3. The learned Government Pleader emphasises the need for a tripartite agreement since the land is allotted specifically for an industrial purpose and to ensure that the transfer made by the financial institution, in the event of enforcement of the mortgage, is only with the knowledge of the Government. Clause (8) is explained insofar as it being only a requirement that on an auction proceeding being conducted in enforcement of the mortgage, any excess amounts received by

the financial institution over and above that owed by the petitioner/borrower would have to be paid over to the Government and not to the petitioner as owner of the property.

4. However, it is to be noticed that Ext.P1 grants absolute alienable right to the petitioner, on the properties and does not require any fees or rent to be paid on the land. The only restriction is insofar as any alienation or encumbrance to be made with the prior permission of the Government. This again ensures that the land is put to use for no other purpose than an industrial purpose. When an alienation is made of the property and the petitioner seeks a permission from the Government, the Government also could only insist for such a condition of the use to which the property is to be put to and cannot claim any amount from the petitioner or from the intending purchaser, for reason of the Government having title over the property as such.

5. The above clause would indicate that the Government in the event of a mortgage and the enforcement on

default; would claim any excess amounts received by the financial institution over and above the amount required to satisfy the debt due. Such a condition however cannot be insisted by the Government since the property is absolutely held by the petitioner with only the condition with respect to the use to which the property is to be put. The insistence for a tripartite agreement with; the financial institution, the borrower and the Government, cannot be interfered with since it is only to ensure that the property is not alienated without the knowledge of the government. But however the clause with respect to the payment of any excess amounts received in auction being liable for deposit to the Government cannot be sustained in view of the specific terms in Ext.P1, which vests the property in the absolute ownership and possession of the petitioner subject only to the conditions laid down therein.

6. In such circumstance, the petitioner shall be issued with a certificate of mortgage by the 4th respondent at any rate

within a period of two weeks from the date of receipt of the certified copy of this judgment and the petitioner shall also ensure that the tripartite agreement is entered into; but however without clause (8). The specific clause in the agreement; numbered as (8) would not be insisted upon by the 4th respondent when such an agreement is entered into.

The writ petition would stand allowed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB

// true copy //

P. A to Judge