

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.M. SHAFFIQUE

THURSDAY, THE 9TH DAY OF APRIL 2015/19TH CHAITHRA, 1937

WP(C).No. 33650 of 2014 (E)

PETITIONER:

SARSWATHI DEVI, AGED 60 YEARS
W/O.S.VIJAYAN, SAVIYA INDUSTRIES KANNANALLOOR
KOTTIYAM, KOLLAM RESIDING AT PADMA SADANAM
97/VIVEKANANDA NAGAR, MAMMOOTIL KADAVU, KAVANAD PO
KOLLAM

BY ADVS.SRI.V.JAYAPRADEEP
SRI.ABE RAJAN

RESPONDENTS:

1. KERALA SMALL INDUSTRIES DEVELOPMENT CORPORATION
SANTHINAGAR, PB NO. 50, THIRUVANANTHAPURAM 695 001
REPRESENTED BY ITS CHAIRMAN

2. STATE OF KERALA
REPRESENTED BY THE PRINCIPAL SECRETARY
INDUSTRIES DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM 695 001.

R1 BY ADV. SRI.R.T.PRADEEP
R2 BY GOVERNMENT PLEADER SRI. MUHAMMED SHAFI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-04-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: COPY OF THE NOTICE DATED 3/7/2014 OF RI

EXHIBIT P2: COPY OF THE LETTER DATED 19/7/2014 OF THE PETITIONER

EXHIBIT P3: COPY OF THE NOTICE DATED 2/8/14 OF RI

EXHIBIT P4: COPY OF THE REPLY DATED 7/8/14 OF THE PETITIONER

EXHIBIT P5: COPY OF THE ORDER DATED 1/11/2014 OF R1

EXHIBIT P6: COPY OF THE REPRESENTATION DATED 24.11.14 TO THE STATE
INDUSTRIES MINISTER

EXHIBIT P7: COPY OF THE RECEIPT DATED 28//11/2014 ISSUED FROM THE OFFICE
OF THE STATE INDUSTRIES MINISTER

EXHIBIT P8: COPY OF THE COPY OF ORDERS ON EVEN DATES BY R1

EXHIBIT P9: COPY OF THE STAY ORDERS ON EVEN DAYS BY R2

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

A.M. SHAFFIQUE, J.

W.P.(C) No.33650 of 2014

Dated this the 9th day of April, 2015

JUDGMENT

Petitioner has approached this Court challenging Ext.P5, order passed by the first respondent terminating the allotment of land in favour of the petitioner.

2. The short facts involved in the writ petition would disclose that the petitioner was allotted shed No.1, 3 and 12 in the mini industrial estate, Thrikkovilvattom on hire purchase basis for running an industrial unit. Alleging non-compliance of the terms and conditions of allotment, show cause notice, Ext.P1 was issued. It is stated that though the petitioner had given a satisfactory explanation, by Ext.P5 the allotment was cancelled. The sheds were originally allotted to her in 1987 and 1991. Since she did not comply with the terms of conditions of allotment, by an order dated 24.11.2006, the allotment was terminated. She was evicted and the possession was taken over by SIDCO on 31.07.2008. The petitioner filed O.S. No.7/2007 before the Munsiff Court, Kollam challenging the eviction proceedings which was decreed in her favour. Later she filed a case as O.S. No.115/2005 before the District Court, Kollam and also filed W.P.(C) No.10269/2013 before the High Court. Taking into

consideration the representation made by the petitioner, she was allowed personal hearing on 14.05.2008 and thereafter she was given re-allotment of the sheds as per order dated 4.7.2013 on certain conditions.

3. It is inter alia stated in Ext.P5 that during the inspection of the mini industrial estate, it was noticed that some unauthorised persons are occupying the sheds which was allotted in favour of the petitioner. Though notice was given to the petitioner to show cause why the allotment should not be terminated, there was no satisfactory explanation.

4. Petitioner submits that sufficient opportunity was not granted to the petitioner to show cause and proper hearing was not given to her before passing Ext.P5 order. That apart the petitioner has submitted a representation before the Minister for Industries which is pending consideration before the competent authorities. In the meantime, there was an attempt to evict the petitioner from the aforesaid sheds and hence she has approached this Court seeking the reliefs as aforesaid.

5. Statement has been filed by the first respondent inter alia stating that as per the terms and conditions in the Annexure - 1 dated 4.7.2013, sheds were re-allotted to the petitioner. Clause 9 clearly

indicates that if the sheds are not utilised for the purpose for which the re-allotment is made within the specified period the sheds would be resumed as per rules. It is pursuant to the said power available with the first respondent that further notice is issued and since the petitioner did not appear for any hearing, final termination order was issued to the petitioner in terms of Ext.P5. The learned counsel for the petitioner would argue that the petitioner is occupying the sheds and is functioning the unit and the inspection allegedly conducted by the first respondent is false. Her son was occupying the premises and it is incorrect to say that it was handed over to somebody else .

6. Heard the learned counsel for the petitioner, the learned counsel appearing for the respondents and the learned Government Pleader.

7. Perusal of the documents would indicate that the petitioner was served with notice dated 3.7.2014 seeking for explanation as to why the allotment should not be cancelled. Apparently this, notice was proceeded by an early notice dated 13.4.2014. Petitioner had given Ext.P2 reply dated 19.7.2014 requesting to stop all further proceedings against her indicating that she was unable to get electricity for a certain period of time and that she will comply with all further requirements as stated in the allotment letter. The first

respondent again being dissatisfied with the said explanation, issued another notice dated 02.08.2014 stating that since she did not comply with the conditions of allotment and she was asked to show cause within 15 days as to why occupancy of the sheds should not be terminated.

8. Petitioner sent a reply again on 07.08.2014 as per Ext.P4 denying the unauthorised occupancy of the sheds by another person. According to the petitioner, the right to property is vested with the petitioner and therefore no further order ought to be passed in the matter.

9. The main reason for passing Ext.P5 order is the finding that the sheds were in occupation by unaurhorised persons and they were doing some activities. The petitioner disputes the aforesaid fact and submits that she is ready and willing to carry on with the unit for which it has been allotted and a further opportunity should be granted.

10. Having regard to the aforesaid factual situation, I do not think that there is violation of principles of natural justice. The first respondent had acted in terms of the contractual provisions and sufficient opportunity has been given to explain the breaches pointed out.

11. Sheds allotted in favour of the petitioner has to be utilised within a specified time and the allottee will have to comply with the terms of allotment. If there is any breach of the terms, the first respondent is bound to take appropriate action in terms of the allotment letter. The petitioner is unable to point out any circumstances by which Ext.P5 order suffers from any illegality. The only contention is that there is violation of principles of natural justice which I cannot agree, as sufficient opportunity has already been granted to the petitioner to explain why allotment should not be cancelled. Petitioner also could not produce any material to indicate that she was functioning the unit during the relevant time. As such it is clear the petitioner was not functioning the unit and if any person who was present in the shed during the time of inspection could only be unauthorised persons.

12. This is not an instance in which the petitioner was not given an opportunity. Even on earlier occasions opportunity was granted to the petitioner to sustain the allotment. She should have taken appropriate steps to ensure that she was carrying on the business in the unit.

13. Having regard to the aforesaid finding of fact I do not think that the petitioner has brought forward a valid case for interference

with Ext.P5. That apart being a contractual matter the scope of interference by this Court is very limited. The first respondent proceeds on the basis that there is breach of contract by the allottee and materials are available to prove the same. If the petitioner has a different case and alleges that she has not committed breach of contract, the remedy is to approach the civil court to establish the same and cannot seek interference of this Court under Article 226 of the Constitution.

14. Petitioner claims benefits on the basis of similar orders passed by the first respondent in other cases and that the matter is pending before the Government. First of all the Government has no role in the matter relating to allotment of land by SIDCO. Secondly, if at all any other person had been granted any benefit, it depends upon the factual situation in such cases, and cannot be imported to the case on hand.

In such circumstance, I do not find merit in the writ petition and accordingly it is dismissed.

Sd/-
A.M. SHAFFIQUE,
JUDGE

smv