IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 22.01.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.29883 and 29997 of 2014
and
M.P.Nos.1 to 3 of 2014
and
M.P.Nos.1 and 2 of 2014

S.Parvathi .. Petitioner in W.P.No.29883/2014

M/s.Rank Mark
rep.by its Managing Partner
Plot No.155, Women Industrial Park
Karuppur, Omalur Taluk
Salem District .. Petitioner in W.P.No.29997/2014

vs

1. The Government of Tamil Nadu
rep.by its Secretary, Revenue Department
Fort St.George, Chennai 600 009.

2. Tamil Nadu Small Industries Development
Corporation rep.by its Managing Director
SIDCO, Thiru.Vi.Ka.Industrial Estate
Guindy, Chennai 600 032.

3. The District Collector
Salem District, Salem.

4. The Branch Manager
Tamil Nadu Small Industries Development
Corporation, Five Roads, Salem-4.
.. Respondents in both W.Ps.

W.P.No.29883 of 2014: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records from the first respondent relating to the issue of the G.O.Ms.No.172 Revenue [(Nimu 7(i)] Department dated 11.06.2013 and from the fourth respondent relating to the issue of Rc.No.524/C/2001 dated 24.03.2014; to quash the same and to direct the respondents to fix the cost of the industrial plots in Women Industrial Park at Karuppur Village, Omalur Taluk afresh only by taking 50% of the market value of the lands as obtained during the year already adopted by the respondents 2 to 4 to fix the cost of plots in the second respondent proceedings in Rc.No.5749 dated 30.03.2005 and to furnish the complete working details of the cost of plot so fixed to the petitioner and thereafter to demand the additional amount from or to repay the amount to the petitioner, if the amount already paid is lesser or higher than the cost so fixed, as the case may be.

W.P.No.29997 of 2014: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records from the first respondent relating to the issue of the G.O.Ms.No.172 Revenue [(Nimu 7(i)] Department dated 11.06.2013 and from the fourth respondent relating to the issue of two letters in same number namely, Rc.No.524/C/2001 dated 24.03.2014 respectively in respect of Plot Nos.155 and 156 in Women Industrial Park at Karuppur Village, Omalur Taluk, Salem District; to quash the same and all consequential orders issued thereunder insofar as the petitioner is concerned and consequently to direct the respondents to fix the cost of the industrial plots afresh only by taking 50% of the market value of the lands as obtained during the year 2001-02 and to furnish complete working details of the cost of plot so fixed to the petitioner and thereafter to demand the additional amount from, or to repay the excess amount already paid to the petitioner as the case may be and further to direct the respondents to execute in favour of the petitioner a sale deed conveying the title of the said plots bearing Nos.155 and 156 having an extent of 74.28 cents and 26.44 cents respectively in Women Industrial Park at Karuppur, Omalur Taluk, Salem District taking the cost of the plots fixed as aforesaid as market value and by exempting the stamp duty for the same.

For Petitioner : Mr.N.Subramaniyan
in both W.Ps.

For Respondents: Mr.S.Gunasekaran
Government Advocate
for RR1 and 3
Mr.Abdul Saleem
for RR2 and 4

COMMON ORDER

Heard Mr.N.Subramaniyan, learned counsel for the petitioner, Mr.S.Gunasekaran, learned Government Advocate appearing on behalf of respondents 1 and 3 and Mr.Abdul Saleem, learned counsel appearing for respondents 2 and 4.

2. The relief sought for in both the writ petitions are identical and therefore, both the writ petitions are heard together and are disposed of by this common order.

3. The prayer sought for in both these writ petitions is to quash the order passed by the first respondent in G.O.Ms.No.172 Revenue [(Nimu 7(i)] Department dated 11.06.2013 and the consequential proceedings issued by the fourth respondent dated 24.03.2014 and to direct the respondents to fix the cost of the industrial plots in the Women Industrial Park at Karuppur Village, Omalur Taluk, Salem District afresh only by taking the value of the land as obtained during the year already adopted by the respondents 2 to 4 to fix the cost of plots in the second respondent proceedings in Rc.No.5749 dated 30.03.2005.

4. Both the petitioners were allotted an industrial estate property by SIDCO exclusively reserved for Women Entrepreneurs. There is no dispute with regard to the allotment and the fact that the petitioners have paid the money and such other matters. Therefore, those issues being not disputed, they are not dealt with elaborately.

5. The short issue, which falls for consideration in these writ petitions, is as to whether the respondent-SIDCO could call upon the petitioners to pay the revised cost being the sum of Rs.2,86,816/- in W.P.No.29883 of 2014 and Rs.17,18,119/- for Plot No.155 and Rs.6,11,565/- for Plot No.156 in W.P.No.29997 of 2014 respectively.

6. In the demand dated 24.03.2014, issued by the SIDCO it is stated that the District Collector, Salem issued a proceedings dated 10.09.2013 calling upon the SIDCO to pay a sum of Rs.9,23,05,075/- being the land cost and the same has been paid by SIDCO vide Demand Draft No.188156 dated 10.10.2013 and therefore, the cost of the plot allotted to the petitioners is revised and the petitioners are granted two months' time to pay the differential amount as mentioned in the impugned demand and failing which, it is further stated that the petitioners are liable to pay interest at 13% for the belated period.

7. The petitioners have challenged the said impugned demand dated 24.03.2014 issued by the SIDCO as well as that portion of the Government Order in and by which the Government has ordered that the cost of the land has to be fixed based on the current market value. It is to be noted that the Government order in G.O.Ms.No.172 dated 11.06.2013 does not concern the petitioners. But, it is the Government Order for the purpose of fixing the land cost payable by SIDCO to Government for the purpose of promoting the women entrepreneurs industrial estate. During the pendency of these writ petitions, further notices have been issued to the petitioners dated 13.01.2015 threatening the petitioners that if the differential cost as per the impugned demand dated 24.03.2014 is not paid within 15 days from the date of the said letter, the allotment of plot will be cancelled without any further notice.

8. It is true that in the order of allotment dated 30.03.2005 issued to the petitioners, it is stated that only the tentative cost of the land is fixed and there is also a condition empowering SIDCO to revise the cost so fixed, subject to the revised land cost to be fixed by the Government. Further, it is stated that if the erstwhile owners of the lands acquired for the above estate happen go to the Civil Court appealing against the award passed by the Land Acquisition Officer and the Courts pass a decree or decrees in their favour, the additional compensation payable is also recoverable from the allotees. Further the allotment order states that the final price of the developed plot due to the increased cost of development charges and provision of amenities etc., shall be determined within a period of five years from the date of allotment excepting in the case of acquisition proceedings pending in Civil Courts and such fixation of price by SIDCO is conclusive and final.

9. Pursuant to the aforesaid order of allotment, the petitioners have given an undertaking on a Rs.50/- non judicial stamp paper stating that they are agreeing to pay the additional cost of the land, (over and above that notified in allotment order) if any, that may be fixed by the SIDCO consequent on the enhanced land cost fixed by the Government/excess award that may be passed by the Civil Court and also due to any extraneous unavoidable circumstances in the increased rate of taxes or cost of development and provision of amenities.

10. It has to be seen as to whether the impugned demand is only within the conditions mentioned in the allotment order, which empowers the SIDCO to fix the differential cost or whether it would be as per the undertaking given by the petitioners.

11. The cases on hand, appears to be unique and it is not a normal case where the additional cost has been fixed based on increase in the compensation amount payable to the original land owners on account of an order passed by the Reference Court under the Land Acquisition Act or by the High court or by the Hon'ble Supreme Court. But it appears that this portion of the land where the petitioners industrial plots were developed did not belong to the Department. At the first instance, it is not covered in the acquisition proceedings. The land was earmarked for Government Engineering College and presumably under the possession and control of the Department of Higher Education. It is not known whether this fact was within the knowledge of the Government at the time when permission was granted to the SIDCO to form an industrial estate for women entrepreneurs over the entire extent. It is further seen that the said land, which was earmarked for the Government Engineering College was subsequently given to the Periyar University and this is also pursuant to the orders passed by the Government. Despite these orders being in vogue, the SIDCO developed the industrial estate and

were in the process of inviting application for allotment to women entrepreneurs.

12. Realizing that the lands in question would vest with the Government Department and has been earmarked for specific purpose, i.e for Periyar University, SIDCO appears to have applied to the Government to give them permission to enter upon the land so that they can carry on with the developmental activities and thus permission was accorded and orders were passed by the Government subject to certain conditions, which the petitioners are unaware. The petitioners were allotted the developed plots during the year 2005. Even at this point of time, the allotment order did not contain any specific condition stating that the portion of the land in which the petitioners' plots were developed is yet to be transferred to SIDCO and still continues to remain notified as Periyar University and unless and until the Government passes appropriate orders, the land will not vest with SIDCO. It appears that SIDCO proceeded with the project presumably on the assumption that the Government Orders would be forthcoming. It is to be noted that as on date, the Government is yet to transfer the land in favour of the SIDCO. In the interregnum the District Collector has fixed the land cost at Rs.9,23,05,075/- vide his proceedings dated 10.09.2013 and which is also said to have been remitted by SIDCO. However, even after the remittance, there is nothing on record to show that the land has been transferred to SIDCO. Though proposal was made for the purpose of fixation of the cost of land, it was stated that the 50% of the market value prevailing as on the date of allotment would be a reasonable amount and this was the proposal submitted by the Government. But, nevertheless the Government fixed the market value prevailing as on the date of transfer. It is to be noted that if the market value of the property on transfer should be taken into consideration, then there will be no finality of the matter since the Government is yet to transfer the lands to SIDCO. Therefore, the concerned authority without placing the recommendations to the Government thought fit to recommend that 50% of the current value on the date of allotment would be a fair and reasonable value to be recovered.

13. On a perusal of the facts of the case, it is evidently clear that for no fault committed by the petitioners they are being penalised. The Government with an avowed object of empowering women have come forward with such a scheme for promoting exclusive industrial estate for women entrepreneurs. If the impugned demand is allowed to be continued to remain, it will be against such a progressive object behind promoting such an industrial estate. The petitioners were not informed of all these developments and all proceedings are inter departmental communications only. The conditions of allotment does not provide for such fixation of land cost or based on the land cost fixed by the Government. The reason

assigned for demanding enhanced cost is unreasonable since it is not attributable to the petitioners nor on account of any enhanced compensation paid for land acquisition to the erstwhile land owners or due to enhanced cost of development charges or for provision of amenities. The mistake lies within the various authorities for which the petitioners cannot be penalised. It is relevant to be pointed out that the Government has appointed a State Level Single Window Clearance Committee for the purpose of establishment of effective micro, small and medium enterprises (MSME). In the first State Level Meeting conducted by the said committee, which consisted of Secretaries of all the Departments, one of the Agenda taken up was regarding fixing of land cost by Revenue Department in cases where enter upon permission has been granted. From the Agenda of the Resolution, it is evident that the present case is not the solitary instance but on several occasions SIDCO has been developing industrial estates based on enter upon permission granted by the Government without any formal order of transfer in their favour. Therefore, this issue got the attention of the High Level Committee and in the meeting held on 14.02.2014 under the Chairmanship of the Chief Secretary to the Government, the following decision was taken.

> "Managing Director, SIDCO informed that SIDCO develops the Industrial Estates based on the enter upon permission granted by the Government and allots the plots to the entrepreneurs at a tentative cost based on the prevailing guideline value. The alienation orders based on the proposals sent by the District Collector to the Government are issued after few years at the guideline value prevailing in the year of such alienation which is exorbitant and hence not in favour of the MSMEs. The allottees should not be penalized for the administrative delay in issue of alienation orders. It would therefore be necessary to fix the cost prevailing in the year of enter upon with notional increase for subsequent years till date of alienation orders on the modalities of G.O.Ms.No.907, Revenue Department dt.13.12.1994.
>
> The Secretary to Government, Revenue Department stated that the request made by SIDCO is reasonable and it applies to SIPCOT, TNHB and on the recommendations made by the Commissioner of Land Administration, the issue is under the consideration of Government and necessary orders will be issued.
>
> The Committee requested the Secretary, Revenue Department to follow up this issue closely and obtain orders in circulation at the earliest and issue orders.
>
> (Action: Secretary, Revenue)"

14. The Committee also discussed one other Agenda regarding granting 50% subsidy in land cost on allotment to MSMEs and 100% Stamp duty concession to original allottees in SIDCO Estates and has taken the following decision:

> "Managing Director, SIDCO informed the Committee that based on the announcement made by the Hon'ble Chief Minister of Tamil Nadu under Rule 110 in the floor of the Legislative Assembly, 50% subsidy on land cost has been ordered vide G.O.Ms.No.177, Industries (MIE.1) Department dated 08.01.2013 on allotments made by SIPCOT in existing and new industrial complexes in 9 southern districts. The MSMEs also need to be encouraged by similar concession in land cost. Therefore, it is proposed to extend 50% subsidy in land cost in allotments in all new/existing industrial estates and to extend 100% stamp duty exemption to all original allottees in SIDCO industrial estates. Principal Secretary, Finance Department opined that when such concession is given to major industries, MSMEs deserve to have the same and hence this may be considered.
>
> The Committee decided that this may be considered and requested to get necessary orders in circulation."

15. The Committee in its resolution has requested the Secretary, Revenue Department to follow up the issue closely and obtain orders in circulation at the earliest and issue orders. Thus the recommendations which were placed before the Government, which ***is subsequent to the** passing of the Government Order in G.O.Ms.No.172 Revenue [NiMu7(i)] Department dated 11.06.2013. However, the Committee did not recommend any collection of land cost on the date of transfer but recommended collection at 50% of the market value on the date of allotment. This is the view taken by the State Level Single Window Clearance Committee dated 14.02.2014 consisting of Secretaries to the Government under the Chairmanship of the Chief Secretary to Government. Therefore, a serious thought should be given by the respondents to these issues, when the Government themselves have realized that it is unreasonable to demand the cost prevailing as on the date of transfer.

16. For all the above reasons, it is held that the petitioners cannot be called upon to pay the enhanced cost as contemplated in the impugned demand though SIDCO is said to have been called upon to pay pursuant to the proceedings issued by the District Collector dated 10.09.2013. The petitioners, not being a party to any of the proceedings, which culminated in the Government Order in G.O.Ms.No.172 Revenue [(Nimu 7(i)] Department dated 11.06.2013 cannot be ordered to pay the impugned demand based on such Government Order

and as a consequence, there is no necessity for the petitioners to challenge the said Government Order.

17. In the result, both these writ petitions are allowed and the impugned demand dated 24.03.2014 and the consequential notice dated 13.01.2015 are quashed and the respondents are directed to consider the petitioners case for execution of sale deeds as expeditiously as possible. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS IV)
Dated: 4.2.2015

*Corrected as per order dated
11.2.2015 and made herein
Sd/
Assistant Regsitrar
Dated: 16.2.2015

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government of Tamil Nadu
Revenue Department
Fort St.George, Chennai 600 009.

2. The Managing Director
Tamil Nadu Small Industries Development
Corporation, SIDCO
Thiru.Vi.Ka.Industrial Estate
Guindy, Chennai 600 032.

3. The District Collector
Salem District, Salem.

4. The Branch Manager
Tamil Nadu Small Industries Development
Corporation, Five Roads, Salem-4.

+ 1 cc to M/s. N. Subramaniyan, Advocate Sr.7359
+ 2 ccs to M/s. Abdul Saleem, Advocate Sr.3553&3554
+ 2 ccs to Government Pleader Sr.7550

To be substituted to the order already despatched on 9.2.2015

WP.Nos.29883 and 29997 of 2014

CA(CO)
EU 04.02.15 kk 16/2