IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2016

Date of Reserving the Order	Date of Pronouncing the Order
24.10.2016	02.11.2016

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

W.P.Nos.4357 and 4358 of 2014
and M.P.Nos.2 and 2 of 2014

M/s.Sasikala Enterprises
Sales and Service Centre
Rep. By its Proprietor Mrs.K.Sasikala
H-45/1, New ASTC HUDCO,
8th Cross, Hosur - 635 109
Krishnagiri District. .. Petitioner in both W.Ps.

vs

1.Tamil Nadu Small Industries
Development Corporation Ltd., (SIDCO)
Rep. By its Managing Director,
Thiru.Vi.Ka. Industrial Estate,
Paulwers Road, Kathipara Junction, Guindy,
Chennai - 600 032.

2.General Manager.
Tamil Nadu Small Industries
Development Corporation Ltd., (SIDCO)
Rep. By its Managing Director,
Thiru.Vi.Ka. Industrial Estate,
Paulwers Road, Kathipara Junction, Guindy,
Chennai - 600 032.

3.The Branch Manager,
SIDCO Branch Office,
Hosur.

4.M.Govindan .. Respondents in both W.Ps.

Prayer in W.P.No.4357 of 2014: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings Rc.No.7532/IE-7/2013 dated 14.11.2013 on the file of the 1st respondent, quash the same and consequently direct the first respondent to allot the Plot No.86, measuring 7.50 cents (approx) at Hosur Industrial Estate to the petitioner.

Prayer in W.P.No.4358 of 2014: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the proceedings Rc.No.17949/IE-7/05 dated 31.10.2013 on the file of the 2nd respondent, quash the same.

For Petitioner
in both W.Ps : Mr.V.Ravi

For Respondents
in both W.Ps. : Mr.Abdul Saleem (For R1 to R3)
Mr.S.Mohan (For R4)

COMMON ORDER

The petitioner in both the writ petitions is a propriety concern represented by its proprietrix Mrs.K.Sasikala. In W.P.No.4357 of 2016, the petitioner challenges the proceedings of the first respondent (SIDCO) dated 14.11.2013 by which Plot No.86 at Hosur Industrial Estate was allotted to the 4th respondent and for further direction to allot the said Plot No.86 in her favour. In W.P.No.4358 of 2016, the petitioner challenges the proceedings of SIDCO dated 31.10.2013 in and by which the respondent SIDCO returned the Earnest Money Deposit paid by the petitioner during 2006 while applying for an allotment of a plot in the Industrial Estate at Hosur measuring 11 cents to 15 cents.

2.Heard Mr.V.Ravi, learned counsel appearing for the petitioner, Mr.Abdul Saleem, learned counsel appearing for the respondents 1 to 3 and Mr.S.Mohan, learned counsel appearing for the 4th respondent.

3.The Managing Director of SIDCO by notification published in the Daily Thanthi dated 01.02.2006 invited applications from the public for allotment of various categories of industrial plots in Hosur Industrial Estate. The advertisement listed out five categories of plots as well as the actual number of vacancies which were existing. The plots were categorized based on their extent, viz., 5 cents, 5 cents to 10 cents, 11 cents to 15 cents, 15 cents to 20 cents and 21 cents to 25 cents. The petitioner applied in response to the said advertisement seeking for allotment of a plot measuring 11 to 15 cents. There were only two plots available for being allotted in the category 11 to 15 cents. The petitioner paid an Earnest Money Deposit of

Rs.10,000/-. The application filed by the petitioner was considered among other applicants and two other persons were found to be more eligible than the petitioner and they were allotted those two plots measuring 11 to 15 cents. As there were no vacancy, the respondent SIDCO by proceedings dated 31.07.2006 intimated the petitioner that her name is kept in waiting list No.1 for the plot measuring 11 to 15 cents. The explanation which is sought to be given by the respondent SIDCO, is that on many occasions, the allottee does not pay the plot cost or fails to comply with the allotment conditions resulting in cancellation of allotment and in such contingency, the next person who is eligible to be considered will be considered for allotment and that is why the waiting list is retained. It is further submitted that such waiting list will be valid only for one year as per the Board resolution of SIDCO and beyond the period of one year even assuming any cancellation is effected and vacancy arises, the plot cannot be allotted without giving a fresh advertisement.

4.After 2006, it appears that the petitioner did not follow up the matter nor took any action and for the first time came before this Court in 2014 challenging the allotment issued to the 4th respondent vide proceedings dated 14.11.2013. It is to be pointed out that the petitioner did not challenge any of the proceedings initiated by SIDCO in the interregnum between 2006 and 2013/2014 nor there was any representation given by the petitioner to the SIDCO. The petitioner's contention is that the 4th respondent has been allotted the plot measuring 7.5 cents and the petitioner has been placed in the waiting list for the plots measuring 11 to 15 cents and therefore, her application should have been considered for allotment.

5.At the first instance, the arguments advanced by the learned counsel for the petitioner appears to be sound and reasonable. But, however on closer scrutiny of the facts, it appears otherwise. The allotment in favour of the 4th respondent was made in November 2013 which is pursuant to an application made by the 4th respondent on 20.08.2013 in response to the notification issued by the SIDCO published in the Indian Express dated 05.07.2013. This notification is not restricted to the Hosur Industrial Estate alone as it pertains to 43 Industrial Estates in the State of Tamil Nadu developed by SIDCO and the size of the plots ranges from 5 cents to 1 acre in 38 Industrial Estates and shed sizes ranging from 500 sq.ft. to 2000 sq.ft. in 6 Industrial Estates on outright sale basis. Thus, the petitioner did not apply for any allotment pursuant to the notification dated 05.07.2013 nor has challenged the said notification and therefore the question of entertaining a writ petition challenging an allotment in favour of the 4th respondent is not maintainable. The justification given by the petitioner is that the plot size sought for by her could have been accommodated since the extent notified in 2013 ranges from 5 cents to 1 acre. This argument deserves to be outrightly rejected for the reason that the notification dated 05.07.2013 is a separate and independent notification and has got nothing to do with the advertisement issued on 01.02.2006 which pertains only to the Hosur Industrial Estate. Therefore the petitioner having not participated pursuant to the notification dated 05.07.2013 nor challenged the notification is not entitled for any relief.

6.Another limb of argument advanced by the learned counsel for the petitioner is that though the petitioner was placed in the waiting list No.1 by proceedings dated 31.07.2006, for the first time the respondent SIDCO took a decision to return the Earnest Money Deposit to the petitioner only on 31.10.2013, that too, returned only Rs.7,000/- and therefore it is deemed that the petitioner's application was kept alive and her right as a waiting listed candidate cannot be negatived.

7.As mentioned above, the Board of the respondent SIDCO has passed a resolution as early as in the year 1996 with regard to the allotment of sheds and plots and the procedure to be followed. In the said resolution dated 06.09.1996 in clause (viii) in item No.19, it has been stated that in the case of those Industrial Estates where the number of applications received is less than the number of sheds/plots advertised, the Managing Director will continue to receive individual applications and make direct allotment on the recommendations of the Allotment committee for a further period of one year from the date of advertisement without advertising. At the end of that period, the availability of sheds/plots should be advertised again and the process repeated. Therefore, after July 2007 the waiting list maintained by the respondent automatically lapsed and there was no power for the 2nd and 3rd respondents to make allotment from wait listed candidates without advertising afresh. Thus the argument of the petitioner stating that the waiting list continued till 2013 is liable to be rejected.

8.As noticed above, the petitioner had submitted her application in the year 2006 for allotment of a plot measuring 11 to 15 cents. The advertisement dated 01.02.2006 clearly indicated that there were only two plots available and by way of buffer the petitioner's name was retained as waiting list No.1. Admittedly, both the allottees had complied with the conditions and those allotments are valid as on date. Thus no vacancy arose within one year of allotment to operate the waiting list. Therefore, on facts, the waiting list maintained by the respondent SIDCO in respect of plots measuring 11 to 15 cents automatically stood lapsed as no vacancy had arisen in the said category to which the petitioner had submitted her application.

Hence the relief sought for by the petitioner in W.P.No.4357 of 2014 challenging the allotment of plot in favour of the 4th respondent has to necessarily fail. Accordingly the writ petition in W.P.No.4357 of 2014 is dismissed.

9.So far as W.P.No.4358 of 2014 is concerned, since the vacancy had never arisen and waiting list having not been operated within a period of one year, it stood automatically lapsed. Therefore, as per the terms and conditions of the allotment, the petitioner is entitled to refund of proportionate amount of the Earnest Money paid. As mentioned earlier, the petitioner had paid a sum of Rs.10,000/- during 2006, out of which, after deducting the administrative expenses, Rs.7,000/- has been refunded to the petitioner by proceedings dated 31.10.2013. In the light of the decision taken in W.P.No.4357 of 2014, challenge to the proceedings dated 31.10.2013 has also to fail and therefore, the said order is affirmed and the writ petition in W.P.No.4358 of 2014 stands dismissed.

10.It appears that the cheque which was sent to the petitioner had been returned by the petitioner and not encashed because of the pendency of the writ petition. In the light of the above, there will be a direction to the respondent SIDCO to refund a sum of Rs.7,000/- to the petitioner together with simple interest @ 8% per annum from 01.08.2007 onwards till 31.10.2013. If the amount which had been refunded by demand draft/cheque is still retained by the petitioner, then the petitioner shall appear before the second respondent, viz., the General Manager, SIDCO, Chennai and surrender the demand draft/cheque and the second respondent shall issue a fresh demand draft for a sum of Rs.7,000/- together with interest as ordered above and effect payment within a period of two weeks from the date on which the petitioner appears before the 2nd respondent. On the other hand if the petitioner has already returned the demand draft/cheque to the 2nd respondent or it has lapsed, fresh Demand Draft shall be issued for a sum of Rs.7,000/- with simple interest at 8% from 01.08.2007 till 31.10.2013 within two weeks from the date of receipt of a copy of this order.

11.Having rejected the case of the petitioner, the plight of the 4th respondent has to be taken into consideration. Though the 4th respondent had paid the initial deposit amount after receipt of the order of allotment dated 14.11.2013, till date he has not been put in possession of the plot nor the respondent SIDCO accepted the payment of balance sale consideration. The apprehension of the 4th respondent in the present scenario is that when the 4th respondent approaches SIDCO for execution of sale deed in his favour, the SIDCO may demand revised plot cost. The 4th respondent need not have any apprehension for the simple reason that it is not on account of his conduct he could not remit the balance sale consideration but on account of an interim order granted in these writ petitions. Therefore, the 4th respondent cannot be penalised on account of the conduct of the writ petition nor can he be punished for the interim order passed by this Court in these writ petitions. Therefore, the balance sale consideration as mentioned in the allotment order dated 14.11.2013 shall be the cost of the plot which shall be payable by the 4th respondent and the respondent SIDCO is directed to grant sufficient time to the 4th respondent to pay the remaining amount and on receipt of the same, execute sale deed in favour of the 4th respondent on receipt of the plot cost and put the 4th respondent in possession of the plot within four weeks from the date of payment of the entire sale consideration.

12.In the result, both the writ petitions are dismissed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1.The Managing Director,
Tamil Nadu Small Industries
Development Corporation Ltd., (SIDCO)
Thiru.Vi.Ka. Industrial Estate,
Paulwers Road, Kathipara Junction, Guindy,
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2.General Manager.
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Paulwers Road, Kathipara Junction, Guindy,
Chennai - 600 032.

3.The Branch Manager,
SIDCO Branch Office,
Hosur.

+1 cc to M/s.V.Ravi,advocate,sr.62435

ala(co)
krd 23/11