

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

WP.Nos.11841, 12403, 12469, 12683, 12964, 13193, 14197, 14198,
14199, 14424 and 14425 of 2015

and

MP.No.1 to 1 and 2 to 2 2015 (in all W.Ps.)

Lalitha Devi ... Petitioner WP.No.11841 of 2015
& WP 14424 of 2015

M/s. Sai Forgings
No.D3, Sowndaryam Flats,
E.B.Office Road,
Mugappair East,
Chennai 37,
Rep.by its Partners
1.K.Jayakumar
2. K.arul.

... Petitioner in WP 12403 of 2015

M/s. Sterling Metal Finishers
Rep.by its Partners
1.Smt.S.Pushpa
2.K.S.Aswinkumar

... Petitioner in WP 12469 & 14197
of 2015.

M/s.Aruvan Pattern Works
Rep.by J.Anbarasu

... Petitioner in WP 12683 & 14198
of 2015.

M/s.Queen Metal Industries
Rep.by its Partners
1. K.R.Rajkumar
2.R.Mary

... Petitioner in WP 12964 & 14199
of 2015.

M/s.Bheema CNC
Rep.by P.Simhadri

... Petitioner in WP 13193 & 14425
of 2015.

Vs

1.The Managing Director, Tamil Nadu Small Industries,
Development Corporation Limited,
Government of Tamilnadu undertaking,
Thiru.Vi.Ka.Industrial Estate,
SIDCO Corporate Office,
Guindy, Chennai - 600032.

2.The Branch Manager,
SIDCO Branch Office,
Industrial Estate, Kakkalur,
Tiruvallur.

... Respondents in all WPs

Prayers: WP.No.13193 and 14425 of 2015 are filed to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order made in RC.No.1665/1E2/2015, dated 26.3.2015 of the 1st Respondent and to quash the same and to direct the Respondents to give all assistance including the issuance of sale deed, No Objection Certificate for promoting the Small Scale Industrial Unit and to call for the records pertaining to the intimation with Form-A Notice under the Tamil Nadu Public Premises Act in RC.No.780/B/2008, dated 26.4.2015 of the 2nd Respondent and to quash the same and to direct the Respondents to give all assistance to the Petitioner including the issuance of No Objection Certificate and sale deed for promoting the Small Scale Industrial Unit, respectively.

WP.No.11841 and 14424 of 2015 are filed to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order made in RC.No.4113/1E2/2008, dated 23.3.2015 of the 1st Respondent and to quash the same and to direct the Respondents to give all assistance such as issuing No Objection Certificate, Sale Deed and other assistance to the Petitioner for promoting the Small Scale Industrial Unit and to call for the records pertaining to the intimation with Form-A Notice under the Tamil Nadu Public Premises Act in RC.No.132/B/2008, dated 23.4.2015 of the 2nd Respondent and to quash the same and to direct the Respondents to give all assistance to the Petitioner including the issuance of No Objection Certificate for promoting the Small Scale Industrial Unit, respectively.

WP.No.12469 and 14197 of 2015 are filed to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order made in RC.No.6665/1E2/2008, dated 23.3.2015 of the 1st Respondent and to quash the same and to direct the Respondents to give all assistance including the issuance of sale deed, No Objection Certificate for promoting the Small Scale Industrial Unit and to call for the records pertaining to the intimation with Form-A Notice under the Tamil Nadu Public Premises Act in RC.No.687/B/2008, dated 23.4.2015 of the 2nd Respondent and to quash the same and to direct the Respondents to give all assistance to the Petitioner including the issuance of No Objection Certificate and sale deed for promoting the Small Scale Industrial Unit, respectively.

<https://hcservices.ecourts.gov.in/hcservices> WP.No.12964 and 14199 of 2015 are filed to issue a

Writ of Certiorarified Mandamus to call for the records pertaining to the order made in RC.No.5139/1E2/2008, dated 27.3.2015 of the 1st Respondent and to quash the same and to direct the Respondents to give all assistance including the issuance of sale deed, No Objection Certificate for promoting the Small Scale Industrial Unit and to call for the records pertaining to the intimation with Form-A Notice under the Tamil Nadu Public Premises Act in RC.No.202/B/2008, dated 26.4.2015 of the 2nd Respondent and to quash the same and to direct the Respondents to give all assistance to the Petitioners including the issuance of No Objection Certificate and sale deed for promoting the Small Scale Industrial Unit, respectively.

WP.No.12683 and 14198 of 2015 are filed to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order made in RC.No.6935/1E2/2008, dated 24.3.2015 of the 1st Respondent and to quash the same and to direct the Respondents to give all assistance including the issuance of sale deed, No Objection Certificate for promoting the Small Scale Industrial Unit and to call for the records pertaining to the intimation with Form-A Notice under the Tamil Nadu Public Premises Act in RC.No.772/B/2008, dated 24.4.2015 of the 2nd Respondent and to quash the same and to direct the Respondents to give all assistance to the Petitioner including the issuance of No Objection Certificate and sale deed for promoting the Small Scale Industrial Unit, respectively.

WP.No.12403 of 2015 is filed to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the intimation with Form-A Notice under the Tamil Nadu Public Premises Act in RC.No.316/B/2007, dated 6.4.2015 of the 2nd Respondent and to quash the same and to direct the Respondents to give all assistance to the Petitioner including the issuance of No Objection Certificate for promoting the Small Scale Industrial Unit.

For Petitioners : Mr.A.E.Chellaiyah
Senior Counsel for Mr.K.Ramanujam

For Respondents : Mr.Abdul Saleem
Additional Government Pleader

COMMON ORDER

In these Writ Petitions, the Petitioners seek to quash the orders of the 1st Respondent, cancelling the allotment of plots on the ground of non utilisation and the consequential intimations with Form A Notice, calling for the Petitioners to

hand over the plots and to show cause as to why an order of eviction should not be made against them.

2. The facts leading to filing of these Writ Petitions are that the Government vide GO.Ms.No.785 dated 7.6.1988, granted permission to SIDCO (Tamil Nadu Small Industries Development Corporation Limited) for formation of industrial plots in Kakkalur, Tiruvallur District. Accordingly, SIDCO developed industrial plots under two phases, viz. Phase I, consisting of 147 Plots and Phase II, consisting of 357 Plots. On the applications for allotment of plots made by the Petitioners, they were allotted plots bearing Nos.G531, 13, S71, G65C, G55F and G87, by allotment orders dated 22.10.2008, 18.10.2010, 23.10.2008, 8.7.2009, 22.10.2008 and 3.6.2009 respectively. The Petitioners paid their respective sale considerations in instalments and made their respective payment of last instalment on 31.3.2011, 20.10.2011, 19.01.2011, 06.01.2010, 22.06.2009 and 04.02.2010 respectively. Pursuant to the payment of the entire sale consideration, Memorandums of Understanding were executed with the Petitioners on 4.2.012, 20.10.2011, 17.2.2011, 27.01.2010, 1.4.2011 and 19.02.2010 and possession of their respective plots were handed to them on 29.2.2012, 22.10.2012, 29.4.2011, 27.8.2010, 30.6.2011 and 16.4.2010. Alleging that as per the Clauses 6, 7, 19 and 21 of the allotment orders, the allotted plots were not utilized within the time prescribed, for the purposes for which it was allotted, show cause notices dated 19.9.2013, 20.09.2013, 2.9.2013, 20.5.2011, 12.9.2013 and 27.06.2011 were issued, calling upon the Petitioners to show cause and to submit a reply and to furnish the proof. The Petitioners also sent their replies, requesting extension of time. Again, show causes notices dated 20.11.2014, 11.8.2014, 18.11.2014, 10.09.2013, 15.10.2014, 19.11.2014, 30.5.2013 and 11.09.2013 were issued to the Petitioners. Thereafter, after issuing final show cause notice, allotments were cancelled by the impugned orders dated 26.3.2015, 23.3.2015, 23.3.2015, 27.3.2015, 24.3.2015 and 6.3.2015 and consequently, the impugned intimations with Form A Notice dated 26.4.2015, 23.4.2015, 23.4.2015, 26.4.2015, 20.4.2015, 6.4.2015 for eviction were issued.

3. The learned Senior Counsel appearing for the Petitioners has assailed the impugned orders of cancellation of allotment and the impugned notices with Form A on the following grounds:

3.1. WP.No.13193 and 14425 of 2015:- There was delay in handing over possession of the plot allotted. The periods calculated, based on which allotments were cancelled by the Respondents, are incorrect. While the Petitioner took possession of the plot, there was no infrastructural facilities and the Petitioner took all necessary efforts to put up an industry. However, without issuing No Objection

Certificate, executing sale deed and even referring to the explanations, allotment was cancelled arbitrarily.

3.2. WP.No.11841 and 14424 of 2015 :- Though the plot was handed over on 29.02.2012, as there was incorrect measurements in the extent of the plot, on representation, after modification of the measurements, the plot was handed over in the year 2015 and therefore, the terms and conditions would commence from 2015, thus the periods calculated, based on which allotments were cancelled by the Respondents, are incorrect. While the Petitioner took possession of the plot, there was no infrastructural facilities and the Petitioner took all necessary efforts to put up an industry. However, without issuing No Objection Certificate, executing sale deed and even referring to the explanations, allotment was cancelled arbitrarily.

3.3. WP.No.12469 and 14197 of 2015:- Though the Petitioner got the land allotted in 2008, the Petitioner got clearance from all the Departments in January 2015 only. There was delay in handing over possession of the plot allotted. The periods calculated, based on which allotments were cancelled by the Respondents, are incorrect. While the Petitioner took possession of the plot, there was no infrastructural facilities and the Petitioner took all necessary efforts to put up an industry. However, without issuing No Objection Certificate, executing sale deed and even referring to the explanations, allotment was cancelled arbitrarily.

3.4. WP.No.12964 and 14199 of 2015:- Though the Petitioner got the land allotted in 2009, the land with lesser extent than the allotted extent was handed over in 2010 and the Petitioner got clearance from all the Departments in 2014 only. Thus, there was delay in handing over possession of the plot allotted. The periods calculated, based on which allotments were cancelled by the Respondents, are incorrect. While the Petitioner took possession of the plot, there was no infrastructural facilities and the Petitioner took all necessary efforts to put up an industry. However, without issuing No Objection Certificate, executing sale deed and even referring to the explanations, allotment was cancelled arbitrarily.

3.5. WP.No.12683 and 14198 of 2015:- There was delay in handing over possession of the plot allotted. Though the Petitioner got the land allotted in 2008, the possession of the land was handed over in 2011 and the Petitioner got clearance from all the Departments in 2014 only. The periods calculated, based on which allotments were cancelled by the Respondents, are incorrect. While the Petitioner took possession of the plot, there was no infrastructural facilities and the Petitioner took all necessary efforts to put up an industry. However, without issuing No Objection Certificate, executing sale deed and even referring to the explanations, allotment was cancelled arbitrarily.

3.6. WP.No.12403 of 2015:- There was delay in handing over possession of the plot allotted. Though the Petitioner got the land allotted in 2009, the possession of the land was handed over in 2010 and the Petitioner got clearance from all the Departments. The periods calculated, based on which allotments were cancelled by the Respondents, are incorrect. While the Petitioner took possession of the plot, there was no infrastructural facilities and the Petitioner took all necessary efforts to put up an industry. However, without issuing No Objection Certificate, executing sale deed and even referring to the explanations, allotment was cancelled arbitrarily.

4. The learned Additional Government Pleader appearing for the Respondents, by filing separate counter affidavits, contended that though the allotments were made on outright sale basis, the Petitioners paid the entire sale considerations belatedly in instalments and that the Petitioners took possession of the plots belatedly and that as per the terms and conditions of the allotment orders, particularly, clauses 6, 7, 19 and 21, since the plots were not utilised, for the purpose for which it was allotted, for more than the prescribed period and as the Petitioners also failed to prove their utilisation of their respective lands, by producing necessary evidence and as there were no proper explanations within time, which would amount to breach of the terms and conditions stipulated in the allotment orders, after issuing show cause notices, allotments were cancelled by the impugned orders, which warrant no interference by this court, as they are legally valid. In support of his contentions, he placed reliance on the following decisions:

(i) B.D.A. v. Ajai Pal Singh reported in (1989) 2 Supreme Court Cases 116;

(ii) Robin Chemicals (P) Ltd. v. Government of Tamil Nadu reported in 1996 (II) CTC 261.

5. This Court heard and considered the submissions made by the learned counsel on either side and also perused the materials placed on record.

6. The indisputable facts, on a scanning of the typed set of papers, could be reiterated thus:

6.1. In order to form industrial plots in Kakkalur, Tiruvallur District, the Government vide GO.Ms.No.785 dated 7.6.1988, granted permission to SIDCO (Tamil Nadu Small Industries Development Corporation Limited).

6.2. SIDCO developed industrial plots under two phases, viz. Phase I, consisting of 147 Plots and Phase II, consisting of 357 Plots.

6.3. On the applications for allotment of plots made by the Petitioners, they were allotted plots bearing Nos.G531, 13, S71, G65C, G55F and G87, by allotment orders dated

22.10.2008, 18.10.2010, 23.10.2008, 8.7.2009, 22.10.2008 and 3.6.2009 respectively.

6.4. The Petitioners paid their respective sale considerations in instalments and made their respective payment of last instalment on 31.3.2011, 20.10.2011, 19.01.2011, 06.01.2010, 22.06.2009 and 04.02.2010 respectively. 6.5. Pursuant to the payment of the entire sale consideration, Memorandums of Understanding were executed with the Petitioners on 4.2.012, 20.10.2011, 17.2.2011, 27.01.2010, 1.4.2011 and 19.02.2010 and possession of their respective plots were handed to them on 29.2.2012, 22.10.2012, 29.4.2011, 27.8.2010, 30.6.2011 and 16.4.2010.

7. This Court, while ordering notice of motion in W.P.No.13193 of 2015, has granted the following interim order:

"Notice of motion returnable by 11.07.2015. Private notice is also permitted.

2. Dr.A.E.Chelliah, learned senior counsel for the petitioner, referred to the typed set of documents and would submit that while the petitioner took possession of the industrial plot, there was no infrastructural facilities like electricity, roads, water and sewerage connection and the petitioner took all necessary efforts to put up an industry. A show cause notice dated 19.09.2013 was issued and the petitioner has also submitted his reply on 03.10.2013. There was a subsequent show cause notice dated 20.11.2014 for which also, the petitioner has given his reply on 13.02.2015. Learned senior counsel submits that without even referring to the explanation given by the petitioner, the impugned order has been passed and prays for an interim order.

3. This Court, in the light of the facts and circumstances, is of the prima facie view that the petitioner is entitled to interim order. Accordingly, there shall be an order of ad interim stay till 11.07.2015.

Post on 11.07.2015."

8. Therefore, the main ground of attack on the impugned order(s) of cancellation of allotments, is that the explanation offered by the petitioners did not reflect in the same, by which, one could easily infer that the explanations of the petitioners were not at all considered by the respondents while passing the impugned orders and on that ground alone, the impugned orders need to be interfered with by this Court.

9. Moreover, it is the prime contention of the petitioners that they have not been given with either 'No Objection Certificate' or the sale deeds, so far and hence, the impugned order of cancellation of allotments would have no legs to

stand the scrutiny of law, for the reason that because of the inaction on the part of the respondents, the petitioners could not be made to suffer the loss. Further, the respondents failed to show as to the violations committed by the petitioners in this regard.

10. No doubt, the object of the scheme that is proposed by the Government in in GO.Ms.No.785 dated 7.6.1988, is to form industrial plots in Kakkalur, Tiruvallur District and accordingly, granted permission to SIDCO (Tamil Nadu Small Industries Development Corporation Limited). However, the same is being protracted by one way or the other and ultimately, it ended in filing of the present writ petitions, challenging the cancellation of the allotments to the petitioners.

11. Insofar as the case of the petitioner in W.P.No.13193 of 2015 is concerned, when the petitioner took possession of the industrial plot, there was no infrastructural facilities, viz., electricity, roads, water and sewerage connection. Therefore, he took all necessary efforts to put up an industry therein. While so, a show cause notice dated 19.09.2013 came to be issued, to which, he has also submitted his reply on 03.10.2013. But, there was a subsequent show cause notice dated 20.11.2014 and the petitioner has also given his reply on 13.02.2015. Meanwhile, the impugned order of cancellation was issued to the petitioner. Similar is the case of the other petitioners in this batch of writ petitions and hence, challenge is made to the same herein.

12. A thorough scrutiny of the materials available on record in the form of typed set of papers, would prove the case of the petitioners and accordingly, this Court is inclined to interfere with the impugned orders of cancellation, for the following reasons:

12.1. The delay in utilising the plots, which were allotted to the petitioners, is attributed on the part of the respondents, mainly because the petitioners were not issued with 'No Objection Certificate' and the respective sale deeds, as well.

12.2. The non-issuance of 'No Objection Certificate' as well as sale deeds, leads to the non-utilisation of the plots allotted in favour of the petitioners.

12.3. According to the petitioners, no infrastructures have been developed by the respondents, so as to enable the petitioners to run the small scale industrial units, in their allotted plots. In such circumstances, the respondents are not justified in passing the impugned order of cancellation, merely on the ground of delay in utilisation.

12.4. Ultimately, the respondents did not even refer to the explanations offered by the petitioners to the show cause notices issued by them, at the time of passing the impugned orders of cancellation. It shows non-application of mind on the part of the respondents in passing the impugned orders.

13. Therefore, all the writ petitions are allowed and the impugned orders of cancellation of allotment of plots in favour of the the petitioners are quashed. Accordingly, the respondents are directed to take necessary steps to issue the relevant documents, such as, 'No Objection Certificate' and sale deeds, to promote the small scale industrial units, if the petitioners fulfil all the norms. On such Certificate(s) being issued, the petitioners should commence their business in the units within six months thereafter, failing which, the respondents can take appropriate action in accordance with law. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

//True Copy//
Sub Assistant Registrar

srcm/rsb

To:

1.The Managing Director, Tamil Nadu Small Industries Development Corporation Limited,
Government of Tamilnadu undertaking,
SIDCO Corporate Office
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai 600032

2.The Branch Manager, SIDCO Branch Office
Industrial Estate, Kakkalur, Tiruvallur

+12 ccs to Mr.K.Ramanujam, Advocate, sr.11290, 11285, 11283, 11282, 11286, 11289, 11288, 11287, 11293, 11292 & 11291.

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12964, 13193, 14197, 14198,
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