

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17.02.2016

Pronounced on : 29-02-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 3325 of 2015

and

M.P. No. 1 of 2015

Smt. Neelam Agarwal
Wife of Sri Sandeep Agarwal
Proprietrix
M/s. Auroplast
Plot Nos. 58 & 58-A
SIPCOT Industrial Complex
Hosur 635 126

... Petitioner

Versus

State Industries Promotion Corporation
of Tamil Nadu Limited (SIPCOT)
represented by its General Manager-II
19-A, Rukmani Lakshmipathy Road
Egmore, Chennai - 600 008

... Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus calling for the letter Lr.No.DII/SICH/Auroplast/2013 dated 21.10.2014 under which the respondent has made demand of Licence fee and quash the same and consequently direct the respondent to refund the amount collected under receipt dated 18.11.2008 amounting to Rs.35,01,700/- together with interest thereon at the rate of 18% per annum and for granting the permission to the petitioner to sub-lease the property.

For Petitioner : Mr. Paras Jain

For Respondent : Mrs. Sudharshana Sundar

ORDER

The petitioner has come forward with this writ petition questioning the correctness of the demand of licence fee made by the respondent in the letter dated 21.10.2014. After setting aside such demand, the petitioner seeks for a consequential relief to direct the respondent to refund the amount of Rs.35,01,700/- collected from her with interest and also to direct the respondent to permit the petitioner to sub-let the lease hold property to third parties.

2. The brief facts which are necessary and essential for disposal of this writ petition are as follows:-

(i) The respondent has let out the property bearing Plot Nos. 58 & 58-A located in Sipcot Industrial Complex, Ranipet admeasuring 1.94 acres in favour of M/s. Milano Exports Private Limited for a long term lease of 99 years vide lease deed dated 29.08.1988 registered as document No. 4068 of 1988 on the file of Sub-Registrar, Hosur. At the time of letting out the property on lease, the respondent has collected a sum of Rs.1,16,300/- from the said M/s. Milano Exports Private Limited representing rent for the whole of the lease period for 99 years. As per the recitals contained in the lease deed dated 29.08.1988, on expiry of the period of 99 years, a new lease deed will be executed on such terms as may be agreed by the lessor and the lessee. The recitals also contain a clause by which the respondent permitted the lessor to sub-lease or part with the possession of the leasehold property to any third party with their previous approval/consent in writing. Further, under the lease deed, the respondent has no right to collect any amount like premium or licence fee, whenever lease is assigned or portion of it is leased. It has right only to collect development charges and the same is restricted to 10% and that too only when development is made and not otherwise.

(ii) As per the clauses stipulated in the lease deed dated 29.08.1988, M/s. Milano Exports Private Limited has transferred the lease hold right in favour of M/s. Emkay Automobile Industries Limited by executing a lease deed dated 02.09.2005. Thereafter, from M/s. Emkay Automobile Industries Limited, the petitioner intended to get the lease hold right transferred in her name. At the time of transferring the lease hold rights, the respondent demanded a sum of Rs.35,01,700/- as differential land costs from the petitioner vide letter dated 13.11.2008 without authority of law. The petitioner also paid the sum of Rs.35,01,700/- to the respondent and on receipt of the same, the respondent executed a Modified lease deed in favour of the petitioner on 26.11.2008. But it is not known under what authority of law, the said amount was collected from the petitioner and it has not been disclosed either in the demand notice or in the receipt issued to the petitioner.

(iii) According to the petitioner, she is carrying on business in the lease hold property after investing a sum of Rs.2 crores for the purpose of putting up industrial shed and building. During the course of the business, the petitioner intended to sub-lease a portion of the property measuring 18,132 square feet with the consent and permission of the respondent in favour of M/s. First Steps Baby Wear Private Limited as per the conditions in the lease agreement. In this context, the petitioner written a letter dated 24.06.2014 to the respondent and sought their permission to sub-lease a portion of the lease hold property. In response, the respondent sent a letter dated 21.10.2014 stating that the petitioner should pay a licence fee of Rs.13,69,802/- including service tax to the respondent as a condition precedent for

transferring a portion of the lease hold property in favour of M/s. First Steps Baby Wear Private Limited. According to the petitioner, such an amount has been calculated by the respondent at the rate of Rs.5.51 per square feet for the first 12 months with an escalation of 5% of the amount every year. According to the petitioner, the said letter dated 21.10.2014 has been issued by the respondent purportedly on the basis of an Office order dated 14.08.2012 of the respondent. It is this letter dated 21.10.2014 of the respondent, demanding payment of Rs.13,69,802/- from the petitioner, which is challenged in this writ petition.

3. The learned counsel for the petitioner would contend that at the time of execution of the original lease deed dated 29.08.1988 in favour of M/s. Milano Exports Private Limited, the respondent has collected a sum of Rs.1,16,300/- representing rent covering the entire lease period of 99 years. In spite of the same, at the time of transferring the lease hold right in favour of the petitioner on 13.11.2008, the respondent collected Rs.35,01,700/- purportedly towards differential land cost. Notwithstanding the above, when the petitioner is intending to sub-lease a portion of the lease hold property measuring 18,132/- square feet in favour of M/s. First Steps Baby Wear Private Limited, the respondent has issued the impugned letter dated 21.10.2014 demanding a sum of Rs.13,69,602/- as a condition precedent for permitting the petitioner to transfer the leasehold right in favour of M/s. First Steps Baby Wear Private Limited. According to the counsel for the petitioner, such a demand made by the respondent is without authority of law. The respondent has no right to make such a demand when already the petitioner paid Rs.35,01,700/- at the time of getting the lease hold right transferred in her favour. There is no provisions in the contract entered into between the parties to levy and demand a sum of Rs.13,69,602/- for transferring a part of the lease hold right in favour of M/s. First Steps Baby Wear Private Limited.

4. The learned counsel for the petitioner would contend that the Office Order relied on by the respondent, based on which the impugned demand has been made, has no statutory force and it cannot form the basis for the impugned demand. The respondent has no right to legislate law and such right is vested with Parliament and the State Legislature. To substantiate this contention, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in the case of (Chief Settlement Commissioner, Punjab and others vs. Om Prakash and others) AIR 1969 Supreme Court 33 wherein in Para No.6, it was held as follows:-

"6. In this context it is essential to emphasise that under our constitutional system the authority to make the law is vested in the Parliament and the State Legislatures and other law making bodies and whatever legislative power the executive administration possesses must be derived

directly from the delegation of the legislature and exercised validly only within the limits prescribed. The notion of inherent or autonomous law-making power in the executive administration is a notion that must be emphatically rejected. As observed by Jackson, J. in a recent American case- Youngstown Sheet & Tube Co. v. Sawyer(1)-"With all its defects delays and inconveniences men have discovered no technique for long preserving free government except that the Executive be under the law, and that the law be made by parliamentary deliberations." In our constitutional system, the central and most characteristic feature is the concept of the rule of law which means, in the present context, the authority of the law courts to test all administrative action by the standard of legality. The administrative or executive action that does not meet the standard will be set aside if the aggrieved person brings the appropriate action in the competent court. The rule of law rejects the conception of the Dual State (2) in which governmental action is placed in a privileged position of immunity from control by law. Such a notion is foreign to our basic constitutional concept.

5. For the very same proposition that the respondent corporation has no legislative powers to impose tax, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in Bimal Chandra Banerjee vs. State of Madhya Pradesh etc., AIR 1971 Supreme Court 517 wherein in para No.18, it was held as under:-

"18. No tax can be imposed by any bye-law or rule or regulation unless the statute under which the subordinate legislation is made especially authorises the imposition even if it is assumed that the power to tax can be delegated to the executive. The basis of the statutory power conferred by the statute cannot be transgressed by the rule-making authority. A rule-making authority has no plenary power. It has to act within the limits of the power granted to it."

6. The learned counsel for the petitioner also relied on the judgment of the Division Bench of this Court in the case (DCW Limited vs. The State of Tamil Nadu and others) AIR 2005 Madras 264 to contend that it is well settled that purely administrative order, which have no statutory force, are not enforceable in a Court of law.

7. The learned counsel for the petitioner vehemently contend that the demand made by the respondent for payment of Rs. 13,69,602/- is without authority of law. The learned counsel for the petitioner relied on Article 265 of the Constitution of India whereunder it was categorically indicated that "No tax

shall be levied or collected except by authority of law". In support of this contention, the learned counsel for the petitioner relied on the decisions in (i) (Mafatlal Industries Limited and others vs. Union of India and others) (1997) 5 Supreme Court Cases 536 (ii) M/s. B.K. Industries and others vs. Union of India and others) AIR 1993 Supreme Court 2123 (iii) M/s. Dabur India Limited and another vs. State of Uttar Pradesh and others) AIR 1990 Supreme Court 1814. These decisions arise out of the Taxation Laws wherein it was held that if the Court comes to the conclusion that a levy of tax is unlawful, the Court will direct the Government to return the tax. Relying on these decisions, the learned counsel for the petitioner would contend that the impugned demand made by the respondent is without authority of law and it is legally not sustainable. Therefore, the learned counsel for the petitioner prayed this Court to allow the writ petition with a consequential direction, as prayed for.

8. Per contra, the learned standing counsel for the respondent vehemently opposed the writ petition contending interalia that the original lessee M/s. Milano Exports Private Limited paid a sum of Rs.1,16,300/- at the time of execution of the lease deed on 30.08.1988 in their favour. Subsequently, the respondent accorded approval for change of management subject to payment of Rs.4,65,000/- which was also remitted by M/s. Emkay Automobile Industries Private Limited, from whom the petitioner has taken over the leasehold right on payment of Rs.35,01,700/- on 13.11.2008. Such amount was remitted by the petitioner without any protest. Thereafter, the petitioner, by letter dated 24.06.2014 sought for transferring a part of the lease hold right in favour of M/s. First Steps Babywear Private Limited from 01.07.2014 for a period of three years and the sub-lessee has also agreed to abide by whatever terms and conditions that may be stipulated by the respondent as a condition precedent for taking over the leasehold rights. The permission sought for by the petitioner to transfer part of the leasehold right cannot be granted without levying any fee since the petitioner, who is not the original lessee is bound by the terms and conditions incorporated in the original lease deed. Therefore, at the time of according approval, the respondent demanded licence fee of Rs.13,69,802 which is inclusive of service tax at 12.36%. Such fee was demanded by the respondent on the basis of Office Order No. 7 of 2012 and it cannot be said to be arbitrary or unreasonable.

9. According to the learned standing counsel for the respondent, as per Clause 29 of the terms and conditions of the original lease deed, the corporation reserved their right to impose any further condition or stipulations or alterations in the regulations at any time for establishment of industrial complex and to implement such conditions for the benefit of the industrial complex as a whole. In fact, as per clause 19 of the Modified lease deed, the petiitoner is not entitled to assign, sub let or transfer, either in part of in full, her

interest in the lease hold property except with the prior consent of the corporation. When the petitioner sought for sub-leasing a part of the property, the corporation reviewed the policy of sub lease based on recommendation of the sub-committee constituted for framing comprehensive guidelines for sub leasing the lease hold rights made on 18.07.2012. In this context, the office order No. 7 of 2012 dated 14.08.2012 was issued recommending for sub-leasing the property on payment of licence fee. Such recommendation was made taking note of the conditions prevailing in other States. The recommendation made by the sub-committee was to the effect that permission for sub-lease can be granted subject to payment of licence fee for a period of five years, which can be renewed once in three years. In any event, as per condition No. 29 of the modified lease deed executed in favour of the petitioner, the corporation reserved their right to impose any other condition which could form part of the lease deed in favour of the petitioner. Therefore, the learned counsel for the respondent justified the demand made by the respondent in the impugned letter.

10. In order to strengthen her submission that the respondent derive their power to demand the licence fee on the basis of the terms and conditions contained in the lease deed, the learned standing counsel for the respondent relied on the order dated 29.01.2015 passed by the Honourable Supreme Court in U.P. State Industrial Development Corporation Limited vs. Mosanto Manufacturers Private Limited and another) wherein it was held that the corporation is justified in levying transfer fee when the leasehold rights are transferred from one person to the other. Useful reference can be made to Para Nos. 23, 27, 40 and 41 of the order, which reads as under:-

"23. The Corporation has issued guidelines for transfer/re-construction in respect of the plots in the industrial areas of the corporation. Clause 6.01 (E) of the said guidelines prescribes Transfer levy and Clause 6.01 (F) defines transfer.....

27.There are many instances/examples in which the lessee gets allotment of huge industrial plots and thereafter sells the same for huge monetary gains. This adversely affects the aims and objectives of the appellant - corporation i.e., the planned development of industrial areas in the State of Uttar Pradesh. The Hon'ble High Court ought not to have interfered in the matter looking into the public interest involved and clause 3 (p) of the lease deed."

40. In the present case it has not been denied that respondent company M/s Super Tannery (India) Ltd. and the other company Super Agro Tech. Ltd. are family held companies of the same family having common Directors/Promoters. Pursuant to the order of amalgamation by the High Court the plot of land in question namely A-9, A-10, Industrial Area Unnao

Site-II which was allotted to Super Agro Tech. Ltd. became the asset of the respondent company M/s Super Tannery (India) Ltd. As per Amalgamation Scheme, all the property, rights and power of Super Agro Tech. Ltd., having its office at 184/170, Jajmau Kanpur was transferred without further act or deed to M/s Super Tannery (India) Ltd. Thus it is clear that by the order of the Court the premises in question was transferred in favour of the other Company.

41. In view of the aforesaid facts as noticed in each case, we hold that the appellant rightly issued notice demanding transfer fee from each of the respondents and there was no reason for the High Court to interfere with the same."

11. The learned standing counsel for the respondent brought to the notice of this Court that in identical circumstance, M/s. Vinayaka Impex Limited filed WP No. 10200 of 2013 before this Court against this respondent questioning the correctness of the demand made as a condition precedent for allowing them to sub-lease the lease hold premises. When the writ petition came up for hearing, this Honourable Court refused to interfere with the demand made by the SIPCOT and ultimately, the writ petition was dismissed as withdrawn on 07.02.2014. Therefore, the learned counsel for the respondent would submit that the demand made by the corporation is justified and it is based on the terms and conditions governing the contract between the petitioner and the respondent corporation. If the petitioner has any dispute in respect of the demand made by the respondent, she can invoke clause 27 of the original lease deed entered into with the corporation for reference of the dispute to an arbitrator. Therefore, according the counsel for the respondent, the writ petition itself is not maintainable and she prayed this Court for dismissal of the writ petition.

12. I heard the counsel for the petitioner as well as the learned Standing counsel for the respondent. I perused the materials made available, including the counter affidavit filed by the respondent.

13. The issue arise for consideration in this writ petition is whether the demand made by the respondent for payment of licence fee, as a condition precedent for granting permission to transfer part of leasehold right by the petitioner in favour of M/s. First Steps Babywear Private Limited is justified or not.

14. Originally, the property in question was leased out to M/s. Milano Exports Private Limited by a lease deed dated 30.08.1988 for a long term lease of 99 years. During the subsistence of the lease, M/s. Milano Exports Private Limited opted to transfer the leasehold right. For the purpose of

according approval for transfer of lease hold right, the respondent demanded payment of Rs.4,65,000/- towards differential land cost on 24.09.1999 and it was also paid. Thereafter, the leasehold rights were transferred in favour of M/s. Emkay Automobile Industries Private Limited by executing a modified lease deed dated 01.10.1999. Subsequently, M/s. Emkay Automobile Industries Private Limited also opted to give up their leasehold right in favour of the petitioner on the ground that they are not in a position to run the company any further. At that time, the respondent demanded a sum of Rs.35,01,700/- as a condition precedent for transferring the leasehold right in favour of the petitioner. The petitioner also, without any protest, remitted such amount on 18.11.2008 and thereafter, a modified lease deed was executed in favour of the petitioner on 26.11.2008. Now, the petitioner wanted to give up a portion of their leasehold right in favour of M/s. First Steps Babywear Private Limited. Therefore, the petitioner sent a letter dated 24.06.2014 seeking permission from the respondent to transfer part of a leasehold right in favour of M/s. First Steps Babywear Private Limited. According to the respondent, M/s. First Steps Babywear Private Limited has agreed to abide by any condition that may be imposed by the corporation. Thereafter, the respondent issued the impugned letter dated 21.10.2014 demanding payment of Rs.13,69,802/- towards licence fee purportedly on the basis of an Office Order No. 7 of 2012.

15. The impugned letter has been attacked by the petitioner mainly on the ground that the demand made by the respondent is without any authority of law and the amount demanded in the impugned letter is arbitrary, unreasonable and without any statutory right. In this context, it has to be mentioned that at the time when the petitioner was inducted as a lessee, a modified lease deed dated 13.11.2008 was entered into between the petitioner and the respondent-corporation. The lease deed dated 13.11.2008 contains several clauses. Such clauses were admitted by the petitioner with open eyes. The terms and conditions contained in the lease deed dated 13.11.2008 governs the business run by the petitioner. Prior to execution of the lease deed dated 13.11.2008, the petitioner paid a sum of Rs.35,01,700/- on 13.11.2008. Such amount has been paid by the petitioner without any protest or by reserving their right to question the manner in which such amount was demanded by the respondent. While so, the petitioner is estopped from making any claim for refund of the amount of Rs.35,01,700/- with interest.

16. As mentioned above, the contract between the petitioner and the respondent is governed by certain terms and conditions, which were reduced into writing in the form of a lease deed dated 13.11.2008. The terms and conditions contained in the lease deed dated 13.11.2008 binds the petitioner. Such terms and conditions also empowers the respondent to demand payment of licence fee. This source of power has been reserved by the respondent under clause 29 of

the lease deed. As per clause 29, the corporation reserved their right to impose any other further conditions or stipulations for regulation or administration of the leasehold property. For ready reference, clause 29 is extracted below:-

"29. The party of the First Part shall reserve the right to impose any further conditions and stipulations or alternations in the regulation necessary at any time for the establishment of the industrial complex, to implement the conditions of this deed and for the benefit of the industrial complex as a whole."

17. Therefore, the power on the part of the respondent-corporation to impose or demand or collect licence fee springs or emanates from clause 29 of the lease deed dated 13.11.2008. When the petitioner is a signatory to the terms and conditions of the lease deed dated 13.11.2008, especially having expressly agreed to the covenants thereof, it is futile on the part of the petitioner to question the authority of the respondent to demand collection of licence fee. In any event, the consequential prayer sought for in this writ petition for refund of the sum of Rs.35,01,700/- paid by the petitioner at the time when the leasehold rights were transferred in her favour cannot be refunded with interest, as claimed in the writ petition. Such payment was made by the petitioner without any protest and all these years, the petitioner never demanded for repayment of the said amount from the respondent, for reasons whatsoever.

18. In all the decisions relied on by the learned counsel for the petitioner, mentioned supra, what was adjudicated was the power or source of authority to demand tax. The decisions cited on behalf of the petitioner arise out of disputes pertaining to payment of Tax under Taxation Laws. Even Article 265 of The Constitution of India relied on by the counsel for the petitioner has no relevance to the facts of this case inasmuch as Article 265 deals with collection or levy of tax except by authority of law. In the present case, what was demanded by the respondent is not towards payment of any tax, rather, the respondent demanded licence fee, as a condition precedent for transferrring part of the leasehold right in favour of M/s. First Steps Babywear Private Limited so that the lease hold property could be effectively administered and maintained by them. In such circumstances, the decisions relied on by the counsel for the petitioner to contend that the demand made by the respondent is without authority of law cannot be made applicable to the facts of this case.

19. In my considered view, the respondent derives power to demand, levy or impose licence fee on the basis of the terms and conditions governing the leasehold property rights between the petitioner and the respondent. The petitioner, having remitted the amount demanded by the respondent to the tune of Rs.35,01,700/- on 13.11.2008 and having enjoyed the leasehold

property rights for a period of more than six years, is estopped from seeking for refund of the said amount from the respondent-corporation. It may also not out of place to indicate that the amount demanded in the impugned notice has to be paid by M/s. First Steps Babywear Private Limited and as per the counter and they are also ready and willing to abide by any condition imposed by the corporation. Further, as per the counter affidavit, the impugned demand is being made in the form of licence fee for sub-leasing the premises in favour of a third party from the original allottee, either in full or in part. While so, I do not find any reason to interfere with the letter dated 21.10.2014 issued by the respondent especially when the dispute is purely contractual in nature. The petitioner has not made out any case for interference by this Court. Moreover, if the petitioner has any grievance against the quantum of demand made by the respondent, the petitioner is having alternative remedy by invoking the clause for arbitration contained in the modified lease deed executed in favour of the petitioner.

20. In the result, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The General Manager-II
State Industries Promotion Corporation
of Tamil Nadu Limited (SIPCOT)
19-A, Rukmani Lakshmipathy Road
Egmore, Chennai - 600 008

+1cc to Mrs. Sudharshana Sundar, Advocate, S.R.No.13165
+1cc to Mr.Paras Jain, Advocate, S.R.No.12641

W.P No. 3325 of 2015

RSI (CO)
CA(22/03/2016)