

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2016

Date of Reserving the Order	Date of Pronouncing the Order
05.04.2016	07.04.2016

Coram

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

W.P.No.36035 of 2015

M/s.Exsurge
Proprietorship Concern,
Formerly known as M/s.Anbu Sons,
Proprietor,
Mr.A.Sujant Anbu ... Petitioner

Vs

1.Project Director,
National Highways Authority of India (NHAI)
No.8, 29th Cross Street,
Indhira Nagar,
Chennai - 600 020.

2.The Chairman & Managing Director,
Tamil Nadu Small Scale Industries
Development Corporation,
Paul Wells Road, Kathipara Junction,
Chennai - 600 010.

3.The Collector,
Vellore Collectorate,
Sathuvachari,
Vellore District.

4.The Competent Authority cum
The Special District Revenue Officer,
National Highways Authority of India (NHAI),
Vellore Collectorate,
Vellore - 632 009.

5.Special Tashildar (National Highways),
Ranipet - Unit 7,
Vellore District.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus, to direct the first and fourth respondents to implement the reference letter in RC.G5/20354/2002, dated 10.03.2015 by paying compensation as per award passed in Rc.G5/20354/2002, dated 23.03.2006, passed by the fourth respondent pertaining to the portion of the petitioner's land and industrial unit of an extent of 0.997 acres or 4035 sq., meters in New Survey No.13/7, at Plot No.D situated at SIDCO Industrial Estate, Vannivedu Village, Walaja Taluk, Vellore District.

For petitioners .. Mr.David Thyagaraj

For Respondents .. Mr.Abdul Saleem for R2

Mr.R.Rajeswaran Spl.G.P., for RR3 to 5

No Appearance for R1

O R D E R

The petitioner has filed this Writ Petition praying for issuance of a Writ of Mandamus, to direct the first and fourth respondents to implement the communication, dated 10.03.2015, by which the District Revenue Officer, Vellore, directed the first respondent, the Project Director, NHAI, to take action to deposit the compensation amount of Rs.4,06,479/- immediately for the land and industrial unit in new Survey No.13/7, in Plot No.D, at SIDCO Industrial Estate, Vannivedu Village, Walaja Taluk, Vellore District which had been acquired by the National Highways.

2. Heard Mr. David Tyagaraj learned counsel assisted by Mr.Vinod Paul Tyagaraj, learned counsel for the petitioner, Mr.Abdul Saleem, learned counsel for the second respondent, and Mr.R.Rajeswaran, learned Special Government Pleader for the third and fifth respondents.

3. The petitioner is a Proprietorship concern initially called as M/s.Anbu Sons and at present called as M/s.Exsurge. They applied for allotment of a developed plot in an Industrial Estate promoted by SIDCO at Vannivedu Village, Vellore District, by application, dated 30.05.1997. The application was favourably considered and by communication, dated 07.07.1997, the petitioner was informed that developed plot bearing No.D, measuring an extent of about 1.19 acres is offered to the petitioner on outright purchase basis, subject to the conditions contained in the said communication. The tentative cost of the developed plot was fixed at Rs.1,73,500/-. The plot was to be utilised for the manufacturer or fabrication columns, casing cells, hoppers for electronic precipitation etc. The provisional allotment order duly signed, was returned by the petitioner to SIDCO. While doing so, it was pointed out that

the measurement of the plot on the east-west boundaries was not given in the blue print and therefore, SIDCO was requested to furnish the said information to enable the petitioner to submit the building plan for approval. The SIDCO by communication dated 15.11.1997, addressed to the petitioner while accepting the payment of Rs.1,73,500/-, paid on 06.10.1997, indicated that there was a balance amount of Rs.5023/- payable towards plot cost and interest for belated payment and they were requested to remit the same. Along with the communication, the lay out of the industrial estate mentioning the measurement of all four sides of each plot was furnished to the petitioner. The petitioner was directed to furnish six copies of the building plan, proof for financial tie-up to implement the project and provisional SSI certificate. The petitioner by their letter dated 25.11.1997, pointed out that the demand for Rs.5,000/- over and above the payment made by the petitioner is not justified for the reasons stated therein. While so, it appears that there was a difference in the actual extent of the land allotted to the petitioner, as it was short of about 18 cents lesser than the extent mentioned in the order of allotment. The extent allotted to the petitioner was 1.19 acres, but the actual extent available on ground was 1.01 acres, i.e., 18 cents less than what was allotted. While accepting the shortage of area, the petitioner was informed by SIDCO that refund of the plot cost towards the shortage area, will be considered after receipt of charge papers on handing over the plot allotted to the petitioner. The copy of the revised lay out showing the exact extent of the plot was enclosed along with the communication, dated 12.01.1998.

4. By another letter dated 23.09.1998, SIDCO addressed the petitioner stating that though they have paid the full plot cost, they have not taken steps to comply with the condition No.10 of the allotment order and requested them to take immediate steps to comply with the conditions without further delay. The petitioner executed a letter of undertaking on 11.03.1998, undertaking to start construction activities with their own funds and construct the factory building by adhering to the Town and country Planning Act and the other rules and regulations. It was undertaken that they proposed to obtain financial assistance to buy the plant and machinery from TIIC and undertook to use the plot for industrial activity for which it was allotted within the time limit stipulated in the allotment order. Subsequently, a Memorandum of Understanding was entered into between the petitioner and SIDCO on 30.03.1998, wherein the parties agreed to the quantum of water charges and maintenance charges to be paid among other things. On 03.04.1998, the petitioner addressed, the District Industry Sector, Vellore, referring to the allotment and enclosing the blue prints and requested for approval of the blue prints of the proposed unit by enclosing 14 copies of the same to enable them

to get necessary clearance from the Government, local body and other authorities. Photostat copy of the provisional SSI certificate was enclosed. Proforma furnishing the details requesting permission for construction was also furnished. On 03.07.1998, the plot was handed over to the petitioner by SIDCO and in this regard, a charge paper was drawn. Thereafter, by communication, dated 01.08.1998, the Manager of Industrial Estate SIDCO, Chennai, informed its Branch Manager at Vellore stating that the petitioner has been allotted 1.01 acres as per revised lay out and he has paid the full cost of the plot and necessary handing over permission has been issued and charge papers have also been received. Referring to the request made by the petitioner to refund the EMD of Rs.10,000/-, sanction was accorded to the Branch Manager to effect refund. Thereafter, the petitioner sent a letter to SIDCO, requesting for refund of the excess amount paid by them.

5. While so, it appears that the Entrepreneurs Association submitted representation to the SIDCO with regard to the approval of the revised lay out plan, as it was an essential requirement to enable the purchasers to apply for individual planning permission. Based on the said communication, the Superintending Engineer of the SIDCO forwarded that layout plan approved by the Commissioner of Town and Country Planning to the Branch Manager of the SIDCO Industrial Estate, Ranipet by his letter dated 25.11.1998.

6. The Entrepreneurs Association submitted a representation to the Chairman SIDCO on 18.04.2001, stating that all the allottees have fully paid the land cost and have received necessary approvals from all authorities and bore wells have been installed and construction activities have commenced, levelling of land has been done etc. It was pointed out that on 16.04.2001, the officials of the National Highways Department, had come to the Industrial Estate and laid stones marking the boundaries for forming a bye-pass road in the area and the proposed alignment passes through six industrial plots as well as tiny sheds. Therefore, the association requested the Chairman, SIDCO, to take up the matter with the National Highways Department, for realignment of the proposed bye-pass road to the northern side to pass through the lands owned by the State Revenue Department. The association received a copy of the letter dated 26.04.2001, addressed by the SIDCO to the National Highways Department, stating about the extent of the Industrial Estate and that it is an approved industrial lay out vide approval dated 16.11.1998, there are 10 tiny sheds and 13 developed plots in the estate, which have been allotted to small scale entrepreneurs and they have also started industrial activity and if the proposed bye-pass is to pass through the industrial estate, it will create difficulties to the small scale entrepreneurs. Therefore, SIDCO requested National

Highways to drop the proposal. This request was once again reiterated by SIDCO vide their letter dated 25.06.2001, addressed to the National Highways. These requests made by SIDCO did not yield any result and notification was issued by the National Highways under Section 3A of the National Highways Act, 1956 and published in the English daily dated 16.05.2003, furnishing details of the properties which were subject matter of acquisition.

7. The petitioner by their letter dated 16.06.2003, addressed to the District Revenue Officer, recorded their objection for acquiring the land and emphasised that the land is not a Government land but a private land as they have paid the full cost to the SIDCO and in this regard, supportive documents were enclosed. This was followed by another representation, dated 22.06.2004, addressed to the NHAI as well as SIDCO and the District Collector for allotment of alternate lands. The petitioner sent another representation to the Chairman. SIDCO on 05.07.2015. In response of the petitioner's letter dated 23.10.2007, a reply was received by the petitioner from SIDCO stating that the District Revenue Officer, Vellore, has been requested to release compensation for the land taken over by National Highways and after receipt of compensation, the same will be released to the petitioner. This communication was signed by the General Manager of SIDCO. This stand was reiterated by SIDCO by their letter, dated 21.06.2013 and the fifth respondent also informed the petitioner that they can receive the compensation amount from SIDCO, by communication dated 16.07.2014. Based on all the earlier communications, the District Revenue Officer addressed the first respondent on 27.10.2014, raising several objections as regards the acquisition. The petitioner was given a copy of the communication sent by the District Revenue Officer, dated 10.03.2015, addressed to NHAI requesting for deposit of compensation amount immediately.

8. From the counter affidavit, it is seen that the compensation amount has now been released by NHAI and received by SIDCO by demand draft, dated 18.09.2015. The petitioner now seeks for payment of the said compensation with liberty to claim higher compensation. The communications which emanated from SIDCO to the petitioner as well as to the National Highways had been referred at in the preceding paragraphs to demonstrate as to how SIDCO had treated the petitioner. For all purposes, SIDCO reconciled with the fact that the petitioner had paid the entire land cost towards the plot, which was allotted to him on outright purchase basis. Therefore, whatever compensation, which is paid by National Highways, has to be passed on to the petitioner, as he is the allottee of the plot and in possession after having paid the full land cost.

9. SIDCO was conscious of the fact that inspite of sale deed having not been executed for all practical purposes, the petitioner was recognised as the allottee/owner of the plot in possession. For the first time in the counter affidavit, the SIDCO has taken a diametrically opposite stand stating that the petitioner had violated the terms and conditions of allotment and at not put the plot to use. As a result of which SIDCO states that all that the petitioner can receive, is what he had paid as land cost at the time of allotment during 1997. The plea raised by SIDCO apart from being a belated plea smacks off, arbitrariness and unreasonableness. The petitioner being a person in possession of the land was a "person interested" to object to the acquisition proceedings. In fact, the petitioner conveyed his objections to the District Revenue Officer by a representation, dated 16.06.2003, 22.06.2004, and SIDCO echoed the voice of the petitioner and sent their objections requesting for dropping the acquisition proposal. Thus, at no earlier point of time, SIDCO took a stand that the petitioner is not a "person interested" with regard to the acquisition proceedings. Hence, at this belated stage, that too, for the first time before this Court such a plea cannot be allowed to be raised.

10. One more ingenious attempt embarked upon by the SIDCO before this Court is to state that the petitioner had not utilised the plot. This plea is vexatious and deserves to be out rightly rejected, apart from being arbitrary. Though the allotment was made on 28.07.1997, the dispute regarding the boundaries, the extent, stood resolved only by January 1998, as could be seen from the communication of the Chairman SIDCO to the petitioner, dated 12.01.1998. On 02.03.1998, the petitioner was reminded that he has to comply with condition No.10 of the allotment order with regard to establishing of the factory. There are four conditions, which have to be fulfilled in terms of clause 10, which reads as follows:-

10. The developed plot(s) will be handed over to you on full payment subject to your producing evidence for having taken effective steps to start your industry as below:

- a) You have to forward the building plans for getting NOC from SIDCO within one month from the date of payment of full cost.
- b) You will have to produce the Provisional SSI Certificate for the proposed industry.
- c) You will have to produce sufficient evidence of financial tie up for the project.
- d) You will have to execute a Memorandum of Understanding (MOU) agreeing to the terms and conditions of SIDCO.

11. Out of the four conditions, the petitioner was called upon only to comply with condition Nos.(a) to (c) as admittedly, to comply with condition No.(d), the Memorandum of Understanding (MoU) had to be furnished by SIDCO. The petitioner complied with the conditions and also executed the MoU on 30.03.1998. Thus, SIDCO having been satisfied that the petitioner has complied with clause No.10, did nothing further pursuant to their communication dated 02.03.1998. Hence, at this distance of time, that too, for the first time before this Court, SIDCO cannot raise a plea that the petitioner did not comply with the terms and conditions of allotment.

12. While the facts stood thus, there was still a dispute with regard to the refund, which the petitioner was entitled to and that was resolved only after SIDCO sanctioned the refund by proceedings dated 01.08.1998. The petitioner informed the SIDCO that he is entitled to refund of Rs.17,000/- for which he had enclosed the copy of the advance stamp receipt evidencing payment of the said amount. Ultimately, the approved lay out plan of the industrial estate was forwarded to the Branch Manager at Ranipet on 25.11.1998. The petitioner has effected steps to utilise the plot, he has established a bore well, submitted plans for approval etc. While so, during April 2001, National Highways Department entered upon the property and laid stones indicating the proposed alignment of the bye-pass road, which would virtually cut across through the Industrial Estate and the maximum damage to be suffered was by the petitioner, as the entire plot was to be acquired. Given these facts, the respondent SIDCO cannot now state that they will appropriate the compensation amount and pay the petitioner what he had paid in 1997. Hence, the stand taken in the counter affidavit, which is clearly a belated plea and an after thought deserves to be rejected.

13. In the light of the above, the Writ Petition is allowed and the second respondent is directed to pay the entire amount paid towards compensation received by them for acquisition of plot No.D, allotted to the petitioner, which is stated to be Rs.4,06,479/- within a period of two weeks from the date of receipt of a copy of this order.

14. The learned counsel for the petitioner submitted that because of the delay, they are entitled to claim compensation at the present market rate. In this regard, the matter has to be agitated before the District Collector, the third respondent by filing an application under Section 3G(5) of the National Highways Act. Accordingly, liberty is granted to the petitioner to move the third respondent by way of an application under

Section 3G(5) of the National Highways Act and the third respondent, while computing limitation, shall compute the same from the date of receipt of the certified copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

pbn
To

1. Project Director,
National Highways Authority of India (NHAI)
No.8, 29th Cross Street,
Indhira Nagar,
Chennai - 600 020.
2. The Chairman & Managing Director,
Tamil Nadu Small Scale Industries
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5. Special Tashildar (National Highways),
Ranipet - Unit 7,
Vellore District.

+2ccs to Mr. David Tyagaraj, Advocate, S.R.No.22330
+1cc to Mr. Abdul Saleem, Advocate, S.R.No.22305
+1cc to the Government Pleader, S.R.No.22512

SR(CO)
EU(26/04/2016)

W.P.Nos.36035 of 2015