

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 19.7.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.34116 OF 2013

M.MEGANATHAN

... petitioner

Vs

- 1 THE MANAGING DIRECTOR
THE TAMIL NADU SMALL INDUSTRIES CORPN LTD
REP. BY ITS MANAGING DIRECTOR NEAR SIDCO
ELECTRONICS COMPLEX THIRU VI KA INDSL
ESTATE GUINDY CH-32.
- 2 THE BRANCH MANAGER
SIDCO BRANCH OFFICE KRISHNAGIRI.
- 3 THE ASSISTANT EXECUTIVE
ENGINEER (O&M) WEST TANGEDCO DHARMAPURI-
636 701.
- 4 MATHIYAN respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorari calling for the records of the 1st respondent in R.C. No.9535/ 1E-7/2001 dated 6.8.2013 quash the same and direct the 1st respondent to allot Shed No.10 at the Tiny Industrial Complex Vellagoundanpalayam Dharmapuri District to the petitioner.

For petitioner ... Mr.R.Subramanian

For respondents ... Mr.Abdul Saleem, for respondents 1 and 2

Mr.R.K.Gandhi, for 4th respondent

Mr.M.Varunkumar, for 3rd respondent

O R D E R

Heard Thiru.R.Subramanian, learned counsel for the petitioner and Thiru.Abdul Salem for respondents 1 and 2, Thiru.R.K.Gandhi, for 4th respondent and Thiru.M.Varunkumar, for 3rd respondent.

2. With the consent of both the sides, the Writ Petition is taken up for disposal.

3. The petitioner has filed this Writ Petition challenging the order of allotment issued in favour of the 4th respondent dated 6.8.2013, in respect of a tiny shed No.10, situate at Tiny Sector Complex, Vellagoundanpalayam. The said shed no.10 was initially

allotted to one Kamalam. It could be seen from the counter affidavit filed by SIDCO that the said Kamalam committed default towards payment of cost of the shed, resulting in cancellation of allotment. After such cancellation, it appears that the fourth respondent submitted an application on 26.11.2001 for allotment of Shed No.10 and without any authorization, he is said to have paid a sum of Rs.12,000/- to the Senior Manager, SIDCO at Chennai. It is not known as to how the amount was received by the said authority. Since the application was not considered, the petitioner submitted a representation dated 17.8.2004, to SIDCO. The said representation was not considered and therefore, the petitioner filed a Writ Petition in W.P.No.27815 of 2004 and the Writ Petition was disposed of by order dated 6.10.2004, directing SIDCO to consider the petitioner's representation and pass orders within a period of twelve weeks. SIDCO considered the representation dated 17.8.2004 and passed an order on 2.2.2005, rejecting the fourth respondent's request and referred to the undertaking letter given by the fourth respondent to the Branch Manager, Krishnagiri that he will take back the amount paid by him without any objection.

4. It appears that the petitioner was in possession of shed no.10 and undoubtedly, there is no order of allotment in favour of the petitioner. When the fourth respondent attempted to interfere with the petitioner's possession, the petitioner filed a suit against the fourth respondent in O.S.No.328 of 2004, on the file of the District Munsif Court, Dharmapuri, and the suit was decreed by judgment dated 8.8.2008. In the said suit, though SIDCO was not a defendant, officials of SIDCO were examined as witnesses and documents issued by SIDCO were also marked. Though the Court came to the conclusion that the petitioner did not have a valid order of allotment in respect of tiny shed no.10, nevertheless, held that the petitioner was in possession. The lower Court therefore granted a decree of permanent injunction. The fourth respondent preferred an appeal as against the said decree in A.S.No.72/2008 on the file of the Sub Court, Dharmapuri and the appeal was dismissed by judgment dated 22.7.2009. The said judgment has become final as on date. There is a decree of injunction operating against the fourth respondent.

5. While the facts stood thus, in 2013, SIDCO has allotted shop no.10 in favour of the fourth respondent by letter dated 6.8.2013. It is rather curious to note that this allotment was made in respect of the fourth respondent by taking into consideration his application dated 26.11.2001, which was earlier rejected by SIDCO by order dated 2.2.2005. That apart, though SIDCO is aware of the civil proceedings between the petitioner and the fourth respondent, wherein they have given evidence before the civil court and marked documents, there is no reference to the said proceedings in the impugned order. It is thus clear that SIDCO did not handover physical possession of shop no.10 to the fourth respondent. Under such circumstances, the allotment order dated 6.8.2013 can at best be considered only as paper allotment and no right could accrue in favour of the fourth respondent, as SIDCO has not handed over physical possession to the fourth respondent. That apart, the impugned order does not state as to how an application, which was rejected earlier, could have been referred to, or revived, and fresh allotment order could have been

made. The illegality committed by SIDCO is manifest in issuance of impugned order.

6. There is another parallel problem pertaining to shed no.17. This shed was allotted to the petitioner's father Muthusami and one Fathima Bi is said to be partner of the petitioner's father. The said Fathima Bi had remitted certain amount to the cost of the shed. After the demise of the petitioner's father, the said partner has requested SIDCO to transfer shed in her name. This was rightly rejected by SIDCO, holding that after his demise, only Muthusami's legal heirs would be eligible for name transfer. In any event, the matter pertaining to shed no.17 could have no impact on the present proceedings. In the light of the facts noted above, it is held that SIDCO could not have made allotment in respect of s.no.10 in favour of the fourth respondent, based on an application, which was already rejected by order dated 2.2.2005. That apart, the actual physical possession was not handed over to the fourth respondent and this is fortified by the fact that there is a decree of injunction, dated 8.8.2008, operating against the fourth respondent, which has been confirmed by the Lower Appellate Court by judgment dated 22.7.2009, in the appeal filed by the fourth respondent which came to be dismissed. The fourth respondent did not pursue the matter further and the decree of injunction has become final. That apart, Tamil Nadu Electricity Board has filed a counter affidavit stating that they have granted electricity service connection in favour of the petitioner. It is also brought to my notice that property tax has been collected by the Panchayat from the petitioner. Hence for all the above reasons, the impugned order of allotment is held to be unsustainable. The impugned order is quashed and the Writ Petition is allowed. It is open to the petitioner to approach SIDCO seeking for formal allotment order, in respect of shed no.10, which shall be considered in accordance with law.

7. In the light of the above, the fourth respondent is directed to approach SIDCO for refund of the amount which they had paid pursuant to the impugned order allotment order, which shall be refunded within a period of four weeks from the date on which such a request is made.

8. In the result, the Writ Petition is allowed. No costs. Consequently, M.P.Nos.2 and 3 of 2013 are closed.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

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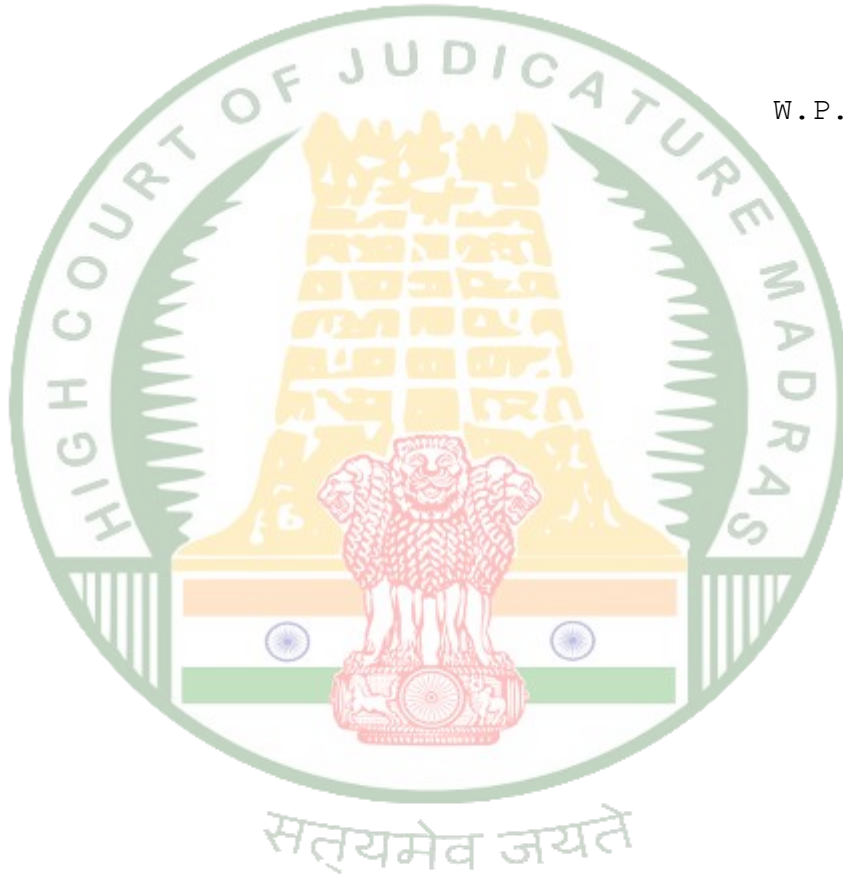
+1 cc to Mr.M.Varunkumar,advocate,sr.41399

+1 cc to M/s.K.Gandhi,advocate,sr.41498

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