IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2016

CORAM

The HON'BLE MR.SANJAY KISHAN KAUL, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE R.MAHADEVAN

W.P.No.25132 of 2013

K.Krishnamurthy .. Petitioner

Vs.

1. The Chief Secretary
Government of Tamil Nadu
Secretariat
Fort St. George
Chennai - 600 009.

2. The Secretary
Department of Commerce
Ministry of Commerce and Industry
Udyog Bhavan
New Delhi - 110 107.

3. The Principal Secretary
Industries Department
Secretariat, Fort St. George
Chennai - 600 009.

4. The Managing Director
Tamil Nadu Industries Development
Corporation Limited
19A, Rukmini Lakshmipathy Road
Egmore, Chennai - 600 008.

5. The Development Commissioner
MEPZ-Special Economic Zone
NH-45, Administrative Office Building
Tambaram, Chennai - 600 045.

6. The Inspector-General of Registration
No.100, Santhome High Road
Chennai - 600 028.

7. The Principal Accountant General
(Economic and Revenue Sector Unit)
"Lekha Pariksha Bhavan"
361, Anna Salai
Chennai - 600 018.

8. Mahindra World City Developers Ltd.
(Mahindra), Administrative Block
Mahindra World City
Chengalpattu Taluk
Kanchipuram - 603 002
Tamil Nadu.

9. Mahindra GESCO Developer Limited
Mahindra World City
Chengalpattu Taluk
Kanchipuram - 603 002
Tamil Nadu. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India for issuance of a writ of Mandamus to direct respondents 1 to 6 to recover the loss of Rs.67.57 Crores being the value of the lands and Rs.96.84 Lakhs being stamp duty exemption from respondents 8 and 9 and also the valuable lands illegally transferred by respondents 8 and 9 to the individuals not connected with the Special Economic Zone activities and to cancel the development and State support agreements with the 8th respondent and to file an action taken report.

For Petitioner : Mr.R.Rajendran

For Respondents : Mr.C.Manishankar
Addl. Advocate General
assisted by
Mr.T.N.Rajagopalan
Special Govt. Pleader
for respondents 1, 3 and 6

Mr.V.Venkatesan, SCGSC
for respondents 2 and 5

Mr.Vijayan
for M/s.King and Patridge
for 4th respondent

Mr.T.Ravikumar
for 7th respondent

Mr.Vijayanarayan
Senior Counsel
for M/s.R.Bharath Kumar
for respondents 8 and 9

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

The petitioner, an Ex-M.P., Ex-M.L.A., and an advocate, has filed the present petition as a public interest litigation seeking directions against the official respondents/State Government and the Tamil Nadu Industries Development Corporation Limited/fourth respondent to recover the alleged losses of Rs.67.57 Crores stated to be the value of the lands in question and Rs.96.84 Lakhs being the value of the stamp duty exemption granted to respondents 8 and 9.

2. The allegation of the petitioner is that lands were allotted to respondents 8 and 9 in the Special Economic Zone and instead of utilization for the said purpose, residential accommodation has been developed and sold to third parties.

3. We may note at the threshold that qua allegations that there is violation – whether of stamp duty or pertaining to other departments, the necessary departments have already triggered off action which has resulted in legal proceedings being initiated by the said private respondents.

4. Thus, if the intention of the petitioner was to bring to the notice of the authorities concerned the aspects dealing with the subject matter, that has reached its objective and it would

not be appropriate to comment on any of these aspects as they are sub judice in respect of legal proceedings initiated by respondents 8 and 9, sequitur to the authorities initiating certain actions.

5. We are really thus now concerned in the present petition with the issue that whether out of the lands allotted by the State Government in the Special Economic Zone, there has been any transfers contrary to the norms laid down and the consequences thereof. This is so as the petitioner alleges misuse of the land by construction of villas and semi-bungalows which have been leased out to individuals on a perpetual lease-hold basis.

6. It is also the case of the petitioner that since there is a financial participation of the Tamil Nadu Industries Development Corporation Limited/fourth respondent, it also amounts to a financial loss for a public sector.

7. The learned Senior Counsel for the private respondents submits that the alleged violation of the Special Economic Zones Act, 2005 and the Special Economic Zone Rules, 2006 is an issue which is no more res integra in view of the judgment of the learned Single Judge of this Court in Deepti Ahuja v. The Chief Controlling Revenue Authority-cum-Inspector General of Registration and others, 2016 (4) CTC 689.

8.1. The proceeding in Deepti Ahuja case, supra, arose on account of a petition filed by one of the lessees, who intended to take out a residential unit to let it out to the employees of the Special Economic Zone. In that context, the effect of Instruction No.65, dated 27.10.2010 has been examined. The instruction while dealing with the aspects of "housing" in Special Economic Zone has specified that 5% of the total area should be used for constructing low cost housing and dormitories and that the developer should rent out these houses to the employees of units. The housing facilities could also be used by persons who are working for establishments relating to Special Economic Zone Developers, units and or users of infrastructure facilities created in the Special Economic Zone. The sale of the land per se is barred under the Special Economic Zone Rules, 2006. In the aforesaid context, the perpetual lease deed executed by the private respondents herein in favour of the third parties in the non-processing area of Special Economic Zone came to be examined.

8.2. The stand of the State Government was that as per Rule 11(10) of the Special Economic Zone Rules, 2006, no vacant land in the non-processing area is to be leased for business or social purposes, while the developer or co-developer shall lease out the completed housing facilities not only for the management and office staff, but also for the workers of the Special Economic Zones. Sale of Special Economic Zone land to units or other persons or entities was not allowed. The Instruction No.65 was stated to have been issued as an extract and supplement to the amendment brought to the statutory provisions and, thus, the instruction could not be said to be issued in derogation of the Special Economic Zone Act and Rules.

8.3. The consideration by the learned Single Judge of the issues is in paragraph (14), which is reproduced as under:

> "14. Section 6 of the SEZ Act, 2005 classifies the processing area and non-processing area. As per Sub-section (c) of Section 6, the non-processing area is one where there are activities other than those specified under clause (a) and (b) thereof which relates to areas meant for setting up Units for activities such as manufacture of goods, or rendering service, including area earmarked for providing warehousing facilities. As per Section 5 of the SEZ Act, the Board has to grant approval in favour of the fourth respondent as a Co-Developer. As per Rule 11 of the SEZ Rules, the areas with the SEZ have been demarcated as processing zone and non-processing zone. Of course, there is a prohibition contained under Rule 11 (10) of the SEZ Rules relating to lease of vacant lands in non-processing area if it is meant for business and social purpose such as educational institution, hospital, hotel, recreation and entertainment facilities, residential and business complex to any person except a Co-developer approved by the Board. The proviso to Rule 11 (10) categorically stipulates that the Developer or Co-developer may lease the completed infrastructure along with the vacant land for such purpose. Therefore, as per Rule 11 (10), the lands within the non-processing area has to be leased out or otherwise transferred only after providing complete infrastructure thereof and it should not be leased out as vacant land. The second proviso to SEZ Rule says that adequate housing facilities shall be made not only for the management and office staff but also for the workers working in the SEZ. However, after amendment inserting Rule 11 (A), even the non-processing area shall be earmarked for business and social purpose after obtaining approval from the Central Government, including a No Objection Certificate from the concerned State Government. Thus, there is no embargo or prohibition anywhere in the Act and Rules to lease out the completed

infrastructural amenity along with the vacant land appurtenant therewith in the non-processing area to third parties like the petitioner. What is prohibited is that it should not be used for any other purpose except for residential use and even if it is meant for any other purpose, prior permission has to be obtained from the Developer and a No Objection Certificate from the concerned State Government. In this case, the property covered under the lease deed is a residential unit and not a vacant land situate within a non-processing area. The intention of the petitioner is to take the property on lease and to lease it out to the employees of the SEZ. Thus, when the object sought to be achieved by the Act and Rules is fulfilled by reason of the petitioner letting out the leased property situate within the non-processing area for rent to the employees of the SEZ, then the petitioner is entitled for exemption from stamp duty."

(emphasis supplied)

8.4. We may notice that this judgment is stated to have been not challenged any further and has been accepted by the State Government. There is a categoric finding of absence of any embargo or prohibition anywhere in the Special Economic Zone Act or Rules to lease out the completed infrastructural facilities along with the vacant land appurtenant therewith in the non-processing area to third parties like the petitioner therein. The finding is that what was prohibited was that it should not be used for any other purpose except residential use and even if it is meant for any other purpose, prior permission has to be obtained. In the said case, the property covered under the lease deed was a residential unit and not a vacant land situated within the non-processing area.

9. The aforesaid being the judicial view taken on the issue in question, through the public interest litigation, we are not inclined to interfere with the same and issue any specific directions.

10. We have already noticed that the authorities have taken cognizance of the various other alleged violations by the private respondents on being so intimated by the petitioner and as set out in the public interest litigation, which will take their natural course in view of the proceedings initiated by the private respondents.

The petition is, accordingly, closed in the aforesaid terms. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To:

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   Chennai - 600 009.

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+1cc to Mr.V.Venkatesan, SCGSC Sr.55658
+1cc to M/S.R.Bharathkumar, Advocate Sr.55729
+1cc to the Government Pleader Sr.56114
+1cc to for King & Partridge, Advocate Sr.55507
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W.P.No.25132 of 2013

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srg 07/10/2016