

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-12-2016

CORAM :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition No. 28047 of 2016

M/s. Singapore Realty Pvt Ltd.,
represented by its Director
Plot No.K-1, Singapore IT Park
Siruseri, Navaloor Post
Pin - 603 103 .. Petitioner

Versus

The State Industries Promotion
Corporation of Tamil Nadu
19-A, Rukmani Lakshmipathi Salai
Egmore, Chennai - 600 008 ... Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus directing the respondent herein to accept the balance sale consideration of Rs.2,09,42,000/- in accordance with the sale deed dated 06.05.2004 and 16.12.2004 as directed by the order dated 14.03.2012 in WP No. 6243 of 2006 and WP No. 6244 of 2016.

For Petitioners : Mr. Sriram Panchu,
Senior Advocate
for Mr. Srinath Sridevan

For Respondent : Mr. R. Muthukumarasamy,
Advocate General
assisted by Ms. Sudharsana Sundar

ORDER

The petitioner seeks for issuing a Mandamus to direct the respondent to accept the balance sale consideration of Rs.2,09,42,000/- as per the sale deeds dated 06.05.2004 and 16.12.2004 and as directed by this Court in the order dated 14.03.2012 in WP No. 6243 of 2006 and WP No. 6244 of 2016.

2. In the affidavit filed in support of the writ petition, it is stated that the petitioner company is a Special Purpose Vehicle incorporated under the Companies Act, 1956 and it was set up pursuant to a Memorandum of Understanding dated 18.09.2003 entered into between Lee Kim Tah Holdings Limited and the Government of Tamil Nadu. The petitioner company was set up to construct a knowledge based integrated township at the IT Park, Siruseri, Chennai and it consists of housing

units, schools, playgrounds, shopping etc., to cater to the housing requirements of IT and ITES employees working in Old Mahabalipuram Road. According to the petitioner, the respondent conveyed 104.77 acres of land in SIPCOT IT Park at Siruseri to the petitioner under two absolute sale deeds dated 06.05.2004 and 16.12.2004. The petitioner paid 90% of the consideration mentioned under the sale deeds and the balance of Rs.2,09,42,000/- was to be paid by them on or before 06.05.2007. As per the sale deeds, the construction has to be made by the petitioner in three phases.

3. According to the petitioner, on the strength of the sale deeds executed in their favour, they have completed the first phase of the construction within three years from the date of sale deeds and the subsequent phases in two years each thereafter. According to the petitioner, they have also obtained Environmental clearance as per the Environmental Impact Assessment (EIA) Notification of the year 1994. At that stage, on 14.12.2005, the petitioner received a notice from the Tamil Nadu Pollution Control Board directing the petitioner to stop work and to re-start the work only after obtaining Environmental Clearance. Once again, on 17.01.2006, the Tamil Nadu Pollution Control Board issued a notice asking the petitioner to show cause as to why the construction put up by them should not be treated as the one which was constructed in violation of the environmental norms. The petitioner sent a reply dated 30.01.2016 stating that no construction was undertaken and only constructions were "Show Flats" which were in the nature of mock apartments. In spite of the same, the Government passed an order dated 17.02.2016 purporting to cancel the Memorandum of Understanding and also issued another order dated 26.02.2016 attempting to cancel the order of land allotment issued to the petitioner.

4. Challenging the aforesaid orders, the petitioner filed WP No. 6243 and 6244 of 2016 before this Court. During the pendency of the writ petitions, the balance consideration payable by the petitioner become due and therefore they have tendered the payment, but the respondent refused to receive it on the ground that the allotment orders were cancelled. The petitioner therefore filed WMP No. 713 of 2007 in WP No. 6244 of 2006 seeking to direct the respondent to accept the balance sale consideration tendered by the petitioner. When WMP No. 713 of 2007 came up for hearing, this Court has passed the order in the main writ petition itself on 14.03.2012 holding that the cancellation of the Memorandum of Understanding and allotment orders were in violation of principles of natural justice and the reasons for cancelling the Memorandum of Understanding are baseless. Ultimately, in the said order dated 14.03.2012 it was held that it is open to the petitioner to pay the balance sale consideration to the second respondent therein and in such event, the second respondent shall receive the same.

5. According to the petitioner, pursuant to the order dated 14.03.2012, they have tendered the balance sale consideration on 09.04.2012, but it was not accepted by the respondent. Subsequently, by letter dated 11.04.2012, the respondent rejected the payment on the ground that the copy of the order dated 14.03.2012 was not received by them. After the order copy was delivered, the petitioner once again tendered the payment on 17.10.2012 but it was not received by the respondent. When it was again tendered on 25.10.2012, it was stated by the respondent that they have filed an appeal as against the order dated 14.03.2012 before the Division Bench of this Court. When the Writ Appeal Nos. 1546, 1547, 2179 and 2180 of 2013 were taken up for hearing, the Division Bench of this Court, after hearing both sides, dismissed the appeals on 14.03.2014 and confirmed the order dated 14.03.2012 passed by the writ Court. Immediately thereafter, the petitioner tendered the amount on 24.03.2014. But by order dated 27.03.2014, the respondent refused to receive it without assigning any reasons. However, it was stated that they are likely to prefer a Special Leave Petition before the Honourable Supreme Court.

6. Accordingly, the respondent filed SLP (C) No. 17449 and 17450 of 2014 before the Honourable Supreme Court and they were dismissed on 01.09.2014. The respondent also unsuccessfully filed Review Petition No. 2817 to 2818 of 2014 and they were also dismissed at the stage of admission. Notwithstanding the same, the respondent filed a Curative Petition Nos. 350 to 351 of 2015 and they were taken up by a larger Bench of the Honourable Supreme Court consisting of five Honourable Judges. The Honourable Supreme Court, by order dated 13.10.2015, dismissed the Curative Petitions. In the meantime, the State Government independently filed Special Leave Petitions in SLP (C) Nos. 8554 to 8555 of 2015 and they were dismissed on 08.12.2015. As the respondents have exhausted all the legal remedies open to them, the petitioner has tendered the payment on 02.02.2016. However, by a communication dated 02.03.2016, the respondent refused to receive the payment on the ground that they, along with the Government, are preparing to file a Civil Suit. Having waited for some time and the respondent has not instituted any civil suit, the petitioner tendered the payment on 18.06.2016 and it was not received by the respondent. In such circumstances, the petitioner has come up with this writ petition praying for issuing a Mandamus to direct the respondent to receive the balance sale consideration as per the directions issued by this Court in the order dated 14.03.2012 in WP No. 6243 and 6244 of 2016 which were subsequently confirmed by the Honourable Supreme Court.

7. Mr. Sriram Panchu, learned Senior counsel for the petitioner would contend that the respondent exhausted all the legal remedies available to them to assail the order dated 14.03.2012 passed by this Court in WP Nos. 6243 and 6244 of 2016 but they were unsuccessful. Even in the order dated

05.12.2015 passed by the Honourable Supreme Court in the appeal filed by Government in SLP (C) Nos. 8554 and 8555 of 2015, the Government withdrew the Special Leave Petition with liberty to institute Civil Suit and the Honourable Supreme Court has not given any such relief in favour of the Government. According to the learned Senior Counsel for the petitioner, as on this date, the respondent has not instituted any civil suit and the petitioner has not received any summons thereof. Therefore, the respondent are bound to receive the balance sale consideration when tendered by the petitioner. The refusal on the part of the respondent to receive the balance sale consideration, therefore, warrants issuance of a Mandamus by this Court.

8. On the contrary, the learned Advocate General appearing for the respondent would only contend that no doubt the appeal filed by the State was dismissed by the Honourable Supreme Court. However, the Honourable Supreme Court gave liberty to the government to institute a Civil Suit before the Civil Court to resolve the dispute. The Government also filed a Civil Suit before this Court and it is in the pre-admission stage and the petition filed by them seeking leave to file the Civil Suit is yet to be taken up. If at all, the respondent has to receive the payment from the petitioner, it will be subject to the result of the Civil proceedings initiated by the Government. Therefore, the learned Advocate General would only contend that the relief as prayed for by the petitioner need not be granted at this stage.

9. I heard the learned Senior counsel for the petitioner and the learned Advocate General appearing for the respondent. Admittedly, as against the order passed by the respondent seeking to cancel the Memorandum of Understanding executed by the petitioner with the Government and also the order of allotment, the petitioner successfully filed WP No. 6243 and 6244 of 2016. By order dated 09.04.2012, this Court allowed the writ petition with a specific direction to the respondent to receive the balance sale consideration from the petitioner. As against the said order, the respondent filed W.A. Nos. 1546, 1547, 2179 and 2180 of 2013 and they were also dismissed by the Division Bench of this Court on 14.03.2014. As against the order dated 14.03.2014 of the Division Bench, the respondent filed Special Leave Petition (C) Nos. 17449 and 17450 of 2014 before the Honourable Supreme Court and they were also dismissed on 01.09.2014. The respondent also filed Review Petition Nos. 2817 to 2818 of 2014 seeking to review the order dated 01.09.2014 passed in SLP (C) No. 17449 and 17450 2014 and the Review Petitions were also dismissed on 13.01.2015. The respondent also filed Curative Petition Nos. 350 to 351 of 2015 before the larger Bench consisting of five Honourable Judges of the Supreme Court and the Curative Petitions were also dismissed on 13.10.2015. The Government has filed SLP (C) Nos. 8554 and 8555 of 2015 before the Honourable Supreme Court but they withdrew the Special Leave Petitions on 08.12.2015 with liberty to file a Civil Suit.

10. As rightly pointed out by the learned Senior counsel for the petitioner, in the order dated 08.12.2015, the Honourable Supreme Court has only recorded the statement made by the petitioners to withdraw the special leave petitions and to work out their remedy before the Civil Court. The Honourable Supreme Court has not specifically given liberty to the Government to institute a Civil Suit but permitted to withdraw the Special Leave Petition on that ground only.

11. Be that as it may, as on date, neither the respondent nor the Government has filed any civil suit. According to the statement of the learned Advocate General appearing for the respondent, the Government has filed a Petition seeking leave to file a Civil Suit before the original side of this Court and it was not even numbered. In such circumstances, as the order dated 14.03.2012 passed by this Court in WP Nos. 6243 and 6244 of 2006 has been upheld by the Honourable Supreme Court in favour of the petitioner, I am of the view that the respondent is bound to receive the balance sale consideration as per the directions issued by this Court in the order dated 14.03.2012 passed in WP Nos. 6243 and 6244 of 2016, which was also subsequently confirmed by the Division Bench of this Court as well as the Honourable Supreme Court.

12. In the result, the writ petition is allowed as prayed for. A Mandamus is issued to the respondent to receive the balance sale consideration of Rs.2,09,42,000/- from the petitioner as per the direction issued by this Court on 14.03.2012 in WP Nos. 6243 and 6244 of 2006. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The State Industries Promotion Corporation
of Tamil Nadu
19-A, Rukmani Lakshmipathi Salai
Egmore, Chennai - 600 008.

+ 1 cc to Mr.Srinath Sridevan, Advocate SR.74214

Order in WP No. 28047 of 2016

GMI (CO)
EU 30.12.16