

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.D.AUDIKESAVALU

W.P.No.5202 of 2017 in
WMP No.5526 of 2017

Prakash Metal Industries,
Rep., by its Proprietor Mr.K.P.Kalidoss,
No.4, Ponnusamy Street, Karunkalpalayam,
Erode - 3

.. Petitioner

Vs

1. The Tamil Nadu Small Industries Corporation Ltd.,
Rep. By its Managing Director,
SIDCO Corporate Office, Thiru-Ki-Va Industrial Estate,
Guindy, Chennai - 600 032.

2. The Branch Manager,
SIDCO Industrial Estate,
Branch Office, Chennaimalai Road,
Erode - 1.

3. The Estate Officer,
SIDCO Industrial Estate,
Branch Office, Chennaimalai Road,
Erode-1.

.. Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 3rd respondent dated 16.02.2017 in proceedings No.302/B/2013 and quash the same and direct the 1st respondent to issue a sale deed in respect of the remaining land measuring 3.1 cents in S.No.816 part in Kazipalayam, Erode District.

For Petitioner : Mr.S.Gopinathan
For Respondents : Mr.V.P.Sengottuvel

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent the writ petition is take up for final disposal.

2. The petitioner in the affidavit filed in support of this writ petition would aver among other things that the

respondent namely Tamil Nadu Small Industries Corporation Ltd (in short SIDCO) allotted a shed in the Industrial Estate in favour of M/s.Prakash Metal Industries which is a Partnership Firm vide allotment order dated 23.11.1982 and in the light of the allotment, it has been specifically mentioned that Shed No.B3 was occupied by the petitioner and the provisional cost of the land and building was fixed vide proceedings dated 31.03.1983 and at the time of allotment itself, the sheds bearing Nos. B2 and B3 were of same extent measuring 0.231 acres in Survey No.816 of, Kazipalayam Village, Erode District and the value was also fixed accordingly.

3. The allottee of B2 shed namely M/s.Nataraja Industries was issued with form 'A' notice under the provisions of Tamil Nadu Public Premises (Eviction of Unauthorised occupants) Act, 1975, [in short the Unauthorised Occupants Act] and as per the said proceedings, the land extent was specifically mentioned as 0.231 acres. The 1st respondent has also approved the land for additional construction, in respect of B3 units, wherein, it has been mentioned as 10,041.62 Sq.ft or 23.10 cents and the 2nd respondent has also executed a registered Sale Deed bearing document No.3004 of 1989 dated 19.10.1989. However, in respect of the shed B3, it has been mentioned as 0.200 acres in stead of 0.231 acres and only 2 acres of land alone has been conveyed and the petitioner was repeatedly corresponding with the respondents pointing out the said discrepancies / mistake and requested them to convey the actual extent of land as 0.231 acres and however, to the shock and surprise of the petitioner, the 3rd respondent without taking into consideration the said representations, has issued the impugned notice, calling upon the petitioner to be present at the time of evicting him from the premises on 03.03.2017 and subsequently, put the seal also on the premises and challenging the legality of the same, the petitioner came forward to file this writ petition.

4. The learned counsel for the petitioner has drawn the attention of this Court to the letter of Branch Manager, SIDCO, Erode dated 25.03.2014 in R.C.No.302/B/2013 addressed to the Deputy General Manager (IE-I), SIDCO, Chennai - 32 and would submit that even the contents of the letter states that the land admeasuring to an extent of 0.231 acres have been allotted and while executing the sale deed, a mistake has crept in form of conveyance of only 2 acres alone and in spite of the positive recommendation and a detailed representation submitted by the petitioner, the 3rd respondent by a cryptic and non-speaking order has called upon him to be present at the time of eviction and therefore prays for interference.

5. Per contra, the learned standing counsel appearing for the respondents has invited the attention of this Court to the Counter affidavit and would submit that in consideration of the request made by the petitioner, a joint inspection was done by the 2nd respondent along with the Surveyor of SIDCO as well as the petitioner and as per the resurvey, the measurement was recorded as 24.50 cents available which is over and above the extent of the land conveyed under the above said Sale Deed and therefore fair decision has been taken to invoke the provisions of Unauthorized Occupants Act and prays for dismissal of the writ petition and would further submit that since the petitioner is having an alternate remedy under section 9 of the said Act, the writ petition is not maintainable.

6. This Court carefully considered the rival submissions and also perused the materials placed before it.

7. In the considered opinion of this Court whether the petitioner was allotted to 0.231 acres or 2 acres is disputed question of fact and counter affidavit of the official respondents would also disclose that before arriving the above decision to invoke of the provisions of the said act, a joint survey was conducted in which the petitioner also participated. The petitioner was also put on notice that he is in possession of the excess area which has been reserved for open space reservation.

8. It is also further submitted by the learned counsel appearing for the petitioner that since certain materials have been kept up in the sealed premises, he may be permitted to take the same.

9. In the considered opinion of this Court, in the light of the alternate remedy available, the writ petition is not maintainable. At this juncture, the learned counsel for the petitioner would submit that since he is diligently prosecuting the proceedings in the form of this writ petition, the limitation for invoking the said appeal remedy may be condoned by invoking the Section 14 read with 29(2) of the Limitation Act. and therefore, a direction may also be given to the Appellate Authority to entertain the appeal and dispose of the same at an early date.

10. Accordingly, the writ petition is dismissed. The petitioner is at liberty to invoke the alternate remedy by filing an appeal within two weeks from the date of receipt of

this order. The Appellate Authority shall entertain the appeal, if the papers or otherwise in order without putting the issue of limitation and thereafter, consider the said appeal and give a disposal as expeditiously as possible and not later than further period of four weeks thereafter and communicate the decision taken, to the petitioner as well as to the person/s concerned. No costs. Consequently, the connected miscellaneous petitions are also dismissed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

sk/rka

To

1. The Managing Director,
Tamil Nadu Small Industries Corporation Ltd.,
SIDCO Corporate Office,
Thiru-Ki-Va Industrial Estate,
Guindy, Chennai - 600 032.
2. The Branch Manager,
SIDCO,
Industrial Estate,
Branch Office,
Chennai-malai Road,
Erode - 1.
3. The Estate Officer,
SIDCO Industrial Estate,
Branch Office,
Chennai-malai Road,
Erode-1.

Copy to:-

The Court of Principal/ District Judge,
Erode.

- +1 CC to Mr. S. Gopinathan, Advocate sr 46318
+1 CC to Mr.V.P. Sengottuvel, Advocate sr 46546

WP.No.5202 of 2017

EV (CO)
SP(20/07/2017)