IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 28.11.2017
CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHADNRABAABU

W.P.No.15194 of 2017

M/s.GS Polymers,
Represented by its Proprietor Mr.G Sridhar,
BS-5,PIPDIC Industrial Estate,
Mettupalayam,
Pondicherry -605 009. ... Petitioner

Vs.

1.The Managing Director,
Pondicherry Industrial Promotion Development & Investment Corporation (PIPDIC),
A Government of Pondicherry Undertaking,
No.60, Romain Rolland Street,
Puducherry -605 001.

2. The General Manager (Dev.),
Pondicherry Industrial Promotion Development & Investment Corporation (PIPDIC),
A Government of Pondicherry Undertaking,
No.60, Romain Rolland Street,
Puducherry -605 001.

3. The Executive Engineer,
Pondicherry Industrial Promotion Development & Investment Corporation (PIPDIC),
A Government of Pondicherry Undertaking,
No.60, Romain Rolland Street,
Puducherry -605 001.

4. The Manager (Finance),
Accounts Section,
Pondicherry Industrial Promotion Development & Investment Corporation (PIPDIC)
A Government of Pondicherry Undertaking,
No.60, Romain Rolland Street,
Puducherry -605 001.

5. The Deputy Manager (Finance),
MIE,Accounts Section.
Pondicherry Industrial Promotion Development & Investment Corporation (PIPDIC)
A Government of Pondicherry Undertaking,
No.60, Romain Rolland Street,
Puducherry -605 001.

6. The Officer (Works),
Pondicherry Industrial Promotion Development & Investment Corporation (PIPDIC)
A Government of Pondicherry Undertaking,
No.60, Romain Rolland Street,
Puducherry -605 001.

7. M/s. Soni Group of Industries,
Represented by its Proprietor Thiru Kanhaiya Lal Goldsmith,
Residing at Ganapathy Nagar,
Muthialpet,
Puducherry-605 003.

8. M/s.Aroma Food Products,
Represented by its Authorized Signatory,
PIPDIC Industrial Estate,
Mettupalayam,
Pondicherry -605 009.

9. T.Karikalan,
The Managing Director,
Pondicherry Industrial Promotion Development & Investment Corporation (PIPDIC),
A Government of Pondicherry Undertaking,
No.60, Romain Rolland Street,
Puducherry -605 001. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to impugned order vide No. PIPDIC/Dev/32/5/1992/2208 dated 26-05-2017 passed by the 1st respondent and quash the same as is highly illegal, unlawful, arbitrary, violative of cardinal principal of Natural Justice and same crystal clearly reveals biased & malafide attitude of the 1st respondent and consequently direct to allot the Shed type "A" , bearing No.As-2, PIPDIC Industrial Estate, Mettupalayam, Puducherry-605 009 in favour of the petitioner by entering into separate lease agreement after following all formalities.

For Petitioner : Mr.S.Silambanan SC for
MR.Prakash adiapadam
For Respondents: Mr.T.P.Manoharan, SC for
MR.T.M.naveen for R1 to R6 and R9
: Mr.P.Nehru for R8
: Mr. Balaijayan for R7

O R D E R

The petitioner is aggrieved against the proceedings of the first respondent dated 26.05.2017 and consequently sought for a direction to allot the Shed Type A bearing No.As-2, PIPDIC Industrial Estate, Mettupalayam, Puducherry-605 009 in favour of the petitioner by entering into separate lease agreement.

2.The case of the petitioner is as follows:

The petitioner is manufacturer of Poly Propylene Tubes & Bags and having manufacturing unit at Shed Type 'B' bearing No.Bs-5, PIPDIC Industrial Estate, Mettupalayam, Puducherry. The petitioner was allotted with a Shed by the second respondent through Allotment Order dated 14.02.2011. The petitioner stored finished products and raw materials worth more than 50 lakhs at the shed Type 'A' bearing NoAs-2, PIPDIC Industrial Estate, Mettupalayam, Puducherry, located adjacent to the petitioner's shed, which was originally allotted to the seventh respondent on 06.10.1976 through an hire purchase agreement. The seventh respondent had set up his industry for manufacturing machinery spares, etc., However, the seventh respondent could not proceed with hire purchase agreement, as they faced unexpected huge loss in the business. In the meantime, the first respondent has increased the monthly rent, which the seventh respondent opposed and made several representations. They have not been considered. Therefore, the seventh respondent after finding the running of unit is not viable, approached the petitioner to take over the said shed, which the petitioner agreed. Therefore, on 14.10.2013, the seventh respondent submitted a representation to the first respondent to accept his surrender of the shed and also to give No Objection Certificate for handing over the shed to the petitioner. The said representation has not been considered. However, the second respondent, all of a sudden, on 13.10.2016, by exercising power under sub section 2 of section 5-A of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, cancelled the allotment of shed As-2 granted in favour of the seventh respondent and also authorised the respondents 5 and 6 to take possession of the said shed together with factory building and other movables on 18.10.2016, as the seventh respondent had failed to make payment of Rs.8,24,449/- towards arrears of rent and sum of Rs.1,99,072/- towards service tax, maintenance and water charges. On 18.10.2016, the respondents 5 and 6 came to the shed along with the police officials and forcibly took possession of the shed along with the petitioner's finished products and raw materials stored therein. The petitioner immediately sent representation on 19.10.2016, requesting to allot the said shed in their favour. Those representations were not considered. Hence, the petitioner filed a writ petition in W.P.No.3605 of 2017, seeking for allotment of shed Type 'A' in their favour. The said writ petition was disposed of on 11.04.2017, by directing the respondents to consider the said representation of the petitioner dated 05.02.2017 and pass orders on the same on merits and in accordance with law. Thereafter, the present impugned order was passed on 26.05.2017, rejecting the request of the petitioner. The said shed is now allotted to the eighth respondent.

3.A detailed counter is filed by the respondents 1 to 5 and 9 wherein it is stated as follows:

The seventh respondent had not paid any amount towards arrears of rent of Rs.10,23,521/- as on 31.08.2016. Hence, the Corporation issued notice dated 31.08.2016 under public Premises Act, 1971 to the seventh respondent. Thereafter, the Corporation had passed an order on 13.10.2016, as the seventh respondent failed to make the payment. The Corporation had resumed the possession of shed along with movables assets on 18.10.2016 in the presence of VAO and 2 witnesses, locked and sealed the said shed. The approved value of the goods available in the shed is Rs.2,70,000/-. The Corporation has to sell those movable assets and adjust the sale proceeds towards the arrears of rent. The Corporation can consider and allot the said industrial plots and industrial sheds, including A Type Industrial shed bearing No.As-2 at its Mettupalayam Industrial Estate only to the eligible entrepreneurs in the list of 83 applicants, who have submitted application forms for allotment of plots/sheds/lands on premium/Annual Lease/TLHR and waiting for such allotment. The Corporation cannot adopt any other method or any other procedure and allot those industrial plots/sheds to any other person out of the way such settled procedure. The Allotment Committee has considered 83 applicants and decided to allot industrial plots and sheds to the eligible applicants among them. The eighth respondent, a woman entrepreneur, is allotted shed As-2. The petitioner is a lessee of industrial shed bearing No.Bs-5 and he is fully aware of the eviction order and taking over possession of shed As-2 by the Corporation on 18.10.2016. He cannot claim anything in any manner in respect of As-2 shed. The petitioner having failed to make any application in the manner prescribed, the Corporation cannot allot either the said shed or any other shed to the petitioner on lease and he has no legal right to seek an out-of-turn allotment. The petitioner, as an afterthought, has given a letter dated 05.02.2017 to the Corporation incorrectly stating that the seventh respondent has requested the corporation to issue NOC to hand over the said shed to the petitioner and he had stored his finished products and raw materials more than 50 lakhs in the said shed. The claim made by the petitioner in his letter dated 05.02.2017 including that he had stored his finished products and raw materials worth more than 50 lakhs are false, malafide, motivated, illegal and untenable.

4.In another affidavit filed by the respondents 1 to 6 and 9 on 16.11.2017, it is further stated that out of 88 industrial sheds in Mettupalayam Industrial Estate, the petitioner has filed applications to the corporation and was initially allotted 5 Industrial Sheds bearing Nos. Bs-5, Cs-2, Cs-50, Cs-51 & Cs-55. The petitioner has not made an application by preparing a project report for his proposed industry by paying necessary fees, etc., He has also not furnished the required information and particulars.

5.Mr.S.Silambannan, learned Senior Counsel for the petitioner submitted as follows:

The petitioner's application is the first application for allotment of the disputed plot and however, the same was not considered by the respondents. They have not followed the procedure in a fair and transparent manner in allotting the shed. They have done it in a pick and choose manner. Since the petitioner is already having a shed adjacent to the disputed shed, then he should have been given preference by way of granting the extension of area. The petitioner was ready to pay the arrears payable by the seventh respondent as well. This was not considered. The property value of Rs.60 lakhs are lying in the disputed shed belonging to the petitioner and therefore, the petitioner has got vested right to claim allotment of the said shed in their favour. The seventh respondent permitted the petitioner to store the goods in the disputed shed in view of the flood, which caused damage.

6.In support of his contention, the learned senior counsel relied on a decision of the Division Bench of this Court made in W.A.Nos.119 to 122 of 2014 dated 19.11.2014 and decisions reported in 1987(2) SCC 295 and AIR 1988 Supreme Court 157.

7.Per contra, Mr.T.P.Manoharan, learned Senior Counsel appearing for the respondents 1 to 5 and 9 submitted as follows:

The seventh respondent is the allottee of the disputed shed, who committed default and consequently, he was evicted from the premises by taking due process of law. Such eviction was made on 18.10.2016 at 5 p.m. and the possession is also taken from the seventh respondent including the goods available in the disputed shed. The valuer assessed the value of the goods as Rs.2,70,000/- and therefore, the Corporation has to sell the goods for realizing the arrears of rent payable by the seventh respondent. Hence, the petitioner cannot claim right over the goods. The goods do not belong to the petitioner. The seventh respondent cannot permit the petitioner to store the materials without getting sanction from the Corporation. The Corporation is following proper methods to allot the plots to various applicants and when the petitioner is not the one of such applicant, he cannot question the allotment of such plot in favour of the eighth respondent. The petitioner is already allotted with five plots, whereas the eighth respondent is the first time allottee, apart from the fact that she is a woman entrepreneur. The representations made by the petitioner on three occasions no way indicate or state that the petitioner has stored the goods in the disputed shed. Moreover, the said representations cannot be construed as applications seeking for allotment of the shed, as they are not in the prescribed format, enclosing the material details.

8. Learned counsel appearing for the eighth respondent reiterated the contentions raised in the counter affidavit and submitted that the eighth respondent, being the women entrepreneur and also the first time allottee in the industrial area, she cannot be disturbed at the instance of the petitioner, who is already allotted with five plots.

9.Heard the learned senior counsel appearing for the petitioner, learned senior counsel appearing for the respondents 1 to 5 and 9 as well as the learned counsel appearing for the eighth respondent.

10.The petitioner is an allottee of shed Type "B" bearing No.s-5. It is also seen that apart from the said shed, the petitioner was allotted with four other sheds bearing Cs-2, Cs-50, Cs-51 and Cs-55, of course, in the name of different entity. Though initially it is stated by the learned counsel for the petitioner that the eighth respondent was allottee of about eight sheds already, apart from the disputed shed, when the matter was adjourned to ascertain the said fact, today when the matter is taken up for further hearing, the learned Senior counsel for the petitioner is not in a position to substantiate such contention. On the other hand, it is seen from the statement made by the learned Senior counsel appearing for the respondents 1 to 5 and 9 as well as from their pleadings and also the counter affidavit filed by the eighth respondent that the eighth respondent is the first time allottee, apart from being a woman entrepreneur. Now the question is whether the petitioner is entitled to succeed in this writ petition by seeking allotment of the said shed in his favour by cancelling the same granted in favour of the eighth respondent. In my considered view, the petitioner is not entitled to get such relief from this court for the following facts, circumstances and reasons:

a)No doubt, the petitioner is an allottee of the adjacent plot viz., Bs-5. At the same time, it is the seventh respondent, who was allottee, has committed default and therefore, the petitioner cannot step into the shoes of the seventh respondent on his own and seek for allotment of the said shed in his favour merely because he has stored the goods in the adjacent shed, of course, with the permission of the seventh respondent.

b)Needless to say that the seventh respondent being the allottee, is not entitled to permit the petitioner to store the goods, when he himself defaulted in payment of the arrears to the Corporation. Therefore, such permission for storing of the goods, even assuming that the goods inside the shed belongs to the petitioner, is totally illegal and cannot be held sustainable in law. When the adjacent shed has been taken possession by the Corporation on 18.10.2016, needless to say that the petitioner, who is the allottee of the next plot is fully aware of the situation. If at all the petitioner is interested in taking that plot also, he should have made an application in the prescribed format for allotment. Those two plots are different types of plots and they have to be allotted only by way of separate allotment and not by way of extension. In this case, the petitioner has not made any such application except making a request to the respondent Corporation to extend the area by considering their representation. Even assuming that the petitioner's request can be considered as an application, so that he can compete with the other applicants, I do not think that the petitioner is entitled to be considered in a preferential manner, more particularly, when the petitioner was already allotted with five plots in the very same industrial area. Therefore, this Court is of the considered view that the claim of the petitioner has been rightly rejected by the respondent corporation, especially, when they have chosen to allot the said plot to a woman entrepreneur, apart from the fact that such allotment is made as a first time to the eighth respondent.

11.The decisions relied on by the learned senior counsel for the petitioner cannot be applied to the present facts and circumstances, when the petitioner himself has not made the application in the prescribed format. Moreover, a person, who is holding 5 plots in the same industrial area, cannot seek as a matter of right to get another allotment in their favour by overlooking others including the first time applicant viz., the eighth respondent herein. Thus, I find that the present writ petition is devoid of any merits. Accordingly, the same is dismissed.

12. The learned senior counsel for the petitioner finally made a request for atleast considering the prayer for returning all the materials inside the shed, as the petitioner is willing to pay the value of the goods as assessed by the Valuer. It is stated in the counter affidavit that the Valuer has assessed the goods to the tune of Rs.2,70,000/-, which includes the value of the machineries and furnitures to the tune of Rs.1,95,000/- and the value of the finishing products and raw materials to the tune of Rs.75,000/-. As the petitioner has come forward to pay the value for the finished products and raw materials available inside the disputed shed, which is valued to the tune of Rs.75,000/-, this Court is of the view that in all fairness, the respondent Corporation can collect the said sum of Rs.75,000/- and allow the petitioner to remove the finished products and raw materials from the disputed shed.

13.Hence, though this writ petition is dismissed in so far the prayer sought for in this writ petition is concerned, a direction is issued to the respondent Corporation to allow the petitioner to remove the finished products and raw materials available inside the disputed shed, after collecting the payment of Rs.75,000/- within a period of two weeks. On such payment, the financial products and raw materials, except the machineries will be removed and handed over to the petitioner. Consequently, the shed shall be handed over to the eighth respondent. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

vri

To

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2. The General Manager (Dev.),
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+1cc to Mr.T.M.NAVEEN Advocate, S.R.No. 84614
+1cc to Mr.M.VAIKUNTH Advocate, S.R.No. 84916
+1cc to Mr.P.NEHRU Advocate, S.R.No. 84672

W.P.No.15194 of 2017

RJ(CO)
TR(08/12/2017)