

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.11.2017

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A Nos.1493 to 1498 of 2013 and
Connected Miscellaneous Petitions

W.A.No.1493 of 2013

- 1.The Secretary
Small Industries Department,
Government of Tamilnadu,
Fort St.George, Chennai - 600 009.
 - 2.Industries Commissioner and Director
Department of Industries and Commerce,
Chepauk, Chennai - 600 005.
 - 3.Assistant Director (Electrical and Electronics)
Electronic Product Development and
Training Centre, Thuvakudi,
Trichy - 620 015.
- ...Appellants/
Respondents (in all)

Vs

M/s.Vatsala Engineering Works
Rep. by V.Ramani
L-35 and L-36 Plots
Electrical and Electronics Industrial Estate
Thuvakudi, Trichy - 620 015 .. Respondent in W.A.No.1493 of
2013/Petitioner

TRICY PIPES
REP BY V.RAMAKRISHNAN,
HP SHED L4 E&E INDUSTRIAL ESTATE,
THUVAKUDI, TRICHY - 620 015 .. Respondent in W.A.No.1494 of
2013/Petitioner

CRESCENT CORPORATION
REP BY S.KANAGAVEL,
P3 4 7 & 8 DEVELOPED PLOTS,
THUVAKUDI, TRICHY - 620 015 .. Respondent in W.A.No.1495 of
2013/Petitioner

HARISHA ELECTRONICS
REP BY K.CHANDRAN L-8 ELECTRICAL &
ELECTRONICS INDUSTRIAL ESTATE
THUVAKUDI, TRICHY - 620 015

.. Respondent in W.A.No.1496 of
2013/Petitioner

DARBANISWARA ELECTRICALS
REP BY V.S.CHIDAMBARANATHAN PLOT NOS.PU-7
AND PU-8 ELECTRICAL AND ELETRONICS
INDUSTRIAL ESTAE THUVAKUDI
TRICHY - 620 015

.. Respondent in W.A.No.1497 of
2013/Petitioner

MECH FAB ENTERPRISES REP BY
C.GUNASEKARAN L1 E&E ESTATES
THUVAKUDI, TRICHY 620 015

.. Respondent in W.A.No.1498 of
2013/Petitioner

Prayer:-

Writ Appeal filed under clause 15 of Letters Patent, against the order made in W.P.No.581 of 2007 to 584 of 2007, WP.2558 of 2007 & 3109 of 2007 respectively dated 13.03.2013.

Prayer in WPs. 581 TO 584 of 2007,
2558 of 2007 & 3109 of 2007:-

Prayer in W.P.581 of 2007:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in the file RcNo. 35721/EL//1/04 dated 22-8-2006 of the 2nd respondent and to quash the entire proceedings pertaining to fixation and demand of Rs. 95,222/- as purported final cost for the plot No.L35 and 36 of the petitioner situated in the Electrical and Electronics Industrial Estate, Thuvakudi, Trichy 620 015 as arbitrary ultra vires and is against the judgment of this court consequently direct the respondents to execute sale deeds instead of assignment deed for the plot Nos.L35 and 36 of the petitioner situated in Electrical and Electronics Industrial estate Thuvakudi Trichy 620 015 and for the cost already paid by the petitioner.

Prayer in W.P.582 of 2007:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in the file RcNo.38295/EL1/04 dated 22-8-2006 of the 2nd respondent and to quash the entire proceedings pertaining to fixation and demand of Rs.7,59,210/- as purported final cost for the H.P. shed No. L4 of the petitioner situated in the ElectrECIAL and Electronics Industrial Estate, Thuvakudi, trichy - 620 015 as arbitrary ultra virus and is against the judgment of this COURT consequently direct the respondents to execute sale deeds instead of assignment deed for the H.P.shed No.L4 of the petitioner situated in Electrical and Electronics Industrial estate Thuvakudi Trichy 620 015 and for the cost already paid by the petitioner.

Prayer in W.P.No.583 of 2007:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in the file RcNo. 31442/EL1/04 dated 21-8-2006 of the 2nd respondent confirming its earlier proposal dated 19-10-2005 and to quash the entire proceedings pertaining to fixation and demand of Rs.4,77,400/- as purported final cost for the plot Nos. P-3 P-4 P-7 and P-8 of the petitioner situated in the ElectrECIAL and Electronics Industrial Estate Thuvakudi trichy 620 015 as arbitrary ultra virus and is against the judgment of this COURT and consequently direct the respondents to execute sale deed for the Plot Nos.P-3, P-4, P-7 and P-8 of the petitioner situated in Electrical and Electronics Industrial estate Thuvakudi, Trichy 620 015 and for the cost already paid by the petitioner.

Prayer in W.P.584 of 2007:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in the file in RC.No.74776/EL1/03 dated 24/11/2004 of the 2nd respondent and to quash the entire proceedings pertraining to fidxatinof cost and demand of 2,10,200/- as purported differential final cost for the Plot No. L8 of the petitioner situated in the Electrical and Electronics Industrial Estate Thuvakudi Trichy 620 015 as arbitrary ultra virus and is against the judgment of this COURT and consequently direct the respondents to execute sale deed for the Plot No.L8 of the petitioner situated in Electrical and Electronics Industrial estate Thuvakudi, Trichy-620 015 and for the cost already paid by the petitioner.

Prayer in W.P.2558 of 2007:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in the file in R.C.No.35719/EL1/04 dated 23.8.2006 of the 2nd respondent and to quash the entire proceedings pertaining to fixation and demand of Rs.87,900/- as purported final cost for the the plot Nos.PU-7 and PU-8 of the petitioner situated in the Electrical and Electronics Industrial Estate Thuvakudi, Trichy 620 015 as arbitrary, ultra virus and is against the Judgment of this Court, consequently direct the respondents to execute sale deeds instead of assignment deed for the plot Nos.PU-7 and PU-8 of the petitioner situated in Electrical and Electronics Industrial estate Thuvakudi Trichy 620 015 and for the cost already paid by the petitioner.

Prayer in W.P.3109 of 2007:-

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in the file in Rc No. 85623/EL1/03 dated 22/08/2006 of the 2nd respondent and to quash the entire roceedings pertaining to fixation and demand of Rs.7,11,073/- as purported differential final cost for the shed L1 of the petitioner situated in the Electrical and Electronics Industrial Estate, Thuvakudi Trichy 620 015 as arbitrary, ultravirus and irrational acts of the 1st and 2nd respondents, consequently direct the respondents to execute sale deeds instead of assignment deed for the plot Shed No.1 of the petitioner situated in Electrical and Electronics Industrial estate Thuvakudi Trichy 620 015 and for the cost already paid by the petitioner.

For Appellants : Mrs.A.Sri Jayanthi
Special Govt. Pleader (in all appeals)

For Respondent : Mr.R.Arumugam (in all appeals)

C O M M O N J U D G M E N T

K.K. SASIDHARAN, J.

The Department of Industries and Commerce (Electrical and Electronics Branch), Government of Tamil Nadu, by way of individual allotment orders allotted developed plots to the respondent in the respective intra court appeals (hereinafter referred to as the "respondents") fixing the tentative cost with a condition that they are liable to pay the final cost as and

when the same is communicated to them. When a demand was made to the allottees for payment of the final cost, writ petitions were filed before the Writ Court on the ground that they are not liable to pay the amount and the Government Order referred to in the notice viz., G.O.Ms.No.27 Small Industries Department, dated 17 April, 1995 relates only to rented sheds and it was not applicable to plots. The learned single Judge accepted the contentions taken by the respondents and allowed the writ petitions. The common order dated 13 March, 2013 in W.P.No.2558 etc., batch is under challenge at the instance of the State.

2. The learned Special Government Pleader submitted that plots were allotted to the respondents by collecting tentative cost with a clear understanding that the balance amount has to be paid after fixing the final cost. The allottees have accepted the allotment and as such, it is not open to them to avoid the liability at a later point of time. The learned Special Government Pleader further contended that the respondents are liable to pay the final cost arrived at by the Government.

3. The learned counsel for the respondents contended that the Government Order in G.O.Ms.No.27 dated 17 April, 1995 is not applicable to the allottees, who were given allotment of developed plots. The learned counsel contended that the Government Order was issued only in respect of rented sheds and as such, the appellants have no right to claim the balance amount on the basis of the said Government Order.

4. The Government of Tamil Nadu established an Electrical Consumer Goods Industrial Estate at Tiruchirapalli. The land was acquired from the local land owners. The Government issued an order in G.O.(Ms)No.580 Industries Department, dated 17 April, 1974 allotting funds for the industrial estate at Tiruchirapalli. The Government called for applications from entrepreneurs for allotment of plots. The respondents were the beneficiaries of such allotment. We are not dealing with the details of each of the allotment.

5. The allotment order dated 18 May 1979 issued to the respondent in W.A.No.1493 of 2013 indicates that the cost of the plot was fixed only tentatively while making allotment. The Government in the respective order of allotment made it clear that any increase in the cost of the plot, consequent on the increase in the cost of land acquisition/development cost or any other inputs and maintenance charges will have to be proportionately paid by the allottees. There is a clear indication in the order of allotment that the initial amount was fixed tentatively and there is a liability to pay the final cost. The respondents accepted the conditions in the allotment order with eyes open. It was only when the Government called

upon the allottees to pay the final cost, they have filed the writ petitions to avoid the liability.

6. While fixing the final cost and issuing notice to the respondents, the Government referred to the order in G.O.Ms.No.27 dated 17 April, 1995. Though the nomenclature of the Government Order indicates that it is for conversion of rental sheds into Hire Purchase sheds, the fact remains that there is a clear indication in the said Government Order as to how the final cost has to be arrived at. Even in the absence of the Government Order determining the cost, the respondents are liable to pay the final cost, which they originally agreed to pay during the time of allotment.

7. The land was acquired from the local land owners. The Government have to pay the enhanced compensation pursuant to the Award passed by the Reference Court. The allottees also have to pay the cost of the land acquisition/development cost, besides interest. The respondents challenged the liability only on the ground that the Government Order in G.O.Ms.No.27 dated 17 April, 1995 was issued only in respect of sheds and it has no application to the plots allotted to them by the Government. The allotment order, more particularly, clause 2 (a) very clearly states that the cost is fixed tentatively and it is subject to upward revision of cost. The allottees were obliged to pay the increase in the land value consequent to the acquisition/ development cost besides maintenance charges. Thus, the payment as indicated in Clause 2(b) of the allotment order should be paid by the allottees as agreed to by them.

8. The learned single Judge interpreted the Government Order in G.O.Ms.No.27 dated 17 April, 1995 and held that the respondents are not liable to pay the final cost.

9. The file produced before this Court clearly indicates that the plots were allotted on hire purchase basis with a clear understanding that the title would be conferred only after the payment of final cost. The respondents wanted to avoid the contractual obligation and for that purpose invoked the jurisdiction under Article 226 of the Constitution of India.

10. The writ jurisdiction under Article 226 of the Constitution cannot be invoked in a matter covered by contract. There is no question of issuing a Writ to avoid the contractual obligation voluntarily undertaken by a party. We are therefore of the view that the learned single Judge was not correct in setting aside the notice issued by the appellant for payment of final cost.

11. In the result, the common order dated 13 March 2013 is set aside. The writ petitions are dismissed.

12. We allow the intra court appeals. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

svki

- 1.The Secretary
Small Industries Department,
Government of Tamilnadu,
Fort St.George, Chennai - 600 009.
- 2.Industries Commissioner and Director
Department of Industries and Commerce,
Chepauk, Chennai - 600 005.
- 3.Assistant Director (Electrical and Electronics)
Electronic Product Development and
Training Centre, Thuvakudi,
Trichy - 620 015.

+6ccs to Mr.R.Arumugam, Advocate, S.R.No.80804 to 80809
+1cc to the Government Pleader, S.R.No.81692

W.A Nos.1493 to 1498 of 2013

GJII(CO)
CS/30/01/18

सत्यमेव जयते

WEB COPY