

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2017

CORAM

THE HON'BLE Mr. JUSTICE R.SURESH KUMAR

W.P. No.25519 of 2013

and

MP. No.1 of 2013

M/s.Colour Line Process,
A registered partnership firm,
Rep. by its Managing Partner,
Mr.Kuldeep Mehta,
S/o.Mahipal Kumar Mehta,
Having office at
No.61C, Bharathi Colony,
Angeripalayam Road,
Thirupur 641 603.

... PETITIONER

Vs

1.The Principal Secretary/Chairman and
Managing Director,
SIPCOT Ltd.,
State Industries Promotion Corporation of
Tamil Nadu Ltd., (SIPCOT)
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai 600 008.

2.The Project Officer,
SIPCOT,
Industrial Growth Centre, P.V.Palayam,
Perundurai, Erode District.

3.Latha Balasubramaniam
(R3 is impleaded as per order dated 21.03.2017
in MP.No.1/2015 in WP.No.25519/2013)

... RESPONDENTS

Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of mandamus directing the respondents to effect necessary modifications in the lease deed dated 14.10.2005 registered as document No.304/2006 in the office of the Sub Registrar, Perundurai in respect of new partners based on the petitioner's representation dated 27.07.2013 within the time.

For Petitioner : Mr.R.Bharath Kumar

For Respondents : Ms.Sudharshana Sundar
for R1 and R2
Mr.Ramshankar
for Mr.R.Mariappan
for R3

O R D E R

The prayer in the writ petition is for a writ of mandamus directing the respondent to effect necessary modification in the lease deed dated 14.10.2005, registered as document No.304/2006 in the office of the Sub Registrar, Perundurai, in respect of induction of new partners based on the petitioner's representation dated 27.07.2013 within a time frame to be stipulated by this court.

2. The facts leading to the filing of this writ petition is that, the petitioner is a partnership firm, at the time of constitution of the partnership firm, there were nine partners, during the year 2005, the petitioner firm entered into a lease agreement with second respondent namely State Industries Promotion Corporation of Tamil Nadu Ltd., (hereinafter referred to as SIPCOT) to have an industrial unit at SIPCOT Industrial complex at Perundurai, Erode District. Subsequently, seven out of nine partners retired from the partnership firm on 09.04.2009 including the third respondent herein. Therefore, on 10.04.2009, after the retirement of the seven partners, the petitioner's firm was reconstituted only with the existing two partners. Thereafter, since the petitioner's firm had to clear heavy debts payable to the Banks, it was in financial crisis, therefore the petitioner's firm decided to induct four new partners in order to bail out the petitioner's firm from the financial crisis and accordingly, four new partners were inducted on 21.05.2012. Accordingly, the petitioner's firm was again reconstituted with six partners that is with two already existing partners and four newly inducted partners.

3. Everything run on smoothly till such time. When the reconstitution had taken place with four new inducted partners, subsequently, one of the retired partners that is one among the seven retired from petitioner's firm on 09.04.2009, who is none other than the impleaded third respondent in this writ petition, had filed a writ petition in W.P.No.6616/2012 before this Court with a prayer of writ of mandamus, directing the first respondent namely, the SIPCOT, therein, to take appropriate steps to evict the respondents 12 to 15 who are none other than the newly inducted four partners, from plot No.6, that was in fact allotted to the petitioner's firm by the SIPCOT. The said

writ petition was dismissed by order of this Court dated 27.03.2012 on the ground that the issues raised in the said writ petition cannot be resolved under Article 226 of the Constitution of India. Therefore, the same was dismissed.

4. Not stopping with that, the third respondent once again approached this Court by filing another writ petition in W.P.No.35212 of 2012. This time, the prayer sought for in the said writ petition was for a mandamus forbearing the first respondent viz., the SIPCOT, therein, from taking any steps towards approval of change in the Constitution of the firm viz., M/s.Colour line process. It is brought to the notice of this Court by the learned counsel appearing for the third respondent that the said writ petition i.e., W.P.No.35212 of 2012 filed by the third respondent herein, with the aforesaid prayer, was dismissed as withdrawn on 18.06.2013. In this regard, the said counsel has relied upon the averments made by the third respondent in the impleading petition in M.P.No.1 of 2015 in W.P.No.25519 of 2013 which is extracted herein under:

"I further submit that I had filed W.P.No.35212 of 2012 on the file of this Hon'ble Court to forbear the second respondent from taking any steps towards approval of change in the constitution of the firm. I submit that originally Injunction was granted in favour of the petitioner. I submit that the second respondent filed a counter affidavit informing the Court that they have not accorded any approval for the change in constitution. I submit that during the course of enquiry in the above writ petition the same stand was reiterated before the Court. I submit that since the assurance was made before this Hon'ble Court satisfied with the stand of the second respondent I had withdrawn the writ petition on 18.06.2013. I submit that the other partners are trying to take advantage of the fair approach adopted by me based on the assurance of the second respondent." सत्यमेव जयते

5. Thereafter also some writ proceedings were filed by the third respondent as well as the petitioner. In one writ petition filed by the third respondent in W.P.No.1653 of 2016, the prayer seeking, was for a direction to the Tamil Nadu Pollution Control Board, not to renew the concent given by them to the petitioner's firm. In a related development, the third respondent, in fact, seems to have approached the TANGEDCO (Tamil Nadu Electricity Distribution System) to cut down the electricity supply given to the petitioner's firm, pursuant to which a show cause notice seems to have been given and challenging the said show cause notice, the petitioner herein has filed a writ petition in WP.No.13015 of 2016. Though, the

said two writ petitions viz., W.P.No.1653 of 2016 filed by the third respondent as well as the writ petition in W.P.No.13015 of 2016 filed by the petitioner are pending before this Court, the said pendency may not have any repercussion on the present issues raised in this writ petition and therefore, only for narration of facts, the pendency of these writ petitions have been mentioned.

6. As far as the present writ petition is concerned, the prayer sought for herein is for a writ of mandamus, directing the second respondent, SIPCOT to give effect to necessary modifications as indicated in the lease deed dated 14.10.2015 registered as document No.304 of 2006 at Sub Registrar, Perundurai, regarding the induction of new partners based on the petitioner's representation dated 27.07.2013. Since no action has been taken on the request of the petitioner's firm to effectuate the necessary modifications as it has been sought in the lease deed, the petitioner has approached this Court with this writ petition with the aforesaid Prayer.

7. Mr.R.Bharath Kumar, learned counsel appearing for the petitioner would submit that the facts narrated above either culled out from the averments made out in the affidavit or from the documents filed before this Court, as it has been recorded above, is not in much controversy. The learned counsel would submit that in so far as the present issue raised in this writ petition is concerned, the reconstitution of the firm had taken place, in the eye of Law, after induction of four new partners and based on such reconstitution, the necessary modification has to be effected in the lease deed executed by the SIPCOT to and in favour of the petitioner's firm, as originally the said lease deed was executed to the petitioner's firm where nine partners were available, out of which subsequently, since seven have retired and the firm having been reconstituted with the induction of four new partners, the necessary modification is required to be effected by the SIPCOT.

8. In this regard, the learned counsel for the petitioner would also submit that the only objection for effecting the modification sought for by the petitioner was from the third respondent, as he had filed a writ petition in W.P.No.35212 of 2012 where he sought for an injunction restraining the SIPCOT from doing anything to the petitioner's firm giving effect to the reconstitution made subsequent to the induction of four new partners. However, the said writ petition since has been dismissed as withdrawn, there can be no further impediment for the SIPCOT to consider our request and to effect necessary changes in the lease deed. Hence, the learned counsel appearing for the petitioner submit that the prayer sought for in this writ petition can be considered for grant.

9. Ms.Sudharshana Sundar, learned standing counsel appearing for the second respondent/SIPCOT would submit that the lease deed was executed for 99 years. At the time of execution of the lease deed, the composition of the petitioner's firm was different as there were nine partners in the firm. Subsequently, since it was claimed that seven partners retired and four new partners inducted and the firm has got reconstituted, the said facts have to be verified and only based on which further action can be initiated from the side of the SIPCOT. In this regard, the learned counsel for SIPCOT would further submit that before such an action being taken by SIPCOT towards the request of the petitioner, the third respondent has raised serious objections that, he continues to be one of the partners of the petitioner's firm and therefore no modification can be effected in the lease deed without his consent. Not stopping with that, the third respondent in fact had approached this Court, as stated supra, by filing a writ petition in W.P.No.35212 of 2012 where the SIPCOT was arrayed as main respondent against whom only the prohibitory orders were sought for. In fact, it is the claim of the third respondent that some prohibitory orders were passed by this Court restraining the SIPCOT from acting upon as per the request of the petitioner.

10. The learned standing counsel would further submit that, however, now, in view of the fact that the learned counsel for the third respondent has come forward to state that the said writ petition in W.P.No.35212 of 2012 has been dismissed as withdrawn, to the knowledge of the SIPCOT, there is no other impediment available for acting on the request made by the petitioner. However, the learned Standing counsel would submit that number of developments have taken place such as retirement of partners, induction of new partners, reconstitution of the firm and also the proceedings at least in two writ petitions filed before this Court by the third respondent which were already dismissed by this Court. All these developments since have been taken place in quick succession, unless and until the necessary documents as required by the SIPCOT are produced in complete form by the petitioner to the satisfaction of the SIPCOT, the modification sought to be effected by the petitioner, cannot be completed. Therefore, the learned standing counsel would submit that, once the petitioner comes forward to produce all relevant documents as required by the SIPCOT, the request of the petitioner would be considered and accordingly a decision would be taken.

11. However, Mr. Ramshankar, learned representing counsel for the third respondent would submit that as the third respondent still continuing in the partnership firm/petitioner and the third respondent has not agreed to the claim of the petitioner that the third respondent has also retired from the petitioner's firm on 09.04.2009, the third respondent is questioning the very reconstitution of the petitioner's firm with four newly inducted partners.

12. In this regard, the learned counsel for the third respondent would submit that even at the time of withdrawing the writ petition in W.P.No.35212 of 2012, it was represented on behalf of the SIPCOT, before the Court, that they have not accorded any approval for the change in constitution of the partnership firm. Only in that context, since the SIPCOT itself has not come forward to effect any change in the constitution of the petitioner's firm, the petitioner sought to withdraw the writ petition and accordingly it was withdrawn and dismissed on 18.06.2013. Therefore, the learned counsel for the third respondent would submit that merely because the said writ petition having been withdrawn, the claim made by the third respondent that she is also continuing in the petitioner's firm and therefore she would have every valid objection against the petitioner's herein with regard to the change sought to be effected in the lease deed cannot lose its significance. Therefore her objection should be taken into account by the SIPCOT before taking any such decision, as required or requested by the petitioner.

13. This Court has considered all these rival submissions made by the learned respective counsel appearing for the parties.

14. In so far as the constitution of the firm and the allotment of land to the firm (petitioner) by the SIPCOT and the execution of lease deed towards the firm are concerned, those issues are not in controversy. The controversy starts only from the retirement of seven partners including the third respondent herein and subsequent induction of four new partners and the consequential reconstitution. With regard to the objections raised by the third respondent, against the reconstitution of the petitioner's firm by inducting four new partners are concerned, the Inter-se dispute between the third respondent and the petitioner or with other partners, can be resolved by the third respondent by approaching the appropriate legal forum in the manner known to law. In fact on the same line, the earlier writ petition filed by the third respondent in W.P.No.6616 of 2012 was dismissed by this Court. In so far as the specific

objection against the modification to be effected in the lease deed is concerned, such an objection though has been raised by the third respondent in the subsequent writ petition in W.P.No.35212 of 2012 where, as claimed by the third respondent, some prohibitory order was also given against the SIPCOT, however the said issue also came to an end by the dismissal of the said writ petition, of course, as withdrawn by the third respondent, by the order of this Court dated 18.06.2013. Therefore, as far as the issue with regard to the modification to be effected in the lease deed is concerned, there is no lis pending before this Court and whatever writ petitions filed either by the third respondent or by the petitioner subsequently, in the year 2016, they are not related to the issues raised in the present writ petition.

15. In so far as the claim of the petitioner is concerned, after retirement of seven partners, the firm was reconstituted on 10.04.2009. At the time, only two existing partners were in the petitioner firm and during that period the petitioner firm was under severe debt trap as it had to settle huge dues to the Banks. Only at that juncture, the petitioner's firm decided to induct few more new partners. In order to make the firm financially viable to meet the financial contingencies and for the said reason only four new partners have been inducted as claimed by the petitioner. In this regard, the averments made by the petitioner at paragraph No.3 and 4 of the affidavit filed in support of the writ petition are extracted herein.

"I submit that the Petitioner was entered into a lease deed with the second Respondent for setting up a Knitted Fabric Dying Unit in the said land. The petitioner was established with the major contribution of S. Govindappa (father of G.Danasekar, a partner) and another partner Rangasamy. The aforesaid persons pledged their immovable properties as security with State Bank of India, Thirupur Branch for purchase of machineries and subsequently the machineries were also hypothecated with the said Bank. Since the firm did not have sufficient capital to continue the business, it incurred heavy loss and consequently the unit become defunct from the year 2007. Subsequently the Bank account of the Petitioner was declared as non-performing assets by the said Bank. At this juncture to save the immovable property the Petitioner was in the dire need of funds. With a view to escape from their personal liabilities seven partners namely Mrs. Padmavathi, G.Danasekar, Mrs. Yasoda Venkat, B.Latha Balasubramaniam, B. Narmatha and R. Balamurugan had retired from the partnership firm by virtue of Retirement Deed dated 09.04.2009. Whiles o one

Mr.J.Surendar and R. Rangasamy continued as partners of the firm by virtue of re-constitution Deed dated 10.04.2009.

I submit that since the Petitioner was in dire need of funds to settle the outstanding of State Bank of India, Thirupur four new partners namely Sri Sheetal Kumar Mehta, Rithesh H.Mehta, Sri Kuldeep Mehta, HUF consisting himself and his wife and daughters Tisha H. Mehta and Mahi K. Mehta and Sri Mahipal Kumar HUF consisting himself, his wife, daughter Kajal Kumari and two sons Kuldeep Mehta and Shetakumar M. Mehta were inducted into the firm. After re-constitution, the new partners cleared all the dues of the firm with the State Bank of India, Thirupur and thereby the induction of the new partners had been duly accepted."

16. After induction of the new partners, which had become the basic requirement for the petitioner to reconstitute the firm, on 21.05.2012, the firm was reconstituted. Therefore, as claimed by the petitioner, as of now, only six partners, two existing and four newly inducted partners are available with the petitioner's firm. Therefore, it requires necessary changes in the lease deed which was originally executed by the SIPCOT, as at that time, there were nine partners in the petitioner's firm. Therefore, the necessary changes have to be effected in the lease deed, based on which, the petitioner's firm has been allotted a land by the SIPCOT, where the petitioner has established its Industrial unit. Only in order to get the changes taken place in the petitioner's firm, to be effected, necessary modifications to be issued in a modified lease deed. The petitioner though has approached the respondent SIPCOT and has been making request, the same has not been considered or completed, in view of the pendency of the writ petition triggered by the third respondent.

17. Now, the said writ petition filed by the third respondent has already ended up as discussed above. Hence, there is no further impediment for the SIPCOT to act upon.

18. In this regard, as has been rightly submitted by the learned standing counsel for the SIPCOT, that, for effecting the changes as decided by the petitioner's firm, the necessary documents right from the beginning have to be produced before the SIPCOT and after scrutinising the same only the SIPCOT can take a decision, of course after hearing the petitioner firm.

19. In view of the aforesaid circumstances and the facts narrated and discussed above, this Court is of the considered view that this writ petition can be disposed of with the following directions:

(i) The second respondent, SIPCOT shall consider the request of the petitioner dated 27.07.2013 and on prima facie consideration of the said representation, if SIPCOT feels that further documents are required to be scrutinised, it is open to the SIPCOT to seek those documents from the petitioner; (ii) On such requirement is made by the SIPCOT requiring more documents from the petitioner, the petitioner shall submit the same to the SIPCOT and on receipt of the same; (iii) SIPCOT can consider the issue in full and in this regard, if needed, the petitioner can be given a personal hearing also and thereafter, a decision can be taken to effectuate the necessary modifications in the lease deed in accordance with law based on the documents to be supplied by the petitioner.

20. Since the third respondent still claims that she is continuing in the petitioner's firm, as she has been agitating all along by instituting number of litigations, it is open to the third respondent also to make her claim by submitting documents to show that still the third respondent is continuing in the firm.

21. In regard to the aforesaid process, all the parties can strictly adhere to a self made time schedule within which everyone has to act and at any rate after completion of this process as indicated above, the final order has to be passed by SIPCOT within a period of three months from the date of receipt of a copy of this order.

With these directions, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

kak/sai

To

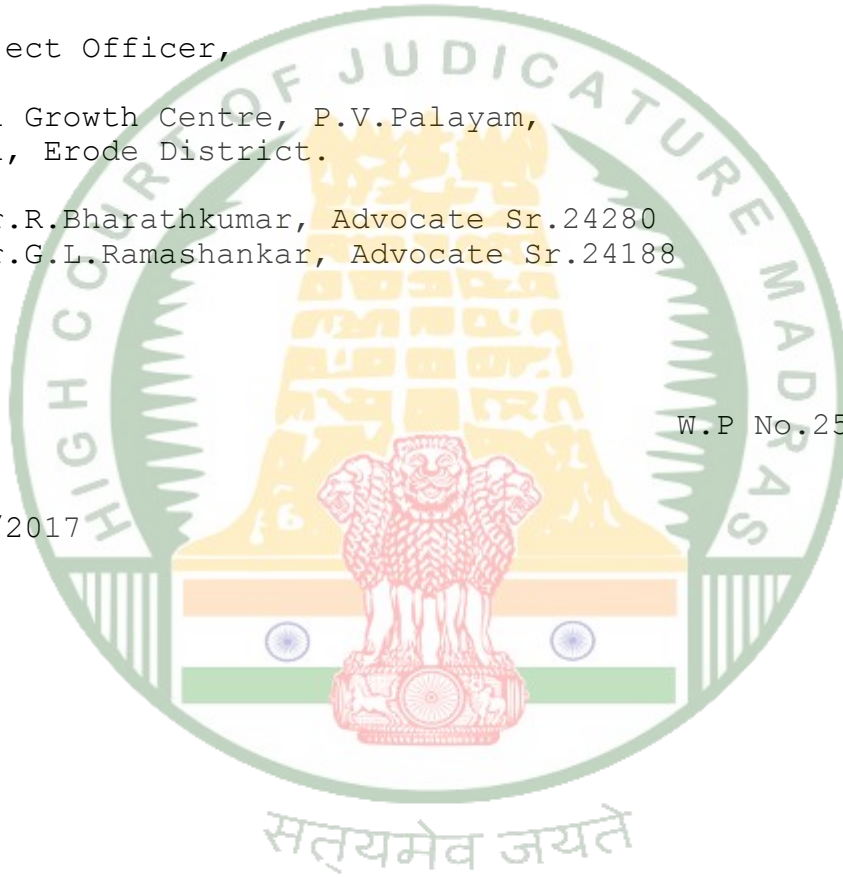
1.The Principal Secretary/Chairman and
Managing Director,
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19-A, Rukmani Lakshmipathy Road,
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2.The Project Officer,
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Industrial Growth Centre, P.V.Palayam,
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+lcc to Mr.R.Bharathkumar, Advocate Sr.24280
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