

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 28.03.2019	Delivered on 10.04.2019
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CORAM:

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Review Application No.40 of 2018

M/s.Irrigation Products International Pvt. Ltd.,
rep. By its Managing Director,
Mr.Ravi Kumar Garyali ...Petitioner /Respondent/Petitioner

versus

1. The Chairman & Managing Director,
State Industries Promotion Corporation of T.N. Ltd.,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai 8

2. The Senior Project Manager,
SIPCOT Information Technology Park,
Padur Post, Siruseri 603 103
Kancheepurak District. ...Respondents/Appellants/Respondent

Petition filed to review the order passed in W.A.No.1942 of
2012 dated 09.11.2017.

Prayer in W.A.No.1942 of 2012:

Writ Appeal filed under Clause 15 of Letters Patent,
against the order made in W.P.No.24903 of 2008 dated 18.11.2011.

Prayer in W.P.No.24903 of 2008:

Praying to call for the records in pursuant to the impugned
order passed by the 1st respondent in proceedings
No.D.11.SITP/15/IPIPL/07 dated 20.04.2007 and proceeding No.D-
11/SITP/15/IPIPL/07 dated 11.09.2008 and quash the same.

For petitioner : Mr.Krishna Srinivas
for M/s.Ramasubramanian & Associates

For respondent : M/s.Sudharshana Sundar, for R-1
R2-Notice Not sent.

O R D E R

K.K.SASIDHARAN, J.

The review applicant, notwithstanding the law declared by the Hon'ble Supreme Court recently in Dalip Singh and others vs. State of Haryana and others, 2018(14) Scale 278, holding that failure to complete the construction within the stipulated time would give a right to the development authority to resume the industrial plot, filed this review application, to review the judgment, restoring the order passed by the State Industries Promotion Corporation of Tamil Nadu Ltd., (hereinafter referred to as SIPCOT) on account of the violation of the statutory condition with regard to the commencement and completion of construction, within the stipulated period.

2. The review applicant was allotted an industrial plot by SIPCOT as per proceedings dated 29 April 2005. The applicant took possession of the plot on 30 August 2005. There was a condition incorporated in the agreement that the construction should be commenced within six months. Since there was a clear violation of the conditions of allotment which mandates commencement of construction within six months, notice was issued by SIPCOT on 14 June 2006 to show cause as to why allotment should not be cancelled. There was no reply given by the applicant to the show cause notice. The applicant simply made a request to grant 24 months time to comply with the terms and conditions of the allotment. Since the explanation was not satisfactory and the mandatory condition was not complied with, the SIPCOT cancelled the allotment by order dated 20 April 2007. The Writ Petition filed by the applicant challenging the order of cancellation was allowed by the learned Single Judge. The intra court appeal at the instance of the SIPCOT was allowed by this Court with a clear finding that failure to commence the construction within the stipulated period would give a right to the SIPCOT to cancel the very allotment. It is to review the said judgment, the applicant has come up with this review application.

3. Mr.Krishna Srinivas, learned counsel for the review applicant took up only one contention i.e. waiver of the right to cancel the allotment. According to the learned counsel, the Project Officer, SIPCOT, by notice dated 19 May 2008, called

upon the applicant to remit the maintenance amount. Subsequently by notice dated 2 July 2008, provisional maintenance arrears for the year 2007-08 was also collected. These actions were after passing the order cancelling the allotment. These two notices were relied on by the learned counsel in support of his contention that the order of cancellation was not intended to be acted upon. No other contentions were raised before us.

4. The learned Standing Counsel for the SIPCOT contended that the applicant has been in possession and enjoyment of the plot even after cancellation, on the strength of the interim order in the Writ Petition. The applicant was bound to pay the maintenance charges till possession is handed over to SIPCOT. According to the learned counsel, notice calling upon the applicant to pay the maintenance charges and the payment thereafter would not amount to an act of waiver or cancellation of the earlier order cancelling the allotment.

5. The plot in question was allotted to the applicant with a specific purpose. The SIPCOT acquired large extent of land for promoting industries. It was for a larger public interest. The land was acquired from the poor land owners. The land was allotted to several industries, including the review applicant. The allotment was made on 29 April 2005. The possession of the land was taken over by the applicant on 30 August 2005. The review applicant was expected to commence the construction on or before 28 February 2006. Since the applicant has not taken any steps even to obtain planning permission and commencement of construction, SIPCOT issued a show cause notice on 14 June 2006. Even in the reply to the said notice, there was no explanation given by the applicant for its failure to commence construction. The applicant made a simple request to give 24 months more time. There was no action plan submitted by the applicant even in the explanation to the show cause notice indicating the action taken so far and the time required for commencement and completion of the construction.

6. The review application is filed primarily on the ground that the order of cancellation was not acted upon. The applicant has relied on two notices issued by the Project Director calling upon the allottee to remit the maintenance charges. The notices were issued by the Project Officer who is in charge of the project, calling upon the applicant to pay the maintenance charges. The applicant was bound to pay the maintenance charges so long as the company is in possession. It is a matter of record that the applicant obtained an interim order from the writ court not to dispossess and on the strength of the said order, continued to possess the industrial plot even after the order of cancellation of allotment. The fact that the applicant was called upon to pay maintenance charges by the Project Officer, would not go to show that SIPCOT impliedly cancelled

the very order, cancelling the allotment. There was no waiver of any right due to the issuance of notices calling upon the applicant to pay the maintenance charges. The agreement executed by the applicant with the SIPCOT clearly shows that the liability to pay the maintenance will continue till the expiry of the lease period or till the date of surrender of the plot. Such being the factual position, there is absolutely no merit in the contention taken by the applicant that there is an act of waiver of the right to cancel the allotment.

7. The question regarding the right to resume the industrial plot on account of the failure of the lessee to complete the construction within the stipulated time came up for consideration before the Hon'ble Supreme Court in Dalip Singh and others vs. State of Haryana and others, 2018(14) Scale 278.

8. The Hon'ble Supreme Court while negating the plea taken by the allottee to revoke the order of suspension by contending that they are ready to pay the current market rate, made it clear that the Court can interfere with the revocation of resumption of land only if the executive has not carried out its duty or acted in violation of the procedure.

9. The Hon'ble Supreme Court observed that in view of the terms and conditions of the allotment clearly stipulating that in the event of breach of any of the conditions of transfer, the Estate Officer may resume the land, the Development authority was well within its right to cancel the allotment and resume the land.

10. The grounds taken by the applicant would not constitute sufficient grounds within the meaning of Order 47 Rule 1 CPC. We are therefore of the view that there is absolutely no merit in the review application.

11. In the upshot, we dismiss the review application. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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SSD(CO)

RRS(28/05/2019)