IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.08.2018
Pronounced on : 08.10.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16246 of 2008

M/s.Imeco Limited,
32, T.T.K. Road,
Alwarpet Road,
Chennai 600 018. ... petitioner

Vs.

M/s.State Industries Promotion
Corporation of Tamilnadu (SIPCOT),
19-A, Rukmani Lakshipathy Road,
Egmore, Chennai 600 008. ... Respondent

Prayer : Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent comprised in impugned communication in D-II/SCG/GPD/IMECO/2007 dated 08.10.2007 in so far as it relates to the demand of a sum of Rs.55.72 lakhs as differential land cost as being wholly arbitrary and illegal and consequential direct the respondent to refun the excess amount of Rs.47,76,000/- collected together with interest at 18% p.a. from the date of collection of such excess sum till the date of refund.

For petitioner : Mr.Rahul Balaji

For Respondent : Mr.Sudharshana Sundar

O R D E R

This Writ Petition has been filed to call for the records of the respondent comprised in impugned communication in D-II/SCG/GPD/ IMECO/2007 dated 08.10.2007 in so far as it relates to the demand of a sum of Rs.55.72 lakhs as differential land cost as being wholly arbitrary and illegal and consequential direct the respondent to refun the excess amount of Rs.47,76,000/- collected together with interest at 18% p.a. from the date of collection of such excess sum till the date of refund.

2. The petitioner signed a modified lease deed for the residual period of lease to an extent of 3.98 acres of land

that was originally allotted to one M/s.Vastra Silks Pvt. Ltd. (original allottee) at the respondent's SIPCOT Industrial Complex at Gummidipoondi. The original allottee had originally paid a sum of Rs.6 lakhs per acre in 1995.

3. The original allottee was sanctioned a term loan of Rs.175 lakhs by the respondent on 4.8.1995. On account of the defaults committed by the

original allottee, respondent took possession of the land and the building on 19.12.2000 under section 29 of the State Finance Corporation Act and advertised the same for being sold.

4. Petitioner had offered to pay a sum of Rs.71 lakh for the land together with the existing superstructure and certain other materials left by the previous allottee of aforesaid land.

5. The respondent vide letter dated 21.8.2006 accepted the offer of the petitioner to receive a sum of Rs.71 lakhs as lease consideration for the residual period.

6. The respondent allocated a sum of Rs.12 lakhs per acre towards the land and super structure. Thus, a sum of Rs.47,76,000 [20,64,000+27,12,000] out of the total consideration of Rs.71 lakhs was allocated towards the land. A modified lease deed was thereafter signed pursuant to an auction conducted by the respondent as per the norms.

7. At the time of setting up a new factory in the existing building, the petitioner encountered practical difficulties and was informed by their structural engineer that existing buildings may not meet their requirements.

8. Under these circumstances, by letter dated 16.3.2007, the petitioner requested the respondent to permit transfer of the lease in favour of two other entities identified by the petitioner. By letters dated 10.07.2007 and 31.7.2007, the respondent informed the petitioner that the two entities identified by it should pay a sum of Rs.24,08,000/-. Rs.7,500/- and Rs.31,64,000/- + 7,500/- towards differential land cost and the processing fee respectively. However, these persons identified by the petitioner did not find the offer viable and therefore the proposal could not be carried forward.

9. By a letter dated 12.7.2007, the petitioner informed the respondent that the amount demanded as differential land cost should to be worked out at Rs.8 lakh per acre instead of Rs.14 lakh as proposed by the respondent.

10. According to the petitioner the differential land cost should be worked out between the value adopted by the respondent for the proposed transfer and the value at which the lease was transferred to the petitioner . In other words, the petitioner submitted that the differential land cost should be at Rs.8 lakhs [Rs.20 lakhs - Rs.12 lakhs = Rs.8 lakhs].

11. The respondent however by its letter dated 31.7.2007 demanded a differential land cost at the rate of Rs.14 lakhs per acre being the difference between the current value and the original value adopted at the time of original lease (Rs.20 lakhs - 6 lakhs = Rs.14 lakhs per acre).

12. Thereafter, the petitioner brought M/S.Greaves Cotton Limited who showed interest in taking over the lease of the building and the land for setting up their ancillary manufacturing unit.

13. By a letter dated 12.9.2007 the petitioner requested the respondent to transfer the lease in favour of the said company as it was apprehensive of loosing M/S.Greaves Cotton Limited if there was any further delay.

14. By a letter dated 27.9.2007, the petitioner clearly mentioned that the said company was agreeable to pay the above differential land costs of Rs.55,72,000/-.

15. Pursuant to the above, by letter dated 8.10.2007, the respondent clearly mentioned that M/S.Greaves Cotton Limited the new transferee identified by the petitioner was required to pay the aforesaid sum Rs.55,72,000/- within 30 days from the date of receipt of the letter and that the transferee should execute a modified lease deed within 30 days from the date of payment of the differential land cost.

16. As the prospective transferee was also in urgent need of the land, the petitioner paid the differential land cost of Rs.55,72,000/- to the respondent on 11.10.2007 and executed the modified lease deed and completed the process.

17. After the process was completed, by a legal notice dated 16.2.2008 the petitioner called upon the respondent to refund the excess amount collected as differential land cost based on their earlier representation dated 12.07.2007.

18. As the respondent did not respond to the said legal notice, the present petition came to be filed in the year 2008. The respondent has filed its counter and has denied the liability.

19. Heard, Mr Rahul Balaji, the learned counsel for the petitioner and Mrs.Sudarshana Sunder, the learned counsel for the respondent.

20. Petitioner submits that at the time of transfer of the lease in its favour, the respondent had collected a sum of Rs.12 lakhs per acre from the petitioner and Rs.6,00,000/- from the earlier allottee and since the land was transferred to the subsequent allottee identified by the petitioner, the differential land cost ought to have been restricted to only Rs.2 lakhs [20 lakhs -18 lakhs (6 lakhs + 12 lakhs)] only per acre, as Rs.18 lakhs was already paid by the orginal allottee and the petitioner.

21. Therefore, the petitioner prayed for refund of excess amount paid by the petitioner at the time of transfer of the lease to M/s.Greves Cotton Ltd.

22. The petitioner submits that respondent being a “State” within the meaning of Article 12 of the Constitution of India cannot make arbitrary demand and make unjust profits by saddling the retransfer of the lease by demanding amounts in excess at the cost of industrial units.

23. It is further submitted that only pursuant to the aforesaid letter, the respondent accorded approval for transfer of the leasehold rights subject to M/S.Greaves Cotton Limited remitting aforesaid sum of Rs. 55.72 lakhs. Further, petitioner themselves by their letter dated 27.9.2007 informed the respondent that the said company would pay the differential land cost.

24. It is the contention of the respondent that M/S. Greaves Cotton limited paid the amount and therefore question of refunding the amount to the petitioner does not arise.

25. It is further submitted that the claim is vague and cannot be entertained. It is also submitted to the petitioner cannot be aggrieved person. The respondent has further contested the writ petition on the ground that the respondent had transferred the lease to M/S. Greaves Cotton Limited pursuant to latter giving their consent by the letter dated 24.9.2007 and therefore, the petitioner did not have a locus standi to ask for refund. The said company is not a party to

the present proceeding.

26. After hearing the parties, respondent was directed to furnish the basis on which differential land cost was been collected by them at the time of re-allotment of the land for the residual period.

27. The learned counsel for the petitioner filed several office orders of the respondent wherein it has been stated that when the assets of the unit are sold by the promoters along with the leasehold rights on land, the new incumbent will be required to pay the current land cost to SIPCOT. The only exception is under circumstances specified in paragraph 2 of office order dated 10.7.2003. Paragraph 2 of the said order which reads as under:-

> “2. In the case of sick/closed units within support industrial complex, parks/growth centres and where assets are sold by SIPCOT/TIIC or any other financial institution/bank, the differential land cost need not be demanded”.

28. The very purpose of collecting differential land cost is to discourage sale of the leased land by marketers’. The purpose is to encourage industrial growth in these growth centres and therefore a person who are unable not use the land for the purpose for which it was allotted them were allowed to re- transfer the land subject payment of differential land cost payable by new allottes.

29. In this case, no differential land cost was collected when the land was allotted to the petitioner pursuant to the auction in terms of the policy of the respondent which clearly spells out that no differential land cost is to be collected in case of purchase of land through auction.

30. Thus, when the petitioner was allotted the land it was not subjected to any differential land cost. However, when subsequent transfer was affected by the petitioner, the transferee was required to pay the differential land cost.

31. In this case, strangely it is the petitioner who paid the differential land cost after categorically agreeing that the said amount would be paid by M/S. Greaves Cotton Limited, by their letter dated 29.9.2007.

32. Relevant portion of the letter dated 27.9.2007 of the petitioner bearing reference REF: IME/BH/2007-08/1391

addressed to the respondent reads as under:-

> “2.Since they could not proceed with the projects, we have been approach to take over about two units by M/S. Greaves Cotton Limited, who is a leading manufacturer of Internal Combustion Engine and has various units in your Gummidipoondi and Ranipet Complexes. Since the land and building suit their requirements, they have come forward to take over the above two assets.
>
> We enclose the self-explanatory letters from the two companies namely, M/S. Bharadwaj Techno Materials (P) Ltd., M/s.Daiki Industries Private Limited, and also consent letter from M/S. Greaves Cotton Limited., to take over the asset and transfer of leasehold land and also agreeable to pay the difference in land cost. ”

33. It is thus clear that the differential land cost was payable by the new allottee namely M/S. Greaves Cotton Limited.The petitioner, has paid the amount on behalf of M/S.Greaves Cotton Limited pursuant to internal arrangement between them even though amount was payable by the said company to the respondent.

34. After having agreed for the transfer together with the differential land cost of Rs. 55. 72 lakhs payable by the new allottee, it is not open for the petitioner to ask for refund, even if it is assumed that the calculation of the differential land cost demanded was incorrect or not proper.

35. In Mafatlal Industries Ltd. v. Union of India 1997 (89) E.L.T. 247 (S.C.), though, the rendered in the context of tax laws it was observed that

“Section 72 of the Contract Act is a rule of equity. Once it is a rule of equity, it is not understandable how can it be said that equitable considerations have no place where a claim is made under the said provision. What those equitable considerations should be is not a matter of law. That depends upon the facts of each case. But to say that equitable considerations have no place where a claim is founded upon Section 72 is a contradiction in terms. Therefore, equitable considerations cannot be held to be irrelevant where a claim for refund is made under Section 72. Now, one of the equitable considerations may be the fact that the person claiming the refund has passed on the burden of duty to another. In other words, the person claiming the refund has not really suffered any prejudice or loss. If so, there is no question of reimbursing him. He cannot be recompensated for what he has not lost. The loser, if any, is the person who has really borne the burden of duty; the manufacturer who is the claimant has certainly not borne the duty notwithstanding the fact that it is he who has paid the duty.

36. The Court further held that "the very concept of economic justice means and demands that unless the claimant (for refund) establishes that he has not passed on the burden of the duty/tax to others, he has no just claim for refund. It would be a parody of economic justice to refund the duty to a claimant who has already collected the said amount from his buyers."

37. The Court further held that refund should really be made to the persons who have actually borne its burden that would be economic justice. Section 72 of the Contract Act may be attracted to such a case and a claim for refund of tax on this score can be maintained with reference to Section 72. In this case, the said company is also not presnt to support the case of the petitioner that the petitioner has not received consideration towards to differential land cost.

38. The Court further held that "Where the petitioner-plaintiff has not himself suffered any loss or prejudice (having passed on the burden of the duty to others), there is no justice or equity in refunding the tax (collected without the authority of law) to him merely because he paid it to the State. It would be a windfall to him. As against it, by refusing refund, the monies would continue to be with the State and available for public purposes. Refunding the duty paid by a manufacturer/assessee in situations where he himself has not suffered any loss or prejudice (i.e., where he has passed on the burden to others) is no economic justice; it is the very negation of economic justice. By doing so, the State would be conferring an unearned and unjstifiable windfall upon the manufacturing community thereby contributing to concentration of wealth in a small class of persons which may not be consistent with the common good. The preamble of Constitution and the Articles 38 and 39 do demand that where a duty cannot be refunded to the real persons who have bore the burden, for one or the other reason, it is but appropriate that the said amounts are retained by the State for being used for public good. Accordingly, even looked at from the constitutional angle, the right to refund of tax paid under an unconstitutional provision of law is not an absolute or an unconditional right. Similar is the position even if Article

265 can be invoked - we have held, it cannot be - for claiming refund of taxes collected by misinterpretation or misapplication of a provision of law, rules, notifications or regulation.”

39. Refund of the amount even if it is assured was paid in excess would result in unjust enrichment in the hands of the petitioner in the light of the decision of the Hon’ble Supreme Court in Mafatlal Industries Case.

40. In the present case, the petitioner has no locus standi to ask for refund as the differential land cost was demanded and payable by the new allotee namely M/s.Greaves Cotton Ltd. The petitioner paid for the same to complete the transaction for M/s.Greaves Cotton Ltd. Therefore, it is not open for the petitioner to ask for a refund.

41. Therefore,the petitioner cannot ask for a mandamus for refund of the amount. Further whether the petitioner is entitled to restitution by way of refund of amount also cannot be decided under Article 226 of the Constitution of India as neither the new allottee is a party to the proceeding nor can the Court get into disputed questions of facts.

42. In view of the above obseravation, the present writ petition is liable to be dismissed and is dismissed accordingly. No cost.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
The State Industries Promotion
Corporation of Tamilnadu (SIPCOT),
19-A, Rukmani Lakshipathy Road,
Egmore, Chennai 600 008.

+1cc to M/s.Sudharsshana Sundar, Advocate Sr.No.69327
+1cc to MR.R.Parthasarathy, Advocate Sr.No.70274

BR(CO)
sm:12.11.2018

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