

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.02.2018
Delivered on : 28.06.2018

CORAM:

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

W.A No.325 of 2015 and
M.P.No.1 of 2015

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

...Appellant

Vs

M/s.Expertus Infrastructure Pvt. Ltd.,
No.180, Kodambakkam High Road,
2nd Floor, Capital Towers,
Nungambakkam, Chennai - 600 034.
Rep. by its Director Srinivas Krishnamoorthy

...Respondent

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent
against the order dated 14.10.2014 made in W.P.No.17006 of 2007.

WP.No.17006 of 2007

Writ Petition filed under Article 226 of the Constitution of
India for a writ of Certiorari to call for the records relating
to order of cancellation passed in Ref.No.D-II/SITP/69/EIPL/07
dt 20.4.2007 quash the same.

For Appellant : Ms.Sudarshana Sundar

For Respondent : Mr.S.Doraisamy

J U D G M E N T

K.K. SASIDHARAN, J.
Introductory

Even though the industrial land covered by the Lease
Agreement dated 6 June 2005 which contain a mandatory condition

to commence the construction within six months from the date of allotment and completion within 24 months and commencement of production within 30 months, was handed over to the respondent on 15 June 2005 as a developed plot, no such construction commenced within the stipulated period resulting in cancelling the allotment in accordance with the terms of allotment. The inconsistent stand taken by the respondent for its failure to construct the factory building was accepted by the learned single Judge notwithstanding the fact that being a pre-sanctioned site, permission of the planning authority was not required to put up the industrial building. The intra court appeal is directed against the order quashing the proceedings cancelling the allotment by invoking the terms and conditions of the allotment and the related Lease Deed.

Brief Facts

2. The appellant developed an industrial layout at Siruseri, Kancheepuram District, for promoting Information Technology based industries. The I.T. Park was developed by acquiring 920 acres of land. The appellant allotted 3.78 acres of land to the respondent for setting up an industrial unit for software development and support services. The lease was for a period of 99 years. The Lease Deed was executed on 6 June 2005. The developed plot was handed over to the respondent on 15 June 2005.

3. The terms and conditions of the Lease Deed provide that the Lessor must commence the construction of the building within six months of allotment and it should be completed within 24 months. There was no need to obtain prior permission from the Planning Authority for commencement of construction. The submission of plan is sufficient. The appellant reserved the right to cancel the allotment in case of violation of the essential terms, which includes failure to commence and complete the construction and commencement of production within 30 months.

4. The appellant by notice dated 23 February 2006 cited the attention of the respondent to the mandatory condition of the Lease and called upon the Lessee to commence the construction forthwith. The respondent in its reply dated 25 May 2006 informed the appellant that they have identified a builder and action would be taken for commencement of construction.

5. Since there was no follow up action taken by the respondent to commence the construction, the appellant issued a notice dated 4 August 2006 to show cause as to why the allotment should not be cancelled due to non-observance and breach of the conditions of the Lease Deed.

6. The respondent in its reply dated 18 August 2006 once again informed the appellant that the Board has decided to give the work to a contractor.

7. Since there was no positive action to comply with the mandatory conditions of the Lease, the appellant cancelled the allotment of land by order dated 20 April 2007.

8. The respondent challenged the order dated 20 April 2007 in W.P.No.17006 of 2007. According to the appellant, the learned single Judge quashed the order by giving certain irrelevant reasons.

Submisisions

9. The learned counsel for the appellant contended that commencement of construction within six months of allotment was a mandatory condition. In order to facilitate immediate construction, the Lessee was permitted to go ahead with the construction after making an application to the Planning Authority. Since the respondent failed to abide by the essential terms of the allotment and Lease Agreement, the allotment was rightly cancelled.

10. The learned counsel for the respondent while supporting the order passed by the Writ Court contended that even before the expiry of 24 months, allotment was cancelled. According to the learned counsel, the appellant should have given reasonable time to the respondent to put up the building.

Discussion

11. The Lease Deed executed between the appellant and the respondent on 6 June 2005 contains certain mandatory requirements to be complied with by the Lessee. The Lessee was obliged to commence the construction work within six months from the date of allotment and it should be completed within 24 months. The allottee must commence commercial production/trial production within 30 months from the date of allotment order. The Lessor reserved its right to cancel the allotment in case of non-compliance of the conditions of allotment.

Mandatory Conditions

12. The essential conditions of the Lease Deed are extracted below:-

a) Commencement and Completion of construction

The party of the second part shall have to commence Construction of buildings within six

months from the date of allotment order and be completed within 24 months from the date of allotment order. Before commencing such construction of works on the allotted plot, the allottee should strictly follow the following building regulations prescribed, among others.

b) Commercial Production Time Limit

17. The allottee shall commence commercial production/trial production within 30 months from the date of allotment order. Failure will entail cancellation of allotment and forfeiture of total amount paid towards the extent allotted.

c) Right to cancel the Lease

14(i) If, in the opinion of the Party of the First Part, it is found that the land allotted to the Party of the Second Part is not put to use for the purpose for which it was allotted or is in excess of the actual requirements of the Party of the Second Part for the purpose for which it was allotted, the Party of the First Part shall at any time have the right to cancel the allotment in respect of such land or excess land, as the case may be, and resume the same under the provision of TNPEE. In the event of resuming excess land by the party of the first part, the plot deposit and development charges and additional development charges collected from the Part of the Second part will be suitably modified and refund of the plot deposit alone if any, due to the Party of the Second Part will be made. Development charges, additional development charges, Lease rent, Interest and enhanced interest, if any already paid or due, will not be subject to any refund or modification in such an event.

No Need for Planning Permit

13. There was no need to obtain planning permission before commencing the construction work. This is made clear by Clause 18(1) of the Lease Agreement, which reads as follows:

"18 i) All buildings to be constructed should be in conformity with the byelaws of the local body and regulations in force from time to time as well as any other laws, rules and regulations

in force relating to the construction and use of premises. However, as per the G.O.Ms.No.169, Industries (MIE.2) dated 12.9.96, the allottee can start construction immediately after submitting the necessary application for building plan approval to the appropriate authorities, provided a certificate from a Chartered Architect or a Civil Engineer registered with the concerned local body is enclosed conforming that the plan is not violating any rules or regulations, including the zone regulation under the Town and Country Planning Act, 1971. This permission is subject to the undertaking that the portion of the building will be demolished if it is found that the building violates any rules or regulations. The Party of the First Part reserves the right to suggest such modifications or alterations as may be in common interest."

14. The plot which was developed by the appellant by providing roads, streetlights and other infrastructural facilities was handed over to the respondent on 15 June 2005 by way of a "Handingover Note". Even though there was no requirement to obtain planning permission, the respondent failed to take any action to construct the building within the stipulated period.

15. The appellant having found that no further action was taken by the respondent for construction of building even after handing over the site on 15 June 2005, issued a notice dated 23 February 2006 calling upon the Lessee to commence the construction forthwith. To this notice, a reply was sent only on 25 May 2006 by the respondent which was after three months. This long delay in giving the reply itself shows the lack of bonafides and the lethargic attitude of the respondent.

16. There was no proper explanation in the reply dated 25 May 2006 for the delay in commencing the construction. The respondent has given certain flimsy reasons to buy time.

17. The appellant waited for a period of 6 months after issuing the first notice dated 23 February 2006. Since nothing was done to put up the building even after six months of the notice dated 23 February 2006, the appellant issued a show cause notice dated 4 August 2006.

18. The respondent in its reply dated 18 August 2006 once again has given the very same reasons to explain the delay.

19. Since there was wilful non-compliance of the mandatory conditions, the appellant cancelled the allotment by order dated 20 April 2017.

20. The learned single Judge without advertting to the terms and conditions of the Lease Deed accepted the case of the respondent by observing that the allotment was cancelled before 24 months, which is the period prescribed for completion of construction. The learned single Judge omitted to take note of the principal condition that the construction should be commenced within six months. The question of completion of construction would arise only in case of commencement of the construction work. Even though the allotment was made on 6 June 2005, not even a single building was constructed by the respondent till date.

21. The land was allotted in 2005 taking into account the prevailing land value, which was the basis for fixing the rent. The allotment was not for keeping the land idle. It should be used for industrial purpose. The fact that the respondent started IT business by taking a building elsewhere cannot be a valid reason to avoid the construction of building and commencement of business within the outer time limit prescribed by the Lessor, which was also agreed to by the Lessee.

22. The respondent entered into an agreement with the appellant knowing fully well the terms and conditions. The commencement of construction within six months and completion within 24 months and starting production within 30 months of allotment were the mandatory conditions of the allotment. The terms are binding on both the Lessor and the Lessee. It is not open to a party to a contract to avoid the contractual terms by resorting to the discretionary remedy under Article 226 of the Constitution of India.

23. The Court is concerned only with the decision making process. It is not within the province of the Courts to look into the correctness or nature of the terms to render a finding. The parties have the choice to enter into the contract or to avoid such contracts. It is essentially a business for them. Article 226 is not for avoiding contractual obligations voluntarily undertaken by the parties.

24. The appellant is a State. The appellant developed the I.T park to attract investment in I.T Sector to boost the economy and to give employment. The allotment was not with a view to create a land Bank. The so called difficulty of the Lessor cannot be a reason to avoid the contractual obligations. In case of interference by Courts in a matter like this, the

industrial land would be retained by the allottees to make profit later by sale or lease, without starting the industry. It was only to avoid such acts, provisions were made in the agreement to cancel the allotment for various reasons.

25. There was no procedural violation in the subject case. Before issuing the show cause notice for cancellation, a letter was issued six months back calling upon the respondent to commence construction. It was only six months thereafter, show cause notice was issued. The order of cancellation was made by following the principles of natural justice. The order does not suffer from arbitrariness, irrationality or illegality. We are therefore of the view that the learned single Judge was not correct in quashing the order cancelling the allotment.

26. The order dated 14 October 2014 is set aside. The writ petition in W.P.No.17005 of 2007 is dismissed.

27. The intra court appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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

+1cc to Mr.Sudarshana Sundar, Advocate, S.R.No.41754

+2cc to Mr.S.Doraisamy, Advocate, S.R.No.41815 & 41509

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AD(CO)
SP(23/07/2018)