IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 29.01.2018	Delivered on 23.03.2018

CORAM:

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

W.A.No.588 OF 2016

Neelam Agarwal ... appellant
versus
State Industries Promotion Corporation of Tamil Nadu Ltd., (SIPCOT), rep, by its General Manager II, 19-A, Rukmani Lakshmipathy road, Egmore, Chennai 600 008 ... Respondent

Appeal filed against the order passed by this Court dated 29.2.2016 passed in W.P.No.3325 of 2015. Petition presented to this court to issue a writ of certiorarified Mandamus calling for the letter Lr.No.DII/ SICH/ Auroplast/2013 dated 21.10.2014 under which the respondent has made demand of Licence fee and quash the same and consequently direct the respondent to refund of an amount collected under receipt dated 18.11.2008 amounting to Rs.35 01 700/- together with interest thereon at the rae of 18% per annum and for granting the permission to the petitioner to sub lease the property.

For appellant : Mr.Paras Jain for M/s.K.Maheswaran
For Respondents : Mrs.Sudhashana Sundar

J U D G M E N T

K.K.SASIDHARAN, J.

Introductory:-

The appellant purchased the industrial plot allotted by the State Industries Promotion Corporation of Tamil Nadu Ltd., originally to M/s.Milano Exports Ltd., from a subsequent purchaser and in accordance with clause 19 of the original term of allotment, paid a sum of Rs.35,01,700 on 13 November 2008 for approval of transfer resulting in executing a modified agreement by SIPCOT dated 26 November 2008. When the appellant approached the State Industries Promotion Corporation of Tamil Nadu Ltd. (hereinafter referred to as “the SIPCOT”) in 2015 to permit her to grant a sub lease of a portion of the industrial land, SIPCOT raised a demand for Rs.13,69,082/- for approval of the sub lease in accordance with the bilateral agreement. The appellant immediately filed a Writ Petition on 19 November 2015 for refund of Rs.35,01,700/-, paid voluntarily on 13 November 2008 as a condition precedent for approval of the transfer of public property acquired from the farmers and allotted to her predecessor-in-interest. The learned Single Judge dismissed the Writ Petition on the ground that the payment was made in terms of the agreement and having enjoyed the land on the basis of the modified lease deed, it is not open to the appellant to claim refund.

2. The appellant in this intra court appeal is claiming return of the amount paid voluntarily with eyes open by invoking the equitable jurisdiction under Article 226 of the Constitution of India, in a matter which is in the realm of contract. In short, the Writ Petition is filed to avoid the contractual obligation undertaken by the appellant and more particularly after performing her part in furtherance of the bilateral agreement.

Factual matrix:-

3. The SIPCOT acquired large extent of land from the local people for establishing an industrial complex at Hosur. The land was developed and industrial layouts were formed by SIPCOT. The SIPCOT allotted plot Nos.58 and 58A, measuring 1.94 acres to M/s.Milano Exports (P) Ltd on 25 July 1988 and 11 August 1988 by collecting lease amount at the rate of Rs.60,000/- per acre. The allottee executed a lease deed and it was registered as Doc.No.4066/1988 on 30 August 1988. The lease deed contain a provision that transfer is not permissible without the consent and if permitted, it would be subject to the terms and conditions imposed by SIPCOT.

4. The original alottee approached SIPCOT for permission to transfer the plots to M/s.Emkay Automobile Industries (P) Ltd. The SIPCOT granted approval on payment of the differential land cost. The transferee paid the amount resulting in executing a modified lease deed dated 2 September 2005 and it was registered as Doc.No.3670/2005.

5. Thereafter, the transferee M/s.Emkay Automobile Industries (P) Ltd. made a request to permit them to transfer the land to M/s.Auroplast, owned by the appellant. The SIPCOT agreed to permit such transfer subject to the condition that a sum of Rs.35,01,700/- shall be paid, being the differential land cost.

6. The transferor and the transferee agreed to the conditional approval and submitted an undertaking letter to SIPCOT agreeing to pay the amount. The appellant paid the amount on 18 November 2008 and obtained a lease deed dated 26 November 2008, which was registered as Doc.No.14997/2008. The appellant took possession of the land and established an industry.

7. The appellant submitted an application dated 24 June 2014 to the SIPCOT to permit her to grant a sub lease of a portion of the premises to M/s.First Steps Babywear (P) Ltd. Both the appellant and the proposed sub lessee, vide letter dated 24 June 2014, agreed to abide by the conditions imposed by SIPCOT for approval of the sub lease.

8. The SIPCOT vide letter dated 21 October 2014, indicated its willingness to grant approval for the sub lease subject to the payment of a sum of Rs.13,69,802/- towards licensee fee.

9. The appellant on receipt of the demand notice filed a Writ Petition for return of the amount paid on 18 November 2008, pursuant to the order passed by SIPCOT granting approval to M/s.Emkay Automobile Industries (P) Ltd. for transferring the land to the appellant.

10. Before the writ court, the respondent filed a detailed counter affidavit, highlighting the terms and conditions of the original allotment, including the provision regarding conditional approval for transfer of land.

11. The learned Single Judge referred to the provisions of the agreement and opined that amount was collected in accordance with the terms of allotment and as such, the claim for refund was legally not maintainable. The Writ Petition was accordingly dismissed.

Submissions :-

12. The learned counsel for the appellant contended that there is no legislative sanction for collecting the differential land cost or license fee. The learned counsel by citing judgments relating to collection of tax without authority vehemently contended that the decision taken by the Board of management of SIPCOT would not amount to law and as such, the demand for payment of the land cost and licensee fee is illegal. According to the learned counsel, SIPCOT collected amount from the appellant without the authority of law. The appellant is therefore entitled to make a claim for refund.

13. The learned counsel for the respondent took us through the provisions of the lease agreement and contended that the SIPCOT reserved its right to impose conditions for approval of transfer of land. The amount was collected legally and no case is made out for refund.

Discussion:-

14. The SIPCOT allotted Plot No.48 and 58A measuring 1.94 acres in SIPCOT Industrial Complex, Hosur, as per lease deed dated 30 August 1988 to M/s.Milano Exports (P) Ltd. The lease deed contain the terms and conditions of allotment.

Relevant terms:-

15. The following clauses incorporated in the agreement are relevant for deciding this appeal.

> "19. The party of the second part shall not directly or indirectly transfer, assign, sell, encumber or part with his interest, either in part or in whole, in any manner whatsoever without the previous approval of the party of the First part in writing. It shall be open to the party of the First part

to grant or refuse approval or to impose any conditions it consider necessary and suitable.

25. Any change in the ownership or constitution of the party of the Second part, if it is a firm or a company, should be immediately communicated to the party of the Firm part and its written consent obtained in advance, during the currency of the lease.

29. The party of the First part shall reserve the right to impose any further conditions and stipulations or alterations in the regulation necessary at any time for the establishment of the industrial complex, to implement the conditions of this deed and for the benefit of the industrial complex as a whole."

16. The SIPCOT pursuant to the application submitted by the original allottee, for permission to transfer the lease to M/s.Emkay Automobile Industries (P) Ltd, called upon the allottee M/s.Milano Esports (P) Ltd. and the proposed transferee to pay a sum of Rs.4,65,000/- towards differential land cost. Both the parties agreed to the conditional order and paid the amount, resulting in executing a modified agreement on 2 September 2005 between SIPCOT and Emkay Automobile Industries (P) Ltd. Clause 4 of the modified agreement clearly provides that the original lease dated 30 August 1988 shall be in full force. In short, the conditions of the original lease dated 30 August 1988 in favour of the original allottee shall be treated as part of the modified lease agreement in favour of M/s.Emkay Automobile (P) Ltd.

17. When M/s.Emkay Automobile (P) Ltd. made a request to transfer the land to the appellant, the SIPCOT directed the company to pay a sum of Rs.35,01,700/- towards differential land cost. The demand was made to the subsequent allottee M/s.Emkay Automobile (P) Ltd., in exercise of the right conferred under the original agreement dated 30 August 1988 and the modified agreement dated 26 November 2008.

18. The approval for transfer of land was given to M/s.Emkay Automobile Industries (P) Ltd. There was no privity of contract between the appellant and SIPCOT at that point of time. Both the transferor and the transferee agreed to pay the amount. Thereafter, amount was remitted and a modified lease deed was executed on 26 November 2008. The appellant being a party to the contract, and bound by the undertaking given by the transferor originally, remitted the amount and took possession of the land.

19. When the appellant made an application for permission for granting sub lease of a portion of the land, SIPCOT calculated the license fee and made a demand. It was only at that point of time, the appellant filed the Writ Petition.

20. The original allotment was made on 29 August 1988 after collecting the then guideline rate from the allottee. The original allottee paid only a sum of Rs.60,000/- per acre. The allotment was made with a condition prohibiting transfer by way of sale or lease or in any other manner. The transfer of land by the original allottee to the predecessor in interest of the appellant would amount to a fresh allotment, giving right to the SIPCOT to claim the guideline rate as on the date of transfer. The SIPCOT calculated the guideline rate on the date of transfer and after deducting the amount paid by the original allottee at the rate prevailing at that point of time. determined the differential land cost. Similarly, when there was a transfer in favour of the appellant, once again the differential land cost was arrived at, taking into account the prevailing guideline rate. The SIPCOT was well within its authority to collect the differential land cost in view of clause 19 and 29 of the terms of allotment.

21. The predecessor-in-interest sold the land to the appellant for consideration. It was a business for the appellant and her vendor. The agreement provided for taking the specific approval of the SIPCOT for transfer. The SIPCOT as a condition precedent for granting approval for transfer, directed the vendor to pay the differential land cost. The appellant in her capacity as the purchaser, paid the said amount. It was a voluntary payment in consideration of the approval of transfer, granted by the SIPCOT. It would not therefore be possible to the appellant to avoid the liability at a later point of time.

22. The SIPCOT vide letter dated 13 November 2008, informed M/s.Emkay Automobile (P) Ltd. that approval for transfer is given, subject to three conditions, the first being payment of Rs.35,01,700/- towards differential land cost. Both the transferor and the transferee submitted letters of undertaking, agreeing to the terms of transfer and remitted the amount. The possession of the land was given to the appellant by SIPCOT on payment of the differential land cost. The appellant now seeks an order to avoid the payment and at the same time to retain the land.

23. It would not be possible for a party to the contract to avoid the unfavourable conditions and accept those favourable to them. The terms and conditions of the contract are binding on both the parties.

24. When the appellant made an application for sub letting a portion of the land, the SIPCOT made a demand for payment of license fee. However, there was no demand to pay the differential land cost. This is so because there was no transfer of the entire right, and the sub lease was for a limited period of three years.

25. It is for the appellant to accept the conditional approval given by SIPCOT. There is no compulsion to pay the amount unless approval is necessary for sublease. The appellant is not doing any charity by granting sub lease. It is a business

for the appellant. The SIPCOT is entitled to claim its license fee as a condition precedent for approval of sub lease.

The law:-

26. The Supreme Court in Assistant Excise Commissioner and others vs. Issac Peter, 1994(4) SCC 104, while interpreting the provisions of excise contracts, observed that when the contract between the parties is governed by the conditions of license and the counter agreement, they constitute the terms and conditions of the contract, which is binding both upon the Government and the licensee. The Supreme Court opined that neither of the parties can depart from the contract.

27. The Supreme Court in M/s.New Bihar Biri Leaves Co. and others vs. State of Bihar and others, 1981(1) SCC 537, by quoting the maxim "qui approbat non reprobat" (one who approbate cannot reprobate), observed that it is not open to a party to a contract to take a part of which it is advantageous to it and repudiate the other.

The Supreme Court said:-

> "It is a fundamental principle of a general application that if a person of his own accord, accepts a contract on certain terms and works out the contract, he cannot be allowed to adhere to and abide by some of the terms of the contract which proved advantageous to him and repudiate the other terms of the same contract which might be disadvantageous to him. The maxim is "qui approbat non reprobat" (one who approbate cannot reprobate). This principle, though originally borrowed from Scots Law, is not firmly embodied in English Common Law. According to it, a party to an instrument or transaction cannot take advantage of one part of a document or transaction and reject the rest. That is to say, no party can accept and reject the same instrument or transaction. Although a person cannot be debarred from enforcing his fundamental rights on the ground of estoppel or waiver, the aforesaid principle which prohibits a party to a transaction from approbating a party of its conditions and reprobating the rest, is different from the doctrine of estoppel or waiver."

28. The differential land cost was paid on 18 November 2008. The modified lease was executed on 26 November 2008, taking into account the payment made for grant of approval for transfer. The writ petition was filed only on 19 January 2015. The Writ Petition is therefore liable to be dismissed also on the ground of delay and laches.

29. The payment was not made with a protest. It was a voluntary payment made for taking possession of the land. It was only when the SIPCOT made a demand for payment of license fee for permitting sub lease, the appellant filed the Writ Petition.

30. The appellant was a party to a contract. The appellant is bound to adhere to the terms of the contract. The appellant invoked the writ jurisdiction under Article 226 of the Constitution of India to avoid the contractual obligation. The equity jurisdiction is not for absolving a party from the obligation incurred as a party to the contract. The Writ Petition in a case of this nature is not maintainable.

31. The Writ Petition filed by the appellant is a clear abuse of process of court. The learned Single Judge was therefore correct in dismissing the Writ Petition.

32. The intra court appeal is dismissed without liability to pay costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To
The General Manager II,
State Industries Promotion Corporation of Tamil Nadu Ltd.,
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Egmore, Chennai 600 008

+ 1 cc to Mr.K. maheswaran, Advocate Sr.22440

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NM(CO)
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