THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.5071 of 2013

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed requesting to grant a Writ of Mandamus declaring the action of the respondents in not extending to the petitioner the benefit of G.O.Ms.No.102, Industries & Commerce (INF) Department, dated 19.06.2012, and in issuing the proceedings in Lr.No.7132/ZO-TPT/IP-GMD/LP/2011/7060/9201, dated 24.11.2012, by the fifth respondent cancelling the allotment of land (adjacent to plot Nos.39-A & B) at Industrial Park, Gajulamandyam, Renigunta Mandal, Chittoor District, Andhra Pradesh, already made in favour of the petitioner, as illegal, discriminatory and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India and to consequently set aside the above said proceedings, dated 24.11.2012, and further declare that the petitioner is entitled to the benefit of the said G.O or in the alternative, direct the respondents to receive the balance amount and restore the allotment to the petitioner.

2. I have heard the submissions of *Sri K.S.Murthy*, learned counsel for the petitioner, of the learned Government Pleader for Industries & Commerce, appearing for respondents 1 to 3, and of Smt.A.Jayanthi, learned Standing Counsel appearing for respondents 4 and 5.

3. The petitioner is represented by its Proprietor. The case of the petitioner and the submissions made on its behalf, in brief, are as follows:

The proprietor of the petitioner belongs to Scheduled Caste community; he wanted to become an entrepreneur by establishing an industry. It is his life goal. He wanted to create living opportunities to several people. After completion of his Post Graduation in Law, he made an application to the Zonal Manager, APIIC Limited – the fifth respondent, requesting to allot land for establishment of Pharma Industry under the name and style "Lakshmee Pharma" for preparation of N.E.C.Blood Plasma & Estrogen etcetera. Along with the application, the petitioner submitted all relevant documents, including the project report. After considering the application and its enclosures, the fifth respondent made provisional allotment of land of an extent of Acs.4.63 cents or 18737.61 square metres situated at Industrial Park, Gajulamandyam, Renigunta Mandal, Chittoor District, at the rate of Rs.500/- per square metre vide proceedings, dated 25.05.2011. The demand notice, dated 13.09.2011, was issued by the APIIC Limited directing the petitioner to pay the 50% of the land cost. And, he was shown the plot. However, the petitioner raised doubts regarding the extent of land and the assessment of cost of the land. A suggestion was made to make a representation and seek extension of time for payment. And, hence, the petitioner made a representation.

On 23.09.2011, the officials of the APIIC Limited reassessed the extent of the land allotted and found that the extent is in excess of the originally allotted extent. The petitioner was informed to pay excess amount. Thus, the petitioner was required to pay Rs.1,22,00,000/-. The petitioner made representations, dated 02.12.2011 and 07.12.2011, requesting time for payment. The petitioner made a part payment of Rs.12,00,000/- along with the representation, dated 14.03.2012, and requested for further time to pay the balance amount. The petitioner was given three months time for payment and the proceedings, dated 04.04.2012, were accordingly issued. The petitioner was informed that the Government are evolving a policy to see that persons like the properties of the petitioner are given facility to pay the amounts in easy installments by rescheduling. While so, the Government issued G.O.Ms.No.102, dated 19.06.2012, explaining the procedure to be followed while allotting the land to SC/ST entrepreneurs and making it clear that the land will be allotted to such entrepreneurs on initial payment of 25% only of the total cost of the land and requiring the payment of balance amount within 10 years in installments. The said policy was evolved by the Government to develop and encourage entrepreneurs from the said communities. The Government are also giving various concessions and providing easy installment methods to facilitate such young entrepreneurs to get foothold at the initial stage. When the petitioner was about to pay the balance amount, the petitioner was informed about the latest policy and the G.O.Ms.No.102. The Proprietor of the petitioner was orally assured that the benefit under the said G.O will be extended to all the SC entrepreneurs, who were allotted lands prior to the issuance of the said G.O. Therefore, the petitioner made a representation, dated 20.06.2012, requesting to extend the benefit under the said G.O to the case of the petitioner. However, the respondents denied the benefit under the said G.O to the petitioner vide proceedings, dated 08.10.2012. The same was served upon the petitioner in the second week of November, 2012; the petitioner was also served with a show cause notice, dated 10.10.2012. Since it was originally sent, on 05.11.2012, it was received by the petitioner in the second week of November, 2012. The petitioner submitted a detailed explanation, dated 14.11.2012, to the respondents. The fifth respondent, without considering the said explanation, issued the proceedings, dated 24.11.2012, cancelling the allotment of the land. The petitioner approached the offices of the respondents and made a representation, dated 12.12.2012, along with the Demand Drafts for Rs.16,00,000/-. The Vice Chairman & Managing Director of APIIC Limited and its Zonal Manager refused to receive the same. Then the petitioner approached the Commissioner for Industrial Promotion – the second respondent, and made a representation, dated 12.12.2012, expressing his readiness to make part payment by means of Demand Drafts, which were already drawn for Rs.16,00,000/-. After considering the case of the petitioner, the second respondent issued proceedings, dated 14.12.2012, directing the fourth respondent to consider, before taking any decision, the petitioner's case and accept the amount and place the issue before the next Board Meeting. The petitioner approached the fourth respondent and tried to present the Demand Drafts. Inspite of the specific directions of the second respondent, the fourth respondent refused to take the same for reasons best known to him. No final orders were passed pursuant to the proceedings, dated 14.12.2012, of the second respondent. The petitioner came to know that the Commissioner of Industries in his proceedings, dated 25.06.2012, sought extension of G.O.Ms.No.102 to several persons in Prakasam District, whose cases are similar to the case of the petitioner and that a positive response was received in that regard. The petitioner could have been given extension enabling the petitioner to raise loans for payment of the balance amount. The APIIC, in its Board Meeting held on 22.12.2012, decided to extend the benefit under the G.O to the persons like the petitioner who were allotted land prior to issuance of G.O. The petitioner came to know that the benefit under the said G.O was extended to several persons who were allotted plots prior to the said G.O and who could not complete the payment. Their allotments were not cancelled.

One such proceeding is filed by the writ petitioner. However, the petitioner was denied similar concession. Therefore, the petitioner's case was treated in an arbitrary manner and the petitioner was discriminated. Hence, the present Writ Petition is filed.

4. The case of respondents 4 and 5, as per their counter affidavit and submissions made on their behalf, in brief, is as follows:

The main objects of the Corporation, among others, are acquisition of lands, development of lands into industrial area by providing infrastructural facilities and allotment of plots/sheds to entrepreneurs in the industrial areas for industrial purposes. The Corporation aims to accelerate development of industries in Andhra Pradesh to facilitate socioeconomic progress of the State. The petitioner was provisionally allotted land adjacent to Plot Nos.39-A & B at Industrial Park, Gajulamandyam, Chittoor District. The same was subsequently cancelled for non-fulfilment of terms and conditions of such allotment. The said land is in possession of APIIC Limited and is lying vacant. The offer is a conditional offer. Therefore, it does not confer any right on the writ petitioner, much less, enforceable legal right for seeking a Writ of Mandamus. The provisional allotment was subject to terms and conditions stipulated in the allotment letter. As per the stipulated conditions, an agreement of sale should be entered into. The petitioner did not even enter into an agreement of sale as per the conditions stipulated in the letter of allotment. Originally the cost of the land worked out to Rs.83,68,805/-, after rebate. The stipulated time for payment of the land cost expired by 03.09.2011. A notice, dated 23.09.2011, was issued requesting to pay, within seven days from the date of receipt of the said notice, 50% of the land cost with 16% interest per annum for the period of delay. On assessment of the extent of the land, amended orders were issued to the petitioner, on 23.09.2011; and, the sale consideration, on recalculation worked out to Rs.1,11,69,330/- instead of Rs.83,68,805/-. However, the petitioner, by way of two Demand Drafts, dated 28.01.2012 & 01.02.2012, paid only Rs.12,00,000/- towards part of the land cost. They were retained in the Zonal Office, Tirupati, without crediting the same to the account of APIIC. Having made the said payment, he made a representation through letter dated 22.03.2012, for extension of time for payment of balance amount towards land cost. Even that request was made belatedly without fulfilling the basic conditions. Keeping in view the fact that the applicant belongs to SC community, his request for extension of time was considered by the APIIC Limited. And, the petitioner was requested to pay the balance of land cost by June, 2012. However, he failed to pay the balance of the land cost even by the extended time of June, 2012. The contentions advanced placing reliance on G.O.Ms.No.102 do not improve the case of the petitioner, as the said G.O is not applicable to the case of the petitioner and as the instructions contained therein are prospective and not retrospective. The representation for adopting the guidelines issued in G.O.Ms.No.102 was duly examined. However, since the provisional allotment was made to the petitioner much prior to the said G.O., and as the time stipulated in the provisional allotment had already expired, the guidelines in the said G.O cannot be applied retrospectively. The said fact was informed to the petitioner vide letter, dated 08.10.2012. The petitioner, vide letter dated 12.12.2012, addressed to the fifth respondent (a copy of which is marked to the fourth respondent) requested to accept the payment of Rs.16,00,000/- sought to be made by means of two Demand Drafts towards part payment of land cost and for restoration of provisional allotment and sought for further extension of time. The petitioner cannot blame the respondents for failure on his part. The case of the petitioner has been examined in detail, and was placed in 193rd Board Meeting held on 22.12.2012, and it was decided by the Board that the request of the petitioner cannot be considered. Hence, the Board advised for taking necessary action as per rules. Accordingly, allotment was cancelled. The contention that the benefit of G.O.Ms.No.102 was extended to various persons to whom plots were allotted prior to the issuance of the said G.O and to persons who did not complete payments, is baseless and untenable. The contention that the petitioner's case was treated in an arbitrary manner and it was discriminated is false. Since the petitioner violated the terms & conditions of the provisional allotment, the allotment made to it was cancelled. G.O.Ms.No.102 is not applicable to its case. Hence, the Writ Petition may be dismissed.

5. The petitioner in the reply affidavit filed by its Proprietor reiterated that it was discriminated; that the directions of the second respondent are not obeyed; that the benefits of the G.O are applicable to the allottees like the petitioner; that a part payment of Rs.16,00,000/- sought to be made was refused to be received for reasons best known to the respondents; that the respondents are acting against the basic objects of the scheme under the G.O; that the benefits of the G.O are made applicable to the existing SC and ST allottees; that, therefore, it must be made applicable to the case of the petitioner also; and, that the respondents cannot act against the spirit of the G.O and deny the benefits to the petitioner by discriminating him.

6. Learned counsel for the petitioner, learned Government Pleader and the learned Standing Counsel advanced their arguments in line with the pleadings which are stated supra.

7. I have carefully gone through the material documents, which are referred to in the pleadings supra.

8. Admittedly, the allotment is a provisional/tentative allotment. Even as per the allotment letter, dated 25.05.2011, the petitioner was required to execute the outright sale agreement with appropriate stamp duty on full land cost at his own expenses and take physical possession of plot/land invariably within one month from the date of final allotment order. In the case on hand, neither the final allotment order was issued nor was the outright sale agreement executed. The payment is required to be made within 90 days from the date of receipt of the allotment letter, which is dated 25.05.2011. Though the petitioner was granted extension of time, the petitioner did not pay the amounts payable and went on seeking further extensions of time. The Proprietor of the petitioner was even requested, vide letter dated 13.09.2011, to pay, within seven days from the date of receipt of the said notice, 50% of the land cost and interest at 16% per annum for the period of delay. He was also informed by the said letter that on making payment of 50% of the land cost with interest, the request for extension of time for a further period of three months would be considered, and that on failure to do so, action would be taken to cancel the allotment without further notice to him. In his letter, dated 21.09.2011, the petitioner sought extension of time for a period of 90 days for payment of land cost and undertook to pay interest, if any, payable on the delayed payments. In view of the increase in land cost due to increase in the extent of land, the sale consideration was arrived at Rs.1,11,69,330/- instead of at Rs.83,68,805/-, and the petitioner was informed accordingly by letter, dated 23.09.2011, stating, *inter alia*, that the other conditions in the provisional letter remain unaltered. The petitioner again, by letter dated 02.12.2011, sought extension of 90 days more time and undertook to pay interest, if any, payable on the delayed payments. By letter, dated 07.12.2011, the petitioner informed the respondents that in view of the increase in the land cost at a time when the loan proposal is under consideration for sanction by the bankers, the process was stalled, and that it necessitated reworking of the proposal with the bankers. He further submitted in the said letter that the project proposal is under process with the bankers and sought a further time of 90 days to pay the entire contracted amount and the applicable interest amount payable for the period of delay. He also addressed a letter, dated 14.03.2012, requesting to accept the initial amount of Rs.12,00,000/- vide SBI Demand Drafts for the amount of Rs.5,00,000/- and Rs.7,00,000/-. The said Demand Drafts, though received, were not encashed and the amounts were not credited to the relevant account, according to the submissions of the respondents. The petitioner also addressed a letter, dated 22.03.2012, requesting further time of 90 days for paying the entire contracted amount as well as the applicable interest payable on account of the delay. By letter, dated 04.04.2012, the fifth respondent informed the petitioner that the request for extension of time upto 20.06.2012 for payment of total sale consideration along with interest @ 16% per annum was sanctioned and that, on failure to make payment, action would be taken to cancel the allotment of land without any intimation. By letter, dated 08.10.2012, the petitioner was informed that his representation, dated 20.06.2012, for adopting guidelines of G.O.Ms.No.102 was examined and not considered, as the allotment was given prior to the release of the G.O by the Government. The petitioner was thereafter served with a show cause notice, dated 10.10.2012, calling upon him to explain, within 15 days, the reasons as to why the allotment should not be cancelled for non-compliance with the terms & conditions of allotment order and for violation of terms and conditions. The petitioner issued a reply/explanation, dated 14.11.2012, reiterating that its case comes under the purview of G.O.Ms.No.102 and that it has got a *prima facie* case to get the concession under the said G.O, which is retrospective in operation. The petitioner also stated that if the provisional allotment order is cancelled without consideration of the case of the petitioner in terms of the G.O., it would suffer irreparable loss and appealed for application of the adoption of G.O.Ms.No.102 to its case. By impugned proceedings, dated 24.11.2012, the fifth respondent eventually cancelled the allotment for violation of the terms and conditions of allotment and forfeited the EMD paid by the petitioner and offered to refund as per the norms of the Corporation, the amounts paid by the petitioner. The petitioner addressed a letter, dated 12.12.2012, to the fifth respondent stating, *inter alia*, that it earlier paid Rs.12,00,000/- and that it has drawn two Demand Drafts dated 12.12.2012, on IOB, Tirupati Branch, for Rs.7,00,000/- and Rs.9,00,000/- each i.e., for a total sum of Rs.16,00,000/-, and that the same makes out 25% of the amount out of the total amount and requested to take back the cancellation letter and receive the said Demand Drafts for Rs.16,00,000/- and afford an opportunity by giving six months time to make payment of the balance 75% of the allotment amount with interest at 16% per annum. According to the petitioner, the said Demand Drafts were not received. No doubt, the Principal Secretary to the Government – the first respondent herein, addressed a letter to the fourth respondent (enclosing the representation, dated 12.12.2012, of the petitioner) requesting to consider the case of the petitioner and accept the amount and to place the issue before the next Board Meeting. The Commissioner of Industries also addressed a letter, dated 25.06.2012, to the fourth respondent referring to the representation of the SC entrepreneurs of Gullapalli Industrial Growth Centre, Prakasam District, and requesting the fourth respondent to consider the request of the SC entrepreneurs, who have already been allotted the land in the APIIC Growth Centre, Ongole, for payment of balance land cost in installments over a period of 10 years, and to make a clause in the sale agreement in order to make SC/ST entrepreneurs eligible for availing loan and incentives by furnishing the sale agreement. However, as per the submissions in the counter affidavit, when the matter was placed before the Board in its 193rd Board Meeting held on 22.12.2012, the Board decided that the request of the petitioner cannot be considered and the Board advised to take necessary action as per rules. It is pertinent to note that one R.K.Narra, who is said to be the President of the Dalit Indian Chamber of Commerce & Industry (DICCI), also addressed a letter to the first respondent – the Principal Secretary, *inter alia*, stating that the APIIC Limited has allotted lands to SC/ST entrepreneurs for establishing units and that some of them have paid initial amounts ranging from 5% to 25% towards land cost in various Districts of Andhra Pradesh; the above entrepreneurs had already contacted the commercial and private banks of their Districts; so far no bank has come forward to finance the units, and that, therefore, a request was being made to consider the request of the SC/ST entrepreneurs of Andhra Pradesh to renew the allotment of lands and apply G.O.Ms.No.102, dated 19.06.2012, to those of the allottees, who have made part payments towards land cost in the industrial estates in Andhra Pradesh. Be that as it may.

9. The petitioner specifically stated that the benefit of the aforesaid GO was given retrospective effect and that the benefits thereunder were extended to some of the entrepreneurs who are similarly placed as that of the petitioner and that its case was treated in an arbitrary manner and it is discriminated. As already noted, though it is stated in the counter affidavit that the Board in its 193rd meeting convened on 22.12.2012, held that the petitioner's case cannot be considered, a copy of the minutes of the Board are not produced. It is also not in dispute that the 2nd respondent after considering the case of the petitioner issued proceedings, dated 14.12.2012, directing the 4th respondent to consider the case of the petitioner and accept the amount. The petitioner specifically pleaded that its' demand drafts for a total sum of Rs.16,00,000/- when offered to be delivered were not received by the Vice Chairman & Managing Director of APIIC Limited and its Zonal Manager. It is also specifically pleaded that the 4th respondent refused to receive the demand drafts despite specific directions of the 2nd respondent. The said fact is not in dispute. The petitioner also stated that the Commissioner of Industries in his proceedings, dated 25.06.2012, sought extension of G.O.Ms.No.102 to several persons in Prakasam District, whose cases are similar to the case of the petitioner and that a positive response was received in that regard. This contention is not specifically denied in the counter affidavit.

10. On the above analysis of the facts and for the foregoing reasons, this Court is of the considered view that the writ petition can be disposed of with appropriate directions.

11. In the result, the Writ Petition is partly allowed directing the respondents to extend to the petitioner the benefit of G.O.Ms.No.102, Industries & Commerce (INF) Department, dated 19.06.2012, in the event the said benefit is already extended to the others who are similarly placed as that of the petitioner by giving it a retrospective operation, however, after recalling the cancellation proceedings for the said purpose. Nevertheless, it is made clear that if the benefit of G.O.Ms.no.102 afore-stated is not extended to others who are similarly placed as that of the petitioner, the petitioner may accordingly be informed and in which event, the impugned proceedings shall hold good for all purposes. The necessary decision either way shall be taken by the respondents within eight weeks from the date of receipt of a copy of this order; and, the decision taken be communicated to the petitioner within a week thereafter.

Pending miscellaneous petitions, if any, in this Writ Petition, shall stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

12.07.2018
vs