IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.01.2019

DELIVERED ON : 21.01.2019

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A.No.1617 of 2012
and M.P.No.1 of 2012
and WMP.Nos.6814 and 3742 of 2018

M/s.E.I.D.Parry (India) Ltd.
Regd. Office at No.234, Dare House,
Parry's Corner,
Chennai-600 001.
Sugar Mill at Ariyur,
Kandamangalam Post,
Puducherry-605 102.

..Appellant/2nd Petitioner

Vs.

1.Director of Sugar,
Department of Sugar,
No.690, Anna Salai,
Nandanam, Chennai-600 035.

2.M/s.Rajashree Sugars & Chemicals Ltd.,
Regd. Office at:
The Uffizi, 338, Avinashi Road,
Peelamedu, Coimbatore-641 004.
Tamil Nadu. Sugar Mill at:
Unit-II, Mundiyampakkam Post,
Villupuram-605 601.
Tamil Nadu.

..Respondents/Petitioner

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 20.07.2012 made in W.P.No.13796 of 2012, which was filed for the relief of a Writ of Certiorarified Mandamus calling for the records of the first respondent relating to the impugned letter dated 25.5.2012 bearing reference Rc.No.11647/Cane/2/2011 and quash the same as illegal and direct the respondents to refrain from interfering with the areas/villages allotted exclusively to the petitioner, as per G.O.Ms.No.1972, Agriculture dated 5.12.1977, G.O.Ms.No.104 dated 20.01.1981 and G.O.Ms.No.1326 dated 03.07.1984.

For Appellant : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.D.Ravichander

For Respondents : Mr.L.P.Shanmugasundaram,
Special Govt. Pleader for R1
Mr.Krishna Srinivas,
for M/s.Sairaj Associates for R2

JUDGMENT

M.SATHYANARAYANAN, J.

The second respondent in W.P.No.13796 of 2012 is the appellant. The second respondent in this Writ Appeal had filed the said Writ Petition, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the first respondent dated 25.5.2012 bearing reference Rc.No.11647/Cane/2/2011 and quash the same as illegal and direct the respondents to refrain from interfering with the areas/villages allotted exclusively to the petitioner as per G.O.Ms.No.1972, Agriculture dated 5.12.1977, G.O.Ms.No.104 dated 20.01.1981 and G.O.Ms.No.1326 dated 03.07.1984. The Writ Petition, after contest, came to be allowed, vide order dated 20.07.2012 and aggrieved by the same, the second respondent in the writ petition has filed this writ appeal.

2. Facts leading to the present litigation have been narrated in detail and in extenso in the impugned order passed in the writ petition, which is the subject matter of challenge in this writ appeal and therefore, it is not necessary to restate the facts once again, except to state few relevant facts for the disposal of this writ appeal.

2.1. It is the case of the second respondent/writ petitioner that it is a Public Limited Company, incorporated in the year 1985 and having it's head office at Coimbatore and operates three modern sugarcane based integrated bio-refinery complexes within the State of Tamil Nadu and one such unit in the State of Andhra Pradesh and it commenced it's operations during the month of January, 1990 and has a crushing capacity of 2,500 TCD (Tonnes of Cane Crushed per day). The second respondent/writ petitioner merged with M/s.South India Sugars Ltd., formerly known as M/s. South India Steel and Sugars Ltd. and as a result of the said transaction, it became the owner of the second unit in Mundiyampakkam in Villupuram District and the Unit has been set up in the year 1962 and it commenced operations in the year 1965 with a capacity of 1000 TCD. The said unit, at the time of merger, had a capacity of 3,500 TCD and after merger, the said capacity increased to 5,000 TCD.

2.2. It is further averred by the second respondent/writ petitioner that certain areas/villages were exclusively allocated to M/s. New Horizon Sugar Mills Ltd for the purpose of registering / drawing sugarcane and from the year 1983, certain villages were exclusively allocated to the sugar mill at Nellikuppam belonging to the second respondent. The details of the areas/villages allotted to M/s.South India Steel and Sugars Limited are as below:

> " (a) All the Revenue Villages in Villupuram Taluk lying to the west of the Western Boundary between Pondy State and Madras State excluding (i) Gangarampalayam Revenue Village including its hamlets (ii) Pallinelliyanur and its hamlets;
>
> (b) The following enclave of Villages of Madras State : Kodikur, Mutrampet, Thirumangalam, Nergunam, Chitlampet, P.S.Palayam (Madras State territory Only) and Vadanur (Madras territory only);
>
> (c) On the west of Villupuram, Trichy Trunk Road of Villages, all villages North of Penniyar river and between Villupuram Trichy Road and Valavanur, Melpattampakkam Road;
>
> (d) All Villages north of Malatar river upto Cuddalore Taluk Limits; and
>
> (e) The entire Gingee Taluk."

The following villages/areas were allotted to the sugar mill at Nellikuppam belonging to M/s.E.I.D. Parry (India) Limited, the second respondent herein and the details of which are given below:

> "(a) The entire Chidambaram Taluk;
>
> (b) The entire Cuddalore Taluk excluding Villages North of Malatar River from where the M/s.New Horizon Sugar Factory is drawing supplies of cane by agreement with the sugar mill at Nellikuppam belonging to M/s.EID Parry (India) Limited ;
>
> (c) All villages sought of the boundary allocated to M/s. South India Steel and Sugars Limited (mentioned above) upto Cuddalore Taluk limits."

2.3. The appellant herein had purchased the assets of M/s.New Horizon Sugar Mills Ltd. in an auction conducted by a bank and the assets came to be registered in their names. M/s.New Horizon Sugar Mills, Pondicherry is drawing cane by agreement with the sugar mill at Nellikuppam belonging to the appellant herein except Shri Mushnam and Senthiathope Firkas and all the villages south of the Malatar river, boundary mentioned for M/s.South Steel and Sugars Ltd. except Madam hamlet of Vadivambalam in Villupuram Taluk with effect from 01.01.1978.

2.4. It is the case of the second respondent/writ petitioner that in terms of the above cited Government Orders, lands which were allocated to the erstwhile M/s.South India Sugars Ltd. (formerly known as M/s. South India Steel and Sugars Ltd.) has been extended to the petitioner and consequently enures to the exclusive benefit of the petitioner and the details of which are given below:

"1.West of Western Boundry Between Pondy State and Madras State Excluding (i) Gengarampalayam Revenue Villages And its Hamlets (ii) Pallaineliyanur And its Hamlets:

A.V.Budur
B.Valvanur
C.Arpisampalyam
D.Siruvanthadu
E.Motchakulam
F.Parasureddypalyam
G.Elangadu
H.Sengadu

2.Enclave Villages of Madras State:

A.Vadhanur
B.V.Nergunam
C.Mutrampattu
D.Kodukkur
E.Chithalampattu
F.Thirumangalam

3.West of Villupuram - Trichy Trunk Road all Villages North of Pennaiyar River

A.Pidagam
B.Maragadhapuram
C.Kondangi
D.Kandampakkam
E.Kandamanadi
F.Valuthareddy
G.Puntottam
H.Villupuram
I.Viratikuppam

J.Alattur
K.Kalpattu
L.Siruvakkur
M.Vedampattu
N.Nannadu
O.Sattipadu
P.Orukodi
Q.Venmani Attur
R.Vallam
S.Perumpakkam
T.Venatesapuram
U.Kottamangalam
V.Teli
W.Manbalampattu
X.Kuppam

4. Between Villupuram Trichy Trunk Road And Valavanur Mel Melpattampakkam Road, All Villages North of Malatar River Up to Cuddalore Taluk Limits:

A.Panchamadevi
B.Malavarayanur
C.Salayampalayam
D.Nanatampalyam
E.Panampattu
F.Anangur
G.Agaram
H.Pillur
I.Salamedu
J.Kavinipakkam
K.Chittatur
L.V.Ariyalur
M.Kolatur"

2.5. M/s.New Horizon Sugar Mills Ltd. made a request to the Commissioner of Sugars, Chennai -600 035 for re-allotment of Thathampalayam Village for drawal of cane and the said request came to be rejected, vide communication dated 10.03.1995 and making a challenge to the said order, M/s.New Horizon Sugar Mills Ltd. had filed W.P.No.5838 of 2018 seeking a Writ of Mandamus to consider and dispose of their representations dated 13.11.1990 and 14.06.1991 for re-allocating the additional reserve areas and it was entertained.

2.6. On behalf of the Secretary to Government of Tamil Nadu, Industries Department, Chennai and Commissioner of Sugar, Chennai, a counter affidavit has been filed stating among other things that the claim for additional area is not acceptable since they had enough area and any further increase will have adverse effect in the Cooperative Sugar Mill in Puducherry and will affect its viability and even on merits, the second respondent/writ petitioner is not entitled to any additional area since they are viable and have adequate cane area to raise sugarcane for meeting full capacity and this Court, vide order dated 20.01.2003 had disposed of the writ petition directing the Director of Sugar to consider and dispose of the representations submitted by M/s.New Horison Sugar Mills Ltd. and accordingly, the Director of Sugar, vide proceedings dated 09.05.2003 has rejected the representations and also stated that there shall not be any revision in the cane areas already demarcated among the sugar mill at Nellikuppam belonging to M/s.E.I.D. Parry Co., and M/s.New Horizon Sugar Mills and M/s. South India Sugars Limited.

2.7. The second respondent/writ petitioner expressed grievance that despite the said rejection, attempts are made to expand the area and it was also brought to the knowledge of the Collector of Villupuram District, vide representation dated 03.12.2011. The Director of Agriculture, Union Territory of Puducherry as well as the Director of Sugar, Chennai, has sent a communication dated 26.08.2011 and 14.11.2011 to the appellant herein to desist from registering/drawing sugar cane from the areas demarcated to the petitioner/second respondent herein with a further direction to the second respondent to de-register the cane area allotted to the petitioner and handover the same and furnish an action taken report.

2.8. It is further averred by the second respondent/writ petitioner that a Triparty meeting was conducted by the Collector of Villupuram District to substantiate the areas/villages allotted to the parties and a report was also prepared and circulated and according to the second respondent/writ petitioner, it is contrary to the factual position and the Government Orders cited above and the Collector of Villupuram District has issued the impugned letter dated 25.05.2012 stating that the areas/villages allotted to the petitioner/second respondent may be declared as a common area for both the mills belonging to the second respondent/writ petitioner and the appellant herein and supplying of cane to any of the aforesaid mills may be left to the choice of the farmers and it is also subject to the decision taken by the Area Delimitation Committee and the said decision is contrary to the relevant Government Orders and Sugar Control Order.

2.9. The second respondent/writ petitioner challenging the legality of the order of the first respondent, namely the Director of Sugar dated 25.05.2012, filed W.P.No.13796 of 2012 and it was entertained.

2.10. The second respondent in the writ petition/appellant herein had filed a counter affidavit stating among other things that 14 villages which are presently in dispute in the Valavanur area, namely V.Budhur, Valavanur, Arpisampalayam, Pakkamedu, Kudumiyankuppam, Malrajankuppam, Poovarasankuppam, Pallikondapuram, Pudupalayam, Siruvanthadu, Thondireddypalayam, Parasureddipalayam, Elangadu and Sengadu are not located between Villupuram-Trichy road and Valavanur-Melpattampakkam Road and hence the above 14 villages do not come under the cane area allotment order 12.09.1963. It was further averred by the appellant/second respondent in the writ petition in the counter affidavit that G.O.Ms.No.1972 dated 05.12.1977 did not state about such disputed 14 villages and the second respondent also took a stand that by way of interim measure the area was declared as common and choice were given to sugar growers to supply to either of the mills and the Area Delimitation Committee was also directed to take a call as to the allotment of the said order noway prejudicial to the interest of the writ petitioner.

2.11. The second respondent/writ petitioner has filed a reply taking the stand that the areas, namely Siruvanthdu, Pudupalayam, Elankadu, Budur, Valavanur, Parasureddipalayam, Arpisampalayam were demarcated to M/s.South India Sugars Limited and as such, it cannot be termed as disputed area and even otherwise, the Area Delimitation Committee cannot go into that aspect and prays for allowing of the writ petition.

2.12. The learned Single Judge, after taking note of the averments made in the counter affidavit, reply affidavit and on going through the files and the report/letter of the Collector of Villupuram District dated 23.12.2011, observed that the State shall do the delimitation exercise by appointing a Committee comprising of the Joint Director of Agriculture as Chairman and the Deputy Director of Horticulture, P.A. (Agri) to the Collector, Villupuram Tahsildar, Block Development Officers of Vikkiravandi and Kandamangalam and Assistant Directors of Agriculturre, Koliyanur and Kandamangalam as it's members and the Committee, after conducting inspection, has given an opinion that the disputed area falls within the jurisdiction of M/s.Rajshree Sugars & Chemicals Limited and M/s.New Horizon Sugar Mills Ltd., which was the precursor of the appellant herein, was operating the disputed area since its inception upto the year 2004 and M/s.Rajshree Sugars and Chemicals Limited entered this area only during the year 2005, when the the above Mill fell sick.

2.13. The learned Judge found that since the Committee after conducting an elaborate exercise, has reached the conclusion that the disputed area falls within the cane area of the second respondent/writ petitioner herein and the said fact has not been properly looked into by the first respondent, namely the Director of Sugar and in the light of the same, the said official cannot have any jurisdiction to interfere with the order of the Area Delimitation Committee. The learned Judge has also taken note of the counter affidavit of the Commissioner of Sugar filed in W.P.No.5838 of 1996 which was filed by the Precursor of the appellant, namely M/s.New Horizon Sugar Mills Limited and found that the said mill cannot draw cane from the area allocated to M/s.South India Sugars. The learned Judge has also taken note of the fact that the appellant herein merely purchased the assets of M/s.New Horizon Sugar Mills Limited and therefore, they cannot be termed as successor-in-interest and as such, they cannot have any right in the area allocated to the writ petitioner/second respondent herein and therefore, allowed the writ petition by setting the order passed by the Director of Sugars dated 25.05.2012. The second respondent in the writ petition, aggrieved by the said order, has come forward with this Writ Appeal.

3. Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the appellant/second respondent in the writ petition would submit that the Director of Sugars, after going through the report of the Collector of Villupuram District, has found that the problem as to the allocation of disputed area requires to be solved by the Area Delimitation Committee and till such time, it should be declared as common order and option was given to agriculturists to supply sugar to either of the mills and it cannot be found fault with for the reason that the said order enure to the benefit of both parties. It is the further submission of the learned Senior Counsel appearing for the appellant that in terms of Clause 6 of the Sugarcane (Control) Order, 1966, the first respondent has the requisite jurisdiction to regulate the distribution and movement of sugar and in exercise of such Statutory power, the impugned order came to be issued and the learned Judge has failed to appreciate the fact that in exercise of such statutory power, the first respondent has erroneously reached the conclusion merely based on the report of the District Collector before passing the impugned order.

4. It is also the submission of the learned Senior Counsel appearing for the appellant that even if the Area Delimitation Committee gives recommendation, it is not binding on the Commissioner of Sugar, as he has to independently take a call in terms of Clause 6 of the Sugarcane (Control) Order, 1966. It is also contended by the learned Senior Counsel appearing for the appellant that admittedly the precursor of the appellant, namely M/s. New Horizon Sugar Mills Limited was supplied with sugarcane from the farmers in the disputed area in Valavanur Village between 1958 till 2004-2005 and thereafter only started

supplying to the second respondent/writ petitioner from the year 2005 and the said fact has been taken into consideration by the first respondent and rightly reached the conclusion in the impugned order and it cannot be faulted with. The learned Senior Counsel appearing for the petitioner further submitted that even on facts, the second respondent/writ petitioner is having enough supply to fulfill the crushing capacity and as such, they cannot be said to be prejudiced on account of passing of the impugned order and prays for setting aside the impugned order passed in the writ petition and prayed for dismissal of the writ petition. The learned Senior Counsel appearing for the appellant, in support of his submissions, placed reliance upon the decision in Nadippisai Pulavar K.R.Ramasamy Cooperative Sugar Mills Cane Growers Association v. Union of India [(2010) 6 MLJ 251].

5. Per contra, Mr.Krishna Srinivas, learned counsel appearing for the second respondent/writ petitioner has drawn the attention of this Court to the order of the first respondent dated 09.05.2003 addressed to the precursor of the appellant, namely M/s.New Horizon Sugar Mills Limited and would submit that a specific request was made by them to demarcate the lands in seven villages which include the alleged disputed area in Valavanur Village came to be rejected and admittedly, the said order has not been put to challenge by the precursor of the appellant herein. It is the further submission of the learned counsel appearing for the second respondent that since they started barging into the allocated area of the second respondent/writ petitioner and started drawing sugarcane, the Director of Agriculture cum Cane Commissioner, Government of Puducherry and the Director of Sugar, vide communications dated 26.08.2011 and 14.11.2011 addressed to the appellant herein asking them to desist from doing so and the report of the Triparty Committee meeting convened by the Collector of Villupuram District would also disclose that he has formed a Committee comprising of officials from various departments and rightly reached the conclusion that the disputed villagers were allocated to M/s.Rajshree Sugars and Chemicals Limited and since the learned Judge found that the said report has not been taken into consideration in proper perspective by the first respondent, has rightly interfered with the said order.

6. Insofar as the exercise to be carried out by the Area Delimitation Committee is concerned, the learned counsel appearing for the second respondent has drawn the attention of this Court to G.O.Ms.No.217, Industries (MICI) Department dated 18.08.1997 and would submit that as per paragraph No.3 of the said Government Order, the Area Delimitation Committee shall continue to examine the area delimitation proposals in respect of new Sugar Mills and Sugar Mills under Private Sector and only after demarcation of the areas between the existing sugar mills,

the Director of Sugar/Cane Commissioner can do so and as such, the reliance placed by the learned Senior Counsel appearing for the appellant to the decision in Nadipissai Pulavar K.R.Ramasamy case (cited supra) has no application to the case on hand. It is also the submission of the learned counsel appearing for the second respondent that the proceedings before the Commissioner of Sugar under Sugarcane (Control) Order, 1966 is in the nature of quasi-judicial proceedings and in the light of the above said Government Order, the Director of Sugar and the Commissioner of Sugar cannot exercise such a power and would submit that on account of the interim orders in operation, the appellant continued to get sugarcane from farmers in respect of the area allocated to the second respondent/writ petitioner and therefore, prays for dismissal of the writ appeal with exemplary costs. The learned counsel appearing for the second respondent, in support of his submissions, placed reliance upon the decision in The Purtabpore Co. Ltd., v. Cane Commissioner of Bihar and Others [1969 (1) SCC 308].

7. This Court has considered the rival submissions and also perused the entire materials placed before it.

8. Admittedly, the precursor of the appellant had approached the Director of Sugar for demarcating the areas allocated to the appellant herein as well as to M/s.South India Sugars and since it was not considered, filed W.P.No.5838 of 1996 and this Court, vide order dated 20.01.2003 has directed the respondents to consider and dispose of the representation submitted by M/s. New Horizon Sugar Mills Limited - precursor of the appellant herein within a stipulated time and in compliance of the same, the Director of Sugar has considered the said request and vide communication dated 09.05.2003 has rejected the said request. It is also pertinent to point out at this juncture that according to the appellant, the disputed area/village falls within Valavanur i.e., one of the areas allocated to the precursor of the second respondent/writ petitioner, namely M/s. South India Sugars and in the light of the rejection of the request made by the precursor of the appellant, the alleged disputed area falls within the jurisdiction of M/s.South India Sugars Limited and the said company got merged with the second respondent/writ petitioner. It is also to be noted at this juncture that despite the said rejection order, the precursor of the appellant did not make a challenge to the communication of the second respondent dated 09.05.2003 and it has become final.

9. The second respondent/writ petitioner alleging that the appellant herein after purchasing the assets of M/s. New Horizon Sugar Mills Limited, started registering cane growers and since the area falls within their jurisdiction, given complaints/representations to the Director of Sugars, Government

of Puducherry as well as the Director of Sugars, Government of Tamil Nadu, who vide communications dated 26.08.2011 and 14.11.2011 respectively had directed the appellant herein not to do so. Simply because the precursor of the appellant herein was operating the disputed area upto the year 2004, the same will not cloth them with any right indefinitely and as already pointed, their request to allocate the disputed area of Valavanur was also rejected by the first respondent, vide communications dated 09.05.2003 and it has become final in the absence of any challenge to the said order. Once again, the Director of Sugars has considered the dispute between the second respondent and the appellant herein and also taken note of the fact as to the constituted of Committee by the District Collector, Villupuram and conducting of Triparty Committee meetings on 08.12.2011 and concluded that the disputed area may be allotted as common area till the Area Delimitation Committee carries out the exercise and option was given to cane growers to supply cane to any one of the two mills.

10. In the considered opinion of the Court, the impugned order passed by the first respondent have not at all taken into consideration the contents of the report of the Collector of Villupuram District and the learned Judge on summoning the original files had gone through the said detailed report and found that the Collector of Villupuram District has appointed a Committee comprising of the officials of concerned departments and the said Committee, after inspection, has submitted a report stating that the disputed area falls within the jurisdiction of the second respondent/writ petitioner.

11. The learned Judge has rightly taken note of the fact that the said material part of the said report have not at all been taken into consideration by the first respondent, while passing the impugned order and as such, the first respondent cannot have any jurisdiction to interfere with the order of the Area Delimitation Committee.

12. The decision in Nadipissai Pulavar K.R.Ramasamy Cooperative Sugar Mills Cane Growers Association v. Union of India [(2010) 6 MLJ 251] relied on by the learned Senior Counsel appearing for the appellant has no application to the case on hand for the reason that it is a dispute between Cooperative Sugar Mill and Private Sugar Mill and the learned Judge found that the constitution of Area Delimitation Committee by the Government Order is valid.

13. As already pointed out, in the light of G.O.Ms.No.217, Industries (MICI) Department dated 18.08.1997, the Area Delimitation Committee is having jurisdiction to examine the area delimitation proposals in respect of new Sugar Mills and Sugar Mills under Private Sector. In the facts and

circumstances of the case, there need not be such an exercise by the Area Delimitation Committee for the reason that the Director of Sugars, vide order dated 09.05.2003 has already informed the precursor of the appellant, namely M/s.New Horizon Sugar Mills Limited and succeeded by the second respondent/writ petitioner on account of the merger that there will not be any revision in the cane areas already demarcated among M/s.E.I.D. Parry & Co., M/s.New Horizon Sugar Mills Limited and M/s.South India Sugars Ltd.

14. The decision in The Purtabpore Co. Ltd., v. Cane Commissioner of Bihar and Others [1969 (1) SCC 308], relied on by the learned counsel appearing for the second respondent/writ petitioner would say that the proceedings before the Cane Commissioner are quasi judicial proceedings and in the absence of any challenge to the said order, it has become final.

15. The first respondent has filed a counter affidavit dated 05.02.2016 in this writ appeal, wherein he took a stand that the report of the Collector of Villupuram dated 23.12.2011 was based on the findings of the Committee constituted by the District Collector, Villupuram and the learned Judge found that the said report came to be given after inspection and the findings reached by the said committee that the alleged disputed area has been allocated to M/s.South India Sugar Mills, which got merged with the second respondent/writ petitioner.

16. This Court, on an independent application of mind to the entire materials placed and after bestowing it's best attention to the rival submissions, is of the considered opinion that there is no error apparent or infirmity in the reasons assigned by the learned Judge in allowing the writ petition and finds no merit in this Writ Appeal.

17. In the result, this Writ Appeal is dismissed, confirming the order dated 20.07.2012 made in W.P.No.13796 of 2012. In the light of the dismissal of the writ appeal, the interim order already granted in M.P.No.1 of 2012 is vacated and consequently, M.P.No.1 of 2012 and other connected miscellaneous petitions shall stand dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Jvm

To

1.Director of Sugar,
Department of Sugar,
No.360, Anna Salai,
Nandanam, Chennai-600 035.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.3891

+1cc to Mr.Sai Raj Associates, Advocate, S.R.No.3906

+1cc to the Government Pleader, S.R.No.8073

W.A.No.1617 of 2012

PP(CO)
GSP(25/02/2019)