

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on: 06..09..2019
Orders Pronounced on: 30..09..2019

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.14640 of 2008

M/s.Cenza Technologies Private Limited,
Rep. by its Vice President (Operations),
Mrs.G.Rajalakshmi,
No.79, Chamiers Road,
Chennai 600 028.

... Petitioner

-Versus-

1.The Chairman cum Managing Director,
State Industries Promotion Corporation of
Tamil Nadu (SIPCOT),
19-A, Rukmani Lakshmipathy Road,
Post Box No.7223, Egmore,
Chennai 600 008.

2.The Member Secretary,
Mamallapuram Municipality,
No.131, GST Road, Chengalpet.

3.The Commissioner,
Tiruporur Panchayat Union Office,
Chengalpet District.

[Respondents 2 and 3 were impleaded as per order
dated 30.01.2019 made in W.M.P.No.2623 of 2019]

सत्यमेव जयते

... Respondents

Writ Petition filed under Article 226 of the Constitution of
India, praying to issue a Writ of Certiorari calling for the
records pertaining to the impugned order dated 03.06.2008 in D-
II/ITP/CTPL/07 on the file of respondent and to quash.

For Petitioner

: Mr.M.K.Kabir,
Senior Counsel for
Mr.S.Rajasekar

For Respondent(s)

: Mrs.Sudharshana Sundar for
R1

For Petitioner

: Mr.M.K.Kabir,
Senior Counsel for
Mr.S.Rajasekar

Mr.D.Suriya Narayanan, GA
for RR2 and 3

ORDER

This writ petition has been filed challenging the order passed by the 1st respondent cancelling the order of allotment of plot granted on lease to the petitioner.

2. The case of the petitioner in brief is as follows: The petitioner is a company registered under The Companies Act, 1956. The 1st respondent - State Industries Promotion Corporation Of Tamil Nadu (SIPCOT) allotted Plot No.A-28 comprised in S.No.240 (part) in the IT Park at Siruseri, Chengalpattu Taluk, Kancheepuram District, measuring about 1 Acre of land on lease for a period of 99 years for setting up a Software Project for Data Processing, Data Entry, Data Conversion, Data Analytics for Financial Legal Health Care and other sectors in their allotment order Nos.D-II/ITP/AEPL/2004 dated 02.04.2004 and 28.03.2005.

3. Thereafter, the petitioner and the 1st respondent entered into a lease agreement. As per Clause 18 of the lease agreement, the petitioner should commence construction activities within a period of six months and complete the same within a period of 24 months from the date of allotment. While so, pursuant to the allotment, after obtaining permission from the SIPCOT, the petitioner mortgaged the site with a Nationalized bank for financial assistance. Thereafter, on 04.09.2006, the petitioner submitted a proposed plan for the building to be constructed at the subject land for which the respondent sent a reply on 06.09.2006, pointing out certain defects in the proposed plan and also advised the petitioner to get necessary building plan approval from the local body. In compliance with the above directions, on 13.09.2006, the petitioner applied to the 2nd respondent - Member Secretary, Mamallapuram Local Authority at Chengalpattu, for plan approval through the 3rd respondent - Commission of Thiruporur Panchayat. On 25.01.2007, the petitioner also obtained a No Objection Certificate from the Fire Department and submitted the same to the 3rd respondent.

4. While so, on 13.04.2007, the 3rd respondent requested further information / documents and the application for building plan permission is pending with the 2nd respondent. In the mean while, the petitioner also applied to the Tamil Nadu Electricity Board for temporary electricity service connection and commenced

the construction of compound wall. The petitioner company have also acquired the plant and machineries, generators , etc., for commencement of their project. The petitioner company was waiting for building plan approval from the local body for the construction of buildings.

5. In the mean while, on 13.06.2006, the 1st respondent had issued a show cause notice asking the petitioner to show cause as to why the allotment of the subject land should not be cancelled for non-compliance of the terms of the lease agreement for which the petitioner sent a reply on 28.08.2006, explaining the circumstances for the delay. In fact, as directed by the Senior Project Manager of SIPCOT, the petitioner also appeared in person before the General Manager and satisfactorily explained the difficulties in completing the construction activities. Pending building plan approval, the respondents also communicating with the petitioner requesting the details of the quantum of the discharge of treated effluent from the proposed unit in the subject land. On 19.05.2008, the 1st respondent requested the petitioner to contribute an additional sum of Rs.1,70,000/- for development of SIPCOT IT Park road works which was promptly complied with by the petitioner on 28.05.2008 itself. While things stood thus, without issuing any further notice nor conducting any enquiry, the 1st respondent communicated the impugned proceedings dated 03.06.2008 whereby the allotment of plot made in favour of the petitioner company was cancelled on account of non compliance of the conditions in the lease agreement and the petitioner was directed to execute a deed of cancellation within a period of 15 days. It is this proceeding which is now under challenge in this writ petition.

6. The 1st respondent - SIPCOT filed its counter affidavit inter alia contending that the writ petition itself is not maintainable. According to the respondent, the SIPCOT developed IT park in Siruseri and allotted a plot bearing No.A-28 (Old NO.A-50) measuring about 1 Acre to M/s.APCOM Exports Private Limited on 02.04.2004. Later on, in view of the request of M/sAPCOM Exports Private Limited, the name of the petitioner company was approved for allotment by proceedings dated 28.03.2005. Thereafter, the petitioner company executed a lease agreement on 04.05.2005 agreeing for all the terms and conditions therein. Thereafter, the possession of the plot was handed over to the petitioner on 27.07.2005. As per the terms and conditions of the allotment, the petitioner should take possession of the site within 105 days of the allotment and commence construction within 6 months, complete the same within 24 months and also commence production within 30 months from the date of allotment of plot. But, the petitioner company did not take any effective steps to commence construction activities in the allotted plot.

7. In the said circumstances, a show cause notice was issued on 31.01.2006 for which the petitioner issued a reply on 07.03.2006 requesting time for the implementation of the project till July 2006 in anticipation that US partner would invest by then. Even thereafter, there was no progress, hence, the 1st respondent issued a notice granting 90 days time to the petitioner to rectify the defect for which the petitioner sent a reply on 13.09.2006 stating that the construction would be started by 15.10.2006 and completed by 05.10.2007 and the production activities would be commenced by 31.06.2008. Subsequently, by letter dated 04.09.2007, the petitioner requested for 12 months time for compliance. Even within the extended period, no construction was commenced. As there was a demand for allotment of the industrial plots in the IT Park at Siruseri, the plot allotted to the petitioner was not utilized and the terms and conditions of the allotment were not complied with, the respondent initiated steps to cancel the order of allotment. The plot allotted to the petitioner was kept vacant for more than four years without any developmental activity which is against the interest of the respondents. Since there was no concrete activity in implementing the terms and conditions of the allotment order and the lease agreement, the 1st respondent cancelled the order of allotment on 03.06.2008.

8. I have heard the learned senior counsel for the petitioner, the learned counsel appearing for the 1st respondent, and the learned Government Advocate appearing for the respondents 2 and 3 and also perused the records carefully.

9. The learned senior counsel appearing for the petitioner submitted that after the order of allotment, the petitioner company have taken all earnest steps to commence the construction activities. After getting permission from the 1st respondent, the petitioner company have mortgaged the subject matter of land with a Nationalized bank for financial assistance. The petitioner company have also applied to the local planning authority concerned for building plan permission after obtaining necessary No Objection Certificate from the Fire Department and the other authorities. The application submitted by the petitioner for building plan permission is still pending for consideration with local planning authority.

10. While the matter stood thus, a show cause notice was issued on 13.06.2006 and pursuant to the show cause notice, the petitioner appeared before the SIPCOT and gave proper explanation and sought more time for the commencement of the construction activities. thereafter, the petitioner continuously communicating with the SIPCOT and the petitioner company were required to submit the details of the quantum of the discharge

of treated effluent from the proposed unit in the subject land and were also directed to pay a sum of Rs.1,70,000/- for development of SIPCOT IT Park road works and the same was promptly complied with by the petitioner. In the above circumstances, on 04.09.2007, the petitioner sent a communication requesting to extend the time for further 12 months and no order was passed on the same, the same has been pending with the 1st respondent. While so, all of a sudden, the 1st respondent issued the impugned proceedings cancelling the order of allotment without there being any notice or enquiry whatsoever and without considering the subsequent developments and in total violation of principles of natural justice.

11. Per contra, the learned counsel for the 1st respondent submitted that the site was allotted to the petitioner with specific conditions that the petitioner company should commence the construction activities within 6 months from the date of order of allotment and complete the same within a period of 24 months and commence production within 30 months from the date of allotment of plot. For more than 3 years from the date of order of allotment, the petitioner did not take any concrete steps to comply with the conditions of the lease agreement and commence the construction activities. Therefore, a show cause notice was issued, even after giving 90 days time, the petitioner company did not commence the construction activities and kept the allotted site idle. In the above circumstances, invoking the condition of the lease agreement, the impugned order has been passed and there is no illegality in the same.

12. I have considered the rival submissions and also perused the records carefully.

13. The primordial contention of the learned senior counsel for the petitioner is that the impugned order has been passed after two years of issuing the show cause notice and without conducting any enquiry whatsoever. The 1st respondent has failed to consider the subsequent developments and also the request made by the petitioner company for extension of time for commencement of building activities and the order has been passed in total violation of principles of justice.

14. Admittedly, the site was allotted on 28.03.2005. As per clause 18 of the lease agreement, the petitioner company should commence the construction within 6 months from the date of order of allotment and complete the same within 24 months. The lease agreement further stipulates that before the commencement of the construction work on the allotted site, the petitioner company should strictly follow the building rules prescribed by the authorities and the building should be constructed in conformity with the by-laws of the local body and regulations

imposed from time to time as well as the to the rules and regulations in force.

15. Since the petitioner failed to commence the construction work, a show cause notice was issued by the 1st respondent on 13.06.2006 giving 90 days time to rectify the defects for which the petitioner said to have sent a reply explaining the difficulties and thereafter, the 1st respondent sent another communication to the petitioner on 06.09.2006 requiring some modification in the building plan to be obtained from the local body. Pursuant to the such directions, the petitioner company have applied for building plan permission from the local body after obtaining necessary NOC from the Fire Department and the other authorities and the same is pending consideration with the local body. Thereafter, it appears that the petitioner approached the 1st respondent on 04.09.2007 seeking 12 months for compliance of the requirements and same is pending with the 1st respondent and no order has been passed on the same till the impugned order came to be passed. While so, subsequently, the 1st respondent directed the petitioner to pay a sum of Rs.1,70,000/- for development of SIPCOT IT Park road on 19.05.2008 and also required the petitioner company to furnish the details of the quantum of the discharge of treated effluent from the proposed unit. The petitioner company paid the required amount which is not in dispute. There were continuous communications between the petitioner and the 1st respondent regarding the commencement of the construction activities. When that being so, all of a sudden, the 1st respondent has issued the impugned proceedings cancelling the allotment of site nearly two years after the show cause notice dated 31.01.2006 and 90 days notice dated 13.06.2006. As rightly pointed out by the learned senior counsel, the impugned order has been passed without considering the subsequent developments, pendency of the application for building plan permission with the respondents 2 and 3 and also the request made by the petitioner company by letter dated 09.04.2007 seeking extension of 12 months time for completion of construction activities.

16. Admittedly, the impugned order was not preceded by any enquiry pursuant to the show cause notice issued in the year 2006. In the above circumstances, this court is of the considered view that the impugned order has been passed in total violation of the principles of natural justice and also in total non application of mind. Thus, the impugned order is liable to be set aside on the sole ground of violation of principles of natural justice and the matter requires reconsideration.

In the result, This writ petition is allowed and the impugned order of the 1st respondent is set aside and the matter is remitted to the 1st respondent with a direction to conduct an

enquiry by giving an opportunity to the petitioner company and pass an appropriate order on merits and in accordance with law. No costs.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

kmk

To

1.The Chairman cum Managing Director,
State Industries Promotion Corporation of
Tamil Nadu (SIPCOT),
19-A, Rukmani Lakshmipathy Road,
Post Box No.7223, Egmore,
Chennai 600 008.

2.The Member Secretary,
Mamallapuram Municipality,
No.131, GST Road, Chengalpet.

3.The Commissioner,
Tiruporur Panchayat Union Office,
Chengalpet District.

+1 CC to Mr. Rajasekar, Advocate sr 83526.

+1 CC to M/s. Sudharshana Sundar, Advocate sr 83545.

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MG(CO)
SP(21/10/2019)

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