

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :05.07.2019

CORAM
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P.No.33785 of 2007
and M.P No.1 of 2007

HMTD Engineering Pvt Limited,
represented by its Chairman and
Managing Director, having its
registered Office at
D-4, MIDC, Taloja,
District Raigad,
Maharashtra - 410 208.

...Petitioner

Vs.

1. State Industries Promotion
Corporation of Tamil Nadu
Limited represented by its
Board of Directors,
19-A, Rukmani Lakshmipathy Road,
Egmore,
Chennai - 600 008.

2. State Industries Promotion
Corporation of Tamil Nadu,
Limited represented by its
Chairman and Managing Director,
19-A, Rukmani Lakshmipathy Road,
Egmore,
Chennai - 600 008

3. Project Officer,
SIPCOT, I.T. Park,
Siruseri, Chengalpattu Taluk,
Kancheepuram District

....Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call for the entire records relating to the letter dated 18.07.2006 in Ref.No.D-II/SITP/HMTDEPL/06 and the letter in Ref.No.D-II/SITP/Siruseri/2007, dated 20.07.2007 and issued by the Chairman and Managing Director, State Industries Promotion Corporation of Tamil Nadu Limited, 19-A, Rukmani Lakshmipathy Road, Egmore, Chennai-600 006 the second respondent herein and quash the same.

For Petitioner : Mr.T.S. Gopalan
Senior Counsel for
N. Damodaran

For R.1 & R.2 : M/s Sudharshana Sunder

ORDER

The petitioner filed the present Writ Petition praying to issue a Writ of Certiorari to call for the entire records relating to the letter dated 18.07.2006 in Ref.No.D-II/SITP/HMTDEPL/06 and the letter in Ref.No.D-II/SITP/Siruseri/2007, dated 20.07.2007 issued by the Chairman and Managing Director, State Industries Promotion Corporation of Tamil Nadu Limited, 19-A, Rukmani Lakshmipathy Road, Egmore, Chennai-600 006, the second respondent herein and quash the same.

2. The case of the petitioner is that petitioner Company is a Private Limited Company started in the year 1981 in Thane for manufacturing Brushless Alternators for Indian Railways and Industries. The Company has a manufacturing Unit and a two acre of land for future expansion in Chennai and other modern facilities in Taloja, and both Taloja and Chennai units are certified for ISO-9001.

3. The petitioner further averred that during the year 2000, the petitioner Company joined hands with Landert Motoren AG Switzerland for a joint venture and established Landert HMTD (India) Private Limited for manufacturing special electrical machine and control for exports and Indian Industries. The petitioner Company also established other associated Companies in India.

4. In order to set up a Software Division located in the vicinity of IT Corridor, OMR Road, Chennai, the petitioner applied to the respondent Corporation on 25.10.2000 for allotment of lands for setting up an industrial unit at the IT Corridor.

5. The petitioner further averred that the provisional allotment order was issued on 24.11.2000 by the General Manager of the respondent Corporation, intimating the allotment of the lands on the terms and conditions as stipulated therein. As per the said order of allotment, it was directed to pay a sum of Rs.13,00,000/- per acre, thus, totally a sum of Rs.26,00,000/- for two acres of land minus the sum of Rs.2,000/-already remitted by it towards the initial deposit.

6. On 15.05.2001, the Company had accepted the said proposal and remitted sum of Rs.25,98,000/- to the respondent. Thereafter, on 10.01.2002, the respondent issued the final order of allotment containing various terms and conditions of allotment and also prescribed time limit for complying with the condition stipulated in the allotment order.

7. On 11.01.2002, the Company and the respondent executed a registered lease deed as Document No.328 of 2002 on the file of Sub Registrar, Tiruporur and the lease was allotted for a period of 99 years for the said purpose. On 20.01.2006, the second respondent issued Show Cause Notice stating that the Petitioner Company had violated clause 3(vii) and 3(viii) of the allotment order and clause 19 of the lease deed.

8. On 12.05.2006, the petitioner company received a letter from the third respondent informing that the Company had not taken possession from the Corporation as per the condition of allotment order and the clause contained in the lease deed and it was called upon to take possession of the land on 18.05.2006.

9. After delivery of possession, again on 13.06.2006, another Show Cause Notice was issued by the first respondent to the petitioner with regard to non-establishment of the Industry. Thereafter, the petitioner submitted an explanation on 26.06.2006 and not being satisfied with the explanation, the second respondent issued the impugned letter dated 18.07.2006, cancelling the allotment of land made in favour of the Company on the ground that the petitioner Company had violated the allotment order under clause 3(vii) and 3(viii) and lease deed clause No.18.

10. Thereafter, the petitioner sent a detailed representation on 16.08.2006 to the second respondent. After receipt of the representation, the first respondent issued the letter dated 20.07.2007 refusing to withdraw the order of cancellation made earlier. Aggrieved over the same, the petitioner has filed the present writ petition.

11. The learned Senior Counsel for the petitioner submitted that it is not in dispute that the possession was handed over to the petitioner on 18.05.2006 and within two months the cancellation order was passed and under no stretch of imagination, an Industry will be established within a period of two months and there shall be a reasonable time for establishment of an Industry. The learned Senior Counsel further submits that though the allotment order was passed in the year 2002, however, no infrastructure facility was provided for establishment of an Industry in the IT Corridor and the petitioner Company has repeatedly requested the Respondents for providing infrastructure facility enabling them to set up an

Industry, but, the respondent has not handed over the site till 18.05.2006 and thereafter, handed over the site for establishment of an Industry. However, within one year, they cancelled the allotment order, which is unsustainable and the entire amount was paid in the year 2002 itself. The learned counsel further submits that the respondent cancelled the order within two months, which is illegal and arbitrary and therefore prayed for allowing the writ petition.

12. Ms. Sudharshana Sunder, learned counsel appearing for the Respondents submitted that though allotment order was made in favour of the petitioner in the year 2002, after a lapse of five years, since the petitioner had not taken any step to establish the Industry, the respondents issued a Show Cause Notice on 20.01.2006 and the petitioner gave a reply on 04.02.2006 stating that there was likelihood of change in the management of the Company introducing the Directors from the Principal Company and the representatives are also visiting in February/March 2006 for finalising the project and hence requested time upto 31.03.2006. Even thereafter, the petitioner has not commenced the work. Therefore, the Show Cause Notice dated 18.07.2006 was issued cancelling the allotment order.

13. Heard both sides and perused the materials available on record.

14. On perusal of the records, it is seen that the provisional allotment order was issued on 24.11.2000 by the General Manager of the respondent Corporation intimating the allotment of the lands on the terms and conditions as stipulated therein. Immediately, after the allotment order, the petitioner was directed to pay Rs.13,00,000/- per acre and thus, totally a sum of Rs.26,00,000/- for two acres of land minus, the sum of Rs.2,000/- already remitted by it towards the initial deposit.

15. The Petitioner Company had accepted the said proposal and had remitted the said sum of Rs.25,98,000/- on 15.05.2001 to the respondent. Thereafter, the respondent issued the final order of allotment on 10.01.2002. After the allotment order, the petitioner and respondent had executed a Registered Lease Deed on 11.01.2002 and due to non-providing of basic amenities by the respondents such as laying of proper road, water supply, power supply and drainage facilities, the terms and conditions as contained in the Lease Deed could not be carried out.

16. While doing so, the petitioner received a letter dated 12.05.2006 from the third respondent for the first time, informing that as the Company had not taken possession from the Corporation as per the conditions of the allotment order and the clause contained in the lease deed, called upon the petitioner to take possession of the land on 18.05.2006 at 4.00 p.m.

Accordingly, the possession was handed over on 18.05.2006 at 3.30 p.m. Though the possession was taken over on 18.05.2006, within two months i.e., on 18.07.2006,, the second respondent issued the impugned letter, wherein, they had chosen to cancel the allotment of land made in favour of the petitioner and also forfeited the initial deposit on the premises that the petitioner company had violated the allotment order clauses 3 (vii) and 3(viii) and lease deed clause number 18.

17. Immediately, after handing over possession, the first respondent issued a Show Cause Notice on 13.06.2006 for non-setting up of an Industry and the petitioner submitted his explanation on 26.06.2006. Thereafter, they issued second Show Cause Notice on 18.07.2006 and had chosen to cancel the allotment of land and they cancelled the allotment of land on 20.07.2007 which is untenable and liable to be interfered with.

18. Though the allotment order was passed in the year 2002, admittedly, possession was handed over to the petitioner only on 18.05.2006 and the impugned order came to be passed on 18.07.2006 on the ground that the petitioner had violated clauses 3(vii) and 3(viii) of the allotment order, and clause 18 of the lease deed, which was executed in the year 2002, is legally unsustainable and one cannot set up an Industry within a period of two months and hence the cancellation order dated 20.07.2007 is liable to be set aside and accordingly it is set aside.

19. In view of the above, the order dated 20.07.2007 passed by the first respondent is set aside, and the matter is remitted back to the first respondent for fresh consideration and pass appropriate orders. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

sr

To

1. The Board of Directors,
State Industries Promotion
Corporation of Tamil Nadu Limited,
19-A, Rukmani Lakshmipathy Road,
Egmore,
Chennai - 600 008.

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2. The Chairman and Managing Director,
State Industries Promotion
Corporation of Tamil Nadu Limited
19-A, Rukmani Lakshmipathy Road,
Egmore,
Chennai - 600 008

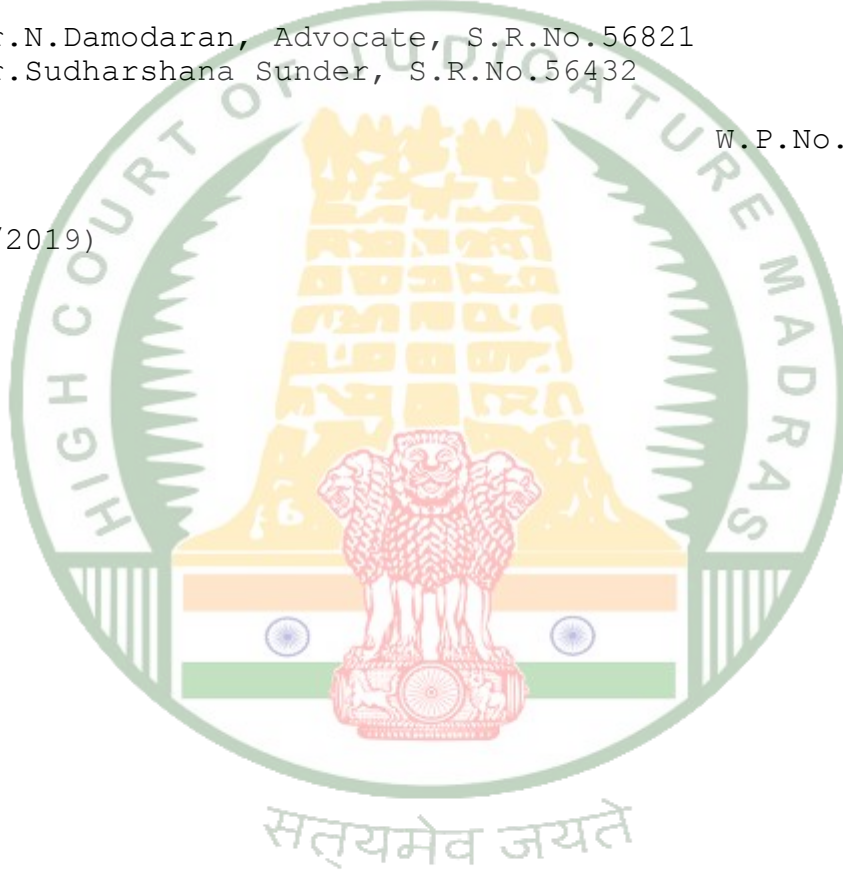
3. The Project Officer,
SIPCOT, I.T. Park,
Siruseri, Chengalpattu Taluk,
Kancheepuram District

+1cc to Mr.N.Damodaran, Advocate, S.R.No.56821
+1cc to Mr.Sudharshana Sunder, S.R.No.56432

W.P.No.33785/2007

MP (CO)

RRS (28/08/2019)



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