

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P. 12537 of 2010

and

M.P. 1 of 2010

M/s.Kamachi Sponge & Power
Corporation,
rep. by its Director,
Sardarmal Kothari,
Pappankuppam Village,
S.R.Kandigai Panchayat,
Gummidipoondi Taluk,
Tiruvallur District.

... Petitioner

Vs

1. The Commissioner,
Gummidipoondi Panchayat Union,
Gummidipoondi,
Tiruvallur District.
2. The Secretary,
Housing and Urban Development
Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
3. The Director of Town and
Country Planning,
Chennai-600 002.

(R2 & R3 are Suo motu impleaded
as per order dated 01.08.2018
in WP No.12537/10)

... Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a Writ of Certiorari, to
call for the records relating to the impugned order passed by
the respondent in Na.Ka.No.122/2010/A3, dated 27.05.2010 and
quash the same as illegal, arbitrary, unsustainable.

For Petitioner : Mr.K.Jayachandran

For Respondents : Mrs.K.Bhuvaneswari,
Addl. Govt. Pleader

O R D E R

This Writ Petition has been filed challenging the impugned order of the 1st respondent dated 27.05.2010 and quash the same as illegal, arbitrary and unsustainable.

2. The case of the petitioner is that the petitioner company is incorporated under the Companies Act and the petitioner is the owner of the land in an extent of 113.510 acres situated at Pappankuppam Village, Gummidipoondi Taluk. The land is situated adjacent to SIPCOT complex, Gummidipoondi. The petitioner had applied to the 1st respondent for approval of drawings and grant of license for setting up a Sponge Iron Plant with capacity of production of 400 mts. per day. The said application was submitted to the 1st respondent on 27.03.2006 with the request to forward the same to Health Department, Fire Department and Directorate of Town and Country Planning, Chenglepet for approval. Along with the said application, the petitioner has also enclosed the approval obtained from Chief Inspector of Factories, Chennai and from Tamil Nadu Pollution Control Board. The Tamil Nadu Pollution Control Board had given consent for both air pollution and water pollution enactments separately and the no objection certificate was issued by the Tahsildar, Gummidipoondi by an order dated 06.07.2006. The 1st respondent vide letter dated 20.07.2006 forwarded the application to the District Industries Centre, Thiruvallur and requested the said District Industries Centre to get approval from the concerned authorities/departments of the State Government. The petitioner has also applied for License and Registration certificate from Central Excise Department, Sales Tax Department and Service Tax department and obtained certificates. Further, the petitioner has also obtained IEC Code from Ministry of Commerce, Government of India and the petitioner's establishment was covered under EPF and ESIC. From the date of establishment, the petitioner regularly contributed towards EPF and ESIC to the respective statutory authorities. Further, the establishment of the said company is paying nearly Rs.20 crores as Central Excise Duty, and service tax to the tune of Rs.50 lakhs and Sales Tax to the tune of Rs.6 crores to the Sales Tax department.

3. While being so, the District Industries Centre by its letter dated 18.09.2006 informed the petitioner that the Deputy Director of Town and Country Planning / Member Secretary has returned the papers stating that the location falls under mixed zone viz., residential cum industrial zone and the proposal for

reclassification of land has to be sent to the Government. Accordingly, the petitioner has submitted the papers to the 1st respondent, who has forwarded to the District Industries Centre by letter dated 19.01.2007 and the authorities have required a resolution from the Panchayat Union. Consequently, the 1st respondent by its letter 27.11.2009 addressed to the Deputy Director of Town and Country Planning, Chenglepet stated that the Panchayat Union by resolution No.426, dated 27.11.2009 approved the proposal for reclassification of the lands as industrial zone. While being so, to the shock and surprise, the 1ST respondent authorities issued the impugned proceedings dated 27.05.2010 demanding Rs.1 lakh as penalty on the ground that the petitioner has not obtained any permission from the Panchayat Union for establishment of certain industry. Against which, the present Writ Petition has been filed by the petitioner.

4. The learned counsel appearing for the petitioner would submit that in the earlier occasion, since the industry was situated in the mixed zone, the Deputy Director of Town and Country Planning issued the lock and seal notice and the same was challenged before this Court in W.P. No. 20331/2013 and this Court disposed the Writ Petition and granted status quo to the petitioner industry till the disposal of the decision for reclassification of the lands. While such being the position, the present impugned order is passed, which is unsustainable one and on the one hand, the 1st respondent had passed a resolution in favour of the petitioner and on the other hand, imposing penalty is unsustainable one. In fact, the petitioner is regularly paying the property tax and professional tax and other taxes to the Panchayat union without any default. Accordingly, he prayed to quash the impugned order of imposing penalty and prayed to allow this Writ Petition.

5. The learned Addl. Government Pleader appearing for the State would submit that the present impugned order is passed without perusing the resolution passed by the Panchayat Union. Hence, this matter may be remanded back to the authorities for fresh consideration.

6. On perusal of the records, it is found that the 1st respondent authorities issued the impugned proceedings dated 27.05.2010 demanding Rs.1 lakh as penalty on the ground that the petitioner has not obtained any permission from the Panchayat Union for establishment of the industry. Further, the petitioner industry is situated in the mixed zone, for which the 1st respondent authority viz., Panchayat Union Council recommended for reclassification of lands from the residential zone to industrial zone by its resolution No.426, dated 27.11.2009. However, on the one hand, the 1st respondent had passed a

resolution in favour of the petitioner and on the other hand, imposing penalty, which is unsustainable one. Hence, the impugned order is liable to be interfered with. Accordingly, the impugned order passed by the 1st respondent in Na.Ka.No.122/2010/A3 dated 27.05.2010 is set aside. However, this Court makes it clear that the order of this Court will not stand on the 1st respondent to demand property tax and professional tax from the petitioner industry. So, with the above observation, this Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

rpp

To

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Gummidipoondi,
Tiruvallur District.
2. The Secretary,
Housing and Urban Development
Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
3. The Director of Town and
Country Planning,
Chennai-600 002.

+1cc to Mr.K.Jayachandran, Advocate SR.No.63735

+1cc to Government Pleader, High Court, Madras SR.No.63853

W.P. 12537 of 2010

EV(CO)
GMY(28/08/2019)