IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.14156 of 2005
and W.P.M.P.No. 15483 of 2005
and W.V.M.P.No. 264 of 2007

Thiru Arooran Sugars Limited
Eldorado, 5th Floor,
112, Nungambakkam High Road,
Chennai 600 034. ... Petitioner

Vs.

1. State of Tamil Nadu
rep. Secretary to Government,
Revenue Department,
Fort St. George, Chennai 600 009.
2. The Commissioner,
Land Reforms, Ezhilagam,
Chepauk, Chennai 5.
3. The Assistant Commissioner,
(Land Reforms),
Ground Floor Collector's Office Compound,
Villupuram. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in Letter No.538, dated 17.12.2002 read with the notice of the third respondent in Rc.No.A2/2611/2000, dated 30.03.2015 and quash the said orders and consequently direct the respondents to pass orders to the effect that the permission granted to the petitioner in G.O.Ms.No.431, Revenue (Land Reforms II-1), Department dated 29.05.1998 shall operate in favour of Shree Ambika Sugars Limited on the same terms and conditions.

For Petitioner : Mr.C.V.Vijayakumar,
for Mr.T.R.Rajaraman
For Respondents : Mrs.K.Bhuvaneswari, AGP

O R D E R

This petition is filed to quash the Letter of the first respondent in No.538, dated 17.12.2002 and the notice of the third respondent in Rc.No.A2/2611/2000, dated 30.03.2015 and consequently, to direct the respondents to pass orders to the effect that the permission granted to the petitioner in G.O.Ms.No.431, Revenue (Land Reforms II-1), Department dated 29.05.1998 shall operate in favour of Shree Ambika Sugars Limited on the same terms and conditions.

2. By an order dated 29.05.1998, the petitioner Company was granted permission under Section 37-A of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act, 1961, by the first respondent herein to hold the extent of 174.61 2/3 ordinary acres or 154.33 standard acres in Thirumandangudi Village of Papanasam Taluk, Thanjavur District on certain conditions. One such condition is that the land should be utilised for the specified industrial purpose within a period of 10 years, with reference to the orders issued in G.O.Ms.No.318, Revenue Department, dated 21.03.1997.

3. Pursuant to the permission granted, the petitioner herein had decided to effect change in the name of the Company from M/s.Arooran Sugars Ltd. to M/s.Shree Ambika Sugars Ltd. as revealed from the letter of intent dated 15.03.1996. Thereby, Shree Ambika Sugars Ltd., had requested the first respondent herein to extend the permission granted to Shree Arooran Sugars Ltd. on 29.05.1998 to their Company. The said request was made under Rule 56 (3) of the Tamil Nadu Land Reforms (Fixation of Ceiling on Land) Act.

4. By an order dated 17.12.2002, the first respondent herein had rejected the request for transfer of permission on the ground that only when the entire commercial undertaking is transferred, permission under Rule 56(3) would be applicable and since the petitioner intends to transfer only 119.67 acres covered in the earlier permission granted to M/s.Arooran Sugars Ltd., the request was not feasible and thereby, the first respondent had rejected the petitioner's application.

5. Pursuant to the order of the first respondent, the third respondent had issued a notice on 30.03.2015 to both Arooran Sugars Ltd. and Shree Ambika Sugars Ltd., calling them for an enquiry and to show cause as to why declaration under Section 20 (1) of the Act should not be made against them. The order dated 17.12.2012 and the consequent notice dated 30.03.2005 are under challenge in the present Writ Petition.

6. The learned counsel for the petitioner submitted that as per the letter of intent, they have decided to set up a subsidiary company to take over undertaking of the petitioner-Company and as such, the Government of India, by Proceedings

dated 29.05.1998, permitted the substitution of the subsidiary company under Rule 56 (3) (ix) of the said Rules facilitating the transfer of the commercial undertaking, which should be intimated to the Government within 30 days. Hence, the petitioner as well as Shree Ambika Sugars Ltd. made application dated 29.06.1998 seeking for exemption of the lands.

7. According to the learned counsel for the petitioner, since Shree Ambika Sugars Ltd. is only a subsidiary Company of the petitioner herein, and the entire holding of 119.67 1/3 acres had been transferred to its name, which necessitated them to make an application seeking for permission.

8. The learned counsel for the petitioner submitted that when the impugned order was passed, they were not given prior opportunity. It is further submitted that Rule 56(3)(ix) does not restrict the applicability of the transfer of the whole of the undertaking and part transfer is also permissible.

9. The learned Additional Government Pleader appearing for the respondents, on the other hand, submitted that only when the whole commercial undertaking is transferred, the respondents would be empowered to grant permission and since the petitioner intends to transfer only portion of the lands, which have been exempted, there is no infirmity in the order passed by the respondents.

10. The learned Additional Government Pleader further submitted that the consequent order dated 30.03.2005 is only a notice calling for enquiry and as such, the Writ Petition challenging the notice is premature.

11. I have given careful consideration to the submissions made by the respective counsel.

12. Before adverting to the reasonings given by the first respondent in the order dated 17.12.2002, it would be appropriate to look into the factual position under the said Rules. Rule 56(2) of the Rules empowers the Government to grant permission to hold or acquire whole or part of such land for bona-fide purpose, on an application made for permission to hold or acquire the excess land. As such, the very reasoning in the order of the first respondent dated 17.12.2002 that when the whole of the industrial or commercial undertaking is transferred alone, the Government is empowered to grant such permission, is not acceptable. When the Rules provide for permission for transfer of a part of the land under Rule 56 (2), the very basis on which the said order dated 17.12.2002 is passed, becomes illegal.

13. Furthermore, Rule 56 (3) (ix) stipulates that when the industrial or commercial undertaking is transferred, the transferor and transferee shall intimate such transfer within 30 days to the Government.

14. In this case, the petitioner intended to transfer the land in favour of Shree Ambika Sugars Ltd. based on the letter of intent dated 15.03.1996 and pursuant to the intention, both the transferor as well as the transferee had made applications dated 29.06.1998. In view of the letters of intent, it can be said that the applications were made in time. Secondly, when the Rules permit transfer of a portion of the land, there is no impediment on the part of the first respondent to grant such a permission.

15. It is the case of the petitioner that due to their administrative reasons, the petitioner intended to invest 54% of the capital in Shree Ambika Sugars Ltd. Since the business of manufacturing of sugar did not change, as well as the lands were also sought to be utilised for the same purpose for which the exemption was granted, the respondents are not justified in refusing the permission.

16. The learned Additional Government Pleader, by reiterating the averments made in the counter affidavit submitted that when the first respondent had passed the order on 17.12.2002, no prior notice was given, since the petitioner had violated the terms of exemption granted earlier.

17. I am unable to agree with such submission. Under Rule 56 (3) (ix), when the first respondent intends to pass an adverse order in the application seeking permission, an opportunity of being heard ought to have been given. The Rules stipulate that such an opportunity should be given at the time of cancelling the permission. Such an analogy can be drawn to the case where the application seeking for permission is rejected. Even otherwise, the principles of natural justice require that due opportunity of hearing should be given in all cases where the orders are sought to be interfered with.

18. In consequence of the order passed by the first respondent, the second respondent had now initiated proceedings, whereby, the notice dated 30.03.2005 was issued, calling upon the petitioner to give his explanation as to why declaration contemplated under Section 20 (1) should not be made.

19. Now as this Court has found that the order refusing permission itself is bad, the consequential proceedings initiated by the second respondent cannot be valid.

20. For all the foregoing reasons, the order of the first respondent dated 17.12.2002 in Letter No.538, and the notice dated 30.03.2015 of the third respondent in Rc.No.A2/2611/2000, are quashed. Consequently, the first respondent shall consider the application of the petitioner herein viz., Shree Arooran Sugars Limited as well as Shree Ambika Sugars Ltd., both dated 29.06.1998 in the light of the above observations and pass necessary orders in accordance with law, after giving due opportunity to the representatives of Shree Arooran Sugars Limited, as well as Shree Ambika Sugars Ltd. Such an exercise shall be completed within a period of three months from the date of receipt of the order. The Writ Petition stands ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

pvs

To

1.The Secretary to Government,
State of Tamil Nadu
Revenue Department,
Fort St. George, Chennai 600 009.

2.The Commissioner,
Land Reforms, Ezhilagam,
Chepauk, Chennai 5.

3. The Assistant Commissioner,
(Land Reforms),
Ground Floor Collector's Office Compound,
Villupuram.

+1 cc to The Government Pleader, Sr.No. 26291

W.P.No.14156 of 2005

CSL/07.05.2019