

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 07.03.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P. NO. 29614 OF 2011

AND

M.P. NO. 2 OF 2011

M/s. G.R.Chemicals

rep. By its Partnership N.Rajagopal

No. G-31, Industrial Estate

Chennai 600 058.

.. Petitioner

- Vs -

1. The Tamil Nadu Small Industries
Development Corporation Ltd.
(SIDCO) rep. By its Chairman
& Managing Director
Paulwels Road, Kathipara Junction
Chennai 600 016.

2. The Project Officer
The Tamil Nadu Small Industries
Development Corporation Ltd.
Administrative Block Building
First Floor, Industrial Estate
Ambattur, Chennai 600 058.

3. M/s.Kothai S
rep. By its Proprietor
Shed No.G-30 (SP)
Industrial Estate, Ambattur
Chennai 600 058.

4. M/s.Sevagan Industries
rep. By its Partner S.V.Ramasamy
S/o Ar.Sevugan Chettiar
No.22/1, Ormes Road
Kilpauk, Chennai - 10.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari to call for the records from the 1st respondent pertaining to his order in his reference letter Rc. No.29543/R-4/93 dated 05.12.2011 and quash the said order.

For Petitioner : Mr. J.Rajakalifulla, SC

For Respondents: Mr. V.P.Sengottuvel for RR-1 & 2
Mr. V.Ayyadurai, for RR-3 & 4

ORDER

The petitioner, aggrieved by the impugned proceedings of the 1st respondent in rejecting the claim of the petitioner relating to the allotment of land, is before this Court by filing the present petition.

2. The facts, which give rise to the filing of the present writ petition are briefly stated hereunder :-

The petitioner is a partnership firm engaged in the manufacturing and exporting oil well drilling chemicals since 1979. It is a small scale industrial unit supplying their products to various countries all over the world. They have their factory premises in Shed No.31, Industrial Estate, Ambattur, Chennai. Originally, a larger extent of land was allotted to the petitioner, measuring about 11500 sq.ft., in the Industrial Estate, Ambattur, Chennai - 58. On the basis of the request made by the petitioner for additional space, 7520 sq.ft., was allotted to the petitioner on 3.7.92 considering the fact that the petitioner unit was 100% export oriented earning valuable foreign exchange. The petitioner had utilised the entire piece of land allotted to them by putting up construction and shed for carrying on their manufacturing activity.

3. Whiles, the petitioner was in requirement of additional space apart from what was granted earlier to it and in that regard, approached the 2nd respondent vide their representation dated 9.11.93 to allot a small portion of vacant land adjacent to their land No.G-31. Considering the genuineness of the request of the petitioner, the 1st respondent, by letter dated 17.12.93, allotted 2350 sq.ft., of land adjoining the petitioner's land in the industrial estate, Ambattur. The cost of the additional site was fixed at Rs.61,745/- apart from Rs.3,090/- as service charge. The entire amount, as demanded by the 1st respondent, had been paid by the petitioner. Subsequently, on 11.5.94, the 1st respondent informed the petitioner that though they were allotted additional land that measured 2350 sq.ft., but actual measurement of the available area of the land was only 2162 sq.ft. and not 2350 sq.ft. Accordingly, an amendment was issued by reducing the land cost to Rs.56,805/- and corresponding service charge. Along with the letter dated 11.5.94, a sketch, showing the additional land allotted was also given to the petitioner. After getting the additional land of an extent of 2162 sq.ft., the petitioner took possession of the same and put up construction and installed

machineries for their manufacturing activity in the said land. According to the petitioner, they had spent nearly Rs.20 Lakhs in building and machineries on this additional land and the factory has been running with utmost capacity.

4. While the matter stood thus, to the petitioner's surprise, a letter was issued by the 1st respondent on 13.3.2001 cancelling the allotment of the additional land of an area of 2162 sq.ft., allotted to the petitioner, stating that the said additional land was not adjacent to the petitioner's land, but was adjacent to the neighbour's land. Since the reasons, as set forth in the cancellation order was not correct and contrary to facts, the petitioner was constrained to approach this court and file W.P. No.6537/2001 to quash the order of cancellation dated 13.3.2001. This Court, vide order dated 7.8.07, disposed of the writ petition by remanding the matter back to the 1st respondent for fresh consideration. The 1st respondent was directed to give opportunity to the petitioner and the 3rd respondent therein, who is also the 3rd respondent herein and the adjacent plot holder and pass orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of the order.

5. Thereafter, the petitioner submitted a detailed representation to the 1st respondent on 26.9.07 stating that all the plots behind Shed Nos.28, 29, 30 and 31 were identical plots, which were allotted to the allottees of Shed Nos.28, 29 and 30 as additional lands behind their respective sheds. According to the representation given by the petitioner, there had been no complaint or any disturbance from any quarters and the allotment, which was made in 1994, cannot be cancelled after a passage of a considerable time.

6. However, not satisfied with the representation made by the petitioner, the 1st respondent issued a show cause notice to the petitioner on 12.10.07. In the show cause notice, for the first time, the petitioner was informed that the petitioner had encroached some lands and only after removal of the encroachment by the petitioner, the additional land will be handed over to him and thus directed the petitioner to show cause within 15 days as to why the allotment of the additional land of 2162 sq.ft., should not be cancelled. As against the show cause notice, the petitioner submitted their reply on 7.11.07. In the reply, the petitioner has clearly stated that the possession of the entire land had already been taken and construction was put up after obtaining approval and machineries were also installed. For grant of the additional land, payment was also made. However, the 1st respondent, by order dated 23.1.08, cancelled the allotment of additional land of 2162 sq.ft. The reply and the statements given by the petitioner during personal hearing

was recorded, but no reasons were given by the 1st respondent, but merely concluded that the request of the petitioner was not feasible of compliance.

7. Since the cancellation order dated 23.1.08 did not give any reasons at all, the petitioner was once again constrained to approach this Court by filing W.P. No.4094/08 challenging the order dated 23.1.08. This court, vide its order dated 23.2.2010 finally disposed of the writ petition by dismissing the writ petition and upholding the impugned order. As against the said order, the petitioner herein has preferred W.A. No.906/10. The learned Division Bench of this Court, vide its order dated 27.6.2011 passed a detailed order allowing the claim of the petitioner herein and once again remitted the matter back to the 1st respondent for fresh consideration. The operative portion of the order of the learned Division Bench, as found in para-16 of the said order, is extracted hereunder for reference :-

"16. Accordingly, the order dated 23 January, 2008 is quashed and the matter is remitted to the first respondent for fresh consideration. The first respondent is directed to issue notice to the appellant and all other affected parties and pass appropriate orders on merits and as per law, with opportunity of hearing to all concerned. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this order. It is made clear that we have not considered the merits of the matter and the impugned order is set aside solely on the ground of failure to indicate reasons in support of the order of cancellation."

8. Thereafter, vide communication dated 27.9.11, the petitioner was requested to represent afresh in respect of the land to an extent of 2162 sq.ft., pursuant to the order passed by the Division Bench of this Court within a period of two weeks. At this, the petitioner submitted a representation on 10.10.11 stating that the Division Bench has actually directed the 1st respondent to issue notice and, thereafter, after hearing the parties, to pass appropriate orders, but no notice as such has been issued. It is also stated in the said representation that the petitioner had been put in possession of the additional piece of land as early as on 17.12.93 on payment of the entire cost of the land and, therefore, the 1st respondent cannot cancel the allotment after 17 years. Thereafter, the petitioner was directed to appear before the 1st respondent on 10.11.2011. Finally, the 1st respondent passed the impugned order on 5.12.2011 cancelling the allotment made to the petitioner on 17.12.93 and the subsequent amendment dated 11.5.94. The reasons, which led to the cancellation, as could be ascertained

from the penultimate paragraph of the impugned order is that the neighbouring units had already been granted the land, including the additional land given to the petitioner and sale deeds were executed much prior to the allotment of the additional lands to the petitioner on 17.12.93. According to the impugned communication, the sale deeds in favour of the neighbours had been executed on 21.1.92 and 22.1.93, i.e., prior to the allotment to the petitioner on 17.12.93. The said order is the subject matter of challenge in the present writ petition.

9. Mr.Raja Kalifulla, learned senior counsel appearing for the petitioner stoutly contended that each time when the cancellation order was issued, the 1st respondent has come up with new reasons and sought to displace the petitioner unjustly and arbitrarily. It is the admitted case that the petitioner has been allotted the additional lands on 17.12.93, which was subsequently clarified and amended on 11.5.94. It is also the admitted case that the petitioner had taken possession of the additional lands and put up construction and installed machineries and has been actively engaged in the manufacturing process and such on-going industry cannot be imperilled by passing an order of cancellation after a period of 17 years. According to the learned senior counsel for the petitioner, the reason given in the impugned order does not hold good any further for the simple reason that respondents 3 and 4, who are allottees of Shed No.G-30, had sold the plot to a third party, vide sale deed dated 31.8.12 and registered as Document No.9621/12 in the office of the Sub Registrar, Ambattur. According to the learned senior counsel, the 3rd respondent had sold only 5358 sq.ft., of the land out of 7520 sq.ft., which was less 2162 sq.ft., allotted to the petitioner. Therefore, it is clear that the petitioner has been in occupation and possession of the additional piece of land to an extent of 2162 sq.ft. However, while executing the sale, curiously and strangely, the 3rd respondent has reserved his right to deal with the additional piece of land depending on the outcome of the present writ petition. In fact, there was an agreement in the sale deed that the balance extent of 2162 sq.ft. would also be registered in favour of the purchaser as soon as the litigation in respect of the same is resolved. Therefore, according to the learned senior counsel for the petitioner, respondents 3 and 4 have no interest in the dispute, since admittedly they have sold their property in favour of third parties.

10. In the above backdrop, learned senior counsel for the petitioner submits that the 1st respondent, who has admittedly allotted the additional lands to the petitioner, cannot be allowed to cite the objections by respondents 3 and 4 in seeking to cancel the allotment after a period of 17 years. Even otherwise, learned senior counsel submits that in view of the

pendency of the litigation before this Court, more than 25 years have lapsed and the petitioner, who is running an export oriented unit and who has spent huge amount of money in installation of machinery and putting up construction, cannot be deprived of the space, particularly, in the face of the fact that nobody today could claim any right to the subject piece of land. According to the learned senior counsel, even assuming that there was a mistake in the allotment of the piece of land, such a mistake cannot be rectified as against the accrued interest of the petitioner for over 25 years, particularly when no other interest is in clash with the interest of the petitioner herein. Therefore, the learned senior counsel for the petitioner implored this Court to allow the writ petition by setting aside the impugned cancellation order.

11. Per contra, Mr.V.P.Sengottuvel, learned counsel appearing for respondents 1 and 2 submits that the additional land of 2162 sq.ft., had been allotted mistakenly to the petitioner since that additional land was part of the 7520 sq.ft. of land allotted to Shed No.30. According to the learned counsel for respondents 1 and 2 the allotment to the petitioner was made only in December, 1993, whereas the sale deeds for the neighbours, viz., Shed Nos. 28, 29 and 30 were executed earlier to the allotment made to the petitioner, in which case the allotment made to the petitioner cannot be considered as a valid allotment at all. Therefore, the 1st respondent initiated steps to rectify the mistake committed by the officials earlier and such step initiated by the 1st respondent cannot be faulted with only on the basis of passage of time. When any mistake is discovered at any point of time, the same could be rectified and such mistake committed by the officials of the 1st respondent cannot enure to the advantage of the petitioner, who was otherwise not entitled to allotment of additional lands.

12. Mr.V.Ayyathurai, learned senior counsel appearing for respondents 3 and 4 submitted that originally additional lands to an extent of 2162 sq.ft., was part of the area of 7520 sq.ft., allotted to respondents 3 and 4 and mistakenly a portion of the same had been carved out and given to the petitioner. Therefore, the petitioner had to be treated as an encroacher in the land allotted to him. Therefore, at their instance, the 1st respondent initiated action rightly and cancelled the allotment. The petitioner having enjoyed the illegal allotment for many years cannot be allowed to continue with such illegal enjoyment to the detriment of the original allottee. Therefore, learned senior counsel submitted that the impugned action required to be upheld.

13. Heard the learned counsel appearing for the parties and perused the materials and pleadings placed on record.

14. Admittedly, in this case, additional land to an extent of 2162 sq.ft., has been allotted to the petitioner on 17.12.1993. Though originally it was mentioned as 2350 sq.ft., but, subsequently, it was clarified vide proceedings dated 11.5.94 about the actual extent of land being 2162 sq.ft. It is also admitted that the petitioner has taken possession of the land and put up construction and installed machineries and has been carrying on their manufacturing activity in the entire space allotted to them without any hindrance. However, for the first time, the petitioner was informed vide order dated 13.3.01 about the cancellation of allotment of the additional land and the reasons as set forth in the said order is that the additional land allotted to it had been the cause of disturbing the possession of neighbouring units and, therefore, the cancellation became necessary. When this Court intervened in the cancellation order vide its order dated 7.8.07 in W.P. No.6537/01, yet another order came to be passed on 23.1.08 cancelling the allotment without giving any reasons at all. Thereafter, the petitioner has approached this once again and a learned Division Bench of this Court in W.A. No.906/10 vide order dated 27.6.11, allowed the appeal and remitted the matter back to the 1st respondent for passing fresh orders by issuing notice to the petitioner and all other affected parties.

15. Whiles, unfortunately, without complying with the directions passed by the Division Bench of this Court, without issuing any notice, the petitioner was directed by the 1st respondent, vide communication dated 27.9.11, seeking his representation in respect of the additional allotment of land of an extent of 2162 sq.ft. In fact, this was objected to by the petitioner vide its representation dated 10.10.11 stating that the 1st respondent ought to have issued notice as per the directions issued by the learned Division Bench of this Court. The petitioner also represented that the entire cost of the additional land had been paid and, therefore, the question of cancellation after such long delay was not permissible. Ultimately, the impugned order has been passed by the 1st respondent on 5.12.11 stating that the allotment was made after the sale deeds had been executed to the neighbouring allottees, which included the additional land allotted to the petitioner.

16. This Court is unable to appreciate the stand taken by the 1st respondent not only after a period of 17 years, but also in the three rounds of litigation, including the present one. It is clear that the 1st respondent has been taking a different stand each time, including the stand in the present cancellation order, which is impugned in the present writ petition. The above act of the 1st respondent in issuing cancellation orders by taking different stands resulted in the Court intervening in the

matter in the earlier rounds of litigation by remanding the matter back to the 1st respondent for fresh consideration.

17. Instead of considering the matter on the basis of realistic appraisal of the situation, particularly in the face of the fact that the petitioner has been in occupation of the entire piece of land and utilising the same for their legitimate manufacturing activity for over 17 years, the 1st respondent has passed the order of cancellation at the instance of the private respondents. It is not the case of the 1st respondent that the petitioner has illegally or unjustly encroached upon the land belonging to the private respondents. It is an admitted fact that the land in question has been allotted to the petitioner by the 1st respondent and the cost of the allotment has also been fully paid by the petitioner and that the petitioner has also taken possession of the said land. That being the case, the petitioner cannot be faulted for taking undue advantage of the so-called mistake committed by the 1st respondent. After all, the request was made by the petitioner for additional allotment and the same was considered by the 1st respondent and allotment was made as early as on 7.12.93. Thus, the petitioner was allowed to enjoy the additional piece of land by the 1st respondent for over 17 years, including the period in which the litigation before this Court was pending. In the said circumstances, whether the 1st respondent could deprive the petitioner of the additional extent of land measuring 2162 sq.ft., has to be considered in the circumstances of the case.

18. As rightly contended by the learned senior counsel for the petitioner, respondents 3 and 4 have no more interest in the subject piece of land assuming that was part of the area of 7520 sq.ft. of land allotted to the private respondents 3 and 4, since they had sold their interest in the said lands to third parties vide sale deed dated 31.8.12. In the sale deed, what was sold was only 5358 sq.ft., which was minus 2162 sq.ft., which means that respondents 3 and 4 were not in possession of the extent of 2162 sq.ft. The reservation of the right to deal with 2162 sq.ft., on the basis of the outcome in the writ petition in a private deal between respondents 3 and 4 and a third party cannot give any right to respondents 3 and 4 to resist the claim of the petitioner before this Court. Having relinquished their right by executing a sale deed in respect of the neighbouring shed, it does not lie in the mouth of respondents 3 and 4 to oppose the claim of the petitioner herein, who has been admittedly allotted additional piece of land to an extent of 2162 sq.ft. by the 1st respondent.

19. Moreover, as rightly contended by the learned senior counsel for the petitioner, the petitioner has been carrying on their manufacturing activity in the entire piece of land, having

put up construction and installing machineries and, therefore, the present action by the 1st respondent will not serve anybody's interest, as rightly or wrongly the petitioner has been using the land since 1993 to till date. Once the land has been used for nearly 25 years by the petitioner, on the basis of the allotment made by the 1st respondent itself, today, the petitioner cannot be called an encroacher and cannot be directed to hand over the additional piece of land.

20. It is to be pointed out that it was the 1st respondent, who recognised the need of the petitioner for additional space for their business activity and had allotted the said land. Although when a mistake is discovered at a later point of time, it is always possible for the government or its agency to rectify the same, but such rectification cannot result in wholesome injustice being meted out to the party like the petitioner herein. Moreover, in this case, the original complainant, on whose instance the entire action was initiated in the year 2001, has now ceased to have any interest in the property, the balance of convenience is definitely in favour of the petitioner herein for retention of the allotment made by the 1st respondent to the petitioner. In any event, the cost of the land, which was allotted in the year 1993 having been paid by the petitioner and the third party having purchased only 5358 sq.ft. from respondents 3 and 4 by sale deed dated 31.8.12, no prejudice would be caused to any party, if the allotment is allowed to be retained by the petitioner. Normally, this Court would be circumspect in interfering with the action of the government or its agency by rectifying their mistake, but as far as the case on hand is concerned, the action of cancellation of the allotment at this distant point of time under the garb of rectification would cause extreme hardship to the allottee, since the allotment was not made on the basis of misrepresentation by the petitioner.

21. For the reasons aforesaid, this Court is of the considered view that the petitioner is entitled to succeed. Accordingly, the writ petition is allowed and the impugned order dated 5.12.2011 passed by the 1st respondent in letter Rc. No.29543/R-4/93 is set aside. Consequently, connected miscellaneous petition is closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Chairman & Managing Director
Tamil Nadu Small Industries
Development Corporation Ltd. (SIDCO)
Paulwels Road, Kathipara Junction
Chennai 600 016.

2. The Project Officer
The Tamil Nadu Small Industries
Development Corporation Ltd.
Administrative Block Building
First Floor, Industrial Estate
Ambattur, Chennai 600 058.

+1 cc to Mr.V.P.Sengottuvel, Advocate Sr.No.21849

+3 cc to Mr.V.Ayyadurai, Advocate Sr.No.21272 (07.06.2019)

W.P. NO.29614 OF 2011

EV(CO)
CSL/12.04.2019