

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.5727 of 2019
and WMP.No.6526 of 2019

M.Suresh Babu

... Petitioner

vs.

1. The Chairman,
State Industries Promotion Corporation of
Tamil Nadu Ltd. (SIPCOT),
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

2. The Managing Director,
State Industries Promotion Corporation of
Tamil Nadu Ltd. (SIPCOT),
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

3. The District Collector,
Krishnagiri District,
Krishnagiri.

4. The Project Officer,
NH44, SIPCOT Project Office,
Hosur - 635 126.

5. The President,
Residents Association of SIPCOT Housing Colony,
Hosur - 635 126.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents 2nd and 4th on the basis of allotment letter condition dated 30.06.1980 that the allotment now made to subject to the condition that the plot issued only for residential accommodation and to initiate appropriate action to evict the commercial establishment activities, against the

policy of SIPCOT as per condition of allotment letter, pending disposal of this writ petition.

For Petitioner : Mr.K.Krishna

For Respondents : Mr.E.Manoharan
Additional Government Pleader

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner, a resident of SIPCOT Housing Colony, Hosur and claiming himself to be a public interest litigant, has opposed to running of a hostel in the name and style of 'Akshaya Women's Hostel' and 'Karur Working Women's Hostel', in the same housing colony, stated to have made a representation dated 25.11.2018 to the Project Officer, SIPCOT Project Office, Hosur, marking copies to Chairman, SIPCOT, Chennai, the Assistant Engineer, TNEB, SIPCOT, Hosur, the President, Residents Association of SIPCOT Housing Colony, Hosur and the District Collector, Krishnagiri District, Krishnagiri, respondents herein, to take action, and to stop the running of the hostels, which according to him, has violated the conditions of allotment that the plot should not be used for any commercial purposes.

2. Petitioner has contended that respondents have allowed commercial establishment in the residential colony, which grossly violates the policy of SIPCOT. Petitioner has contended that the hostel is a commercial establishment. Contending further that the representation dated 25.11.2018 has not been disposed of, and therefore, petitioner has sought for a mandamus, directing the Managing Director, SIPCOT, Chennai and the President, Residents Association of SIPCOT Housing Colony, Hosur, respondents 2 and 4, to initiate appropriate action to evict commercial establishment activities, which according to him, is against the policy of SIPCOT, as per condition of allotment letter dated 30.06.1980.

3. Heard Mr.K.Krishna, learned counsel for the petitioner and perused the materials available on record.

4. Vide proceedings in Ref. No.32/H/4PD/79 dated 30.06.1980, Project Officer, SIPCOT, has allotted Plot No.B-135 within Housing Colony of SIPCOT Industrial Complex, Hosur to Mr.S.Venkatachalam. Allotment order reads thus.

Sir/Madam,

Sub: SIPCOT Housing Colony Industrial complex
Hosur Housing Plot No. Allotment of Plots at SIPCOT

Housing colony at Hosur regular allotment order - regarding.

Ref: 1. Your application No.W1

You are informed that Plot No.(s)B-135 (Housing) at SIPCOT Industrial Complex, Hosur is allotted to you subject to the following conditions:-

1. The tentative cost to the plot including development charges worksout to Rs.3510/- (Rupees Three Thousand Five Hundred and Ten only).

2. The cost of the plot now fixed is only tentative, the actual cost of the plot will be intimated after the accounts are finalised and the difference, if any, should be paid on intimation from this office.

3. The balance amount of Rs.3010 (Rs.3510 less Rs.500) (Rupees Three Thousand and Ten only) should be paid within 30 days of the receipt of this allotment by you failing which the allotment will be cancelled and initial deposit forfeited.

4. The allottee(s) should execute at his / their own cost the sale deed in the prescribed form which will be sent separately.

5. The sale deed should be executed within one month from the date of receipt of this letter. An undertaking to this effect should be given to SIPCOT.

6. The taxes (Government and local authority) or any competent authority) due on the plot shall be paid by the allottee(s) with effect from the date of the taking possession of the plot.

7. The allotment is made to the allottee on the specific condition that construction should be commenced within six months and building completed within 3 (three) years from the date of agreement after getting the building plan approved by SIPCOT and local body and that the allottees shall not part with possession, alineate, assign or other wise encumber his/her/their right in the above plot till the expiry of period of 5 (five) years from the date of consideration of construction or till any pending writ petitions are suits about the lands in question are disposed off, whichever is later and without the written prior approval of SIPCOT.

8. You will be liable to maintain the property in good condition.

9. You shall pay all charges for consumption of water and electricity on the premises in addition to annual maintenance charge of the area / colony.

10. The allotment now made is subject to the

condition that the plot is used only for residential accommodation.

11. Please contact the project officer, SIPCOT project office, Hosur along with your letter of acceptance of conditions of allotment with declaration called for in para-5 above.

12. No financial aid or commitment will be given by SIPCOT for the construction of buildings on the plot allotted to you. However, 'No Objection Letter' will be given to financial institution(s) which comes forward to advance loans for the construction of residential buildings on the site allotted to you. The allottee should give a declaration that he/she does not own a house site in the nearby Panchayat Union Limits.

13. You are request to remit a sum of Rs.50.00 (Rupees Fifty only) to Tamil Nadu Electricity Board through this office for house service electric connection along with the plot cost.

Yours faithfully,
PROJECT OFFICER.

5. Subsequently, by proceedings in Lr.No.AO/Housing Colony/SICH/94 dated 25.11.1994, the said Venkatachalam, has been permitted to execute a sale deed to Smt. C.S.Bavuthra Rani, W/o. Thiru C.J.Sridhar. Said permission reads as thus:

Dear Sir,

Sub: SIPCOT Indl.Complex, Hosur - Plot No.B.135

allotted to Thiru.S.Venkatachalam - Permission

to sell to Smt.C.S.Bavuthra Rani - Reg.

Ref: H.O. Lr.No.ADN/ICH/M.66/87 dated 17.11.94

You are request for sale of housing plot No.B135 has been permitted by our Head Office vide in the reference cited. You may execute the sale deed with the buyer to Smt.C.S.Bavuthra Rani W/o.Thiru.C.J.Sridhar and the copy of the sale deed my be sent to this office for changing the name in our records.

Yours faithfully,
PROJECT OFFICER.

6. Smt.C.S.Bavuthra Rani, has executed a sale deed dated 01.12.2008 to the writ petitioner M.Suresh Babu.

7. Placing reliance on Condition No.10 that the property allotted to be used only, for residential accommodation and running of a women's hostel is a commercial activity, and therefore, the same has to be stopped, petitioner has filed the instant writ petition.

8. Running of hostel is also opposed on the following averments.

"9. It is submitted that in my street itself, there is a ladies hostel by name "Karur Ladies Hostel" where around 30 women are staying inside this hostel which is not worth staying more than 10 people. The garbage collection due to this overcrowding of people in a small building is also huge, creating a hub for the mosquito breeding place. Moreover, many outsiders who come to this ladies hostel for pick up and drop of the ladies and it is true a night mare for the rest of the residents since we have all grown up children's who watch this daily activities and sometimes some these outsiders are notorious and even tease the school going children. This was many times discussed with the Association president and he is helpless since the building owners who are not in Hosur, lease it to unknown people through agents.

10. The petitioner respectfully submits that, there are around 330 housing plots for residential purposes and there are commercial space provided by the SIPCOT for commercial activities, which are functioning without any problems. But these resident plots are being used for a commercial purposes and one of the biggest Ladies Hostel in the colony is "Akshaya Ladies Hostel" which houses around 150 to 250 inmates and the water supplies are from the Municipality, which normally should not be given for commercial purposes."

9. Though at paragraph No.13, the petitioner has contended that allowing a commercial establishment in a residential colony is violative of the policy of SIPCOT, he has not furnished any details of the commercial establishment, except to make a bald averment.

10. Government have enacted Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014 (Act 18 of 2014) dated 02.09.2014. Statement of objects and reasons of the abovesaid Act are as under

"According to Section 8-A of the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982 (Tamil Nadu Act 33 of 1982), every person, who makes an application for building permit

for any building work to a local authority concerned and every person who undertakes or is in charge of, any construction work other than the said building work, shall liable to pay, a sum at such per cent, not exceeding one percent of the total estimated cost of the building or construction work proposed to be constructed, as may be fixed by the Government by notification, as contribution to Fund for benefit of manual workers in the employment in construction or maintenance of dams, bridges etc.

2. However in Explanation under the said section 8-A of the said Act, as the term 'person' does not include the Central Government and the Central Government Undertakings, there is no enabling provision for collecting such contribution from the Central Government and the Central Government Undertakings, when they undertake construction works within this State.

Therefore, the Government have decided to amend the said Act to make a provision for collecting such contribution from the Central Government and the Central Government Undertakings also.

3. The Bill seeks to give effect to the above decision.

11. As per Section 2(e), 'hostel' or 'lodging house' means, a building in which accommodation is provided for women, children or both, either with boarding or not.

12. Reading of the statutory provisions of Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014 makes it clear that license has to be obtained for a hostel, lodging houses and homes for women and children. Procedure is also set out for renewal, power to cancel or suspend the license, surrender of licence, registration of homes for women and children, etc.

13. In exercise of the powers conferred by sub-section (1) of Section 25 of the Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014 Government of Tamil Nadu have issued G.O.Ms.No.10, Social Welfare and Nutritious Meal Programme (SW5) dated 21.02.2015 and framed Tamil Nadu Hostels and Homes for Women and Children (Regulation) Rules, 2015.

14. Rule 2(e), 'inmates' means women and children residing in the licensed or registered institutions like homes, hostels and lodging housings run by Government or Non Government Organisations or Private or Religious Institutions or Factories or Enterprises etc.

15. As per Rule 2(f), 'licence' means a licence granted under Section 5 of the Act.

16. As per Rule 2(g) of Tamil Nadu Hostels and Homes for Women and Children (Regulation) Rules, 2015, 'Non Government Organisation' means, an institution which is registered either under the Indian Trusts Act, 1992 (CA 2 of 1882) or the Tamil Nadu Societies Registration Act, 1975 (TN Act 27 of 1975) or the Companies Act, 2013 (CA 18 of 2013) or the Juvenile Justice (Care and Protection of Children) Act, 2000 (CA 56 of 2000) or any other Act.

17. Reading of the provisions of the Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014 and the Rules framed therein, makes it clear that the hostel is a place, meant for residence either licensed or registered, and the petitioner has not placed any materials to substantiate that a Hostel, is a commercial establishment.

18. 'Establishment' and 'Commercial Establishment' as defined in Section 2(6) and 2(3) of the Tamilnadu Shops and Establishments Act, 1947, reads thus.

2(6) 'establishment' means a shop. Commercial establishment, restaurant, eating house, theatre or any place of public amusement or entertainment and includes such establishment as the State Government for the purposes of this Act;

2(3) 'commercial establishment' means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding or commercial agency, or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, broker's office or exchange and includes such other establishments as the state government by notification may by notification declare to be a commercial establishment for the purposes of this Act.

19. Hostel would not fall under the definition of shop, restaurant, eating house, theatre or any place of public amusement or entertainment and includes such establishment as the State Government for the purposes of this Act. Hostel would not fall under business of advertising, commission, forwarding of Commercial Agency etc. No notification has been placed before us that a Hostel is a Commercial Establishment, for the purpose of Tamilnadu Shops and Establishments Act, 1947.

20. While considering the definition and meaning of the word, defining a Hostel, in Section 2(e) of the Tamil Nadu Hostels and Homes for Women and Children (Regulation) Act, 2014, establishment and commercial establishment in Sections 2(6) and 2(3) of the Tamilnadu Shops and Establishments Act, 1947, we do not accept the arguments of the learned counsel for the petitioner that Hostel, is a commercial establishment, for issuance of a writ of mandamus, directing the respondents 2nd and 4th, to initiate appropriate action to evict the hostel, on the basis of Condition No.32/H/APD/79 in the allotment letter dated 30.06.1980.

21. Averments of the petitioner in paragraph Nos. 9, 10 and 13 are not substantiated. Statute defines an hostel as a place of residence. Contention of the petitioner that Cl.No.10 of the allotment order has been violated and that it has not been used for the purpose for which it is granted i.e. Residential accommodation, but then the plot has been used a commercial purpose, cannot be countenanced. There is no merit in the writ petition. Hence, dismissed. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

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3. The District Collector,
Krishnagiri District,
Krishnagiri.

4. The Project Officer,
NH44, SIPCOT Project Office,
Hosur - 635 126.

+1 cc to mr.K.Krishna, Advocate SR.No.18566
+1 cc to The Government Pleader, Sr.No.19314

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and WMP.No.6526 of 2019

SJ(CO)
CSL/10.04.2019