

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM
W.P.No.35165 of 2013

G.Arul Xavier

...Petitioner

vs.

1. The Management of Binny Ltd.,
Rep.by its General Manager,
having Corporate Office at
No.1, Cooks Road,
Otteri, Perambur,
Chennai-600012.
2. The Management of Binny Mills Ltd.,
Rep.by its General Manager,
No.9, Stephenson Road,
Otteri, Perambur,
Chennai-600 012.
3. The Appellate Authority for
Industrial and Financial Re-Construction,
10th Floor, Jeevan Prakash,
No.25, Kasturibai Gandhi Marg,
New Delhi-110 001.
4. Board for Industrial and
Financial Re-Construction,
JawaharVyapar Bhavan,
No.1, Tolstoy Marg,
New Delhi.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 1st respondent herein to allot 500 sq.ft. of land to the petitioner as allotted to 244 workman of the respondent mill in pursuant to Memorandum of Understanding dated 28.05.2008 which was the basis for closing of entire proceedings before the 3rd respondent herein in Case No.48/1993 and thereby the 1st respondent was ceased to be a sick Industrial Undertaking with reference to 30.09.2005 as per order passed by this Court in W.P.Nos.18117 and 18304 of 2008 dated 30.07.2008 and consequently, forbearing the 1st respondent herein from bringing the Mill property for sale.

For Petitioner : No-appearance
For Respondents : Mr.Haroon AL.Rasheed
for M/s.T.S.Gopalan & Co
for RR1 & 2.

O R D E R

The relief sought for in the present writ petition is to direct the 1st respondent herein to allot 500 sq.ft. of land to the petitioner as allotted to 244 workman of the respondent Mill in pursuance to Memorandum of Understanding dated 28.05.2008 which was the basis for closing of entire proceedings before the 3rd respondent herein in Case No.48/1993 and thereby the 1st respondent was ceased to be a sick Industrial Undertaking with reference to 30.09.2005 as per order passed by this Court in W.P.Nos.18117 and 18304 of 2008 dated 30.07.2008 and consequently, forbearing the 1st respondent herein from bringing the Mill property for sale.

2. The writ petitioner states that he was appointed in the B&C Mills Limited as Machine Man in C.M. Preparation and his Token is No.742. The writ petitioner further stated that himself and 30 others did not opt for Voluntary Retirement Scheme of the 1st respondent herein in pursuance to 12(3) settlement dated 28.03.1998, when the Mill was closed.

3. The relief sought for in the present writ petition is to allot 500 sq.ft., of land to the writ petitioner as allotted to 244 workman of the respondent Mill, in pursuance to Memorandum of Understanding dated 28.05.2008. The allotment of land was granted in respect of the employees who were in possession of the quarters. Admittedly, the writ petitioner was not allotted any quarters and he was residing within the premises. In respect of the said issue in relation to the Memorandum of Understanding as well as other facts, this Court elaborately passed an order dated 31.10.2019 in W.P.No.30818 to 30829 of 2017, the relevant paragraph No.13 is extracted hereunder:

13. On a reading of the conditions in the MOU, it is clear that the benefit of 500 sq.ft was extended only to 244 workers, who were in occupation of the company quarters. Thus, the Labour Court arrived at a conclusion that the writ petitioners had not established any pre-existing right so as to entertain a computation petition under Section 33-C(2) of the Industrial Disputes Act. Further, the Labour Court found that the merits on issues raised by the writ petitioners in computation petition cannot be decided under Section 33-C(2) of the Industrial Disputes Act.

4. In respect of other order passed on 17.07.2017 in W.P.No.10701 of 2017, the Division Bench confirmed the judgment in W.P.No.1012 of 2017 on 05.07.2019, wherein the Division Bench observed as follows:

15. In view of this clear admission and acquiescence, the workmen, represented by the appellant Trade Unions, are estopped in law from raising the issue again before the Court of law, by way of present writ petition, which has been rightly dismissed by the learned Single Judge of this Court. This Court cannot permit the dead issues to be raised again and again. The issue sought to be raised before this Court was not only dead long ago, but even in the Scheme itself also, it was only a proposal. Had the said Scheme been carried out and implemented in full in its letter and spirit, that part of the Scheme also could be implemented by the concerned Agencies, including BIFR, at that point of time. That not having been done, after 14 years, now there is no occasion for this Court to go into those issues once again at the instance of the Labour Unions and to issue any such Mandamus/direction or even revive the case before BIFR or NCLT as prayed for.

16. In view of this, this Court finds no merit in the present writ appeals and the same are liable to be dismissed. Accordingly, they are dismissed. No costs. Consequently, CMP.No.14246 of 2017 is also dismissed.

5. In view of the above judgment, this Court is of the considered opinion that the relief as such sought for by the writ petitioner to direct the respondents to allot 500 sq.ft. of land to the writ petitioner cannot be considered.

6. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

ssb

To

1. The Appellate Authority for Industrial and Financial Re-Construction,
10th Floor, Jeevan Prakash,
No.25, Kasturibai Gandhi Marg, New Delhi-110 001.

2. Board for Industrial and Financial Re-Construction,
JawaharVyapar Bhavan,
No.1, Tolstoy Marg, New Delhi.

+1cc to Mr.G.Purushothaman , Advocate SR.No. 98675

+1cc to M/s.T.S.Gopalan & Co, Advocate SR.No. 98463

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