



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.11.2019

Pronounced on: 03.12.2019

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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.22385 of 2019
& W.M.P.No.21717 of 2019

G.Jaisankar Srinivasan,
S/o.M.Ganesan,
No.4/89, Avvaithirunagar 1st Cross Street,
Virugambakkam,
Chennai - 600 092

... Petitioner

/versus/

1. The Tamil Nadu Small Industries,
Development Corporation,
Rep. by its Chairman and Managing Director,
Thiru.Vi.Ka.Industrial Estate, Guindy,
Chennai - 600 032.
2. The Project Officer,
Office of the Project Officer,
Industrial Estate,
Chennai - 600 058.
3. The Secretary,
Small Industries Development,
Government of Tamil Nadu,
Fort St.George, Chennai - 9.
4. The District Collector,
Tiruvallur District.

.... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in his R.C.No.3322/1E-6/2005, dated 06.12.2013, which was received by the petitioner through his counsel to whom the 1st respondent sent the same through a letter dated 24.03.2014 in his R.C.No.3322/IE-6/2005, and quash the same and pass a consequential order to the 1st respondent directing him to accept the balance of land cost and handover vacant possession of the developed plot bearing Nos.FB 1 and 2 of a total extent of 11,425 Sq Industrial Estate Ambattur allotted in pursuant to the



order of the 1st respondent in his proceedings No.4286/1E-1/96, dated 21.03.1996 and execute the sale deed in favour of the petitioner.

For Petitioner : Mr.V.Vaithiyalingam

For R1 & R2 : Mr.M.J.Jaseem Mohamed

For R3 & R4 : Mr.N.Inbanathan,
Additional Government Pleader

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. On 21.03.1996 the petitioner herein was allotted developed plots bearing No.FB 1 and FB 2 measuring 11,425 sq.ft for a cost of Rs.8,00,760/- at SIDCO Industrial Estate, Ambattur by the Chairman-cum-Managing Director, SIDCO. In the allotment order, the petitioner was asked to pay the cost by 31.03.1996. The petitioner did not pay any amount within that time. Thereafter, the petitioner has paid Rs.1,95,000/- in 4 instalments between 04.04.1996 and 16.05.1996. While so, the said allotment was temporarily kept in abeyance by the Managing Director, SIDCO vide his letter dated 25.06.1996 on the ground that, the said land is reserved for fishing pond. After two years, a show cause notice dated 04.06.1998 issued to the petitioner calling for his reply why the allotment should not be cancelled since the petitioner has not taken steps to pay the balance cost of the land and further, the land allotted to the petitioner comes under common purpose area (fishing pond area) which falls under 10% Reservation category under Chennai Metropolitan Development Authority norms.

3. The petitioner though claims that, he replied to this show cause notice, the copy of the reply not filed. However, the SIDCO has not proceeded further with this show cause notice to cancel the allotment as per the show cause notice. After 10 years, the Chairman-cum-Managing Director of SIDCO has issued another show cause notice dated 22.06.2006 calling upon the petitioner to reply within 15 days, stating that the land allotted to the petitioner comes under the common purpose/Public purpose/open space Reservation areas, which is required for SIDCO for the purpose for which it has been reserved. The Board of SIDCO have decided not to hand over the lands even though payment of the land cost made, since the allotment is in violation of the approved Master Plan.



4. In response to the show cause notice dated 22.06.2006, alleged to have been received on 19.07.2006, the petitioner has given a reply dated 02.08.2006. In his reply, the petitioner has stated that, he cannot be penalised for the violation committed by SIDCO. He has invested on his project based on the allotment. If the allotment is cancelled, it will jeopardise his investment. Further, the petitioner has alleged selective discrimination in issuing the cancellation notice. While few allottees were given possession some of the allottees alone asked to forego the allotment. Following his reply, the petitioner has also issued notice through his Solicitors, M/s.Norton & Grant, on 12.08.2006 requesting the SIDCO to pass appropriate orders for accepting the balance amount and hand over the developed plot.

5. Thereafter, in W.P.No.36786 of 2006, seeking issuance of a Writ of Mandamus directing the SIDCO to accept the balance land cost and hand over the vacant possession was filed by the petitioner. This Writ Petition was disposed on 04.09.2013 with the following direction:-

8. The prayer sought for in this writ petition is for allotment of the plot by receiving the balance sale consideration. In my considered view, such an order cannot be straight away passed, especially under the circumstances that the matter is under the stage of show cause notice. No doubt, the respondents have filed a counter and stated some reasons therein for not complying with the request of the petitioner. In my considered view, when the respondents have issued a show cause notice and received a reply from the petitioner, necessarily they have to pass an order considering the explanation given by the petitioner. Only thereafter, if any order is made against the interest of the petitioner, the petitioner can challenge the same in a manner known to law. Till an order is passed, the petitioner cannot seek a mandamus as sought for in this writ petition.

9. Therefore, without expressing any view on the merits and contentions of the rival parties, I only direct the first respondent to pass an order in pursuant to the show cause notice dated 22.6.2006. It is open to the petitioner to make further representation or further objections, if any, before the first respondent within a period of three weeks from the date of



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receipt of copy of this order and after receiving the same and an order on merits and in accordance with law shall be passed by the first respondent within a period of four weeks thereafter.

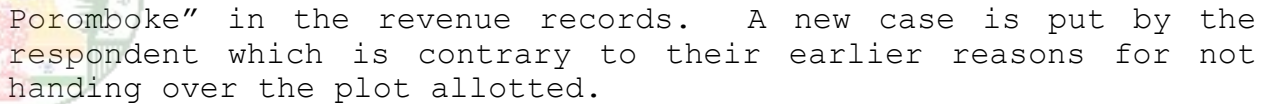
6. Pursuant to the above order, the petitioner has given a representation on 11.09.2013. The 3rd respondent/SIDCO had passed order on 06.12.2013 cancelling the allotment. Alleging that, no such order was served on him, the petitioner has caused a notice dated 15.03.2014 through his lawyer to furnish copy of the cancellation order to take further legal steps for appropriate remedy. In response to this notice, the SIDCO along with its covering letter dated 24.03.2014 has furnished the copy of the allotment cancellation order dated 06.12.2013. This order is challenged after lapse of 5 years in this writ petition, enclosing the medical certificate issued by a Siddha Hospital to explain the delay.

7. The Estate Manager of SIDCO, in his counter has stated that, the petitioner did not tender the cost within the time given. The Government after June 1996 reviewed all the allotments made during the period 1992 -1996 and found the land allotted to the petitioner comes in Survey No. 480 of Ambattur Village which has been classified as "Kulam Poramboke". The land not yet been conveyed to the SIDCO by the Government. Hence, even if the petitioner is ready to pay the balance cost, the SIDCO is not in a position to accept the balance cost.

8. In reverence to the High Court direction issued in W.P.No.36786 of 2006, dated 04.09.2013, the petitioner was called for personal hearing on 26.11.2013. The letter sent to the petitioner address returned with endorsement "no such name in the address". The petitioner over phone called and sought one week time to appear in person. But, the petitioner failed to turn up for the personal hearing even after one week. Thereafter, the order of cancellation No.3322/IE-6/2005, was passed on 06.12.2013.

9. It is reiterated in the counter of the respondent that, the subject land is classified as "Kulam Poramboke" therefore, the petitioner is not entitled to get the land allotted to him. They have not discriminated the petitioner. The land in Survey No.480 of Ambattur Village is not yet alienated to the SIDCO, the proposal sent to the Collector, Chennai is still pending.

10. As a rejoinder to the counter, the petitioner contents that, through Right to Information Act, he has come to know that 7 out of 11 allottees are given possession of the land. In the show cause notice, the respondents refused handing over, on the ground, it falls under reserve area, whereas, in the counter, they claim that it is classified as "Kulam



12. The sequence of facts from the pleadings and documents indicates that, the allotment of Plot FP 1 and 2 to the petitioner on 21.03.1996 was kept in abeyance from 25.06.1996 after collecting Rs.1,95,000/- out of Rs 8,00,760/-. Even this partial amount was paid only after the time prescribed for payment in full. The reasons stated for the proposed cancellation of the allotment in the first show cause notice issued after two years on 04.06.1996 and the second show cause notice issued after 10 years on 22.06.2006 varies. In the W.P.No.36786 of 2006, this Court has directed the respondents to pass orders on merit after affording opportunity to the petitioner. The respondent has passed the impugned order on 06.12.2013 obviously not on merits, but a non-speaking ex parte order quoting none appearance of the petitioner for personal hearing fixed on 26.11.2013. The petitioner gives his own explanation for not appearing before the first respondent for personal hearing. De hors of his none appearance, the 1st respondent should have passed a speaking order assigning reason for cancelling the allotment.

In compliance with the court order, and your representation dated 12.09.2013 you have been called for personal hearing on 26.11.2013 at 11.30 a.m to come over to this Office and communication was sent vide reference 5th cited. The letter was returned by the postal authority stating that "no such name in the address". The communication was sent to the address as given in your representation dated 12.09.2013. It is also ascertained that you



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are not actually residing in the address given by you in your representation and you have been given another one week's time to appear for hearing on 03.12.2013 on your request through a telephone (mobile No.9489255364). But you have failed to turn up for the personal hearing even after one week time.

14. Besides none payment of the cost within the time prescribed, various other reasons are given at different point of time, viz., the show cause notices (dated 04.06.1998 and 22.06.2006) and the counter affidavit of the respondents. Whether the cancellation is for the reason that, land is a reserved space for public purpose or it is a pond in existence or the land classified as "Kulam Porambokku" or for all these reasons is not stated in the impugned order. Further, from the information furnished by the petitioner in his re-joinder, the stand of the respondents that the land in Survey Number 480, had not so far assigned to the SIDCO by the Government appears to incorrect. The documents and Court judgments cited by the petitioner coupled with the information which he obtained from the Information Officer of the respondent Office under RTI Act indicates that, out of 11 plots 7 plots in the said Survey Numbers either sold or handed over to the allottees.

15. On the part of the petitioner, this Court finds that, there are significant lapses on his side. Firstly, he neither paid the part amount within the time nor paid the cost in full, even thereafter. Now he takes advantage of the receipt of part amount from him after the date fixed for remittance (31/03/1996) and sustains his right of seeking possession. Secondly, he has not come to the Court within reasonable time after the receipt of the impugned order.

16. In the said circumstances, for the reasons stated, the impugned order of the first respondent dated 06.12.2013 is quashed. The 1st respondent is directed to pass order afresh on considering the representations submitted by the petitioner, the Government Orders in G.O.Ms No.959 dated 23.07.1976, G.O.Ms.785 dated 07.06.1988, which are relied and referred by the petitioner in his rejoinder, the alienation of the plots to the other allottees in the same Survey Number and all other relevant factors necessary to take decision on merit. The petitioner also shall be at liberty to give any additional representation, if he so wishes. In case, the respondent holds that the subject land could be alienated, then they are entitled to collect interest from the petitioner for the delayed payment of the land cost.



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17. Accordingly, the Writ Petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

bsm

1. The Chairman and Managing Director,
The Tamil Nadu Small Industries,
Development Corporation,
Thiru.Vi.Ka.Industrial Estate, Guindy,
Chennai - 600 032.
2. The Project Officer,
Office of the Project Officer,
Industrial Estate,
Chennai - 600 058.
3. The Secretary,
Small Industries Development,
Government of Tamil Nadu,
Fort St.George,
Chennai - 9.
4. The District Collector,
Tiruvallur District.

+1cc to Mr.M.Jaseem Mohammed, Advocate, SR.No.100633.
+1cc to Mr.V.Vaithiyalingam, Advocate, SR.No.100785.

Order in
Writ Petition No.22385 of 2019

VD (CO)
CSR(31/12/2019)