

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 18.02.2020
CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. No.21563 of 2012
and
MP No.1 of 2012
and
MP No.1 of 2013

S.Albert & Co. Pvt. Ltd.
Rep. by its Director. Petitioner

Vs

1. Chennai Port Trust,
Rep. by its Chairman & Managing Director,
Rajaji Salai,
Chennai - 600 001.

2. The Traffic Manager,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for records relating to the impugned order of the 2nd respondent herein under Ref.C2 (a)242/2006/T, dated 15.02.2012, 4.5.2012, 12.06.2012 and 25.07.2012 demanding a sum of Rs.73,17,375/- as three times penalty in respect of the covered space godown measuring 4,744 sq. meters at Heavy Workshop Eastern Shed, BTC Shop and Machine Shop, near 10th Gate in III Section by the petitioner and quash the same.

For Petitioner : Mr.K.Sivakumar
For Respondents : Mr.M.Devendran

ORDER

This writ petition has been filed challenging the orders dated 15.02.2012, 04.05.2012, 12.06.2012 and 25.07.2012 passed by the second respondent demanding a sum of Rs.73,17,375/- as three times penalty in respect of the covered space godown measuring 4,744 square meters at Heavy Workshop Eastern Shed, BTC Shop and Machine Shop, near 10th Gate in III Section occupied by the petitioner under an allotment order issued by the first respondent on 15.11.2011.

2. It is the case of the petitioner that the above mentioned space was occupied by the petitioner pursuant to an allotment order issued by the first respondent in their favour on 15.11.2011.

3. It is the case of the petitioner that under the allotment order dated 15.11.2011, there was a delay in the payment of security deposit as well as advance licence fees.

4. It is also the case of the petitioner that the petitioner has paid the security deposit of a sum of Rs.25,39,617/- along with the advance licence fees for three months and penalty for the belated payment as demanded by the second respondent. However, it is the case of the petitioner that by the impugned orders, dated 15.02.2012, 04.05.2012, 12.06.2012 and 25.07.2012 passed by the second respondent, the second respondent has called upon the petitioner to pay a sum of Rs.73,17,375/- as penalty for unauthorised occupation of the space from 25.11.2011 to 29.03.2012, which is arbitrary, illegal and unjust. It is the case of the petitioner that the allotment order, dated 15.11.2011, issued by the first respondent does not stipulate any payment towards penalty and hence, the respondents are not entitled to claim penalty from the petitioner. In such circumstances, this writ petition has been filed.

5. A counter affidavit has been filed by the respondents stating that only due to the belated payment of the security deposit and the licence fees and as per the condition No.3 stipulated in the allotment order, the respondents have claimed penalty from the petitioner under the impugned orders.

6. Heard Mr.K.Sivakumar, learned counsel for the petitioner and Mr.M.Devendran, learned counsel for respondents.

Discussion :-

7. This Court has perused and examined the allotment order

dated 15.11.2011 issued by the first respondent in favour of the petitioner. As rightly contended by the learned counsel for the petitioner, the aforesaid allotment order does not stipulate payment of penalty in case of breach of any of the conditions under the allotment order. However, it is an admitted fact that the security deposit as well as the advance licence fees payable under the allotment order was paid belatedly by the petitioner. This being the case, the respondents will have to be compensated for the losses, if any suffered by them on account of breach of contract committed by the petitioner. Under the impugned orders, the second respondent has quantified the penalty payable by the petitioner for each month at Rs.4,87,825/- and they have directed the petitioner to pay a total sum of Rs.73,17,375/- for the alleged unauthorised usage of the space by the petitioner for the period from 25.11.2011 to 29.03.2012. Further, they have calculated the said penalty amount for five months based on three times penalty, without any basis whatsoever, as the allotment order does not provide for any penalty clause nor does it fix any sum as liquidated damages. It is clear that the penalty amount imposed upon the petitioner under the impugned orders is arbitrary, illegal and unjust as it has been imposed without any basis whatsoever as the allotment order does not provide for payment of penalty. However, since there was a delay in the payment of security deposit as well as the advance licence fees by the petitioner, they are liable to pay compensation, if any suffered by the respondents on account of the breach of contract.

8. If any claim for compensation is made by the respondents, the petitioner must be put on notice and must be given an opportunity to contest the claim for compensation by the respondents. In the case on hand, no such opportunity has been given to the petitioner by the respondents, as seen from the impugned orders.

9. For the foregoing reasons, the impugned orders dated 15.02.2012, 04.05.2012, 12.06.2012 and 25.07.2012 are hereby quashed and the matters are remanded back to the second respondent for fresh consideration.

10. In the result, the second respondent is directed to issue a show cause notice to the petitioner within a period of two weeks from the date of receipt of a copy of this order, with regard to the claim for penalty / compensation for the period from 25.11.2011 to 29.03.2012, mentioning the quantum of penalty / compensation payable by the petitioner. On receipt of the show cause notice, the petitioner is permitted to send a reply objecting the said claim, along with supporting

documents and the said exercise shall be done, within a period of two weeks thereafter. Further, on receipt of the said reply from the petitioner, the second respondent is directed to consider the aforesaid reply as well as the documents, after affording an opportunity of personal hearing to the petitioner, pass final orders on merits and in accordance with law, within a period of eight weeks, thereafter.

11. In terms of the above directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/
Sub Asst. Registrar

vsi2

To

1. The Chairman & Managing Director,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

2. The Traffic Manager,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

+1 cc to M/s.K.Sivakumar Advocate sr14299

+1 cc to M/s.M.Devendran Advocate sr13963

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W.P. No.21563 of 2012

rr(co)

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