

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20.01.2020
CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5563 of 2013
and
M.P.No.1 of 2013

M/s.Yantro Software (P) Ltd.,
Rep., by its Managing Director,
PR.Karuppaiah,
Having registered office at
No.9, Beemasana Garden Street,
Royapetta High Road,
Mylapore, Chennai-4. .. Petitioner

-vs-

- 1.The Government of Tamilnadu,
Rep., by its Secretary to Government,
Industries Department,
Fort St. George,
Chennai-9.
- 2.The Principal Secretary/Chairman
and Managing Director,
State Industries Promotion Corporation of
Tamilnadu Limited (SIPCOT),
19-A, Rukmani Lakshmipathy Road,
Egmore,
Chennai-600 008. .. Respondents

Petition under Article 226 of the Constitution of India
praying for issuance of Writ of Certiorari to call for the
records relating to the impugned order passed by the second
respondent herein issued in his proceedings
No.DII/SITP/83/yanthro/2008 dated 08.02.2013 and quash the same.

For Petitioner : Mr.M.S.Velusamy
For Respondents : R1 - Ms.A.Sri Jayanthi,
Special Government Pleader
: R2-Mr.Ramesh Venkatachalapathy,
Standing Counsel

ORDER

Heard Mr.M.S.Velusamy, learned counsel for the petitioner, Ms.A.Srijayanthi, learned Special Government Pleader for the first respondent and Mr.Ramesh Venkatachalapathy, learned Standing Counsel for the second respondent-SIPCOT.

2.The petitioner has impugned the order passed by the second respondent dated 08.02.2013, cancelling the allotment of a plot in SIPCOT, IT Park, Siruseri, on the ground that the petitioner did not adhere to the conditions of lease deed and commence construction as contemplated therein. The allotment was made in favour of the petitioner by proceedings dated 18.03.2008, and the lease deed was registered on 18.07.2008. The second respondent has referred to Condition No.3(viii) of the allotment order and Condition No.16 of the lease deed, which states that the allottee shall commence the commercial production within 30 months from the date of allotment order. Failure, will entail cancellation of the allotment and forfeiture of total amount paid towards the extent allotted. Referring to this condition, show cause notice dated 14.10.2011, was issued giving the petitioner 15 days time. The petitioner submitted a letter on 25.11.2011, requesting the Senior Project Manager of the second respondent to give permission to construct an approached culvert to their plot. This being a prerequisite to enable them to commence construction. Though the office of the second respondent received the letter dated 25.11.2011, it appears that no reply was sent and a second show cause notice dated 18.03.2012, was issued stating that the reply given by the petitioner is not convincing and extension of time for implementation cannot be considered and therefore, requested the petitioner to rectify the defect within 90 days. The defect would mean that the petitioner should comply with the condition of putting up construction and commencing commercial production. The petitioner by reply dated 29.03.2012, informed the second respondent organisation that they have already commenced construction. However, subsequently, at the intervention of the Senior Project Manager, the construction was stopped and the petitioner addressed the second respondent by letter dated 18.04.2012, requesting for approval to construct culvert (bridge) as requested by them by letter dated 25.11.2011, and owing to non grant of permission, they had to stop construction. The Senior Project Manager, informed the petitioner by letter dated 23.04.2012, that their request for construction of the approached culvert has been forwarded to the second respondent and without getting approval, the culvert cannot be constructed. On receipt of the said communication, the petitioner submitted representations dated 27.04.2012, to the Senior Project Manager and 07.05.2012, to the second respondent followed by another representation dated 14.05.2012.

3.Once again show cause notice was issued on 25.05.2012 stating that the petitioner has not produced any evidence such as building plan, financial arrangements, schedule for implementation of project, etc., and the petitioner was required to furnish concrete schedule for implementation of the project and for commencement of commercial production and the second respondent granted permission to construct the approached culvert by giving 90 days time to take remedial action. Subsequently, the petitioner addressed the Senior Project Manager about the type of design which they proposed to adopt for the culvert etc. By letter dated 01.08.2012, the petitioner informed the second respondent about the completion of the culvert work and that they are working for building construction process. By letter dated 22.08.2012, the petitioner had forwarded the blueprint of the building construction to the second respondent and requested for approval. Soon after, the impugned order has been passed.

4.In the considered view of this Court, the respondent cannot fall back on the original time limit as mentioned in their show cause notice dated 14.10.2011 or 18.03.2012 and in the light of the proceedings dated 25.05.2012. By this proceedings, the petitioner was granted permission to construct the approached culvert which permission, the petitioner is requesting ever since 2011. Unless and until an approached road is widened, construction activity cannot be commenced and this is a basic requirement. That apart, the second respondent having stated that the petitioner has to produce evidence such as building plan and financial arrangements, by letter dated 25.05.2012, once again cannot fall back on condition no.3(viii) of the allotment order and condition no.16 of the lease deed to cancel the allotment. That apart, after the completion of the culvert, the petitioner accepted payment of R.34,500/- towards water charges.

5.Considering all the above facts, this Court is of the considered view that the impugned order of cancellation could not have been passed by referring to the conditions of allotment or the lease conditions on and after 25.05.2012, when the petitioner was first granted the permission for construction of the culvert. It is to be noted that during the pendency of this writ petition, the petitioner had the benefit of an interim order as a result of which, the petitioner is in possession and enjoyment of the property till date, which is still lying as a vacant site. Thus, considering the peculiar facts and circumstances of the case, the impugned order calls for interference.

6. Accordingly, the writ petition is allowed, the impugned order dated 08.02.2013, is set aside and the petitioner is directed to submit all their credentials and financial statement as to how and within what time, they will commence construction activities and complete the same. These details shall be submitted to the second respondent within a period of eight weeks' from the date of receipt of a copy of this order. On receipt of the same, the second respondent shall examine the same and its genuinity and pass orders in accordance with law. Till orders are passed, the possession and enjoyment of the plot in question shall remain with the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

abr

To

1. The Secretary to Government,
The State of Tamilnadu,
Industries Department,
Fort St. George, Chennai-9.
2. The Principal Secretary/Chairman
and Managing Director,
State Industries Promotion Corporation of
Tamilnadu Limited (SIPCOT),
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai-600 008.

+1cc to Mr. Ramesh Venkatachalapathy, Advocate, SR.No.3629.
+1cc to Mr. S. Velusamy, Advocate, SR.No.3734.
+1cc to Government Pleader, SR.No.4389.

NR(CO)
CSR: 04.03.2020

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