

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.03.2021

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR
W.P. No.30124 of 2013

Carborundum Universal Ltd.,
Rep. by its Senior Manager - Legal,
Parry House, 43, Moore Street,
Chennai - 600 001.

.. Petitioner

Vs

1.Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

2.The Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the file of the 2nd respondent leading to the letter No. AL/10/4322/2008 dated 14.1.2011 as confirmed by the second respondent in its communication dated 29.7.2013 and quash the same consequently direct the respondents to execute a Sale Deed in favour of the petitioner herein in respect of Plot Nos.C4 and C5 in the CMDA Industrial Complex at Maraimalai Nagar, Chengalpattu Taluk in Kancheepuram District without imposing any claim or condition given a right preemption to purchase the plots at the original cost or obtaining NOC for sale of plots as stipulated in clause 18 of the draft sale deed furnished by the Second Respondent.

For Petitioner : Mr. S.Raghunathan
for B.Giridhara Rao

For Respondents : Mr. P.S.Ganesh

O R D E R

This writ petition is filed for issuing a writ of Certiorarified Mandamus calling for the file of the 2nd respondent leading to the letter No. AL/10/4322/2008 dated 14.1.2011, and quash the same and to direct the respondents to execute a Sale Deed in favour of the petitioner herein in respect of Plot Nos.C4 and C5 in the CMDA Industrial Complex at Maraimalai Nagar, Chengalpattu Taluk in Kancheepuram District, without imposing any claim or condition giving a

right of preemption to purchase the plots at the original cost or obtaining NOC for sale of plots as stipulated in clause 18 of the draft sale deed furnished by the Second Respondent.

2. Brief facts that are set out in the affidavit filed in support of this petition are as follows:

The petitioner is a public limited company and engaged in the business of manufacture of bonded and coated abrasives. Originally the first respondent acquired a large tract of lands to an extent of about 600 acres situated at four different villages. After acquiring the lands, the first respondent laid out the entire property into various plots for industrial use besides setting out of lands for the purpose of laying roads, drains and other common purposes by way of implementing a scheme which was framed to promote industries and to generate employment. It is admitted that the first respondent allotted plot No.C4 and C5 in CMDA industrial complex at Maraimalai Nagar to M/s. Cutfast Bonded Abrasives Pvt. Limited, the predecessor in interest of the petitioner. The allotment of plot was pursuant to the application that was submitted by the erstwhile company in 1979. The original allottee was using the plots for their manufacturing activities. Unfortunately M/s. Cutfast Bonded Abrasives Pvt. Limited was amalgamated with another company known as M/s. Cutfast Abrasives Tools Limited, under the scheme of amalgamation. As per the terms of amalgamation it is stated that all the assets of property of M/s. Cutfast Abrasives Tools Limited stood transferred and vested with the petitioner company pursuant to the order of this Court passed in C.P. No.99 and 98 and C.P. No.103 of 1990. Since the properties of the erstwhile company vest with the petitioner's company, the petitioner approached the first respondent for transfer of allotment of two plots which were originally allotted by the first respondent in favour of the erstwhile company. It is admitted that the second respondent by proceedings dated 17.12.2002, transferred the allotment of the said plots in favour of the petitioner. It is also stated by the petitioner that the first respondent has passed a transfer order upon payment of requisite transfer fee. Subsequently the first respondent executed a lease cum sale agreement on 05.05.2003 in favour of the petitioner. The allotment in respect of Plot No.C4 and C5 was transferred to the petitioner on a lease cum sale basis. As per the lease cum sale agreement, on completion of one year from the date of commercial production and adhering to the terms and conditions of the said agreement, the first respondent is expected to sell and convey to the allottee the property namely Plot Nos. C4 and C5. The memorandum of lease cum agreement dated 05.05.2003, are of course subject to certain conditions which are set forth in the agreement.

3. It is stated by the petitioner that there is no condition giving right of preemption in the lease cum sale agreement. As per the lease cum sale agreement, the petitioner

is entitled to have the sale deed subject to the terms and conditions contained in the lease cum sale agreement. However, it is stated that the second respondent has insisted the petitioner to execute a sale deed with a condition to the effect that in the event of allottee wants to sell the site even after the execution of the sale deed they should give first preference to CMDA to purchase at the original cost and if they decline to take back, then the same shall be sold to third parties with No Objection Certificate from CMDA. Challenging the conditions imposed by the respondents giving preferential right and insisting No Objection Certificate from CMDA, the above writ petition is filed.

4. Learned counsel appearing for the petitioner relied upon a judgment of Hon'ble Supreme Court and specific provisions of Transfer of Property Act, for a proposition that a Clause which is repugnant to the disposition is void and that therefore it is not enforceable. Learned counsel then submitted that the terms of allotment do not enable the respondents to insist on a condition giving right of preemption to sell the property to the respondent for the original consideration. Learned counsel then submitted that the respondent has no power to impose a new condition in the sale deed contrary to the terms and conditions of allotment and that such unilateral conditions are against common law principles. Imposition of new condition is not only illegal but also unconstitutional and against public policy. Learned counsel also relied upon Section 10 and 11 of Transfer of Property Act and submitted that a condition which is repugnant to the terms of original allotment is void.

5. Learned counsel appearing for the respondents on the other hand made a submission that the terms and conditions of allotment, if read and understood properly, would enable the respondent to impose a condition restraining alienation or giving a right of preemption. Learned counsel relied upon Clause 4, 7, 20, 29, 30, 31, 34 & 35 of lease cum sale agreement dated 05.05.2003 between the petitioner and the first respondent. Learned counsel appearing for the respondent submitted that the allottee is required to observe the stipulations, restrictions and easements affecting the allotted block. Referring to Clause 30, 34 of lease cum sale agreement, the counsel submitted that the respondent has reserved in itself the right to impose further conditions and stipulations at the time of implementing the agreement and for the benefit of industrial complex as a whole. Since Clause 34 of the lease cum sale agreement specifically enables the respondent to ask for any right in grant of No Objection Certificate to enable the allottee to create further encumbrance for obtaining final assistance and for other purposes, the petitioner cannot feel aggrieved while a specific condition is imposed in the sale deed that there cannot be alienation without getting a No Objection Certificate.

6. This Court carefully considered the terms and conditions of lease cum sale agreement. The terms and conditions are not ambiguous and can be stated that there is no condition restraining alienation except for getting a No Objection Certificate for mortgaging the property. Before considering the arguments of either side, it is necessary to go in to the issue whether the allotment in favour of the petitioner should be treated as a Government grant or a transfer of interest in immovable property attracting the provisions of Transfer of Property Act. In case of transfer or assignment in favour of any individual by Government in exercise of its power under Government Grant Act, the provisions of Transfer of Property Act cannot be applied as the Transfer of property Act is not applicable to cases of assignment of Government under the Government Grants Act, 1895. However, the lease cum sale agreement or the subsequent sale deed that was contemplated are pursuant to a scheme framed by the respondent while implementing the policy of Government. The lease cum sale agreement should be treated as a pure contract between the petitioner and the first respondent. In such circumstances, the petitioner is entitled to rely upon provisions of Transfer of Property Act particularly Section 10 and 11 of the Act. The contract namely the lease cum sale agreement dated 05.05.2003 does not give any clue as regards restrictions on alienations. Except No Objection Certificate which is required for creating encumbrance over the property, this Court does not read any provisions under the lease cum sale agreement to enable the respondents to put a condition quite contrary to the terms and conditions of the agreement. The conditions relied upon by the counsel appearing for the respondents should be understood to mean stipulations necessary for establishment of industrial complex or to implement the agreement for the benefit of industrial complex and support. In short, there can be a restriction which is meaningful to carry out the objects and moral principles that can be gathered from the scheme framed by the respondents.

7. Section 10 and 11 of Transfer of Property Act reads as:

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10. Condition restraining alienation:

Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her

marriage to transfer or charge the same or her beneficial interest therein.

11. Restriction repugnant to interest created:

Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.¹⁰ [Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof.]”

A condition or limitation restraining the transferee from disposing of his interest is void. On a transfer of property, an interest in the property if it is created absolutely in favour of any person, the terms of the transfer of interest should be considered as absolute.

8. In the present case, the lease cum sale agreement does not create any interest in immovable property as it is only an agreement. However, upon payment of the entire consideration, the terms of lease agreement can be enforced. There is no dispute in the present case that the entire consideration was paid by the petitioner to the respondents as it was agreed and payable by the petitioner. However, at the time of executing the sale deed, the respondents want certain clauses which are hit by the provisions of Transfer of Property Act. The conditions are restrictions to deal with the property. Therefore, the petitioner is right in pleading that the respondents cannot put new conditions which are repugnant to the interest that was created in favour of the petitioner as per the terms of the original agreement.

9. The Hon'ble Supreme Court had an occasion to deal with similar issue and has repeatedly held in several cases that the condition restraining alienations found in transactions by which the Government intend to give absolute right in favour of individuals is void. The condition that is found in the draft sale deed to compel the petitioner to sell the property at the price originally agreed at the time of allotment is certainly repugnant to the transfer that was expected as per the lease cum sale agreement. As pointed by this Court earlier none of the terms of lease cum sale agreement enable the respondents to import a condition which not only restricts the absolute power of alienation but also repugnant to the right to be conferred upon the petitioner under the lease cum sale agreement.

10. In such circumstances, this Court is of the view that condition namely condition No.18 found in the draft sale deed is void and unenforceable. As a result the writ petition is allowed. No costs. The second respondent is directed to execute the sale deed in favour of the petitioner in respect of Plot Nos.C4 and C5 in the CMDA Industrial Complex at Maraimalai Nagar, Chengalpattu Taluk in Kancheepuram District, without insisting on no objection and without reserving any right of preemption, within a period of six weeks from the date of receipt of a copy of this order. The respondents are entitled to collect usual charges as it is required for registration of the instrument and it is made clear that the whole process of registration will be at the cost and expenses of the petitioner.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

- 1.Chennai Metropolitan Development Authority,
Rep. by its Member Secretary,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.
- 2.The Chief Executive Officer,
Chennai Metropolitan Development Authority,
No.1, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

+1cc to Mr.S.Raghunathan, Advocate SR.No. 19286

+1cc to Mr.P.S.Ganesh, Advocate SR.No. 19415

W.P. No. 30124 of 2013

GP1(CO)

A.SK(13.07.2021)

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