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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 06.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.15263 OF 2021

AND

W.M.P.NO.16154 OF 2021

(THROUGH VIDEO CONFERENCE)

M/s.Seberos Auto Pvt., Ltd.,
Rep. by its Authorized Signatory,
Plot No.45, Sector-25,
Faridabad - 121 004, Haryana

..Petitioner

Vs

- 1) The Managing Director (P-III) i/c,
State Industries Promotion
Corporation of Tamil Nadu,
19-A, Rukmani Lakshmipathy Road,
Post Box No.7223,
Egmore, Chennai 600 008
- 2) The Senior Project Manager,
SIPCOT Industrial Growth Centre / Industrial Park,
Mathur Post and Village,
Oragadam, Sriperambadur Taluk,
Kancheepuram District.
- 3) The Estate Officer,
SIPCOT Industrial Growth Centre / Industrial Park,
Mathur Post and Village,
Oragadam, Sriperambadur Taluk,
Kancheepuram District.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned order made in Lr.No.P-III/ORG/26/Seberos/2014 dated 12.01.2021 passed by the 1st respondent and quash the same.



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For Petitioner : Mr.T.Om Prakash,
Senior Counsel
for Mr.T.Shanmugam

For Respondents : Mr.M.Karthikeyan,
Standing Counsel

O R D E R

This Writ Petition has been filed challenging the impugned letter in Lr.No.P-III/ORG/26/Sebros/2014 issued by the first respondent dated 12.01.2021 wherein the allotment granted in favour of the petitioner was cancelled and the petitioner was directed to execute the Surrender Deed within fifteen days.

2. The case of the petitioner is that they applied for allotment of land with State Industries Promotion Corporation Of Tamil Nadu (hereinafter referred to as 'SIPCOT') and by proceedings dated 20.10.2006, Plot No.17 measuring an extent of 3 acres was allotted in favour of the petitioner. Thereafter, through the amended letter dated 16.01.2007, a further extent of 29 cents of land was also allotted and thereby, a total extent of 3.29 acres of land was allotted in favour of the petitioner Company.

3. The petitioner Company entered into a Memorandum of Lease Deed with SIPCOT and the same was also registered on the file of S.R.O., Sriperumbudur on 9.07.2007 and the Lease was for a period of 99 years.

4. The Lease Deed sets out the terms and conditions of the allotment and one such condition was that the petitioner should commence construction of building within six months and complete the same within 24 months from the date of the allotment order. Further, the petitioner should commence the commercial production within 30 months from the date of allotment order.

5. The petitioner was having difficulty in complying with these conditions. There was a delay even for getting the permission to construct the building. The petitioner made a request to the SIPCOT seeking for extension of time. It is at this point of time, the petitioner received the impugned letter, dated 12.01.2021 cancelling the allotment granted in favour of the petitioner and directing the petitioner to execute the Surrender Deed. Aggrieved by the same, the present Writ Petition has been filed before this Court by the petitioner.



6. The respondents have filed the counter affidavit. The respondents have taken a very specific stand to the effect that the petitioner did not comply with the time-line fixed under the Lease Deed and every time-line was violated by the petitioner. The respondents have taken a further stand that the plot has already been resumed by SIPCOT and therefore, there is absolutely no ground to interfere with the impugned letter issued on 12-01-2021.

7. Heard the learned Senior Counsel appearing for the petitioner and learned standing counsel for the respondents.

8. When the matter came up for hearing on 13.08.2021, this Court passed the following order:-

"It is brought to the notice of this Court that a batch of writ petitions challenging the cancellation of allotment was heard by a learned Single Judge and orders have been reserved.

2. Mr.T.Om Prakash, learned Senior counsel appearing on behalf of the petitioner, submitted that this is a case where the entire construction has been completed and for various reasons, the petitioner was not able to commence the production. The learned Senior counsel requested that this writ petition can be kept pending awaiting the orders in the batch of writ petitions, where orders have already been reserved.

3. Per contra, the learned Standing counsel appearing on behalf of SIPCOT submitted that a proposal was made by the SIPCOT to regularise the allotment if the allottees are prepared to pay the differential land value cost. The learned counsel submitted that in cases where the construction has been completed and the production was not started, the SIPCOT was insisting for payment of 50% of the differential land value cost. The learned counsel submitted that in the present case, the cancellation deed has also been executed on 30.06.2021 and registered before the concerned Sub Registrar and the land has been resumed by SIPCOT.

4. The learned standing counsel for SIPCOT shall take instructions from the respondents as to what would be the amount representing 50% of the land value cost in the present case. Once that amount is ascertained, some interim orders can be passed in this case by balancing the right of the petitioner and



SIPCOT and in the meantime, this Court can also await the final orders in the batch of writ petitions.

5. Post this case under the caption 'for orders', on 19.08.2021."

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9. The matter was again taken up for hearing on 19.08.2021 and at which point of time, the petitioner gave an undertaking with regard to the commencement of actual production, if the petitioner's allotment is continued. Recording the same, the following order was passed by this Court.

" When the matter was taken up for hearing today, the learned Senior counsel appearing on behalf of the petitioner submitted that the petitioner will be able to commence the actual production between 90 and 120 days. The learned standing counsel appearing on behalf of the SIPCOT sought for some time to take instructions and report before this Court. Post this case under the caption on 31.08.2021."

10. When the matter was taken up for hearing on 29.09.2021, it was brought to the notice of this Court that final orders have been passed in a batch of writ petitions, wherein the learned Single Judge had an occasion to consider similar grievance of the other allottees. Therefore, this Court wanted to go through the order before taking the final decision in this writ petition. Accordingly, the matter was adjourned and the writ petition was taken up for hearing today.

11. This Court had the advantage of going through the detailed order passed by the learned Single Judge in W.P.No.14877/2020 & batch, dated 24.09.2021. The learned Single Judge after taking into consideration the facts and circumstances of the case and the stand taken by the SIPCOT, disposed of the writ petitions by issuing the following directions:

"44. In view of the above discussion, this court is of the view that the specific contentions raised by the learned counsel for the respective petitioners have been properly addressed by the learned Advocate General and the scheme suggested by SIPCOT is fully acceptable. Therefore, this court feels appropriate that the writ petitions can be disposed of with the following observation:-

(i) The petitioners have to opt either to surrender the lands allotted to them and get refund of the amount paid by them after deducting the amount



deductible as per the prevailing policy of SIPCOT;
(OR)

(ii) if the petitioners are willing to retain the lands allotted to them despite such a long delay in implementing the project, they shall make payment of the penalty proposed by SIPCOT as indicated in the above mentioned table in 12 equal monthly instalments commencing from the 1st of the English Calendar month from the date of this order and also undertake to implement the project immediately and commence the commercial production within such period of 12 months;

(iii) in case the petitioners fails to adhere to the above condition of making regular payment of monthly instalment of penalty or implementing the project within the stipulated period of 12 months, the SIPCOT will have every right to cancel the allotment without any reference to the court;

(iv) in the event of surrendering of a part of unused land, the petitioners will have to pay the penalty, if any, after adjusting the amount payable to the petitioners as per the prevailing policy of SIPCOT and they are also bound by the above mentioned conditions for payment of penalty, implementation of the project and the default clause. "

12. The learned Senior Counsel appearing on behalf of the petitioner brought to the notice of this Court the various categories of allottees, who had approached the Court in the above writ petitions. For this purpose, the learned Senior Counsel specifically brought to the notice of this Court paragraph No.11 of the order. It was submitted that there were broadly three categories of allottees. The first category was, where no construction was put up and it remained vacant. The second category was, where some construction was put up and the last category was, where substantial construction has been put up. Insofar as the last category is concerned, the proposed penalty was 20% of the differential cost. The learned Senior Counsel submitted that in the present case, the entire construction has been completed and what remains is the commencement of the actual production and therefore, left it to this Court to fix the appropriate penalty that should be paid by the petitioner Company. The learned Senior Counsel submitted that the petitioner is placed in a better footing than the petitioners, who were parties in the above batch of writ petitions.



13. Per contra, the learned Standing Counsel appearing on behalf of SIPCOT submitted that the petitioner cannot take advantage of the above order since in the case of the petitioner, the plot has already been resumed by SIPCOT. Learned Standing Counsel submitted that the allotment was cancelled and the plot was resumed and therefore, there is no question of once again extending the lease in favour of the petitioner. The learned Standing Counsel further submitted that the cases that were involved in the above batch of writ petitions did not deal with the scenario, where the plot that was allotted was already resumed by SIPCOT. Therefore, the learned Standing Counsel urged this Court to dismiss the above Writ Petition.

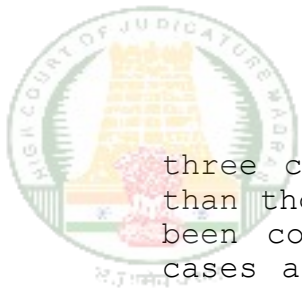
14. This Court has carefully considered the submissions made on either side and perused the materials available on record.

15. This Court went through the order passed in the batch of writ petitions. The learned Single Judge had taken pains to understand the various problems faced on both sides and in order to strike a balance, issued various directions in paragraph No.44 of the order, which has been extracted supra.

16. In the present case, it is an admitted fact that almost 95% of the construction has already been completed and the construction that was put up by the petitioner was tailor made for manufacturing Rack / Power Steering , Pinion Column Pipes & Steering Racks. Therefore, even if SIPCOT resumes the plot and wants to allot to somebody else, they must find a similar manufacturer, which may take substantial time. If SIPCOT decides to allot the plot to someone else, then the allottee will have to make substantial modification in the construction and that will again delay the process. By confirming the cancellation of allotment and permitting SIPCOT to proceed further, since the plot has been resumed, the same will neither enure to the benefit of the petitioner nor to the SIPCOT. It will be a loss for both sides. Therefore, this Court has to necessarily strike a balance and ensure that the interest of both the sides are safeguarded.

17. The above order passed in the batch of writ petitions gives a clear indication with regard to the manner in which this writ petition has to be dealt with. It is true that there is variation of facts in the present writ petition due to the resumption of plot by SIPCOT. However, that by itself does not completely change the scenario and it is merely a paper resumption. Therefore, this Court can take cue from the above order passed in the batch of writ petitions.

18. The various types of allottees, whose cases were considered in the above batch of petitions, broadly falls under



three categories. The petitioner is placed in a better footing than those allottees since more than 95% of the construction has been completed. Therefore, the stand taken by SIPCOT in those cases assumes significance. In the cases where the property was vacant, the SIPCOT has imposed 100% penalty on the differential cost. In those cases where some construction was made, the SIPCOT had imposed 50% penalty towards differential cost. For those constructions which showed substantial improvements, the penalty has been fixed at 20% of the differential cost. In the present case, the petitioner has completed substantial construction of nearly 95%. Therefore, this Court is inclined to adopt the penalty of 20% of the differential cost to be paid by the petitioner.

19. In view of the above discussion, the impugned letter in Lr.No.P-III/ORG/26/Sebros/2014 issued by the first respondent dated 12.01.2021 is hereby quashed and the following directions are issued by this Court:-

(i) The petitioner shall pay the penalty at the rate of 20% of the differential cost to be fixed by SIPCOT, within a period of two(02) weeks from the date of receipt of a copy of this order;

(ii) The petitioner shall pay the penalty fixed by the SIPCOT in eight(08) equal monthly instalments, commencing from December 2021 onwards and the instalment shall be paid on or before the 10th of every month;

(iii) The petitioner shall commence the actual production within a period of 120 days from the date of receipt of a copy of this order;

(iv) The petitioner will be bound by all the terms and conditions as stipulated in the Lease Agreement and shall strictly comply with the same; and

(v) If the petitioner fails to adhere / comply with any one of the conditions imposed by this Court, it is left open to the respondents to cancel the allotment and resume the plot without any further reference to this Court.

20. In the result, this Writ Petition is Allowed with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

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Sub Assistant Registrar



To:

- 1) The Managing Director (P-III) i/c,
State Industries Promotion
Corporation of Tamil Nadu,
19-A, Rukmani Lakshmipathy Road,
Post Box No.7223,
Egmore, Chennai 600 008
- 2) The Senior Project Manager,
SIPCOT Industrial Growth Centre / Industrial Park,
Mathur Post and Village,
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Kancheepuram District.
- 3) The Estate Officer,
SIPCOT Industrial Growth Centre / Industrial Park,
Mathur Post and Village,
Oragadam, Sriperambadur Taluk,
Kancheepuram District.

+1cc to Mr.T.Shanmugam, Advocate, S.R.No.52412

W.P.No.15263 of 2021

SPD(CO)
PM/27/10/2021