IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.12.2020

Delivered on : 19. 02.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

OA.No.566 of 2020
and
A.No.2604 of 2020

Laly George
Sole Proprietor
M/s. Gee 2 Apparels
Plot No.K-53(2), SIPCOT Apparel Park,
Irungattukottai, Sriperumbudur- 602117.

... applicant in both applications

vs

SIPCOT Ltd.
Represented by its Managing Director,
No.19-A, Rukmani Lakshmipathy Road,
Egmore,
Chennai- 600 008.

...respondent in both applications

Prayer in OA.No.2604 of 2020: Application filed to pass an order of ex parte ad interim stay of the letter bearing Lr.No.IIi/AP/IRU/Gee/2007 dated 26.09.2020 issued by the respondent pending the arbitral proceedings to be commenced between the parties.

Prayer in A.No.566 of 2020: Application filed to pass an order of ex parte ad interim restraining the respondent from in any way allotting Plot No.K-53(2) SIPCOT Apparel Park, Irungattukottai, Sriperumbuddur - 602117 leased to the applicant herein vide Lease Deed dated 13.09.2007 registered as Document No.20316 of 2007 in the office of the Sub-Registrar, Sriperambatur to any other person pending disposal the proceedings to be commenced between the parties.

For Applicant : Mr. P. Wilson, Senior Counsel

For Respondent : Mr. Sudharsana Sundar for SIPCOT

COMMON ORDER

Since the facts are common in both the application, a common order is being pronounced in the above applications.

2. ***OA.No.566 of 2020***:

This application is filed for restraining the respondents from leasing out the property to 3rd parties pending arbitral proceedings.

3. ***A.No.2604 of 2020:***

This application is filed to stay the letter dated 26.09.2020 issued by the respondent.

4. The facts as narrated in the affidavit are as follows:

a) The applicant who is the sole proprietor of M/s. Gee 2 Apparels was allotted 2.75 acres in the SIPCOT Apparel Park by order dated 24.04.2007. The property in question was situated at Plot No.K-53(2), SIPCOT Apparel Park, Irungattukottai. Thereafter, a lease deed was entered into between the applicant and the respondent on 13.09.2007, in and by which, the applicant was given a 99 year old lease in respect of the above said property. The terms of the lease further provided that the applicant shall pay a sum of Rs.54,80,100/- for the lease of the land under the heads of deposit, lease rentals, etc. The said sum has also been paid. It is the case of the applicant that similarly an allotment dated 29.06.2005 and a lease deed dated 20.10.2005 was entered into between Imperial Readymade Garments Factory India Private Ltd, (herein after called Imperial Garments), which is a sister concern of the applicant and the respondent regarding the adjacent property bearing Plot No.K-60.

b) The applicant would submit that they along with Imperial Garments had originally requested the respondent to allot a contiguous extent of 5 acres to them. As against this demand, the respondent had first alloted 5 acres to their sister concern and thereafter the lease deed now called in question was given to the applicant for an extent of 2.75 acres.

c) The specific case of the applicant is that after the allotment of the land in question to her, the parties have been using both the land as a contiguous one with a common boundary, common utility, etc. which have been commonly built.

d) While so, on 14.11.2018, she had received a letter from the respondent stating that the terms of Clause Nos. 17 and 18 of the Lease Deed have been breached and calling upon the applicant to submit an explanation. By their reply dated 29.11.2018, the applicant had informed the respondent that they have taken steps to develop the property but they are unable to proceed with the development on account of the fact that the respondent have failed to provide the infrastructure facility like electricity water, road, public transport, etc. as promised. Thereafter, there was no action on the side of the respondent. While so, on 18.02.2020, there was another notice from the respondent stating that till then no steps had been taken as assured by the applicant. The letter further stated that if steps are not taken for implementing the project within 90 days from the date of the receipt of the notice, the allotment would stand cancelled. Pursuant to this notice, the applicant had engaged a consultant to draw up a plan and immediately began construction. However, in the meanwhile, the lockdown on account of the pandemic and the applicant was unable to engage workmen since migrant workers became scarce. The applicant had assured the respondent that they would undertake the work within a period of eight months.

e) The allotment was ultimately cancelled by the respondent by letter dated 26.09.2020. The applicant had thereafter invoked the arbitral agreement in the lease deed and issued notice dated 10.10.2020 to the respondent under section 21 of the Act for appointing an Arbitrator. The applicant has also moved this Court thereafter for interim orders under Section 9 of the Arbitration and Conciliation Act for the reliefs mentioned supra.

5. The case of the respondent:

a) The respondent corporation has filed a counter interalia contending that as per Clause Nos. 17 and 18 of the Lease Deed, the applicant was under the obligation to commence the construction of the factory building within six months, and complete the same within 24 months. Commercial production was required to be commenced within a period of 30 months from the date of allotment.

b) The respondent would submit that right through, the applicant has not taken any steps to put the property to use. Even as early as on

10.01.2011, the respondent had issued a show cause notice asking the respondent to give reasons as to why the construction had not been completed. On 27.01.2011, the applicant had sent a reply giving certain frivolous reasons and assuring the respondent that they would develop the land. However, they did not proceed to put up construction or develop the land. It is thereafter that the subsequent notices dated 14.11.2018, 18.02.2020 and 26.09.2020 came to be issued

c) The case of the respondent is that industrial lands have become very scarce and there are several people waiting in queue for an industrial plot. Therefore the retention of the land by the applicant without developing the same amounts to depriving the genuine industrial concerns from obtaining such land. The respondent would submit that they were therefore constrained to exercise their rights under the Lease Deed on account of the non adherence to the terms of Lease Deed by the applicant. Since there is a breach of the terms of the agreement, this Court should not grant the discretionary relief of injunction to the applicant.

6. Submissions:

a) Mr. Wilson, learned Senior Counsel appearing on behalf of the counsel for the applicant would submit that the respondents were very much aware that the property in question is being used as an extension of the property of their sister concern namely M/s.Imperial Garments. In fact, even at the outset, it was made known to the respondent that M/s. Imperial Garments requires an extent of 7.5 acres for their use. They were offered 5 acres initially and 2.75 acres were given thereafter and the same was in the name of the applicant.

b) The learned Senior Counsel would submit that the applicant herein is a Director in M/s Imperial Garments which would clearly show that both the companies are being run by the same persons.

c) He would contend that the lease was for a period of 99 years and the applicant has paid the deposit, development charges and the lease rentals for the entire period of 99 years. He would argue that under the lease agreement, cancellation of allotment and the lease was contemplated only under Clause 7. Under Clause 9, the respondent could cancel the allotment order for non payment of dues. Under Clause 12 (1) such a cancellation could take effect only if there is violation of any of the conditions of this deed or the terms and conditions of allotment.

d) He would further argue that in the case of allottee not commencing commercial production or the construction of building within the stipulated time as provided under the Act, then the remedy available would only entail cancellation of allotment and not cancellation of lease.

e) The Learned Senior counsel would further argue that as per Clause 32 of the Lease Deed, power was given to the respondent to extend the time for performance of the conditions. He would therefore submit that the respondent herein having not raised any objections all these years have impliedly extended the time. Now all of a sudden they have come up with this show cause notice. He would argue that the remedy available to the respondent is only to seek determination of the Lease as contemplated under Section 106 of The transfer of Property Act which contemplated a six months notice in the case of a property which undertakes manufacturing activities. He would draw the attention of the Court to the judgment reported in the case of ***"ITC Limited vs State of Uttar Pradesh and Others reported in [(2011) 1 SCC page 493]"*** with particular reference to paragraph No.30, which is extracted hereinbelow:

> *"30. A lease governed exclusively by the provisions of the Transfer of Property Act, 1882 ("the TP Act", for Short) could be cancelled only by filing a civil suit for its cancellation or for a declaration that it is illegal, null and void and for the consequential relief of delivery back of possession. Unless and until a court of competent jurisdiction grants such a decree, the lease will continue to be effective and binding. Unilateral cancellation of a registered lease deed by the lessor will neither terminate the lease nor entitle a lessor to seek permission. This is the position*

under private law. But where the grant of lease is governed by a statute or statutory regulations, and if such statute expressly reserves the power of cancellation or revocation, and is such statute expressly reserves the power of cancellation or revocation to the lessor, it will be permissible for an authority, as the lessor, to cancel a duly executed and registered lease deed, even if possession has been delivered, on the specific grounds of cancellation provided in the statute."

f) He would submit that the present notice runs contra to this dicta. He would further argue that the invocation of The Public Premises Act was wrong since they are not in unauthorized occupants of the property. He would sum up by stating that the determination of the Lease was not as contemplated by law. Considering Clause 32 and the conduct of the respondent, there was a clear case of waiver. The applicant is not in unauthorized occupation of the property. There are about 800 workers who are dependent on the suit property. The DTC plan has been submitted for approval. Therefore, the applicant is in compliance of the terms of the Lease Deed.

g) Per contra, Mrs. Sudarsana Sundar, learned counsel appearing on behalf of the respondent would contend that the applicant who had taken on Lease the property in the year 2007 has not laid even a single brick for developing the property. In 2011, a show cause notice was issued to the applicant informing them about there being no development and as to why their allotment may not be cancelled. To this, the applicant had sent a reply inter alia contending that they were unable to proceed with the defendant work as they were not provided with the infrastructure facility and that they are taking steps to develop the property. Since no development activities were undertaken as promised, a second show cause notice issued on 14.11.2018 for non implementation of the project and breach of condition Nos. 17 and 18 of the Lease Deed. By reply dated 29.11.2018, the applicant had informed the respondent that they have started development and construction activity and they expected the construction work to be completed within a year i.e; by November 2019. This promise was also observed in a breach which constrained the respondent to issue the show cause notice dated 18.02.2020 giving 90 days to the applicant to comply with the terms and conditions of the allotment letter. The applicant once again by her reply dated 11.05.2020, informed the respondent that they have completed the preliminary works of construction and that when they had started to construct further the pandemic and lockdown set in place and they were not able to proceed further. Since the respondent was not convinced with the reasons given by the applicant and as there was a clear violation of Clause Nos. 17 and 18, the respondent had issued notice dated 26.09.2020 cancelling the allotment. Therefore, the applicant had sent a notice dated 10.10.2020 for appointing the arbitrator.

h) The learned counsel would contend that as per the terms of Clause Nos. 17 and 18, the respondent was to have completed the construction within a period of 24 months from the date of allotment and commercial activity should have started 30 months from the date of allotment. None of these time schedules have been followed and therefore the applications should be dismissed.

7. Since applicant had contended that the construction activity has commenced and the same had been stoutly refuted by the respondent, this Court with the consent of parties had appointed Mr. G. Vivekanand, Advocate as an Arbitrator to inspect the premises in question and submit a report about the physical features of the property and to submit a sketch and photographs as well by order dated 04.02.2020. Pursuant to the order, the learned Advocate Commissioner has visited the premises in the presence of both parties and extensively inspected not only the property in question but also the property belonging to M/s. Imperial Garments and submitted a detailed report with photographs and sketches as annexures.

8**. Discussion:**

a) From the photographs submitted by the Advocate Commissioner, it is clearly evident that except for a wall, no activity has taken place in the premises. That apart, the report of the Commissioner clearly states that the property of the applicant and the property of M/s. Imperial Garments are not interconnected though they are lie next to each other. The statement of the applicant that the lands are contagious and both the lands are being used for the benefit of M/s. Imperial Garments therefore appears to be an incorrect statement and contrary to the picture of site. From the photographs it is clearly evident that though situated right next to the property of M/s. Imperial Garments, the land of the applicant has different access and is totally independent property. In fact there is no direct access from the applicant's property to the respondent's and vice versa.

b) The applicant has moved this Court for an injunction on the ground that the land in question is being used for the benefit of M/s Imperial Garments and that it is being used as an extension of the property of M/s. Imperial Garments and therefore any attempt to cancel the allotment would affect the livelihood of 800 employees. However, the same is not reflected on site as is evident from the Advocate Commissioner's report not a single brick appears to have moved into the applicant's property all these years. Therefore, the applicant have come to court with a totally incorrect statement. The affidavit of the applicant is also contrary to the true facts.

c) Clause 17 and 28 of the Lease Agreement which reads as follows:

> *"17. The allottee shall commence commercial production/trial 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.*
>
> *18. The party of the second part shall have to commence construction of building within six months from the date of allotment order and be completed within 24 months from the date of allotment order. Before commencing such construction of works on the allotted plot, the allottee should strictly follow the following*

building regulation prescribed among others."

d) A Reading of this Clause would clearly show that an obligation has been placed on the allottee to commence construction and to complete the construction within a period of 24 months. However the applicant has not done anything in their direction for nearly over 14 years. Clause 17 clearly provides for cancellation of the allotment in case of non-compliance. The lease having been terminated the respondent has also invoked the provisions of The Public Premises Act as from the date of the termination the occupation becomes unauthorized. As argued by the learned counsel for the respondent, industrial lands are scarce and no individual can purchase and keep a land idle in an industrial estate especially when there are several people in the queue waiting for an allotment. Despite promising to put up the construction as early as in the year 2011, the applicant has not moved a little finger in this direction. They have also moved this Court on false facts. In order to avail the protection of this Court through an interim order of injunction the applicant has to come to court with clean hands and without suppressing the true facts. In the instant case a reading of the affidavit and the arguments advanced would clearly show that the applicant has distorted the facts to obtain orders from this Court. Therefore, she is not entitled to interim protection from this Court. Consequently, OA.No.566 of 2020 and A.No.2604 of 2020 are dismissed.

19.02.2021

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OA.No.566 of 2020 and A.No.2604 of 2020

P.T.ASHA, J.

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Pre delivery Order in
OA.No,566 of 2020
and
A.No.2604 of 2020

19.02.2021