IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9/2/2021

C O R A M

THE HONOURABLE Mr.JUSTICE B.PUGALENDHI

Writ Petition No.30574 of 2019
a n d
M.P.Nos.30630, 30632 of 2019 and 20308 of 2020

S.K.Leathers Private Limited
rep. By its Managing Director
Mr.S.Jeyakumar
Puducherry 605 009. ...Petitioner

Vs

1. The Pondicherry Industrial Promotion Development and Investment Corporation Ltd
   rep. By its Managing Director
   60 Roman Rolland Street
   Puducherry 605 001.

2. The General Manager (Development)
   Pondicherry Industrial Promotion Development and Investment Corporation Ltd
   60 Roman Rolland Street
   Puducherry 605 001. ...Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the second respondent in PIPDIC/Dev/280/91/B-2034/2766 dated 26/8/2019, quash the same and consequently, direct the second respondent to fix the sub lease rent as Rs.10,000/- as fixed by the second respondent for a period of three years in its proceedings vide Letter No.PIPDIC/Dev/280/91/B-2034/3545 dated 26/7/2016 and proceedings vide Letter No.PIPDIC/Dev/280/91/B-2034/290 dated 30/4/2018, for the previous years 2016 and 2018 for issuance of No Objection Certificate for subleasing the very same factory premises as per the extent Board Resolution of the first respondent dated 26/5/2015.

For petitioner ... Mr.C.Gauthamaraj

For respondents... Mr.D.Ravichander
Standing Counsel

O R D E R

This Writ Petition has been filed to quash the order, dated 26/8/2019, passed by the second respondent, in PIPDIC/Dev/280/91/B-2034/2766 and consequently, direct the second respondent, to fix the sub lease rent as Rs.10,000/-, for a period of three years in its proceedings, vide Letter No.PIPDIC/Dev/280/91/B-2034/3545, dated 26/7/2016 and proceedings vide Letter No.PIPDIC/Dev/280/91/B-2034/290, dated 30/4/2018, for the previous years 2016 and 2018, for issuance of No Objection Certificate for subleasing the very same factory premises, as per the extent Board Resolution of the first respondent, dated 26/5/2015.

2. The brief facts that are necessary for the disposal of the petition are as follows:-

The petitioner is a Private Limited Company registered under the Companies Act, 1956, situated in the Union Territory of Pondicherry, carrying on the business of manufacturing Leather products, mainly shoe uppers and leather garments. Pondicherry Industrial Promotion Development and Investment Corporation Limited, first respondent is incorporated under the Companies Act, 1956. It was established for the purpose of the Industrial development in the Union Territory of Pondicherry such as acquiring lands and converting them into industrial plots by providing financial facilities to the needy entrepreneurs. The petitioner entered into a lease deed with the first respondent by paying the required premium lease amount for a period of 99 years on 22/7/1992, registered as Document No.2270/1992, on the file of the Sub-Registrar, Oulgaret.

3. The petitioner availed a term loan of Rs.18,00,000/- and additional term loan of Rs.9,00,000/- during the year 1993 and 1996. The petitioner constructed the factory building and started its production on 1/4/1994 for manufacture of shoe uppers. Due to recession in the global market, the petitioner Company became sick. However, the petitioner was running the unit and had repaid the entire term loan by availing One Time Settlement during the year 2007. After the settlement, the petitioner was running the unit till 2016. He proposed to sub lease the premises to other persons and sought for No Objection from the respondents.

4. On 26/5/2015, the first respondent, in its Board Meeting considered the issue in detail and compared the rate of their fair rent charged by the Corporation along with the rates charged in other Corporations and by a Resolution, dated 26/5/2015 decided to reduce the rates. Thereafter, the petitioner applied for the issuance of NOC before the first

respondent for the purpose of sub-leasing the factory premises to Lakshmi Industries on 2/6/2016. NOC was issued by the first respondent to the petitioner on 26/7/2016 for a period of three years by fixing a sum of Rs.10,000/- as sub lease rent from 15/6/2016 to 14/5/2019. But sub-lease was not given effect to by the petitioner due to non-availability of Industrial Licenses for Lakshmi Industries.

5. On 12/1/2018, the petitioner had applied for issuance of NOC for sub-leasing the factory premises to one Udayam Chemicals for which the first respondent fixed a sum of Rs.10,000/- as sub-lease rent as one time payment for a period of three years from 1/2//2018 to 31/1/2021. Due to non-availability of Industrial and Allied Licenses, the sub-lease was not given effect to by the petitioner. When the petitioner made a request for issuance of NOC on 15/4/2019, the first respondent increased the sub-lease rent for a sum of Rs.1,25,000/-, so as to issue NOC for sub leasing the factory premises on 26/8/2019 for a period of one year only. As a reply, the respondents had effected 40 fold increase in rent without any rational basis or justifiable necessity for increase in such rent. Being aggrieved, the Pondicherry Chamber of Industries, Mettupalayam, gave a representation, dated 13/8/2019 to the second respondent, regarding the progress of revised rates of penal clauses and the revised rate on sub lease fair rent charges. Since there was no reply, the petitioner had come forward with this writ petition, praying for the relief as stated therein.

6. Referring to audit objections raised by the Controller of Audit and General, dated 4/3/2019, Mr.D.Ravichander, learned Standing counsel appearing for the respondents submit that audit team has found certain lapses and has also noted down that under the previous system for issuance of No Objection Certificate, for sublease, the Company collected Rs.1.33 crores for the period 2001 - 13 for 40 units. However, under the new revised rates, the Company could collect only Rs.9.73 lakhs for the period May 2015 - January 2019 for 72 units. It is also noted down that PIPDIC had issued NOC to 40 units over a period of 12 years when 50% fair rent was collected and issued NOC to 72 units in just more than 3 years under reduced rates shows that the allottees are not keen on running the Industries but having interest in sub lease only to get additional revenue by way of obtaining market rent/advance etc. It is also observed that the decision of the Board of charging the reduced fixed rates for sub-lease was against the prospectus of the PIPDIC as the allottees is just by paying Rs.5,000/- to Rs.15,000/- once for three years. This decision to change the fair rent system to fixed rate is taken based on the independent Directors insistence despite the advantages spelt out in the agenda and this resulted with a loss of income of approximately Rs.3.41

crores to the respondent Corporation.

7. Pursuant to this Audit Objections, the second respondent in its Board Meeting held on 26/7/2019 has also revised the rent in order to stream line the sub-leasing and to generate more revenue to PIPDIC as follows:-

(i). Rs.2.00 lakhs per year in respect of 'A' type plot
(ii).Rs.1.25 lakhs per year in respect of 'B' type plot
(iii).Rs.0.75 lakh per year in respect of 'C' type plot.

8. The above mentioned rent is arrived taking into account of 60% of the plot area which is admissible by the Government for construction of factory building in the total area of plot. The calculation details for arriving at the above rent as stated by the respondents are recorded as follows:-

i. 'A' type plot: 1050 m^2 x 60%=630m^2 = 6779 sqft.
6779sq.ft x Rs.5/- per sq ft/month = Rs.33,895/- /2 = Rs.16,948/-
Sub-lease rent for 12 months = Rs.16948 x 12 = Rs.2,03,397/.

Say Rs.2,00,000/-

ii. 'B'' type plot: 648 m^2 x 60%=389m^2= 4186 sqft.
4186 sq ft x Rs.5/- per sq.ft/-month = Rs.20,930/-/2= Rs.10,465/-
Sub-lease rent for 12 months = Rs.10,465/- x 12= Rs.1,25,580/-

Say Rs.1,25,000/-

iii. 'C' type plot: 390 m^2 x 60% = 234 m^2 = 2518 sq ft
2518 sq ft x Rs.5/- per sq.ft/month= Rs.12,590/- x 12= Rs.6,295/-
Sub-lease rent for 12 months = Rs.6,295/- x 12 = Rs.75,540/-

say Rs.75,000/-

Alternatively, they are collecting sub-lease rent based on the availability of built-up area @ 50% of the fair rent per month depending on the type of the building by adopting the approved fair rent of Rs.9/- per sq.ft for A/c sheet roofings and Rs.14/- per sq.ft for RCC roofing buildings respectively, area/type furnished by the Construction Wing of the Corporation.

9. This Court paid its anxious consideration to the rival submissions made and also perused the materials placed on record.

10. The grievance of the petitioner is that the petitioner has made a request for granting NOC. The 2nd respondent has fixed the rent as Rs.1,25,000/-, which was previously collected as Rs.10,000/- per month. The petitioner who obtained a plot in the zone developed for industrial purpose conducted some

industrial activity upto 2016 and from then sub-leasing the premises to some 3rd parties. When the proposal has been made by the petitioner for obtaining the NOC for sub-leasing the petitioner's factory premises to one Lakshmi Industries in the year 2018, the respondents have fixed a sum of Rs.10,000/- as a sub-lease amount for a period of three years. This decision appears to have been taken at the instance of the Independent Directors of the respondents / Corporation. The respondent / Corporation, registered under the Companies Act and is governed by the Board of Directors and on the compulsion of the Independent Directors of the Board, the earlier decision was taken fixing the lease amount for a meagre amount. The Comptroller and Auditor General has noted down these lapses and raised certain objections that there was a loss of income to an extent of Rs.3,41,00,000/- to the respondent / Corporation.

11. Based on the said audit objections in the board meeting held on 26.07.2019, they have reduced the rent in order to streamline the sub leasing. The petitioner has been allotted a 'B' type plot and this revised rent as per the resolution of the Board dated 26.07.2019 is Rs.1,25,000/- per year and according to the learned Standing Counsel for the respondent / Board, it is only at a rate of Rs.5/- per Sq.ft.

12. The revised rent fixed by the respondents pursuant to the resolutions dated 26.07.2019 appears to be reasonable and based on the market value. The petitioner cannot take advantage of the earlier rent fixed as Rs.10,000/- for three years at the instance of the Independent Directors to continue even after audit objection. These plots are acquired by the Government from the farmers for a less amount and leasing out the same to the petitioner and this is for the purpose of industrial development.

13. In view of the above observations, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs/kkn

TO
1.The Managing Director
Pondicherry Industrial Promotion Development
and Investment Corporation Ltd
60 Roman Rolland Street
Puducherry 605 001.

2. The General Manager (Development)
Pondicherry Industrial Promotion Development
and Investment Corporation Ltd
60 Roman Rolland Street
Puducherry 605 001.

+1 cc to M/s.D.Ravichandran, Advocate Sr.No. 7311
+1 cc to M/s.k.Rajashrinivas, Advocate Sr.No. 7553

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AAB(CO)
RMP(18/03/2021)