



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.328 of 2022

1. The Managing Director
State Industries Promotion Corporation
of Tamil Nadu Ltd. (SIPCOT)
No.19-A, Rukmani Lakshmipathy
Road, P.B.No.7223, Egmore
Chennai.
2. The General Manager (P-II) I/C
State Industries Promotion Corporation
of Tamil Nadu Ltd. (SIPCOT)
No.19-A, Rukmani Lakshmipathy Road
P.B.No.7223, Egmore, Chennai.
3. The General Manager (P-I)
State Industries Promotion Corporation
of Tamil Nadu Ltd. (SIPCOT)
No.19-A, Rukmani Lakshmipathy Road
P.B.No.7223, Egmore, Chennai. .. Appellants

Vs.

M/s.Steel Shoppe India Pvt. Ltd.
rep. by M.Panneerselvam
Director (Projects). .. Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent
against the order dated 02.11.2021 passed in W.P.No.22402 of
2021.

Prayer in W.P.No.22402 of 2021:

Writ Petition filed Under Article 226 of the Constitution of
India, to issue a Writ of Certiorari Mandamus Calling for the
entire records in pursuant to the order vide No. P-I / SIP - IRU
/ Steel Shoppe / 2015-21 dated 25.06.2021 and the consequential
order of rejection vide No. P-I / IRU / Steel Shoppe / 213 /



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2016 dated 07.09.2021 both passed by the 1st respondent and quash both of them.

For Appellants : Mr.Haja Nazirudeen
Addl. Advocate General-I
for Mr.V.Deepan Raj Krishna

For Respondent/
Caveator : Mr.T.P.Prabhakran

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

By this writ appeal, a challenge has been made to the order dated 02.11.2021, whereby the writ petition preferred by the petitioner/non-appellant was disposed of with certain directions.

2. It is a case where the petitioner/non-appellant applied for the allotment of a plot for setting up an industrial unit. Pursuant to the application aforesaid, the writ appellants issued a letter on 01.02.2016, allotting plot number G-8(A). The lease was granted for an area of five acres. The lease deed was executed and registered thereupon on 08.03.2016. As per the terms of the lease, the petitioner/non-appellant was to commence commercial production within thirty months from the date of allotment order, failing which, the allotment to be cancelled with forfeiture of the amount paid by the petitioner/non-appellant.

3. The petitioner/non-appellant failed to complete the construction and as a consequence, to commence the commercial production. However, on the request made by the petitioner/non-appellant, the writ appellants had extended the period from time to time and the last order was issued on 24.02.2020 extending the period by one year. It is not only to complete the construction, but also to commence the commercial production. Due to Covid-19 pandemic, the petitioner/non-appellant could not carry out the work, so as to commence the commercial production and thus, prayed for further extension. It was allowed with imposition of penalty at the rate of five per cent of the cost of the land with GST.

4. A challenge to the imposition of penalty was made by the petitioner/non-appellant, by maintaining a writ petition. The writ Court allowed the writ petition finding that due to Covid-19 pandemic, the work could not be commenced and also the commercial production, reduced the penalty from five per cent to one per cent on the cost of the land along with GST.

5. The challenge to the order of the learned Single Judge has been made precisely on the ground that it being a



contractual matter, the learned Single Judge should not have interfered in the order passed by the writ appellants and otherwise, the direction contained in paragraph 9 of the impugned order would cause discrimination among the similarly placed allottees who were imposed with penalty of five cent on the cost of the land with GST for their default in carrying out the construction and commencing commercial production.

6. We have considered the submissions made by learned Additional Advocate General for the writ appellants and learned counsel for the respondent.

7. As regards the jurisdiction of the Court in reference to contractual matters, the same was not raised before the learned Single judge and per se, when the writ appellants extended the period from time to time and even the last extension was given but with imposition of penalty, to make it reasonable, the learned Single judge has rightly exercised the extraordinary jurisdiction to make the penalty to be equitable. Thus, the objection to the maintainability of the writ petition, which was not raised before the learned Single Judge, cannot be allowed to be raised here.

8. Insofar as reduction of penalty is concerned, the learned Single Judge, taking note of the fact that in view of Covid-19 pandemic, the construction and commencement of commercial production was not found to be feasible within a year, even after the last extension of one year by order dated 24.02.2020, reduced the penalty from five per cent to one per cent.

9. With regard to discrimination, we do not find any material before us and otherwise, the amount of penalty may depend on case to case basis. The five per cent penalty with GST may be appropriate in a given case where the default in carrying out the construction and commercial production, after the extension of period, prior to Covid-19 pandemic, may be justified. But, if it is during the course of the Covid-19, it may not be entirely justified and therefore, determination of penalty depends on case to case basis.

10. Finding no merits in the appeal, the same is dismissed. There will be no order as to costs. Consequently, CMP No.2800 of 2022 is also dismissed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kpl



To,

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+2 ccs to Mr.V.Deepan Raj Krishna., Advocate Sr.NO.12523

+1 cc to Mr.T.P.Prabhakran , Advocate Sr.NO. 12603

W.A.No.328 of 2022

SPD(CO)

A.SK(04/03/2022)