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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2022

C O R A M

THE HON'BLE MS.JUSTICE V.M.VELUMANI

W.P.No.9261 of 2021

M/s.MOC Dies and Moulds Pvt Ltd,
Rep. by its Director,
D.Gobianand
SP.93, First Floor,
Ambattur Industrial Estate,
Ambatuur, Chennai - 600 058.

...Petitioner

Vs

1.The Managing Director,
State Industries Promotion Corporation of
Tamil Nadu (SIPCOT),
19-A, Rukmanilakshimapathy Road,
Egmore, Chennai - 600 008.

2.The Project Manager,
State Industries Promotion Corporation of
Tamil Nadu (SIPCOT),
SIPCOT INDUSTRIAL PARK,
Vallam - Vadagal,
Kanchipuram District - 631 604.

...Respondents

Prayer Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, to call for the impugned order issued by the 1st respondent dated 30.03.2021 in Ref.No.P-II/SIP-VV/83/MOC DIES/2017, and quash the same.

For Petitioner : Mr.Alagu Narayanan
for M/s.RRN Legal

For Respondents: Mr.S.Girissh
for Mr.M.Karthikeyan

ORDER

This Writ Petition is filed seeking to call for the impugned order issued by the 1st respondent dated 30.03.2021 in Ref.No.P-II/SIP-VV/83/MOC DIES/2017, and quash the same.



2. Heard Mr. Alagu Narayanan, learned counsel appearing for the petitioner as well as Mr. S. Girish, learned counsel appearing for the respondents.

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3. According to the petitioner, after establishment of SIPCOT Industrial Estate, the Plot No. G95/1 admeasuring 7.00 acres was allotted to the petitioner company. The lease deed dated 13.12.2017 was executed by the 2nd respondent in favour of the petitioner for a period of 99 years from 2017, on condition that the petitioner has to pay a sum of Rs.1,25,00,000/- per acre as lease amount, Rs.22,00,000/- towards plot and deposit Rs.1,03,00,000/- towards development charges and on further condition that the petitioner has to commence construction of building within 6 months from the date of Allotment Order and complete within 24 months from the date of allotment. According to the petitioner, he has already commenced the construction activity by levelling the ground of the plot and constructed the compound wall. While so, the 1st respondent has issued notice dated 04.11.2020 to the petitioner imposing penalty of 5% of lease amount i.e Rs.63,43,916/- along with processing fee of Rs.11,800/- stating that the petitioner has not completed the construction of building within 24 months as per the lease agreement. The petitioner had sent a reply dated 03.12.2020 to the 1st respondent requesting for extension of time for payment of penalty amount. The 1st respondent by letter dated 23.12.2020 called upon the petitioner to show cause as to why he has not complied with the Condition No.3(vii) of the Allotment Order and Clause Nos.17 and 18 of the lease deed and failed to commence the commercial production within 30 months from the date of Allotment Order. The petitioner again sent a reply dated 22.03.2021 to the 1st respondent stating that construction work is being carried out in the allotted plot and requested for extension of time for the payment of penalty amount. While that being so, the 1st respondent has issued the impugned order dated 30.03.2021, cancelling the Allotment Order. Challenging the same, the petitioner has filed the present Writ Petition.

4. This Court by order dated 19.07.2021, directed the petitioner to deposit the penalty amount of Rs.63,43,916/- by 10 equal installments to the respondents Corporation and to complete the construction of the building within 14 months from 01.08.2021 and also directed the petitioner to file affidavit of undertaking before the respondents with regard to the said direction within 10 days from the date of receipt of a copy of that order. As per the order of this Court, the petitioner filed letter of undertaking dated 29.07.2021 before the



respondents and undertook to pay a sum of Rs.63,43,916/- in 10 equal instalment starting from 01.08.2021 and complete the construction within 14 months from August 2021. As per the undertaking given by the petitioner, the petitioner had paid seven monthly instalment totally to a sum of Rs.44,40,741/- and the balance amount of Rs.19,03,175/- out of penalty will be paid between March and October and prayed to quash the impugned order of cancellation of allotment.

5.The learned counsel appearing for the respondents submitted that the Writ Petition itself is not maintainable as there is no statutory violation on the part of the respondents. The action taken by the respondents Corporation is only based on the terms and conditions as agreed by the petitioner and the 1st respondent and the impugned order was passed for the violation of contractual terms and the Writ Petition is filed without jurisdiction. In the Board Meeting of respondents Corporation held on 21.07.2020 and 24.09.2020, it was decided to pursue action against the allottees who have not completed the construction within 24 months and not commenced the commercial production within 30 months from the date of Allotment Order. As per the decision taken in the Board Meeting, the 2nd respondent visited the unit of the petitioner and filed report stating that the unit was yet to commence the construction and enclosed the photographs to that effect. As the petitioner had not commenced the construction activities even after the lapses of three years, as per O.O.No.43 of 2020 dated 07.10.2020, penalty amount of Rs.63,43,916/- was levied and penalty notice was issued on 04.11.2020 for extension of duration of implementation under Category '2'. Therefore, the request of the petitioner was not considered as the petitioner has not implemented the project in the allotted plot even after the lapse of three years and 90 days notice was issued to the company on 23.12.2020. Even after the expiry of 90 days, the petitioner had not made any request based on the said notice issued. Hence, without paying the penalty, the petitioner is not entitled for the allotment. In view of the same, the 1st respondent has cancelled the Allotment Order. As per the order of this Court dated 19.07.2021, the petitioner has paid the lumpsum amount of Rs.31,71,958/- on 29.12.2021 and the balance amount is not paid.

6.In reply, the learned counsel appearing for the petitioner submitted that due to the cancellation of the Allotment Order, the petitioner could not access respondents' portal for making the payment through online and therefore, the petitioner sent Demand Draft to the respondents enclosing the



letter addressing the Managing Director of the respondents Corporation and produced a copy of the Demand Draft, the said letter and acknowledgement by way of Additional Typedset of Papers.

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7.From the materials on record, it is seen that the petitioner has not complied with the terms of the Allotment Order and the lease agreement and failed to complete the construction within 24 months and commence the commercial production within 30 months from the date of Allotment Order. According to the petitioner, they commenced the construction by levelling the plot from the ground level and constructed compound wall preventing the local people from using the allotted plot as pathway for reaching the nearby dwellings and after the sanction of loan of Rs.17 Crores by the Bank, the petitioner placed order on two machineries worth about Rs.15 Crores. According to the learned counsel appearing for the respondents, without payment of penalty amount, the petitioner is not entitled for an extension of time. Now, as per the order of this Court dated 19.07.2021, the petitioner has to complete the construction of the building within a period of 14 months from 01.08.2021, subject to the final orders passed by this Court in W.P.No.14877 of 2020. The petitioner has also filed the letter of undertaking that he will pay the penalty amount of Rs.63,43,916/- in 10 equal instalments starting from 01.08.2021 and complete the construction within 14 months from August 2021. According to the petitioner, he had paid 7 instalments and commenced the construction work.

8.Considering the above materials and fact that the 1st respondent has issued No Objection Certificate to the petitioner to mortgage the lease hold right for construction of factory and purchasing machineries, the petitioner had paid the amount as per the Allotment Order and lease agreement. With regard to the penalty amount, the respondents are not disputing that the petitioner has obtained a sum of Rs.15 Crores from the Bank and placed orders for the purchase of two machineries. Further, due to the Covid-19 pandemic situation, lockdown and due the non-availability of materials and man power for construction, the petitioner is entitled for the grant of extension of time to complete the construction as per his request. The respondents are directed to receive the balance penalty amount through Demand Draft as the petitioner could not access the respondents' online portal. The petitioner is permitted to make the balance three instalments through Demand Draft to the respondents on or before 5th of every month, without fail. The petitioner is directed to complete the construction work on or before



31.10.2022, as per the undertaking given by the petitioner. If the petitioner fails to comply with the undertaking produced before this Court, it is open to the respondents to proceed further.

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9. With the above directions, the impugned order dated 30.03.2021 in Ref.No.P-II/SIP-VV/83/MOC DIES/2017, passed by the 1st respondent is set aside and the Writ Petition is allowed. No costs.

s/d-
Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To:

1. The Managing Director,
State Industries Promotion Corporation of
Tamil Nadu (SIPCOT),
19-A, Rukmanilakshimapthy Road,
Egmore, Chennai - 600 008.
2. The Project Manager,
State Industries Promotion Corporation of
Tamil Nadu (SIPCOT),
SIPCOT INDUSTRIAL PARK,
Vallam - Vadagal,
Kanchipuram District - 631 604.

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MT (CO)
SP (04/04/2022)