



W.P. Nos. 14582 and 21448 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. Nos. 14582 and 21448 of 2022

and

W.M.P. Nos. 13781 and 20446 of 2022

M/s. Sattva Vaid Nature's Global Pvt. Ltd.,
41, Ragunayakulu Street,
Park Town,
Chennai – 600 003.

... Petitioner in W.P. No. 14582 of 2022

M/s. Kawman Ex-Act Ingredients Pvt. Ltd.,
41, Ragunayakulu Street,
Park Town,
Chennai – 600 003.

... Petitioner in W.P. No. 21448 of 2022

-VS-

1. State Industries Promotion Corporation of Tamil Nadu Limited,
represented by its Managing Director,
No. 19-A, Rukmani Lakshmipathy Road,
P.O. Box No. 7223,
Egmore,
Chennai – 600 008.

2. The Project Officer,
State Industries Promotion Corporation of Tamil Nadu Limited,
Kudikadu,
Cuddalore – 607 005.

3. Edelweiss Asset Reconstruction Company Limited,
Edelweiss House, Off C.S.T. Road,
Kalina,
Mumbai – 400 098.

... Respondents in both W.P.s



W.P. Nos. 14582 and 21448 of 2022

Prayer in W.P. No. 14582 of 2022:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, directing the First Respondent to call for the entire records in connection with the impugned proceedings in P-III/SIP-Cud/Sattvavaid/89-21 dated 29.04.2022 of the First Respondent proceedings and quash the said impugned proceedings dated 29.04.2022 relating to the demand of 10% differential plot cost as it violates the fundamental rights of the Petitioner.

Prayer in W.P. No. 21448 of 2022:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, directing the First Respondent to call for the entire records in connection with the impugned proceedings in P-III/SIP-Cud/Kawman/89-21 dated 27.10.2021 of the First Respondent proceedings and quash the said impugned proceedings dated 27.10.2021 relating to the demand of 10% differential plot cost as it violates the fundamental rights of the Petitioner.

For Petitioner : Mr. AR.L.Sundaresan, Senior Counsel
for Mrs. AL.Ganthimathi
(in W.P. No. 14582 of 2022)

Mr. B.Sanjay Balachandar
(in W.P. No. 21448 of 2022)

For Respondents : Mr. Ramesh Venkatachalapathy
(for R1 & R2) (in both W.P.s)



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COMMON ORDER

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Heard Mr. AR.L.Sundaresan, Learned Senior Counsel appearing for the Petitioner in W.P. No. 14582 of 2022, Mr. B.Sanjay Balachandar, Learned Counsel for the Petitioner in W.P. No. 21448 of 2022 and Mr. Ramesh Venkatachalapathy, Learned Counsel for the First and Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. In view of the order proposed to be passed, which would not cause any prejudice to the Third Respondent, notice to it is dispensed with.

3. The First Respondent had allotted Plot Nos. A-7, A-10, A-11, A-12 and A-15 for a total extent of 55.15 acres in the SIPCOT Industrial Complex, Cuddalore to one M/s. JK Pharma Chem Limited and had executed a lease deed dated 01.06.1990 for the period of 99 years. Thereafter, the First Respondent by a modified lease deed dated 22.04.2013 had accorded approval for transferring the remaining period of lease hold rights of the said JK Pharma Chem Limited to M/s.Vardhman Life Sciences Private Limited (hereinafter referred to as 'M/s.Vardhman' for short) subject to the conditions stipulated in Letter No. DIL/Cud/VLSPL/2013 dated 30.03.2013. M/s.Vardhman had obtained



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Certificate of No Objection by proceedings in Ref. No. D-II/SIC-

C/Vardhman/2013 dated 08.05.2013 from the First Respondent for creating mortgage of the said property in favour of State Bank of India, Exim Bank, State Bank of Hyderabad and State Bank of Patiala. As there was default in the borrowing made from State Bank of India, it had assigned the debt by agreement dated 04.03.2015 in favour of the Third Respondent, viz., M/s.Edelweiss Asset Reconstruction Company Limited, who had brought the property for sale in public auction in which the Petitioners, viz., M/s. Sattva Vaid Nature's Global Private Limited (Petitioner in W.P. No. 14582 of 2022) and M/s. Kawman Ex-Act Ingredients Private Limited (Petitioner in W.P. No. 21448 of 2022), were the successful bidders in respect of Plot No. A-15 in two parts, and the other plots belonging to M/s. Vardhman were purchased by M/s. Sri Vari Dyeings Process and M/s. Avanthiya Pharma LLP.

4. When a request was made by the Petitioners for execution of modified lease deed for transferring the remaining period of lease hold rights of the property in their favour, they were called upon by the First Respondent by Order in P-III/SIP-Cud/Sattvavaid/89-21 dated 29.04.2022 and Order in P-III/CUD/75/89-21 dated 27.10.2021 respectively to pay 10% of the differential plot cost by stating that they were auction purchasers of the Bank where NOC



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was not specifically obtained from SIPCOT. The said condition imposed on the Petitioners to pay 10% of the differential plot cost is challenged in these Writ Petitions by contending that it is contrary to the Office Order No. 19/2019 dated 31.08.2019 and Office Order No. 39/2021 dated 09.04.2021 passed by the First Respondent.

5. Learned Senior Counsel appearing for the Petitioner in W.P. No. 14582 of 2022 and Learned Counsel for the Petitioner in W.P. No. 21448 of 2022 have referred the distinction drawn in obtaining No Objection Certificate issued for mortgage of lease hold rights of the allotted plots in Sl. No. 7 and 8 of the Office Order No. 19/2019 dated 31.07.2019 issued by the First Respondent, which reads as follows:-

Sl. No.	Classification	Applicable transfer fee
7.	Sales of assets by the Banks/FI/Listed NBFC/ARC, where NOC was issued for mortgaging the lease hold rights of allotted plots.	Nil
8.	Sales of assets by the Banks/FI/Listed NBFC/ARC, where NOC was not issued for mortgaging the lease hold rights of allotted plots.	10% of differential plot cost.



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In the procedure for according approval for transfer of leasehold rights on the allotted plot for balance lease period in favour of the transferee unit in Office Order in O. O. No. 39/2021 dated 09.04.2021 issued by the First Respondent, it has been provided as follows:-

“ As regards to sale of assets is made through Official Liquidator/Court/NCLT approval for transfer of leasehold rights of the allotted plot shall be accorded in favour Auction Purchaser (transferee unit) by collecting dues towards maintenance charges, water charges during prior & after possession period with 'NIL' transfer fee as per O. O.3rd cited.

In case of sale of assets by the Banks/Financial Institutions/Listed NBFC/ARC where NOC was issued for mortgaging the leasehold rights of the allotted plot to the Banks/Financial Institutions, approval for transfer of leasehold rights of the allotted plot shall be accorded in favour of the auction purchaser (transferee unit) by collecting dues towards maintenance charges & water charges during prior and after possession period with 'NIL' transfer fee as per O. O.3rd cited.



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If sale of assets by Banks/Financial Institution/Listed

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NBFC/ARC where NOC was not issued for mortgaging the leasehold rights of the allotted plot to the Bank or Financial Institution, approval for such transfer shall be accorded by demanding 10% of differential plot cost and other dues if any.”

It is highlighted that M/s. Vardhaman had specifically obtained No Objection Certificate from the First Respondent by proceedings in Ref. No. D-II/SIC-C/Vardhman/2013 dated 08.05.2013 and it would fall under clause 7 for which nil transfer fee was payable and the requirement to pay 10% of differential plot cost would arise only when No Objection Certification had not been obtained for mortgaging the lease hold rights of allotted plots.

6. Learned Counsel for the First and Second Respondents, relying on Counter-Affidavit dated 11.07.2022 filed by the First Respondent, contends that the transfer fee of 10% of differential plot cost would be applicable to the Petitioners inasmuch as they had not obtained No Objection Certificate at the time of assignment of rights from State Bank of India to the Third Respondent and also because two other auction purchasers had paid the transfer fee and different yardstick cannot be adopted for the Petitioners in these Writ Petitions.



7. It is not possible to accept the contention of the First Respondent for the

simple reason that clause 7 of the Office Order No. 19/2019 dated 31.09.2019 and the relevant clauses in Office Order No. 39/2021 dated 09.04.2021 issued by the First Respondent makes it is clear and specific that nil transfer fee would have to be extended to the cases where the sale of assets had taken place from banks/financial institutions where No Objection Certificate was issued for mortgaging of lease hold rights, as in these cases, and there is nothing to show that the assignment of rights from banks/financial institutions to the securitization agent would fall under that category where No Objection Certificate had not been obtained. The assignment of rights from banks/financial institutions to the securitization agent under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, is merely a devise followed for recovering the dues, and it cannot be brought either under clause 8 of the Office Order No. 19/2019 dated 31.09.2019 or the relevant clauses in Office Order No. 39/2021 dated 09.04.2021 issued by the First Respondent for which No Objection Certificate is required. The mere circumstance that two other auction purchasers had paid the transfer fee demanded cannot be a valid criteria to deny the benefit of nil transfer fee to the Petitioner when it is not established by the First Respondent from the relevant office orders that such rights could be legitimately exercised. It is settled



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position that there cannot be equality in illegality and merely because an erroneous order has been passed in respect of other persons, it would not mean that the Petitioners would also be bound by the same. In that view of the matter, the impugned Order No. P-III/SIP-Cud/Sattvavaid/89-21 dated 29.04.2022 and Order No. P-III/CUD/75/89-21 dated 27.10.2021 passed by the First Respondent, insofar as it levies 10% of differential plot cost for the Petitioners for transfer of leasehold right in their favour, is alone set aside. After receipt of copy of this order, the First Respondent shall, within a period of 30 days from the date on which the respective Petitioners satisfy all the conditions stipulated for transfer of leasehold rights in their favour except the impugned condition of levying 10% of differential plot cost, shall execute necessary instrument of transfer and present the same for registration before the concerned authority.

In the result, these Writ Petitions are ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

18.10.2022

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Index: Yes/No

Note: Issue order copy by 18.11.2022.



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To

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State Industries Promotion Corporation of Tamil Nadu Limited,
No. 19-A, Rukmani Lakshmipathy Road,
P.O. Box No. 7223,
Egmore,
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P.D. AUDIKESAVALU, J.

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