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W.P.Nos.12047 and 12048 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.08.2022

PRONOUNCED ON : 28.10.2022

CORAM:

THE HON'BLE MR.JUSTICE S.SOUNTHAR

W.P.Nos.12047 and 12048 of 2014

and

M.P.Nos.1 and 2 of 2014

M/s.A.R.Kences Steel Industries Pvt. Ltd,
Rep. by its General Manager,
Thiru.Y.Sivalinga Prasad,
Administrative Office,
8th Floor, Kences Towers,
No.1, Ramakrishna Street,
North Usman Road, T.Nagar,
Chennai 600 017.

...Petitioner in both the W.Ps.

vs.

1. The Chairman and Managing Director,
State Industries Promotion Corporation of Tamil Nadu,
(A Government of Tamil Nadu Undertaking)
Registered Office at 19-A,
Rukmani Lakshmipathy Road,
Post Box No.7223, Egmore,
Chennai- 600 008.

2.The Estate Officer,
(Senior Project Manager),
SIPCOT Industrial Complex,
Gummidipoondi-601 201.



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3.M/s.Mitsuba Sical India Limited,
rep. by its Managing Director,
Plot No.D-8, SIPCOT Industrial Complex,
Gummidipoondi. ...Respondents in W.P.No.12047 of 2014

(R3 impleaded as per order dated 16.09.2014 by BRJ in M.P.Nos.1 to 4 of 2014 in W.P.No.12047 of 2014)

1. The Chairman and Managing Director,
State Industries Promotion Corporation of Tamil Nadu,
(A Government of Tamil Nadu Undertaking)
Registered Office at 19-A,
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Post Box No.7223, Egmore,
Chennai- 600 008.
- 2.The Estate Officer,
(Senior Project Manager),
SIPCOT Industrial Complex,
Gummidipoondi-601 201. ...Respondents in W.P.No.12048 of 2014

Prayer in W.P.No.12047 of 2014: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue writ of certiorarified mandamus to call for the records pertaining to the 1st respondent under reference No.DII/SICG/620/A.R.Kences/95 dated 24.02.2011, 06.03.2013 and 03.05.2013; records relating to the suo motu cancellation deed dated 14.11.2011 registered as Document No.5293 of 2011; records relating to allotment order dated 08.10.2012 allotting Plot



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No.D-9 SIPCOT Industrial Complex Gummidipoondi and consequential Lease Deed dated 28.11.2012 registered as Document No.6507 of 2012 at the office of the Sub-Registrar, Gummidipoondi in favour of 3rd Respondent restore the Plot NO.D9 SIPCOT Industrial Complex Gummidipoondi to the petitioner.

(Prayer was amended as per order dated 16.09.2014 by BRJ in M.P.Nos.1 to 4 of 2014 in W.P.No.12047 of 2014)

Prayer in W.P.No.12048 of 2014: This Writ petition has been filed under Article 226 of the Constitution of India, praying to issue writ of certiorari to call for the proceedings of the 1st respondent said to have been initiated under the Tamil Nadu Public Premises (Eviction of Unauthorised Occupants) Act, 1975 culminating into resumption of possession dated 21.9.2011 as claimed in the 1st respondent letter dated 03.05.2013 and quash the same.

In both the W.Ps:

For Petitioner : Mr.P.Wilson (Senior Advocate)
for M/s.P.Wilson Associates

For R1 and R2 : M/s.Sudharshana Sundar

In W.P.No.12047 of 2014:



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For R3

: Mr.B.Sanjai Balachandar
for M/s.S.Yashwant

ORDER

The petitioner herein has filed this writ petition challenging the order passed by the 1st respondent dated 24.02.2011 cancelling the allotment of the industrial plot to the petitioner in SIPCOT Industrial Complex, Gummidipoondi and other consequential proceedings whereunder, the 1st respondent informed the petitioner that the entire plot cost paid by it had been forfeited. The petitioner prayed for quashing of cancellation order and restoration of the plot claiming that he had paid the entire plot cost as demanded by the 1st respondent. The writ prayer was subsequently amended by the petitioner challenging the subsequent allotment of the plot to the 3rd respondent also.

2. According to the writ petitioner by allotment letter dated 14.12.1995 issued by the 1st respondent corporation plot No.D.9 with an extent of 8.18 acres of land situated in SIPCOT Industrial Complex, Gummidipoondi was allotted to the petitioner for the purpose of setting up an industrial unit for manufacturing twisted steel rods and steel sections.



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Subsequently, a lease deed was entered into between Project Officer of the 1st respondent corporation namely the 2nd respondent and the petitioner on 31.01.1996. As per the lease deed, the lease period was fixed at 99 years. The clause 2 to 4 b of the lease deed contains details of the schedule of payment which reads as follows:

"2. That in consideration of the allotment of plot made by the party of the First Part, the Party of the Second Part has paid a sum of Rs.24,54,000/- (in words) being 50% of the plot deposit.

3. The Second instalment of 25 % of the plot deposit of Rs.12,27,000/-(in words) shall be paid within six months from the date of the allotment order.

4a. The Third instalment of 25% of the plot deposit of Rs.12,27,000/- (in words) less Rs.100/- shall be paid within 12 months from the date of allotment order.

4b. The party of the first part shall not pay any interest for the plot deposit remitted by the party of the second part."

Clause 23 and 23a of the lease deed with schedule for construction of industrial unit and production activity which reads as follows:



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"23. Construction of building will have to be commenced 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 regulations prescribed, among others.

23.a. The allottee shall commence commercial production/trial production within 30 months from the date of allotment order. Failure will entail cancellation of allotment and forfeiture of initial deposit paid towards the extent allotted."

3. The reading of lease deed and letter of 2nd respondent dated 03.05.1996 make it clear on the date of execution of lease deed, petitioner deposited 50% of the plot cost namely Rs.24,54,000/- and got the lease deed executed. The possession of the plot was also handed over to the petitioner on that date. It appears there is some default on the part of the petitioner in paying remaining cost of the plot and therefore, the allotment made to the petitioner was cancelled subsequently on request made by the petitioner, the plot cost was revised as per the terms of allotment order and



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lease deed. In the meantime the petitioner had also surrendered portion of the allotted plot with an extent of 4 acres to the 1st respondent and executed the surrender deed. Notwithstanding the same, the 1st respondent demanded the entire revised cost for the total extent of 8.18 acres of land as a condition for revocation of the cancellation order. As per the intimation letter of the 1st respondent dated 15.05.2007, the petitioner paid a sum of Rs.55,00,520/- to the 1st respondent. Even thereafter, the 1st respondent by letter dated 03.07.2007 demanded a further sum of Rs.10,48,960/- towards various charges from 01.05.2005 to 09.07.2007. The said sum was also paid by the petitioner on 11.07.2007 and consequently requested the 1st respondent to revoke the cancellation order.

4. It is the case of the petitioner that it paid a sum of Rs.1,00,53,480/- to the 1st respondent as against original plot cost of Rs.49,08,000/-. When the petitioner was waiting for favourable response from the 1st respondent regarding revocation of the cancellation order, the 1st respondent by communication dated 24.07.2007 informed the



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petitioner to remit a further sum of Rs.1,14,52,000/- towards differential land cost. The petitioner by letter informed the respondent that it had paid a sum of Rs.1,00,53,480/- so far and sought for details of calculation for the further demand of Rs.1,14,52,000/- made by the respondent. Subsequently, on 15.07.2010 1st respondent by another communication letter informed the petitioner that the petitioner shall deposit a further sum of Rs.1,96,32,000/- towards differential land cost as on 15.07.2010 for revocation of cancellation. The petitioner by letter dated 28.07.2010 sought for details of working sheet for arriving at the differential cost of Rs.1,96,32,000/-. But however the 1st respondent sent a show cause notice dated 22.11.2010 informed the petitioner that it failed to complete construction of factory building within 24 months and commence the commercial production within 30 months from the date of allotment order and thereby violated the clauses 23 and 23a of lease deed and the petitioner was directed to show cause why the allotment order and lease deed should not be cancelled and the plot resumed under TNPPE Act.

5. The petitioner responded to the show cause notice by letter dated



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10.01.2011, wherein they mentioned that they had already paid Rs.1,00,53,480/- and they do not know how a further sum of Rs.1,96,32,000/- became payable towards differential land cost. In these circumstances, the 1st respondent passed an impugned order, cancelling the allotment made to the petitioner again by invoking the clause 23 and 23a of lease deed on the ground the petitioner failed to commence commercial production within 30 months. The petitioner was advised to execute surrender deed and handover the possession of the plot. Subsequently, by letter dated 06.03.2013, the respondent informed the petitioner that they had taken possession of the plot under TNPPE Act on 21.09.2011 and a suo moto cancellation deed was executed and registered on 14.11.2011. By the same letter, the petitioner was also informed that the plot was allotted another company namely the third respondent. Subsequently by letter dated 03.05.2013 the 1st respondent informed the petitioner that entire plot cost paid by it for the cancelled allotment was forfeited as land was resumed under TNPPE Act. In these circumstances, the petitioner has come up with this writ petition challenging the series of communications of the 1st respondent from cancellation of the allotment



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dated 24.02.2011 to communication of 1st respondent dated 03.05.2013 wherein petitioner was informed that the entire amount paid by him was forfeited by invoking clause 23a of lease deed. Subsequently, the prayer was amended challenging the subsequent allotment in favour of 3rd respondent.

6. The learned counsel for the petitioner submitted that the petitioner paid Rs.1,00,53,480/- nearly double the original cost of the plot and when the 1st respondent sent a communication demanding further differential land cost of Rs.1,96,32,000/-, the petitioner sent number of communications seeking the details of the working sheet for arriving at differential land cost. Without furnishing the details of the working sheet for arriving at differential land cost arrived at by 1st respondent, unilaterally, the allotment was cancelled by invoking clauses 23 and 23 A of lease deed, on the ground petitioner failed to follow the time schedule prescribed for commencing production activity. The learned counsel submitted that earlier cancellation order passed by the 1st respondent for default in payment of plot cost was not revoked in spite of the fact that



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petitioner paid double the land cost as demanded by the 1st respondent.

Therefore, the entire delay in commencing production is attributable to the 1st respondent. Though, the petitioner challenged the cancellation of the allotment, at the time of argument the learned senior counsel appearing for the petitioner on instruction submitted that he confined his argument to invocation of forfeiture clause under clause 23a of lease deed. The learned senior counsel for the petitioner submitted that in the facts and circumstances of the case clause 23a of the lease deed cannot be invoked by the 1st respondent for forfeiting the land cost paid by the petitioner. It was his submission that the failure of the petitioner to commence commercial production within 30 months as mandated by the clause 23a is not due to the petitioner's fault.

7. The learned Senior counsel submitted that there was some default on the part of the petitioner in making the payment of the land cost as per the payment schedule mentioned in the lease deed. Therefore, the respondent cancelled the allotment order earlier. Subsequently, as per the communication of the respondent petitioner paid further sum over and



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above the original land cost. According to the learned senior counsel, the petitioner paid a sum of Rs.1,00,53,480/- as against the original land cost of Rs.49,08,000/-. Notwithstanding the payment, the 1st respondent failed to revoke the cancellation order and hence petitioner was prevented from commencing production. Since, the delay in commencing production is attributable to in-action of the 1st respondent, clause 23a cannot be invoked for forfeiting the entire land cost paid by the petitioner. The learned counsel further submitted that clause 23a only enables the 1st respondent to forfeit initial deposit paid by the petitioner towards the allotted land. The expression "initial deposit" is not defined in the lease deed and consequently, the forfeiture of the entire sum deposited by the petitioner is not legal and the same would amount to unjust enrichment on the part of the 1st respondent.

8. Per contra, the learned counsel for the respondent corporation submitted that petitioner failed to commence construction in the industrial unit and commercial production as per the time schedule specified in the lease deed. The petitioner also defaulted in depositing the original land



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cost fixed in the lease deed. Considering the conduct of the petitioner in his failure to implement the project and act in accordance with terms of lease deed in making the payment, the allotment order was initially cancelled by the 1st respondent. Since, the petitioner failed to pay the entire cost as per the time schedule, by taking into consideration the long delay in making the payment, differential cost was imposed for revocation of the cancellation by the 1st respondent. The petitioner instead of remitting the differential land cost of Rs.1,96,32,000/- as demanded by the 1st respondent, sought for clarification on the demand and therefore petitioner was issued with show cause notice as to why his allotment order should not be cancelled for his failure to commence production within the time specified. The learned counsel by referring to clauses 23 and 23a of lease deed, submitted that the 1st respondent is entitled to cancel the allotment if allottee (petitioner herein) failed to commence commercial production within 30 months from the date of allotment order. The learned counsel further submitted that since the petitioner failed to surrender allotted land and execute surrender deed in pursuance of the cancellation order issued by the 1st respondent, suo moto cancellation deed was



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executed by 2nd respondent and the land was resumed by invoking TNPPE Act on 21.09.2011 and suo moto cancellation deed was executed on the same day.

9. Heard the arguments of the learned senior counsel for the petitioner and the counsel for the respondent corporation. Perused the affidavit, counter affidavit and typed set of papers. Though the petitioner challenged the cancellation of the allotment order, at the time of argument confined his argument to the legality of 1st respondent's action in invoking forfeiture clause and retaining the entire land cost deposited by the petitioner. Though cancellation order was passed by 1st respondent as early as 24.02.2011 and suo moto cancellation deed was executed on 21.09.2011 and land was resumed on the same day. The petitioner failed to challenge the same immediately. The petitioner has come up with this writ petition only after the communication from the 1st respondent dated 03.05.2013, whereunder the petitioner was informed that entire plot cost paid by it was forfeited and the plot was already allotted to another company. The writ petition was filed only on 22.04.2014. The allotment order in favour of 3rd respondent was made on 08.10.2012 itself. Since the



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petitioner failed to challenge the cancellation order immediately, the 1st respondent had taken future steps and allotted the plot to an innocent 3rd party and hence it is too late for the petitioner to challenge the correctness of the cancellation order. Absolutely there is no explanation on the part of the petitioner, why he waited for nearly 3 years to challenge the cancellation order. In view of the submissions made by the learned senior counsel for the petitioner on instruction that he confined his argument to the legality of invocation of forfeiture clause in respect of the entire land cost paid by the petitioner, this Court proceeds to consider that question alone. The forfeiture clause in the lease deed entered between the petitioner and the 1st respondent namely clause 23a enables 1st respondent to forfeit initial deposit paid by the petitioner towards land allotted. Admittedly, the petitioner failed to commence commercial production within 30 months. Though, the learned senior counsel for the petitioner argued that the failure to commence commercial production is attributable to the 1st respondent as they cancelled the allotment earlier and failed to revoke the same in spite of the fact that the petitioner paid twice the land cost, the fact remains petitioner committed default in



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payment of land cost as per the time schedule mentioned in the clauses 2 to 4b (extracted supra). The petitioner deposited 50% of the original plot cost namely Rs.24,54,000/- on the date of lease deed and he failed to comply with the time schedule in payment of the remaining two instalments, consequently, the 1st respondent cancelled the allotment order earlier. The perusal of the various communications between the petitioner and respondent corporation make it clear the land cost was revised due to enormous delay on the part of the petitioner and petitioner failed to make the full payment till 2007. Therefore, the contentions of the learned senior counsel that the delay in commencing commercial production is not due to the fault of the petitioner and it is attributable to the 1st respondent corporation cannot be accepted. The revision of the land cost was made by the 1st respondent only due to the delay by the petitioner in depositing original cost mentioned in the lease deed. Hence, I hold the failure of the petitioner to commence commercial production within 30 months is only due to its own fault and hence the 1st respondent is entitled to invoke clause 23 and 23a for cancellation of the allotment and forfeiting the initial deposit made by the petitioner.



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10. As rightly contended by the learned senior counsel for the petitioner the expression "initial deposit" is not defined under the lease deed. The plain reading of clause 23a of the lease deed would suggest the 1st respondent is not justified in forfeiting the entire land cost paid by the petitioner, it is entitled to retain only the initial deposit. The reading of clause 2 to 4b make it clear initially the petitioner deposited Rs.24,54,000/- towards plot deposit (plot cost) on the date execution of lease deed. In the absence of any definition in the lease deed for the expression "initial deposit", I hold that the initial deposit made by the petitioner on the date of the execution of the lease deed shall be treated as initial deposit mentioned in clause 23a of lease deed. Hence, I am of the view, the petitioner is not entitled to retain more than Rs.24,54,000/- deposited by the petitioner on the date of execution of lease deed. The action of the 1st respondent in forfeiting the entire revised land cost paid by the petitioner namely Rs.1,00,53,480/- is not legally tenable. As per the terms of lease agreement, the 1st respondent can only retain the initial deposit and the remaining amount has to be paid to the petitioner. The 1st



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respondent is not entitled to both resumption of land and forfeiture of the entire land cost. Allowing the 1st respondent to take back the land and also retain entire land cost would certainly amount to unjust enrichment. Hence, the 1st respondent is not entitled to retain the entire land cost paid by the petitioner.

11. The learned counsel for the 1st respondent corporation by relying Office Order dated 26.03.2004 made in O.O.No.4 of 2004, submitted that as per the policy of the 1st respondent corporation, if the land is resumed under TNPPE Act, the entire land cost paid by the allottee shall be forfeited. The Office Order issued by the 1st respondent is only an internal communication and it will not bind the petitioner. Further, it is not open to the 1st respondent to alter the terms of the lease unilaterally and retain the entire land cost.

12. In view of the above discussions, the writ petition is partly allowed by quashing the impugned communication of the 1st respondent dated 03.05.2013 to the extent it enable the 1st respondent to forfeit the



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entire land cost paid by the petitioner. The 1st respondent is entitled to forfeit the initial deposit of Rs.24,54,000/- made by the petitioner on the date of execution of lease deed and remaining amount paid by the petitioner shall be paid back to the petitioner by the 1st respondent. In view of the clause 4b of the lease deed, the petitioner is not entitled to claim any interest on that amount. No costs. Consequently connected miscellaneous petitions are closed.

13. The petitioner in W.P.No.12048 of 2014 challenging the proceedings of the 1st respondent, initiated under TNPPE Act culminating in resumption of plot as claimed in 1st respondent letter dated 03.05.2013. In view of the order passed in W.P.No.12047 of 2014, no further orders are necessary in this writ petition. Therefore, W.P.No.12048 of 2014 is disposed of as no further orders are necessary.

28.10.2022

Index : Yes / No
Internet : Yes/ No
Speaking/Non-speaking Order
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To

1. The Chairman and Managing Director,
State Industries Promotion Corporation of Tamil Nadu,
A Government of Tamil Nadu Undertaking)
Registered Office at 19-A,
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