



WEB COPY



Writ Petition No.3653 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.3653 of 2023

and

W.M.P.No.3742 of 2023

A.S.Cargo Movers Private Limited,
represented by its Director - Finance
Mr.S.Sundararajan
173/103, 9th Floor, Block "B",
Navins Presidium, Nelson Manickam Road,
Aminjikarai, Chennai - 600 029.

...Petitioner

Vs

The Chairman and Managing Director,
The State Industries Promotion Corporation
of Tamil Nadu Ltd.,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the entire records pertaining to the respondent's Demand Letter D-II/IORG/A.S.Cargo/2013 dated 27.06.2014 and the Respondent's Office Letter No.P-I/SIP/ORG/AS Cargo/2008 dated 23.09.2022 and quash the same.

For Petitioner : Mr.J.V.Niranjan

For Respondent : Mrs.Sudharshana Sundar



Writ Petition No.3653 of 2023

ORDER

This writ petition has been filed challenging the demand letter issued by the SIPCOT dated 23.09.2022 directing the petitioner to remit the dues and the caution deposit failing which SIPCOT will take further legal course of action to resume the plot allotted to the petitioner.

2. Heard Mr.J.V.Niranjan, learned counsel for petitioner and Mrs.Sudharshana Sundar, learned counsel for respondent.

3. The petitioner applied for allotment of a developed plot in Irrungattikottai Industrial Park and the SIPCOT entertained the application and an allotment order dated 21.11.2003 was issued to the petitioner. The petitioner and the respondent also were in the process of finalising the lease deed. Ultimately, a lease deed dated 14.01.2004 was executed in favour of the petitioner and the lease was granted for a period of 99 years. This deed was also registered before the concerned Sub-Registrar office.

4. The respondent issued a letter dated 27.06.2014 imposing sub-leasing fee of Rs.1,43,33,928/-. The petitioner was aggrieved by this demand



made by the respondent and the matter ultimately reached the Arbitral Tribunal. An award came to be passed on 14.08.2017 and this award went in favour of the respondent.

5. The petitioner filed O.P.No.736 of 2017 before this Court challenging the award and the same was pending. The petition came to be dismissed for default on 10.03.2020. Pursuant to the same, the respondent issued the impugned letter dated 23.09.2022 directing the petitioner to immediately remit the dues failing which further legal course of action will be taken to resume the plot allotted to the petitioner. Aggrieved by the same, the present writ petition has been filed before this Court.

6. Learned counsel for petitioner submits that similar demand was made against another company, viz., A.S.Carriers Private Limited and the same was put to challenge before this Court in W.P.No.5446 of 2016. This Court on considering the contentions put forth by either side, came to a conclusion that SIPCOT is not entitled to demand sub-lease charges since the same was not contemplated under the lease agreement. Accordingly, the demand made by the SIPCOT was set aside and the writ petition was



allowed by order dated 26.08.2022. Learned counsel submits that this order will squarely cover the issue that is involved in the present writ petition also.

It is only for this reason, the petitioner has chosen to file the writ petition before this Court.

7. *Per contra*, learned Standing Counsel appearing on behalf of the SIPCOT submits that the petitioner had chosen to challenge the demand made by the respondent by raising a dispute before the Arbitrator and an award has already been passed by the Arbitrator in favour of the respondent and this became a subject matter of challenge u/s.34 of the Arbitration and Conciliation Act before this Court in O.P.No.736/2017. The petition filed by the petitioner was dismissed for default and hence, the respondent proceeded to take steps to recover the dues. Learned Standing Counsel submitted that the petitioner cannot be permitted to parallelly prosecute this writ petition when the writ petitioner had already chosen to challenge the demand in the Original Petition. Accordingly, learned Standing Counsel sought for the dismissal of this writ petition.



WEB.COM

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. There are no serious disputes on the facts of this case. It is apparent from the records that the demand made by the respondent was put to challenge before the Arbitral Tribunal and the petitioner suffered an award. This award was put to challenge before this Court in O.P.No.736 of 2017. The petition was dismissed for default and learned counsel for petitioner submitted that steps have already been taken to restore this petition. At that stage, the present writ petition was filed before this Court by taking note of the order passed in W.P.No.5446 of 2016, dated 26.08.2022.

10. In the considered view of this Court, the order passed in W.P.No.5446 of 2016 does not really create a fresh cause of action for the petitioner. Probably, the issue that is involved in that writ petition is similar to the issue on hand. However, since the petitioner has chosen to agitate their grievance through arbitration proceedings and they have already suffered an award, which was put to challenge before this Court, the petitioner will not be allowed to parallelly maintain a writ petition on the



Writ Petition No.3653 of 2023

same cause of action. If the petitioner has already taken steps to restore O.P.No.736 of 2017, it is always left open to the petitioner to prosecute that petition and if so advised, to rely upon the order passed in W.P.No.5446 of 2016 while arguing the petition on merits, if the same is restored.

11. When this Court exercises its jurisdiction under Article 226 of the Constitution of India, there is always a discretion given to this Court not to entertain a writ petition on the given facts of the case. In the present case, the petitioner has already chosen a particular course of action challenging the demand made by the respondent and hence, the petitioner has to necessarily follow that course of action and the petitioner will not be allowed to parallely maintain a writ petition before this Court to ventilate the same grievance. This is a case where this Court is not inclined to exercise its writ jurisdiction and it is left open to the petitioner to continue to prosecute the course of action that has already been resorted. The dismissal of this writ petition will not stand in the way of the petitioner to seek remedy for the grievance expressed by them in the manner known to law.



Writ Petition No.3653 of 2023

In the result, this Writ Petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

15.06.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
gm

To
The Chairman and Managing Director,
The State Industries Promotion Corporation
of Tamil Nadu Ltd.,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai - 600 008.



WEB COPY



Writ Petition No.3653 of 2023

N.ANAND VENKATESH, J

gm

Writ Petition No.3653 of 2023

15.06.2023