



W.P.No.1745 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.02.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

WP.No.1745 of 2015

M/s.Madhucon Granites Ltd.,
Rep. By its Authorized signatory
K.Jayanth
Beside D.No.135, Addakurukki(V)
Kamandoddi (PO) Hosur (Tq)
Krishnagiri 635 109.

... Petitioner

Vs

The State Industries Promotion Corporation,
of Tamilnadu
Rep. by its Managing Director
19-A Rukmani Lakshmipathy Road
Egmore, Chennai 600 008.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in Letter bearing Ref.No.P&SP/SEZ-B/Madhucon/1/2010 dated 29.10.2014 and quash the same and consequently direct the respondent to refund to the Petitioner the sum of Rs.1,07,04,094/- deducted without any authority by the respondent together with appropriate interest.

For Petitioner : Mr.A.Palaniappan
For Respondent : Mr.Sudharshana Sundar
Standing Counsel



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ORDER

Heard Mr.A.Palaniappan, learned counsel for the petitioner and Ms.Sudarsana Sundar, learned Standing Counsel for the sole respondent / the State Industries Promotion Corporation of Tamil Nadu (SIPCOT).

2. The submissions of Mr.A.Palaniappan are as follows:-

(i) The petitioner was incorporated in 1988 to engage in manufacture and trading of minerals.

(ii) It is a hundred percent Export Oriented Unit (EOU) and made an application on 03.11.2010 for allotment of a plot in the Special Economic Zone (SEZ) at SIPCOT Industrial Complex, Bargur.

(iii) An in-principle allotment had been issued on 02.12.2010 and a regular allotment order on 07.07.2011 allotting Plot No.1 to and in favour of the petitioner.

(iv) The lease was for a period of ninety-nine years and the permitted/approved activity comprised manufacture of Granites Slabs / Tiles / Cutter Slabs and Kitchen Tops.

(v) The total extent of the plot allotted, in acreage, comprised 40.24 acres and the amount payable was of a sum of Rs.15,00,000/- per acre.

(vi) The petitioner made an initial deposit of a sum of Rs.2,00,000/- and application fee of Rs.250/-.



(vii) The allotment order dated 07.07.2011 contained a component entitled 'towards plot deposit and development charges'. The former field contain the narration 'will be informed later' and the latter field contained no narration as against it. Thus, and apparently there had been no quantification of either development charges or plot deposit at the time when the allotment was made.

(viii) The petitioner had admittedly remitted the amount due in entirety, being a sum of Rs.75,000/- and Rs.6,01,60,350/- towards initial deposit, processing fee, application cost, plot deposit, development charges and lease rent that was duly acknowledged on 21.11.11.

(ix) Clause 2 (c) provided for the deployment of development charges and stated thus:-

"c. The amount remitted towards development charges and any additional development charges incurred by SIPCOT and collected from you during the lease period will be adjusted towards the expenditure incurred and/or to be incurred for the development of SIPCOT Industrial Park/Complex/Growth Centre including its infrastructural facilities."

(x) Clause 2(d) set out the consequences of a surrender of plot in the following terms:-

"d. On surrender of a plot by an allottee, the plot deposit may be refunded in full after forfeiting the initial deposit and processing fee. The development charges may be refunded after forfeiting an amount of 5% per year or part thereof for the number of years the plot was held by the allottee, subject to a minimum deduction of 15%. No compensation for improvement or



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for the building or for other structures erected in the plot will be made.”

(xi) One of the conditions that was stipulated was that commercial production / implementation of the unit was mandatory within 30 months from the date of allotment order. This was under threat of cancellation of allotment and forfeiture of the initial deposit and development charges remitted.

(xii) Clause 4(a) stated that the plot deposit and development charges set out under Clause 1 was only tentative and was subject to revision by SIPCOT.

(xiii) Clause 4(b) stated that since the provision of infrastructural facilities by SIPCOT was on-going and targeted towards overall development of the industrial park, expenses would continue to be incurred at various stages till its completion. Thus, the allottee, it was made clear, shall not have any claim over the development charges paid to SIPCOT.

(xiv) The parties entered into a Memorandum of lease deed on 26.12.2011 and reiterated the terms that have already been encapsulated in the previous paragraphs of this order.

(xv) Thereafter, the petitioner approached the Development Commissioner of the SEZ as well as other authorities for provision of infrastructural facilities such as electricity, water. It was also pursuing with SIPCOT



the question of plans and approval for the SEZ project itself apart from approaching banks for and financial facilities.

(xvi) There was no traction from those authorities pending completion of various formalities by SIPCOT.

(xvii) This was brought to the notice of the respondent as early as on 13.06.2012 which is the communication most proximate to the date of lease deed available on record. In terms of this letter, the petitioner requested that the infrastructure be made 'project ready', outlining the following eight points as calling for urgent attention and action:-

"We hope that all infrastructure will be "project ready as communicated by you during our meeting as indicated below:

1. Forest trees clearance – The work will be completed in one week, i.e. by the 18th of June

2. Roads connecting the SEZ to the highways – The Road connecting the SEZ to the National/State highway will be completed in two months time, i.e. by mid August 2012.

3. Water line to the plot – Water is available at the SEZ at a tank already constructed by SIPCOT and this can be made available to our unit through a dedicated water line that can be laid within two days. If required, SIPCOT will also accord special approval to dig a bore well in our 40 acre site.

4. Power substation – Temporary connection of Power will be provided by SIPCOT through TNEB. The substation will be provided in six months by which time more units would have been allotted land within the SEZ. As agreed, we will make an application to SIPCOT for power supply and provide load requirements.



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5. Access to wastelands to dump residual – Land to dispose slurry and waste stone will be provided by the time our unit is ready to commence production.

6. Compound wall – Fencing of SEZ area will be done by July 2012.

7. Street light within the SEZ – This will be done by march 2013 as lighting will have to be provided from Pochempalli extending into the SEZ.

8. Central excise office – SIPCOT has already released funds to the Excise department and the facility will be ready in time by December 2012.”

(xviii) The letter concluded with an entreaty, that based on the assurances extended to the petitioner by the Chairman and Managing Director, SIPCOT, orders had been placed on suppliers for production and dispatch of various machinery / equipments for achieving the target stipulated for commercial production.

(xix) The request of the petitioner was reiterated on 30.09.2012.

(xx) On 04.12.2012, the petitioner wrote to the Chairman and Managing Director, SIPCOT, referring to a slew of letters and meetings conducted, and bringing to his notice that no DTCP approval or electricity connection had been provided by SIPCOT. The petitioner expressed its apprehension about starting the project in time, also pointing out that in the absence of infrastructural support which was critical to the project, it would be under tremendous pressure financially and business-wise. These letters, very fairly, have been placed on record by respondent counsel.



(xxi) The petitioner specifically draws attention to communication dated 03.01.2013 where, under the head 'DTCP Approval', they have indicated to the respondent that their application with the Department of Town and Country Planning was on the verge of being rejected. They state that the Deputy Director, DTCP had clearly conveyed that until and unless SIPCOT submitted their project details for approvals, there could be no question of approving individual projects in the SEZ. Since Open Space Reservation (OSR) would be determined based on the entire area allotted at 10% with the question of open space reservation pending at SIPCOT for want of to project approval, DTCP expressed its inability to approve the petitioner's unit.

(xxii) By way of response to the petitioner's stream of letters, the respondent conceding to the delay in provision of infrastructural facilities. They fell back on various government norms that was standing in the way of a fruitful and effective implementation of infrastructural facilities. Letter dated 10.01.2013 to this effect reads thus:

"With reference to your letter cited, we are to inform that SIPCOT has already engaged in developing the infrastructure facilities in SIPCOT Industrial Complex, Bargur including SEZ. With regard to allotment of land to TANGEDCO, we have already requested them to remit the plot cost so as to hand over the site for establishing the proposed sub-station.

With regard to DTCP approval, we are to inform that action is being taken to obtain the same. However, we are to inform that as per G.O.Ms.No.169, Industries



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(MIE.2) dated 12.9.96, the allottee can start construction immediately after submitting the necessary application for building plan approval to the appropriate authorities provided a certificate from a Chartered Architect or a Civil Engineer registered with the concerned local body is enclosed confirming that the plan is not violating any rules or regulations, including the zone regulations under the Town and Country Planning Act, 1971."

(xxiii) In this context, Petitioner draws attention to G.O.No.23 dated 24.01.2012 issued in the context of Open Space Reservation (OSR) and which makes it mandatory for developers of SEZs to adhere with all applicable norms in such development. Specific reference is made to Clause 6 which refers to orders under Section 113 of the Town and Country Planning Act relating to exemptions of development regulations for Chennai Metropolitan Area / Development Control Regulations of the Directorate of Town and Country Planning.

(xxiv) In these circumstances, and in light of the continued inaction of SIPCOT, the petitioner had no option but to commence withdrawal from the project and intimated SIPCOT of such intention by communication dated 10.01.2013.

(xxv) On 07.10.2013, SIPCOT requested the petitioner to reconsider its decision for surrender of the plot and requested the petitioner to proceed with implementation of the project.

(xxvi) The above request is really ironical seeing as, on that date, that is, 07.10.2013, the SEZ had not been enabled in any sense to support pro-



ject implementation. How the respondent expected the petitioner to commence the project without basic infrastructure, is indeed a mystery.

(xxvii) Petitioner, on 05.08.2014, executed a deed of surrender of lease surrendering the plot and recording that it had no manner of right over the same.

(xxviii) The petitioner also sought refund of the amounts remitted to SIPCOT being an amount of Rs.6,03,61,350/-. Inter alia the petitioner outlined the difficulties encountered over the past 19 months and the roadblocks encountered on account of the inaction of SIPCOT to provide even the most basic of facilities till that date. The aforesaid letter states thus:

The Memorandum of Lease Deed has been signed and registered on 26-12-2011 between the SIPCOT and MADHUCON GRANITES LIMITED for the purpose of putting up the project for manufacturing granite sector. Soon after the execution of the memorandum of Lease Deed, the company has approached the concerned authorities of SIPCOT for perusing to take necessary steps to create the basic infrastructure ie. High Tension Power, Water, Link Roads area for dumping waste etc.

Hopefully on take off the SEZ activities the company has made advances to the Machinery suppliers. We strongly believed that the SIPCOT will immediately create at least the necessary infrastructure facilities for putting up projects in SEZ sector, which are essential and basic for the establishment of the said processing unit. To our surprise during the past 19 months no progress was happened inside the SEZ. In view of the anticipation, the company has paid crores of rupees as commitment advances to machinery suppliers for timely supply of machineries.



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In order to expedite project execution, the company has approached the office of the Deputy Director of Town and Country Planning (DTCP) at Dharmapuri to know the ways and means to obtain the necessary requisite approvals for the construction of the said unit. During the meeting, we were learned that the SIPCOT has not obtained the necessary approval for the establishment of the said Industrial Estate (SEZ) till date. Further, we have been informed that let the SIPCOT first get the approval for the establishment of the said Industrial Estate and SEZ, there after the approval for unit will be considered by this office. Till date, we are approaching the SIPCOT authorities to help us to able to get necessary approval by the DTCP office: Since, the bankers are very particular about necessary statutory clearances.

In continuation of the efforts to establish the project in time, the company has initiated and approached the Tamil Nadu Pollution Control Board (TNPCB) authorities to know the ways. and means to obtain the necessary clearance for starting of the unit. The authorities of TNPCB have also expressed that the SIPCOT has not obtained the necessary clearance from this office for establishing industrial Complex. Further, they are very particular about the plan of action by the SIPCOT authorities for disposal of slurry and other waste generated from the industrial units of the said complex.

Since, it is a bonded area the company cannot make our own arrangement for the disposal. Till date there is no clear plan of action in this regard from the SIPCOT, even the bankers are very much keen for the necessary environmental clearance to establish the project.

As for as High Tension Power supply is concerned, we have approached the TNEB/TNGEDCO authorities concerned about the time line for establishment of new substation inside the Bargur SIPCOT Industrial Complex. The official of the office of the TNEB/TNGEDCO have expressed that there is no concrete



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proposal have been received from the SIPCOT towards establishment of a sub-station for the High Tension power supply for the units to be established and allotment of land by the SIPCOT for the same. As per the TNEB authorities view, it may take at least two years to establish a new sub-station. In fact, lack of High Tension Power Station is the main lacuna for the development of the said proposal. Running of the said unit using power generators is not at all viable considering rise in fuel prices.

As far as the approach road is concerned, even today there is no proper approach road/link road or even a road linking up to the SIPCOT SEZ complex. During the rainy days working in the plot was very difficult and beyond explainable, since all equipment and machineries are heavy in size.

As far as unit approval by the MEPZ is concerned, that the authorities have been extended the unit approval twice till now. Further, extension of unit approval by the MEPZ would not possible as per the provisions and which was specifically stated in their previous extension of unit approval letter.

As far as water arrangement facilities are concerned, it appears that there is no proper arrangement to supply water to the units concerned in SEZ complex.

In view of the these delays from the side of SIPCOT, the bankers are much cautious to take up for appraising project funding for establishing the project in the Granite SEZ at SIPCOT Industrial Complex, Bargur. In particular Bankers insisting for concrete schedule with written commitment for the above clearances from SIPCOT and the same has been pursued through several letters/ communications but there is no response with commitments from the your authority. In fact no progress has seen during the past 19 months. At this juncture our Board of Directors of the company has



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resolved to drop the Project. We feel very sorry for the hard decision taken by our board after painful unproductive efforts.

In view of failure to provide basic amenities and infrastructure facilities even after 19 months have been passed from the date of entering memorandum of Lease deed (MoLD) with SIPCOT-authority, the company has left with no option except to seek refund of amounts remitted and surrender the land. Long gestation in providing facilities as stipulated in MoLD has caused us hefty financial losses besides cancellation of order confirmed with machine and equipment suppliers.

(xxix) The request of the petitioner was only partly acceded to and an amount of Rs. Rs.1,07,04,094/- withheld, ostensibly under the head 'development charges'.

3. The petitioner is aggrieved by the retention of the aforesaid amount for the reason that there has, in fact, been no development of the SEZ. In fact, the petitioner would argue that it has had to surrender the plot allotted solely on account of the delay and inaction of SIPCOT to obtain even basic approvals. Hence this writ petition praying for a quash of the impugned order rejecting its request for a full refund of the amount remitted by it. It also seeks a consequent direction to the respondent to pay over the amount of Rs. Rs.1,07,04,094/-(Rupees One crore seven lakh four thousand and ninety four only) withheld from it.

4. Per contra, the submissions of the respondent are as follows:



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(i) The defence put forth by the respondent revolves primarily around the terms under the allotment order to the effect that refund of development charges is impermissible.

(ii) They also rely upon a Government Order in MS.No.169 dated 12.09.1996 cited specifically to address the argument raised regarding the difficulties in obtaining approval from DTCP. According to the respondent, as early as in 1996, the Government of Tamil Nadu has eased the procedure for grant of approval and there was no hinderance that would have been encountered by the petitioner in that regard.

(iii) There was no necessity to await approval if the applications were accompanied by certificates from specified entities. This G.O., according to the respondents, would put paid to the submission of the petitioner that its approvals were being thwarted by the inaction of SIPCOT.

(iv) That apart, the respondent emphasises that the amounts received towards development have already been spent towards development of infrastructure and thus, it would be impossible for SIPCOT to refund any amount on this account.

(v) Moreover, as the petitioner had been an early bird, it had had the benefit of lower rates for the land itself as compared with later entrants who had remitted considerably more consideration.



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(vi) Respondent counsel circulates a copy of a communication dated 03.02.2011 issued by the Assistant Development Commissioner granting approval for manufacture of the items specified.

5. Heard both parties. The facts upon which my decision is sought are largely admitted and the only question that arises for determination relates to whether the petitioner is entitled to the refund of an amount withheld as 'development charges' amounting to Rs.1,07,04,094/-.

6. No doubt, the petitioner is one of the early allottees of the property in 2011. It is however seen to have been repeatedly and regularly pleading before the respondent to provide some basic infrastructure for initiation of eligible activity and commencement of commercial production.

7. The respondent has admitted categorically to a delay in the provision of such infrastructural facility. The items for which action was required have also been specifically enumerated above, at paragraph 2(vii). A perusal of these items would indicate the essential nature of the same as without resources of electricity and water any business activity, let alone industrial activity would be impossible. This is on the one hand.

8. As to the defence of the respondent to the effect that the amount has been used and that the petitioner has had the benefit of lower pricing, this can hardly be accepted. The retention of the development charges, even as per Clauses c and d would only be justified if SIPCOT were to establish that the amount forfeited had not been spent by it.



9. Several opportunities were granted to the respondent to produce some material to show what development had taken place till 2014 when the plot was surrendered by the petitioner. They were also required to show actual deployment of the amount that they withheld from the petitioner. Not a scrap of paper has been placed in this regard. I am thus led to the unassailable conclusion that the forfeiture in this case is unjustified, unwarranted and unfair as no component by it has been shown to be used towards actual infrastructural development.

10. Coming to the Government Orders, I extract the same below for completion of narration and clarity. G.O.Ms.No.169 dated 12.09.96 reads thus:-

"Entrepreneurs setting up small scale, Medium Scale and Large Scale Industries have been representing that they loses lot of time in getting their building plans approval by the local bodies. It appears that in many instances the local bodies themselves do not have the authority and they will have to send the plans for approval of the Town Planning Department and wherever the plinth area is more than 2000 sq.ft plans are referred to the Directorate of Town Planning at the head quarters. All these lead to delay in getting the approval and hardship for the entrepreneurs. As times goes by, there will be escalation of price of construction materials and projects also get delayed. The Government have carefully considered all above complaints and representations and have now decided to simplify the plan approval procedure. It has been decided that is enough if the entrepreneur submit the necessary application for plan approval to the appropriate authorities. They need not wait for the approval of those plans before beginning the construction. They need not wait for the approval of those plans before



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beginning the construction. The applications should be accompanied by a certificate from a Chartered architect or a Civil Engineer registered from a chartered architect, or a Civil Engineer registered from a chartered architect, or a Civil Engineer registered with the concerned local body confirming that the plan is not violating any rules or regulations, including the zoning regulations under the Town and Country Planning Act, 1971. This permission to begin the construction straightaway is being given on condition that later on, if it is found that the building as constructed violates any rules or regulations that portion of the building will be demolished immediately. The applicant should enclose with his application from, an undertaking to subject himself to the condition that the portion of the building will be demolished if it is found that the building violates any rules or regulations.

2. It is expected that the entrepreneurs would appreciate the trust the government have placed in them and behave in a responsible fashion making this new experiment successful and advantages both for the Government and themselves.

3. This order issues with the concurrence of Small Industries (Department (vide U.O.No.48(A)/SECY./96-1, 20.8.96 Housing and Urban Development Department (vide G.O.No.247/Secy/96 Dated 28.08.96) and Municipal Administration and Water Supply Department (Vide U.O.No.100/(MA&WS)96 dated 2.9.96)."

11. The sum and substance of the above G.O. is that it provides for an escalation in the period for processing of applications for approval by Small Scale, Medium Scale and Large Scale Industries. No where it is stated that the authorities concerned will dispense with the initial requirements including statutory approvals to be obtained by the developer of the SEZ.



12. In fact, this Government Order, of the year 1996 does not refer to a Special Economic Zone at all. The G.O. certainly does not support the submission of SIPCOT to the effect that the allottees in a SEZ can proceed with development without developer (SIPCOT) having obtained necessary approvals from statutory and planning authorities. Such an interpretation would be a travesty of the law and this Government Order does not support such a submission.

13. For proper development of SEZ, it is necessary that the procedure followed by all stakeholders is adherent to the law, right from the commencement of the project. The allottee derives the justification for business activity only on the strength of the approvals and obtained by the developer. Thus, the approvals of a developer would form the basis and substratum for the allottee taking matters forward at his level. Thus, reliance upon G.O. No.169 of 1996 is misconceived, to say the least.

14. G.O.No.23 dated 21.1.2012 reads thus:-

"Under the SEZ Act, 2005 the developers are not permitted to sell or convey any part of the notified lands and the developer who violates the act is liable for penal action.

2. As per the SEZ Act, 2005 and Rules, the developers of the Special Economic Zone are required to maintain the infrastructure within the SEZ during the entire period of notification of the SEZ.

The 10% reservation of land as Open Space Reservation and its handing over are insisted as per Development Regulation under the Second Master Plan in



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respect of the Development in Chennai Metropolitan Area and as per the Development Control Regulations in Town and Country Planning area under the Tamil Nadu Town and Country Planning Act, 1971..

3. The Special Economic Zone Developers have represented that the roads and Open Space Reservation within the declared SEZ areas could not be handed over to local bodies as the SEZ areas are access controlled since they are customs bounded areas and further SEZ Act does not provide for such transfer.

4. Based on the decisions taken in the Chief Secretary's Meeting held on 14.7.2010, the Government have issued orders in G.O.Ms.No.192, Housing and Urban Development Department, dated 8.9.2010 that the Director of Town and Country Planning shall accord approval for the proposals of layout submitted by the Special Economic Zone developers, on fulfilment of the usual conditions stipulated for such approval as employment generation and economic development of the state need to be encouraged and at the same time, proper road connectivity for better circulation in the local area and Open Space Reservation spaces required to, and to be ensured to serve the interests of the public. Such approval shall be subject to the condition that the open space reservations and roads shall be handed over to local bodies by the Special Economic Zone Developers and the local bodies in turn, shall give such open space reservations and roads immediately on lease to respective Special Economic Zone developers subject to the following conditions:

Nominal value shall be collected as lease charges;

Lease period shall not exceed 30 years with right to enter upon and inspect and cancel in case of violation.

5.However, the above directions have not been given desired relief to the SEZ developers, as gifting of land to the local bodies is not permissible under the



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SEZ Act and Rules and hence certain decisions were taken during the meeting held on 05.08.2011.

6. The Government after careful consideration of decisions taken in the High Level meeting held on 05.08.2011 in consultation with Director of Town and Country Planning and Chennai Metropolitan Development Authority issue the following orders under Section 113 of the Town and Country Planning Act, as it involves exemption of Development Regulations for Chennai Metropolitan Area / Development Control Regulations of the Director of Town and Country Planning.

A In respect of existing SEZs

a. The mandatory requirement of the open space such as park/ playground in a SEZ development site or the roads provided on the advice of Chennai Metropolitan Development Authority/ Director of Town and Country Planning for connectivity in the locality shall be transferred to the local body/ local planning authority concerned as the case may be by a registered deed of lease for a nominal value (of 1 rupee per acre or part thereof) per year, for a period of 99 years. The deed shall be duly signed by both the Lesser (i.e the SEZ developer who has right over the land) and the Lessees (the Local body or the planning authority). It shall be irrevocable, and shall not be modified without the Government Orders obtained from the concerned Department (viz. Municipal Administration and Water Supply / Rural Development). The leasing shall continue as long as the SEZ status continues, irrespective of the subsequent transfer of the company holdings.

b. Maintenance of Open Space Reservation Area and Roads leased out to the local body / the planning authority in SEZs shall be undertaken by the respective SEZ developer. The Local body/ local planning authority shall have every right to ensure the use of the Open Space Reservation/ road spaces only for the purposes approved and take action against any deviations as per law.



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c. In case, SEZ loses its status as SEZ during the lease period, then the Open Space Reservation Area and roads shall become the properties of the local body / local planning authority concerned, and the lease deed shall provide for the same.

B. For the new and upcoming SEZs:

a. It shall be mandatory that they shall abide by the local Acts regarding provision and handing over of Open Space Reservation space and road connectivity to local body, by keeping land equivalent in extent outside the custom bound SEZ (Internal roads of the SEZ can be maintained by the SEZ developers themselves).

b. In specific cases of SEZ developments, where already decisions have been taken in the Chief Secretary's Meetings earlier, the specific decisions arrived therein shall be followed,

7. The Director of Town and Country Planning and the Member Secretary, Chennai Metropolitan Development Authority are directed to pursue action accordingly.

8. The Works Manager, Government Central Press, Chennai – 79 is directed to publish the appended Notification in the next issue of Tamil Nadu Gazette and send ten copies of the Gazette notification to Government."

15. This G.O., which is specific to development under the SEZ Act, 2005 would have some relevance in the matter and reveals the processes that would have to be followed by the developers for various stages of the development activity including OSR, sanctions, planning sanctions, approval for development activity such as road spaces etc. In the present case, though SEZ in question is of the year 2012, SIPCOT has admittedly



not taken any of the preliminary and initial steps to support the early allottees to move forward with the permitted activity.

16. In any SEZ, particularly one driven by the State, it is the responsibility of the developer to provide basic infrastructure, as in the alternative, achieving targets of commercial production would be almost impossible. Unless necessary planning and other approvals are obtained by SIPCOT the petitioner can hardly be blamed for not initiating processes at its end. In the present case, the petitioner has placed orders for delivery equipment placing faith in the respondent's timely action for start of the project. Its hopes have certainly been belied.

17. While the collection of development charges from the allottees is no doubt an integral part of the management of SEZ, the respondent cannot shirk the responsibility cast upon it to provide basic infrastructure upto a point and in the present case, SIPCOT is seen not to have done the same. The period of holding of the plot by the petitioner is 07.07.2011 to 05.08.2014, when, in desperation the plot was surrendered.

18. No material, despite several opportunities granted, have been placed on record by the respondent to establish what development has taken place and how the amount withheld has been deployed. Withholding of the amounts would only be justified in the face of the respondent producing some material to establish incurrence of expenditure which, in this case, has not been done.



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19. Admittedly, and there is no dispute on this account, by 2014, there has been no infrastructure that has been provided enabling the petitioner to move forward with its commercial activity. That apart, and incidentally, the plot has been re-assigned post surrender by the petitioner and it is stated to be in the hands of a third party now.

20. I thus find sufficient merit in this writ petition as regards the claim of the petitioner for refund. In light of the discussion as aforesaid, the impugned order rejecting the request of refund on the avowed premise that the amount has been used towards development is clearly unsustainable and is set aside. This writ petition is allowed in above terms. The amount withheld shall be refunded to the petitioner within a period of eight weeks from today. No costs.

24.02.2023

Index : Yes
Speaking Order
Neutral Citation : Yes

ssm

To

The State Industries Promotion Corporation,
of Tamilnadu
Rep. by its Managing Director
19-A Rukmani Lakshmipathy Road
Egmore, Chennai 600 008.



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