



WEB COPY



W.P.No.14085 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

W.P No.14085 of 2022

and

WMP.No.13318 of 2022

M/s.Pewturman decor Pvt Ltd
Rep.by its Authorised Signatory
A.A.K.Apathsakaayem
Having its registered office at
No.1, A Wing, 3rd Floor, Parsn Manere
602, Anna Salai
Chennai 600 006.

...Petitioner

Vs.

1.Tamil Nadu Small Industrial Development Corporation Ltd
Rep.by its Managing Director
Guindy
Chennai.

2.Tamil Nadu Small Industries Development Corporation Ltd
Rep.by its Branch Manager
SIDCO, Branch Office
Master Plan Complex
D.C.I, 1st Floor
Villupuram 2.

...Respondents



W.P.No.14085 of 2022

WEB COPY

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the impugned order passed by the second respondent vide RC.No.615/B/2009 dated 02.03.2022 and quash the same.

For Petitioner : Mr.Sarath Chandran
for Mr.Govindaraju

For Respondents : Mr.A.Prabhakaran for R1 & R2
Standing Counsel

ORDER

This Writ Petition is filed challenging the order passed by the second respondent imposing penalty of Rs.19,56,381/- for non utilization of the allotment to the petitioner in SIDCO Industrial Estate, Venmaniathur.

2. According to the petitioner, he submitted an application for allotment of industrial plot in SIDCO Industrial Estate at Venmaniathur on 05.08.2009. The first respondent allotted industrial plot measuring 1.66 acres bearing Door Nos.14 & 15 to the petitioner, vide allotment order dated 01.10.2009. The petitioner paid the entire consideration for the plot namely



W.P.No.14085 of 2022

Rs.14,62,425/-. The memorandum of understanding between the petitioner and the second respondent was entered into only on 03.08.2010. The first respondent by the order dated 11.03.2015 cancelled the allotment of industrial plot to the petitioner on the ground of non utilization. The said order was challenged by the petitioner by way of Civil Suit in OS.No.2405 of 2015 on the file of the VIII Assistant Judge, City Civil Court, Chennai. The said suit came to be dismissed on 27.10.2017. Aggrieved by the same, the petitioner preferred an appeal in A.S.No.96 of 2019 on the file of the V Additional City Civil Court, Chennai. The first Appellate Court after considering the explanation offered by the petitioner for non utilization set aside the cancellation order passed by the first respondent on the ground that the first respondent failed to consider the explanation of the petitioner before passing order of cancellation. The first Appellate Court also directed the respondents to conduct a fresh enquiry by giving sufficient opportunity to the petitioner and pass fresh orders by considering the explanation of the petitioner. Thereafter, the impugned order came to be passed by the second respondent on 02.03.2022 imposing penalty of Rs.19,56,381/- on the petitioner for non utilization of the plot.

3. The learned counsel appearing for the petitioner assailed the



W.P.No.14085 of 2022

impugned order mainly on the ground that the memorandum of agreement entered into between the petitioner and the respondents does not contain any enabling provision empowering the second respondent to impose the penalty for non utilization of the plot.

4. The learned counsel for the petitioner further submitted that the earlier cancellation order passed by the first respondent was set aside by the Civil Court in A.S.No.96 of 2018 with a direction to the respondents to conduct fresh enquiry by giving sufficient opportunity to the petitioner. The second respondent without conducting fresh enquiry passed the impugned order imposing penalty on the petitioner without any enabling provision. Therefore, the same is liable to be set aside.

5. The learned counsel for the respondents submitted that the allotment of the industrial plot was made in favour of the petitioner in the year 2009. Even after a lapse of nearly 12 years, the petitioner has not made any construction and utilized the industrial plot. Therefore, the second respondent rightly imposed penalty on the petitioner by the impugned order.



W.P.No.14085 of 2022

6. It is the specific case of the petitioner that there is no enabling provision in the agreement to impose penalty for non utilization of plot. The Clause 19 of agreement between the parties only talks about the cancellation of allotment in case of non utilization. In the case on hand, already the cancellation order was passed by the first respondent and the same was set aside by the Civil Court with a direction to conduct fresh enquiry. When there is no provision in the agreement between the parties empowering the second respondent to impose penalty on the petitioner for non utilization, the impugned order passed by the second respondent cannot be sustained.

7. Further before passing the impugned order imposing penalty amount of Rs.19,56,381/-, the petitioner was not given an opportunity to explain the reason for non utilization. Therefore, there is a violation of natural justice principles. Accordingly, the impugned order is liable to be set aside.

8. The earlier cancellation order passed by the first respondent was already set aside by the Civil Court and the first respondent was directed to conduct fresh enquiry by giving opportunity to the petitioner. Instead of conducting fresh enquiry as directed by the Civil Court, the second respondent



W.P.No.14085 of 2022

passed the impugned order imposing penalty, which is not sustainable in the eye of law for the reasons discussed above. Accordingly, the impugned order is set aside.

9. With the above directions, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

26.09.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
dna

To

1.The Managing Director
Guindy
Chennai.

2.The Branch Manager
SIDCO, Branch Office
Master Plan Complex
D.C.I, 1st Floor
Villupuram 2.



WEB COPY



W.P.No.14085 of 2022

S.SOUNTHAR, J.
dna

W.P No.14085 of 2022
and
WMP.No.13318 of 2022

26.09.2023