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Writ Petition No.33744 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.33744 of 2022

and

W.M.P.No.33253 of 2022

M/s.General Hivack Electronics Private Limited,
represented by its Director,
Mr.Suresh Babu
No.61/24, Burkit Road,
T.Nagar, Chennai - 600 017.

...Petitioner

Vs

The Managing Director,
State Industries Promotion Corporation of
Tamil Nadu (SIPCOT),
No.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 Certiorarified Mandamus calling for the records of the respondent in their proceeding bearing Lr.No.P-I/SIP-Hosur/General Hivack/1976 dated 28.11.2022 and quash the same and consequently, forbear the respondent from any manner preventing the petitioner's possession and enjoyment of their own land bearing Plot No.36-A in SIPCOT Industrial Complex, Hosur, Krishnagiri District, measuring an extent of 3.6 Acres, for the purpose of running hotel/commercial complex



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instead of doing the existing manufacturing business.

For Petitioner : Mr.Gowtham Raman
for M/s.Raman and Associates

For Respondent : Mr.M.P.Rajavelayutham

ORDER

This writ petition has been filed challenging the proceedings of the first respondent dated 28.11.2022 and for a consequential direction to forbear the respondent from interfering with the possession and enjoyment of the petitioner in the subject property for running the hotel/commercial complex.

2. Heard Mr.Gowtham Raman, learned counsel for petitioner and Mr.M.P.Rajavelayutham, learned counsel appearing for respondent.

3. The case of the petitioner is that the subject property was allotted in favour of the petitioner in the year 1976. A lease-cum-sale agreement dated 12.12.1977 was executed in favour of the petitioner. On payment of the entire consideration, the respondent has to execute a sale deed in favour of the petitioner. The petitioner also paid the entire consideration and no



sale deed was executed by the respondent. In the mean time, a demand notice was issued by the respondent claiming for certain amount as due and payable. The same was challenged before this Court. Some understanding was reached between the petitioner and the respondent and on 10.06.2022, a sale deed was executed in favour of the petitioner and it was registered in document No.11018 of 2022.

4. The petitioner decided to run a hotel business in the property that was conveyed by the respondent to the petitioner. Hence, the petitioner gave representations in this regard. Through the impugned letter dated 28.11.2022, the request made by the petitioner was rejected by the respondent. Aggrieved by the same, the present writ petition has been filed before this Court.

5. The respondent has filed a counter affidavit and has taken a stand that the petitioner is bound by the covenant in the sale deed which specifically prohibits the petitioner from utilizing the property other than the purpose for which it was intended and allotted. The petitioner had also taken a stand that a similarly placed person was given such permission and



hence, the petitioner wanted them also to be treated on the same lines.

Insofar as this claim made by the petitioner, the respondent has taken the following stand in the counter affidavit:

"13. It is submitted that in the representations dated 13.06.2022, 27.09.2022 and 18.10.2022 addressed to the Respondent, the petitioner stated that the Plot No.177, which is located opposite to the petitioner's Plot No.36-A was granted permission for change in line of activity from industrial to commercial. Originally the above plot No.177 is situated more than 500 meters away from the petitioner's Plot No.36-A and it is also located in the opposite side of the petitioner's Plot No.36-A. Plot No.177 is located along the National Highways lying in middle of the plots allotted to St.Joseph School Matriculation Higher Secondary School and SIPCOT Housing Colonies. While so, when the allottee of Plot No.177 proposed to start an industry, it was informed to them by M/s.Hosur New Town Development Authority (HNTDA) vide their letters dated 15.05.2014 and 17.04.2017 that approval for building plan for establishment of industries could not be granted due to objections made by the above mentioned School and the adjacent local residents. Hence, by considering the said HNTDA references and by taking into consideration of the ground reality and in order to reduce the fears of pollution of the habitants, NOC was issued by SIPCOT to some portion of the land in the above plot for conversion from Industrial into Commercial purpose, subject to the condition that building plan approval should be obtained from local body/HNTDA before commencement of construction. Further, it may be inferred from HNTDA letter dated 26.05.2014 that some of the Survey Nos. of Mookandapally village, covered in Plot No.177 is classified as Residential, Commercial and General Industrial Use. Whereas, the petitioner Plot No.36-A, measuring 3.60 acres, SIPCOT Industrial Park, Hosur, Phase - I and its surrounding plots are classified as Industrial Plots. Hence based on the above HNTDA letter and also as per the reasons stated above, the allegation of the petitioner seeking conversion of their activities from Industrial to commercial purpose (Hotel Industry) by citing Plot No.177 in Hosur Phase-I area, could not be considered."



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6. The short issue that arises for consideration in the present case is as to whether the petitioner is entitled to seek for changing the line of activity from manufacturing to hotel industry (commercial) in the subject property.

7. To decide the above issue, it is pertinent to take note of the relevant covenant in the sale deed dated 10.06.2022 executed in favour of the petitioner and the same is extracted hereunder:

"2) The Purchaser hereby covenants with the Vendor as follows.

- i) The Purchaser shall utilize the allotted plot described in the Schedule-B Property hereunder for the bonafide Industrial purpose for which it is intended and allotted. In other words, the Purchaser shall not utilise the plot allotted described in the Schedule-B Property hereunder for any purpose other than the purpose for which it was allotted i.e. to manufacture reflectors for projectors, optical coating for goggles, anti-reflection coating, ophthalmic coatings & filters.
- ii) The Purchaser while dealing with the Schedule-B Property should incorporate necessary clause in the relevant documents to be executed so that the third party purchaser/lessee shall also comply with the conditions contained in the sale deed."

8. It is quite apparent from the above covenant that the petitioner has bound themselves not to utilize the property for any purpose other than the



purpose for which it was allotted. In fact, even if the petitioner sells the property, the same covenant has to be incorporated in the sale deed. This was done to ensure that the property is not put to any other use and it will go against the object of setting up the SIPCOT.

9. Learned counsel for the petitioner submitted that the covenant extracted supra is hit by Section 11 of the Transfer of Property Act and hence, is not binding on the petitioner.

10. In the considered view of this Court, the parties have entered into a contract by virtue of a sale deed and they are bound by its terms. If ultimately one of the party questions some of the covenants as barred by any law, it is not for the writ court, which will get into this issue and the party has to necessarily approach the competent civil Court and seek for declaration. Such a declaration cannot be made in a writ petition.

11. Insofar as the claim made by the petitioner seeking for parity with yet another entity for whom a similar request was acceded to by the



respondent, an explanation has been given by the respondent at paragraph No.13 of the counter affidavit. How far this explanation is acceptable is not an issue which can be gone into in the present writ petition. In any case, the petitioner is in different footing altogether and the case of the petitioner cannot be considered in tandem with the case of M/s.Kannan & Co. where the considerations were different before the respondent. The petitioner cannot be allowed to take the assistance of the decision that was arrived at in the case of M/s.Kannan & Co. in the light of specific covenant that was available in the sale deed. The petitioner has to independently seek for a declaration before the competent Court, if the covenant runs contrary to a law in force.

12. In the light of the above discussion, this Court does not find any ground to interfere with the decision taken by the respondent. Liberty is granted to the petitioner to approach the competent civil Court and work out their remedy in the manner known to law.

N.ANAND VENKATESH, J

gm



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WEB COPY In the result, this writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

14.06.2023

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

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