



W.P. (MD) No. 12608 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2023

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

W.P. (MD) No. 12608 of 2022

and

W.M.P. (MD) Nos.8932, 8933 & 14821 of 2022

P.Surendran

... Petitioner

Vs.

1. The Additional Chief Secretary,
Government of Tamil Nadu,
Micro Small and Medium Enterprises Department,
Secretariat, Chennai 600 009.
2. The Chairman Cum Managing Director,
Tamil Nadu Small Industries
Development Corporation Limited (TANSIDCO)
3. The General Manager,
Tamil Nadu Small Industries Development
Corporation Limited (TANSIDCO)
4. The General Manager (Admin),
Tamil Nadu Small Industries Development
Corporaion Limited (TANSIDCO)
Address for Respondents 2, 3 and 4 are
Head Office, Electronic Complex,
Thiru Vi.Ka.Industrial Estate, Guindy, Chennai 600 032.



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5. The Branch Manager,
Tamil Nadu Small Industries Development
Corporation Limited (TANSIDCO),
SIDCO Industrial Estate, K.Pudur,
Madurai 625 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed in Proc.No.10875/1E-10/2009 dated 26.04.2022 and the consequential the Rc.No.10874/1E-10/2009-1 dated 26.04.2022 by the respondents 3rd and 4th herein quash the same and direct the 2nd Respondent to issue an order to allot an alternative land in MAHIA Industrial Estate, Sivangani Road, Uranganpatti, Madurai District either Industrial Plot No.102 or in any plot in commercial area / display area for the amount paid for the developed plot No.W in MAHIA Industrial Estate, Sivagangai Road, Uranganpatti, Madurai District.

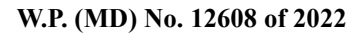
For Petitioner : Mr. K.P.Krishnadoss

For Respondents : Mr. M.Senthil Ayyanar
Additional Government Pleader (for R1)

Mr. T.Sakthi Kumaran (for R2 to R5)

ORDER

Heard Mr. K.P.Krishnadoss, Learned Counsel for the Petitioner,
Mr. M.Senthil Ayyanar, Learned Additional Government Pleader appearing



2. The Second to Fifth Respondents, viz., Tamilnadu Small Industries Development Corporation Limited (hereinafter referred to as 'SIDCO' for short) is a Public Sector Undertaking of the Government of Tamil Nadu entrusted with acquisition of lands for developing them into the industrial plots to facilitate organized industrial growth across the State. Plot No. W measuring an extent of 82.00 cents at MAHIA Industrial Estate, Sivagangai Road, Uranganpatti, Madurai District was allotted to the Petitioner by Proceedings in Rc. No. 10875/P4/2009 dated 23.11.2009 by SIDCO on condition that no superstructure shall be constructed in it, which should be used as open space. Although the tentative cost of that plot was fixed at Rs. 31,63,100/-, it was subsequently reduced to Rs. 28,71,228/- by Proceedings No. 2334/P4/2007 by SIDCO and that amount is said to have been paid by the Petitioner. It is not in dispute that the said plot had been categorized as Open Space Reservation (hereinafter referred to as 'OSR' for short) and attempts made for converting the same for regular use was not



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fruitful and by Proceedings No. 10875/IE-10/2009 dated 26.04.2022, the said allotment in favour of the Petitioner was cancelled by SIDCO and by Letter in R.C No: 483/A2/2009 dated 16.05.2022, the plot cost of Rs. 28,81,268/- was refunded by SIDCO by Cheque No. 994478 dated 12.05.2022 in favour of the Petitioner. At that stage, the Petitioner has filed this Writ Petition challenging the said order of cancellation and to further direct SIDCO to allot alternative land in MAHIA Industrial Estate, Sivagangai Road, Uranganpatti, Madurai District either at Industrial Plot No. 102 or in any other plot in the commercial area.

3. There does not appear to be any merit in the challenge made by the Petitioner to the cancellation of the allotment of the plot, which forms part of the OSR land meant to be always kept for common use and could not at all have been sold. Having conciously purchased such land with an express condition that it cannot be used for any construction, the Petitioner cannot have any grievance on its cancellation, especially when the amount collected from him towards plot cost has been refunded to him.

4. The next plea of the Petitioner that he should be allotted another plot



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for commerce use in lieu of the cancelled allotment cannot be countenanced.

At the outset, it must be recapitulated here that the well settled legal position that the disposal of public property by the State or its instrumentalities partakes the character of a trust and the methods to be adopted for its disposal must be fair and transparent providing an opportunity to all the interested persons to participate in the process, has been lucidly explicated by the Hon'ble Supreme Court of India in ***Kasturi Lal Lakshmi Reddy –vs- State of Jammu & Kashmir*** [(1980) 4 SCC 1] in the following words:-

“10. There is increasing expansion of the magnitude and range of Governmental functions, as we move closer to the Welfare State, and the result is that more and more of our wealth consists of these new forms of property. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. The law has however not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights, while



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others have been given legal protection not only by forging procedural safeguards but also by confining, structuring and checking Government discretion in the matter of grant of such largess. The discretion of the government has been held to be not unlimited in that the Government cannot give largess in its arbitrary discretion or as its sweet will or on such terms as it chooses in its absolute discretion. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other in regard to the persons who may be recipients of such largess.

11. So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largess. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contractor



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dealing with his property. But the Government is not free to act as it likes in granting largess such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is, subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid....



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14. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example, give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so.

15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largess may be granted. It is now well settled as a result of the decision of this Court in **Ramana Dayaram Shetty –vs- International Airport Authority of India [(1979) 3 SCC 489]** that the Government is not free like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government



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need not deal with anyone but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant. The governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance. This rule was enunciated by the Court as a rule of administrative law and it was also validated by the Court as an emanation flowing directly from the doctrine of equality embodied in Article 14.”

Viewed from this perspective, any decision granting such allotment of public property to the Petitioner at his mere asking on representation made to suit his convenience just because some other plot allotted to him has been cancelled, would be contrary to law and defeat public interest. It is also not the case of the Petitioner that the amount for the cancelled plot had been

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made by competitive bidding from eligible applicants. When the manner of allotment for the cancelled plot is not in accordance with the constitutional mandate of equality of opportunity to all similarly placed persons to participate in the sale, the Petitioner cannot claim any right to grant some other land in substitution thereof.

5. Learned Counsel for the Petitioner then ventilated the grievance that discrimination has been meted out to the Petitioner inasmuch as another person, viz., M/s. Golden Fabrics, whose allotment of plot in OSR land had also been cancelled, has been granted allotment of another land. In response, it is explained by SIDCO that allotment of Plot No. B in OSR land made in Proceedings in Rc. No. 7896/IE-1C/2009 dated 30.03.2012 to the said M/s. Golden Fabrics had been cancelled by Proceedings in R.C. No. 4918/IE-4/2012 dated 28.11.2012 and the refundable amount of plot cost had been adjusted against the allotment made for Plot No. 142 in furtherance to another application made on 14.09.2009 by the said M/s. Golden Fabrics. Inasmuch as the substitution of allotment has not been made by any transparent procedure, it cannot confer any right on the Petitioner to claim parity, but it would preclude him from challenging such irregular allotment in

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appropriate legal proceedings.

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6. It has been brought to notice by Learned Counsel for the Petitioner that the Cheque for Rs. 28,81,268/- had not been encashed by the Petitioner and this Court in the interim dated 21.06.2022 passed at the time of admission had observed that the said cheque could be retained by him till final orders are passed in the Writ Petition. In such circumstances, it is left open to the Petitioner to produce the said cheque to SIDCO for getting it revalidated following the prescribed procedure.

7. A fervent plea is made by Learned Counsel for the Petitioner that interest should be award on the refunded amount from the date of its remittance as the Petitioner had lost the benefit of utilizing the same during that period. It would assume significance here that if the Petitioner is bound to pay interest for delayed remittance as per the terms of allotment, it would follow as its corollary that SIDCO would also have to be mulcted with liability to pay interest at the same rate for the relevant period on refund due to cancellation. As such, if any representation is made by the Petitioner in that regard, the same shall be examined by the concerned authority of SIDCO

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and a reasoned order with a working-sheet showing the calculation of interest at the applicable rates shall be passed on merits and in accordance with law within a period of 30 days from the date of its receipt.

8. Learned Counsel for the Petitioner further submits that an enquiry has to be ordered into the irregularities committed by the authorities in making allotment of OSR land in order to deter such kind of malpractice in future. It is needless to add here that the Petitioner is not precluded from making such representation before the proper forum in that regard.

9. In the result, the Writ Petition is dismissed with the aforesaid observations. Consequently, the connected Miscellaneous Petitions are closed. No costs.

04.01.2023

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NCC : Yes/No

Index : Yes/No

Note: Issue order copy by 30.01.2023.

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To

1. The Additional Chief Secretary,
Government of Tamil Nadu,
Micro Small and Medium Enterprises Department,
Secretariat, Chennai 600 009.
2. The Chairman Cum Managing Director,
Tamil Nadu Small Industries
Development Corporation (TANSIDCO)
Head Office, Electronic Complex,
Thiru Vi.Ka.Industrial Estate,
Guindy, Chennai 600 003.



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3. The General Manager,
Tamil Nadu Small Industries Development
Corporation (TANSIDCO)
Head Office, Electronic Complex,
Thiru Vi.Ka.Industrial Estate,
Guindy, Chennai 600 003.
4. The General Manager (Admin),
Tamil Nadu Small Industries Development
Corporaion (TANSIDCO)
Thiru Vi.Ka.Industrial Estate,
Guindy, Chennai 600 003.
5. The Branch Manager,
Tamil Nadu Small Industries Development
Corporation Limited (TANSIDCO),
SIDCO Industrial Estate, K.Pudur,
Madurai 625 007.



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P.D.AUDIKESAVALU,J.

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