



W.P.(MD) No.3520 of 2014

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.02.2023

PRONOUNCED ON : 03.03.2023

CORAM

THE HONOURABLE MR.JUSTICE **K.KUMARESH BABU**

W.P.(MD) No.3520 of 2014

and

M.P.(MD) No.1 of 2014

M/s. Devi Irrigation Systems Pvt.Ltd.,
represented by its Managing Director,
R.Theenachandran,
Devi House,
No.281-4, Sivagangai Main Road,
Gomathipuram,
Madurai 625 020.

... Petitioner

/vs./

1.The State of Tamil Nadu,
represented by its Secretary,
Department of Micro Small and Medium Enterprises (C),
Fort St.George,
Chennai – 09.

2.The Chairman and Managing Director,
Department of Tamil Nadu Small Industries
Development Corporation Ltd.,



W.P.(MD) No.3520 of 2014

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Thiru.Vi.Ka. Industrial Estate,
Near SIDCO Electronics Complex,
Guindy, Chennai 600 032.

3.The District Collector,
Madurai District,
Collectorate, Madurai.

4.The Branch Manager,
Tamil Nadu Small Industries Development Corporation Ltd.,
SIDCO, Industrial Estate,
K.Pudur,
Madurai 625 007.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the Impugned order dated 01.11.2013 passed by the 2nd Respondent in Rc.No.10871/IE4/2009-1 in relation to the cancellation of allotment of Plots bearing Nos.O and N in favour of the petitioner by the 2nd Respondent dated 23.11.2009 under reference Rc.No. 10871/P4/2009 and quash the same as illegal and consequently direct the Respondents particularly 2 and 4 to execute the sale deed in respect of said plot bearing Nos.O and N measuring to an extent of 72.20 and 30.40 cents totaling 102.60 cents situated at SIDCO-MAHA, Industrial Estate, Uranganpatti, Madurai District forthwith.

For Petitioner	: Mr.S.Palanivelayutham
For R1 & R3	: Mrs.D.Farjana Ghoushia
	Special Government Pleader
For R2 & R4	: Mr.T.Sakthi Kumaran



W.P.(MD) No.3520 of 2014

WEB COPY

ORDER

The prayer in the writ petition is seeking for a Certiorarified Mandamus to call for the impugned order dated 01.11.2013 passed by the second respondent in Rc.No.10871/IE4/2009-1 in relation to the cancellation of allotment of plots bearing Nos.'O' and 'N' in favour of the petitioner dated 23.11.2009 under reference Rc.No. 10871/P4/2009, to quash the same and consequently to direct the respondents 2 and 4 to execute the sale deed in respect of said plots situated at SIDCO-MAHA, Industrial Estate, Uranganpatti, Madurai District.

2.Heard Mr.S.Palanivelayutham, learned counsel for the petitioner, Mrs.D.Farjana Ghoushia, learned Special Government Pleader for the respondents 1 and 3 and Mr.T.Sakthi Kumaran, learned counsel for the respondents 2 and 4.

3.Mr.S.Palanivelayutham, learned counsel for the petitioner would submit that the petitioner being in the field of manufacturing and marketing agricultural inputs throughout India established a Company in the name and style of M/S.Devi Irrigation Systems Private Limited, which is registered under the Companies Act,



W.P.(MD) No.3520 of 2014

1956 and has been carrying on business by manufacturing Inline Dripper Line, HDPE pipes and PVC pipes required for micro irrigation etc. Therefore, the company had required a huge vacant space for storing various materials without construction of any permanent building/structure. In pursuance to acquire the said land, the petitioner company had approached the second respondent for allotment of certain lands.

4.By proceedings dated 23.11.2009, the second respondent had allotted two plots being identified as Plot Nos.'O' and 'N' at MAHIA Industrial Estate, Uranganpatti on an outright sale basis for a tentative cost of Rs.39,57,700/-. The said tentative cost was quantified to Rs.35,42,165/-, which also included the interest for the allotted plots. The petitioner had paid the entire amount and has been requesting the second respondent to execute the sale deed in their favour. Without any further communication, the second respondent by the impugned order dated 01.11.2013 had passed the order of cancellation holding that the plots allotted to the petitioner have been demarcated as an open space reservation area. He would further submit that the petitioner having paid the amount as early as in the year 2010 has been waiting for allotment of these lands for storage of the



W.P.(MD) No.3520 of 2014

WEB COPY

materials manufactured by the petitioner company in the very same Industrial Estate.

5.The learned counsel for the petitioner would further submit that the petitioner will not put up any construction in the land and will only maintain it as a vacant space for storage of materials and therefore, the reason assigned by the second respondent without putting the petitioner on notice is wholly arbitrary. He would further submit that when the respondents had sold the property to the petitioner, the second respondent cannot be right in now saying that the land has been earmarked as an OSR land. Therefore, he would submit that the reason assigned in the impugned order is wholly non-est and will have to be set aside.

6.Countering his arguments, Mr.T.Sakthi Kumaran, learned counsel for the respondents 2 and 4 would submit that the Madurai Hosier Industrial Estate Association (MAHIA) were allotted 27 sheds and 8 stray plots by SIDCO and that the stray plots had been earmarked as common purpose/open space reservation area. Without considering the same, on the basis of the application made by the petitioner, plot Nos.'O' and 'N' were allotted to the petitioner. When a



W.P.(MD) No.3520 of 2014

revised planning approval was made for de-reserving the area allotted to the petitioner and others from the OSR area, the planning authority had rejected the request. Hence, the second respondent had left with no other alternative cancelled the allotment. Hence, by the impugned order, the allotment has been cancelled.

7.Further, the amount paid by the petitioner, namely a sum of Rs. 35,42,165/- was refunded to the petitioner through a cheque dated 02.01.2014 and that the petitioner has also realized the aforesaid amount and on realization of the amount, the petitioner was intimated that the said amount will be kept in a separate bank account. He would further submit that as per the norms of the Director of Town and Country Planning, the OSR lands are not the saleable land and should be kept as an open space area for the betterment of the environment.

8.He would submit that when the petitioner had encashed the refund of the amount, the petitioner cannot now seek to challenge the order of cancellation. He would further submit that it is not the case of the petitioner that they will keep it as a vacant space, but they would use it for storage of their materials. He would further submit that open space area is meant for all the allottees. It is for the



W.P.(MD) No.3520 of 2014

benefit of all the allottees apart from to maintain the balance in the environment.

If the petitioner is permitted to use it as a stockyard, then the purpose of open space reservation will be lost. Hence, he would submit that there is no infirmity in the order passed by the second respondent.

9.Mrs.D.Farjana Ghousia, learned Special Government Pleader for the respondents 1 and 3 adopts the arguments advanced by Mr.T.Sakthi Kumaran, learned counsel for the respondents 2 and 4.

10.I have considered the rival submissions made by the learned counsels appearing on either side.

11.It is an admitted fact that the petitioner had been made an allotment of plot Nos.'O' and 'N'. Even the allotment order specifically states that the petitioner will have to maintain it as an open space area and cannot use it for any other purpose, in the affidavit filed in support of this writ petition, the petitioner had specifically stated that he had purchased the property for storage of manufactured materials, which itself is contrary to the order of allotment. Further, the petitioner



W.P.(MD) No.3520 of 2014

had received the amount refunded by the respondents and has made a claim that the same has been kept in a separate bank account and subject to the result of this writ petition, the respondents should be entitled to withdraw the amount along with interest.

12. Even though such submission is attractive, I do not find any merits in this writ petition. When the land has been earmarked as an open space area in the planning approval granted by the authorities, it was not open to the developer of the plots to sell the said earmarked areas in favour of any individuals. Unfortunately in this case, the second respondent had issued orders of allotment and the petitioner had paid a sum of Rs.35,42,165/- pursuant to the said order of allotment as early as in the year 2010 and the said amount has been refunded to the petitioner during the year 2014.

13. As I have held that the second respondent had no right to sell the open space reserved area, the order of allotment itself is wholly non-est and cannot be sought to be implemented. Hence, I do not find any infirmity in the order impugned in this writ petition. But however, the second respondent had collected



W.P.(MD) No.3520 of 2014

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a sum of Rs.35,42,165/- as early as in 2010 and has kept the money with him till 02.01.2014. In view of the same, the second respondent is liable to pay interest for a sum of Rs.35,42,165/- to the petitioner from 06.08.2010 to 02.01.2014 at the rate of 8% per annum.

14.In fine, the Writ Petition is dismissed. But however, the second respondent shall pay interest at the rate of 8% per annum as indicated supra within a period of 12 weeks from the date of receipt of a copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
Internet : Yes / No
Index : Yes / No
NCC : Yes / No

03.03.2023

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To

1.The Secretary,
Department of Micro Small and Medium Enterprises (C),
Fort St.George,
Chennai – 09.

9/11



W.P.(MD) No.3520 of 2014

WEB COPY

2.The District Collector,
Madurai District,
Collectorate, Madurai.



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W.P.(MD) No.3520 of 2014

K.KUMARESH BABU, J.

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order made in
W.P.(MD) No.3520 of 2014

03.03.2023