



W.A.No.1422 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.02.2024
DELIVERED ON : 05.03.2024

CORAM :

THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE BHARATHA CHAKRAVARTHY

W.A.No.1422 of 2023

State Industries Promotion Corporation
of Tamil Nadu Ltd
rep. By its Chairman and Managing Director
19A, Rukmani Lakshmipathy Road
Egmore, Chennai – 600 008.

.. Appellant

Vs

PHA India (P) Limited
C-16 & C25, SIPCOT Industrial Park
Irrungattukottai
Sriperumbudur – 602 117.

.. Respondent

Prayer: Appeal under Clause 15 of the Letters Patent against the order dated 23.11.2022 made in W.P.No.24723 of 2012 by the learned Single Judge.

For the Appellant	: Ms.Sudharshana Sunder
For the Respondent	: Mr.Kuberan for M/s.Rank Associates



W.A.No.1422 of 2023

JUDGMENT

THE HON'BLE CHIEF JUSTICE

M/s.PHC Manufacturing Private Limited was allotted a land by the appellant herein [M/s.State Industrial Promotion Corporation of Tamil Nadu Limited (SIPCOT)], admeasuring 4 acres under allotment letter dated 23.1.1998. A further area of 3.95 acres was also allotted by the appellant under allotment letter dated 10.2.2005. The said allotments are for a period of 99 years.

2. M/s.PHC Manufacturing Private Limited applied for approval of the change in the name of the company from M/s.PHC Manufacturing Private Limited to M/s.PHA India Private Limited [respondent in the appeal/original writ petitioner]. The present appellant, on or about 24.8.2011, accorded approval for the change in the name of the company, subject to the payment of the differential land cost of Rs.1,87,13,125/- and processing fee of Rs.7,500/-, so also execution of modified lease deed. The



W.A.No.1422 of 2023

same is assailed by the respondent/original writ petitioner by filing W.P.No.24723 of 2012.

3. The learned Single Judge, under the judgment and order dated 23.11.2022, allowed the said writ petition and set aside the communication dated 24.8.2011, wherein differential land cost and processing fee was claimed by the present appellant. The said order is assailed in the present appeal.

4. Ms.Sudharshana Sunder, learned counsel for the appellant, strenuously contends that Clause 26 of the lease deed is crystal clear. The original allottee is precluded from assigning, subletting, transferring or parting with its interest in the allotted plot either in whole or in part, except with the prior written consent of the SIPCOT. In the event M/s.PHC Manufacturing Private Limited seeks approval for change in constitution, or change in the management or control or amalgamation with any other company or transfer of interest to any third party either in



W.A.No.1422 of 2023

whole or in part, the SIPCOT shall grant approval provided M/s.PHC Manufacturing Private Limited or any person claiming under it agrees to pay the cost determined by the SIPCOT and the cost determined thereby shall be final and binding on M/s.PHC Manufacturing Private Limited or any person claiming under it.

5. By relying upon the aforesaid clause, learned counsel for the appellant contends that the shareholding pattern has also undergone a change. The three companies are the original promoters of the allottee [M/s.PHC Manufacturing Private Limited]. M/s.Pyeong Hwa Automotive Co. Ltd, Korea, holds 50% and the remaining two companies hold 25% each. Subsequently, the shares held by M/s.Component Speciality Inc USA; and M/s.Component Speciality India Private Limited, Bangalore, were transferred to M/s.CS Holdings Co., USA and M/s.CS Management Services Private Limited, Bangalore, in the process of restructuring. Pursuant to the said restructuring, M/s.Pyeong Hwa Automotive Co. Ltd, Korea, held 50% share, whereas M/s.CS



W.A.No.1422 of 2023

WEB COPY

Holdings Co., USA held 37.50% and M/s.CS Management Services Private Limited held 12.5%. M/s.PHC Manufacturing Private Limited has undergone many changes from 12.1.2005 to 14.12.2009. The original promoters were holding less than 51% of shares. At the time of allotment of land to M/s.PHC Manufacturing Private Limited, there were seven directors. Now, the same has also changed. Hence, the differential land cost has to be collected as per Clause 26 of the lease deed. The shareholding pattern would clearly establish that the same has changed substantially, inter alia, the same would amount to change in management.

6. It is the contention of Mr.Kuberan, learned counsel for the respondent/original writ petitioner, that the respondent never sought approval for change in constitution or change in management of the company. It only sought approval for change in the name of the company. There is only restructuring of the shares amongst the directors of promoter companies. Expatiating



W.A.No.1422 of 2023

WEB COPY

the said point, it is submitted that M/s.PHC Manufacturing Private Limited was originally incorporated under the Joint Venture Agreement dated 19.9.1997 between (i) M/s.Pyeong Hwa Automotive Co. Ltd, Korea, (ii) M/s.Component Speciality Inc USA and (iii) M/s.Component Speciality India Private Limited, Bangalore. M/s.Pyeong Hwa Automotive Co. Ltd., Korea held 50% of shares pursuant to the reconstruction and remaining 50% shares were held by M/s.CS Holdings Co. USA (37.50%) and M/s.CS Management Services Private Limited, Bangalore (12.50%). The above 50% held by M/s.CS Holdings Co. USA and M/s.CS Management Services Private Limited, Bangalore was absorbed by the original promoter M/s.Peyong HWA Automotive Co. Ltd, Korea. Therefore, M/s.Pyeong Hwa Automotive Co. Ltd., Korea, the original promoter, became entitled to 100% of the holdings. It is only restructuring of the shares among the promoters. Change in name or restructuring, resulting in the original promoter M/s.Pyeong Hwa Automotive Co. Ltd, Korea, getting holdings will not give rise to an occasion to enable the



W.A.No.1422 of 2023

SIPCOT to demand differential land cost, since there is no change of management or control or change of constitution. Accordingly, he prayed for dismissal of the appeal.

7. We have considered the submissions canvassed by learned counsel for the parties.

8. On a perusal of the order dated 24.8.2011, which is impugned in the writ petition, demanding differential land costs, it is manifest that the approval was accorded for change in the name of the company from M/s.PHC Manufacturing Private Limited to M/s.PHA India Private Limited and while granting the said approval, the differential land cost was directed to be paid. It was also noted by SIPCOT that M/s.Pyeong Hwa Automotive Co. Limited, Korea, held 99.98% shares, whereas Mr.Sung Ho Park held 0.02% shares.

9. The appellant would be entitled to direct payment of



W.A.No.1422 of 2023

differential costs only if the parties seek approval for change in the constitution or management or control or amalgamation with any other company or on transfer of interest to any third party, either in whole or in part.

10. The relevant aspect to be considered is whether there would be a change in the constitution, or management, or control or amalgamation with any other company or transfer of interest to any third party. The same is with a purpose that the parties may not transfer the interest in the land allotted by change in the management of the company and/or the control of the company.

11. The paramount consideration would be the management or control of the company. The shares may shuffle, however, the management or the control of the company allotted with the land should remain with the one at the time of allotment. The shareholding pattern at the time of allotment and now is placed on record. The original allottees were the group companies.



W.A.No.1422 of 2023

Right since the date of incorporation, the management was with M/s.Pyeong Hwa Automotive Co. Ltd, Korea, and the remaining shares were with its group companies under the joint venture agreement. It appears that the group companies underwent restructuring and upon restructuring the holding of M/s.Pyeong Hwa Automotive Co. Ltd, Korea, became almost 100%. It is only amongst the promoters the shares have been shuffled. The change in the name or restructuring of the shares never resulted in M/s.Pyeong Hwa Automotive Co. Ltd, Korea, losing its control over the company. The management and control remained with M/s.Pyeong Hwa Automotive Co. Ltd, Korea. The promoters of the company never changed. The control of the company never changed. The transfer of shares from one company to another was amongst the promoters itself. The same promoters are the directors. It would be manifest that there was no transfer of the interest in the land allotted to any third party.

In the light of that, the learned Single Judge has not



W.A.No.1422 of 2023

committed any error in passing the impugned judgment. The writ appeal, as such, is dismissed. There shall be no order as to costs. Consequently, C.M.P.No.13881 of 2023 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

05.03.2024

Index : No
Neutral Citation : No
sasi



WEB COPY



W.A.No.1422 of 2023

THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY,J.

(sasi)

W.A.No.1422 of 2023

05.03.2024