IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.9423 of 2023
and
W.M.P.Nos.9497, 9499 & 9500 of 2023

AMRL Hitech City Limited,
Rep by Vice President Sales and Marketing
1st Floor, No.290,
Peters Road,
Gopalapuram, Chennai – 600 086. .... Petitioner

Vs

1.State of Tamil Nadu,
Industries, Investment Promotion &
Commerce Department,
Rep. by Secretary,
Secretariat, Chennai – 600 009.

2.Tamil Nadu Industrial Development
Corporation Ltd (TIDCO),
Rep. by the Chairman,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008,
Tamil Nadu. .... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari calling for the records of the second respondent pertaining its communication dated 29.12.2022 determining the (i) Lease Deed dated 20.06.2008 granted to M/s.AMRL Hitech City Ltd. For 165.88.5 Ha Vide Document No.5437 & (ii) Lease Deed dated 20.06.2008 granted to M/s.AMRL Hitech City Ltd. for 232.55.0 Ha Vide Document No.5438 and quash the same as being arbitrary.

For Petitioner : Mr.Ashlin Christe
for Mr.Rohan Rajasekaran
Ms.R.Vaishali

For R1 : Mr.P.S.Raman
Advocate General
Assisted by Mr.V.Manoharan
Additional Government Pleader

For R2 : Mr.H.Karthik Seshadri

ORDER

This Writ Petition has been filed challenging the communication of the second respondent dated 29.12.2022, thereby determining the (i) Lease Deed dated 20.06.2008 granted in favour of the petitioner for an extent of 165.88.5 Hectares Vide Document No.5437 & (ii) Lease Deed dated 20.06.2008 granted in favour of the petitioner for an extent of 232.55.0 hectares Vide Document No.5438.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner is engaged in the real estate business activity. While being so, the second respondent sought to establish a Hi-Tech Park in Nanguneri Taluk, Tirunelveli District, in order to facilitate industrial development in the southern region of Tamil Nadu. In cooperation with the first respondent, a common vision of setting up a Special Economic Zone (hereinafter referred to as "SEZ") was proposed, in order to develop an industrial hub that would aid the promotion of industries and development in the area. Therefore, the second respondent had entered into a Memorandum of Understanding with INFAC Management Corporation on 22.05.1997 and agreed to set up a Hi-Tech Industrial Park in Nanguneri Taluk, Tirunelveli District.

4. INFAC entered into an associate sector agreement with the second respondent and AXES Technology Inc. on 24.02.1998. On 19.05.2000, the petitioner was incorporated to implement the project. INFAC finalized a partnership with AMR Constructions as a co-developer for implementing the projects and accordingly, on 04.11.2006, INFAC, AMR Construction, A.Mahesh Reddy and B.Ravikumar Reddy entered into a shareholders' agreement and share

subscription agreement. It was also accepted by the second respondent to induct AMR Constructions as a co-developer. On 10.04.2008, the first respondent, AMR Construction, B.Ravikumar Reddy and INFAC entered into an agreement, whereby the petitioner was tasked with implementing the project as a SEZ in consultation with the first respondent. The share holding pattern of the petitioner was as the second respondent held 1% and INFAC held 30.89% and investors & their Associates held 68.11% of the shares. Further, as per the agreement, the investors should not alienate their shares without prior consent of the first respondent. On completion of the project implementation, the investors were permitted to make changes to the shareholding pattern, provided they intimated the first respondent.

5. A total extent of 2519 acres were required for the implementation of the project, which was procured by the first respondent and the petitioner. The cost of the entire land was paid by the petitioner. While being so, the petitioner faced certain difficulties in progressing with the implementation due to delays in obtaining approvals and environment impact clearances. However, the SEZ became operational in March, 2011. It is also recorded in W.P (MD) No.6116 of

2013 filed as a Public Interest Litigation to implement the project before the Madurai Bench of this Court by an order dated 10.02.2014. In order to implement the said project, the petitioner sought approval from the respondent to obtain financial assistance from SREI Equipment Finance Limited. After obtaining approval, a proposal was floated to induct SREI as a strategic equity partner in the petitioner.

6. In the meanwhile, a part of the petitioner's group obtained a loan from SREI and executed a loan agreement on 08.09.2013. It was secured by way of collateral and personal guarantee. Due to default in repayment of loan, SREI initiated arbitration proceedings for recovery of the loan. The Arbitrator passed an award on 21.02.2014. Therefore, in consideration of the claim amount sought by SREI, SREI Alternative Investment Trust undertook to acquire the shares held by A.Mahesh Reddy with the proceeds to be adjusted as against the amounts due to SREI. It was communicated by the said A>Mahesh Reddy and B.Ravikumar Reddy to the second respondent seeking permission to transfer the shares in favour of SREI and to induct SREI as a strategic equity partner.

7. The second respondent, by its communication dated 20.03.2014, accorded its approval (in-principal) for the induction of SREI as a strategic equity partner. Thereafter, the petitioner issued a notice to convene a meeting to be held on 27.03.2014 to give effect to the proposed changes to the second respondent and the meeting was held as scheduled. On the strength of the award, SREI filed an Execution Petition before the High Court of Kolkata. The Kolkata High Court directed a receiver to receive and transfer the share to SREI Alternative Investment Trust and remit the proceeds therefrom to SREI. The change in shareholding was approved by the Execution Officer, SEZ, by a communication dated 31.10.2014. While being so, the petitioner was served with a show cause notice dated 09.10.2021 with regard to change in shareholding had been undertaken without its approval and it is a violation of the clauses contained in the Joint Venture Agreement and the Lease Deeds. Thereafter, the termination notice dated 29.12.2022 was issued to the petitioner on the ground that there is a violation of clauses 2(v) and 12(i) of the Lease Deeds by the lessee and clauses 1.5, 1.6 and 7.2 of the Joint Venture Agreement and clauses 6 and 22 of Lease Deed

document No.5437/2008, dated 20.06.2008 and clause 6.18 and 27 of Lease Deed document No.5438/2008, dated 20.06.2008.

8. A perusal of the counter filed by the first respondent and the submissions made by the learned Advocate General appearing for the first respondent and the submissions made by the learned counsel appearing for the second respondent reveals that the petitioner Company is now under liquidation and the Interim Resolution Professional has been appointed to administer the petitioner and a moratorium is in force in terms of Section 14(2)(a) and 14(3) of the Insolvency and Bankruptcy Code, 2016. Based on the Government order in G.O.Ms.No.220, Industries (MIE.1) Department, dated 29.08.1997, the Government acquired 1534 acres of land out of a total of 1660.71 acres of patta land in Therku Nanguneri, Puliyurkurichi and Rajakkalmangalam Villaage in Nanguneri Taluk, Tirunelveli District in favour of the second respondent to implement the project, i.e., Hi-Tech Industrial Park in Nanguneri Taluk, Tirunelveli District. After acquisition, as per G.O.Ms.No.429, Industries (MIE.1) Department, dated 12.12.2000, the second respondent transferred the acquired patta land by virtue of a conditional sale deed

dated 07.05.2001, the land admeasuring 1519.45 acres and subsequently, on 21.10.2010, the land admeasuring 14.55 acres was transferred in favour of the Joint Venture Company, subject to the following terms and conditions :

> *"(1) The aforesaid land should be used for setting up the industrial units and other related supporting services and infrastructure facilities that which are of non-polluting nature.*
>
> *(2) ATMAC shall achieve the financial closure of the project and commence construction activities in the land within one year from the date of transfer of lands. The Government may extend the time at its discretion for further period provided ATMAC proves to the Government that the financial closure and/or construction activities could not be achieved due to unavoidable circumstances.*
>
> *(3) If the Government are satisfied that the land acquired and transferred to ATMAC is not used for the purpose mentioned under condition No.1 above within the period specified under condition No.2 above, the Government may, by an order, take possession of the land and the land shall vest in the Government in Revenue Department free from all encumbrances*

provided that no order under this shall be made unless the person or authority aggrieved has had a reasonable opportunity of being heard. In the event of taking possession of the land, the Government will arrange for reimbursement of the cost incurred by ATMAC in buying the land."

9. Therefore, the main objective of framing clauses was to implement the project without further delay so that the investors and INFAC India Group will ensure speedy implementation as the project was actually commenced on 10.02.2001. Further, as per Clause 4 of the Joint Venture Agreement dated 10.04.2008, the investor hereby agreed to arrange the necessary financing, including debt required for the project and any shortfall in the equity to be contributed by any of the parties to the agreement. Further, Clause 1.3 also states that the Company shall have immediate and unconditional access to such funding and that the investors were required to bring in their contributions towards the paid-up capital of the company. However, the petitioner failed to do so.

10. As per Clause 1.5 of the Joint Venture Agreement dated 10.04.2008, the prior consent of the second respondent is required for any transfer of shares and also mandates that the investors shall ensure an agreement with the third parties and the second respondent before transferring shares to such third parties. The petitioner failed to comply with the said clause by not executing a proper agreement with third party before such transfer. Consequently, the petitioner availed a huge loan and transferred the shares without obtaining the consent of the second respondent. Therefore, an enquiry was conducted. During the enquiry, the petitioner categorically admitted that they were not able to proceed further with the project from 2019 to 23.12.2022. Out of the total area of land admeasuring 2519 acres, they had developed only 300 acres, of which only 135 acres had been occupied, even after 15 years. As per their business plan, the entire project was to be completed in two phases over a period of seven years.

11. Admittedly, the project has not been implemented even after completion of 15 years. That apart, the petitioner obtained approval only for his land to the tune of Rs.105 crores for the purpose of

developing the project. However, the petitioner obtained other loans without any intimation to the second respondent and it is a clear violation of the agreement. Therefore, the second respondent has the right to exercise their authority to terminate the lease deeds.

12. A perusal of the records also shows that in-principle approval was granted only for the induction of SREI Infrastructure Finance Limited (SIFL). However, the quantum and mode of investment was to be discussed with Chairman and Managing Director of the second respondent. Admittedly, no such financial approval was granted by the second respondent. As per Clause No.1.5 of the Joint Venture Agreement, the written consent of the second respondent is necessary for investors to transfer their shares. Further, the second respondent never given any consent for the transfer of shares as required. Therefore, the transfer of shares is null and void. In fact, in the Public Interest Litigation filed before the Madurai Bench of this Court in W.P.No.8224 of 2016, it was ordered that

> *"29. Insofar as the induction of the eleventh respondent is concerned, the counter affidavits of the*

second and third respondent would disclose that in-principle approval has been accorded and it is also the stand of the second respondent that periodical monitoring is being done and if any infraction is noted as to the conditions stipulated in G.O.(MS) No.429, Industries (MIE.1) Department, dated 12.12.2000 and clauses in the joint venture agreement, immediate and necessary action would be taken to resume the possession of the lands."

13. Thus, it is clear that both respondents stated that no final approval or consent for the transfer of shares was given. After repeated request made by the second respondent, the petitioner submitted the annual report, which revealed that the petitioner had transferred 58% of the shares to SIFL managed funds, without obtaining any approval. The approval in-principle does not constitute final approval. Therefore, the second respondent issued a notice to the petitioner, A.Mahesh Reddy and B.Ravikumar Reddy and SREI Infrastructure Finance Limited on 09.10.2021, as to why the possession of the land should not be taken and such other action as deemed fit. In response, the petitioner had given replies dated 08.11.2021 and 10.12.2021 respectively without any

justification for violating the terms of the lease deeds. Though the petitioner was granted sufficient time, they failed to take any remedial action to rectify the conditions breached by them. Therefore, the lease deeds were rightly terminated by the second respondent.

14. In view of the above, this Court finds no infirmity or illegality in the order passed by the second respondent. Thus, the writ petition lacks merit and is liable to be dismissed. Accordingly, this writ petition stands dismissed. Consequently, connected miscellaneous petitioners are closed. No costs.

25.10.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
Lpp

To

1.The Secretary,
State of Tamil Nadu,
Industries, Investment Promotion &
Commerce Department,
Secretariat, Chennai – 600 009.

G.K.ILANTHIRAIYAN, J.

Lpp

2.The Chairman,
Tamil Nadu Industrial Development
Corporation Ltd (TIDCO),
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008,
Tamil Nadu.

W.P.No.9423 of 2023

25.10.2024