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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	21.08.2024
PRONOUNCED ON	02.09.2024

CORAM:

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

W.P.No.17235 of 2010
and
M.P.No.1 of 2010

M/s.Meenakshi Exports (Vellore) Private Limited,
Represented by its Director K.Parameshwaran,
Plot No.11, SIPCOT Industrial Estate,
Lalapet Road, Ranipet,
Walajah Taluk, Vellore District. .... Petitioner

Vs

1. The Tamil Nadu Industrial Investment Corporation Limited (TIIC)
Represented by its Branch Manager,
No.45, T.K.M. Complex, II Floor,
Katpadi Road, Vellore – 632 004.

2. State Industries Promotion Corporation of Tamil Nadu (SIPCOT),
Represented by its Chairman & Managing Director,
19-A, Rukmani Lakshmipathy Road,
Egmore, Chennai – 600 008. .... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order No.D-II/SICR/MEVPL/06 dated 08.08.2006 on the file of the second respondent herein and quash the same and consequently direct the respondents herein to execute and register a sale deed of

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the property situated in Plot No.11, SIPCOT Industrial Estate, Ranipet, Lalapet Road, Walajah Taluk, Vellore District, in favour of the petitioner herein.

For Petitioner	: Mr.TN.Rajagopalan for Mr.K.S.Ravikumar
For R1	: Mr.K.Magesh
For R2	: Mr.K.Palaniappan

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 08.08.2006, thereby directed the respondents to remit a sum of Rs.28.43 lakhs towards differential land cost for registration of sale deed.

2. The petitioner was incorporated on 19.09.2002 as a Private Limited Company. Before being incorporated as a Company, the petitioner was a Partnership firm in the name and style of M/s.Meenakshi Exports, consisting of two partners. During its existence as a partnership firm, the first respondent notified to hold a public auction on 29.01.2002 for sale of a property land, building and materials belonging to M/s.Solvent Extractions (P) Limited (hereinafter referred to as “the Company”) situated in Plot No.11, SIPCOT Industrial Estate, Ranipet, Lalapet, Walajah Taluk, Vellore District. As per the conditions of tender-cum-public auction, the highest bidder will have to deposit 10% of the tender amount on the date of the auction as advance. On payment of

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the balance bid amount, the first respondent shall have to execute and register a sale deed in favour of the highest bidder.

3. As per the terms and conditions, the first respondent would issue the sale deed or deliver notice to the successful bidder or his nominees where the sale deed is issued in favour of the nominee, provided there should be satisfactory proof of their involvement as a Co-promoter of the industrial venture with the assets purchased in the public auction. The partnership firm was declared as a successful bidder with a bid amount of Rs.21 Lakhs for the land and building. They also deposited 10% of the bid amount on 29.01.2002. After the auction, the first respondent requested to enhance the bid amount and accordingly, the petitioner agreed to pay a sum of Rs.23 lakhs, for which, a sum of Rs.20,000/- was also paid on 19.05.2002, being the differential amount of 10% of the enhanced bid amount. By a communication dated 19.08.2002, the first respondent confirmed the bid amount in favour of the partnership firm and requested to pay the balance amount of Rs.20.70 lakhs.

4. While being so, the partnership firm was incorporated as private limited company with the Registrar of Companies vide R.C.No.18-49624 dated 19.09.2002. The erstwhile partners of the partnership firm had become the

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Directors. Therefore, the petitioner requested the first respondent to execute the sale deed in respect of the auctioned property in its favour. However, the first respondent informed that the sale deed can be executed in favour of the partnership firm not in the name of the petitioner. Thereafter, on 22.02.2005, the first respondent had recognized the petitioner as the successful bidder. On receipt of the communication from the second respondent dated 11.06.2003, thereby informed that the petitioner had cleared all the dues of the Company, who was the erstwhile leaseholder of the subject property. In the meanwhile, the first respondent handed over the possession of the land and building, which was auctioned on 11.11.2002. The second respondent also issued No Objection Certificate to sell the subject property in favour of the petitioner in the auction sale. Further, the second respondent informed that the petitioner should approach the second respondent for transfer of the auctioned plot with regard to 99 years lease. Therefore, the petitioner submitted a representation to the second respondent justifying their entitlements for sale deed and requested to issue sale deed. Further, the second respondent informed the petitioner that there was a change in the controlling interest / Management and therefore, according to their norms for allotment of plots, whenever, there is a change in the management, the differential plot cost has to be remitted. Though the petitioner replied that there was no change in the controlling interest of the

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petitioner Company, since the partnership firm was registered as a Private Limited Company, in which, the partners have became Directors. The second respondent, by its communication dated 08.08.2006, directed the petitioner to remit a sum of Rs.28.43 lakhs towards the differential land cost for issuance of No Objection Certificate and transfer of leasehold rights in the name of the petitioner, which is impugned in this writ petition.

5. The learned counsel appearing for the petitioner would submit that when the partnership firm was in existence, the first respondent declared as a successful bidder for purchase of the subject property. In fact, the first respondent had advertised to hold the public auction for sale of a property land, building and materials belonging to the Company. Subsequently, the partnership firm was registered as a Company and the partners have become Directors of the petitioner. Due to administrative reasons, the partnership firm was converted into a private limited company and registered with the Registrar of Companies. Therefore, there is absolutely no change of management. In fact, as per the terms and conditions of auction, the sale deed should be executed in favour of the successful bidder or his nominees. Therefore, the petitioner need not pay any differential land cost. That apart, the petitioner participated in the auction only to purchase the land, building and materials

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belonging to the Company situated Plot No.11, SIPCOT Industrial Estate, Ranipet, Lalapet, Walajah Taluk, Vellore District. Therefore, the second respondent cannot insist to pay a sum of Rs.28.43 lakhs towards the differential land cost.

6. A perusal of the counter filed by the second respondent reveals that the petitioner submitted a representation to the second respondent that he has given "No Objection Certificate" to the second respondent in getting leasehold rights in favour of the Company. However, the petitioner averred in the affidavit that the second respondent cannot alter the impugned transaction towards the leasehold rights, when the first respondent had already bought the land for auction sale on out right payment. As the sale of the subject land is only on an outright payment basis, the second respondent cannot alter the transaction to leasehold right. Further, when the partnership firm was in existence, it participated in the auction sale and thereafter, the firm was converted into a Company. As per the partnership firm, two partners have equal share. After conversion into Company, the two partners are holding 2% share each and one Rajarathinam and Sons (HUF) is a major share holder holding 48% of share. Therefore, this change of constitution from partnership firm to private limited company would amount to change of constitution. Thus, it

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requires differential land cost for issuance of No Objection Certificate for transfer of leasehold rights in the name of the petitioner.

7. It is also to be noted that the second respondent originally allotted the subject property in favour of the Company and executed lease deed for a period of 99 years. In turn, it availed loan from the first respondent by mortgaging the building and other assets, except the land, as collateral security. Thereafter, it committed default and as such the property, which was shown as collateral security was brought into auction sale. When the Company had only the leasehold rights in respect of the subject property, it could not have shown it as collateral security to avail loan from the first respondent. Though the first respondent accepted the subject property as collateral security, the first respondent has no right to bring the property for sale, since the Company has no absolute right over the subject property to deal with the same. As per the lease deed executed by the second respondent, the borrower has got only leasehold rights. After availing the loan, the borrower committed default and without any right over the property, the first respondent brought the property for auction sale. When the borrower had only leasehold right, the first respondent ought not to have brought the property for auction sale.

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8. The petitioner's erstwhile partnership firm was successful bidder and the sale was confirmed in favour of the partnership firm. Further, the second respondent issued No Objection Certificate only for transfer of plots sold by the first respondent in the auction sale of the attached assets of the borrower in favour of the petitioner by the first respondent. Only after the transfer, the petitioner has to approach the second respondent for approval of transfer of land in respect of the subject property, i.e., Plot No.11, SIPCOT Industrial Estate, Ranipet, Lalapet, Walajah Taluk, Vellore District, admeasuring 5.17 acres for a period of 99 years in favour of the petitioner. Further, as per the terms and conditions of the second respondent with regard to change in management or allotment of plots, if there is any change in share holding pattern due to induction of new partner or director and where more than 50% of the share holding is retained by the original promoter of the unit, such transfer can be approved without insisting of payment of current land cost. However, when the assets of the unit are sold by promoter along with the leasehold rights of the land or the unit is merged with another company, the second respondent is entitled to collect the current land cost irrespective of the shares held by the original allottees.

9. Admittedly, the existing partnership firm was changed into a

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private limited company, in which, the erstwhile partners have became Directors of the private limited company. However, both the partners/directors are each hold 2% share and one Rajarathinam and Sons is major share holder holding 48% of shares of the petitioner's Company. Therefore, the petitioner is liable to pay the differential land cost for issuance of No Objection Certificate and transfer of leasehold rights in the name of the petitioner in respect of the subject property. That apart, the order impugned in this writ petition was passed on 08.08.2006, whereas the writ petition has been filed only in the year 2010. There is absolutely no explanation from the petitioner for inordinate delay of four years to file this writ petition.

10. In view of the above, this Court finds no infirmity or illegality in the order passed by the second respondent dated 08.08.2006. Thus, the writ petition lacks merits and it is liable to be dismissed. Accordingly, this Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

02.09.2024

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No

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To

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2. The Chairman & Managing Director,
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G.K.ILANTHIRAIYAN. J,

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Pre-delivery order in
W.P.No.17235 of 2010
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