



W.A.No.2670 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2024

CORAM

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

W.A.No.2670 of 2023

M/s. Moc Dies and Moulds Pvt Ltd.
SP.93, First Floor
Ambattur Industrial Estate
Ambattur, Chennai 600 058.

.. Appellant

Vs.

1. The Managing Director
State Industries Promotion Corporation
of Tamil Nadu (SIPCOT)
19-A, Rukumani Lakshmipathy Road
Egmore, Chennai 600 008.

2. The Project Manager
State Industries Promotion Corporation
of Tamil Nadu (SIPCOT)
SIPCOT Industrial Park
Vallam-Vadagal
Kanchipuram District.

.. Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 01.09.2023 made in W.P.No.20339 of 2023.



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For the Appellant : Mr.R.Ezhilarasan

For the Respondents : Mr.M.P.Rajavelayutham

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Heard Mr.R.Ezhilarasan, learned counsel for the petitioner and Mr.M.P.Rajavelayutham, learned counsel for the respondents.

2. We have heard learned counsel for the appellant and the respondents on the last date.

3. Prior to that, we had passed a detailed order on 29.09.2023.

4. The present appellant/original petitioner had filed a writ petition challenging the order passed by the first respondent dated 30.05.2023 cancelling the allotment made to the writ petitioner in SIPCOT Industrial Park, Vallam-Vadagal. The allotment was



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cancelled on the ground that the writ petitioner failed to comply with the terms and conditions and the order of the learned Single Judge of this Court in W.P.No.9261 of 2021.

5. It appears that the writ petitioner was allotted with the plot measuring 7acres in Plot No.G-95/1 in SIPCOT Industrial Park on or about 13.12.2021. Lease deed was executed by the second respondent in favour of the writ petitioner for 99 years in the year 2017, on certain term and conditions. The writ petitioner committed default in payment of some installments and failed to comply the other conditions. The order cancelling the confirmation was made on 30.03.2021. The writ petitioner challenged the same by filing W.P.No.9261 of 2021.

6. In the said writ petition, the Court directed the writ petitioner to deposit Rs.63,43,916/- in ten equal instalments and to complete the construction of the building in 14 months. The same was also not complied with. The instant writ petition was again filed.



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7. On or about 29.09.2023, we had passed the detailed order in the present appeal. The same reads thus:

"We have heard Mr.N.G.R.Prasad, learned counsel appearing on behalf of Mr.R.Ezhilarasan, learned counsel for the petitioner; and Mr.M.P.Rajavelayutham, learned counsel for the respondents.

2. The appellant was allotted a plot admeasuring 7 acres for industrial purpose on 17.6.2017. On 13.12.2017, a lease deed was executed in favour of the appellant. The appellant, it appears, has only constructed the compound wall and no construction activity to start the industry was taken up. On 4.11.2020, penalty was imposed upon the appellant of Rs.63,43,916/-, apart from processing fee of Rs.11,800/-. The appellant was directed to pay the same within thirty days. On 3.12.2020, the appellant requested time to pay the penalty. On 30.3.2021, the respondents cancelled the allotment order issued in favour of the appellant. Aggrieved thereby, the appellant filed W.P.No.9261 of 2021.



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3. In the aforesaid writ petition, the learned Single Judge of this court passed an interim order in favour of the appellant and directed the appellant to pay the penalty in ten equal installments and complete the construction of the building within a period of 14 months from 1.8.2021. The appellant agreed to pay the amount by installments and filed an undertaking dated 29.7.2021. Thereafter, the appellant paid seven installments. The learned Single Judge, considering the grounds raised by the appellant that due to Covid-19 pandemic situation, lockdown and non-availability of materials, the appellant is entitled for grant of extension of time to complete the construction, by order dated 4.3.2022, disposed of W.P.No.9261 of 2021 by directing the appellant to pay the balance three installments on or before 5th of every month. The appellant was directed to complete the construction work on or before 31.10.2022. The court while disposing of W.P.No.9261 of 2021 under order dated 4.3.2022, observed as under:

"8. Considering the above materials and fact that the 1st respondent has issued No Objection Certificate to the



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petitioner to mortgage the lease hold right for construction of factory and purchasing machineries, the petitioner had paid the amount as per the Allotment Order and lease agreement. With regard to the penalty amount, the respondents are not disputing that the petitioner has obtained a sum of Rs.15 Crores from the Bank and placed orders for the purchase of two machineries. Further, due to the Covid-19 pandemic situation, lockdown and due the non-availability of materials and man power for construction, the petitioner is entitled for the grant of extension of time to complete the construction as per his request. The respondents are directed to receive the balance penalty amount through Demand Draft as the petitioner could not access the respondents' online portal. The petitioner is permitted to make the balance three instalments through Demand Draft to the respondents on or before 5th of every month, without fail. The petitioner is directed to complete the construction work on or before 31.10.2022, as per the undertaking given by the petitioner. If the petitioner fails to comply with the undertaking produced before this Court, it is open to the respondents to proceed further.”

4. The said order is passed on 4.3.2022. The appellant made the court believe that the construction work would be completed on or before 31.10.2022 and undertaking was given to



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that effect to the court. Relying upon the undertaking given, the court granted time to the appellant to complete the construction on or before 31.10.2022. The court further observed in the said order that if the appellant fails to comply with the undertaking produced, it is open to the respondents to proceed further.

5. The appellant deposited only eight installments and two installments were not deposited. The time-lime required to be adhered to was not followed. Moreover, the construction activity was also not commenced. Till date, the construction activity has not commenced.

6. As the appellant did not comply with the undertaking and the order passed by the learned Single Judge in W.P.No.9261 of 2021, dated 4.3.2022, the respondents, under order dated 30.5.2023, cancelled the allotment made to the appellant. Aggrieved thereby, the appellant filed W.P.No.20339 of 2023.

7. The learned Single Judge, considering the fact that the appellant failed to comply with the earlier directions issued in W.P.No.9261 of 2021, dismissed the writ petition vide order dated



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1.9.2023. Assailing the same, the present writ appeal is filed.

8. It is submitted by learned counsel for the appellant that because of Covid-19 pandemic, the material was not available and, therefore, the construction could not be carried out. The same argument was advanced in the earlier writ petition, bearing W.P.No.9261 of 2021. The Court accepted the contention of the appellant and granted extension of time to pay the penalty in installments and to complete the construction. The appellant was at least supposed to abide by the undertaking given to the court, as it was because of the undertaking given, the Court granted extension of time to pay the penalty and also to carry out the construction.

9. Now again the appellant wants to re-agitate the same issue. In fact, in the the earlier order dated 4.3.2022 passed in W.P.No.9261 of 2021 itself, the learned Single Judge of this court had observed that if the undertaking is not complied with, the respondents may proceed further. The appellant had not sought extension of the time granted in the said order dated



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4.3.2022. *The earlier order still holds good. Entertaining the writ petition again would be contrary to the earlier order passed, wherein the learned Single Judge has permitted the respondents to proceed further, if the appellant fails to comply with the undertaking filed before the court. A long latitude has been given by the respondents.*

10. *Learned counsel for the appellant now contends that the appellant will carry out the construction within one month. The appellant did not carry out the construction even as per the undertaking given in W.P.No.9261 of 2021. The undertaking was given more than a year back. No construction activity is commenced till date.*

11. *The lands are meant for industrial purpose. The lands are given to deserving persons for establishing the industry. By such acts of omissions, the industries are not developed.*

12. *In any event, it is for the respondents to consider whether extension of time is to be granted or not.*

We place the matter on 9.10.2023 for the respondents to make a statement in that regard."



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8. It is also not disputed now that eviction has been effectuated.

9. On the last date, we had asked learned counsel for the respondents as to whether the amount deposited by the appellant could be refunded. Learned counsel for the respondents took time.

10. Today, learned counsel for the respondents submits that if the writ petitioner would have voluntarily surrendered the plot, then, the amount deposited could have been refunded in full, after forfeiting 5% of the plot amount per year or part thereof, subject to minimum of 15%. He further submits that after the eviction is carried out, no amount is refundable.

11. We have gone through the policy placed by learned counsel for the respondents. The conditions for refund are as under:

"(a) On surrender of a plot by an allottee,



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the plot deposit may be refunded in full after forfeiting the initial deposit and processing fee. The development charges may be refunded after forfeiting an amount of 5% per year or part thereof for the number of years the plot was held by the allottee, subject to a minimum of 15%. All the pending cases of surrender and similar requests may be disposed off on the basis of this policy.

(b) In respect of companies where refund of development charges has been made in full up to June 2001, no review need be made as these are completed transactions.

(c) The above policy will apply only to voluntary surrenders by the allottees and will not apply to the cases where action has been taken against the allottee for violation of the terms and conditions of the lease. In such cases if the allottee surrenders the land prior to eviction being carried out under the TNPEE Act, an amount of 50% of the development charges should be forfeited. If eviction is actually carried out under the TNPPE Act, then the entire land lease premium will be forfeited, as per the existing policy.”



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12. Admittedly, the writ petitioner had violated the terms and conditions. As such, clauses (a) and (b) may not apply. However, it is not disputed that the eviction was carried out on 29.09.2023 by the respondents. The writ petitioner had already filed a writ petition on 30.06.2023 before this Court and during the pendency of the present proceedings, the respondents carried out eviction. We are inclined to grant the benefit of clause (c) to the writ petitioner. The respondents shall refund 50% of the amount deposited by the writ petitioner within a period of three months from today.

13. The writ appeal is disposed of. There shall be no order as to costs. Consequently, C.M.P.Nos.22446 and 22444 of 2023 are closed.

(S.V.G., CJ.)

(D.B.C., J.)

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Index : Yes/No

Neutral Citation : Yes/No

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

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