



W.P. No. 3648 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 3648 of 2017

and

W.M.P. No. 3680 of 2017

and

W.M.P. Nos. 9136, 9156, 12351, 17487 and 19771 of 2022

S.P.V.Power Ltd.,
Rep. By its Managing Director
Mr. G.Mohan Reddy
Door No. 25, Prameshwar Nagar
Sholingnallur, Chennai – 119.

... Petitioner

-VS-

1. The State Rep. By its
Secretary to Government
Industries Department
Fort St. George, Chennai – 600009.
2. The Managing Director
Small Industries Development
Corporation Ltd. Guindy
Chennai – 600032.
3. The Branch Manager
SIDCO Industrial Estate
Kakkalur (PO)
Thiruvellore District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, forbearing the above respondents



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from re-allotting the industrial Plot No. 120, situate at Kakkalur Industrial Estate, Thiruvellore District, to any other industrial entrepreneurs or to any other third parties in any manner which is unknown to law.

For Petitioner : Mr. G.Mohan Reddy (Party-in-Person)

For Respondents : Mr. P.Ganesan, AGP (R1)
Ms. Sitharasarangan (RR2 & 3)

ORDER

Heard Mr. G.Mohan Reddy, Managing Director of the Petitioner, who has appeared Party-in-Person, Mr. P.Ganesan, Learned Additional Government Pleader appearing for the First Respondents and Ms. Sitharasarangan, Learned Counsel appearing for the Second and Third Respondents, and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, viz., S.P.V. Power Ltd., was allotted Plot No. 120 measuring an extent of 0.524 acres situated in Industrial Estate Kakkalur by Proceedings in Order No. 16399/IE2/1996 dated 10.06.1997 by the Second Respondent on outright basis with a condition that it should be utilized for construction of building within 2 years from the date of its allotment. Since the said plot had not been utilized within that time limit, show cause notice by



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Proceedings in No. 488/B/2011 dated 23.01.2015 was issued by the Third Respondent to the Petitioner and the said allotment of the industrial plot was cancelled by Proceedings in R.C.No.1083/IE-2/2015 dated 16.04.2015 by the Second Respondent, which was sent by registered post on 23.04.2015 to its address at No. 3-G, Oak Land Apartments, Melony Road, Chennai – 600017, but returned with the postal endorsement 'intimation delivered'. Since the Petitioner did not vacate and hand over the plot within 30 days, it was treated as 'unauthorized occupant' of that land and notice to resume that plot under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975, was sent by Proceedings in No.488/C/2011 dated 27.04.2015 in prescribed Form-A in terms of Rule 3 of the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Rules, 1978, (hereinafter referred to as 'the TNPP Rules' for short) with covering letter dated 18.05.2015 by registered post on 20.05.2015 to the same address, but had been returned with postal endorsement 'left without instruction'. Thereafter, the Third Respondent had taken possession of the property at 11.30 a.m. on 28.04.2016 in the presence of the witness, viz., R.Pandian, Managing Director, Kailash Hi-Tech Timber Industries Ltd., Nos. 121 & 122, SIDCO Industrial Estate, Kakkalur, Thiruvallur – 602003, Thiruvallur District.



3. At the outset, it must be recapitulated that the Hon'ble Supreme Court of India in the decision in ***Indu Kakkar -vs- Haryana State Industrial Development Corporation Ltd.*** [(1999) 2 SCC 37] has ruled that the allotment making authority would be justified in resuming the plot from the allottee who cannot claim any right to remain in occupation without performing his obligation to utilize that property for industrial purpose for which avowed object it has been established. This would obviously mean that the Respondents cannot be faulted in cancelling the allotment made in favour of the Petitioner when it has not carried out its obligations to complete construction and commence commercial production within the stipulated time frame in this case.

4. The Petitioner claims to have made a subsequent representation dated 10.12.2016 to the Respondents showing its address at No. 25, Parameshwar Nagar, Sholinganallur, Chennai – 600119 innocuously portraying that it had not received any of the orders relating to cancellation of the allotment and resumption of possession of the industrial plot by the Respondents. In that backdrop, this Writ Petition has been filed seeking to restrain the Second and Third Respondents from re-allotting the Plot No. 120, Kakkalur Industrial Estate, Thiruvallur District.



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5. It is the contention of the Petitioner that inasmuch as the orders relating to the cancellation of allotment of the industrial plot and the resumption of its possession by the Respondents had not been served on the Petitioner, it is not necessary to challenge the same for claiming the relief as now sought in the Writ Petition.

6. As already noticed earlier, the Second and Third Respondents have produced the records maintained to substantiate that the orders relating to the cancellation of allotment of the industrial plot and the resumption of its possession by the Respondents had been sent by registered post to the Petitioner at its last known address, which have been returned undelivered. There is nothing available from the record to infer that the Petitioner has duly intimated the Second and Third Respondents at any time earlier of its change of address from 'No. 3-G, Oak Land Apartments, Melony Road, Chennai – 600017' to 'No. 25, Parameshwar Nagar, Sholinganallur, Chennai – 600119' as mentioned in its representation dated 10.12.2016. At this juncture, reference must be made to Section 27 of the General Clauses Act, 1897, which reads as follows:-

“27. Meaning of service by post:- Where any Act made after the commencement of this Act authorises or requires any document to



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be served by post, whether the expression “serve” or either of the expressions, “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered, in the ordinary course of post.”

The legal position in this regard has been explained by the Hon'ble Supreme Court of India in the decision in ***Harcharan Singh -vs- Shivrani*** [(1981) 2 SCC 535] in the following words:-

“7. Section 27 of the General Clauses Act, 1897 deals with the topic— “Meaning of service by post” and says that where any Central Act or Regulation authorises or requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting it by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. The section thus raises a presumption of due



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service or proper service if the document sought to be served is sent by properly addressing, prepaying and posting by registered post to the addressee and such presumption is raised irrespective of whether any acknowledgment due is received from the addressee or not. It is obvious that when the section raises the presumption that the service shall be deemed to have been effected it means the addressee to whom the communication is sent must be taken to have known the contents of the document sought to be served upon him without anything more. Similar presumption is raised under illustration (f) to Section 114 of the Indian Evidence Act whereunder it is stated that the court may presume that the common course of business has been followed in a particular case, that is to say, when a letter is sent by post by prepaying and properly addressing it the same has been received by the addressee. Undoubtedly, the presumptions both under Section 27 of the General Clauses Act as well as under Section 114 of the Evidence Act are rebuttable but in the absence of proof to the contrary the presumption of proper service or effective service on the addressee would arise. In the instant case, additionally, there was positive evidence of the postman to the effect that the



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registered envelope was actually tendered by him to the appellant

on November 10, 1966 but the appellant refused to accept. In

other words, there was due service effected upon the appellant by

refusal. In such circumstances, we are clearly of the view, that the

High Court was right in coming to the conclusion that the

appellant must be imputed with the knowledge of the contents of

the notice which he refused to accept. It is impossible to accept

the contention that when factually there was refusal to accept the

notice on the part of the appellant he could not be visited with the

knowledge of the contents of the registered notice because, in our

view, the presumption raised under Section 27 of the General

Clauses Act as well as under Section 114 of the Indian Evidence

Act is one of proper or effective service which must mean service

of everything that is contained in the notice. It is impossible to

countenance the suggestion that before knowledge of the contents

of the notice could be imputed the sealed envelope must be opened

and read by the addressee or when the addressee happens to be

an illiterate person the contents should be read over to him by the

postman or someone else. Such things do not occur when the

addressee is determined to decline to accept the sealed envelope.



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It would, therefore, be reasonable to hold that when service is effected by refusal of a postal communication the addressee must be imputed with the knowledge of the contents thereof and, in our view, this follows upon the presumptions that are raised under Section 27 of the General Clauses Act, 1897 and Section 114 of the Indian Evidence Act.”

In view of this incontrovertible legal position, it is not possible to countenance the contentions raised on behalf of the Petitioner ignoring the effect of deemed service of the Order in R.C.No.1083/IE-2/2015 dated 16.04.2015 passed by the Second Respondent for cancellation of the allotment and the Order in No.488/C/2011 dated 27.04.2015 passed by the Third Respondent in prescribed Form-A in terms of Rule 3 of the TNPP Rules. Inasmuch as the said orders have not been challenged by the Petitioner in the manner recognized by law, they have attained finality and have become enforceable entitling the Second and Third Respondents to resume possession of the industrial plot in terms of those orders. As rightly contended by the Respondents, it would necessarily follow that the procedure followed for resuming possession of the industrial plot is proper and legal, and cannot be interfered for any reason whatsoever.



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7. Viewed from that perspective, there does not appear to be any infirmity in the impugned action of the Second and Third Respondents in resuming possession of the industrial plot from the Petitioner following the prescribed procedure. Consequently, the relief claimed to restrain the Second and Third Respondents from re-allotting that industrial plot to any entrepreneur or third party cannot at all be granted. However, it is made clear that the Petitioner is not precluded from claiming the refund of plot cost to the eligible extent in accordance with law.

In the result, the Writ Petition, which is devoid of merits, is dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

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Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 24.05.2024.

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To

1. The Secretary to Government
Industries Department
Fort St. George, Chennai – 600009.
2. The Managing Director
Small Industries Development Corporation Ltd. Guindy
Chennai – 600032.



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P.D. AUDIKESAVALU, J.

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