



W.P(MD)No.3035 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.04.2024

Delivered on : 11.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.3035 of 2021

and

W.M.P(MD)No.2426 of 2021

M/s.Cardamom Products (P) Ltd.,
Rep.by its Managing Director,
Mithun Chakravarthy, No.1/294, Y.Pudupatti,
Arumbanur Post, Madurai District.

: Petitioner

Vs.

1.The Union of India,
Rep.by its Secretary,
Ministry of Commerce and Industry,
New Delhi.

2.The Director,
Spices Board, Sugantha Bhavan,
N.H. By Pass, P.B.No.2277,
Palarivattom P.O., Cochin – 682 025.
Kerala.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, to call for the



W.P(MD)No.3035 of 2021

entire records pertaining to the impugned order passed by the second respondent in No.KMT/SP/SVG/LOP/SCN/01/2020-21, dated 11.01.2021, quash the same and consequently, direct the second respondent to return the entire amount of Rs. 20,10,000/- (Rs.19,10,000/-) and Rs.1,00,000/- registration charges) paid by the petitioner together with interest in lieu of cancellation of allotment/registration of plots Nos.33, 34, 35 and 36 at Spices Park, Sivagangai District.

For Petitioner : Mr.Niranjan S. Kumar.

For Respondents : Mr.S.Jeya Singh,
Senior Panel Counsel, for R1.

: Mr.R.Murali,
for Mr.K.Govindarajan, for R2.

ORDER

This Writ Petition is directed against the order, dated 11.01.2021 passed by the second respondent in No. KMT/SP/SVG/LOP/SCN/01/2020-21 and for direction to the second respondent to return the entire amount of Rs.20,10,000/- paid by the petitioner together with interest in lieu of cancellation of allotment/registration of plots Nos.33, 34, 35 and 36 at Spices Park, Sivagangai District.



W.P(MD)No.3035 of 2021

WEB COPY

2. The Spices Board, constituted under the Spices Board Act, 1986 is a statutory Commodity Board functioning under the Ministry of Commerce and Industry. It is an autonomous body responsible for the export promotion of 52 scheduled spices and development of Cardamom (small and large). The Board is an international link between the Indian exporters and the importers abroad and is an exclusive board to promote, monitor and to develop the production of spices in India and to facilitate the import activities to abroad.

3. It is not in dispute that as requested by the board, the Tamil Nadu Government has allotted an extent of 75 acres of land in Kottagudi Village in Sivagangai District for establishing Spices Park and out of total extent of 75 acres of land, 25 acres of land were utilized by the Board for constructing common infrastructure facilities including road, drains and uninterrupted power and water supply, canteen etc., and the remaining land was demarcated into plots for leasing out to exporters of spices for establishing their own spice processing units in the park and that the Board had invited Expression of Interest (EoI) from prospective investors for establishing Spice processing units in the Spices Park.



W.P(MD)No.3035 of 2021

WEB COPY

4. The factual aspects not in dispute are :

- (i) - The petitioner company sent EOI to the second respondent in respect of three plots in Plot Nos.33, 34 and 35.
- (ii) 14.03.2012 Allotment order was given by the second respondent, allotting the Plot Nos.33, 34 and 35 to the petitioner demanding payment of Rs.13,43,000/- to be payable on or before 18.04.2012.
- (iii) 04.06.2012 The petitioner company requested extension of time for payment. The second respondent has extended the time for making payments by three months.
- (iv) 16.08.2012 Entire payment was made by the petitioner company.
- (v) 06.10.2013 Spices Park at Sivagangai was inaugurated.
- (vi) - The petitioner company has requested to allot one more plot No.36.
- (vii) 16.09.2013 Expression of interest was given by the petitioner for Plot No.36 along with payment of Rs.5,00,000/- and Rs.1,000/-
- (viii) 23.09.2013 The second respondent directed the petitioner company to pay a sum of Rs.70,140/- being the balance amount to process the allotment of Plot No.36.



W.P(MD)No.3035 of 2021

(ix) 01.10.2013 Payment of Rs.70,140/- as demanded by the second respondent was paid.

(x) 20.05.2014 Unregistered lease deed executed by the second respondent in favour of the petitioner.

(xi) 24.05.2014 Communication sent by the petitioner, after signing the unregistered lease deed and returning the same to the second respondent.

(xii) 28.06.2014 Communication sent by the second respondent in respect of registration of lease deed.

(xiii) 19.11.2014 Lease deed was registered in Document No.4948/2014.

(xiv) 11.04.2015 Invitation sent by the petitioner to the second respondent for Boomi Pooja scheduled on 23.04.2015 and requesting them to provide water facility for construction.

(xv) 04.06.2015 No objection certificate issued by the Fire and Safety Department, Sivagangai.

(xvi) 12.02.2020 Communication sent by the second respondent stating that the DTCP approval was granted on 19.07.2019.



W.P(MD)No.3035 of 2021

WEB COPY

(xvii) 08.07.2020 Show cause notice issued by the second respondent to the petitioner as to why the agreement should not be terminated for breach of contract and failure to perform the conditions of allotment.

(xviii) 19.07.2020 Explanation submitted by the petitioner.

(xix) 11.01.2021 Impugned order passed by the second respondent.

5. The learned counsel for the petitioner would contend that the second respondent alone has failed to perform their contractual obligations with the petitioner and failed to hand over the approved plots to the petitioner to start their business; that the second respondent had handed over the unapproved plots to the petitioner without obtaining any regularization or approval from the concerned village panchayat; that though the second respondent received the entire money from the petitioner between 2012 – 2014, they have entered into the lease deed with the petitioner on 19.11.2014 and the possession was handed over during 2015 as agricultural land; that since the second respondent had handed over the unapproved agricultural land to the petitioner, he could not commence his industrial activities; that the second respondent got DTCP approval for the layout only in the year 2019, which clearly shows that the respondent on one hand had caused delay in commencing the Spices Park from



W.P(MD)No.3035 of 2021

the year 2012 to 2019, but on the other hand, he issued show cause notice as if the petitioner caused delay in commencing the project work.

6. The learned counsel for the petitioner would further submit that the second respondent had given 100% refund to some companies, those who had paid the amount, but not entered into the lease deed; that the respondent through the impugned order informed the petitioner that they could refund only 50% of the amount; that the second respondent offered to give 100% refund to the exporters those who were allotted sites and paid the amount to the second respondent, but not got the lease deed registered; that the second respondent refused to give 100% refund to the petitioner, though the petitioner duly abided the instructions given by the second respondent and got the lease deed registered within short time; that even after completion of registration of lease deed, the second respondent had not obtained approval from the local panchayat and thereby prevented the petitioner from commencing the construction and that therefore, the petitioner was constrained to approach this Court.



W.P(MD)No.3035 of 2021

7. The learned counsel appearing for the second respondent would contend that even though there was a delay in signing the Lease Agreement for Plot Nos.33 to 36, the same was signed by the parties on 20.05.2014; that the Lease Agreement which was effective from 20.05.2014 was registered before the Registrar of Sivagangai in December 2014; that as per lease deed, the lease was valid for 30 years and the lease rent was payable; that the lessee shall start work for construction of structure/industry within six months from the date of agreement and complete the same within two years from the date of allotment failing which lessor has right to enhance the lease rent or impose penalty or cancel the allotment of the land; that the lessee was duty bound to start construction of processing unit within six months from 20.05.2014 and to start production within two years from the date of allotment of the plot; that the abnormal delay on the part of the petitioner for commencing the construction of unit and starting production cannot be justified on any grounds as it was lessee's responsibility to start production within two years from the date of allotment of the plots; that though the sanction was given on 19.07.2019, the lessee has not started the construction of the unit; that the petitioner even after receiving necessary sanction from the authorities has not started the



W.P(MD)No.3035 of 2021

construction of the unit; that the Board had conducted a stakeholder meeting on 28.08.2019 to initiate action to commence the construction of processing unit at the earliest; that the second respondent has sent a letter, dated 12.02.2020 requesting the allottees to initiate establishment of Spice Processing Unit and that since the petitioner company has not started construction, the Board was constrained to issue a show cause notice, dated 08.07.2020 to all the allottees including the petitioner and thereby directed M/s.Cardamom Products (P) Ltd., to show cause why the Lease Agreement, dated 20.05.2014 should not be terminated for breach of contract and failure to perform the conditions of allotment; that the Board pursuant to the reply to the show cause notice, instead of terminating the agreement and taking possession of the land, has actually made an offer dated 11.01.2021 that if they surrender the plots, they are eligible to get refund of 50 % of developmental charges, but the petitioner is now demanding the entire amount deposited by him to be refunded and that therefore, the petitioner is not entitled to get the any of the relief claimed.

8. The chronological events above referred would go to show that though the four plots were allotted to the petitioner as early as in 2012, they were not in a position to commence the constructions and start their processing unit till 2021



W.P(MD)No.3035 of 2021

and that the petitioner and the second respondent are blaming each other for the same. Since the petitioner has not commenced the constructions and not started the processing unit, the second respondent has issued show cause notice, dated 08.07.2020 to show cause as to why the agreement entered between the parties should not be terminated for breach of contract and failure to perform the allotment conditions.

9. The petitioner has sent a reply, dated 19.07.2020 stating that they could not start production due to non-coordination between various Government organizations; that no one was given approval and as such, they could not commence business and that since they have performed all the obligations on their side as per the contract, they cannot proceed further due to the failure of the second respondent and the Tamil Nadu Government and that therefore, the entire amount paid by the petitioner has to be refunded.

10. After the receipt of the said explanation, dated 19.07.2020, the third respondent has passed the impugned order, dated 11.01.2021, accepting the proposal of the petitioner to surrender the four plots and to get refund of 50% of the developmental charges, after deducting applicable GST and fees required for



W.P(MD)No.3035 of 2021

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cancellation of registered lease deed. Against the said order, the present Writ Petition came to be filed. At the time of arguments, considering the submissions made by the learned counsel for the petitioner, this Court has raised a question to the counsel appearing for the second respondent as to whether any of the exporter has completed their constructions and started their processing unit till the filing of the writ petition or subsequently.

11. The learned counsel for the second respondent would fairly concede that no exporter has commenced their processing unit till now.

12. It is very shocking and surprising to notice that the second respondent being a statutory body, which began to call for expression of interest in 2012, has failed to fulfil their project of establishing a Spice Park at Sivagangai, even after the lapse of more than 10 years.

13. As already pointed out, it is not in dispute that the lease deed came to be registered on 19.11.2014 and after repeated request, DTCP approval was obtained only on 19.07.2019. Though the petitioner has alleged that the second respondent without obtaining any approval has constructed common



W.P(MD)No.3035 of 2021

infrastructure building and installed machinery, transformer and other utilities, the same was not at all denied or disputed by the second respondent.

14. As rightly contended by the learned counsel for the petitioner, at every stage due to the failure of the second respondent to comply with the mandatory requirements, they were not in a position to commence their constructions/processing unit at an earlier date. Now the only point to be decided is whether the petitioner is entitled to get refund of the entire amount deposited by them or 50% as stated by the second respondent.

15. The learned counsel for the petitioner would mainly contend that the second respondent has already refunded the entire amount to some of the exporters, who had failed to register the lease deed and when a similar request for refund was made, they have taken a stand that they could refund only 50% of the amount.

16. It is pertinent to note that the second respondent has not specifically disputed the factum that the entire amount was refunded to some of the exporters, whose lease deed were not at all registered. As rightly contended by



W.P(MD)No.3035 of 2021

the learned counsel for the petitioner, since the petitioner has complied with the directions of the second respondent Board by registering the lease deed as suggested by them, they were denied the entire refund, but those exporters who had not complied with the directions of the second respondent and refused to register the lease deed, were given refund of the entire amount and as such, the second respondent has not offered any acceptable reason or ground for making such a distinction between the two groups.

17. As already pointed out, since the second respondent is at fault, they cannot retain 50% of the amount deposited by the exporters and as such, the impugned order which is not in accordance with law, is liable to be set aside.

18. The learned counsel for the second respondent would submit that since the present matter deals with the contractual disputes, the very filing of the writ petition is not maintainable.

19. To counter the said arguments, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of ***Karnataka Power Corporation Limited Vs. Emta Coal Limited and another***



W.P(MD)No.3035 of 2021

reported in ***AIR 2022 Supreme Court 2478*** and the relevant passage is extracted

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hereunder :

“12. It is worth noting that this Court has already held that in matters pertaining to a state instrumentality, a writ may be maintainable in matters concerning contractual disputes in certain circumstances. While there is no bar on the maintainability of such writ petitions, the discretion lies with the High Courts as to whether to exercise the said jurisdiction or not. This Court has elaborately discussed the principles that must guide the High Courts while deciding whether to exercise their writ jurisdiction in contractual disputes between a State and a private party in a catena of judgments.”

20. Considering the above, this Court has no hesitation to hold that the writ petition is perfectly maintainable and hence, the writ petitioner is entitled to get the relief claimed.

21. In the result, the Writ Petition is allowed and the impugned order, dated 11.01.2021 is quashed and the second respondent is directed to refund the amount deposited by the petitioner, after deducting the applicable GST and fees



W.P(MD)No.3035 of 2021

required for cancellation of registered lease deed. Consequently, connected
Miscellaneous Petition is closed. No costs.

11.06.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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To

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W.P(MD)No.3035 of 2021

K.MURALI SHANKAR, J.

DAS

Pre-delivery order made in
W.P(MD)No.3035 of 2021
and
W.M.P(MD)No.2426 of 2021

Dated : 11.06.2024