BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	12.07.2024
Pronounced on	24.09.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.(MD)Nos.15950 of 2017 and 125 of 2018
and
W.M.P.(MD)Nos.11309, 12599 of 2017 and 137 of 2018

Lamax Rubber Industry Private Limited,
Represented by its Director
Mr.Alok Rathi ... Petitioner in both W.Ps

Vs.

1.The Tamil Nadu Small Industries Development Corporation Limited (SIDCO),
Represented by its Chairman & Managing Director,
Industrial Estate,
Guindy, Chennai – 600 032.

2.The Tamil Nadu Small Industries Development Corporation Limited (SIDCO),
Represented by its Branch Manager,
SIDCO Industrial Estate,
K.Pudur, Madurai – 625 007. ... Respondents in both W.Ps

Prayer in W.P.(MD)No.15950 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in RC.No.841/A3/2013 dated

14.07.2017 and to quash the same and to further direct the second respondent herein to issue regular Sale Certificate Deed to the petitioner in respect of Plot No.A1 in Developed Plots Estate at Kappalur in Survey Nos.615, 616 and 652 within the Village limits of Nilayur in the Taluk of Madurai South within the Sub Registration District of Tiruparamkundram and Registration District of Madurai.

Prayer in W.P.(MD)No.125 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the first respondent dated 12.12.2017 made in RC.No. 7635/IE-5/2013 and to quash the same.

For Petitioner (In both W.Ps)	:	Mr.B.Ravi Raja
For Respondents (In both W.Ps)	:	Mr.Veerakathiravan Additional Advocate General-III Assisted by Mr.T.Sakthikumaran

COMMON ORDER

By this common order, both these Writ Petitions are being disposed of.

2. W.P.(MD) No.15950 of 2017 and W.P.(MD) No.125 of 2018 have been filed by the same petitioner for the following relief:-

W.P.(MD) No.15950 of 2017	W.P.(MD) No.125 of 2018
For issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned order dated 14.07.2017 bearing reference RC.No.841/A3/2013 passed by the second respondent * and quash the same and to further direct the second respondent herein to issue regular sale certificate deed to the petitioner in respect of Plot No.A1 in Developed Plots Estate at Kappalur in Survey Nos.615, 616 and 652 within the Village limits of Nilayur in the Taluk of Madurai South within the Sub Registration District of Tiruparamkundram and Registration District of Madurai.	For issuance of a Writ of Certiorari to call for the records relating to the impugned order dated 12.12.2017 bearing reference RC No.7635/IE-5/2013 passed by the first respondent # and quash the same.

*Branch Manager of TN SIDCO

#Managing Director of TN SIDCO

3. The impugned order dated 14.07.2017 bearing reference RC.No. 841/A3/2013 impugned in W.P.(MD) No.15950 of 2017 is titled as a Show Cause Notice. The impugned order dated 12.12.2017 bearing reference RC No. 7635/IE-5/2013 impugned in W.P.(MD) No.125 of 2018 is the culminating Order in the said Show Cause Notice impunged in W.P.(MD) No.15950 of 2017.

4. Operative portion of the impugned order dated 14.07.2017 bearing reference RC.No.841/A3/2013 and impugned order dated 12.12.2017 bearing reference RC No.7635/IE-5/2013 reads as under:-

W.P.(MD) No.15950 of 2017	W.P.(MD) No.125 of 2018

The Plot No.A1, measuring 10.660 acres at SIDCO Industriai Esiate Kappalur Madurai was allotted to M/s.Lamax Rubber Industries Pvt Ltd as a private limited concern for the line of manufacture of 'Rubber Components. The plot cost was Rs. 106600/ for 10.76 acres @rs.10000/- per acres. After collecting the plot cost, the Plot was handed over to you on 25.10.1976. As per Assignment deed condition No.4 the plot for the construction of the buildings and erection of machinery and equipment for the manufacture of "Rubber Components" .But you had defaulted from the condition No:4 The Assignment deed condition No. 17, the Assignee shall after taking possession of the plot, commence the construction of factory buildings at least with six months and complete it within two years. But so far you have not constructed the factory buildings and not utilized the plot. As per Assignment deed Condition No.17(vi) the total buit up area in the plot shall not be more than 2/3 of the area of the plot or such lesser area as may be required under the regulations applicable to the particular industry. As per Assignment deed condition No.13, the plot should be utlized only for the industrial purpose for which the plot was allotted. As the plot with vast area of land is misused for non-industrial purpose, show cause notice was issued to the allottee.A copy of show cause notice issued and the	The Developed plot bearing No.A-1 with an extent of 10.66 acres in the Industrial Estate at Kappalur was allotted to you vide reference 1" cited for the manufacture of Rubber Components. An Assignment Deed was executed and registered on 14.03.1977 and handed over to you on 25.10.1976. Subsequently an additional land extent of 0.03 acre adjoining the DP No.A-1 was also allotted to you vide reference 2nd cited and possession of it was taken by you on 01.03.1978. But, the major portion about 9.50 acre extent of Developed plot No.A-1 has been kept unutilized. The Developed plot No.A-1 allotted has not been put into use by you as per the terms & conditions of allotment order dated: 17.09.1976 and Assignment Deed dated: 14.03.1977. Thus you have violated the terms & conditions of the Allotment order and clause Nos. 13 & 17 of the Assignment Deed. The show cause notices in the reference 3d, 5h, 7h & 9h cited have been issued to you and the replies sent by you vide reference 4, 6 and 8 cited are not satisfactory and not Convincing. Hence as per clause No.9 and 11 of the Assignment Deed dated: 14.03.1977, we hereby terminate the Assignment forthwith in respect of the DP No.A-1 and as per the condition No.9 of the

5. The brief case of the petitioner is that the petitioner, an industrial unit was assigned land measuring an extent of 10.66 Acres in the Developed Plots Estate at Kappalur, Madurai District for setting up the factory for manufacture of rubber components. The allotment of the aforesaid land was subject to conditions of Allotment of Developed Plots by Tamil Nadu Small Industries Development Corporation Limited (SIDCO).

6. In terms of the Allotment Order dated **17.09.1976** bearing reference Lr.No.34637/N3/76, the cost of the plot was Rs.10,000/- per Acre only. A sum of Rs.26,650/- being 25% of the cost of the Plot No.1 less Rs.5,500/- already paid as advance amount along with application was to be paid within a period of 30 days from the date of receipt of the aforesaid Allotment Order.

7. The petitioner not only paid initial amount but also paid the balance over a period of time. There is no dispute on the same. Pursuant to the aforesaid Allotment Order dated **17.09.1976** bearing reference **Lr.No.34637/N3/76**, a Deed of Assignment dated 04.03.1977 was executed by the respondent SIDCO represented by its Branch Manager in favour of the petitioner. The terms and

conditions of Allotment have been incorporated in the aforesaid Deed of Assignment dated 04.03.1977.

8. The petitioner appears to have utilized only a portion of the land that was allotted to the petitioner pursuant to the aforesaid Allotment Order dated 17.09.1976 and the Deed of Assignment dated 04.04.1977 registered as **Document No.839/1997** on **04.04.1977**.

9. Under these circumstances, the second respondent issued Letter dated 18.04.2013 to the petitioner in the form of Show Cause Notice to show cause as to why the land that was allotted to the petitioner that was leased out to a third party namely M/s.Susee Automobiles should not be cancelled. In that letter, it was also highlighted that no industrial activities have been carried out by the petitioner in the industrial plot and that the petitioner was in arrears of **Rs. 4,71,884/-** under the following heads:-

1. Annual M.C. Upto 2011-12	Rs. 57,690.00
2. Integrated in fracture development contribution	Rs.2,98,037.00
3. Addl. Central Asst. Scheme	Rs. 99,353.00
4. Sujalthara Contribution	Rs. 9,674.00

	Rs.4,64,754.00

Service Tax @ 12.36 on Sl.No.1	Rs. 7,130.00

Total	Rs.4,71,884.00
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10. The petitioner replied to the same stating that the land in question was indeed being utilized only for "industrial purpose" and an Industrial Licence with 129 HP Machinery and 50 Labours was certified by the Deputy Chief Inspector of Factories, Madurai which was self explanatory and therefore was being enclosed.

11. This was followed by another notice dated **13.06.2013** and finally Show Cause Notice dated **23.03.2015**. In the said Show Cause Notice dated **23.03.2015**, a reference was made to **Condition No.17** to the **Assignment Deed** dated **14.03.1977**, as per which, an assignee shall take over the possession of the plot, commence construction of factory buildings at least within 6 months and complete it within 2 years. It was stated that, the petitioner had neither constructed the factory nor utilized the plot for Industrial purposes. That apart,

a reference was also made to Condition No.13, as per which, the plot should be utilized only for industrial purpose for which it was allotted.

12. It was stated that the petitioner has leased out the land to the third party namely, M/s.Susee Auto Pvt. Ltd., an automobile dealer cum service provider and a major portion of the plot has been used for parking of new vehicles with a small workshop which is a non-industrial activity and since the major portion of the plot was being kept unutilized, the petitioner had violated the Condition No.17 of the Assignment Deed dated 04.04.1977.

13. The petitioner once against replied to the same on **15.04.2015**, wherein, it was stated as follows:-

> "The total plot allotted to us was 10.660+0.03 acres. We had constructed a big industrial shed, godown, boiler shed overhead tank for water, toilet block, metering room etc., in 1977-78 itself. We started commercial production after purchase of machinery etc., in 1978. We got registered with Department of Industries and Commerce in 1977 and got a permanent SSI Certificate in May, 1978.
>
> We had started production of Rubber components in accordance with the allotment letter. The production of Rubber components went on from 1978 to 1990 continuously. In evidence of the production and supply, we

enclose herewith Sales tax Assessment Orders for the period 1984-85 to 1988-89.

To our misfortune, there was power shortage and the Unit had to remain dormant. In the endeavour to restart the production, we purchased a diesel generator by taking a loan.

You may observe that the Industrial Unit has got 3-phase industrial connection of 70KW and the Deputy Inspector of Factories approved up to 129 HP and 50 labourers for employment. We have, in fact, communicated to you about the receipt of such approval on 19.6.2013.

We incurred huge losses for various reasons like high cost raw material, low production, shortage of labour, heavy financial costs etc., we have been attempting to revive the unit to its full capacity and we hope to achieve the desired result.

We intend expanding the Unit once we overcome the temporary difficulties.

We request you to grant some time to put up constructions, as we are hopeful of a bright future in the days to come. We are pooling funds for revival of the Unit.

Please find enclosed herewith the following documents in support of the above.

a) Copy of the Sales tax Assessment order for 1984-85 to 1988-89
b) Copy of letter received from TIIC
c) Copy of the factory licence issued by the Deputy Chief Inspector of Factories.

In view of the above, you are requested not to take any precipitative action. An opportunity of personal hearing may kindly be granted."

Thus, the petitioner itself wants time to put up constructions and hopeful of a bright future in the days to come and was pooling funds for revival of the Unit.

14. The petitioner was thereafter issued with another notice dated **30.09.2015**, wherein, it was stated that the reply of the petitioner was not convincing and the petitioner has not given any evidence for commencement of production like SSI Certificate, EB Card etc. Hence, the petitioner was once again called for to show cause as to why the Assignment Deed should not be cancelled within 10 days from the date of receipt of the said notice. The petitioner appears to have replied back on 12.10.2015, wherein, the petitioner has stated as follows:-

> "In our earlier letters we have mentioned that
>
> 1. We have built an Industrial shed in 1977-78 itself.
> 2. We got power connection and regular production was there from 1978 itself.
> 3. We have submitted the sales Tax assessment order up to 1990
> 4. Copy of TIIC letter for the purchase of Generator
>
> After seeing all the above documents you have asked us to submit SSI Certificate and Electricity Bill payment details.

Hereby we are submitting the copy of

1. SSI Permanent Certificate issued by Department of Industries & Commerce dt:19.05.1978 which shows that regular production was there from 1977-1978.
2. Electricity bill Receipt copies dated 12.01.1990 and 28.12.1989.

In view of the above it is clear that commercial production was started in 1977-78 itself.

As we explained in our earlier letters we are planning for further expansion and necessary funds are being arranged."

15. The petitioner was thereafter issued with another Show Cause Notice dated **18.05.2017**, to which, the petitioner has replied on **27.05.201**7. Again, the petitioner was issued with the another Show Cause Notice dated **14.07.2017** [impugned in W.P.(MD) No.15950 of 2017], to which also, the petitioner has replied on 21.07.2017.

16. In the reply mentioned above, the petitioner has enclosed the following documents:-

i. Cover with 4 Nos. of Photographs showing that buildings were constructed in 1977 itself.
ii. List of machineries purchased in 1977.
iii. Copy of Permanent SSI Certification dated 19.05.1978 got from the Department of Industries and Commerce which clearly indicates that regular production was started in 1977-1978.

iv. Copy of letter from Rubber Board dated 13.02.1997 to show the details of Rubber purchased from 1981 to 1997.
v. Copy of the receipt for payment dated 21.12.1989 from Tamilnadu Electricity Board to show that there was regular production of Rubber components.
vi. Copy of the letter from the Department of Commercial Taxes dated 21.01.1997 indicating that there was regular sales of Rubber components from 1978 to 1987.
vii. Copy of the letter from Tamil Nadu Industrial Investment Corporation Madurai to show that the unit purchased Generator and it was used till 1997.
viii. Copy of the Sales Tax Assessment Orders dated 31.01.1986. 30.01.1987, 15.02.1988, 24.11.1998, 22.02.1990 to show that there was regular sales of Rubber Components from 1978 to 1990.
ix. Latest Udyog Aadhar Certificate No.TN12A0016582 dated 12.02.2017.

17. After **W.P.(MD) No.15950 of 2017** was filed during the month of August, 2017 challenging the impugned **Show Cause Notice** dated **14.07.2017**, the first respondent Managing Director of TN SIDCO has passed the **impugned order** dated **12.12.2017**, against which, **W.P.(MD) No.125 of 2018** has been filed.

18. It is submitted that in the digital world today, many facets of industrialization are changing and consequently processes, in vogue 40 years back cannot be insisted to be undertaken permanently as this would be violative of the Transfer of Property Act and against the Rule of Perpetuity. It is

submitted that if there is a restriction in the document which is repugnant to the interest created it amounts to conditional transfer by Section 25 of the Transfer of Property Act.

19. It is further submitted that rules of natural justice cannot be bypassed or side lined especially when an issue touching upon powers of alienation etc. was adjudicated in **O.S.No.488 of 1983** vide judgment and decree dated **31.07.1986** by the **II Additional Sub Court, Madurai** which also amounts to *res judicata* and *estoppel*.

20. It is submitted that the petitioner must be given a fair and adequate hearing with regard to the public policy under Section 23 of the Indian Contract Act.

21. It is further submitted that when the Union of India has granted infrastructure status to the logistics sector and the same has been notified in the Harmonised Master List of Infrastructures, it does not render the respondents' view such an industry as though violative of the conditions imposed at the time of initial allotment.

22. It is further submitted that the 1st respondent Managing Director of TN SIDCO has not adverted to the Writ Petition in **W.P.(MD) No.15950 of 2017** pending before this Court and has passed the **impugned order** dated **12.12.2017**, thus making the proceedings a colourable exercise of power.

23. It is submitted that the impugned order intimating as though the Developed Plot A1 had not been put to use is false. It is submitted that the purported impugned order threatening action under the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 to resume the plot is also a mere eyewash.

24. In support of this case, the learned counsel for the petitioner has placed reliance on the following decisions of this Court:-

i. **P.Mahalingam** Vs. **The Registrar of Documents,** 2008 (4) CTC 1 661.
ii. **Regi Varghese** Vs. **Tamil Nadu Small Industries Development Corporation Ltd.,** in W.P.No.27946 of 2015.
iii. **Muktha Dye Chem** Vs. **Tamil Nadu Small Industries Development Corporation Ltd.,** in W.P.No.26556 of 2015.
iv. **Lalitha Devi** Vs. **The Managing Director** in W.P.No.11841 of 2015.

v. **Sreyes Syntas (P) Ltd.,** Vs. **The Government of Tamil Nadu** in W.P.No.14290 of 2016.

vi. **Royal Emelsifiers** Vs. **The Government of Tamil Nadu** in W.P.No.26681 of 2016.

vii. **Kaay Yes Vi Plastics** Vs. **The Secretary in W.P.No.24616 of 2016.**

viii. **Sree Senbagham Spintex** Vs. **The Managing Director in W.P.No.15545.**

ix. Adhi Parasakthi Fashions Vs. **The Government of Tamil Nadu in W.P.No.23083 of 2018.**

x. Eshwari Petro Tech Products (P) Ltd. Vs. **The Secretary to Government, Micro Small and Medium Enterprises Department and others, dated 02.12.2020 in W.P.Nos. 29548 and 31551 of 2019.**

25. The learned counsel for the petitioner has also placed reliance on G.O.(MS) No.21 dated 29.03.2016 issued by the Micro, Small and Medium Enterprises Department.

26. The petitioner has also enclosed a copies of photographs to show that the land in question was used for industrial purpose.

27. It is submitted that despite W.P.(MD) No15950 of 2017 being admitted on 24.08.2017, the impugned order dated 12.12.2017 has been passed

[impugned in W.P.(MD) No.125 of 2018]

28. Although two typed set of papers have been filed by the respondent with the docket of counter affidavit, there is no copy of the counter affidavit. In support of the case, the respondents have however placed reliance on the following decisions:-

i. **Dalip Singh and others** Vs. **State of Haryana and others**, (2019) 11 SCC 422.

ii. **Indu Kakkar** Vs. **Haryana State Industrial Development Corporation Ltd. and another**, (1999) 2 SCC 37.

iii. **Aman Semi-Conductors (Pvt.) Ltd.** Vs. **Haryana State Industrial Development Corporation Ltd. and another**, 2023 SCC OnLine SC 195.

iv. **Rajasthan State Industrial Development and Investment Corporation and another** Vs. **Diamond & Gem Development Corporation Limited and another**, (2013) 5 SCC 470.

29. I have considered the arguments of the learned counsel for the petitioner and the learned counsel for the respondent.

30. The issue that arises for consideration in these Writ Petition is whether the 2nd respondent Branch Manager was justified in issuing the

impugned Show Cause Notice [**W.P.(MD) No.15950 of 2017**] and whether during the pendency of the aforesaid Writ Petition, the respondents were justified in passing the impugned order dated **12.12.2017** [**W.P.(MD) No.125 of 2018**].

31. In all the cases relied upon by the petitioner there was no violation of condition of assignment and cancellation of allotment except in the case of **Lalitha Devi Vs. The Managing Director** in **W.P.No.11841 of 2015**.

32. Condition No.13 and Condition No.17 to the **Assignment Deed** dated **14.03.1977** reads as under:-

Condition No.13	Condition No.17
(13) The Assignee shall utilize the Plot solely for the bonafide industrial purpose for which it is intended and allotted, and the Assignee shall not use the land allotted for any other purpose.	(17) The Assignee shall, after taking possession of the Plot, commence construction of factory buildings at least within six months and complete it within two years.

33. In **M/s.Muktha Dye Chem** Case relied upon by the petitioner, a registered partnership Firm, had approached this Court by filing **W.P.No.26556 of 2015** and vide Order dated **04.01.2016**, this Court has disposed of the writ

petition directing the Secretary, Department of Micro and Macro Industries, Govt of TN to pass appropriate orders with regard to the ratification of allotment. In compliance of the order the Secretary, Department of Micro and Macro Industries has passed **G.O.Ms.No.21, Micro, Small and Medium Enterprises (C) Department,** dated **29.03.2016**, stating that the allotment made in the Government Industrial Estates by the Tamil Nadu Small Industries Development Corporation Limited, exceeding 5000 sq. ft. need not get prior approval from the Government.

34. Relevant portion of the **G.O.Ms.No.21, Micro, Small and Medium Enterprises (C) Department, dated 29.03.2016** reads as under:-

> "1.In the G.O first read above the Government have issued orders that the power of attorney has been granted to SIDCO for allotment of plots / sheds in the Government Industrial Estates. However, powers relating to the following matters vest with the Government.
>
> 1) To allot and sell sheds above an extent of 5000 sq.ft.,
> 2) To sell the sheds on hire purchase basis.
> 3) To fix the rent for the sheds etc.,
>
> 2. In his letter second read above, The Chairman and Managing Director, SIDCO has sent proposal to Government for ratification of 470 Industrial Plots/ Industrial Sheds made with the prior approval of Government. **<u>Due to non- utilization of land by the Industrial units after placing the subject before the 241st Board meeting of SIDCO held on 29.03.2010, which</u>**

has resolved to authorize the CMD, SIDCO to send proposals to Government for ratification and to grant extension of time to the allottees who are yet to utilize the plots. The 261st Board meeting of SIDCO held on 13.08.2013, which has resolved to authorize the Managing Director, SIDCO to reiterate to Issue orders in the above matter.

3. The Chairman and Managing Director, Tamil Nadu Small Industries Development Corporation Limited has requested to ratify 403 cases of allotment made in the regular areas exceeding 5000 sq.ft., (299 Industrial Plots and 104 Industrial sheds) and allotment of 67 cases made in open space reservation and common purpose areas.

4. In the Hon'ble High Court orders 3 to 7 read above the following Individuals as filed separate writ petition's before the Hon'ble Court with a prayer to issue sale deed and the Hon'ble Court has passed its final orders as detailed below:-
….

6. **In order to comply with the above orders of the Hon'ble Court and In order to avoid contempt proceedings in the above Writ Petitions, the Government have decided to ratify the action for allotment made in the following Industrial developed Plots/ Sheds by the Chairman and Managing Director, Tamil Nadu Small Industries Development Corporation Limited in Government Industrial Estates, exceeding 5000 sq.ft., without getting the prior approval of the Government, as per the orders issued in G.O (MS) No. 877 Industries dated 1.7.82** and order accordingly."

35. In **Eshwari Petro Tech Products (P) Ltd.** Vs. **The Secretary to Government, Micro Small and Medium Enterprises Department and others**, relied upon by the petitioner, this Court vide Order dated 02.12.2020, had disposed of the writ petition with the following observations:

"5.The 2nd and 3rd respondents have filed counter affidavits and the specific stand taken by the respondent Corporation is that since the extent of the property exceeds 5,000 sq.ft., the same has to be ratified by the Government and only thereafter, the sale deed can be executed in favour of the petitioners. The learned standing counsel appearing on behalf of respondent Corporation submitted that the ratification is still pending with the Government.

6.The learned counsel appearing for the Petitioners brought to the notice of this Court the orders passed by this Court in W.P.No.24616 of 2016 dated 01.08.2016. For proper appreciation, the relevant portions in the order are extracted hereunder:-

> "2. The petitioner has filed this Writ Petition, praying for issuance of a writ of mandamus to direct the respondents to register the sale deed in favour of the petitioner, as per the allotment order.
>
> 3. It is pointed out by the learned counsel appearing for the petitioner that, under identical circumstances, this Court has passed orders in W.P.No.26556 of 2015, dated 04.01.2016, in the case of M/s.Muktha Dye Chem Vs. Tamil Nadu Small Industries Development Corporation and others), and the operative portion of the order is quoted herein below:-
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>> "2. When the matter is taken up for hearing, learned counsel appearing for respondents 1 and 2 submitted that the issue of ratification is pending consideration with the 3rd respondent as seen from the Letter in Rc.No. 4385/IE5/2010 dated 28.01.2015 and both the counsel produced a copy of the order passed by this Court dated 08.12.2015 in W.P. No. 27946 of 2015 (Reji Varghese V. Tamil Nadu Small Industries Development Corporation Limited and another) wherein it has been held as follows:-
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>>> "3. It can be easily visualised that some of the allottees had already got their plot registered by the authorities and necessary sale deeds had also been released. With regard to 470 allottees, now

awaiting for the ratification to be done by the second respondent. There is no valid as well as legally sustainable reason for not granting the ratification as on date. There is also no impediment for the second respondent for ratifying the same, since the petitioner as well as the other allottees had already paid the enhanced plot value. For all these reasons, the second respondent is directed to pass necessary orders of ratification so as to register the sale deed as far as the petitioner is concerned within a period of four weeks from the date of receipt of a copy of this order. On such ratification, the first respondent is directed to register the sale deed and release the document if the petitioner complies other legal requirements towards registration of the sale deed. This writ petition is disposed of. No costs."

3.In such view of the matter, the writ petition is disposed of directing the 3rd respondent to pass appropriate orders with regard to ratification of allotments, as requested by the 1st respondent vide letter No.Rc.no. 4385/IE5/2010 dated 28.01.2015 within a period of eight weeks from the date of receipt of a copy of this order. Based on the decision to be taken by the 3rd respondent, respondents 1 and 2 will have to take action accordingly. No costs."

4.The learned counsel appearing for the respondents 2 and 3 submits that the above order and direction has been implemented, and the sale deed has been executed.

5. In the light of the above, the Writ Petition is disposed of, by directing the first respondent to pass appropriate orders with regard to ratification of allotments, as requested by the respondents 2 and 3 within a period of eight weeks from the date of receipt of a copy of this order, and based on such decision, the third respondent shall take further action for the purpose of execution of the sale deed, as has been done in the case of M/s.Muktha Dye Chem, the decision referred above. No costs. "

7.The learned counsel for the petitioners by specifically pointing out to the portions of the order extracted supra submitted that pursuant to the above orders, the Government has ratified through G.O.Ms.No.8, dated 01.02.2017. The learned counsel therefore submitted that the respondent Corporation need not wait for any further ratification and they can proceed to execute the sale deed in favour of the petitioners, since the petitioners have already paid the entire amount and the petitioners are already in possession and enjoyment of the property

8.The learned standing counsel appearing on behalf of the respondent Corporation in reply to the said submission stated that he is not very sure as to whether the Government order that was referred by the learned counsel for the petitioners, also covered the properties belonging to the petitioners. The learned counsel submitted that if it does not cover the properties belonging to the petitioners, necessary ratification has to come from the Government and only thereafter, the sale deeds can be executed in favour of the petitioners

9.Taking into consideration the facts and circumstances of the case and after carefully considering the submissions made on either side, this Court is inclined to dispose of both the Writ Petitions with the following directions:

(a) The petitioners are directed to make a fresh representations to the 2nd and 3rd respondents along with all the necessary documents and also a copy of this order. The petitioners shall mark a copy of the fresh representation to the 1st respondent.

(b) The 2nd and 3rd respondents are directed to immediately consider the representations made by the petitioners on 29.03.2016 and 21.03.2012 respectively and also make a specific reference to G.O.Ms.No.8 dated 01.12.2017. If the respondents identify that the property belonging to the petitioners has also been ratified in the Government Order, necessary steps shall be taken to execute the sale deeds in favour of the petitioners, after ensuring that the entire amount has been received from the petitioners. This process shall be completed within a period of six weeks from the date of receipt of a copy of this order and

(c) If the 2nd and the 3rd respondents find that the property belonging to the petitioners do not fall under G.O.Ms.No.8,

> dated 01.12.2017, they shall immediately take steps to get the ratification from the 1st respondent. In such an event, the 1st respondent is directed to pass necessary orders of ratification within a period of eights weeks from the date of receipt of a copy of this order. On receipt of the ratification order from the 1st respondent, the 2nd and 3rd respondents shall thereafter execute the sale deeds in favour of the petitioners within a period of four weeks thereafter. No costs."

Thus, there is no positive direction.

36. In **Indu Kakkar** Vs. **Haryana State Industrial Development Corpn. Ltd.,** (1999) 2 SCC 37, relied upon by the respondent, the Hon'ble Supreme Court held that the condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. There a request was made by the allottee to give him an industrial plot for the purpose of setting up an industry. The assurance given by the allottee that he shall start construction of the building for setting up the industry within a period of six months and complete the construction thereof within two years from the date of issue of the allotment letter was verified and found acceptable to the Corporation and then only the Corporation has chosen to enter into the agreement with the allottee. The Court observed that If the allottee evacuates from the scene after inducting someone else into the plot without the consent of the Corporation, it is not legally permissible for the

inductee to compel the Corporation to recognize him as the allottee. Relevant Portion of the said Judgment reads as under:-

> "16. However, the allottee has contended before the trial court that clause 7 of the agreement is unenforceable in view of Section 11 of the TP Act. But that contention was repelled, according to us, rightly because the deed of conveyance had not created any absolute interest in favour of the allottee in respect of the plot conveyed. For a transferee to deal with interest in the property transferred "as if there were no such direction" regarding the particular manner of enjoyment of the property, the instrument of transfer should evidence that an absolute interest in favour of the transferee has been created. This is clearly discernible from Section 11 of the TP Act. The section rests on a principle that any condition which is repugnant to the interest created is void and when property is transferred absolutely, it must be done with all its legal incidents. That apart, Section 31 of the TP Act is enough to meet the aforesaid contention. The section provides that
>
> "on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen".
>
> Illustration (*b*) to the section makes the position clear, and it reads:
>
> "(*b*) *A* transfers a farm to *B*, provided that, if *B* shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. *B* does not go to England within the term prescribed. His interest in the farm ceases."
>
> 17. All that Section 32 of the Transfer of Property Act provides is that "in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an interest". If the condition is invalid, it cannot be set up as a condition precedent for crystallization of the interest created. The condition that the industrial unit shall be

established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the agreement between the parties is, therefore, valid and is binding on the parties thereto.

….

20. Here the agreement was entered into between the Corporation and the allottee as a sequel to the request made by the allottee to give him an industrial plot for the purpose of setting up an industry. The Corporation reciprocated to the request on being satisfied that the allottee was able to carry out the obligations so as to accomplish the purpose of allotment. The assurance given by the allottee that he shall start construction of the building for setting up the industry within a period of six months and complete the construction thereof within two years from the date of issue of the allotment letter was verified and found acceptable to the Corporation and then only the Corporation has chosen to enter into the agreement with the allottee. It is a matter of confidence which the Corporation acquired in the promise made by the allottee that the latter would perform such obligations. If the allottee evacuates from the scene after inducting someone else into the plot without the consent of the Corporation, it is not legally permissible for the inductee to compel the Corporation to recognize him as the allottee."

37. In **Rajasthan State Industrial Development & Investment Corpn. Vs. Diamond & Gem Development Corpn. Ltd.,** (2013) 5 SCC 470, the Hon'ble Supreme Court held as under:-

"14. Before entering into merits of the case, it is required to deal with the legal issues involved herein.

I. ***Approbate and reprobate***

15. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect

of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide Nagubai Ammal v. B. Shama Rao [AIR 1956 SC 593] , CIT v. V. MR. P. Firm Muar [AIR 1965 SC 1216] , Ramesh Chandra Sankla v. Vikram Cement [(2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706 : AIR 2009 SC 713] , Pradeep Oil Corpn. v. MCD [(2011) 5 SCC 270 : (2011) 2 SCC (Civ) 712 : AIR 2011 SC 1869] , Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd. [(2011) 10 SCC 420 : (2012) 3 SCC (Civ) 685] and V. Chandrasekaran v. Administrative Officer [(2012) 12 SCC 133 : (2013) 2 SCC (Civ) 136 : JT (2012) 9 SC 260] .]

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel—the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppels in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had.

…

21. It is evident from the above that generally the Court should not exercise its writ jurisdiction to enforce the contractual obligation. The primary purpose of a writ of mandamus is to protect and establish rights and to impose a corresponding imperative duty existing in law. It is designed to promote justice (*ex debito justitiae*). The grant or refusal of the writ is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to create or to establish a legal right, but to enforce one that is already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

22. Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is

equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for the issuance of the said writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether there exist proper pleadings. In order to maintain the writ of mandamus, the first and foremost requirement is that the petition must not be frivolous, and must be filed in *good faith*. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an officer having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct, are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand.

…

30. The terms and conditions incorporated in the lease deed reveal that the allotment was made on "as-is-where-is" basis. The same was accepted by the respondent Company without any protest whatsoever. The lease deed further enabled the appellant to collect charges, in case it decided to provide the approach road. Otherwise, it would be the responsibility of the respondent Company to use its own means to develop such road, and there was absolutely no obligation placed upon the appellant to provide to the respondent the access road. As the respondent Company was responsible for the creation of its own infrastructure, it has no legal right to maintain the writ petition, and the courts cannot grant relief on the basis of an implied obligation. The order [*Diamond & Gem Development Corpn.* v. *State*, WP (C) No. 5481 of 1994, decided on 30-7-2002 (Raj)] of the High Court is in contravention of Clause 2(*g*) of the lease deed.

…

37. The terms incorporated in the lease deed itself provide for

timely completion of construction and also for the commencement of production within a stipulated period. Records however reveal that only 10% of total construction work stood completed by the respondent Company. No proper application was ever filed for seeking extension of time by the respondent Company, as per the Rules. We have been taken through the record. While providing justification for the non-completion of construction and commencement of production, in very vague terms, it was submitted by the respondent Company that extension of time was sought from statutory authorities. However, the said application did not specify how much more time the Company was seeking, and that too, without meeting any requirements provided in the statutory Rules."

38. In **Dalip Singh** Vs. **State of Haryana,** (2019) 11 SCC 422, the Hon'ble Supreme Court held that the court can interfere with the revocation of resumption of land only if the executive has not carried out its duty or acted in violation of the procedure. There, Clause 11 of the terms and conditions of allotment clearly stipulated that in the event of breach of any of the conditions of transfer, the Estate Officer may resume the land in accordance with the provisions of Section 17 of the HUDA Act, 1977. The Court held that resumption of the plot is as per the terms and conditions of the allotment order and the High Court rightly refused to interfere with the order of the revisional authority. Relevant Portion of the said Judgment reads as under:-

"13. As pointed out earlier, the allotment of industrial plot was with the twin objects of economic development and generation of adequate employment. In order to achieve the said purpose, the industrial policy was framed by the State of Haryana aiming at balanced regional development and with a view to generate adequate employment. The allotment of industrial plot was at concessional rate and was subject to terms and conditions and the allottee was bound to comply with the terms and conditions. In such kind of allotment of industrial plots, based on government industrial policy with twin objectives of economic development and generation of adequate employment, sympathy cannot be the ground for considering the case of the appellants as to their non-compliance of the terms and conditions of allotment especially for twenty long years after the allotment.

…..

21. The allotment of Industrial Plot No. 306, Industrial Area, Phase II, Panchkula in 1984 to Rabinder Nath was in his capacity as Managing Director of M/s Shiva Dairy & Oil Mills. The plot was thus allotted to the partnership firm. The appellants have not been able to show as to how they stepped into the shoes of the partnership firm, apart from the mere fact that they are legal heirs of Rabinder Nath. As discussed earlier, at the time of making application for allotment of industrial plot, the applicant has to clearly disclose all the facts regarding the type of industry to be started, licence if necessary under law, project report, estimated cost of project, details regarding time required in completing the project, details of employees required, source of fund, etc. The project so submitted is then approved by the competent authority after considering its viability. The applicants are then issued letter of intent/provisional allotment letter with condition to complete the other formalities within the stipulated period of time and after completion of formalities, regular allotment letter is issued in favour of the applicant. As pointed out earlier, the undertaking of the production as per the approved project is the foundation for the allotment of the industrial plots which is with twin object of economic development and generation of employment opportunities. Over the years, the State has undergone substantive changes and economic growth. Land/industrial plots now becoming very scarce, governed by the present EMP, the appellants cannot seek for revocation of resumption by contending that they are ready to pay the current market rate.
22. The court can interfere with the revocation of resumption of

> land only if the executive has not carried out its duty or acted in violation of the procedure. Clause 11 of the terms and conditions of allotment clearly stipulates that in the event of breach of any of the conditions of transfer, the Estate Officer may resume the land in accordance with the provisions of Section 17 of the HUDA Act, 1977. The order of resumption of the plot is as per the terms and conditions of the allotment order and the High Court rightly refused to interfere with the order of the revisional authority. The appellants having failed before all the forums including the High Court and also the revisional authority, we do not find any serious infirmity or illegality in the order of resumption of the plot and therefore, this appeal is liable to be dismissed."

39. In **Aman Semi-Conductors (Pvt.) Ltd.,** Vs. **Haryana State Industrial Devlopment Corporation Ltd. and Another,** (2023) SCC OnLine SC 195**,** the Hon'ble Supreme Court held that the idea behind development of industrial plots and allotting them to deserving applicants is to act a catalyst to promote economic growth and accelerating the pace of industrialization. Relevant Portion of the said Judgment reads as under:-

> "20. The judgment of this court in *Indu Kakkar* had concluded that Clause 7 of the agreement, entered into between the parties (in that case), was binding. That condition required construction of the building for setting up the industry, in respect of which land was allotted to the appellant, to start within a period of six months. Construction had to be completed with two years from the date of issue of the allotment letter. Since the appellant failed to commence construction within the stipulated time, show-cause notice was issued as to why the plot be not resumed in terms of the agreement; that was in challenge and relied on Section 11 of the Transfer of Property Act, 1882. This court

negatived the plea in the following manner:

> "*16. However, the allottee has contended before the trial court that Clause 7 of the agreement is unenforceable in view of Section 11 of the TP Act. But that contention was repelled, according to us, rightly because the deed of conveyance had not created any absolute interest in favour of the allottee in respect of the plot conveyed. For a transferee to deal with interest in the property transferred "as if there were no such direction" regarding the particular manner of enjoyment of the property, the instrument of transfer should evidence that an absolute interest in favour of the transferee has been created. This is clearly discernible from Section 11 of the TP Act. The Section rests on a principle that any condition which is repugnant to the interest created is void and when property is transferred absolutely, it must be done with all its legal incidents. That apart, Section 31 of the TP Act is enough to meet the aforesaid contention. The Section provides that "on a transfer of property an interest therein may be created with the condition super-added that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen."*
>
> *Illustration (b) to the Section makes the position clear, and it reads:*
>
> *(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.*
>
> *17. All that Section 32 of the Transfer of Property Act provides is that "in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an interest". If the condition is invalid, it cannot be set up as a condition precedent for crystallization of the interest created. The condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the*

agreement between the parties is, therefore, valid and is binding on the parties thereto.”

21. The decision in *Hari Om* in this court's opinion, does not in any manner assist the appellant. In that case, the court had dealt with several appeals. In the main appeal, the allotment was offered on 20.12.2001; however actual possession was handed over on 08.12.2003. The appellant applied for approval of building plan, thereafter, which was given by HSIDC on 20.03.2004. The construction of the industrial unit was completed in May 2005. In the meanwhile, alleging non compliance with the terms of allotment, the plot was resumed on 03.03.2005. Having regard to these facts, the High Court had set aside the resumption order. This court repelled the HSIDC's argument that writ proceedings were not maintainable, and held in the facts and circumstances, that the setting aside of the resumption was justified.

22. The idea behind development of industrial plots and allotting them to deserving applicants is to act as a catalyst to promote economic growth; this aspect was underlined in Hari Om in the following manner, while describing the functions of HSIDC:

> *“4. […] Its principal function is allotment of industrial plots belonging to the State of Haryana. It was set up as a catalyst for promoting economic growth and accelerating the pace of industrialization. It not only provides financial assistance to the industrial concerns by way of term loans; it also develops infrastructure for setting up of industrial units. The Corporation also invests money in developing the industrial estates at strategic locations. In exercise of its functions, it also allots industrial plots to entrepreneurs for setting up their industries on “no profit no loss” basis. The entrepreneurs, according to the Corporation, must be the deserving ones. For*

> *the said purpose, it keeps in mind the principle that allotment of land should not be made to speculators who invest in property for getting high returns on escalation of price."*

> 23. In the present case, as discussed earlier, the facts are stark; the appellant never made any genuine effort to start its unit. There is no material to disclose that upon receipt of no less than three show cause notices, the appellant showed any sense of urgency in taking steps to live up to the bargain, (of setting up an industrial unit). The inference which this court is left to draw, is that the allottee's intention was perhaps never to set up any industrial unit, despite its promise to the contrary, and speculatively deal with the plot. Having regard to these facts and circumstances, the court is of the opinion that the impugned order does not call for interference."

40. None of the Judgments cited by the learned counsel for the petitioner are any relevant, as they dealt with specific situations therein. In this case, admittedly, even as per the petitioner's own reply dated **15.04.2015** it is clear that the petitioner wanted some time to put up industrial shed in respect of the land that was allotted to the petitioner way back in 1976.

41. It appears that the land was only partially utilized by the petitioner for industrial purpose. However, the industrial activities come to a stand still. The petitioner being allottee of the assigned land, should have utilized the land as

per the Condition in the Deed of Assignment dated 14.03.1977. Condition Nos. 13 and 17, which have been extracted above in Para No.29 of this Order make it clear that the petitioner could not use the land for any other purpose. The petitioner was also required to commence Construction of factory buildings at least within six months and complete it within two years.

42. Sub-leasing / sub letting of the assigned land cannot be considered to be a *bona fide* purpose as is contemplated under the Allotment order dated 17.09.1976 and Assignment Deed dated 14.03.1977. Further, under Condition No. 28 of the Deed of Assignment dated 14.03.1977, the petitioner cannot directly or indirectly transfer, assign, sell, encumber or part with the his interest as an Assignee in the Plot, or in any superstructure constructed thereon or part with possession of the same either in part or in whole, in any manner whatsoever, without the previous approval of the SIDCO obtained in writing.

43. Condition No.9 and Condition No.11 to the **Assignment Deed** dated **14.03.1977** is also relevant which reads as under:-

Condition No.9	Condition No.11
(9) In the event of a breach of any of the conditions of this Deed by the Assignee, it shall be open to the SIDCO to cancel the assignment, after giving one month notice to the Assignee to show cause, if any, against the resumption of possession of the Plot and, if there is no reply or satisfactory reply to such notice, to initiate proceedings for the recovery of possession of the Plot including the factory and other buildings that may have been erected on the same by the Assignee and on such resumption the Plot shall vest absolutely with the SIDCO free from all encumbrances and in such an event, the Assignee shall not be entitled to obtain from the SIDCO any compensation for any of the constructions on the Plot or any refund of any amount that may have been paid by the Assignee except as provided for under this Deed.	(11) If at any period after one year from the date of this Deed the whole or any portion of the allotted land is kept un-utilised by the Assignee, the SIDCO shall have the right to terminate the assignment forthwith in respect of the whole or the portion so un-utilised, as the case may be, and to resume possession of the same with all the consequences stipulated under this Deed.

44. Therefore, I find no infirmity in the impugned order seeking to resume possession of the land allotted to the petitioner. The failure on the part of the petitioner to use the land for *bona fide* industrial purpose indicates that the petitioner has also failed to generate the necessary employment or carried

any economic activity. State resources reserved for Industrial purpose cannot be used for any non-industrial purpose although may be for commercial purpose. Thus, the allotment was rightfully cancelled.

45. These Writ Petitions are therefore dismissed. No costs. Connected Miscellaneous Petitions are closed.

24.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

JEN/arb

To

1.The Chairman & Managing Director,
Tamil Nadu Small Industries Development
Corporation Limited (SIDCO),
Industrial Estate,
Guindy, Chennai – 600 032.

2.The Branch Manager,
Tamil Nadu Small Industries Development
Corporation Limited (SIDCO),
SIDCO Industrial Estate,
K.Pudur, Madurai – 625 007.

C.SARAVANAN, J.

JEN

Pre-Delivery Order in

W.P.(MD) Nos.15950 of 2017 & 125 of 2018

24.09.2024