

(2011) 04 MAD CK 0288

In the Madras High Court

Case No : Writ Petition No's. 3913 and 3916 of 2000

Krishna Wood Works and Aatri Timber Industries APPELLANT

Vs

Tamil Nadu Small Scale Industrial, Development Corporation RESPONDENT
Ltd.

Date of Decision : 01-04-2011

Acts Referred:

Citation : (2011) 04 MAD CK 0288

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : S. Sethuraman, for the Appellant; V.P. Sengottuvel, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—The prayer in both the Writ Petitions is for the issuance of Writ of Certiorarified Mandamus to quash the demand issued by the Respondent-Corporation, demanding additional sum as land cost, by stating that the same is payable towards the development cost, required for the provision of infrastructural facilities like formation of roads etc.,

2. Since an identical issue is involved in both the Writ Petitions, they were heard together and are disposed off by a common order.

3. The facts of the present cases lies in a narrow campus.

4. The writ Petitioners herein were allottees of the plot in the industrial estate at Thiruverambur, developed by the Respondent-Corporation.

5. The writ Petitioners applied to the Respondent-Corporation for allotment of a plot in the industrial estate at Thiruverambur. The Respondent-Corporation by proceedings dated 06.06.1995/30.06.1995, respectively allotted the plot bearing Nos.16 and 17 to the Petitioner in W.P. No. 3913 of 2000 and plot bearing No. 15 to the Petitioner in W.P. No. 3916 of 2000. A photocopy of the allotment

orders has been filed by the Respondent-Corporation. It is seen that in respect of the Petitioner in W.P. No. 3913 of 2000, it has been mentioned that total cost of the plot is Rs. 2,01,000/- and 5% as security deposit for a sum of Rs. 10,050/- and altogether, the Petitioner was directed to pay a sum of Rs. 2,11,050/- on or before 30.05.1995. Insofar as the writ Petitioner in W.P. No. 3916 of 2000, is concerned, the total cost of Rs. 1,05,000/- was payable by him on or before 31.03.1996.

6. It appears that both the Writ Petitioners paid the amount claimed in the order of allotment and were awaiting for a sale deed. It is further stated that both the writ Petitioners complied with all other terms and conditions appended to the order of allotment. It is stated that the writ Petitioners also invested a substantial sum of money, for the purchase of machinery equipments etc.,

7. hilesa, the impugned orders dated 11.05.1998, was served on the writ Petitioners. In the said impugned orders, it is stated that the plot was allotted to the writ Petitioners, as per the land cost applicable for the year 1995-96 and that, they wish to inform the writ Petitioners that the land cost was revised for the year 1995-96, based on development cost for the provision of essential infrastructural facilities, which are intended to benefit the allottees, hence, the writ Petitioners should bear the development cost imposed on them. Therefore, the Petitioners were called upon to pay the difference in land cost and the demands were served claiming a sum of Rs. 5,82,120/-. Challenging the said demands, the writ Petitioners have approached this Court, by way of the present Writ Petitions.

8. Respondent-Corporation filed a counter affidavit contending that nowhere in the allotment orders, it is mentioned that the price fixed for the land allotted to the writ Petitioners was final and therefore, revision of the cost of land is inevitable. Further, it has been stated that the cost has been demanded for the cost incurred towards development works and for providing basic infrastructural facilities, which would benefit the allottees.

9. It appears that apart from the two writ Petitioners herein, there was one another allottee viz., M/s. Ashok Saw Mill, who was also allotted the plot bearing No. 14, in the same industrial estate and an identical demand was served on the said allottee. The allottee questioned the same by way of a petition being W.P. No. 18780 of 1998, and this Court, after considering the contentions raised by the learned Counsel appearing for the Respondent- Corporation, which are identical to that of the stand taken in the present Writ Petitions, allowed the same and quashed the said demand. For better appreciation, the operative portion of the said order is extracted hereunder:

The learned Counsel for the Petitioner submits that the entire amount as required in the allotment order dated 06.06.1995, has been paid within the time stipulated therein and in view of that, there is no obligation on the part of the Petitioner to pay the revised costs. However, learned Counsel for the Petitioner

submits that the cost originally worked out did not include the development charges and the development charges have been now included and a demand has been made for the developments made in the lay out.

It is also to be noted that this Court, while admitting the writ petition on 30.11.1998, granted a blanked interim order. Subsequently, on 04.10.1999, this Court, directed the Petitioner to pay 50% of the remaining amount and on such payment, the second Respondent was directed to hand over possession of the plot.

Pursuant to the same, 50% of the amount has been paid and the paid and the possession has been handed over to the Petitioner. Now, the point in issue is as to whether the Petitioner is liable to pay the revised costs or not.

In the counter affidavit filed by the Respondents, it has been stated that the cost of the land fixed originally was tentative in nature and it is not a final cost. Now, the development charges were included and the same were demanded by the Respondents.

I have heard the learned Counsel on either side and perused the materials made available before this Court, particularly the order of allotment dated 06.06.1995.

I am not able to countenance the arguments of the learned Counsel for the Respondents that the land cost is only tentative in nature and now, by the impugned order dated 06.07.1998, the development charges have been demand as revised land costs for the reason that the order dated 06.06.1995, make it manifestly clear that what was allotted to the Petitioner was only a developed plot in Plot No. 14 of Thiruverumbur Industrial Estate, measuring 1.06 acres. The cost of the land was fixed at Rs. 1,00,500/- There is no mention whatsoever in the allotment order that the land cost is only tentative in nature. The second ground that the development charges are infused with the cost of the land cannot be accepted for the reason that there was an allotment of developed plot to the Petitioner and the costs has been fixed in firm. Hence, the demand made by the second Respondent in the impugned order dated 06.07.1998, for the revised cost of the plot cannot be legally sustainable.

Accordingly, the impugned order dated 06.07.1998, is set aside. The Writ Petition is allowed. The payment made by the Petitioner pursuant to the direction of this Court dated 04.10.1999, is directed to be refunded within four weeks, from the date of receipt of a copy of this order. No costs.

10. is contended that the order passed in that Writ Petition has become final and against the said order, no appeal was preferred and the Respondents did not demand any additional amount from the said allottee.

11. Initially, the present Writ Petitions were heard by a Learned Single Judge of this Court and are disposed off, by an order dated 13.02..2008, wherein, the Learned Single Judge allowed the Writ Petitions and set aside the demand. As against the said orders, the Respondent-Corporation filed Review Applications,

contending that the Learned Single Judge, while allowing the Writ Petitions, by order dated 13.02.2008, referred to an order passed in W.P. No. 5346 of 1998, which has no relevance to the facts of the present case. The Review Applications came to be dismissed. As against which, Writ Appeals were filed by the Respondent-Corporation and the Writ Appeals were allowed and the matters were directed to be heard by the Learned Single Judge on merits afresh. It is thus, these Writ Petitions are before this Court.

12. Elaborate submissions were made by the learned Counsel appearing on either side and I have given an anxious consideration to the said submissions.

13. The learned Counsel appearing for the writ Petitioners would submit that the order of allotment itself says that it is a developed land, which has been allotted to the Petitioner. Further, the cost of the plot has been clearly set out in the allotment order and none of the Terms and Conditions of the allotment order, empowers the Respondent-Corporation to demand additional land cost.

14. Further, the learned Counsel would submit that in W.P. No. 18780 of 1998, challenging an identical demand in respect of another allottee in the same industrial estate, and this Court by an order dated 30.10.2006, quashed the demand for additional land cost and the said order has also become final. It is also submitted that though in the impugned demand, it is mentioned that the amount is required for the development cost, what has been demanded from the writ Petitioners is additional land cost and it cannot be done and is without jurisdiction.

15. Per contra, the learned Standing Counsel appearing for the Respondent-Corporation would contend that the development cost is towards the development of the industrial estate, for providing infrastructure facilities, which are intended to benefit the allottees and therefore, the writ Petitioners are bound to honour the said demands and they cannot contend that they are not liable to pay the said demand. Further, it is submitted that the land cost initially demanded from the writ Petitioners is only tentative and the Respondent-Corporation is fully justified in demanding the additional land cost.

16. The learned Standing Counsel appearing for the Respondent-Corporation fairly admitted that the order in W.P. No. 18780 of 1998, dated 30.10.2006, had become final, yet he would submit that in respect of another allotment, in a neighboring industrial estate at Thiruverumbur, a similar demand was issued and challenging the same, Writ Petitions were filed before this Court, in W.P. Nos. 45 and 46 of 1997, and the same were dismissed by a Learned Single Judge of this Court, by order dated 25.06.2004, stating that the allottee has no right to maintain such writ petitions and the Respondents are justified in demanding additional cost.

17. As against the said orders, Writ Appeals were preferred before a Division Bench of this Court in W.A. Nos. 3789 and 3790 of 2004, and the same were dismissed by the Division Bench by an order dated 22.12.2008. Therefore, the

learned Counsel for the Respondent-Corporation would submit that by following the said orders, the present Writ Petitions are liable to be dismissed.

18. Though the submissions made by the Learned Standing Counsel appearing for the Respondent-Corporation at the first blush, appears to be attractive, but on a closure scrutiny, the same does not merit acceptance. This Court is convinced to say so, for the following reasons.

(i) Firstly, in the order of allotment to the writ Petitioners herein, there is no mentioning that the plot cost is tentative. This is a major difference between the order of allotment in the present Writ Petitions and in respect of the allotment order, which was the subject matter of W.A. Nos. 3789 and 3790 of 2004,

(ii) Secondly, the learned Standing Counsel for the Respondent-Corporation produced original files, relating to the allotment order in the case of. Nos. 3789 and 3790 of 2004. On perusal of the impugned orders in that Writ Petitions, it is clearly mentioned that the tentative cost fixed by the Respondent-Corporation was an approximate amount, and thereafter, the final cost was determined. The order of allotment in the said case also clearly held that the cost was tentative. In such circumstances, the Division Bench of this Court, was inclined to accept the stand taken by the Respondent-Corporation.

(iii) However, in the present Writ Petitions, it is noticed that the cost demanded from the writ Petitioners are firm cost and it is the cost for a developed plot. Perusal of Terms and Conditions appended to the allotment order does not empower the Respondent-Corporation to demand more than what has been fixed in the order of allotment. Therefore, the judgment of the Division Bench rendered in W.A. Nos. 3789 and 3790 of 2004, is clearly distinguishable on facts.

(iv) Once, we steer clear of this position, the only recourse available is to place reliance on decision of this Court, rendered in W.P. No. 18780 of 1998, as the Petitioner in the said Writ Petition viz., M/s. Ashok Saw Mill, was also a similarly placed person, like that of the writ Petitioners herein and they were also served with a similar demand, claiming additional land cost and this Court, after taking note of the stand taken by the Respondents, rejected the same and allowed the Writ Petition and the Respondents have also consciously allowed that order to become final as against the said Writ Petition viz., W.P. No. 18780 of 1998, they have not preferred any appeal.

(v). Therefore, the Respondent Corporation cannot adopt different standards for similarly placed persons. The order passed by this Court in W.P. No. 18780 of 1998, holds the field in insofar as the industrial estate at Thiruverumpur, wherein another allottee was also issued with a similar impugned order. Thus, such order is binding on the Respondent-Corporation.

(vi). Therefore, this Court is fully convinced with the order dated 30.10.2006 rendered in W.P. No. 18780 of 1998, which fully covers the present case on hand and therefore, the writ Petitioners are entitled to succeed.

(vii). In the result, the Writ Petitions are allowed and the impugned order is set aside. However, there shall be no order as to costs. Consequently, connected M.P. is closed.