

(2010) 09 MAD CK 0188

In the Madras High Court

Case No : Writ Petition No. 10280 of 2007 and M.P. No. 1 of 2007

S.M. Durai Arasan

APPELLANT

Vs

The State of Tamil Nadu and Tamil Nadu Small Industries
Development Corporation Ltd.

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Citation : (2010) 09 MAD CK 0188

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : S. Raveekumar, for the Appellant; V.P. Sengottuvel, for R 2, for the Respondent

Final Decision : Allowed

Judgement

K.B.K. Vasuki, J.—The writ petition is filed directed against the order of the second Respondent in his proceedings R.C. No. 18217/R4/05-1 and R.C. No. 18297/R4-05-2 dated 25.01.2006 and to quash the same and to consequently direct the Respondents to act on the basis of the order of allotment dated 16.03.1996.

2. The brief facts which are relevant for consideration herein are the Petitioner has applied for allotment of an industrial plot on 06.11.1995 and an allotment order dated 16.03.1996 was made by the second Respondent / Tamil Nadu Small Industries Development Corporation Limited, in and under which, plot No. O.P.3 measuring an extent of 5000 sq.ft. in the Ambattur Industrial Estate, Chennai, is allotted to the Petitioner. The said allotment was applied for and was made to start an automobile spare parts manufacturing industry on outright sale basis and the value of the plot was fixed at Rs. 1,88,250/-and as per the allotment order, the Petitioner is directed to remit a sum of Rs. 1,97,670/-(Rs. 1,88,250 + service charges of Rs. 9,420). The Petitioner as per the allotment order remitted Rs. 50,000/-by way of cash under due receipt issued by the second Respondent. The Petitioner approached the third Respondent / Project Officer along with

demand draft for the balance sum of Rs. 1,47,670/- on 25.06.1996, but the third Respondent refused to receive the same by informing the Petitioner that the allotment order is kept in abeyance as plot No. O.P.3 is in the area reserved for oxidation pond. As such decision is taken by the second Respondent corporation without any notice to the Petitioner, the Petitioner immediately forwarded his representation to the Respondents 2 and 3 for giving effect to the allotment order. The Petitioner has in his representation explained in detail that the plot allotted to him is situated at a distance of 150 feet from the oxidation pond and the oxidation pond and the plot are divided by a well laid 30 feet road. It is also further stated in the representation that the Petitioner has already on the strength of the allotment order obtained loan from the bank for the construction of the building and purchase machineries and incurred heavy expenditure towards the same. The Petitioner's representation dated 15.07.1996 and the subsequent representation did not revoke immediate response from the Respondents and after much pursuasion in person, the Petitioner was replied that the Petitioner's request for allotting the land to the Petitioner is pending consideration for the consultation of the Government. While the Petitioner was awaiting favourable reply, the impugned order came to be passed, in and under which, the plot allotted to the Petitioner is cancelled and a sum of Rs. 50,000/- remitted by the Petitioner is ordered to be refunded to the Petitioner. Aggrieved against the same, the Petitioner has come forward with this writ petition.

3. According to the learned Counsel for the Petitioner, the impugned order of cancellation without notice and without giving any opportunity to the Petitioner that too after making the Petitioner to part with more than 1/4 of the value of the plot and after allowing him to proceed with further preparation for starting the industry thereby increasing heavy expenditure is illegal and irregular and is without jurisdiction and is in violation of the principles of natural justice. It is further argued by the learned Counsel for the Petitioner that the Respondents having allotted the land, despite the existence of the oxidation pond is now estopped from passing such order, as if the same is reserved for common purpose category, particularly when the same is situated at a distance from the oxidation pond and is divided by well laid 30 feet tar road. The learned Counsel for the Petitioner would also earnestly argue that as the oxidation pond and the industry proposed to be set up by the Petitioner is at more than reasonable distance the setting up of the industry will in no manner affect the common area.

4. Per contra, the learned standing counsel for the Respondents would attempt to justify the impugned order of cancellation and refund of deposit amount on the ground that the allotted area is reserved for common purpose and comes under the category of oxidation pond and the Petitioner failed to make the payment for the cost of plot within the time stipulated.

5. Heard the rival submissions made on both sides and the records are also perused.

6. The facts that the plot No. O.P.3 was originally allotted to the Petitioner and

the Petitioner was in pursuance of the allotment order paid a portion of the value of the plot and when the Petitioner approached the authorities concerned for the payment of balance amount, the same was not received by the authorities concerned are not denied. It may be true that as per the allotment order dated 16.03.1996, the Petitioner is required to pay the payment of portion of the amount on or before 31.03.1996 and the Petitioner has remitted the portion of the amount to the tune of Rs. 50,000/-only on 18.04.1996 and offered the payment of balance amount by way of demand draft on 25.06.1996. However, the order of cancellation and refund of Rs. 50,000/-is not on the ground that the payment of value of the plot is not made within the stipulated time, but on the ground that the same comes under common purpose category. Had it been true that the clause regarding the payment of value of the plot within the stipulated time is mandatory, the authority ought not to have received the sum of Rs. 50,000/-on 18.04.2006, but the action of the authorities concerned in receiving such payment made beyond the stipulated short time that it is not mandatory. The refusal to receive the balance sum is also not on the ground that it is offered belatedly, but only on the ground that as the plot is in the area reserved for oxidation pond, the allotment is temporarily kept in abeyance. The first of such letter enclosed at page 8 of the typed set of papers was issued to the Petitioner on 25.06.1996 and the Respondents have reiterated the same stand in their subsequent communications dated 20.07.2004, 26.08.2004 and also in the orders impugned herein. The earlier communication dated 20.07.2004 and 26.08.2004 enclosed at pages 22 and 23 of the typed set of papers do only mention that the plot comes under the common purpose area. In neither of the communications the Petitioner is informed that that belated payment is either the main reason or one of the reasons for keeping the allotment order in abeyance followed by the cancellation of the order of allotment. The same is for the first time mentioned so in the counter filed by the Respondents herein.

7. As rightly argued by the learned Counsel for the Petitioner, the impugned order can be sustained only for the reason mentioned in the order and the same cannot be improved by any other ground raised subsequently either in the counter or in the counter of argument. As such the contention of the learned standing counsel for the Respondents that the non-payment of the amount within the stipulated time is one of the grounds leading to cancellation of the allotment order is devoid of any merit and deserves no acceptance.

8. Regarding the other ground that the same comes under the common area, it is contended by the learned Counsel for the Petitioner that the plot allotted to the Petitioner does not exactly fall within the oxidation pond area, which is reserved for common purpose but is situated at reasonable distance and is separately from the oxidation pond by well laid 30 feet thar road. The Petitioner has in support of such contention sought to rely upon the layout plan appended to the allotment order enclosed at page 5 of the typed set of papers. The perusal of which shows that the plot allotted to the Petitioner is O.P. No. 3 and the oxidation pond which is repeatedly referred to as reserved for common purpose is located

at a distance and as rightly pointed out by the learned Counsel for the Petitioner is also separated by well laid 30 feet thar road. Thus, the physical features available on land do not justify the reason on which allotment order is cancelled. As a matter of fact, our High Court has by order dated 18.02.2003 in W.P. No. 10404 of 1998 as confirmed by orders dated 15.09.2003 in W.A. No. 2871 of 2003 and 16.06.2004 in W.P. No. 10140 of 1996 as confirmed by order dated 06.10.2004 in W.A. No. 3169 of 2004 upheld similar claim of the Petitioner therein.

9. The reading of the orders enclosed at pages 14 to 21 and 24,25 of typed set of papers would reveal that W.P. No. 10404 of 1998 is filed by one A. Kumar and other W.P. No. 10140 of 1996 is filed by one S. Arunachalam, who are the allottees of adjacent plot numbers. While in the first case, the Petitioner made part payment and offered the balance amount, within the time stipulated in the allotment order. The allottee in the second case paid entire amount despite the same allotment order was cancelled on the ground that the plots are situated very close to the area of oxidation pond. When the same is questioned by the allottees, our High Court is pleased to accept the claim of the Petitioners and set aside the impugned orders of cancellation of allotment order and directed the authorities concerned to act on the basis of the allotment order. As a matter of fact, W.P. No. 10140 of 1996 is disposed of on the basis of the earlier order made in W.P. No. 10404 of 1998 as confirmed in W.A. No. 2871 of 2003. It may be true that the Petitioner herein is not complied with one of the clauses in the matter of payment of the amount within the stipulated time. However, as the impugned order is not based on that ground, the present Petitioner's claim need not be treated on different footing.

10. Further, the learned Counsel for the Petitioner has rightly argued that the ground on which the allotment order is made very much available even on the date of order of allotment and having made the allotment, the same cannot be cancelled without giving any notice or opportunity to the Petitioner. The Petitioner was kept under anticipation from 1996 to 2006, as if the matter is, in consultation of the Government, under consideration. That being the conduct on the part of the Respondents, the impugned order of cancellation for the reason assigned therein does not stand the test of reasonableness and is unfair and arbitrary and is bad in law, cannot be allowed to stand and is liable to be set aside.

11. In the result, the impugned order is set aside, with direction issued to the Petitioner to pay the balance amount within two weeks from the date of receipt of copy of this order, with further direction issued to the Respondents to carry out necessary acts for allotment of the plot on the basis of the allotment order dated 16.03.1996 within four weeks thereafter. The writ petition is accordingly ordered. No costs. The connected miscellaneous petition is closed.