IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.10.2005

Coram:

The Hon'ble Mr. Justice P.K.MISRA
and
The Hon'ble Mr. Justice N.KANNADASAN

O.S.A.No.116 of 2002

State Industries Promotion
Corporation of Tamil Nadu Ltd .,
Rep., by its Managing Director. .. Appellant

vs.

M/s.Sivananda Pipe Fittings Ltd.,
Rep., by its present Secretary and
Finance Manager Mr.N.Sethuraman .. Respondent

Appeal filed as against the judgment and decree of this Court dated 6.2.2001 in C.S.No.32 of 1994.

For Appellant : Mr.P.S.Seetharaman

For Respondent : Mr.T.K.Seshadri

JUDGMENT

The above appeal is filed as against the judgment and decree dated 6.2.2001 in C.S.No.32 of 1994.

2. The appellant is the defendant and the respondent is the plaintiff in the suit. The suit is filed seeking the relief of specific performance in terms of lease-cum-sale agreement dated 19.9.1979. The defendant viz., State Industries Promotion Corporation of Tamil Nadu Limited, is an undertaking of the Tamil Nadu Government which was established to set up industrial complex and for allotment of the same to the needy for the promotion of industries. One such industrial complex was set up at Hosur and the defendant invited applications for allotment of plots for setting up factories. The plaintiff-company submitted an application wherein it is indicated that it intends to establish a factory for the manufacture of steel

pipe fittings etc. In the said application, it is also indicated that it requires an extent of 12 acres initially to set up the factory and it also requires an extent of 20 acres for future expansion. Initially, by letter dated 26.2.1979 the plaintiff was allotted plot No.67 of an extent of 12.69 acres. However on the request made by the plaintiff, that an alternative area in plots bearing Nos.11,12,23 and 24 measuring an extent of 11.65 acres was allotted by the defendant in letter dated 15.6.1979. Lease-cum-sale agreement dated 19.9.1979 was entered into between the plaintiff and the defendant and the plaintiff was put in possession and enjoyment of the plots allotted to them. At the time of initial allotment, the plaintiff has paid a sum of Rs.34,608/- being 25% cost of the plot, which was fixed tentatively. Subsequently, the plaintiff has paid the balance amount. In pursuance of the allotment, the plaintiff was permitted by the defendant's letter dated 21.9.1979, to mortgage the plots for obtaining financial assistance from TIIC. Subsequently, the plaintiff has put up construction and commenced its production from 1981 onwards.

3. While-so, on 9.1.1989, the defendant issued show cause notice as to why the allotment of plot Nos.23 and 24 measuring an extent of 5.78 acres should not be cancelled on the ground that they were not utilised and as such there is a violation of the terms and conditions of the lease-cum-sale agreement. In spite of the reply given by the plaintiff, the order of allotment was cancelled by the defendant through its notice dated 26.10.1989. The plaintiff has challenged the said notice initially by filing a writ petition in W.P.No.15327 of 1989. Subsequently, the said writ petition was dismissed on 13.12.1993 on the basis of the statement made by the plaintiff that in a similar writ petition, the High Court has taken a view to the effect that the in such matters wherein the disputed question of facts were involved, the only remedy available to the party is to file a civil suit. The High Court, while dismissing the said writ petition, observed that the time taken in prosecuting the writ petition can be excluded while deciding the plea of limitation. Under the said circumstances, the present suit was filed.

4. The defendant resisted the suit by contending that there was breach of terms and conditions on the part of the plaintiff and as such, allotment of plot Nos.23 and 24 was cancelled for non-utilisation. The defendant also raised a plea of limitation. The learned single Judge

decreed the suit, against which the above appeal is filed.

5. Learned counsel appearing for the defendant/appellant contended that inasmuch as the lease-cum-sale agreement makes it clear that the plaintiff should establish the factory and make use of the entire area and failure on its part in not utilising the area covered under plot Nos.23 and 24, the defendant was justified in cancelling the allotment. Learned counsel further contended that the learned single Judge has not considered the various evidence adduced in the suit to substantiate that there was breach on the part of the plaintiff. He also contended that the suit ought to have been dismissed on the ground of limitation and accordingly seeks the relief.

6. On the other hand, learned counsel appearing for the plaintiff/respondent contended that the learned single Judge has rightly decreed the suit based on the oral and documentary evidences and the finding rendered on the question of limitation is also sustainable in law and as such, prayed for the dismissal of the above appeal.

7. We have considered the rival contentions of the learned counsels appearing on either side.

8. The point for determination that arises in this appeal is:

> "Whether the judgment and decree of the learned single Judge is sustainable in law in the light of the pleadings and materials available on record?"

9. As far as the factual aspects are concerned viz., the initial allotment of plot bearing No.67 and subsequent change of allotment in plot Nos.11,12,23 and 24; and the payment of the initial deposit and entering into a lease-cum-sale agreement, there is no dispute on the said facts. The main issues to be determined in this appeal are:

> "(a) Whether there was any breach of terms and conditions on the part of the plaintiff and as such, the allotment of plot Nos.23 and 24 is liable to be cancelled or not?
>
> (b) Whether the suit is barred by limitation?"

10. From the materials available on record, it is not in dispute that the entire plots bearing Nos.11,12,23 and 24 situate contiguously. If that is so, we have to examine as to whether the plaintiff-company has established a factory and commenced its business in the entire area after the execution of the lease-cum-sale agreement. It is specifically pleaded by the plaintiff that the plan submitted by them for the establishment of the factory was approved by the defendant, which pleading was not denied. Though a vague denial was made in the written statement to the effect that the plaintiff has not completed the construction of the entire building or infrastructure of the factory, the fact that the factory has come up and it has commenced production was not denied. In fact, DW.1, who gave evidence on behalf of the defendant, has spoken to the effect that he is not in a position to deny the fact that the factory has commenced its production from 1981 onwards. On the contrary, the plaintiff has filed Ex.P.11 series which are relating to the proceedings of the annual general body meetings for the year 1984 to 1995. Learned single Judge has rendered a specific finding that a perusal of the report relating to the period 1985-1986 discloses that the actual production has commenced from the year 1981 onwards. In the oral evidence adduced by DW.1, he has not controverted the stand taken by the plaintiff that the plaintiff has constructed the factory building, administrative office and completed other infrastructures. DW.1 also admitted in his evidence that the plaintiff availed loans both from the defendant and TIIC. The defendant had granted an order of no objection to the plaintiff to obtain loan from TIIC by mortgaging the property on pari-pasu agreement basis. Learned single Judge also rendered a finding to the effect that the plaintiff-company has manufactured steel pipes and fittings with Japanese Collaboration and contemplated production of sophisticated items and most of the items are being exported to foreign countries. No material is produced before us to assail the said findings.

11. When the defendant has issued a show cause notice in Ex.P.8 dated 9.1.1989 to the effect that it has proposed to cancel the allotment in respect of non-utilised plots in plot Nos.23 and 24, to which a reply was submitted, the defendant is expected to inspect the premises in question and to take a final decision. DW.1, while deposing in his evidence, had admitted that he has not conducted any inspection of the plaintiff's premises. In fact, he deposed to the effect that he never visited the premises and stated that a Project Officer is incharge of

the Hosur Office of the defendant-company and no report has been filed or referred in the notice of cancellation or in the cancellation order. On the contrary, PW.1, in his evidence, deposed that the vacant site is used for the purpose of storing raw-materials and for executing some work in the openyard. Ex.P.12 series viz., photographs have also been marked which disclose that a vacant space is available within the compound wall which forms part of the cancelled plots and the said site is being utilised for storing raw materials and pipes as storage yard. That apart, as per the terms and conditions, the plaintiff is required to keep minimum one-third area of the allotted land as vacant space. Under the said circumstances, in an area, which is situated contiguously and surrounded by compound wall, merely because certain areas are left as open space, which is also being used as an open stockyard, it cannot be suggested that the said area is kept unutilised and it is in excess of the actual requirement of the plaintiff and as such, the same is liable for cancellation. In fact, when the plaintiff submitted its application even at first instance, indicated that it requires initially an extent of about 12 acres and a further extent of 20 acres is also required for the purpose of expansion. This would mean that the plaintiff-company is having necessary proposals for future expansion and such expansion can take place even in the area which is kept vacant which is presently used as an open stockyard. Under the said circumstances, at no stretch of imagination, it can be concluded that the plaintiff has violated the terms and conditions of the lease-cum-sale agreement and there is a breach of the terms and conditions on its part.

12. Further, a perusal of the relevant clause about utilisation of the space is extracted as hereunder:-

> "Condition NO.12:
>
> 12. (a) If during the lease period, the whole or any portion of the allotted land is kept unutilised by the party of the second part, the part of the first part shall have the right to terminate the lease forthwith in respect of the whole or the portion as the case may be and resume possession, with all the consequences, mentioned in clauses 10 and 11 supra.
>
> (b) If in the opinion of SIPCOT it is found that the land allotted to the party of the second part is in excess of its requirement, the party of first part

shall have the right to resume the excess land and party of second part shall be paid only the price that has actually been paid by the party of the second part or the market value of the excess land on the date of resumption whichever is lower. The price stated above does not include interest and penal interest paid if any."

The above clauses are incorporated mainly with a view to ensure that the allottee for whom the land is allotted is not expected to keep the premises as vacant or keep excess land than the normal requirement, with a view to ensure that the said land can be allotted to other persons who are having bonafide requirement. In the present case, from the materials available on record, it is clear that the plaintiff is not keeping that portion of the land as vacant site and as such, action can be initiated under the clauses referred to supra.

13. Further a combined reading of Clause-5 and 12 (a) makes it clear that in the event of payment of all instalments by the plaintiff, the defendant is bound to execute the sale deed on completion of the period of five years. Clause 12(a) empowers the defendant to initiate any action to terminate the lease for the non-utilisation of the land only during the period of lease. Admittedly, in the case on hand, the period of lease is already over and in fact, the plaintiff has already paid the entire amount as stipulated therein. Therefore, we are of the opinion that the present cancellation of the allotment by virtue of the powers conferred upon the abovesaid clauses is not in accordance with law. A similar view was expressed by a Division Bench of this Court in OSA No.429 of 2003 dated 9.2.2004 wherein one of us is a party (N.KANNADASAN, J.).

14. In the light of the above discussions, we are of the opinion that there was no breach of the terms and conditions on the part of the plaintiff and as such, the cancellation of the allotment for non-utilisation of the land is not based on valid materials.

15. As regards the next issue viz., as to whether the suit is barred by limitation or not is concerned, the learned single Judge rendered a finding that the suit is filed well within the time, by construing 10.11.1989 viz., the date of cancellation of the allotment as a starting point for computation of the period of limitation. In this connection, it is useful to refer to the clauses of the

lease-cum-sale agreement entered into between the parties. As per the lease-cum-sale agreement, initially the term of lease is indicated as five years. Even though the defendant has paid the entire amount as set out in the lease-cum-sale agreement, there was no communication from the defendant addressed to the plaintiff to the effect that the plaintiff has violated any of the terms and conditions either on the question of payment of the amount or otherwise. It is only on 10.11.1989, the defendant has passed an order of cancellation of two plots on the ground of non-utilisation, which can be construed as a refusal of the performance of contract on the part of the defendant. Hence, if the said date is construed as a starting point for the computation of the period of limitation by excluding the period during which the pendency of the writ petition viz., WP No.15327 of 1989 in Ex.P.10, the present suit is filed within the time prescribed under the Limitation Act. Therefore, we do not see any reason to come to a different conclusion than the one arrived at by the learned single Judge on the question of computing the period of limitation.

16. In the light of the discussions stated above, we are of the view that the judgment and decree of the learned single Judge is sustainable in law.

17. In the result, the above appeal is dismissed, however, there is no order as to costs.

Svn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Sub Assistant Registrar
Original Side
High Court, Madras

+ 2 cc to Mr. T.K. Seshadri, Advocate sr no. 43733
PV(CO)
NM(09.11.2005)

Pre-Delivery Judgment in
OSA 116 of 2002