



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5903-2019
Reserved on: 14.08.2024
Pronounced on: 18.09.2024

Kafila Forge Limited
Versus
State of Haryana and Another
....Petitioner
.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Vijay Pal, Advocate for the petitioner.
Mr. Ankur Mittal, Addl. A.G., Haryana with
Ms. Kushaldeep Kaur, Advocate and Ms. Siddhanth Arora, Advocate.

VIKRAM AGGARWAL, J.

1. The petitioner prays for the issuance of a writ of mandamus directing the respondents to refund the 10% amount (alongwith interest etc.) which was deducted upon surrender of plot No.45, Sector 53 Phase-V, Industrial Estate, Kundli (hereinafter referred to as the 'disputed plot') in view of the order dated 20.09.2013 (Annexure P-3) passed by respondent No.2. The petitioner further seeks the refund of the entire deposited amount as has been granted to other similarly situated allottees. The petitioner also prays for a direction to the respondents to take a decision on the various representations/legal notice dated 17.12.2018 (Annexure P-10).

2. Pursuant to an advertisement issued in the year 2008, the petitioner applied for the allotment of an industrial plot measuring 12000 square meters at Kundli on 20.08.2008. Upon consideration, a decision was taken to allot a plot measuring 11250 square meters situated in Industrial Estate, Kundli at a tentative rate of Rs.55,00/- per square meters. Initially, plot No.58, Sector 53, Phase-V, Industrial Estate, Kundli was decided to be allotted to the petitioner but subsequently the plot was changed to plot No.45 and, accordingly, Regular Letter of Allotment (for short 'RLA') dated 29.01.2009 (Annexure P-1) was issued. As per the RLA, the tentative price was Rs.6,18,75,000/- @ 5500 per square meters. The schedule of payments etc. was also given in the said RLA.

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3. The petitioner claims to have deposited a sum of Rs.3,99,97,702/- towards the cost of the plot and Rs.59,98,636/- as interest and, therefore, paid a total of Rs.4,59,96,338/-.

4. On account of a slowdown of the economy Pan India and particularly in industrial sectors, the petitioner, under compelling circumstances, surrendered the plot vide communication dated 12.07.2013 (Annexure P-2/A). Vide communication dated 02.09.2013 (Annexure P-2/B), the request for surrender was acceded to and a sum of Rs.3,37,97,887/- was refunded and it was mentioned that 10% cost of the plot alongwith interest etc. had been forfeited.

5. Shortly thereafter, on 20.09.2013 (Annexure P-3), a decision was taken by the Haryana State Industrial and Infrastructure Development Corporation (respondent No.2) (for short 'HSIIDC') that where industrial plots had been allotted till 31.12.2012 and on account of the slowdown, a request for surrender was made within a period of 06 months from the date of approval of the proposal i.e 29.08.2013, the HSIIDC would consider the same without any deduction and the principal amount deposited by the allottee towards the price of the plot would be refunded. Accordingly, the petitioner submitted his requests for refund of the amount on various occasions (Annexures P-4 and P-5) and in fact these requests were rejected vide communication dated 10.04.2018 (Annexure P-7).

6. The petitioner also places reliance upon the provisions of the Estate Management Procedure, 2011 (for short 'EMP 2011') (Annexure P-6) to support its case for refund of the entire amount.

7. The disputed plot was ultimately allotted to one Inox World Industry Private Limited @ Rs.10,000/- per square meters. It is the case of the petitioner that no loss was, therefore, caused to HSIIDC on surrender of the disputed plot by the petitioner.

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8. The petitioner represented to the Chief Minister of Haryana and also served upon the respondents a legal notice dated 17.12.2018 (Annexures P-9 and P-10 respectively) but to no avail, leading to the filing of the instant writ petition.

9. The writ petition has been opposed by HSIIDC. In its written statement, the allotment of the plot, the tentative price, issuance of the RLA, request for surrender made by the petitioner, passing of the order dated 20.09.2013 and other facts as pleaded in the petition have been admitted. The case set up by the respondents essentially is that in terms of condition No.5(c) and 2(iv) of the RLA and further Chapter 6 of the EMP 2011, the amount was to be refunded only after deduction of 10% of the tentative price alongwith interest etc. With regard to the order dated 20.09.2013, with regard to refund of the entire amount in view of the slowdown, it has been averred that there was a specific clause that refunds already made would not be affected by the said order. It has also been averred that the case of the petitioner is not covered by the said order as the disputed plot had been surrendered by the petitioner vide communication dated 12.07.2013 and it was accepted by HSIIDC on 06.08.2013 i.e. much before the decision of the Board of Directors of HSIIDC on 29.08.2013 communicated vide circular dated 20.09.2013. The breakup of the amount paid and deductions made have also been given in the written statement. Another stand which has been taken in the written statement is that the petitioner was not able to commence construction and various show cause notices were issued to the petitioner, the details of which have been given in the written statement and ultimately, after more than 03 years of allotment, the petitioner made a request for surrender.

10. In the replication, averments made in the written statement have been denied and those made in the writ petition have been reiterated. In the writ petition as also in the written statement, it has been submitted that while a similar relief has been



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given to many other similarly situated persons, the same has been denied to the petitioner.

11. Learned counsel for the parties were heard.

12. It was submitted by learned counsel representing the petitioner that the action of the respondents in deducting a huge amount of 1 crore of rupees is illegal and arbitrary especially in view of the order dated 20.09.2013. Learned counsel submitted that the respondents had been over technical in rejecting the case of the petitioner whereas they had refunded the entire amount to many other similarly situated persons. However, no details of such similarly situated persons were furnished to the Court during the course of arguments nor any specific instance has been given in the writ petition or the replication. It was submitted that the petitioner had suffered a lot on account of the economic slowdown and further on account of the illegal deduction of about Rs.1 crore by HSIIDC. Learned counsel referred to the documents annexed with the writ petition as also the stand taken by the HSIIDC in its written statement and the documents attached therewith and submitted that the action of the HSIIDC is not sustainable.

13. Mr. Ankur Mittal, learned counsel representing HSIIDC, however, submitted that the action of HSIIDC is in accordance with the order dated 20.09.2013 as also the provisions of the RLA and the EMP 2011. Reference was made to the terms and conditions of the RLA and more particularly Clause 2(iv) as also to Chapter 6 of the EMP 2011 and it was submitted that the deduction had been made in accordance with the said conditions. It was also submitted that the order dated 20.09.2013 was not applicable to the petitioner since the request of the petitioner as also the decision on the same was much prior to the decision which was conveyed vide order dated 20.09.2013. Learned counsel also submitted that no other similarly



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situated persons had been granted the full refund and only people who had applied in pursuance to the order dated 20.09.2013, refunds were made in terms of the same.

14. We have considered the submissions made by learned counsel for the parties.

15. The RLA is on record as Annexure P-1. The disputed plot bears plot No.45 situated in Sector-53, Phase-V, Industrial Estate, Kundli, District Sonipat. It was allotted for setting up of an industrial project of manufacturing of auto parts. Offer of physical possession was given in the RLA itself. The disputed plot measured 11250 square meters and the tentative price was Rs.6,18,75,000/- @ Rs.5500/- per square meters. The schedule of payment was duly given in the RLA. Clause 2(iv) provided as under;

“Apart from fulfilling the conditions precedent as specified at 2(i) & 2(ii) above, you shall also be required to execute an Agreement, in writing, with HSIIDC, at Panchkula, incorporating therein the terms & conditions, as contained in Appendix-A, on the printed agreement, attached with the RLA. This period of 60 days allowed for execution of the agreement will, however, be extendable further by HSIIDC at its sole discretion, but incase, after fulfilling any of the conditions precedent as specified at 2(i) & 2(ii) above, you fail to execute the agreement within the extended period, the allotment shall become liable to be cancelled and the principal amount received towards the tentative price shall be refundable to you without any interest; after forfeiting 10% of the total tentative price of the aforesaid plot/shed. Any amount paid to HSIIDC on account of interest and/or penal interest, as the case may be, shall be non-refundable.

16. The terms and conditions in the format of agreement was also attached as Annexure-A alongwith the RLA. As per the agreement which is stated to have been executed between the parties, the project for which the plot had been allotted was to be implemented within a period of 03 years from the date of offer of possession which was given alongwith the RLA but in the agreement, it was stated

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that the same would be operative from the date of execution of the agreement. It was also specified that implementation of the project would mean commencement of commercial production after coverage of construction in accordance with the norms specified in the EMP 2011 and installation of plant and machinery. It appears that on account of the slowdown, vide communication dated 12.07.2013, a request was made by the petitioner to surrender the plot. It was requested that the allotment be cancelled and the amount be refunded. Notably, this letter was submitted on 12.07.2013 i.e. more than 04 years after the allotment of the plot. It, therefore, means that no construction was carried out within the stipulated period of 03 years. Here, it would be apposite to refer to the averments made in the written statement as regards issuance of show cause notices to the petitioner on account of non-construction, which, for obvious reasons has not been disclosed in the writ petition. As per the written statement, the physical possession was handed over to the petitioner on 25.11.2010 and an undertaking was given by the petitioner on 27.06.2011 (Annexure R-5) that it accepted the provisions of EMP 2011. Upon inspection of the site, a site report dated 12.10.2012 was submitted to HSIIDC in which it was stated that the disputed plot was lying vacant and that the petitioner had also failed to pay a sum of Rs.58,15,299/- on account of interest and delayed interest as on 31.10.2012. Accordingly, show cause notice dated 22.10.2012 (Annexure R-5) was issued. The petitioner is stated to have been given an opportunity of hearing also on 29.11.2012, wherein the petitioner assured that the outstanding amount would be paid within 15 days. However, since the same was not done, further show cause notices dated 29.01.2013, 11.04.2013 and 11.07.2013 (Annexure R-6 Colly.) were issued. It is, therefore, clear that the request for surrender was not immediate but was after more than 04 years of the allotment of the disputed plot and after having received a number of show cause notices for non-construction and non-payment.



17. Clause 6.2 of EMP 2011 deals with surrender of plots and reads as thus;

“A. Surrender of Plots/ sheds:

6.2 Keeping in view that a number of factors impact the establishment of a business in a dynamic business environment, it is recognized that the plans for establishment of a business may undergo a change and the allottee may review and reconsider his plans to carry on with the establishment of the intended business. In such situations, the allottees will have the option to surrender the plots/sheds allotted to them. The requests for surrender of plots/sheds will be regulated as under:

i) Wherever an allottee surrenders the plot/ shed at anytime within a period of two years of allotment, the Corporation will refund the full principal amount paid by the allottee in such cases, without any interest, within a period of 30 days of the receipt of surrender request.

ii) Wherever an allottee surrenders the plot/shed within the third year of allotment the Corporation will refund the principal amount paid by the allottee without any interest, after deduction of 5% of the price of the plot/shed, within a period of 30 days of receipt of the surrender request.

iii) Any surrender of plot after completion of three years of allotment will entail deduction of 10% of the price of plot/shed.”

As per the same, any surrender of plot after completion of 03 years of allotment would entail deduction of 10% of the price of the plot. If one reads Clause 2(iv) of the RLA in conjunction with Clause 6.2 of EMP 2011, it emerges that the surrender of a plot was to entail a deduction of 10% price of the plot alongwith interest etc. In fact, Clause 2(iv) of the RLA clearly lays down that any amount paid to HSIIDC on account of interest and/or penal interest would be non-refundable in such cases.

18. Coming to the order dated 20.09.2013, it has specifically been stated in the written statement and not controverted in the replication by any document that the case of the petitioner would not be covered by the said order as the petitioner had submitted his request for surrender on 12.07.2013 and the same was accepted by HSIIDC on 06.08.2013 which was much before the decision dated 29.08.2013 taken by the Board of Directors and conveyed on 20.09.2013. Even the amount was

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refunded to the petitioner on 02.09.2013 i.e. much prior to 20.09.2013. Even if the amount was refunded after the decision dated 29.08.2013, the same would not make a difference because firstly, the application, as already stated was moved by the petitioner on 12.07.2013 and was accepted by HSIIDC on 06.08.2013. Still further, it has specifically been mentioned in the order dated 20.09.2013 that the cases already decided in the past where extension fee had been remitted or surrender request had been considered after deduction of 10% amount would not be reopened;

“v) That the case already decided in the past where the extension fee had already been remitted by the allottee or surrender request had been considered by the corporation after deduction of 10% amount, shall not be re-opened.”

19. Still further, the details of the amount paid by the petitioner and deducted by HSIIDC have also been furnished in the written statement;

“Total Cost of the Plot-	Rs.6,18,75,000.00
Towards 10% application money-	Rs.65,82,500.00
Towards 25% plot cost-	Rs.1,20,00,000.00
Towards balance 25% plot cost-	Rs.35,13,160.00
Towards interest due up to re-schedulement-	Rs.47,47,662.00
Amount deposited till change of plot-	Rs.2,68,43,322.00
Balance principal	cost-Rs.6,18,75,000.00-
Rs.2,68,43,322.00=Rs.3,50,31,678	
Total amount deposited including installments-	Rs.4,59,78,837.00
10% of plot cost deducted-	Rs.61,87,500.00
Interest and delayed interest-	Rs.59,93,450.00
Refundable amount after deduction-	Rs.3,37,97,887.00”

As per the same, the refundable amount came to Rs.3,37,97,887/- which was duly paid to the petitioner.

20. No doubt, the deduction of more than Rs.1.20 crores would definitely hurt and pinch the petitioner. However, the same had been done in accordance with the provisions of the RLA, the EMP 2011 and from the above discussion, the order dated 20.09.2013 does not apply to the petitioner. In so far as the HSIIDC is



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concerned, it is bound by the various terms and conditions of the RLA, EMP 2011 and the decision taken by its authorities. A cut-off date has to be there for everything. There will always be people on either side of the cut-off date who would feel the pinch and would contend that they were very near to the cut-off date. However, this would not entitle them to any relaxation because a cut-off date has to be fixed under all circumstances.

21. There is another aspect of the matter. The petitioner has averred in the writ petition and it was also contended during the arguments and this was the precise contention at the time of issuance of notice of motion on 05.03.2019 that many other similarly situated persons had been granted a complete refund. However, not even a single instance has been brought on record nor has any such instance been produced before the Court which could have given strength to the case of the petitioner. Under the circumstances, the stand that such relief had been granted to many other similarly situated persons falls to the ground.

22. No policy/instructions have also been brought to the notice of the Court vide which the forfeiture amount could have been reduced or waived off by the respondents at the relevant time.

23. From the totality of the facts and circumstances as have been discussed and noticed in the preceding paragraphs, it emerges that the claim of the petitioner is devoid of merit.

In view of the same, we do not find any merit in the instant writ petition and the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Pronounced on: 18.09.2024

Prince Chawla

Whether speaking/reasoned :

Yes/No.

Whether reportable :

Yes/No.