

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-412-1989 (O&M)

Date of decision:- 12.08.2015

M/s Delta Hamlin Limited

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. M.L. Sarin, Senior Advocate,
with Mr. Hemant Sarin, Advocate,
for the petitioner.

Mr. Deepak Balyan, Additional Advocate General, Haryana,
for respondent No. 1.

Mr. Kamal Sehgal, Advocate,
for respondent No. 2.

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S.J. VAZIFDAR, A.C.J. (ORAL)

The petitioner seeks a writ of mandamus directing the respondents to hand over the possession of industrial plot Nos. 366-367-368 admeasuring 12000 sq. metres (about 3 acres) at Gurgaon. In the alternative, the petitioner has sought the allotment and possession of a similar plot. Lastly, the petitioner has sought interest at the rate of 18% per annum compounded quarterly on the sum of ₹ 7,19,992.44/- from the date it deposited the same with the respondent No. 2 - Haryana State Industrial Development Corporation Limited till possession of the plot is handed over.

2. The petitioner made an application dated 13.04.1982 to the respondent No. 2 for the allotment of an industrial plot admeasuring approximately 20000 sq. metres. A demand draft in the sum of ₹ 35,000/- equivalent to 5% of the tentative price of the plot was enclosed therewith. A

reminder dated 07.01.1983 was addressed by the petitioner to the respondent No. 2.

3. By a letter dated 02.02.1983, the respondent No. 2 informed the petitioner the rate fixed for Phase-IV in which the allotment of a plot was sought and stated that it would not be possible to consider the petitioner's request at the old rates. The petitioner was asked to send its consent for the same if it was interested.

4. On 10.02.1983, the petitioner forwarded a bank draft in the sum of ₹ 2,00,500/- towards 15% application money for the allotment of a 5 acre plot in the said industrial complex. The respondent No. 2 issued a receipt in respect thereof.

5. The respondent No. 2 by a letter dated 27.12.1984 informed the petitioner that it had been decided to offer it the said industrial plot admeasuring 3 acres in Phase-IV at a tentative rate of ₹ 120/- per sq. metre. The receipt of 25% of the cost was acknowledged. The balance 25% was required to be paid in ten equal annual installments with interest at the rate of 15.5% per annum on the reducing balance. Before the issuance of the allotment letter, the petitioner was required to complete the requisitions mentioned therein.

6. Presumably, the petitioner complied with the requisitions and the respondent No. 2 by a letter dated 26.09.1985 informed the petitioner that the said plot had been allotted to it. It is clarified that the area and the price of the plot mentioned therein was only tentative and was subject to adjustment according to actual measurements at the time of possession. The copy of the draft agreement for the petitioner's acceptance was enclosed therewith. In fact, the respondent No. 2 by its letter dated 22.12.1986

informed the petitioner the actual area of the plot and called upon it to deposit the balance amount of ₹ 3.60 lacs.

7. Ultimately, the agreement dated 08.02.1988 was entered into in which the respondent No. 2 agreed to sell the said plot to the petitioner at the price and on the terms and conditions contained therein. Clause 13(1) of the agreement was relied upon by the respondent No. 2 to deny the petitioner's interest on the amount deposited by it. We will set out clause 13(1) while dealing with this argument later.

8. The agreement, however, was never implemented. According to the petitioner, this was on account of the plot having been encroached upon by the Indian Air Force. Considering what transpired between the parties, it is not necessary to decide whether the plot was encumbered by way of encroachment or otherwise. The correspondence that ensued indicates that the petitioner abandoned its claim for the allotment of the plot and was content instead to receive the amount deposited by it together with interest thereon. The petitioner abandoned the agreement for a valid reason. It is for this reason that although we have refused the main prayer, we have directed the respondents to refund the amount deposited by the petitioner together with interest at the rate of 18% per annum.

9. By a letter dated 06.04.1988, addressed to the respondent No. 2, the petitioner stated that the plot had not been demarcated and that during a site visit the previous day the 2nd respondent's manager informed the petitioner that free and unencumbered possession of the plot was not possible in view of the encroachment thereon by the defence authorities and a dispute regarding the title to the land. A stay order issued in legal proceedings was also referred to with the petitioner expressing a grievance that it was never informed about the same. The petitioner stated that it was in

consideration and anticipation of an unencumbered plot that it deposited the amount of about ₹ 7.20 lacs. The petitioner further stated that the property being in dispute it appeared that the respondent No. 2 would not be able to give free possession in the near future. The petitioner concluded the letter as follows:

“From the foregoing, it is abundantly clear that the HSIDC has failed to honour/discharge its part of the contract by not giving timely and free possession of the above plot as a result of which we have been put to a substantial financial and opportunity loss. Therefore, without prejudice to our other rights, we are left with no alternative, but to request you pending alternative arrangement to refund us the full amount paid i.e. Rs. 7,19,992.44/- (Rupees Seven Lacs Nineteen Thousand Nine Hundred Ninety Two and paise Forty Four only) plus interest of Rs. 4,17,536.00 (Rupees Four Lacs Seventeen Thousand Five Hundred Thirty Six only) calculated @ 18% p.a. as detailed in Annexure ‘B’ latest by 30.04.1988. Please note that the opportunity cost has not been accounted for.”

10. The petitioner, therefore, abandoned its claim in respect of the said plot. This is clear from the demand for refund of the sum of ₹ 7.20 lacs together with interest thereon. Faced with this, Mr. Sarin submitted that the demand was without prejudice to the petitioner’s rights and only pending an alternative arrangement. Firstly, even assuming that to be so, it would make no difference for the petitioner had clearly abandoned its claim in respect of the said plot which was the subject matter of the agreement. The question of this Court, therefore, virtually granting specific performance in respect of the said plot would not arise even in a suit. This is clear from the fact that in the paragraph preceding the one we have quoted, the petitioner stated that it appeared unlikely that the respondent No. 2 would be able to give free possession of the plot in the near future.

11. Even assuming that the petitioner is entitled to the alternative arrangement, it is difficult especially in this petition, to consider a claim for the same at this distant point of time. Assuming that the petitioner is entitled to such a relief various factors would have to be considered. It is highly doubtful that in a suit for specific performance a prayer for an alternative plot could be granted. Even assuming it could be granted, various aspects would have to be taken into consideration which in all probability would require evidence. Damages have not been sought. Even if they were, it would have been difficult to compute the same in this writ petition under Article 226 of the Constitution of India.

12. That the petitioner intended abandoning the agreement is crystal clear by its letter dated 05.05.1988 addressed to the 2nd respondent in which it demanded repayment of the full amount deposited by it together with interest. It prefaced its demand with a grievance that the 2nd respondent had never informed it regarding the encroachment. The demand for refund in this letter did not contain the purported qualification in the letter dated 06.04.1988, namely, the same being without prejudice to the petitioner's rights and only pending an alternative arrangement. It was an absolute demand for repayment of the amount deposited.

13. The doubt, if any, in this regard is set at rest by the concluding paragraph of the petitioner's letter dated 06.07.1988 which reads as under:-

"In view of the above, we had lodged a very valid and just claim with you for a refund of our entire amount (Rs. 7,19,992.44/-) plus 18% interest accrued on our money (Rs. 4,17,536/-) or in the alternative to give us free and unencumbered possession of the plot.

The above letter again clarifies our stand that in no case have we surrendered the plot.

An early reply to the above letter will be appreciated.”

14. It is important to note two things about this letter. Firstly, there is an unqualified demand for the refund of the amount deposited by the petitioner with interest. In other words, the demand for refund with interest is without reserving the right to claim anything else. Secondly, and even more important, the demand for the free and unencumbered possession of the plot is only in the alternative to the demand for refund. The petitioner by now was, therefore, clearly content to receive the money.

15. The respondent No. 2 under cover of its letter dated 22.12.1988 forwarded a cheque in the sum of ₹ 2,02,563/- as refund of the money on the surrender of the plot. The petitioner returned the cheque contending that it had never surrendered the plot. The value of a 3 acre plot today would be around ₹ 200 crores. The petitioner contends that it ought to get this plot at the originally agreed price of about ₹ 7.20 lacs. The petitioner contends that it is not responsible for the delay in this litigation. We will assume that to be so. However, in view of our finding that the petitioner was content to give up its rights to the allotment of the plot upon being refunded the amount deposited by it together with interest, it is not necessary to consider this submission.

16. In our opinion, however, the petitioner is certainly entitled to refund of the amount deposited by it with the respondents together with interest at the rate of 18% per annum as demanded by it. There is no justification for respondent No. 2 not refunding the amount together with interest.

17. Mr. Sehgal relied upon clause 13(1) of the agreement dated 08.02.1988 in support of his contention that the 2nd respondent is liable to

return the amount after making the deductions on account of the surrender of the plot. Clause 13(1) reads as under:-

“13(1) That in case of surrender of plot voluntarily by the allottee, he/she/it shall be entitled to refund of the principal amount of the installments paid by his/her/it after deduction of interest till the date of request for surrender and/or delayed interest or penalty, if any, imposed for late remittance of earlier installments. In case, the plot has been constructed, the allottee shall be entitled to remove his/her/its machinery and material within one month of surrender, whereafter, the same shall vest in the Corporation without any liability to pay compensation to the allottee for the said machinery or the building.”

18. The petitioner abandoned its claim to the allotment of the plot only in view of the 2nd respondent's inability to deliver the same unencumbered to it. The petitioner, therefore, was not at fault. It is not even the 2nd respondent's contention that the petitioner was not ready or willing to perform its obligations under the agreement. In these circumstances, the 2nd respondent would not be justified in deducting any amount whatsoever.

19. The writ petition is, therefore, disposed of by directing the 2nd respondent to refund the amount of ₹ 7.20 lacs together with interest thereon at the rate of 18% per annum from the date of the deposit till payment and/or realization on or before 30.11.2015.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

12.08.2015
Amodh