IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 15971 of 2001

Date of Decision:-10.02.2015

Rockman Cycle Industries Ltd. ...Petitioner

Versus

Punjab Small Industries and Export Corporation Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. A.M. Punchhi, Advocate
for the petitioner.

HEMANT GUPTA J.(Oral)

The petitioner is claiming refund of the excess amount of Rs.2,14,000/- deposited by it in pursuance of the demands raised by the respondents while restoring the plot in question to the petitioner.

The petitioner was initially allotted plot No.A-7, Industrial Focal Point, Phase-5, Dhandari Kalan, Ludhiana measuring 35000 square yards in the year 1976. The State Government framed an industrial policy (Annexure P-1) inter-alia contemplating allotment of plots under the “off the Shelf” Scheme. The petitioner was allotted a plot measuring 12800 square yards on 25.8.1993 bearing No.A-7/A after the industrial policy was notified on 24.11.1992 on the tentative price of Rs.49,28,000/-. The letter of allotment further contemplated that if the entire amount is paid in lump sum, 5% discount will be given. The petitioner paid an amount of Rs.46,81,000/- after deducting the amount of 5% discount.

The industrial policy dated 24.11.1992 (Annexure P-1) contemplates that the applicant shall be required to commence commercial production within three years after allotment. The relevant extract from the said policy reads as under:

> "7.3 The allotment of plots under the "Off-the-shelf" shall be subject of the following conditions:
>
> xx xx
>
> (iv) The applicant shall be required to take the following steps within one year from the date of allotment of plots:
>
> (a) Start the construction of the factory building
>
> (b) Place firm orders for the purchase of plant & machinery
>
> (c) Have loan application appraised from the financial institution
>
> (d) Make arrangements for power connection
>
> 7.4 In the event of an applicant failing to take the effective steps indicated in the proceeding para within one year of the allotment of the plot, allotment shall be liable to be cancelled, consequent upon which the earnest money deposited shall stand forfeited and the remaining cost of the plot shall be refunded to the applicant. The Committee, however, in deserving cases may consider allowing extension in time for taking the above effective steps for a maximum period of additional one year.
>
> 8. Extension Fee:
>
> 8.1 Allottees of plots allotted under this policy shall ensure that the units set up by them commence commercial production within three years after allotment.
>
> 8.2 In case the unit does not go into production within three years from the date of allotment, they will be liable to pay extension fee of 5 per cent of the cost of plot in the 4th year and 7.5 per cent in the 5th year.
>
> 8.3 In no case extension shall be allowed beyond 5 years from the date of allotment, on the expiry of which plot shall stand automatically resumed without any notice and the earnest money deposited by applicant shall be forfeited."

The letter of allotment dated 25.08.1993 (Annexure P-4) had also similar clauses. The relevant clause reads as under:

> "2. Plot adjoining Plot No.A-7 measuring 11500 sq. yds at Industrial

Focal Point Dh. Kalan is hereby allotted to you for the manufacture of by-cycle chains on 99 years lease hold basis (renewable for another 99 years) on the following terms & conditions:

xx xx

ix) You shall (a) start construction of factory building as per plans in terms of clause 2(viii) above; (b) place firm orders for the purchase of plant and machinery; (c) have loan application appraised from the financial institution (d) make arrangements for power connection; within one year of the issue of this letter. The Committee however, in deserving cases may consider allowing extension in time for taking effective steps for a maximum period of additional on eyear. You shall further be required to complete the factory building and start commercial production within an over-all period of three years from the date of issue of this letter and shall produce permanent registration of the unit on the allotted plot with Directorate of Industries, Punjab, as a proof of having brought the unit into production within the stipulated period."

Thus, the petitioner was bound to commence commercial production within three years from the date of allotment failing which the plot allotted was liable to be cancelled.

The petitioner did not commence commercial production within three years, which led to the order dated 5.6.1997 resuming the site. The petitioner commenced commercial production on 25.3.1998. The action of the respondent Corporation of resuming the plot became subject matter of challenge before this Court in CWP No.1969 of 2000 titled '<u>M/s Rockman Cycle Industries Ltd. Vs. State of Punjab and others</u>'. Before the writ Court, the respondents produced a resolution passed by the Board in its 208th meeting on 15.2.2001. Such Resolution reads as under :-

"Resolved that the quantum of restoration fee to be levied on the defaulter allottees of plots allotted under off the Shelf Scheme while considering restoration of cancelled allotments and also the rate of extension fee for allowing

> extension in time period beyond permissible period of 3 years for the commencement of production subject to the maximum ceiling of 7 years effective from the date of allotment be and is hereby approved as per agenda item.
>
> Further the rates of extension and restoration fee shall be applicable on the allotments made under the policy notified on 24.11.1992 read with 01.06.96 under Off the Shelf Scheme only."

It is, thereafter, the writ petition was decided in terms of the resolution produced. The petitioner deposited an amount of Rs.6,00,000/-. But later sought refund of Rs.2,14,800/-, which request was dealt with by the respondents on 27.8.2001 vide (Annexure P-7) accepting the request of refund to the extent of Rs.56000/-. The relevant extract of the letter reads as under :-

> "Please refer to your letter dated 25.5.2001 on the subject cited above.
>
> It is to inform you that excess amount of Rs.56,000/- has already been refunded to you vide cheque No.119757 dated 15.3.2001 after deducting the sum of Rs.7,44,000/- out of Rs.8,00,000/- on account of extension/restoration charges. The details are as under:-

1)	Extension Fee @ 5% of the cost of plot for the fourth year	Rs.2,46,400.00
2)	Extension fee @ 7-1/2% of the cost of plot for the fifth year	Rs.3,69,600.00
3)	Restoration Fee @ Rs.10/- per sq. Yard for 12,800 sq. yards	Rs.1,28,000.00
	Total	Rs.7,44,000.00
Amount already deposited		Rs.8,00,000.00
Excess refunded		Rs. 56,000.00"

It is, thereafter the petitioner has filed the present writ petition before this Court claiming refund of Rs.2,14,800/- after adjustment of Rs.56,000/- already refunded to the petitioner.

Learned counsel for the petitioner has raised two fold arguments: firstly, that there is no term in the letter of allotment of charging extension or restoration fee, therefore, the demand of extension and/or restoration fee is illegal. Secondly, the price of the plot is Rs.46,81,000/-, therefore the extension fee is chargeable on the said amount and not on the allotment price of Rs.49,28,000/-

We do not find any merit in the arguments raised.

Earlier, before this Court in the proceedings challenging the resumption order, a resolution was placed on record to the effect that the extension and restoration fee shall be applicable to the allotment made under the policy notified on 24.11.1992 read with “Off the Shelf Scheme” dated 1.6.1996. The said policy contemplated the levy of extension fee at the prescribed rates after expiry of three years. Such extension fee has been claimed by the respondent Corporation, which is evident from the letter dated 27.6.2001. The restoration fee is also part of the resolution produced before this court in the earlier writ petition filed. The petitioner has not disputed such claim at that time. Therefore, the petitioner cannot be permitted to dispute the resolution, which was the basis of the earlier decision in its writ petition. The present petition is not only barred by the principles of Order 2 Rule 2 CPC but also barred by the principles of estoppel.

In respect of the second argument, we find that the price at the time of allotment of the plot was Rs.49,28,000/-. The petitioner has availed the benefit of lump sum payment of 5% but that will not vary the allotment price. The incentive of paying the price in lump sum is a separate concession. Thus, the extension fee and/or restoration fee has been rightly claimed on the allotment price.

Therefore, the charging of extension fee @ 5% for the 4th year and 7-1/2% for the 5th year and also the restoration fee is in terms of the resolution produced before this Court in the earlier writ petition.

Consequently, we do not find any merit in the present writ petition and the same is dismissed.

(HEMANT GUPTA)
JUDGE

February 10, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE