

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.20322 of 2013

Date of decision:15.12.2015

Ajay Kapur

... Petitioner

Versus

State of Haryana & others

... Respondents

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

Present: Mr. Sandeep Sharma, Advocate for the petitioner.
Mr. Rahul Dev Singh, DAG, Haryana.
Mr. Aman Bahri, Advocate for respondent Nos.2 & 3.

....

TEJINDER SINGH DHINDSA, J.

Petitioner seeks quashing of order dated 03.11.2011 (Annexure P-9) passed by the Haryana State Industrial & Infrastructure Development Corporation Limited (in short 'HSIIDC') resuming industrial plot No.340, Sector-3, Growth Centre, Bawal. Petitioner is further aggrieved of an order dated 25.04.2013 (Annexure P-10) passed by the Appellate Committee headed by Principal Secretary, Department of Industries and Commerce, Haryana, whereby the action of resumption has been affirmed.

2. Vide a regular letter of allotment dated 7/10-09-2007 industrial plot bearing No.340, Sector-3 admeasuring 4000 square meters in Growth Centre Bawal was allotted in favour of M/s Shubham Chemicals and Solvents Limited. The allotment was made under the "prestigious projects category" for setting up an industrial project to manufacture pre-laminated particle board. A request for change of allotment from the name of the company to that of Sh. Ajay Kapur, Managing Director of the company i.e. present petitioner was permitted vide communication dated

30.05.2008 (Annexure P-2). It was clarified therein that the conditions contained in the regular letter of allotment dated 07/10-09-2007 would remain the same. Petitioner thereafter entered into an agreement dated 06.08.2008 with HSIIDC as regards the plot in question and the terms and conditions which would be relevant for the issue at hand are reproduced herein:

“Condition No.4: That the allottee shall be required to implement the project, for which the aforesaid plot has been allotted, within a period of three years from the date of offer of possession; and that implementation of the project shall mean the commencement of commercial production, after coverage of construction in accordance with the norms specified in EMP and installation of the plant and machinery.

That the allottee shall be required to implement the project, for which the aforesaid shed has been allotted, within a period of two years from the date of offer of possession; and that implementation of the project shall mean the commencement of commercial production, after installation of the plant and machinery.

Condition No.5: That notwithstanding the period of three years stipulated qua implementation of the project on the plot, the allottee shall comply with the following norms;

- a) The allottee shall be required to take possession of plot, submit building plans and start construction at site within six months of allotment.*
- b) The allottee shall also construction atleast to the extent of plinth level within one year of allotment.*
- c) The allottee shall complete the minimum required construction for completion of project and finalize tie-up for procurement of plant and machinery within two years.*
- d) The allottee shall implement the project after constructing atleast 25% of the permissible covered area and raising investment in fixed capital assets (minimum of Rs.30 crores) in*

the projects as per project report within three years of allotment and submit documents in this regard to the Corporation.

Upon failure on the part of the allottee to adhere to the schedule/time available for the implementation of the project and investment of minimum Rs.30 crores in fixed capital assets in the project, HSIIDC shall be competent to resume the aforesaid plot.

Condition Nos.6 to 10:

xxx

xxx

xxx

Condition No.11: That the use of the land and the building erected on the above said plot/shed shall be governed by the zoning plan of the Estate. The permissible covered area shall be governed as per rules & regulations of the department of Town & Country Planning, Haryana, as amended from time to time. Zoning violations and the deviation from the approved building plans at any stage shall cause a notice to rectify the breach by the allottee. In the event of non-compliance by the allottee, the aforesaid plot/shed shall be liable to be resumed and the allottee shall be required to remove the debris within a period of two months from the order of resumption otherwise the same shall be removed at the cost of the allottee by HSIIDC.

Condition Nos.12 to 34

xxx

xxx

xxx

Condition No.35: That the HSIIDC will be competent to resume plots/shed in its Industrial Estates in case an allottee default in complying with the terms and conditions of allotment/transfer/leasing etc. the resumption of plot/shed would be done by the HSIIDC after giving show cause notice. Upon resumption, the principal amount deposited by the allottee will be refunded after deducting 10% of the price of the plot/shed without any interest. The amount of interest and penalty, if any paid on the installment(s), shall also stand forfeited. The allottee will be free to remove the

structure/debris, if any, within a period of two months of resumption order at his own cost, failing which it shall be removed by the HSIIDC at the allottee's cost. The allottee shall not be entitled to any payment/compensation for building constructed by it on the resumed plot."

3. On 27.10.2009, a communication was issued by HSIIDC calling upon the petitioner to furnish a status report as also putting him to caution that the proposed project is required to be implemented till 07/10-09-2010. Since the petitioner had failed to take possession of the plot a notice dated 11.12.2009 was issued wherein initiation of appropriate proceedings as per terms and conditions of the regular letter of allotment were contemplated. It would be pertinent to take notice that in the light of a slow down in the global economy a general extension was granted by the respondent/corporation across the board and as such the stipulated period of implementation of the project insofar as the petitioner is concerned stood extended upto 09.09.2011. Apparently, the petitioner sought further time for taking over physical possession of the plot in question as also to commence construction and to implement the project. On 29.07.2010, HSIIDC informed the petitioner that the request had been acceded to subject to construction on the plot being commenced within a period of three months from the date of issue of the letter and to thereafter implement the project upto the extended period i.e. 09.09.2011.

4. On 02.12.2010 a show cause notice was issued to the petitioner contemplating the action of resumption on the ground that possession of the plot had not been taken and as such construction also had not commenced. The petitioner submitted a reply dated 27.12.2010 (Annexure P-7) taking a stand that possession of the plot has still not been

delivered. Vide impugned order dated 03.11.2011 (Anneuxre P-9) HSIIDC has directed resumption of the plot in question. Appeal having been preferred by the petitioner, the Appellate Committee headed by the Principal Secretary, Industries and Commerce Department, Haryana has upheld the order of resumption in its meeting held on 25.04.2013. It is against such factual backdrop that the instant writ petition has been filed.

5. The sole contention raised by the learned counsel appearing for the petitioner is that after the general extension for implementation of the project having been granted upto 09.09.2011, repeated attempts had been made and officials of HSIIDC had been approached at its office at Bawal but the response forthcoming was that the file of the plot in question was still at the head office in Panchkula and as and when the file is received, information for handing over possession of the plot would be furnished. Precise contention raised is that under such peculiar circumstances whereunder there has been a delay on the part of the respondent/corporation itself in delivering possession, the extreme step of resumption is not justified.

6. Having heard counsel for the parties at length and having perused the pleadings on record, we are of the considered view that there is no merit in the petition and the same deserves dismissal.

7. The stand taken on behalf of the petitioner as regards the possession of the plot having been delayed does not inspire any confidence. Vide letter dated 29.07.2010 issued by the respondent/corporation a time extension of three months to start construction and to implement the project latest by 09.09.2011 had been granted. Undoubtedly on 07.08.2010, the petitioner had addressed a communication to the respondent/Corporation for

delivering possession of the plot and had even mentioned that the Estate Officer concerned had informed him that the file of the plot is not with him but is still at the Panchkula office. Thereafter the petitioner did not make any effort to secure possession of the plot. It is only after issuance of show cause notice dated 02.12.2010 contemplating the penalty of resumption that the petitioner woke up to submit a reply dated 27.12.2010. Perusal of such reply dated 27.12.2010 at Annexure P-7 would in itself reveal that the petitioner had taken a stand that he was **“busy in some unavoidable activities and was travelling most of the time hence could not contact office of HSIIDC at Bawal in taking possession of the plot.”** It is the pleaded case of the petitioner as per averments in para 16 of the petition that possession of the plot was taken on 20.01.2011. On a pointed query having been put by the Court, counsel for the petitioner has conceded before us that even after taking possession on 20.01.2011 no steps whatsoever had been taken to commence construction thereupon and till the date of passing of the order of resumption i.e. 03.11.2011. The plea raised on behalf of the petitioner as regards delay in delivering possession of the plot is thus totally unfounded and an afterthought.

8. It is a settled legal position that inter se obligations arising out of a bilateral agreement would be governed by the conditions contained in such agreement. As per terms and conditions contained in the agreement dated 06.08.2008 entered into between the petitioner and the respondent/corporation, the petitioner was obligated to construct atleast 25% of the permissible covered area within the stipulated period of three years from the date of issuance of letter of allotment. Such period was thereafter extended upto 09.09.2011. Concededly, the petitioner had not

even commenced construction upon the plot till the date of passing of the order of resumption on 03.11.2011. The action of the respondent/authorities as such is found to be in strict conformity of the terms and conditions contained in the regular letter of allotment as also the agreement dated 06.08.2008 entered into between the petitioner and the respondent/corporation.

9. We do not find any infirmity or procedural irregularity in the decision making process that has led to the action of the resumption of the plot in question. The clear objective of allotment of industrial plot by the respondent/corporation in the Growth Centre/Industrial Estates across the State of Haryana is to facilitate rapid industrialization. Facts of the present case clearly indicate that the petitioner was sitting over a plot with a speculative consideration. Under such circumstances, we do not find any ground to interfere with the impugned orders in exercise of our discretionary jurisdiction.

10. The writ petition is dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

15.12.2015

harjeet

NOTE: Whether to be reported to the Reporters? Yes