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

**Amended Civil Writ Petition No.22567 of 2013** (O&M)
**RESERVED ON: 26.03.2015**
**DATE OF DECISION:01.04.2015**

Devender Kumar Gupta

…..Petitioner

versus

State of Haryana and others

.....Respondents

**CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Vivek Singla, Advocate for the petitioner

Mr. Ashok Singla, Addl. A.G.,
for the respondents

..

**S.J. VAZIFDAR, ACTING CHIEF JUSTICE:**

The petitioner has sought a writ of certiorari to quash communications dated 30.09.2013, 01.10.2013 and an order dated 03.09.2013 passed by respondent No.5 - Principal Secretary, Tourism Department, Government of Haryana and a writ of mandamus to accept lease rent only in respect of land admeasuring only 15,000 square feet and to be computed as per the excise policy and guidelines of Haryana Urban Development Authority (HUDA).

2. There are two major disputes between the parties. The first relates to the extent of the area in respect whereof the petitioner is liable to pay rent to the respondents. The second relates to the rate at which the rent is to be computed. The petitioner contends that he was in possession of only 15,000 square feet and that the rent is payable as per the policy of HUDA which we will refer to. The respondents, the other hand, contend that

the petitioner is liable to pay rent in respect of 30,000 square feet and at a much higher rate.

We are of the view that this petition under Article 226 is not an appropriate proceeding to determine either of the issues.

3. Respondents No.2,3 and 4 are the Deputy Excise and Taxation Commissioner (Excise), Director General, Tourism Department, Haryana and Deputy Commissioner, Faridabad. Respondent No.5 is the Principal Secretary of the Tourism Department, Government of Haryana.

4. The Government of Haryana invited bids to operate L-2/L-14A vends at Surajkund-I. The petitioner's bid of Rs.12,25,75,000/- was accepted.

5. By a letter dated 16.03.2013 addressed to the Managing Director of Haryana Tourism Corporation, the Deputy Excise and Taxation Commissioner (Excise), Faridabad stated that the HUDA/Haryana Tourism Corporation may allot the petitioner vacant land to run the vend at reasonable rates.

Clause 12.17 of the Excise Policy for the year 2013-14, which was quoted in the communication, reads as under:

> "12.17 PROVISION OF SPACE FOR RUNNING OF VENDS IN URBAN AREAS:
>
> "It has been decided that the Government and its agencies will try to provide space for running of vends in urban areas of the State wherever available and possible at reasonable rates for operating liquor vends in pre-fabricated structure."

6. By a letter dated 29.3.2013, the Haryana Tourism Department (HTD) informed the petitioner that it had decided to grant him a lease for the year 2013-14 for the sale of liquor at the rate to be determined by the Deputy Commissioner, Faridabad, on

the terms and conditions stipulated. Condition (i) was that the lease of land was from 01.04.2013 to 31.03.2014. Condition (viii) was that the exact location of the land to be given on rent was to be finalized by the Committee comprising of the Deputy Commissioner, Faridabad, Deputy Excise and Taxation Commissioner (Excise), Faridabad and a representative of the Department. Condition (ix) stated that the petitioner would raise a temporary wooden structure for the shop measuring 100’ x 300’ (30,000 square feet) at his own cost. The petitioner was put in possession of the said premises on 01.04.2013.

7. It must be noted at this stage that the rate at which the rent was to be charged was not determined between the petitioner and HTD. It was yet to be determined. Only the terms and conditions of the lease other than the rate were stipulated in the communication dated 29.03.2013. This is of considerable importance in view of what transpired between the parties thereafter.

8. Mr. Chetan Mittal, the learned senior counsel appearing on behalf of the petitioner contended that the policy of HUDA contained in its internal communication dated 18.3.2011 was applicable between the petitioner and the Haryana Tourism Department (HTD). The term of the policy relating to the rate of rent reads as under:

> "In case the Department of Excise & Taxation, Haryana does not opt for allotment of built up booth/SCO sites/buildings and go for open designated spaces, the allotment shall be subject to the following terms & conditions:
>
> i) The Collector rate (for Commercial Property, if available separately), as revised from time to time in that sector/area shall be the basis for computing the price and the rental should be 6% of that price for the full excise year."

This condition is in the internal communication dated 18.3.2011 from the Chief Administrator HUDA to all the Administrators and Estate Officers of HUDA. The subject of the communication is "Guidelines regarding providing space for opening of liquor vends." The Collector rate for commercial premises for registration purposes in Tehsil Faridabad was Rs.14,000/- per square yard for the year 2013-14 (Annexure P-16).

9. In other words, according to petitioner, the rent payable is 6% of the value of the area actually in the possession of the petitioner calculated at Rs.14,000/- per square yard.

10. There is, however, nothing to indicate that the guidelines contained in the said internal communication of HUDA dated 18.03.2011 is binding upon the HTD. Nor is there anything to indicate that the HTD had accepted these rates to be applicable in respect of the lease granted to the petitioner. Had the rate been applicable at the outset, it would have been so mentioned in the said communication dated 29.03.2013. Instead, as we mentioned earlier, the communication expressly stated that the lease was granted to the petitioner "at the rate to be determined by the Deputy Commissioner, Faridabad ……". Therefore, *prima facie*, at least the HTD had not accepted the rates contained in HUDA's internal circular dated 18.03.2011.

11. The correspondence that ensued thereafter also does not indicate that the guidelines contained in HUDA's internal communication dated 18.03.2011 were adopted by the Haryana Tourism Department. The correspondence that ensued between the parties is as follows.

12. By a letter dated 22.04.2013, the HTD informed the petitioner that the Deputy Commissioner had recommended the rent at Rs.9,16,850/- per month for 30,000/- square feet and accordingly called upon him to deposit the amount. The petitioner by his reply dated 01.05.2013 contended that the rate specified in HUDA's internal circular dated 18.03.2011 ought to be applied. The petitioner also contended that the 30,000 square feet area formally handed over by HTD on 01.04.2013 was not free of encroachment. He contended that the actual area available was only 9800 square feet. He agreed to pay the rent after making the above adjustments as to the rate and area.

13. The Haryana Tourism Department by a letter dated 03.06.2013 addressed to the Deputy Commissioner, Faridabad, requested the Deputy Commissioner to look into the petitioner's representation contained in his letter dated 01.05.2013. The Deputy Director, by a letter dated 20.09.2013, informed the petitioner that the matter had been considered by the Committee under the Chairmanship of the Deputy Commissioner, Faridabad. The Committee recommended a revised reduced rent at Rs.40,000/- per square yard instead of Rs.55,000/- per square yard and had also agreed that the area stood reduced to 15,000 square feet. The petitioner was called upon to pay the rent accordingly.

14. However, by a further letter dated 30.09.2013, the letter dated 03.06.2013 was withdrawn. Consequently, by a letter dated 01.10.2013, a fresh demand in accordance with the earlier demand was made by HTD. The petitioner relied upon the report of the Kanungo dated 01.08.2013 which indicated that the petitioner was in occupation of the area of only 15,000 square feet. The

respondent No.5, Principal Secretary, Tourism Department, Government of Haryana by the impugned order dated 20.09.2013, rejected the petitioner's contentions and upheld the respondents' contention to the effect that the petitioner was liable to pay rent as demanded, and in respect of 30,000 square feet. He further held that the petitioner had defaulted in paying the rent. An enquiry was also directed as to why possession of the land was handed over to the petitioner on 01.04.2013 by the officials of HTD when the licencee had not deposited the advance lumpsum rent of Rs.1,10,02,200/-.

15. *Prima facie*, there does not appear to have been an agreed rate at which the rent was to be paid. Whether the petitioner was bound in law to pay the rent demanded by the respondents is another matter altogether. It would not be appropriate in a petition under Article 226 of the Constitution of India for the Court to determine the rate at which the rent is payable by the petitioner to the respondents.

16. The respondents' contention that the petitioner was bound to pay the rent as contended by them must be determined in proceedings for the recovery thereof. Mr. Singla, the learned counsel appearing on behalf of the Haryana Tourism Development Corporation agreed that the amounts could be recovered by the respondents from the petitioner even as arrears of land revenue only after the determination of the quantum of rent payable by the petitioner in appropriate proceedings. It would always be open to the petitioner to raise any contentions including those raised in this writ petition as a defence to any action taken or proceedings filed by the respondents for the recovery of the rent. The

dismissal of this petition cannot possibly affect any defence that the petitioner may have in such proceedings.

17. Mr. Mittal expressed an apprehension that the petitioner could be considered to be a defaulter and would, therefore, be barred from bidding and applying for leases in future.

In view of what we have observed earlier and in view of the record as it stands, it cannot be said at this stage that the petitioner is in default. The issue of the quantum of rent is yet to be determined. This would depend upon the area found to be in the petitioner's possession as well as the rate at which the rent was to be computed.

18. Indeed, the petitioner must pay the admitted amount in any event forthwith. There would be no excuse for not doing so. The respondents, in turn, would be entitled to accept the same entirely without prejudice to their rights and contentions including for the recovery of further amounts.

19. Mr. Mittal fairly stated that by 31.03.2015 the petitioner, in any event, would have to vacate the premises which are the subject matter of this petition. The petitioner's undertaking to do so is accepted and it is also so ordered hereby.

20. The writ petition is, therefore, disposed of by the following order:-

The petitioner is at liberty to raise all contentions including those raised in the present writ petition in any proceedings that the respondents may adopt or in respect of any action that the respondents may take for the recovery of the amounts higher than that admitted by the petitioner. The admitted amount or the balance thereof, if any, shall be paid by 30.04.2015. The petitioner states that he has vacated and handed over vacant and peaceful possession of the premises under the 2013-15 Excise Policy. In any event, he shall forthwith do so. Any breach of this order shall be viewed very strictly. There shall be no order as to costs.

**(S.J. VAZIFDAR)**
**ACTING CHIEF JUSTICE**

01.04.2015
parkash*

**(G.S. SANDHAWALIA)**
**JUDGE**