IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.23491 of 2013 (O&M)
Date of decision: 08.12.2015

M/s Radha Swami Poly Feb Pvt. Ltd. ... *Petitioner*

Vs.

HUDA & others ... *Respondents*

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

Present: Mr. Aman Bansal, Advocate for the petitioner.
Mr. Deepak Manchanda, Advocate for the respondents.

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TEJINDER SINGH DHINDSA, J.

Petitioner seeks a writ of certiorari to quash the order dated 18.09.2013 (Annexure P-14) issued by the Estate Officer, HUDA, Sonepat raising a demand of Rs.83,75,605/- towards transfer fee in respect of an industrial plot.

2. The facts of the case lie in a narrow compass. Plot No.73-C admeasuring 26020 sq. meters, Industrial Estate Murthal, District Sonepat was allotted to Sh. G.L. Batra vide allotment letter dated 25.04.1997. Conveyance deed was executed on 19.11.1999. On a request made by the original allottee, title of the plot in question was transferred in the name of the petitioner/company. Sanction of building plans was obtained from the office of the third respondent on 18.10.2007. Construction having been effected as per approved building plans, occupation certificate was also issued by the Competent Authority. Petitioner/company commenced commercial production w.e.f. 15.07.2008.

3. On account of a change in the share holding in the petitioner/company, an application for recognition thereof in respect of the plot in question was made on 13.04.2010 (Annexure P-5) to the third

respondent. As per Estate Management Procedure Policy, 2005 of HUDA, a sum of Rs.13,01,000/- vide pay order dated 12.04.2010 was furnished along with the application towards transfer fee. Vide memo dated 24.11.2011, third respondent informed the petitioner that the change of share holding in the company in respect of the plot had been approved and duly noted. A rider was incorporated in such memo and to the following effect:

> *"This approval is further subject to the condition that the transfer fee will be charged as applicable on receipt of clarification from the competent authority which will be payable by you."*

4. The petitioner thereafter was confronted with the impugned order dated 18.09.2013 imposing a transfer fee of Rs.65,05,324 plus interest of Rs.18,70,281 i.e. total Rs.83,75,605. Perusal of the impugned order would reveal that the transfer fee has been raised by applying the Estate Management Procedure Policy of 2011 and by considering Murthal Industrial Estate to be falling in block-A.

5. We are of the considered view that the impugned demand of transfer fee as contained in order dated 18.09.2013 (Annexure P-14) is unsustainable.

6. Admittedly, on the date of submission of application dated 13.04.2010 as regards change in share holding, it was the Estate Management Procedure Policy, 2005 that held the field. Obviously, on such date EMP, 2011 had not even seen the light of the day. Under EMP, 2005, the various industrial estates developed by HUDA had been categorized as under:

"Hyper Potential Zone	*:*	*Industrial Estate Gurgaon.*
High Potential Zone	*:*	*Industrial Estate Faridabad/Ballabhgarh*

		Complex, Sonepat, Kundli, Multi functional Urban complex, Panipat and Panchkula.
Medium Potential Zone	*:*	*Bahadurgarh, Hisar, Rewari, Dharuhera*
Low Potential Zone	*:*	*All other industrial Estates developed by HUDA."*

7. Clause 8 of EMP, 2005 governed change in constitution/share holding and reads as follows:

> *"8. __CHANGE IN CONSTITUTION/SHAREHOLDING__*
>
> *Change in share holding will be allowed only if the original allottee or his family members (spouse, son, daughter, wife, parents, brothers and sisters) retain a minimum of 51% share in the project/company/firm. In case of the original allottee and his family fail to retain the prescribed share holding of 51%, it would amount to transfer and dealt with under the relevant provisions. In case where a private limited company becomes a public limited company listed with recognized stock exchange, the change in constitution may be allowed subject to the condition that the allottee or his associates (family members), retain the largest share holding and having management control, otherwise it will be treated as a case of transfer, processing fee of Rs.5000/- shall be charged in all such cases."*

8. From the categorization reproduced hereinabove, it becomes clear that Industrial Estate, Murthal was seen as a Low Potential Zone. It is the petitioner's own case that the change in share holding was to such an extent that the same would amount to transfer. Under the EMP, 2005 itself, the transfer fee for plots in industrial estates categorized as Low Potential Zone was fixed at Rs.50/- per square meter. Accordingly, the sum of Rs.13,01,000/- as transfer fee for the plot measuring 26020 square meters at

the rate of Rs.50/- per square meter had been furnished. The respondent/authorities did not take any decision on the application dated 13.04.2010. The petitioner submitted two reminders dated 09.11.2010 (Annexure P-8) and 30.05.2011 (Annexure P-9) through regd. post. The change in share holding was approved and noted vide letter dated 24.11.2011 at Annexure P-11. However, in such communication, it was stipulated that the approval was subject to the condition that transfer fee will be charged as applicable on receipt of clarification from the competent authority. The impugned order dated 18.09.2013 at Annexure P-14 merely recites that as per advice given by the Chief Administrator, HUDA, EMP, 2011 has come into force and by virtue of which, Murthal Industrial Estate is to be considered in Block-A and as such, transfer fee as also interest of Rs.83,75,605/- is payable.

9. On 26.11.2015, the matter was adjourned to today to enable Mr. Deepak Manchanda, learned counsel appearing for HUDA to complete instructions as to whether the application submitted by the petitioner/company dated 13.04.2010 was incomplete in any respect. During the course of hearing today, Mr. Manchanda, would fairly concede that there was no deficiency in the application submitted by the petitioner/company. No justification is also forthcoming with regard to the delay in processing of the application. It has also not been explained as to what was **"nature of clarification"** that was being awaited from the competent authority so as to settle the quantum of transfer fee. Facts of the case clearly establish that the delay in taking a decision on the application dated 13.04.2010 submitted by the petitioner/company was attributable completely to the respondent/authorities. Such delay cannot operate to the detriment of the petitioner. The letter dated 24.11.2011 at Annexure P-11

clearly holds that the share holding in the company has been approved and noted **"on the basis of documents submitted on 13.04.2010."** The approval and transfer, as such, has to relate back to the date of application. Accordingly, the transfer fee liable to be deposited was as per EMP, 2005. Admittedly, the same already stands paid. EMP 2011 would have no applicability in this case.

10. Counsel appearing for HUDA would place strong reliance upon an affidavit dated 14.11.2011 of one of the Directors of the petitioner/company and appended as Annexure R-2/T along with the written statement to contend that an undertaking had been furnished that if in future, HUDA increases the transfer fee, such increased amount along with interest would be duly paid. It has been contended that an undertaking having been furnished, it would not be open for the petitioner/company to assail the demand of enhanced transfer fee as per EMP, 2011. The contention is being noticed only to be rejected. Undoubtedly, the affidavit and undertaking had been furnished. That however, would not permit the State or its instrumentality to fasten upon the petitioner a liability towards enhanced transfer fee on the basis of a policy, which was not even applicable. Holding otherwise would amount to permitting HUDA an undue enrichment.

11. For the reasons recorded above, the writ petition is allowed. The impugned order dated 18.09.2013 (Annexure P-14) is set aside.

(S.J. VAZIFDAR) **(TEJINDER SINGH DHINDSA)**
ACTING CHIEF JUSTICE **JUDGE**

08.12.2015
harjeet

Note: Whether referred to the Reporter? Yes