IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.26002 of 2013 (O&M)

Date of decision:10.09.2015

Narender Nath Seth ... *Petitioner*

v.

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. Vishal Gupta, Advocate for the petitioner.

Mr. Deepak Balyan, Additional Advocate General, Haryana.

Mr. Dheeraj Chawla, Advocate for respondents No.2 to 4.

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TEJINDER SINGH DHINDSA, J.

The instant petition is directed against the resumption order dated 02.02.1994 (Annexure P-1) pertaining to an industrial plot. Further challenge is to a decision dated 30.03.2010 (Annexure P-2) taken by the Appellate Committee chaired by the Financial Commissioner and Principal Secretary, Department of Industries, State of Haryana affirming the resumption order dated 02.02.1994.

2. A narration of facts would be necessary.

3. In the year 1983, the Haryana State Industrial Development Corporation (hereinafter to be referred as the Corporation) invited applications for allotment of industrial plots at Udyog Vihar, Phase IV, Gurgaon at the rate of Rs. 120 per sq. meter. Petitioner applied for a plot ad measuring 500 sq. meters and enclosed a demand draft for Rs.6000/-

towards 10% of the price of the plot along with application dated 12.03.1983. The application submitted having been processed, petitioner was called upon to remit a sum of Rs.9000/- as 15% of the cost of the plot. Such payment was duly deposited. A provisional Letter of Allotment dated 30.12.1988 was issued by the Corporation in favour of the petitioner at an enhanced tentative rate of Rs.175 per sq. meters. Petitioner deposited even the enhanced amount. Thereafter, on 25.08.1989, the Corporation increased the price of the plot from Rs.175 per square meter to Rs.195 per square meter. Even such enhanced demand was satisfied. On 24.10.1989, petitioner was issued a final allotment letter with regard to plot No.UV-281 at the enhanced price of Rs.195 per sq. meter. An agreement dated 06.02.1990 was executed between the Corporation and the petitioner and on the very next day i.e. on 07.02.1990, possession of plot No.UV-281 measuring 450 sq. meter was handed over to the petitioner.

4. It is the pleaded case of the petitioner that in accordance with the terms and conditions of the agreement dated 06.02.1990, construction work to the extent of 25% of the permissible covered area was completed and the industrial activity/production was commenced w.e.f. 01.10.1991. Even communication dated 09.12.1991 (Annexure P-12) was addressed by the petitioner to the Corporation to verify the factual position as regards production activity at the premises having been commenced.

5. On 19.07.1991, the petitioner received a notice from the Corporation raising a further demand of Rs.185 per sq. meter on account of enhancement of the price of acquisition of land. Feeling aggrieved of such enhancement amount, petitioner filed a complaint before the Monopolies and Restrictive Trade Practices Commission, New Delhi (hereinafter to be

referred to as the Commission). A number of complaints were filed by other allottees, who were similarly situated. On 23.08.1994, the Commission directed status quo to be maintained in the matter in the following terms:

> *"There is a standing threat for resumption of property or dispossession of the applicant by the respondents for not paying certain additional amount which has been disputed as unlawful and against the terms of the contract between the parties. Therefore, status quo is to be maintained. The respondent is restrained from interfering in the possession of the applicant or interfering with the existing facilities on the plot till further orders of the Commission."*

6. Proceedings before the Commission remained pending and ultimately on 29.04.2002, liberty was granted to all the complainants including the petitioner herein to amicably settle the matter out of Court and with the Corporation. It has been averred that thereafter lengthy deliberations took place between the Managing Director of the Corporation and the allottees and it was finally agreed that the allottees would make good the enhanced price demanded and upon which only simple interest would be charged. In the light of such settlement, the petitioner is stated to have filed an application before the Commission on 25.02.2004 for withdrawal of the complaint. Vide order dated 18.03.2004, the complaint filed by the petitioner was permitted to be dismissed as withdrawn. As per petitioner, since the settlement with the Corporation was not being acted upon, an application seeking review of the order dated 18.03.2004 passed by the Commission was filed on 24.03.2004. In the meantime, the petitioner is stated to have approached the Corporation to confirm the outstanding dues as per enhanced demand having been raised. On 09.06.2004, the petitioner even forwarded to the Corporation a demand draft for a sum of

Rs.2,49,750/- (inclusive of interest towards settlement of enhanced demand). Correspondence thereafter ensued between the Corporation and the petitioner whereunder the amount sought to be paid by the petitioner was not accepted. Finally, a letter dated 07.06.2005 issued by the Corporation was received by the petitioner informing him that the plot in question stood resumed on account of non implementation of the project and non payment of the dues. This led to the filing of an application by the petitioner before the Commission on 13.06.2005 seeking interim directions pertaining to letter dated 07.06.2005. On 08.07.2005, the Commission directed the parties to maintain status quo. Copy of the order dated 08.07.2005 stands appended as Annexure P-31 along with petition.

7. In the reply dated 06.09.2005 filed on behalf of the Corporation before the Commission to the review application filed by the petitioner, a stand was taken for the first time that the plot already stood resumed vide order dated 02.02.1994. Accordingly, on 15.11.2006, while hearing the review application preferred by the petitioner, the Commission passed an order directing the petitioner to apply for cancellation of resumption of the plot to the Competent Authority. Petitioner is then stated to have filed a writ petition before the High Court of Delhi and which was disposed of on 28.02.2008 (Annexure P-34) by observing that in the event of the petitioner feeling aggrieved of any order passed by the Commission, it would be appropriate for the petitioner to have approached the Commission itself seeking clarification/review of the order dated 15.11.2006. Petitioner then filed an application on 10.03.2008 (Annexure P-35) before the Commission seeking review of the order dated 15.11.2006. Such application was disposed of by the Commission on 05.03.2009 (Annexure P-36) granting

liberty to approach the Corporation for cancellation of the resumption order dated 02.02.1994. In terms of such liberty having been granted, representations dated 29.09.2009 and 19.12.2010 at Annexure P-37 (colly) preferred by the petitioner were placed before the Appellate Committee chaired by the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Industries, respondent No.3 and wherein a decision was taken on 30.03.2010 affirming the order of resumption dated 02.02.1994. Order of the Appellate Committee having been placed before the Commission, petitioner vide order dated 12.04.2013 was granted liberty to seek appropriate remedy in accordance with law.

8. It is against such factual backdrop that the present petition has been filed impugning the order of resumption dated 02.02.1994 (Annexure P-1) as also order of the Appellate Committee dated 30.03.2010 (Annexure P-2) affirming the action of resumption.

9. The case set up on behalf of the petitioner is that the resumption order dated 02.02.1994 has been passed in gross contravention of the principles of natural justice and without giving him any opportunity of being heard. It is contended that even though the impugned order recites that an opportunity of personal hearing was granted and the petitioner had failed to appear before the Single Window Agency (SWA) Committee, yet no intimation had been received by the petitioner calling upon him to appear and to present his case. Counsel for the petitioner would vehemently contend that the petitioner having effected construction and also having commenced production within the stipulated time frame as per agreement dated 06.02.1990 entered into with the Corporation, there would be no justifiable basis for resumption of the plot.

10. Per contra, Mr. Dheeraj Chawla, learned counsel appearing for the contesting respondents No.2 to 4 would submit that as per terms and conditions of the agreement entered into between the Corporation and the petitioner, construction of the building on the plot was to be completed within a period of 1½ year and commercial production was to commence within a period of 2 years from the date of taking over possession of the plot. It is stated that the petitioner had failed to start construction as also commercial production within the time frame provided and thereafter even the enhanced price of Rs.185 per sq. meter had not been deposited and accordingly, no case for interference in resumption proceedings is made out.

11. Counsel for the parties have been heard.

12. The instant case presents a situation wherein even though a resumption order qua the plot in question may have been passed on 02.02.1994, yet the Corporation itself had given the resumption proceedings a go by. We may now proceed to indicate the specific reasons and circumstances in taking such a view;

(i) A complaint having been filed by the petitioner before the Commission and notice having been issued, the Corporation submitted a reply on 29.12.1994. Such reply was verified and signed by an officer of the rank of General Manager. In the complaint filed before the Committee, the petitioner had stated that there was a threat of resumption on account of non deposit of the enhanced price of Rs.185 per sq. meter. Such apprehension and assertion on behalf of the petitioner was rebutted in terms of the following stand taken in para

6 of the written statement filed by the Corporation:

> *"The contention of the petitioner that the plot was resumed is wrong but instead a lenient view was taken and policy was framed by giving him more time for payment of enhancement. As per terms of notice, the petitioner was again given a period of 35 days to clear the outstanding dues along with interest up to 31.08.1994."*

(ii) During the course of proceedings before the Commission, the Corporation issued a demand notice dated 06.03.1998 by which an amount of Rs.2,14,635/- towards enhanced cost was raised. A copy of such demand letter dated 06.03.1998 has been placed on record and appended as Annexure P-17 along with the petition and the same has not been denied by the respondents. Suffice it to observe that such demand was raised almost 4 years after the date of passing of the resumption order i.e. 02.02.1994.

(iii) The petitioner had moved an application before the Commission on 25.02.2004 seeking withdrawal of the complaint. In the application, it was specifically averred that the petitioner/complainant desires to deposit the money towards enhancement and as demanded by the Corporation on the basis that a settlement had been arrived at out of Court. On 18.03.2004, Commission had been pleased to order the complaint to be dismissed as withdrawn. The order dated 18.03.2004 passed by the Commission reads as under :

"MRTP COMMISSION, NEW DELHI

MA No. /2004
UTPE No.7/1995
CORAM

Mr. R.K. Anand
Member

Shri R.L. Sudhir
Member

In the matter of:

Narender Nath Sethi

... Applicant/complainant

Versus

Haryana State Industrial Development Corporation ... Respondent

Present:Shri M. Chaudhary, Advocate for the applicant complainant.

Shri Ravinder Bana, Advocate for the respondent.

ORAL ORDER

18th March, 2004

An application has been made on behalf of the applicant/complainant that the applicant/complainant is willing to deposit the amount demanded by the respondent and therefore, in view of the amicable settlement of the dispute between the parties, the applicant/complainants wishes to withdraw the complainant petition on the basis of which UTP Enquiry No.7/1995 was instituted. As prayed, the complaint petition is dismissed as withdrawn and the Notice of Enquiry dated 13th August 1997 is discharged with no order as to costs on the facts and in the circumstances of the case."

Such order was passed in the presence of Sh. Ravinder Bana, Advocate appearing for the Corporation.

Clearly, the assertion on behalf of the petitioner with regard to an amicable settlement of the dispute having been arrived at had not been objected to by the Corporation and neither was a stand taken at such point of time that an order of resumption dated 02.02.1994 already stood passed.

(iv) It has gone uncontroverted that in pursuance to the complaint having been filed by the petitioner before the Commission an order dated 23.08.1994 had been passed directing the parties to maintain status quo in respect of the plot. In other words, for a period of over six months i.e. from the date of passing of the order of resumption i.e. 02.02.1994, there was no restraint order. In spite thereof, the Corporation took no steps for taking over possession of the plot on account of the resumption order having already been passed. Furthermore, after the passing of the status quo order by the Commission on 23.08.1994, the complaint was finally disposed of by the Commission on 18.03.2004. Over a period of 10 years, Corporation chose not to file any application for vacation of the status quo order and impress upon the Commission that the plot already stood resumed on 02.02.1994.

13. In the light of the facts and circumstances noticed herein above, we would have no hesitation in holding that the resumption proceedings had not only been kept in abeyance but had virtually been given up by the Corporation.

14. We also find considerable merit in the contention raised by the counsel for the petitioner that there was violation of the principles of natural justice insofar as passing of the order of resumption dated 02.02.1994 is concerned. Perusal of the impugned order dated 02.02.1994 (Annexure P-1) would suggest that the petitioner had chosen not to take advantage of an opportunity of hearing before the Single Window Agency Committee on the recommendations of which the plot had been resumed. Counsel has invited our attention to documents placed on record at Annexure P-38 (colly) i.e. the response to various RTI applications having been preferred by the petitioner and which would demonstrate that the respondents have categorically admitted that no records of service of any alleged notice(s) upon the petitioner for appearing before the Single Window Agency Committee are available. Such serious infirmity and aspect has been over looked by respondent No.3/Appellate Committee while affirming the order of resumption in its decision dated 30.03.2010(Annexure P-2).

15. During the course of hearing today, Mr. Dheeraj Chawla, learned counsel appearing for the Corporation has very fairly conceded that not only is the petitioner in possession of the plot as of date but even the industrial unit is functional. In the totality of facts and circumstances, the Corporation cannot be permitted to put in operation a resumption order dated 02.02.1994 now after a period of more than 2 decades.

16. In view of the discussion above, petition is allowed. The impugned orders dated 02.02.1994 (Annexure P-1) and 30.03.2010 (Annexure P-2) are set aside. The plot in question shall be deemed to have been restored in favour of the petitioner. The petitioner, however, is held liable to make good the deposit of money towards the enhanced demand of

Rs.185 per sq. meter along with interest at the rate of 12% per annum w.e.f. 06.03.1998 i.e. the date such demand was raised by the Corporation and up to 09.06.2004 i.e. the date the petitioner had made deposit towards such enhanced cost and the same having been refused by the Corporation. Such deposit be made by the petitioner within a period of eight weeks from today.

Petition is allowed in the aforesaid terms.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

10.09.2015
harjeet

Note: Whether referred to the Reporter? Yes