

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.246 of 2014 (O&M)

Date of Decision: 15.12.2015

Shambhu Darshan Dhoop Industries

--Petitioner

Versus

State of Haryana & others

--Respondents

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR.
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.**

Present:- Mr. Sandeep Sharma, Advocate for the petitioner.

Mr. Rahul Dev Singh, D.A.G., Haryana.

Mr. Dheeraj Chawla, Advocate for
respondents no.2 & 3.

TEJINDER SINGH DHINDSA, J.

The petitioner-firm seeks quashing of order dated 4.5.2007 (Annexure P-7), passed by the third respondent, resuming plot no.126, Sector 7, IMT, Manesar. Petitioner is also aggrieved of the orders dated 26.3.2008 (Annexure P-8) and 25.4.2013 (Annexure P-12), whereby the action of resumption has been affirmed by the Appellate Committee headed by the Principal Secretary, Industries Department, Haryana and the Anomaly Committee constituted under the Haryana State Industrial Development Corporation.

2. The plot in question was allotted to the petitioner-firm vide regular letter of allotment dated 8.3.2000 for setting up a project for manufacturing of *Dhoops* (incense sticks) of different varieties. Certain terms and conditions of the regular letter of allotment and which would be relevant to the case in hand are reproduced below:-

*“Other terms and conditions governing this
allotment shall be as follows:-*

a) *The payment of balance 75% of the price of the plot/shed shall be paid by the allottee through bank draft to the HSIDC in five equal six monthly instalments alongwith interest @ 18% p.a on the balance amount starting from the date of offer of physical possession.*

NO SEPARATE NOTICE FOR PAYMENT OF INSTALMENTS WILL BE ISSUED.

5. xxx xxx xxx

6. *The non payment of instalments towards the balance 75% of the price of the plot/shed or additional price/amount or non fulfillment of any of the terms and conditions of the Regular Letter of Allotment/Agreement by the RLA holder shall entail withdrawal of the RLA/Resumption of the plot/shed and the principal amount deposited will be refunded without any interest after deducting/forfeiture of 10% price of the plot/shed. The amount of the interest paid on instalments, if any shall also stand forfeited.*

7. xxx xxx xxx

8. *Schedule of Construction & Going into Production:*

a) *The allottee shall start construction of building as per approved building plans within a period of one year of offer of possession and will be required to start commercial production within a period of three years from the date of offer of possession. However, in case the allottee is not able to start construction within one year, extension can be granted by the HSIDC/Competent Authority for a maximum period of six months, if the allottee is able to satisfy the authority that the allottee could not start construction for reasons beyond his control. Similarly the period of commencement of production can be extended by the HSIDC/Competent Authority for maximum period of one year subject to the allottee satisfying the authority that he could not go into production within three years of the date of offer of possession for reasons beyond his control and he took effective steps for implementation of the project. Extension in period for commencement of commercial*

production beyond three years shall be granted only if 10% of the permissible area has been constructed and effective steps have been taken by the allottee for completion of the project subject to payment of extension fee as determined from time to time shall be payable by the allottee to the HSIDC.

b) The allottee will be deemed to have completed the project if he constructs minimum 25% of the permissible covered area and start commercial production within specified period as mentioned above, after installation of plant & machinery as per project report submitted by him. In case, there is any deviation in respect of installation of plant and machinery, the HSIDC/Competent Authority will be competent to decide whether the plant and machinery which has not been installed has any material bearing on the project. A certificate of completion of project shall be issued by the HSIDC/Competent Authority on an application by the allottee.

9 to 13. xxx xxx xxx

14. Any failure on the part of the allottee to adhere to the schedule of payment and the schedule of implementation mentioned in the letter of allotment and other terms and conditions shall cause a notice for resumption of the plot/shed. In case of non-compliance of the terms & conditions agreed upon and unsatisfactory reply to the show cause notice, the HSIDC shall resume the plot/shed and the principal amount deposited will be refunded without any interest after deducting 10% price of the plot/shed. The amount of interest paid on instalments, if any, shall also stand forfeited.

15 to 25. xxx xxx xxx

26. RESUMPTION OF PLOTS:-

a) The HSIDC will be competent to resume plots in its Industrial Estates in case an allottee defaults in complying with the terms and conditions of allotment/transfer/leasing etc. The resumption of plot would be approved by the Competent Authority/HSIDC 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 without any interest. The amount of interest paid on instalments, if any, 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 HSIDC at the allottee's cost. It may be clarified that the allottee shall not be entitled to any payment/compensation for building constructed by it on the resumed plot.”

3. Possession of the plot is stated to have been offered vide letter dated 6.9.2002 and such offer was thereafter revised to 1.1.2003 in view of completion of certain infrastructure by the respondent-Corporation. On a request having been made on behalf of the petitioner-firm, the respondent-Corporation vide letter dated 30.8.2005 granted extension for a period of one year for construction and implementation of the project i.e. up to 31.12.2006. Show cause notice dated 7.7.2005 was served upon the petitioner-firm contemplating action of resumption on the basis that as per terms and conditions of the allotment, construction of the premises/building had to be commenced within a period of two years from the date of offer of possession and inspite of an extension of one year having been granted, even possession of the plot had not been taken. Apparently, the petitioner-firm having defaulted towards payment of installments of the allotment price and thereafter having not commenced construction on the premises and as such, having failed to go into commercial production, the impugned action of resumption has been resorted to.

4. Learned counsel appearing for the petitioner-firm has sought to project a case that possession of the plot had not been delivered inspite of repeated requests having been made. It is argued that under such circumstances extreme penalty of resumption could not have been resorted

to.

5. The respondent-Corporation has filed its reply taking a categorical stand that the petitioner-firm is a willful and deliberate defaulter and inspite of extension for commencing construction as also to implement the project having been granted, no steps whatsoever had been taken and as such, the penalty of resumption has been imposed strictly as per terms and conditions of the regular letter of allotment.

6. We have heard learned counsel for the parties at length and have carefully perused the record.

7. There would be no dispute as regards the legal position that *inter se* obligation arising out of a bilateral agreement would be governed by the conditions contained in such agreement subject to overriding effect of provisions contained in the statute, if any, regulating such agreement. It would be apposite to notice that the petitioner-firm was required to deposit the due installments as per schedule specified in the allotment letter itself and for which “**no separate notice**” was required to be served. It has gone unrebutted that the petitioner-firm had defaulted in the payment of the second, third, fourth as also the fifth installments due towards cost of the plot. The justification offered on behalf of the petitioner-firm that possession of the plot had not been delivered, would be belied from the contents of the reply dated 4.8.2005 that had been furnished as response to the show cause notice and the same having been appended as Annexure R-4 along with the written statement, wherein it had been stated that on account of over all recession in the market and on account of a financial crunch, construction upon the premises could not be started. In this very reply extension for a period of one year in terms of policy of HSIDC had been

prayed for. Another pertinent fact is that vide letter dated 30.8.2005 appended as Annexure R-5 along with the written statement, the request for extension for implementation of the project on the plot in question for a period of one year i.e. up to 31.12.2006 had been granted subject to certain terms and conditions and which are reproduced hereunder:-

. The allottee shall henceforth be covered under Industrial Policy-2005/EMP-2005 and will furnish an undertaking to this effect.

. The allottee shall pay extension fee @ Rs.50/- per sq. mtr. along with interest thereon @ 11% p.a w.e.f. 01.01.2005 till date of payment, for regularizing delay in start of construction. The allottee shall, however, be required to construct building to the extent of minimum 20% of permissible covered area and place orders for plant and machinery by 30.06.2006.

. The allottee shall pay extension fee @ Rs.75/- per sq. mtr. for extension in time for implementation of project from 3rd to 4th year i.e. upto 31.12.2006.

. Further, no extension for implementation of project shall be allowed beyond the extended period i.e. 31.12.2006.

. The extension fee and/or dues, if any, shall be cleared by the allottee within 30 days."

8. Clearly, the petitioner-firm, as per clause 8 of the regular letter of allotment was required to start construction of the factory building within a period of one year from the date of offer of possession i.e. up to 31.12.2003 and implement the project within a period of three years i.e. up to 31.12.2006. Extension, thereafter, having been granted vide letter dated 30.8.2005, the petitioner-firm was obliged to raise construction to the extent of minimum 20% of the permissible covered area, place orders for plant and machinery by 30.6.2006 and to commence production by 31.12.2006. The

requisite extension fee was also to be deposited. It has gone uncontroverted that the petitioner-firm has defaulted on all the afore-noticed counts. That apart, there has been a default even as regards payment of installments towards cost of the plot.

9. In the light of such factual position, this Court does not find any infirmity in the action of the respondent authorities in having resumed the plot in question. The allotment of industrial plots at the hands of the respondent-Corporation at controlled rates to entrepreneurs is with a clear objective to promote industrial growth in the State. Facts of the present case clearly suggest that the petitioner-firm after having been allotted the industrial plot has sat on the same with a speculative intent so as to benefit on account of escalation of price. The penalty of resumption has been resorted to strictly as per terms and conditions of the letter of allotment and after following due procedure as mandated by law.

10. For the reasons afore-stated, we do not find any ground to interfere with the impugned orders in exercise of our discretionary jurisdiction.

11. Petition is, accordingly, dismissed.

(S.J. Vazifdar)
Acting Chief Justice

(Tejinder Singh Dhindsa)
Judge

15.12.2015
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Whether to be referred to Reporter? Yes.