

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.24663 of 2014

DATE OF DECISION: NOVEMBER 06, 2015

M/s S.K.Industries through its proprietor Shivesh
Kumar SharmaPetitioner

Versus

State of Haryana and othersRespondents

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

Present: Mr.PR Yadav, Advocate for the petitioner.

Mr.Rahul Dev Singh, Deputy Advocate General,
Haryana.

Mr.Lokesh Sinhal, Advocate for HUDA.

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TEJINDER SINGH DHINDSA, J.

An industrial plot ad-measuring 450 sq. mtrs. allotted to the petitioner-firm on 20.4.2001 was resumed vide order dated 14.11.2006 passed by the Estate Officer, HUDA, Gurgaon on the ground of non-construction. Statutory appeal having been preferred, the resumption order was set aside by the Administrator, HUDA, Gurgaon in the light of order dated 20.6.2007. The revision petition filed by HUDA under Section 17 (8) of the Haryana Urban Development Authority Act, 1977 has been allowed by the Principal Secretary to Government Haryana, Town and Country Planning Department, respondent No.1, vide

order dated 30.9.2014 thereby restoring the order of resumption passed by the Estate Officer.

2. Petitioner-firm seeks a writ of certiorari to quash the impugned order dated 30.9.2014, Annexure 27, passed by respondent No.1 i.e. Revisional Authority.

3. Learned counsel appearing on behalf of the petitioner would submit that the Appellate Authority i.e. Administrator, HUDA, Gurgaon in the order dated 20.6.2007, Annexure P13, had set aside the resumption order subject to payment of dues, extension fee etc. and had granted a period of one year to complete construction as also to start commercial production from the date of delivery of possession of the plot. It has been contended that after setting aside of the resumption order, the petitioner had repeatedly approached the office of respondent No.4 i.e. Estate Officer, HUDA, Gurgaon for delivery of possession of the industrial plot, but out of sheer harassment, possession was not delivered. This led to the filing of a mercy appeal by the petitioner dated 24.12.2007 before the Administrator, HUDA, Gurgaon seeking directions for grant of possession as also for extension of time for construction and to implement the project. Categorical assertion made by the counsel is that the mercy appeal preferred was treated as a revision petition and thereafter, the petitioner-firm on various dates was informed that such revision petition would be posted for hearing in due course. Documents placed on record at Annexures P17, P19, P20 and P24 have been adverted to substantiate such assertion. It is the case set up on behalf of the petitioner that it is only on 30.9.2014 i.e. the date of

passing of the impugned order by respondent No.1 at Annexure P27 that it became aware that the revision petition had, in fact, been filed by HUDA against the order of the Administrator dated 20.6.2007. It has been argued that the petitioner was never put to notice as regards the revision that had been filed by HUDA. Furthermore, it has been contended that the perusal of the impugned order would, itself, reveal that an inordinate delay of 326 days in filing the revision petition had been condoned without even an application seeking condonation thereof having been filed.

4. Per contra, learned counsel appearing for the respondent-authorities would refer to Clauses 13 and 14 of the allotment letter dated 20.4.2001, Annexure P1, as per which the petitioner was required to complete construction and implement the project within three years from the date of allotment. It is stated that offer of possession of the plot had been made on the date of allotment itself and, as such, the resumption had been directed on cogent and valid basis. Learned counsel for the respondents would support the impugned order dated 30.9.2014 passed by respondent No.1 by submitting that the delay of 326 days in filing the revision petition had been rightfully condoned as the issue was required to be dealt with on merits. It is further submitted that it would not be open for the petitioner to raise any objection as regards the notice of the revision petition preferred by HUDA not having been served as representative of the petitioner had appeared before the Revisional Authority and had been afforded a patient hearing.

5. Having heard learned counsel for the parties at length, we are inclined to remand the matter back to the Revisional Authority for passing an order afresh. Pleadings on record would reveal that after the petitioner had filed a mercy appeal dated 24.12.2007 seeking delivery of possession, the Chief Administrator, HUDA (Legal Cell), Panchkula had served upon the petitioner memo dated 28.3.2008 treating the same to be a revision petition and had directed him to furnish the requisite fee in regard thereto. Fee of ₹100/- was duly deposited vide demand draft dated 4.4.2008 in favour of Chief Administrator, HUDA, Panchkula, Annexure P18. Perusal of Annexure P19 dated 12.5.2008, Annexure P20 dated 9.7.2008 and Annexure P24 dated 22.10.2013 would show that the petitioner had been informed by the respondent-Authorities as regards the deferred dates of hearing of the revision petition by referring the same as *“your revision petition”*. From a joint perusal of the documents referred to hereinabove, we conclude that it is quite possible that the petitioner was all through under a bonafide impression that it was his mercy appeal that had been posted for hearing having been treated as a revision petition. Nothing has been brought to our notice by learned counsel appearing for the respondents to show that the petitioner had been duly served as regards the revision petition filed by HUDA against the order of the Administrator setting aside the order of resumption.

6. Under such peculiar circumstances and to leave no scope for grievance, we set aside the order dated 30.9.2014 at Annexure P27 and remand the matter back to the Revisional

Authority for passing an order afresh after affording due opportunity of hearing to the parties concerned. It is requested that such exercise of re-consideration be expedited and, in any case, concluded within a period of two months from the date of receipt of a copy of this order. All contentions and submissions with regard to resumption of the industrial plot in question are kept open. It is further clarified that we have not expressed any opinion with regard to the maintainability of the mercy appeal that had been preferred by the petitioner and the prayers/contentions raised therein.

7. Petition disposed of in the above said terms.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

NOVEMBER 06, 2015

SRM

Note: Whether referred to Reporter? (Yes/No)