IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 8232 of 2014 (O&M)
Reserved on : 17.09.2015
Date of Decision: 07.10.2015

Kulwant Rai Sharma --Petitioner

Versus

State of Haryana & others --Respondents

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

Present:- Mr. Shyam Kumar Sharma, Advocate for the petitioner.

Mr. Deepak Balyan, Addl. A.G., Haryana.

Mr. Deepak Sabharwal, Advocate for HUDA/respondents no.2 to 4.

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TEJINDER SINGH DHINDSA, J.

The instant petition is directed against the resumption of an industrial plot by the HUDA authorities.

2. Facts set out on behalf of the petitioner are that industrial plot no.383, Phase-II, Panchkula admeasuring 444 sq. meters was allotted vide allotment letter dated 14.6.1989 in favour of the petitioner under the N.R.I quota. The entire cost of such industrial plot stands duly paid and deposited and as such nothing remains payable to HUDA in so far as costing is concerned. Even though, clause 7 of the allotment letter states that possession of the plot was being offered along with the allotment letter but actual physical possession was delivered on 21.4.1995. Construction was raised by the petitioner in the year 1995 itself and occupation certificate dated 20.12.1995 was issued by the Estate Officer, HUDA, Panchkula, respondent no.4 in respect of the ground floor at Annexure P-6. It has been

averred that the petitioner set up the pilot project in the years 1998-99 for manufacture of battery eliminators but on account of market conditions the project became unviable and resultantly the petitioner was forced to abandon the project. A certificate has been placed on record at Annexure P-10 to assert that from December, 1999 and for a period of almost 3 years, the petitioner was suffering from renal and prostate ailments and was undergoing regular treatment in a hospital in the United Kingdom. As per certificate at Annexure P-10 the petitioner even underwent repeated invasive procedures for treatment. Ultimately on 18.2.2004 a request was forwarded to respondent no.4 for change of project from battery eliminators to Information Technology Business Process Outsourcing (B.P.O) Unit.

3. However, in terms of order dated 18.3.2005 passed by the Estate Officer, HUDA, Panchkula/ respondent no.4, the industrial plot in question was resumed on the grounds of misuser i.e. being used for residential purposes and on account of production having not commenced. Apart from resumption, forfeiture of 10% of the consideration money paid towards the plot was also directed. The order of resumption stands affirmed by the Appellate as well as Revisional Authorities vide orders dated 31.3.2006 (Annexure P-17) and 28.3.2014 (Annexure P-19) respectively.

4. Resultantly, the present petition.

5. Learned counsel appearing for the petitioner has vehemently contended that in the facts and circumstances of the case the extreme step of resumption of the industrial plot is totally unwarranted. It is submitted that the total cost of the plot stood deposited with the HUDA authorities. After taking physical possession of the plot in April, 1995, no time was lost and construction was raised thereupon within a record time and was completed

in the year 1995 itself. Even occupation certificate in respect of the ground floor was issued by the competent authority on 20.12.1995. It has been argued that the original project of battery eliminators having become unviable, a request for change of project was submitted on 18.2.2004 and without even taking any decision in terms of acceding to or declining such request an order of resumption dated 18.3.2005 has been passed. As per counsel such action smacks of arbitrariness and the respondents ought to have resorted to the extreme penalty of resumption only as a last resort. It was also argued that before the Appellate as also the Revisional Authorities, the petitioner had offered to submit an undertaking to commence industrial production within a stipulated time frame but such submission has been overlooked. As regards the ground of misuser, counsel would submit that only one room on the ground floor had been used for the residence of a watchman and the same would not amount to misuse in terms of the Haryana Urban Development Authority (Erection of Buildings) Regulations, 1979, whereunder covered area up to 10% of the plot is permitted to be used for the residential quarters of the essential watch and ward staff.

6. On the other hand, Mr. Deepak Sabharwal, learned counsel appearing for HUDA would submit that resumption of the industrial plot in question is completely justified as the petitioner, who is an N.R.I never had any intention of setting up an industrial unit and was merely indulging in speculative activity. Counsel would submit that the industrial plot under the N.R.I quota was allotted at a concessional rate with a clear objective to provide incentives to such entrepreneurs so as to encourage the growth of industry as also avenues of employment. Counsel would contend that as per

clause 14 of the allotment letter the plot as also building constructed thereupon could be used only for the purpose for which it had been allotted and read along with clause 18 which stipulated that building was to be constructed within 2 years from the date of possession a necessary corollary would arise that industrial activity had to commence within such time period. During the course of arguments Mr. Sabharwal has invited our attention to an Estate Management Procedure Policy, 2005 (hereinafter to be referred as E.M.P Policy, 2005) (subsequently revised in the years 2009 and 2011) and in terms of which the allottees were obligated to implement the project on the industrial plots allotted within a period of 3 years from the date of offer of possession. As per such policy, implementation of the project would mean commencement of commercial production. It has been contended that even if the starting point was to be taken in the year 1995 when physical possession was delivered, still, the implementation of the project had not come through at the hands of the petitioner till the date of resumption and under such circumstance the same did not warrant any intervention. That apart, it has been submitted that even construction upon the plot had been initiated by the petitioner only upon a show cause notice having been issued under section 17(3) of the HUDA Act, 1977 dated 3.1.1995. Even the submission for change of project has been termed by the counsel as a mere eye wash and an exercise to gain time.

7. Having heard the rival contentions, we are of the considered view that the validity of the impugned resumption order dated 18.3.2005 need not be gone into by us at this stage. It is a fit case for remand and for reconsideration at the hands of the Revisional Authority i.e. the Principal Secretary to Govt. Haryana, Town and Country Planning

Department/respondent no.1 on the following issues:-

(i) Perusal of the order dated 28.3.2014 passed by respondent no.1 declining the revision petition preferred by the petitioner and thereby affirming the order of resumption would reveal that the same has been passed by referring to clause 18 of the allotment letter and upon proceeding on the assumption that the petitioner was required to complete the construction upon the plot and to implement the project thereupon within a period of 2 years from the date of offer of possession and he having failed to comply with such stipulation.

It would be apposite to refer to clause 14 and 18 of the allotment letter dated 14.6.1989 and the same read as follows:-

> *"14. The plot/building shall not be used for any purpose other than that for which it has been allotted in accordance with the plans approved by the competent authority. No obnoxious trade shall be carried out in or any land/building.*
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> *18. You will have to complete the construction within two years of the date of offer of possession after getting the plans of the proposed building approved from the competent authority in accordance with the regulation governing the erection of buildings. This time limit is extendable by the Estate Officer if he is satisfied that non construction of the building was due to reasons beyond your control otherwise this plot is liable to be resumed and the whole or part of the money paid, if any in respect of it forfeited in accordance with the provisions of the said Act. You shall not erect any building or make any alteration/addition without prior permission of the Estate Officer. No fragmentation of any land or building shall be permitted."*

Clause 14 stipulates that the plot/building is not to be used for any purpose other than for which it has been allotted and clause 18 mandates the allottee to complete construction within 2 years of the date of offer of possession after getting the plans of the proposed building approved from the competent authority and such time limit being extendable by the Estate Officer upon being satisfied that non-construction was due to reasons beyond the control of the allottee. Neither clause 14 nor clause 18 lays down any time frame for commencement of industrial production. Counsel appearing for HUDA has also pointed out to us any other condition/clause contained in the allotment letter which would regulate the time frame for commencement of commercial production or towards implementation of the project. Towards justifying the action of resumption for non-implementation of the project the E.M.P. Policy, 2005 has been relied upon by the counsel. Curiously, the E.M.P Policy, 2005 has not even been adverted to by the Revisional Authority while passing the impugned order. A copy of the E.M.P. Policy, 2005 which has been produced in Court, recites that the same shall be effective w.e.f. 1.11.2005.

As such, it would be imperative for the Revisional Authority to have a re-look as regards two aspects with regard to the imposition of resumption on account of non-implementation of the project. Firstly clause 18 of the allotment letter referred to by the Revisional Authority in the impugned order only stipulates the time frame for completion of construction i.e. within 2 years from the date of offer of possession and does not stipulate any time frame towards implementation of the project. Secondly, the applicability of the E.M.P. Policy, 2005 would itself be a moot point as the same had become effective w.e.f. 1.11.2005, whereas the order of resumption was passed by the competent authority earlier in point of time i.e. on 18.3.2005.

(ii) As regards the second ground upon which the order of resumption has been passed i.e. "misuser" Regulation 13 of the HUDA (Erection of Buildings) Regulations, 1979 would be relevant and the relevant portion thereof is extracted hereunder:-

*"**13. Proportion of the site which may be covered with building-**(a) The proportion upto which a site may be covered with buildings including ancillary building shall be in accordance with the following slabs, remaining portion of the site shall be left open in the form of an open space around the building or a courtyard.*

(ii) INDUSTRIAL

Maximum permissible coverage on ground	Maximum permissible floor area ratio	Maximum height of the industrial building
60 per cent of area of the site	125 per cent	21 meters

Out of the above permissible covered area upto 10 per cent of permitted coverage may be used for ancillary and residential quarters for essential watch and ward staff;

Provided further that a basement not exceeding the maximum permissible coverage on the ground floor (excluding the area under public corridors) and intended to be used only for parking, servicing and storage may be allowed if it satisfies the public health and structural requirements.

In case of the buildings where the construction has already taken place the benefit of additional Floor Area Ratio would be allowed on any floor subject to the restrictions as provided in the zoning plan and upon the fulfillment of the conditions to be laid down by the Authority."

In terms of such regulation 60% of the area of the site is the maximum coverage permissible on the ground floor. Still further, out of such permissible covered area upto 10% may be used for ancillary and residential quarters for essential watch and ward staff. Clearly, for a ground of "misuser" to be made the foundation of a resumption order, a finding would have to be returned against the allottee by applying parameters laid down under Regulation 13 itself. No such finding has been returned. Reconsideration on the ground of "misuser" to sustain an order of resumption would, as such, be required.

8. For the reasons recorded above, the writ petition is partly allowed to the extent of setting aside the order dated 28.3.2014 (Annexure P-19), passed by the Revisional Authority i.e. respondent no.1. Matter is remanded back to respondent no.1 to reconsider the issue of resumption of the industrial plot in the light of the observations contained in this order. Respondent no.1 would be obligated to afford the petitioner an opportunity of making written submissions as also a personal hearing.

9. We have been informed that the petitioner is still in possession of the plot. Operation of the impugned resumption order dated 18.3.2005 shall be kept in abeyance for a period of 10 weeks and would be subject to the passing of an order afresh by respondent no.1 as directed herein above.

10. It is, however, made clear that nothing contained in this order would be construed as an expression of our opinion on the merits of the case. The respondents are also at liberty to initiate action in respect of the allegation that the petitioner had entered into an agreement for sale of the plot as the impugned action was not based on this ground.

11. Petition is disposed of.

(S.J. Vazifdar)
Acting Chief Justice

(Tejinder Singh Dhindsa)
Judge

07.10.2015
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Whether to be referred to Reporter? Yes.