IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 9778 of 2014 (O&M)
Date of Decision: 16th September, 2015

M/s Jet Developers Pvt. Ltd. ..Petitioner

Versus

State of Haryana and others ..Respondents

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Aalok Jagga, Advocate, for the petitioner.
Mr. Rahul Dev Singh, Deputy Advocate General, Haryana, for respondent Nos.1 and 2.
Mr. Ajit Sihag, Advocate, for respondent No.4.

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner seeks a writ of certiorari to quash an order dated 27.09.2011 passed by respondent No.2-Department of Industries & Commerce, levying a penalty and a transfer fee and an order dated 13.02.2014 passed by respondent No.1 dismissing the petitioner's appeal against the said order. The petitioner has also sought a writ of mandamus directing respondent nos.2 and 3 to transfer the plot in question in its name and also grant a 'Change of Land Use' certificate without levying any penalty or imposing a transfer fee.

2. In the year 1997, a plot of land admeasuring 9042 sq. meters was allotted to M/s H.R.Bhalla & Sons. On 07.04.2005, M/s H.R.Bhalla and Sons sold the land to M/s Nagpal Food Industry. However, the land was not mutated in the name of M/s Nagpal Food Industry. By an agreement dated 21.10.2008 M/s Nagpal Food Industry in turn sold the land to the petitioner

for a consideration of ₹ 2,48,67,600/-. A sum of ₹ 75,00,000/- was payable on or before 21.11.2008 and the balance sale consideration was payable on or before 31.03.2009. Clauses 3 and 4 of the agreement dated 21.10.2008 read as under:-

> "3. That the FIRST PARTY has conveyed to the SECOND PARTY that the industrial premises subject matter of present contract was purchased by it vide sale deed bearing vasika no. 163 dated 7.4.2005 on payable of valuable sale consideration amounting to ₹ 36,00,000/- (Rupees thirty six lac only). However, the records maintained by the Industries Department, Haryana do not reflect the FIRST PARTY to be owner in possession of the industrial premises referred to above.
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> The FIRST PARTY shall be bound to get its name recorded as lawful and full fledged owner in possession of the industrial premises referred to above and subject matter of this contract in the records maintained by Industries Department, Haryana, prior to 31.03.2009.
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> 4. That the aforesaid incorporation of the name of the FIRST PARTY in the records of Industries Department, Haryana, shall be condition precedent before the FIRST PARTY and insist for payment of entire sale consideration. In case FIRST PARTY is unable to get the needful done prior to the stipulated date in that event limitation for performance of the contract shall stand extended."

3. It was only on 06.04.2009 that the land was transferred in the name of M/s Nagpal Food Industry in view of the said agreement dated 07.04.2005 by which M/s H.R.Bhalla & Sons, sold the land to M/s Nagpal Food Industry. Thereafter, M/s Nagpal Food Industry by a letter/application dated 20.04.2009 informed the respondents about the agreement dated 21.10.2008 by which they had sold the land to the petitioner and requested the respondents to grant them permission in respect thereof.

4. By the impugned order dated 27.09.2011, the Joint Director, District Industries Centre, informed the petitioner that necessary permission for transfer of the plot had been granted in its favour for industrial use by charging a transfer fee computed at ₹ 100/- per sq. meter and penalty equivalent thereto according to the Estate Management Procedure-2005 (EMP-2005). The petitioner was called upon to deposit an aggregate sum of ₹ 18,18,400/- in respect thereof. The petitioner filed an appeal against the said order which was dismissed by an order dated 13.02.2014 passed by the Additional Chief Secretary (Industries & Commerce), Government of Haryana, which is also impugned in this petition.

5. The petitioner has, therefore, challenged the imposition of a transfer fee and penalty of like amounts aggregating to ₹ 18,18,400/-.

6. In so far as the question whether the transfer fee is payable or not, the relevant provisions of EMP-2005 are as under:-

"The transfer fee structure shall be as under:-

Sr. No.	Category	Plots (Rs.per sq. mtr.)	Sheds (Rs. Per sq. ft. of covered area).
1.	Category 'A'	300	60
2.	Category 'B'	150	40
3.	Category 'C'	30	15

No transfer fee will be levied in cases of industrial units, which have been in commercial production for more than five years. Similarly, no transfer fee will be leviable in cases of transfers necessitated on account of inheritance, family transfer or take over by a financial institution. Only a processing fee of ₹ 5000/- will be charged in all such cases. However, prior permission is mandatory.

For transfer of plots/sheds, the transferor will apply to HSIIDC concerned with the following documents:-

a. Original letter of allotment
b. Agreement to sell

c. Project report of the transferee, in case of any change of project.
d. Statement of means of financing of the transferee.

(emphasis supplied).

7. The observation of the Appellate Authority that the petitioner had no locus standi to question the demand raised by the Director for permitting the transfer is erroneous. The petitioner is vitally concerned with the same. The demand for penalty and transfer was raised upon the petitioner as a condition to the acceptance of the request for the transfer of the land to its name.

8. We are entirely in agreement with Mr. Jagga, the learned counsel appearing on behalf of the petitioner that the imposition of the transfer fee was erroneous. The provisions of EMP-2005 quoted earlier expressly provide that no transfer fee will be levied in cases of industrial units which have been in commercial production for more than five years. The industrial unit was in commercial production for more than five years after it was allotted to the original allottee. This is established by the fact that no transfer fee was levied in respect of the transfer of the property from M/s H.R.Bhalla & sons to M/s Nagpal Food Industry pursuant to the agreement dated 07.04.2005. If the unit had not been in commercial production for more than five years, the transfer fee would certainly have been levied even in respect of that transaction.

9. Faced with this, it was contended that no transfer fee would be levied only in the event of each transferee putting the industrial unit to commercial production for more than five years. We are unable to agree. The clause merely requires the industrial unit to have been in commercial production for five years. It does not require the industrial unit to have been in commercial production during the period of its ownership by each

transferee thereof for five years. Had that been the intention, the clause would have been worded entirely differently. To accept the submission on behalf of the petitioner would require our rewriting this term of the EMP-2005.

10. This brings us to the levy of penalty. In so far as the question of penalty is concerned, the relevant provisions of EMP-2005 read as under:-

> "The allottee is required to submit his request for transfer within a period of 30 days from the date of agreement to sell, failing which penalty equivalent to the transfer fee will be imposed by the corporation".

11. The respondents levied the penalty on the ground that though the petitioner had entered into the agreement with M/s Nagpal Food Industry on 21.10.2008, it made a request for transfer only on 20.04.2009 i.e. beyond the period of 30 days stipulated in EMP-2005. As per EMP-2005, an allottee is required to submit his application for transfer within a period of 30 days from the date of the agreement to sell.

12. Before the Appellate Authority, it was contended on behalf of the petitioner that the agreement dated 21.10.2008 entered into by it with M/s Nagpal Food Industry was a conditional agreement and therefore had no validity till the pre-conditions were complied with by M/s Nagpal Food Industry. It was contended on behalf of the petitioner that it was only on 06.04.2009 when the plot was transferred in favour of M/s Nagpal Food Industry that it became necessary for the petitioner to comply with the provisions of EMP-2005 by seeking a transfer of the plot to its name.

13. Mr. Jagga submitted that the agreement between M/s Nagpal Food Industry and the petitioner was not a concluded agreement as it was dependent and was contingent upon M/s Nagpal Food Industry having the property first mutated so transferred in their name. He submitted, therefore,

that there was no concluded agreement between the petitioner and M/s Nagpal Food Industry till 06.04.2009 i.e. the date on which the property was transferred from the name of M/s H.R.Bhalla & Sons to the name of M/s Nagpal Food Industry. Mr. Jagga relied upon sections 31 and 32 of the Indian Contract Act, 1872 which read as follows:-

> **31. "Contingent contract" defined**
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> A "contingent contract" is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.
>
> **32. Enforcement of Contracts contingent on an event happening**
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> Contingent contracts to do or not to do anything in an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

14. The submissions are not well founded. A contingent contract is still a contract. A contingent agreement is not an agreement to enter into an agreement which is not enforceable in law. In a contingent contract the obligation to do that which is promised to be done is there although that obligation can be enforced only upon the happening or not happening of the contingency. That is entirely different from saying that in a contingent contract there is not agreement at all. A contingent contract can be enforced upon the happening or not happening of the contingency as the case may be. The decree enforcing the obligation is, however, made subject to the happening or not happening of the contingency. A contingent contract is not void. It comes void if the contingency becomes impossible.

15. The agreement between the petitioner and M/s Nagpal Food Industry contains all the essential terms and conditions of a valid agreement. Had M/s Nagpal Food Industry refused to perform their obligations, it would have been open to the petitioner to file an action for breach of the contract. The petitioner would have sought specific performance and/or damages for breach of the contract. A Court could have passed a decree subject to any

permission being obtained if obtaining such permission is a condition precedent to the enforcement of the agreement by specific performance thereof.

16. The clause in EMP-2005 is clear. It requires permission for transfer to be sought within 30 days from the date of the agreement to sell. The contention that a request for transfer would have been futile till 06.04.2009 is not well founded. The property not having been transferred to the name of M/s Nagpal Food Industry in the respondents' record did not absolve the petitioner from complying with the requirement to submit the request for transfer within 30 days from the date of its agreement to sell. That is an independent obligation. The respondents could well have agreed to transfer the property directly in the name of the petitioner even without transferring the same to the name of M/s Nagpal Food Industry. More important, the respondents could have first transferred the property in the name of M/s Nagpal Food Industry and immediately, a moment thereafter has transferred the same to the petitioner's name.

17. Even assuming that the contract between the petitioner and M/s Nagpal Food Industry would have become void, if that property was not transferred in the name of M/s Nagpal Food Industry pursuant to an agreement between M/s Nagpal Food Industry and M/s H.R.Bhalla & Sons, it would have made no difference. Till the refusal of the respondents to transfer the name of M/s Nagpal Food Industry, the agreement between the petitioner and M/s Nagpal Food Industry was valid and subsisting and only its enforceability thereof depended upon the transfer of the property.

18. The requirement to submit a request for transfer within a period of 30 days from the date of the agreement to sell is reasonable and understandable. It is necessary for the respondents to be kept informed of the

transactions in relation to such properties. The allotments of such plots are made with a purpose and are, therefore, subject to various conditions. One of the purposes is obviously to encourage entrepreneurs to set up industries in the State. The benefits to society in general thereby are too obvious to state. It is, therefore, necessary for the respondents to monitor the progress of the implementation of the projects for which the allotments are made. The names of the owners of the property, therefore, assume significance so far as the respondents are concerned.

18. In the circumstances, the writ petition is allowed partly. The impugned order in so far as it levies penalty is upheld. However, the impugned order is set-aside in so far it imposes the transfer fee. There shall, however, be no order as to costs.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

16.09. 2015 (TEJINDER SINGH DHINDSA)
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