IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Regular Second Appeal No.2534 of 2011 (O&M)
Date of decision: 28.4.2015

M/s OBC Exports

... Appellants

Versus

Haryana State Industrial Development Corporation Limited and another

... Respondents

CORAM: HON'BLE Mr JUSTICE RAJIV NARAIN RAINA

Present: Mr G.K.Mishra, Advocate,
for the appellants.

Mr Aman Bahri, Advocate,
for the respondents.

Mr Amar Vivek, Advocate,
for the applicants in CM No.4516-C-2015.

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1. To be referred to the Reporters or not? **Yes.**
2. Whether the judgment should be reported in the Digest? **Yes**.

RAJIV NARAIN RAINA, J.

Government of India floated a scheme in the early 1980s attracting NRIs to invest money in India for which they would be given special preference and incentives in setting up industry. One of those preferences was allotment of industrial plots in various industrial areas across the territory. One Mr R.K.Sharma, a Canada based NRI took the call and applied for an industrial plot in Gurgaon through the operating agency i.e. Haryana State Industrial Development Corporation Limited which is now the Haryana State Industrial and Infrastructural Development

Corporation (HSIIDC). Mr Sharma was allotted industrial plot No.227, Phase-IV, Udyog Vihar, Gurgaon measuring 1000 square meters. The allotment was made on 27th November, 1981. But Mr Sharma failed to pay the price of the plot. The account went into default. He was issued various show cause notices by HSIIDC but he was unable to make good the payment. His failure to pay or to set up an industrial unit within the stipulated time led to resumption of property vide order dated 12th April, 1991.The resumption order was challenged by Mr Sharma, the original allottee before this Court in CWP No.7168 of 1994. There was an initial stay on the resumption order on his request for grant of additional time to pay to the HSIIDC the price of the plot. This Court gave him time but he failed to abide by his promise. The writ petition was dismissed on 12th July, 1995. The order became final. On failure of the writ petition, HSIIDC refunded Mr Sharma a sum of money amounting to ₹ 1,94,387/- vide letter dated 4th March, 1998. That was the end of the rights of Mr Sharma on plot No.227.

2. But before Mr Sharma filed the writ petition, he secretly entered into a sale agreement with one Mr Sumer Arora of M/s OBC Exports, a proprietorship concern which was carrying on its business from the neighbouring plot No.226. The agreement between Mr Arora and Mr Sharma was through a general power of attorney for acquiring the rights in the defunct allotment. This agreement to sell is said to have been arrived at on 14th June, 1993 over two years after the plot had been resumed. Mr Sharma had no right, title or interest left in the property on 14th June, 1993 for him to draw and sign a legal and valid agreement to sell without notice

to HSIIDC.

3. To cut the history short, Mr Sumer Arora representing M/s OBC Exports wrangled his way into HSIIDC and offered them to pay the entire market value of the resumed plot. Stranger than fiction, HSIIDC caved in and offered allotment to M/s OBC Exports vide letter dated 12th April, 2001 [Ex.PW2/D] of the resumed industrial plot. HSIIDC offered that if Mr Sumer Arora, the present appellant representing M/s OBC Exports, was prepared to pay a sum of ₹ 50 lacs within 30 days in lump sum, they could consider the offer. The offer was accepted but the appellant also failed to pay even a penny towards the price of the plot agreed to be paid. HSIIDC having opened up its flanks welcomed the appellant, an uninvited guest so graciously to its offices. The Corporation played the perfect host by calling upon the Firm to fulfill its commitment and for this, various opportunities were granted. Having woken the slumbering giant, Sumer Arora-M/s OBC Exports were asked to pay at least 25% of the costs of the plot immediately so that they could take the offer of allotment forward. There was, however, a stipulation in the letter dated 16th August, 2001 Ex.PW3/8 issued by HSIIDC asking the appellant to pay 1/4th of the costs and in case, he fails to make the deposit, the offer will stand withdrawn. All that the appellant offered was a meager sum of ₹ 33,900/- towards maintenance charges thinking that this would keep alive the offer but admittedly failed to make payment of 25% as demanded. The offer did not materialize into an allotment. Today, the appellant rests his case on part performance in paying ₹ 33,900/- towards maintenance charges and that deposit and its acceptance gives him sufficient foothold in HSIIDC to compel them to perform and

allot the suit plot.

4. Interestingly, on account of failure on the part of Mr Sharma to act upon the agreement to sell Ex.PW2/B dated 14th July, 1993, the appellant filed civil suit No.274 of 1996 against Mr Sharma for damages and for recovery of the amount paid to Mr Sharma as earnest money. The suit was decreed on 15th May, 1999 [Ex.DA] for a sum of ₹ 2,20,000/-.

5. In the meantime, since the appellant had taken illegal possession of the adjoining plot No.227 in pursuance of the sale agreement, HSIIDC took recourse to proceedings under the Haryana Public Premises and Land (Eviction & Rent Recovery) Act, 1972 for eviction of the unauthorized occupant. The appellant with a view to protect his illegal possession filed civil suit NO.353 dated 11th December, 1998 through M/s OBC Exports claiming relief of permanent injunction against the eviction proceedings taken out under the Act. The suit was dismissed vide judgment and decree of the Civil Court dated 11th December, 2000 Exb.DC and Exb.DD. In this manner, the appellant has held on to the plot for 22 years without payment of price. It is this suit that is the subject matter of the present regular second appeal.

6. Both the learned trial Court and the Court of first appeal have dismissed the suit vide judgments and decrees on the premise that injunction cannot be granted against the true owner of the property. The present appeal was filed in 2011 and notice was issued in the appeal on 3rd June, 2011 on the offer and undertaking that since the plaintiff-appellant had once been offered allotment of the plot in dispute, the party was still prepared to pay ₹ 50 lacs within 30 days by extension of time by compelling HSIIDC to re-

allot the plot on payment of price fixed by defendant-1 HSIIDC in view of the policy Ex.P1. On his readiness and willingness to clear the financial liability for re-allotment of the plot, which was admittedly in physical possession of the plaintiff, notice of motion was issued and status quo regarding possession as existing on 3rd June, 2011 was ordered to be maintained. On 12th August, 2012, it was given out in Court that the appellant had approached the respondents for an amicable settlement and, therefore, the matter be adjourned. The prayer was opposed by HSIIDC stating that no negotiations were going on between the parties for any settlement, amicable etc. Resultantly, the case was adjourned to 9th November, 2012 but the interim order was vacated. Thereafter, the interim order has not been revived and the appellant continues to be in unauthorized occupation of the suit public property.

7. While this appeal remained pending, the appellant approached this Court on its writ side by filing CWP No.25215 of 2014 against HSIIDC seeking issuance of a writ in the nature of mandamus to the Corporation for a direction to issue a formal letter of allotment in respect of the resumed plot at the current market price or the price existing on 12th April, 2001 when an offer was made along with penalty at the ordinary rate of interest as might be due till date. The writ petition was dismissed as withdrawn by the Division Bench on 10th December, 2014 when the following order was passed : -

> "After arguing for some time learned counsel for the petitioner wishes to withdraw the present writ petition with liberty to claim relief as is claimed in the present writ petition in the pending Regular Second Appeal.

> Dismissed as withdrawn with liberty aforesaid.
>
> As and when the petitioner seeks such remedy, the same shall be considered in accordance with law."

8. With liberty granted, the appellant has preferred CM No.15343-C-2014 in the present appeal praying for appropriate directions/relief in terms of the order dated 10th December, 2014 passed by the Division Bench in the aforesaid writ petition. The prayer made in the writ petition has been reproduced in para. 1 of the application and reads as follows, even though it has been summarized next above: -

> "(i) issue a writ of Mandamus or any other appropriate writ thereby directing the Respondent to issue formal letter of allotment to the petitioner pursuant to the letter of allotment dated 12.04.2001 with regard to the allotment of Industrial Plot No.227, Udyog Vihar, Phase-IV, District Gurgaon, Haryana on the basis of either the price as on 12.04.2001 with penalty @ ordinary rate of interest till date or on the current price of the said industrial plot whichever is as per the policy of the respondent."

9. The case history has been traced from para. 2 onwards and the following prayer has been made at the foot of the application : -

> "It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to direct the respondent to issue formal letter of allotment to the Appellant pursuant to the Letter of allotment dated 12.04.2001 with regard to the allotment of Industrial Plot NO.227, Udyog Vihar, Phase-IV, District Gurgaon, Haryana on the basis of either the price as on 12.04.2001 with penalty @ ordinary rate of interest till date or on the current price of the said industrial plot whichever is as per the policy of the respondent.
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> (ii) pass any other and further order(s) which this Hon'ble Court may deem fit and proper in the facts and

circumstances of the case."

10. Annexure A-1 is the list of dates and events filed with the writ petition starting out from 27th November, 1981 when an industrial plot was allotted to Mr Sharma. Mr Sharma has been called the first allottee which gives the impression that the applicant is the "second allottee" which is far from the truth. Mr Sharma was the original allottee who failed to recover right to allotment with the dismissal of his writ petition. Mr Sharma is accused of entering into a sale agreement without disclosing the fact that industrial plot No.227 had been resumed by the Corporation, meaning thereby, he entered into an illegal agreement to sell with the petitioner for a consideration of ₹ 12 lacs. The appellant herein so candidly confessed that the possession of the property was delivered by Mr Sharma to the firm as though it was lawful to do so and they have even invested about ₹ 4 lacs in making construction over the suit property for the purpose of carrying out their business activities, the firm of which Mr Sumer Arora was the proprietor. Thereafter, the history of the litigation has been narrated. A copy of the present application was handed over to the learned counsel for the HSIIDC on 22nd December, 2014 which is the date of the application filed by Mr G.K.Mishra, Advocate who is not an enrolled counsel of this Court and, therefore, cannot independently act on behalf of the appellant and can only plead before this Court in the presence of local counsel who has filed vakalatnama. The original counsel who filed the appeal is no longer in sight.

11. The respondent-HSIIDC has been accused of acting unfairly and arbitrarily by not taking any steps with regard to the allotment procedures of the industrial plot in favour of the petitioner and hence the

writ petition was filed which has been withdrawn.

12. To make matters even murkier, an application bearing CM No.4516-C-2015 has been filed in the appeal on 25th April, 2015, a few days before the hearing. The application has been filed under Order 1 Rule 10 CPC read with Section 151 CPC to implead one Sandeep Sharma son of Shri J.B.Sharma resident of K-14/20, DLF City, Phase II, Gurgaon as respondent-.3. It is pleaded that the original allottee Mr R.K.Sharma has passed away. In his life time, Mr Sharma executed a Will dated 14th April, 2006 bequeathing the industrial plot No.UV-227, Udyog Vihar, Phase-IV, Gurgaon to the applicant. The two marginal witnesses are mentioned i.e. one Naresh Sharma and Sh.Matadin Sharma. By this will Sandeep Sharma claims to have inherited all legal rights in respect of the suit property and has become the absolute and lawful owner in possession of industrial plot No.227 being the sole beneficiary of the aforesaid Will and no other person claiming through the deceased or his legal heirs have any right, title or interest in the property in question. A copy of the testamentary Will is attached as Annexure A-1 with the application for the perusal of the Court.

13. Even a probate petition has been filed in respect of the Will dated 14th April, 2006 against the General Public in the Court of the District Judge, Gurgaon where it is pending adjudication. It is stated that in the suit filed by Mr Sharma against HSIIDC, Sandeep Sharma has produced the Will in the Civil Court claiming rights to the disputed property but the learned trial court did not give any credit to the aforesaid Will even though there was no issue pertaining thereto, due to which failure, an appeal has been filed under Section 96of the Code which is also pending. It is disclosed in the application that Mr Sharma in his life time filed a civil suit No.837 of

2005 for declaration, permanent injunction and with consequential relief of mandatory injunction claiming allotment of the plot in question and further restraining the defendants, i.e., HSIIDC and M/s OBC Exports, the present appellant from interfering in the peaceful possession of the plaintiff. The suit was filed before the Civil Judge, Senior Division, Gurgaon. In the suit, the present applicant has been impleaded as the legal representative of Mr Sharma vide order dated 13th March, 2012.

14. Till para. 3, the relationship between Sandeep Sharma and Mr R.K.Sharma has not been disclosed but there is an oblique reference while narrating the reasons for non-construction on the disputed plot that there was illness in the family of Mr Sharma suffered in Canada and "subsequently, the father of the plaintiff also expired" whose name in Mr J.B.Sharma. It was for this reason that Mr Sharma was unable to complete the construction within the prescribed time. Mr R.K.Sharma was not aware of the resumption order till he returned to India and deposited the demanded amount of ₹ 2,20,000/- on account of enhanced price and other charges after the resumption order was passed. This does not shed much light of what really transpired. At any rate, these pleadings are completely foreign to the appeal and regard cannot be had of them.

15. Today, applicant-Sandeep Sharma claims to be occupier in possession of the resumed plot. He asserts that neither the HSIIDC nor M/s OBC Exports are in possession of the plot of the deceased plaintiff (Sharma) and the proposal to get the allotment of the plot in favour of M/s OBC Exports has been got mooted by the appellant through sheer connivance with certain vested elements in HSIIDC who have been colluding with each other. It is disclosed in para. 4 that the suit has been dismissed on 19th

March, 2014. Civil Appeal No.73 of 2014 is pending before the learned Additional District Judge, Gurgaon against the suit decree. The appellant is accused by the applicant of not disclosing particulars of the Civil Suit No.837 of 2005 before this Court in the present proceedings knowing fully that well by divulging them, the present appeal would be put in jeopardy even though M/s OBC Exports is a party to the suit proceedings.

16. It is stated that the dispute in appeal and the dispute in the civil suit is the same and by not impleading Sandeep Sharma as a party to the present appeal, M/s OBC Exports has tried to manipulate the proceedings of this case and falsely led the Court to believe that they alone represent the original allottee and have thus tried to achieve a malafide objective of taking exclusive control and possession of the plot in dispute through sheer concealment of the facts. Indulgence of this Court is prayed for, for impleading Sandeep Sharma as party to the present proceedings so that the true picture of various facts and circumstances are brought before this Court for a just and fair decision of the case, as subject matter in the suit and in the present appeal, remain identical. If they are then I would say the suit deserves to be stayed by resort to Section 10 of the Code. To make matters more complicated, it is averred in para. 5 of the application under Order 1 Rule 10 CPC that during the cross-examination of Mr Sumer Arora representing M/s OBC Exports as DW3 in Civil suit No.837 of 2005 he has expressly admitted that possession of the plot in question till the date of recording statement, remained with Shri J.B.Sharma father of Sandeep Sharma since 10th December, 2005 which fact has great importance, according to the applicant, to the present case as the same is completely contradictory and in contra-distinction to the stand taken by the appellant in

the present appeal where he states that he remained in possession of suit property. Sandeep Sharma and Sumer Arora are apparently on the war path fighting over resumed property to which they have no right, title or interest.

17. The extraordinary length to which the parties have gone to grab public property makes on shudder to think as revealed from contents of para. 6 of the application disclosing that Sumer Arora filed an application under Order 7 Rule 11 of the CPC in the aforesaid suit for rejection of the plaint of Sandeep Sharma and the Civil Judge, Senior Division, Gurgaon vide his order dated 26th March, 2010 has dismissed the application since it cannot be said that M/s OBC Exports were in possession of the plot and, therefore, the plaint cannot be rejected. It is recounted in para. 7 that in the year 2006, appellant M/s OBC Exports had filed a suit for possession of property No.227 under Sections 6 & 9 of the Specific Relief Act against deceased R.K.Sharma admitting that the opposite party was in possession and he [Arora] had applied to regain it. Therefore, the purpose of this application "is to humbly place on record true facts that are surrounding the present appeal" and to inform the Court that it is Sandeep Sharma applicant who is in possession of the suit property.

18. It is said that the suit has been dismissed in default on 17th September, 2009. It is also mentioned that Mr Sharma during his life time also filed an application under Order 1 Rule 10 CPC in the civil suit in the present appeal, at the initial stage out of which the present appeal arises but the same was dismissed on 10th March, 2008 holding therein that applicant-Mr Sharma is not a necessary party to the suit. It is argued that the dismissal of the application of R.K.Sharma under Order 1 Rule 10 CPC on 10th March, 2008 by the Civil Court for impleadment does not debar the applicant from

moving the present application because his rights are being adjudicated in this appeal although without his presence. Lastly, it is submitted that applicant-Sandeep Sharma did not know of the existence of this appeal and came to know of it when he happened to visit the office of HSIIDC in connection with the plot in question when he learnt during the second week of April, 2015 that this appeal was pending and, therefore, he took steps to prefer the present application. The application has been signed by Mr S.K.Aggarwal and Mr Ramanjit Singh Advocates. The Vakalatnama is signed by both the learned counsel but not by Mr Amar Vivek, Advocate who appears to press the application in the absence of the other two counsel. His presence is not supported by a Vakalatnama and, therefore, he cannot be allowed to plead the case of the applicant when he is not declared a senior advocate. Though his name is mentioned in the printed form below the name of Mr S.K.Aggarwal in the Vakalatnama and in the "Mention Proforma" which also is not signed by him but by the other two counsel. It is recorded in the application that the application has been listed on a mention made before Hon'ble the Acting Chief Justice and that is how this application has come up today before me.

19. It may be remembered that the present is not a writ petition. It is a regular second appeal with severe restrictions in exercise of jurisdiction permitting this Court to examine only and only the judgment and decrees of the Courts below as have been passed in the presence of the parties before the learned trial court and the court of first appeal. Moreover, the application under Order 1 Rule 10 CPC does not satisfy the test of the provisions of the Code since the presence of the applicant is not found necessary for adjudicating the case, settling the controversy or pronouncing

judgment limited to the findings of fact and law recorded by both the Courts below which are final on the twin aspects. Even mere errors of fact and errors of law are not open to correction unless they give rise to substantial questions of law.

20. If the applicant has stepped into the shoes of Mr R.K.Sharma through the Will, he can claim no rights in suit property since Mr Sharma's case against the resumption order stands foreclosed in CWP No.7168 of 1994 which was dismissed on 12th July, 1995 i.e. 20 years ago and secondly, he was not the owner of property and law did not permit him to make a disposition of property by a will or testament. The applicant has not an iota of right, title or interest in the disputed property and the present application has been filed with oblique motive with unclean hands and by making accusations, allegations and counter allegations which cannot be redressed in the regular second appeal. If he has chosen remedies in the courts below in independent suits and by the probate petition, he is free to pursue them but those would not impact the status of the disputed property as the applicant cannot go behind the resumption order since he was not the original allottee nor the nominee of the original allottee. Even his relationship with Mr R.K.Sharma is not disclosed or why was he chosen as a beneficiary under the Will. I would, therefore, dismiss the application with costs of ₹ 1 lac as an attempt to overreach the Court by a person who claims under a will which was not the subject matter in the appeal and, therefore, cannot be looked into. The amount be paid to the Mediation & Conciliation Centre of this Court within two months, failing which, the Centre can initiate steps to recover the costs against applicant-Sandeep Sharma for filing a frivolous and vexatious application aimed at scuttling the hearing

and delay the proceedings with an oblique purpose without any legal foundations and in the midst of ill-conceived litigation brought to waste the time of civil courts on a dead issue a defunct allotment. In making an order as to costs in frivolous litigation the spirit of the authority of the Supreme Court in **Sanjeev Kumar Jain** v. **Raghubir Saran Charitable Trust**, (2012) 1 SCC 455 where the Court addressed issues relating to costs in civil litigation is to be borne in mind which serves a social purpose to deal with the menace. Then again, the Supreme Court revisited the issue of imposition of realistic costs in **Ramrameshwari Devi & Ors** v. **Nirmala Devi & Ors,** (2011) 8 SCC 249. Appropriate changes in the law on imposition of costs were suggested by the Supreme Court in *Jain* case supra. The Law Commission of India took the call and deliberated the issues in its 240th Report on Costs in Civil Litigation, May 2102 and has made numerous recommendations to bring about changes in the law to contain the epidemic.They may be only recommendations but courts can remain guided by them in the interregnum.

21. I have heard Mr G.K.Mishra and Mr Aman Bahri appearing for the appellant and the Corporation respectively and have perused the record.

22. The only chance that the appellant had to be consummate allotment under the offer of allotment dated 12th April, 2001 is lost to time and tide. M/s OBC Exports made a promise to HSIIDC but broke it 14 years ago which is irreversible damage to them by failing to pay the entire amount of ₹ 50 lacs within 30 days in lump sum, an offer generously made by the Corporation. They did not avail the opportunity given even after that and finally under letter dated 16th August, 2001 Ex.PW3/8 when HSIIDC relented with the appellant to pay at least 25% of the costs of the plot

immediately to take the matter further in order to mature the re-allotment but that opportunity was not availed. Law does not permit any comebacks in special facts of this case. Merely because a small sum of ₹ 33,900/- was paid by them towards maintenance charges would not give them a legal foothold to compel HSIIDC by injunction to issue a letter of allotment. This Court would barricade all roads that lead to unjust enrichment. For 22 years, the appellant, and now we learn of the paratrooper Sandeep Sharma trying to dig his fingers in the pie, have rather apparently been playing ducks and drakes with HSIIDC, the civil courts and this Court.

23. Mr G.K.Mishra submits that with the withdrawing of the writ petition and the liberty granted, permitting his client to make prayers in the writ petition before this Court in appeal, indicates that the Division Bench of this Court has given a carte blanche for this Court to consider in regular second appeal that a settlement should be thrashed out still with HSIIDC to secure an allotment in favour of the appellant. The Honb'le Bench was not made cognizant of the peculiar features of the case from every angle or were made present in its mind when the writ was withdrawn. The appellant/writ petitioner was not given any relief by the writ court nor was there a direction issued for a decision in appeal in any particular manner or any right had been revived. Moreover, the stay granted by this Court in second appeal stands vacated in the year 2012. The appellant is not protected by an interim order since then. It is perhaps for this reason that the writ petition was filed to achieve what could not be achieved in appeal of the same subject matter.

24. Having regard to the judgment and decrees of both the Courts below dismissing the suit, I find absolutely no ground to interfere in this

matter by acting on the lines of sympathy. They are well reasoned decisions on facts and the law. Neither misplaced sympathy nor equity is part of the judicial apparatus while deciding civil rights and liabilities in regular second appeal by flogging a dead horse. Keeping this appeal afloat in the hope of a settlement against a reluctant HSIIDC, will not serve the ends of public justice as the consideration of such a question would never lead to a substantial question of law to be considered, adjudicated or determined in the second appeal side of this Court in a case of the present kind. Sympathy as a legal proposition in resumption matters and conduct of parties in making defaults in payment of dues has been dealt with negatively and in some detail by the Supreme Court in **Teri Oat Estates (P) Ltd.** v. **U.T. Chandigarh and Ors.** (2004) 2 SCC 130. There are a host of decisions from the distant Full Bench of this Court in **Ram Puri** v. **Chief Commissioner**, AIR 1982 P & H 214 that resumption should normally be the last resort.

25. In *Teri Oat,* the Supreme Court quoted from Farewell L.J. in **Latham** v. **Richard Johnson & Nephew Ltd.** 1911-13 AER reprint p. 117 where the learned Judge observed as early as in the year 1911 that we must be very careful not to allow sympathy to affect our judgment with the infant plaintiff. Sentiment is a dangerous Will O' the wisp to take as a guide in the search for legal principles. The Supreme Court in *Teri Oat* held:-

> "We may, however, hasten to add that we do not intend to lay down a law that the statutory right conferring the right of the respondent should never be resorted. We have merely laid down the principle giving some illustrations where it may not be used. There cannot be any doubt whatsoever that if the intention of the

> allottee is dishonest or with an ill motive and if the allottee does not make any payment in terms of the allotment or the statute with a dishonest view or any dishonest motive, then Section 8(1) can be taken recourse to."

26. In **Babu Singh Bains & Ors**. v. **Union of India & Ors**., [1996] 6 SCC 565, the Supreme Court considered the validity of the provisions of resumption of land and buildings under The Capital of Punjab (Development and Regulation) Act, 1952 and held that when the authorities of the respondent Union Terrritory, Chandigarh acted strictly in terms thereof, the Court should not show any sympathy.

27. The rule against taking recourse to resumption by way of last resort applies on original allottee and not to a person who has entered into an illegal contract with original allottee after the property stood resumed and shown indulgence still did not work the terms of the indulgence in making payment 14 years ago. There can be no misplaced sympathy as far as the appellant is concerned. Having not paid the price of the plot as determined by HSIIDC in 2001, the offer of allotment did not acquire the character of an allotment. It lapsed. The appellant does not have an allotment in its favour which can be enforced by a permanent or mandatory injunction by reason of its hedgy, non-committal, overt and covert acts which cannot meet public approval. There has been an irretrievable breakdown in pre-contract papers which brought nothing forth which can be regarded as enforceable in law by decree of specific performance. Only where there is an enforceable right or an actionable claim is there is a remedy available and provided by law. The principle *ubi jus ibi remedium*

does not to my mind apply in the present case to protect vague rights, if any, under the offer letter of 2001 which have, in any event, expired by self-destruction. The odd chance which may have been available many years ago lies squandered and buried by vagrant conduct and failure to act while time permitted. The conduct of the appellant has not been above board and the equities in the 'last resort' principle is not designed for usurpers trying to grab property with dishonest intentions. Even a vestige of an enforceable right, if assumed, feeble as they were have remained inchoate and far from crystallized and cannot be revived by a court of law by a decree and sympathy has no place to confer an indefeasible right to allotment in the facts and circumstances of this case.

28. The law is designed for honest dealing and not for wheeling dealing and where due payments have gone awry for reasons beyond control of man in the vagaries of life and only then sustenance can be drawn from *Teri Oat*, *Ram Puri* and *Babu Singh Bains* cases etc and longstanding principles evolved by the courts to protect constitutional rights in realty and deprivation the exception. In those cases witnessed matured rights through proper allotment but allottees suffered by default in payments for one reason or the other. Where the ratio of the cases applies then the wheel can be turned back by a court of equity within the margins of a sympathetic consideration where conduct has been bona fide and above board and not of the kind judicially criticized. But in the present appeal equity has lost its meaning and value and cannot be exercised in favour of the deceitful appellant to cause wrongful loss to public purpose and national property. It is trite, that public purpose always overrides private interest which must

give way to the former for the collective good. The disputed industrial plot has become precious public property which is to be dealt with in a fair and reasonable manner by its custodians offering it to the public at large for genuine industrial objectives and for the public to compete equally for its allotment/sale/auction or in the manner prescribed by HSIIDC rules and regulations in accordance with law, at current market prices.

29. No question of law, much less a substantial one, arises or is involved in this appeal for clemency. The judgment and decree in appeal suffers from no legal or factual infirmity or an error in reasoning or of judgment warranting interference in the second appeal side of this court or in any other jurisdiction, if I may be permitted to say so.

30. For the foregoing reasons, the appeal is found without life and is accordingly dismissed. Costs ordered be paid on the misconceived and mischievous application as directed above and be deposited and compliance report be filed on record.

(RAJIV NARAIN RAINA)
JUDGE

April 28, 2015
Paritosh Kumar