

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.12314 of 2015 (O&M)
DATE OF DECISION: 22.03.2016

M/s Suave Automative Corporation

....Petitioner

versus

Haryana State Industrial and Infrastructure Development
Corporation Limited and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Dr. Surya Parkash, Advocate for the petitioner

Mr. Lokesh Sinhal, Advocate and
Mr. Kapil Aggarwal, Advocate for respondents
No.1 and 3

Mr. Rahul Dev Singh, DAG, Haryana for respondent
No.2

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

The petitioners seek a writ of certiorari to quash a letter dated 13/16.08.2010 by which the allotment of a Group Housing Site No.11, Bawal, Haryana, has been withdrawn and the petitioners have been directed to pay Rs.5,760/- per square metre for re-allotment of the same plot. The petitioners have also challenged an order dated 16.01.2015 dismissing their appeal.

2. The petitioners were allotted an industrial plot and a plot for group housing.

We will first refer to the facts relating to the industrial plot.

3. In the year 2006, the petitioners were allotted Industrial Plot No.180-T in Sector 3, Bawal, Haryana. The project

report submitted by the petitioners indicated an employment potential of 37 persons. The manpower indicated consisted of 4 Production Supervisors, 20 skilled workers and 10 Helpers to operate the machines and office staff comprising of one Marketing Executive, one Accountant and one Peon-cum-Chowkidar. The production capacity indicated was of different types and sizes of plastic moulded components for auto parts. The petitioners estimated the annual turnover to be Rs.250 lacs initially which was likely to increase in the following years. In the petition, it is averred that the turnover at the time of the application for the industrial plot was about Rs.2.11 crores which increased to Rs.5.79 crores in the year 2013. The balance-sheets for the years 2005-06, 2006-07 and 2012-13 are relied upon.

4. On 30.08.2006, possession of the plot was handed over to the petitioners. The production was to commence by 01.09.2009. There was a delay on account of recession. The respondents appear to have acknowledged the recession and granted relief generally on account of the global economic slowdown by a general circular dated 17.07.2007. A general extension for a period of one year for implementing the projects was allowed to all existing allottees without levy of extension fee. Further extension fee was to be considered by the levy of applicable extension fee. The circular clarified that the general extension was available to all the allottees to whom plots had been allotted and possession had been offered under the Industrial Policy/EMP 1905. Admittedly, the petitioners were allotted the plot under this policy.

5. The respondents inspected the petitioners' site. At a meeting held on 25.03.2010, the Building Plan Approval Committee

decided to convey certain observations to the petitioners. This was done by a communication dated 30.03.2010, which expressly recorded: "3. Unit is in production.". Thus, admittedly, the petitioners' unit had started production prior to 25.03.2010. In view of the General Circular dated 17.07.2009, this was within the extended period provided for by the General Circular dated 17.07.2009.

In this regard, Dr. Surya Parkash, the learned counsel appearing on behalf of the petitioners also relied upon the respondents' parawise reply to the appeal filed by the petitioners against the withdrawal of the Letter of Intent (LOI). In item No.11 of the tabular form, the petitioners' case that they commenced production within the stipulated date is set out in detail. The only comment by the respondents to this averment was: "It is a matter of record." In other words, there was no denial to the petitioners' case.

6. These facts establish that the petitioners commenced production in the unit set up on the industrial plot within the stipulated period as extended.

7. This brings us to the facts relating to the allotment of the plot for group housing.

On 08.06.2006, the petitioners had made an application for allotment of a Group Housing Site (GHS). The draw of lots was held on 12.02.2007. The respondents issued a letter of intent dated 30.03.2007 conveying their decision to allot the plot admeasuring 2000 square meters in favour of the petitioners.

The petitioners accepted the allotment of the GHS plot by their letter dated 24.05.2007.

8. The respondents issued another letter dated 07.12.2007 which contained an additional term to the effect that if the industrial unit was not implemented within the prescribed period of three years, the LOI in respect of the group housing site would stand withdrawn. The other terms and conditions of the original letter of allotment remained unchanged. The petitioners had by their letter dated 11.01.2008 agreed to the same. As we mentioned earlier, the petitioners' industrial unit set up on the said industrial plot commenced production within the stipulated period.

9. It is in the backdrop of these facts that the impugned action, which we will now refer to, must be judged.

10. The respondents issued a notice dated 04.08.2010 calling upon the petitioners' to show cause why the group housing plot ought not to be resumed. It is important to note two things. Firstly, the show cause notice alleged that the petitioners had not started the construction activities at site and had not been depositing the instalments of the costs of the plot and the enhancement costs even after being called upon to do so. Secondly, the petitioners were offered a personal hearing on 10.08.2010. The importance of this is that despite the same the impugned order was passed on 05.08.2010 without affording the petitioners an opportunity of being heard.

11. By an order dated 10.08.2010, the respondents withdrew the group housing plot on the ground that the petitioners had failed to commence production activity on the industrial plot by 30.03.2009. This decision was conveyed to the petitioners by the respondents' letter dated 13/16.08.2010 (Annexure P/19).

12. The resumption order dated 10.08.2010 is unsustainable for three reasons. Firstly, though by the show cause notice dated 04.08.2010 the petitioners were afforded a personal hearing on 10.08.2010, the resumption order was passed on 10.08.2010 pursuant to a decision taken on 05.08.2010. In this regard, it is important to note the averments in the petitioners' appeal and the respondents' stand in response thereto, which is tabulated by the respondents themselves in their para-wise reply to the appeal. The same reads as under:-

"21	That the appellant on inspection of the records of the respondents was surprised that the respondent no.3 had already decided to cancel the GH-11 plot of the appellant vide his order dated 05.08.2010 i.e. 5 days prior to the date fixed for personal hearing on the show cause notice. The impugned order, Annexure P-17, was in fact passed by respondent no.3 on 05.08.2010 in his capacity as Managing Director of respondent no.1 and was communicated to the appellant after the date of personal hearing i.e. 10.08.2010 under the signatures of Assistant General Manager (C&H). The show cause notice was issued on 04.08.2010 and the order of resumption was passed by the respondent no.3 on the very next date i.e. 05.08.2010. This itself establishes the malafides and predetermination of the respondent no.3 to resume the GH plot of the appellant. In fact, the respondent no.3 wants to allot the GH plots to some of his favourables.	It is a matter of record. The decision taken by Managing Director to withdraw the LOI and the offer the GH site at current rate reached to the conveying authority only on 13.08.2010. Meanwhile, the allottee was called to appear on 10.08.2010 for personal hearing. The allottee failed to appear for personal hearing. The same was confirmed from Estate Manager/Bawal and subsequently the decision taken by the Managing Director was finally conveyed to the allottee on 16.08.2010."
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There is, therefore, no denial that the respondents took the decision to cancel the allotment on 05.08.2010 i.e. prior to the date of the personal hearing.

13. Secondly, the impugned order is based on a ground which is entirely different from the basis on which the show cause notice dated 04.08.2010 was issued. Even assuming that the petitioners failed to appear at the personal hearing on 10.08.2010, it would make no difference for, admittedly, they were not given an opportunity of meeting the fresh ground. The order dated 10.08.2010 is not sustainable even for that reason.

14. Thirdly, even on facts, this order was incorrect for, as stated above, the production at the petitioners' industrial unit on the said plot commenced within the stipulated period. The show cause notice and the order ignored the fact that by virtue of the General Circular dated 17.07.2009, the petitioners were granted an extension of one year to commence production from the industrial unit and that the petitioners' unit had commenced production within the extended time.

15. The petitioners challenged the order dated 10.08.2010 (communicated by the letter dated 16.08.2010) by filing CWP No.16379 of 2010. The respondents contended that the petitioners had the remedy of appealing to an Appellate Committee which was set up to consider appeals *inter alia* against the orders of resumption. By an order dated 31.01.2011, the petition was allowed to be withdrawn with liberty to file an appeal. We have already referred to the appeal and the respondents' Estate Officers' para-wise comments thereto.

16. The petitioners' appeal was dismissed by an order dated 25.09.2012 now on different grounds, to wit, neither on the grounds mentioned in the show cause notice nor on the ground on which the order of resumption was passed. The appeal was dismissed now on the ground that the petitioners' unit was not functional as the premises were found locked; that though the allottee had projected a manpower strength of 37 persons, the actual manpower deployed was found to be nil and on 03.12.2012, the order noted that the Corporation had allotted the group housing Plot for the employees/workers engaged in the industrial unit and for the use as general group housing project. This was not the allegation in the show cause notice. Nor was it the basis on which the order of resumption was passed.

17. The petitioners challenged this order by filing CWP No.2841 of 2013. By an interim order dated 12.05.2014, the petitioners were directed to file an affidavit along with a list of employees engaged before allotment of the plot and engaged after the allotment of the plot with details of their ESI and EPF challans as on the relevant date. Ultimately, by an order dated 07.07.2014, the writ petition was disposed of by setting aside the order dated 25.09.2012 passed by the appellate authority without expressing any views on the merits and with a direction to the appellate authority to consider the petitioners' appeal afresh in the light of the material placed on record.

18. This order really did not change the situation. This order would not have an effect of validating the impugned action even if it was otherwise invalid.

19. The impugned order cannot be sustained even otherwise. The petitioners submitted detailed evidence in respect of their contention that the production had started within the stipulated period. In addition thereto, the petitioners submitted considerable evidence in support of their contentions, such as, list of employees, details of EPF and ESIC, payment register at Bawal, electricity bills of about Rs.1 lakh per month and excise returns. These documents were, to say the least, of considerable importance to the issue as to whether the petitioners had employed people at the said unit.

20. The impugned order refers to the number of employees during certain site visits but fails to consider that the employees work in shifts. Most important, the impugned order does not even refer to the admissions made by the respondents in the earlier appeal and in the communication dated 30.03.2010 to the effect that the unit was in production prior to 25.03.2010. The order does not even analyse the evidence. The facts are referred to in paragraphs 1 to 10. Paragraphs 11 and 12 refer to the rival contentions. The concluding paragraphs read as under:-

"13. After deliberations, members observed that the documents submitted by the Appellant in the Hon'ble Punjab & Haryana High Court/before the committee could in no way justify or confirm the number of persons working at the Bawal unit. Further, perusal of the report received from field office had confirmed that even on expiry of 8 years since allotment of the industrial plot, Appellant had failed to achieve desirable scale of operations to justify allotment of a 2000 sq. mtrs group housing site.

14. In view of the above Committee decided to reject the appeal and confirm withdrawal (sic) of LOI."

The order does not state why the documents submitted by the petitioners could not confirm the number of persons working at the Bawal unit. The order merely states that reports received from the field staff confirmed that the appellant had failed to achieve the desirable scale of operation to justify the allotment of the plot. This is a bare statement unsupported by reasoning. We would presume that the desirable scale is a reference to the projection in the project report on the basis of which the application for allotment was made. The order, however, does not indicate the actual scale of operation. At the cost of repetition, these were not even grounds stated in the show cause notice.

21. In the circumstances, the writ petition is allowed as prayed. The orders dated 16.08.2010 and 16.01.2015 are quashed and set aside.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

22.03.2016
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(ARUN PALLI)
JUDGE