

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.19086 of 2014(O&M)

Date of decision: 10.05.2016

Sanjay Kumar and others

... Petitioners

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Anirudh Kush, Advocate for the petitioners.
Mr. Rahul Dev Singh, DAG, Haryana.
Mr. BC Ichhewal, Advocate for respondents No.2 & 3.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

ARUN PALLI J.

A writ in the nature of certiorari is prayed for to quash the order dated 03.07.2009 (Annexure P35), vide which an industrial plot allotted to the predecessor-in-interest of the petitioners was resumed; and also the orders dated 27.10.2009 (Annexure P37), dated 17.06.2014 (Annexure P40), whereby the appeal as also the revision preferred by the petitioners against the order of resumption were dismissed.

Facts that are required to be noticed are limited.

An industrial site bearing No.461, Sector 58, Faridabad, was allotted to Sh. Sanjay Gandhi, vide letter of allotment dated 01.07.2002 (Annexure P1). Possession of the allotted site was also

offered to the allottee on the same day i.e. 01.07.2002 itself. In terms of clause 16 of the allotment letter, allottee was required to construct 50% of the permissible covered area of the plot and install 50% of the plant and machinery, as per the implementation schedule of production, within a period of three years from the date of offer of possession. The allottee got the site plans sanctioned on 21.12.2004. And thereafter purports to have constructed the site in September, 2005. Subsequently, he also sought permission from the authorities to transfer the site in favour of the petitioners. And, vide letter dated 13.01.2006 (Annexure P20), the Estate Officer, HUDA, Faridabad (respondent No.3) accorded the necessary permission, but subject to certain terms set out in the said letter. Resultantly, a sale deed, dated 27.03.2006 (Annexure P21), was executed by the allottee in favour of the petitioners. And, upon obtaining the actual physical possession of the site, the petitioners purport to have purchased machines/equipments, raw material and commenced business. However, the petitioners were served upon a notice under Section 17(4) of the HUDA Act, dated 12.11.2008, vide which they were alleged to have breached condition No.16 of the letter of allotment: non-construction of site, failure to start construction and obtaining occupation certificate within the specified time. And eventually, vide order dated 03.07.2009 (Annexure P35), respondent No.3 ordered resumption of site and also forfeiture of 10% of the amount deposited by the allottee. Appeal preferred against the order of resumption failed, for it was dismissed vide order dated 27.10.2009 (Annexure P37). So

was the fate of the revision preferred by the petitioner, for that too was dismissed, vide order dated 17.06.2014 (Annexure P40). That is how, as indicated above, the petitioners are before this court.

Learned counsel for the petitioners submits that site plans were sanctioned by the authorities in December, 2004, and the DPC certificate, dated 20.06.2005 (Annexure P4), issued by the Divisional Engineer, shows that construction at site was complete upto plinth level. And, eventually the site was fully constructed in September, 2005. Further, he submits that pursuant to the permission accorded by the authorities, the site was transferred in favour of the petitioners. And, soon after obtaining possession, the petitioners set up a plant and commenced production. Thus, he asserts that there was no violation of clause 16 of the letter of allotment. And, hence, the order of resumption was wholly erroneous and so were the orders passed by the appellate as also the revisional authorities.

We have heard learned counsel for the parties and perused the paper book.

On a due and thoughtful consideration of the matter in issue, we are of the considered view that the petition is wholly devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

An industrial site was allotted to the predecessor-in-interest of the petitioners to set up a “zinc job work project”, vide allotment letter dated 01.07.2002. For, clause 16 of the letter of

allotment would be significant, in context of the issue that arises for our consideration, the same is being set out hereafter:

“16. You will have to start civil works as per approved building plan within a period of six months of the offer of possession. The unit must go into production after constructing 50% of the permissible covered area of plot and installation of at least 50% of the plant and machinery as per the implementations schedule of production as per the project report within a period of three years from the date of offer of possession. The permissible covered area will be determined as per the provisions of the Town & Country Planning Department, Haryana.”

Ex facie, the allottee was required to commence civil works as per the approved building plan within a period of six months of the offer of possession. Further, to ensure that the unit goes into the commercial production within a period of three years from the date of offer of possession, he was required to construct 50% of the permissible covered area and to install 50% of the plant and machinery, in terms of the implementations schedule of production. Clause 5 of the letter of allotment reveals that possession of the allotted site was offered to the allottee on 01.07.2002 itself. Concededly, the allottee failed to commence the civil works, as per the approved drawings, for he obtained the actual physical possession of the site only after a year on 01.07.2003. And he got the site plan sanctioned in December, 2004. Documents brought on record show that certain building material was purchased by the allottee between June to September, 2005 (Annexures P4 to P19). The certificate, dated 08.08.2009,

issued by the Architect (Annexure P36), only reflects that structure at site was four years old. And DPC certificate, dated 20.06.2005 (Annexure P4), at best certifies that construction upto plinth level was completed by the allottee by June, 2005. No cogent or credible material was brought on record to show that the site was constructed, in terms of clause 16, within the specified time or even within the extendable period of two years, which the competent authority could extend subject to proof of any special circumstances. Meaning thereby, there was an apparent breach of clause 16 of the allotment letter. Of course, the allottee knew the terms upon which the site was allotted and also the ramification of violation thereof. Therefore, if he indeed had constructed the site in September 2005 itself, he would have naturally obtained an occupation certificate at the earliest to commence commercial production. For, in terms of regulation 11 of HUDA (Erection of Buildings) Regulations, 1979, no person can occupy or allow any other person to occupy any new building unless it has been certified to have been completed in accordance with the sanctioned plans. Ex facie, nothing was brought on record to show that original allottee ever set up any plant and commenced production. Instead, he sought permission from the authorities on 12.07.2005 to transfer the site. Not just that, even in terms of clause 12 of the letter dated 13.01.2006, vide which the permission to transfer was accorded; “transferee will have to get the occupation certificate of the plot before FTL.” But concededly, even the petitioners failed to obtain the occupation certificate. Consequently, neither the final

letter of transfer was issued in their favour nor the site was transferred in their names. Thus, records continued to reflect the name of the original allottee till an order of resumption was passed on 03.07.2009. In fact, in terms of EMP 2005, transfer of industrial site could only be permitted if the original allottee had executed the project and the unit was in production for a period of one year. Therefore, as observed by the revisional authority, the permission for transfer itself ought not to have been granted in favour of the petitioners, for it was in apparent violation of the provisions of EMP 2005. Though, the petitioners claimed to have set up the plant and commissioned the unit, but no cogent material was brought on record to show that the unit, indeed, was into production. Reference to certain bills/cash memos, appended as Annexures P22 to P32, at best show that the petitioners had purchased zinc, sullfer, electrical panel etc. in negligible quantities and had issued bills for the job work that purports to have been carried out. Significantly, all these bills pertained to months of March, April and May, 2006. Indeed, there is nothing on record to show that unit, if any, was even operational for the last 10 years. Needless to assert, for petitioners to commission the unit they would have required an electric and water connection, but again nothing is brought on record to show that unit was even equipped for production. So much so, vide memo dated 23.08.2006, the original allottee as also the petitioners were asked to furnish the proof of production for one year, but they failed to furnish anything in this regard.

An industrial site was allotted for a specified purpose as

back as on 01.07.2002. Time was the essence of allotment. That is how, Clause 16 required the allottee to construct the site, set up the plant and ensure commercial production within three years. The purpose sought to be achieved was; to boost the State economy, revenue generation, create employment opportunities, and to promote industrialization. But, apparently the purpose for which the site was allotted stood defeated.

That being so, we are dissuaded to interfere with the discretion exercised by the authorities under Article 226 of the Constitution of India. Petition being devoid of merit is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

10.05.2016
Rajan