

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

CWP No.2736 of 2014
Date of decision: 24.05.2016

Maharaj Singh

... Petitioner

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. SK Sharma, Advocate for the petitioner.
Mr. Rahul Dev Singh, DAG, Haryana.
Mr. Ajay Kansal, Advocate for respondents No.2 to 4.

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 orders, dated 11.11.2008 (Annexure P11), vide which the industrial site allotted to the petitioner was resumed; dated 13.05.2011 (Annexure P14), and 03.09.2013 (Annexure P16), whereby the appeal as also the revision, preferred by the petitioner, against the said order were dismissed.

Facts that are required to be noticed are limited.

An industrial plot bearing No.528, Sector 58, Faridabad, was allotted to the petitioner (Maharaj Singh), vide letter of allotment dated 03.07.2001, which is appended as Annexure P1, with the petition. In terms

of clause No.15 of the allotment letter, the petitioner was required to initiate civil works as per the approved building plans within a period of six months of the offer of possession; to ensure that the unit goes into production within three years from the date of offer of possession, he was required to construct minimum 50% of the permissible covered area and install at least 50% of the plant and machinery in terms of the project report. In terms of clause 21, the actual physical possession of the site was offered to the petitioner vide letter of allotment itself. The petitioner obtained possession of the plot on 27.03.2002. For, the petitioner failed to construct the site within the specified time, vide memo No.26722, dated 13.09.2006, he was served with a show cause notice, under Section 17(3) of the HUDA Act, 1977 (for short, “the Act”); why an order of resumption be not passed. The reply filed to the said notice was not found to be satisfactory by the authorities. Consequently, in terms of Section 17(4) of the Act, petitioner was afforded an opportunity of personal hearing before passing the order of resumption. Petitioner appeared before the Estate Officer (respondent No.4), but failed to render any plausible explanation for non-construction of the site. For, the authorities arrived at a conclusion that there was a willful breach of condition No.15 of the allotment letter, vide order dated 11.11.2008 (Annexure P11) the site was resumed. Appeal preferred against the said order was dismissed by the Administrator, HUDA, Faridabad, vide order dated 13.05.2011 (Annexure P14), and so was the fate of the revision preferred by the petitioner, for it was also dismissed by the revisional authority on 13.09.2013 (Annexure P16). That is how, as indicated above, the petitioner is before this court.

Learned counsel for the petitioner submits that the possession of the site was delivered to the petitioner on 25.03.2002, and in terms of clause 15 of the allotment letter, he could construct 50% of the permissible covered area within three years i.e. till March, 2005. He submits that the authorities completely overlooked clause 5 of the Estate Management Procedure (EMP-2005) of HUDA (Annexure P12), which entitled the petitioner to seek two consecutive extensions, for a period of one year each. Particularly, when vide letter dated 03.10.2006 (Annexure P3), the petitioner had sought an extension in terms of EMP-2005. That being so, he asserts that the petitioner could construct the site within a period of five years from the date he was offered possession, i.e. from March, 2002 to March, 2007. In reference to the letters, appended as Annexures P5 to P8, and photograph (Annexure P9), with the petition, it is contended that the petitioner had indeed completed the construction in 2007 itself, and the authorities were informed in this regard. Thus, he asserts that the resumption of the allotted site was wholly unwarranted. In any event, he submits, for the petitioner had remitted the entire consideration, and constructed the site, the authorities ought not to have ordered resumption. Particularly when the power of resumption has to be exercised as a last resort. Reliance is placed upon certain decisions rendered by this court in M/s Krishna Rubber Private Limited v. Administrator, H.U.D.A., Faridabad, 1995(1) PLR 66; Sandeep Kumar v. Haryana Urban Development Authority and others, 2009(5) RCR (Civil) 673; Matesh Kumar Katyal v. State of Haryana and others (CWP-14496-2006); Rajinder Mohan Mehta v. The Haryana Urban Development Authority and others, 1993(2) PLR 423; and Ajay Singh Mann v. State of Haryana and others, 2009(1) PLR 742.

As opposed to this, learned counsel for respondents No.2 to 4, reiterates the reasons that have been assigned by the authorities to order or sustain the order of resumption. He submits that, for there was a willful default or breach of the terms of letter of allotment, the authorities were constrained to resume the site.

We have heard learned counsel for the parties and perused the records.

Concededly, the petitioner was allotted an industrial site No.528, Sector 58, Faridabad, vide letter of allotment dated 03.07.2001. In context of the issue that arises for our consideration, we deem it expedient to set out a few relevant clauses of the allotment letter, which read thus:

“8. In the event of violation of any other condition of allotment/transfer the Estate Officer may resume the land in accordance with the provisions of section 17 of the Act.

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15. 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 a minimum 50% of the permissible covered area of plot and installation of at least 50% of the plant and machinery as per the implementation 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 and Country Planning Department, Haryana.

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21. The physical possession of the plot is hereby offered to you.”

Ex facie, in terms of clause 15, the petitioner was required; (i) to initiate civil works at site as per the approved building plans within a period of six months of the offer of possession; (ii) to ensure that the unit goes into commercial production within a period of three years from the date of offer of possession, construct minimum 50% of the permissible covered area of the plot; (iii) and install at least 50% of the plant and machinery as per the implementation schedule of production envisaged in the project report. Concededly, in terms of clause 21, possession of the site was offered to the petitioner vide letter of allotment itself. And, this was never the grievance of the petitioner that the authorities failed to deliver the physical possession, though offered on 03.07.2001. Therefore, the petitioner, in terms of clause 15, was required to construct the site and install the plant and machinery by July, 2004. But, the petitioner obtained possession on 27.03.2002, well beyond a period of six months within which he was required to initiate the civil works at site. Not just that, petitioner even failed to construct the site, though six years had gone by from the date of offer of possession, which is why the authorities initiated proceedings under Section 17 of the Act against him. In fact, vide letter, dated 18.06.2007 (Annexure R2), petitioner had requested the authorities that ***“I want to construction the above said plot immediately. So please give me the permission for the construction the plot”***. Surprisingly, soon thereafter, vide letter dated 04.09.2007 (Annexure P5), the petitioner claimed to have constructed the site and rather requested the authorities to permit him to furnish the balance dues and penalty. Though, nothing was brought on record to suggest that the petitioner had indeed constructed the site in terms of clause 15 *ibid*. If the petitioner had constructed the site, even in 2007, he

would have naturally obtained an occupation certificate at the earliest, 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. Significantly, petitioner never submitted any building plans for approval of the competent authority, which alone would entitle him to construct the site. Thus, construction, if any, raised by the petitioner was/is wholly unauthorized and illegal.

The submission that the authorities completely overlooked clause 5 of EMP-2005, which entitles the petitioner for extension for a period of two years, is equally misconceived. Undoubtedly, EMP-2005 postulates two consecutive extensions, for a period of one year each, for implementation of the project, but subject to certain conditions, which read thus:

“The period for implementation of the project can be extended by the respective Estate Officer, HUDA for a period of one year subject to the allottee having completed construction equivalent to 20% of Permissible Covered Area (PCA) in case of plot size is up to one acre and 10% of PCA in case plot size is more than one acre. Further, the allottee will satisfy the Authority that he could not go into production within three years from the date of offer of possession for reasons beyond his control and he took effective steps for implementation of the project.

Second extension of one year for completion of project i.e. after four years from the offer of possession will be granted only in

exceptional circumstances with the approval of Zonal Administrator, HUDA.”

Ex facie, an allottee is not entitled to extension as a matter of right, but only if he had constructed the site equivalent to 20% of the permissible covered area, and satisfy the authorities that he could not commission the plant within the specified time, for reasons beyond his control although he had taken effective steps for implementation of the project. Likewise, second extension can only be granted in exceptional circumstances. The petitioner never applied to the authorities for extension. Letter, dated 03.10.2006 (Annexure P3), could hardly be termed as a request for extension in terms of EMP-2005, for all what was stated therein; that the petitioner was unable to raise construction in time on account of his illness and scarcity of funds, and, thus, he be granted more time to construct the site. In any case, petitioner was hardly in a position to satisfy the conditions, which alone could entitle him for extension.

Not just that, the order rendered by the revision authority unravels that the petitioner had actually executed an agreement to sell, dated 17.11.2006, in favour of one Pawan Kumar son of Tilak Raj, who also happens to be his General Power of Attorney holder, and is pursuing this litigation. During the course of hearing, learned counsel for the petitioner had produced copies of the said agreement and a registered Will, dated 07.11.2008, executed by the petitioner in favour of his attorney, which are taken on record as Marks ‘X’ and ‘Y’. A bare analysis of these documents show that the petitioner had transferred his interest in favour of Pawan Kumar in November, 2006 itself, after receiving the full consideration of

₹ 2,00,000/-. So much so, the actual physical possession of the site was also delivered to the proposed vendee. That being so, it was not possible for the petitioner to construct the site in the year 2007, for he had already parted with possession. And, if at all, the proposed vendee had raised any construction that was of no consequence, for he was a stranger to the contract between the petitioner and the authorities. Although, the petition has been filed by the original allottee, but obviously to pursue the interest of the proposed vendee, for he himself was left with no interest in the subject site. Thus, the case set out by the petitioner is completely falsified.

Be that as it may, the petitioner still cannot succeed, for the requirement, in terms of clause 15, to install at least 50% of the plant and machinery, in terms of the project report, to ensure commercial production within a period of three years from the date of offer of possession, remained unfulfilled throughout. This is not even the case of the petitioner either that he ever set up an industry or a unit at site. We have examined the decisions that have been referred to by the learned counsel for the petitioner, but none has any bearing on the matter in hand, for they are clearly distinguishable on facts.

We are reminded to point out that an industrial site was allotted to the petitioner 15 years ago, preceded by interviews of the eligible applicants, and keeping in view their experience, educational qualification, and viability of the proposed industry. Needless to assert, the purpose was to boost the State's economy, revenue generation and create employment opportunities. But, apparently, the purpose for which the site was allotted stood completely defeated. No doubt, resumption is the last resort, but in the wake of the position as sketched out above, it was the only and the inevitable

option before the authorities. For, there was a brazen and willful breach of the terms upon which the site was allotted to the petitioner, the authorities were choice-less but to order resumption.

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

24.05.2016

Rajan