

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

CWP No.9434 of 2015
Date of decision: 03.06.2016

PCC Technology Group and another

... Petitioners

Versus

Chandigarh Administration and others

... Respondents

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

Present: Mr. Ashwani Talwar, Advocate for the petitioners.
Mr. Sanjeev Sharma, Senior Standing Counsel with
Mr. Vivek Sharma, Advocate for the respondents.

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 13.03.2015 (Annexure P23), rendered by the Estate Officer, UT, Chandigarh (respondent No.4), vide which claim of petitioner No.1 (Foreign Company) to transfer the site (Built to Suit Site) allotted thereto, at Rajiv Gandhi Chandigarh Technology Park, in the name of its Indian subsidiary company (petitioner No.2), has since been declined.

A brief narration of facts that have led the parties to the current stage shall be expedient.

Petitioner No.1 i.e. PCC Technology Group, 2-Barnard Lane, Bloomfield, USA, is an American company and all its operations are confined within the United States of America. The entire equity of the company is held by its two Directors i.e. Mr. Jerry Wayne Long and Mr. Gurpreet Singh. Whereas petitioner No.2 i.e. M/s PCC Technology Pvt. Ltd. is registered with the Registrar of Companies in India and is a fully owned subsidiary of petitioner No.1. Chandigarh Administration invited Expression of Interest for allotment of Small Campus, and Built to Suit Sites (on lease hold basis), at Rajiv Gandhi Chandigarh Technology Park, to IT enterprises engaged in software development, vide a press release dated 20.02.2008 (Annexure P1). Three built to suit sites in Phase I (Non SEZ area) and equal number of sites in Phase II (SEZ area) were offered for allotment. Requisite details as regard the area of each site, consideration amount and the eligibility criteria for allotment was duly set out in the publication itself. In response, petitioner No.1 (Foreign Company), vide its application dated 18.02.2008 (Annexure P2), applied for allotment of a 'Built to Suit Site' in Phase-I (Non-SEZ Area). A committee constituted by the Administration, for evaluating the eligibility of the applicants, found nine of the fifteen applicants to be eligible for SEZ area, and nine of fourteen for the Non-SEZ area, including the petitioner No.1 (Foreign Company). For, the number of eligible applicants were far more than the sites available in each of the areas, the Committee proposed a draw of lots to carry out allotments. Petitioner No.1 (Foreign Company) succeeded in the draw of lots held by the Administration on 23.04.2008. Accordingly, a letter of intent dated 06.05.2008 (Annexure P4), vide which a built to suit site No.C-4, measuring 1.10 acres, was proposed to be allotted, was issued in favour of petitioner

No.1 (Foreign Company). The tentative premium of the site was Rs.1,65,89,985/-. In terms of clause 5 of the letter of intent, petitioner No.1 (Foreign Company) was required to remit 25% of the tentative premium i.e. Rs.41,47,496/- and execute an agreement to sell in form 'B' within 30 days from the date of issuance of the said letter. And, clause 6 required the remaining 75% of the consideration to be furnished within 90 days of the issuance of the allotment letter. Clause 7 envisaged a lease deed, in form 'D', appended with the Chandigarh Estate Rules, 2007, to be executed within 30 days from the date of issuance of the allotment letter. And, in terms of clause 8, possession of the site was to be delivered within 15 days of the execution of the lease deed. Vide letter, dated 27.05.2008 (Annexure P5), petitioner No.1 (Foreign Company) sought a clarification from the authorities; if a formal letter of allotment could actually be issued in the name of its fully owned Indian subsidiary company (petitioner No.2), for to acquire any immovable property in India, it was necessary for a foreign company to seek permission from the Reserve Bank of India (RBI). And, even the Director Information Technology (respondent No.3), vide its letter dated 28.07.2008 (Annexure P6), conveyed to the Finance Secretary that it would be difficult for the foreign based IT companies to start their business operations in India, and to avail certain tax benefits under the Software Technology Park India (STPI) or SEZ schemes, they shall have to seek STPI registrations. However, that too could be possible, if these companies incorporate Special Purpose Vehicles (SPVs) i.e. their wholly owned Indian subsidiary companies. Accordingly, it was suggested that the foreign based companies be permitted to transfer the sites in the names of their Indian subsidiary companies subject to the same terms and conditions. But, for the

petitioner No.1 (Foreign Company) deposited 25% of the tentative premium of the site, and executed an agreement to sell, in terms of letter of intent, a regular letter of allotment, dated 17.03.2009 (Annexure P7), was issued in its favour. Petitioner No.1 (Foreign Company) complied with all the terms of allotment. And vide letter, dated 07.12.2011 (Annexure P9), even the site plans submitted by petitioner No.1 (Foreign Company), to construct the allotted site, were sanctioned/approved by the Special Project Approval Committee. Records show, for the Administration had acceded to the request of two other foreign companies, namely, M/s Damco Solutions UK Ltd. and M/s Silicon Valley Systech Inc, to issue a formal letter of allotment in the names of their Indian subsidiary companies, a joint recommendation was made by the Joint Secretary, Finance and the Director, Information & Technology, vide letter dated 29.11.2011 (Annexure P10) for according approval to a similar request of another foreign company i.e. M/s 22nd Century Technologies Inc. It was also proposed that petitioner No.1 be also informed of the requirements for transfer of ownership of its site to its Indian subsidiary company. It appears that, as a consequence, petitioner No.1 (Foreign Company), once again, vide letter dated 05.02.2012 (Annexure P11), required respondent No.3 to substitute the name of its Indian subsidiary company in its place. For, the representation of petitioner No.1 (Foreign Company) failed to evoke any response, a writ petition bearing CWP No.23349 of 2013 was filed before this court, which was disposed of, vide order dated 24.10.2013 (Annexure P22), with a direction to the Estate Officer, UT, Chandigarh to consider and decide the claim of the petitioner. As a result, vide order, dated 13.03.2015 (Annexure P23), rendered by the Estate Officer, UT, Chandigarh (respondent No.4), the authorities declined

the request of petitioner No.1 (Foreign Company). The reason that has been assigned by the authorities in support of the order of rejection is; that petitioner No.1 (Foreign Company) could seek allotment in the name of its subsidiary company, provided no letter of allotment was yet issued in its name. But, once an allotment letter was issued, allottee was bound by the terms of allotment. The conclusion arrived at by the authorities reads thus:

“... Even though the allottee company would have been eligible for allotment in the name of its subsidiary company as per the RBI guidelines provided the request in this regard was made prior to issuance of letter of allotment but in the present case, the allotment and even the lease deed has already been made/executed in the name of the original allottee company. In the case of the Company namely Damco Soft Pvt. Ltd. and M/s S.V. Systech Pvt. Ltd. as have been referred to in the legal notice of the allottee company, the decision has been taken on different merits and the similar decision cannot be taken in the case of PCC Technology Group, USA. It is to be noted that in the case of aforesaid two companies the foreign based company in whose favour the letter of Intent was issued has requested for transfer of ownership to its Indian subsidiary company prior to the issuance of letter of allotment and as such the ban for transfer of ownership did not applied in the terms of the Rules which governs such allotment.

The undersigned has gone through the complete facts of the case and the contents of the legal notice and as well as direction contained in the orders dated 24.10.2013 of the Hon'ble High Court & after giving the opportunity of personal hearing on 22.9.2014 and considering the representation made by the representative of the original allottee company as well of its subsidiary company, the undersigned is of the considered view that in the present case of the allottee company, since, the letter of allotment has already been issued and even the lease deed has already been executed in the name of original allottee company i.e. M/s PCC Technology Group, 2 Barnard Lane Bloomfield USA, no benefit could be extended to M/s PCC Technology Group, 2 Barnard Lane Bloomfield USA or its subsidiary company on the basis of the above referred case of M/s Damco Soft Pvt. Ltd. and M/s S.V. Systech Pvt. Ltd. & also in view of the provisions of the Chandigarh Estates Rules, 2007 read with the allotment of Campus Sites in Chandigarh Technology Park Rules, 2006 as amended from time to time which governed the allotment made to the M/s PCC Technology Group, 2 Barnard Lane Bloomfield USA.

Now, therefore, the undersigned keeping in view the entire facts and circumstances of the case has found no ground for considering the change of name of allottee company and as such decline the request made by the M/s PCC Technology Group, 2 Barnard Lane Bloomfield USA.

The concerned party be communicated, accordingly.

Dated:13.3.2015

**Sd/- Estate Officer,
U.T., Chandigarh”**

Learned counsel for the petitioners submits that the reason assigned by the authorities; that petitioner No.1 (Foreign Company) could always seek allotment in favour of its Indian subsidiary, but before a regular letter of allotment was issued in its favour, and now when the site stood allotted, its transfer to a third party was not permissible under the terms of allotment, is wholly erroneous. For, petitioner No.1 (Foreign Company), indeed, immediately on receipt of the letter of intent, vide letter dated 27.05.2008 (Annexure P5), asked the authorities to allot the proposed site in favour of petitioner No.2 (Indian Subsidiary Company). And, not just that, Director Information Technology, vide letter dated 28.07.2008 (Annexure P6), written to the Finance Secretary, not only acknowledged the request made by petitioner No.1 (Foreign Company), but also recommended its case for according approval to transfer the site to its Indian subsidiary company. Thus, he submits that the order being assailed is vitiated. In any event, he submits that in case of two other foreign companies i.e. M/s Damco Solutions UK Ltd. (Non SEZ area), and M/s Silicon Valley Systech Inc (SEZ area), the Administrator accorded approval/sanction for transfer of ownership or letter of allotment in the names of their Indian subsidiary companies, therefore, there was hardly any justification to decline the claim of petitioner No.1 (Foreign Company). Further, respondent No.3 and Joint Secretary Finance, vide joint recommendations, dated 29.11.2011 (Annexure P10), had again recommended its case to the authorities for approval to transfer the site. In reference to the two decisions rendered by the Division

Bench of this court in M/s Damcosoft Private Limited & another v. Union Territory, Chandigarh & others - CWP No.23491 of 2014 (Annexure P25); and M/s 22nd Century Technologies Inc. & another v. Chandigarh Administration & others - CWP No.3038 of 2014 (Annexure P26), he submits that the matter in hand was squarely covered in favour of petitioner No.1 (Foreign Company).

As opposed to this, learned senior counsel for the respondents reiterates the reasons that have been assigned by the authorities in support of its order, dated 13.03.2015 (Annexure P23). It is contended that the decisions rendered by this court, that have been referred to by the learned counsel for the petitioners, have indeed no bearing on the matter, for in those cases no regular letter of allotment was issued in favour of the foreign company and, therefore, its request to transfer the site in the name of its subsidiary was acceded to.

We have heard learned counsel for the parties and perused the record. And, 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.

Concededly, M/s PCC Technology Pvt. Ltd. - the Indian subsidiary company (petitioner No.2) was incorporated on 28.12.2007, much before the Administration even invited applications for allotment. Therefore, the Indian company (petitioner No.2) always had the option to apply and seek allotment in its name, but it did not. Instead, petitioner No.1 applied for a 'Built to Suit Site' in Non-SEZ area and was found to be eligible for allotment. Clause 4 of the letter of intent, dated 06.05.2008, issued in favour

of petitioner No.1 (Foreign Company), envisaged in no uncertain terms: ***“the Site to be allotted is non-transferable and further transfer-re-transfer/ resale of the same will not be allowed in favour of any party at any stage.”***

Further, petitioner No.1 (Foreign Company) was required to furnish 25% (Rs.41,47,496/-) of the tentative premium of the site, and execute an agreement to sell, in form ‘B’, within 30 days of the issuance of the letter of intent. Significantly, vide letter, dated 27.05.2008 (Annexure P5), petitioner No.1 (Foreign Company), asked the authorities, if the allotment letter could indeed be issued in the name of its Indian subsidiary company (petitioner No.2). Meaning thereby, petitioner No.1 was alive to the fact that being a foreign company, unless it has STPI registration, it would not be entitled to the tax benefits under the STPI scheme of Government of India. For, only a letter of intent was issued, the foreign company (petitioner No.1) could always insist upon the authorities, either before or at the time of remitting 25% of the tentative premium, and execution of an agreement to sell, to issue the allotment letter in favour of its Indian subsidiary company (petitioner No.2). Particularly, when similar requests by two other foreign companies i.e. M/s Damco Solutions UK Ltd. and M/s Silicon Valley Systech Inc, were already under consideration of the authorities, and eventually the approvals were also accorded by the Administrator on 14.11.2008 and 20.02.2009, respectively, much before the regular letter of allotment, dated 17.03.2009, was issued to petitioner No.1 (Foreign Company). But, the foreign company (petitioner No.1), instead in compliance of the letter of intent, remitted 25% of the premium and executed an agreement to sell to obtain the allotment letter in its name.

Before we proceed further, it would be apposite, at this juncture, to set out Clauses 6, 7 and 8 of the Letter of Intent, which read thus:

“6. That the remaining 75% of the consideration money shall be deposited by the company in lump sum within 90 days of the date of issue of allotment letter, by way of the prescribed mode of payment, failing which offer of allotment shall be deemed to have been canceled and payment made under sub-rule (ii) shall be forfeited and the company shall have no claim to any damages.

7. That the company shall have to execute a lease deed within 30 days from the date of issue of allotment letter in Form ‘D’ appended with the Chandigarh Estate Rules, 2007. The stamp duty payable is to be intimated in the allotment letter according to prevalent rates. All expenses in respect of stamp papers and registration charges etc. shall be borne by you. The Lease Deed on non-judicial stamp papers is to be got typed in triplicate. The reverse page of the non-judicial papers is to be kept blank. The spaces left blank in the lease deed are to be filled up by this office.

8. That the possession of the BTS sites shall be given to the lessee company within 15 days of the execution of lease deed.”

In due compliance of the terms of allotment, set out above, foreign company (petitioner No.1) executed even a lease deed in form ‘D’ on 17.12.2009, and obtained possession of the allotted site on 05.02.2010.

Concededly, the balance 75% of the consideration was also furnished by the foreign company (petitioner No.1) to the authorities. So much so, even the building plans submitted by the foreign company (petitioner No.1) to construct the site were sanctioned/approved by the Special Project Approval Committee on 07.12.2011 (Annexure P9). That being so, need we say; that a concluded and binding contract had come into being between the parties. And, it was after three years of the issuance of the regular letter of allotment, petitioner No.1 again raked up the issue for transfer of the site in the name of its Indian subsidiary company (petitioner No.2), vide letter dated 05.02.2012 (Annexure P11).

The reliance placed by learned counsel for the petitioners upon a decision rendered by the Division Bench of this court in the case of M/s Damco Soft Pvt. Ltd. (supra), is wholly misplaced. For, concededly, post issuance of the letter of intent, a foreign company i.e. M/s Damco Solutions UK Ltd, requested the authorities to issue a regular letter of allotment in the name of its fully owned Indian company, which was accepted. Pursuant to the approval accorded by the Administrator, a regular letter of allotment was issued in the name of its Indian subsidiary. Thus, no formal contract between a foreign company and the Administration ever came into being. In fact, subsequently, it was owing to the denial of an occupation certificate to the Indian company, a petition was preferred before this court. The reasons assigned by the authorities; that the letter of allotment was issued to the Indian subsidiary, but, by taking into account the eligibility of its parent/foreign company, and, therefore, the Indian company was not entitled for allotment, was found to be erroneous. Rather, the Division Bench emphasized upon the fact that it was only the letter of intent that was issued

in the name of a parent company, whereas the letter of allotment was issued in the name of its Indian subsidiary, after the necessary approval was accorded by the Administration. Therefore, the allotment of site in favour of the petitioner therein (Indian subsidiary) was neither in violation of 2006 nor 2007 Rules. The conclusion arrived at by the Division Bench reads thus:

“The allotment of the plot is not in violation of either the 2006 Rules and/or 2007 Rules. It was only letter of intent, which was issued to the parent company, whereas the letter of allotment has been issued to the petitioner after granting approval for transfer. Rule 14 of the 2007 Rules would not be applicable, as it is not a case of transfer after allotment was made to the petitioner. It is a case of transfer even before letter of allotment was issued. The issuance of letter of allotment to the petitioner by taking into consideration the eligibility of the parent company is not in violation of any Statute, Rules or Instructions. The petitioner has not misrepresented at any stage in respect of status of the parent company or that of the incorporation of Indian subsidiary. The Administration has issued letter of allotment keeping in view the facts disclosed by the petitioner.

Consequently, we find that the communication dated 07.07.2014 based upon communication dated 08.05.2013 and the constitution of Committee on 18.09.2014 to revisit the allotment qua the petitioner is wholly unjustified. The same are accordingly set aside.”

The observation rendered by the Division Bench; ***“Rule 14 of the 2007 Rules would not be applicable, as it is not a case of transfer after allotment was made to the petitioner. It is a case of transfer even before letter of allotment was issued.”*** not only distinguishes the matter in hand from the one that was before the Division Bench, but fortifies the position that post allotment, transfer of the allotted site is not permissible. Likewise, even the decision rendered by the Division Bench of this court in M/s 22nd Century Technologies Inc’ case (supra) would have no bearing on the matter in issue, for even in that case a regular letter of allotment was not obtained by the foreign company in its name. And, in reference to the approval/sanction granted by the Administration in the case of M/s Demco Solutions UK Ltd. and M/s Silicon Valley Systech Inc, a similar relief i.e. to allot the site in the name of its Indian subsidiary was prayed for.

Ex facie, petitioner No.1 (Foreign Company) is not seeking allotment of the site or issuance of a regular letter of allotment in the name of its Indian subsidiary company, for the site already stood allotted in its name. Therefore, what indeed is being claimed is the transfer of the allotted site in the name of a third party. Something, which clause 11(a) of the letter of allotment and Rule 7(i) of Chandigarh Estate Rules, 2007, being set out hereafter, do not permit for a period of 15 years from the date of allotment:

“7 Transfer of title of the site/building (Sites/Buildings allotted on concessional rates and/or lease hold basis):

(i) No site/building allotted on concessional rates and/or on lease hold basis shall be allowed to be

transferred before expiry of 15 years from the date of allotment.”

The rights and obligations of the parties are governed by a concluded contract, and if the terms and conditions thereof do not permit transfer of a site to a third party for a specified time, the only and inevitable option before the authorities was to decline the claim of petitioner No.1 (Foreign Company).

In the wake of the position, as sketched out above, no interference is warranted in exercise of extraordinary writ jurisdiction 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

03.06.2016
Rajan