

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

Civil Writ Petition No. 10062 of 2015
Date of Decision: 12.09.2017

Usha Sekhri and another

.....Petitioners

versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU, JUDGE**

Present : Mr. Tushar Sharma, Advocate, for the petitioners.
Mr. Deepak Balyan, Additional Advocate General, Haryana,
for respondent No.1.
Mr. Deepak Sabharwal, Advocate,
for respondent Nos.2 to 4.

S.J.VAZIFDAR, CHIEF JUSTICE

Respondent No.2 is the Haryana State Industrial and Infrastructure Development Corporation Ltd. Respondent No.3 is the Estate Manager of respondent No.2 and respondent No.4 is the Anomaly Committee of respondent No.2-HSIIDC.

2. The petitioners seek a writ of certiorari to quash an order dated 13.08.2014 and a demand dated 18.11.2014 issued consequent thereto charging a transfer fee at Rs.2500/- per sq. meter. The petitioners have also sought an order directing the respondents to charge a transfer fee at Rs.600/- per sq. meter and to refund the excess amount paid by the petitioners.

3. By an agreement dated 22.10.1981, the HSIIDC sold the plot in question in favour of one Col. Braham Dutt Tyagi at a price of ₹ 36.78 sq. meter. On 20.07.1998 the plot was transferred to M/s Bezel Industries Pvt. Ltd. and on 11.09.2001 it was re-allotted to M/s Future Creation Pvt. Ltd.

4. A conveyance deed 28.09.2001 was executed by HSIIDC in favour of M/s Future Creation Pvt. Ltd. (FCP Ltd.). Clause-10 thereof reads as under:-

“10. That in order to ensure optimum utilization of the Industrial Areas/Industrial Estates, leasing/renting of the remaining 75% portion of the building will be allowed by the transferor if the transferee has constructed 25% of the permissible covered area and has gone into commercial production. Such permission shall be granted on payment of 25% of the fees prescribed from time to time for transfer of plots if leasing/renting is for more than five years and on payment of 10% of transfer fees in case the period is five years or less. In case the transferee/allottee after completing 25% construction of the permissible covered area, is not able to implement his project for reasons beyond his control and satisfy the transferor-HSIDC or his intention, leasing/renting can be allowed by the transferor-HSIDC after charging fee equivalent to transfer fee if the period of lease/rent is more than five years or 50% of the transfer fees if the period is five years or less. It may be clarified that only one additional unit besides the transferee-allottee will be allowed for leasing/renting in all such cases meaning thereby that not more than two units shall be allowed to function at one time on one industrial plot.”

5. FCP Ltd. thereafter sold the plot to one Smt.Mridula Gaind and Smt. Aruna Gaind and applied for the transfer of the plot to them. HSIIDC by its letter dated 18.05.2009 granted a provisional transfer. It informed M/s FCP Ltd. that it was agreeable in principle to the transfer subject to FCP Ltd. complying with all the terms and conditions stipulated therein. A transfer fee was charged at Rs.600/- per sq. meter which was double the normal fee

as the request for transfer was received after the sale deed namely the sale deed dated 18.05.2005. A final transfer letter was never issued in respect of the transfer by FCP Ltd. to Smt. Mridula Gaind and Smt. Aruna Gaind.

6. By a letter dated 03.06.2009 addressed to HSIIDC Smt. Mridula Gaind and Smt. Aruna Gaind stated that they had complied with all the terms and conditions of the provisional transfer letter and a subsequent letter and they intended selling the plot to the petitioners. They requested the HSIIDC to issue the final transfer letter in the name of the petitioners. The HSIIDC by its letter dated 08.06.2009 sought certain documents from them. However, before the final transfer letter was issued by the HSIIDC, Smt. Aruna Gaind and Smt. Mridula Gaind executed a sale deed dated 09.06.2009 in favour of the petitioners. The documents sought by HSIIDC by its letter dated 08.06.2009 were furnished under cover of a letter dated 10.06.2009 addressed by Smt. Mridula Gaind and Smt. Aruna Gaind.

On 04.08.2009 the petitioners applied to the HSIIDC for permission to lease the property in favour of M/s Translational Health Science & Technology Institute for a period of four years 11 months.

7. The HSIIDC by its letter dated 01.10.2009 agreed in principle to regularize the unauthorized transfer of the plot in favour of the petitioners and agreed to the petitioners leasing the same to M/s Translational Health Science & Technology Institute subject to the petitioners complying with the terms and conditions stipulated therein which included the payment of a transfer fee of Rs.3375/- per sq. meter (later reduced to Rs.2500/- per sq. meter) which was equal to 25% of the difference of the then current allotment price of Rs.20,000/- and the price

applicable at the time of allotment/subsequent final re-allotment i.e. the prevailing allotment rate applicable for the financial years 2001-02 of Rs.6500/- per sq. meter. The petitioners by their letter dated 06.10.2009 contended that they were liable to pay the transfer fee of only Rs.600/- per sq. meter alongwith interest at the rate of 11% per annum w.e.f. 03.06.2009 and accordingly forwarded a demand draft of a sum of Rs.6784/-. Further correspondence ensued between the parties in this regard in the course of which the respondent-HSIIDC contended that the fee had been levied as per the policy and could not be waived. The petitioners were requested to pay the balance amount of Rs.27,63,140/- plus interest at 11% per annum from 09.10.2009.

8. The petitioners paid the amount of Rs.29,98,802/- under protest. Ultimately, the HSIIDC issued a re-allotment letter dated 04.08.2010 in respect of the said plot in favour of the petitioners. Pursuant thereto the petitioners' request to lease the plot to M/s Translational Health and Science & Technology Institute etc. was granted.

9. The petitioners filed Civil Writ Petition No.19750 of 2010 in this Court seeking a refund of the excess amount. The petition was disposed of by an order and judgment dated 17.12.2013 by directing respondent No.4 i.e. the Anomaly Committee to pass a speaking order in the matter after hearing the petitioners. It is in these circumstances that the Anomaly Committee passed the impugned order dated 13.08.2014 and issued the impugned demand pursuant thereto.

10. The matter turns on the interpretation of the following clause contained in the minutes of the meeting of Anomaly Committee constituted under the provisions of EMP-2005 held on 30.01.2007:-

“Minutes:-

Item No.1: Framing of Broader Guidelines regarding Anomaly Cases in Estate Division.

At the outset, the Managing Director explained to the Committee that as per Estate Management Procedure (EMP-2005) the Anomaly Committee has been constituted to consider all cases of anomalies arising out of implementation of the provisions of EMP-2005. It was also informed that the Board of Directors while considering the case of the allottee of plot No.249, Phase-VI, U.V. Gurgaon had decided and authorized the Anomaly Committee to frame guidelines and to take final decision in all such cases considering merits of each case.

The Ist Meeting of the Committee was held on 19.05.2006 to consider certain cases where anomalies had arisen and the committee after considering the facts of the cases observed that the vacant plots have been sold by the allottee to the 3rd party long back which were otherwise not eligible for transfer under the policy(s) procedure and in some cases 3rd party have further transferred/leased out the premises to some other parties without approval of the corporation and at present the authorized occupant has constructed building and is operating his unit after making investment on the said plot and has requested for transfer of the plot in his favour.

The committee after deliberations categorized such cases, in the following manner:-

- iv) In case the project has already been implemented on the industrial plot/shed and the Corporation has issued provisional transfer letter (PTL) to the allottee allowing transfer of the said plot on certain conditions and the PTL holder has sold the plot without obtaining Final Transfer Letter in that case fee will be equal to 25% of the difference of the current allotment price and the price applicable at the time of allotment/subsequent final re-allotment, as the case may be or double the fee, as mentioned in EMP-2005, whichever is higher.”

11. The current allotment price referred to in the above clause is admittedly Rs.20000/- per sq. meter. There is no dispute in that regard. It is the meaning/ambit of the words “the price applicable at the time of allotment/subsequent final reallotment.....” that falls for consideration. As we mentioned earlier FCP Ltd. sold the plot on 18.05.2005 to Smt. Mridula Gaiind and Smt.Aruna Gaiind. In respect thereof HSIIDC issued a provisional transfer letter dated 18.05.2009. A final transfer letter was not issued. The question is whether the price applicable on 18.05.2005 or on 18.05.2009 ought to be considered. Obviously the difference between the current allotment price i.e. of 2009 and the price as on 18.05.2005 i.e. on the date on which M/s FCP Ltd. sold the property to Smt.Mridula and Smt.Aruna would be greater than the difference of price between the year 2009 and 18.05.2009 i.e. the date on which the provisional transfer letter was issued.

12. In our view Mr. Tushar Sharma’s contention that the price applicable at the time of allotment/subsequent final reallotment i.e. 18.05.2009 and not the price on the date of transfer i.e. 18.05.2005 ought to be considered is not well founded. The words subsequent final reallotment ought to be read in practical sense and accorded commercial efficacy. The purpose is to charge a transfer fee of 25% on the appreciation of the price between the previous transfer and the present transfer. The date on which the transfer is approved cannot be the relevant date. The approval is granted in respect of a transfer already made and relates back therefore to the date of the transfer. This observation is in respect of the above clause while determining the transfer fee and not necessarily for all purposes. A view to the contrary would enable a party to enter into a transaction and seek the

approval thereof much later and only immediately before the further transfer.

In that event the difference in the price could well be almost nil. Thus by this simple stratagem a party can avoid the payment of a transfer fee altogether.

Considering the nature of clause-4 the words allotment/subsequent final reallotment must be construed to be the date of actual transfer and not the date of approval by HSIIDC thereof.

13. In the circumstances, the petition is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

12.09.2017
ravinder

Whether speaking/reasoned	√ Yes
Whether reportable	√ Yes