

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

CWP No.23005 of 2010 (O&M)

Date of Decision: November 07, 2017

Rishiraj Relators Pvt. Ltd.

---Petitioner

Versus

The Financial Commission and Principal Secretary to Govt of Haryana and
others

---Respondents

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

Present: Mr. Amit Jain, Advocate
Mr. Sunil Sharma, Advocate
for the petitioner.

Mr. Kamal Sehgal, Advocate
for the respondents - HSIIDC.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order dated 18.10.2010 (Annexure P-11) whereby the plot allotted to the petitioner was ordered to be resumed as also the order dated 08.03.2011 (Annexure P-14), whereby the appeal of the petitioner against the resumption order was dismissed by the Appellate Committee.

The petitioner is a private limited company. Vide Regular Letter of Allotment (RLA) dated 18.04.2006, it was allotted a plot measuring 10 acres bearing No.CP-8, Sector 8, Technology Park, IMT Manesar, Gurgaon on free hold basis for setting up of a Technology Park under the Campus Development Scheme as per the Industrial Policy 2005 of the State of Haryana. It was a condition of the allotment that the petitioner was to bring

would utilize at least 30% of the total constructed area of the project for its own unit.

An agreement containing terms and conditions of the allotment was executed by the petitioner with the Haryana State Industrial and Infrastructure Development Corporation Ltd. (hereinafter referred to as 'the Corporation') on 10.05.2006.

As per clause 2 of this agreement, the non fulfilment of any terms and conditions by the allottee shall entail cancellation of allotment/ resumption of plot.

Clause 6 of the agreement specified the project implementation period as under:

“6. The project implementation period for Technology Park would be 30% in two years, 50% in three years and 75% of the project area in five years. Further extension of 2 years would be allowed to complete 100% of the project area.”

As per clause 8 except for the landmark building, the allottee could start construction of buildings on self certification of building plans, fire fighting arrangements, structural stability and adherence to rules and regulations of building/ construction. However the allottee is required to seek approval of building plans before laying the roof of ground floor. The allottee was required to start construction within a period of six months of the offer of physical possession.

The other relevant clauses are clauses 16 and 25 which are as under:

“16. HSIDC has allotted this plot for setting up of a Technology Park and thereby generating employment opportunities and contributing to the overall economy of the State. In case the allottee/ Anchor Unit does not continue to remain in full stream of operation/ production or the production gets held up, HSIDC shall issue a notice to the Allottee/ Anchor unit to resume operation/ production within a period of three months. In case the allottee/ Anchor unit fails to resume the activity within the given time the plot shall be liable to be resumed.

xxxx

xxxxx

xxxxx

25. Violation of any of the terms and conditions of Allotment or this agreement shall cause a notice to be served upon the Allottee. HSIDC shall resume the plot along with the structures standing

thereon in the event of an unsatisfactory response or not responding to show cause notice.

Upon resumption, the amount deposited by the Allottee will be refunded after deducting 10% of the price of the plot without paying any interest. The interest and penalty amount paid, if any, shall also stand forfeited to HSIDC. The allottee will be free to remove the structure/ debris, if any, within a period of 60 days of the resumption order at his own cost."

It is the admitted case of the parties that the possession of the plot was handed over to the petitioner on 18.05.2006.

The petitioner company had initially entered into a Memorandum of Understanding with M/s Spacelab Healthcare Corporation as an anchor unit, which was to be followed by duly executed contract. It is the case of the petitioner that due to the unprofessional conduct of the said Anchor Unit, the petitioner company revoked and terminated the Memorandum of Understanding with it. Thereafter, it requested the respondent-Corporation for the change of Anchor Unit. Its request for engaging M/s Netlink Business Pvt. Ltd. as the new Anchor Unit was approved by the Corporation vide its letter dated 04.02.2008.

On 23.11.2006 M/s Spacelab Healthcare Corporation, the earlier anchor unit, filed a Civil Suit against the petitioner and the respondent-Corporation for specific performance, possession and injunction. Vide order dated 24.09.2008, the Court of Civil Judge (Sr. Division), Gurgaon restrained the petitioner from proceeding further with the project and directed maintaining of status quo in all respects till the final decision of the case. On an appeal filed by the petitioner, the Court of Additional District Judge, Gurgaon vide its order dated 15.06.2009 set aside the order dated 24.09.2008. It directed that the petitioner was at liberty to raise construction in terms of the letter of allotment. However, the petitioner was restrained from alienating/leasing/mortgaging the constructed portion to the extent of 30% till the decision of the case.

The petitioner thereafter preferred a revision petition being

Civil Revision No.6120 of 2009. On 08.04.2010 the following order was passed:-

*“Admitted.
Operation of the impugned order is stayed.
However, the petitioner will not
alienate/lease/mortgage the constructed portion to the
extent of 30% till the decision of the case without prior
permission of the Court.”*

To complete the narration regarding these proceedings, it may be pointed out that the Civil Revision No.6120 of 2009 was permitted to be withdrawn on 12.09.2014 with liberty to the petitioner to take up all pleas taken in the petition before the Trial Court. The Trial Court was directed to dispose of the suit within a period of six months. At the request of the petitioner the interim order dated 08.04.2010 was to continue to operate till the decision of the suit. The Civil Suit was dismissed by the Additional Civil Judge (Sr. Division), Gurgaon vide judgment and order dated 13.04.2015. It has been stated by Ld. counsel that the said order has attained finality as no appeal has been filed there against.

Even as these legal proceedings were underway, the respondent Corporation had initiated action against the petitioner for failure to adhere to the construction schedule as per the agreement. On the allegation that despite the lapse of a period of 8-9 months the petitioner had failed to start construction, the Corporation issued first show cause notice dated 06.03.2007 calling upon the petitioner to explain as to why the plot be not resumed. The petitioner replied vide letter dated 12.03.2007, that it had brought in Spacelab Healthcare Corporation as its Anchor Unit but subsequently, it came to know that its parent company had applied for a plot in the same scheme hence the petitioner terminated its agreement and submitted the name of M/s Netlink Business Systems Pvt. Ltd. as the new

was held up for want of zoning plan, which had been received vide letter dated 09.03.2007. It was also pointed out that the fencing work had been awarded and was in progress and the excavation work would be started within 1-2 days. But despite this assurance the petitioner failed to take any step towards completion of the project and the Corporation issued second show cause notice dated 02.05.2008 pointing out that it had failed to complete the 30% project within two years from the date of offer of possession and only excavation had been completed. The petitioner was given 10 days to explain the reason for not completing the project failing which resumption proceedings would be initiated. The petitioner vide letter dated 19.05.2008, requested for grant of extension, and the Corporation vide letter dated 04.06.2008 agreed to grant six months time for completion of 30% of the project area subject to the conditions that:

- “1. You will start the construction within a period of 30 days.*
- 2. You will complete 30% of project area within six months i.e. upto 17.10.2008.*
- 3. You will complete 50% of project area as per original schedule i.e. within three years from the date of offer of possession.*
- 4. You will submit an undertaking to the Estate Manager IMT Manesar to comply with the above conditions, within 15 days.”*

On 01.10.2008, the Corporation sent a reminder to the petitioner to comply with the terms and conditions contained in the letter dated 04.06.2008. On 04.02.2009, the petitioner submitted building plans which were returned to the petitioner on 09.04.2009. But the petitioner did not resubmit the same for approval. On 15.07.2009 the Corporation sent a letter advising the petitioner to start construction on the plot as the stay has been vacated by the Court. On 06.01.2010, the Corporation sent another notice calling upon the petitioner to show cause as to why the plot be not resumed as it had failed to complete project as per the time specified in the letter of allotment. It was pointed out that as per the terms of allotment 30% of the

project area had to be completed within two years of the date of offer of possession i.e. up to 17.04.2008 and 50% of the project area had to be completed within three years i.e. up to 17.04.2009. Further vide letter dated 04.06.2008, the petitioner had been granted six months time to complete 30% of the project area within six months i.e. up to 17.10.2008 and 50% as per original schedule i.e. within three years from the date of offer of possession i.e. 17.04.2009. However, the petitioner had not even started construction activity on the said plot and as per latest site report only excavation had been done whereas a number of other allottees, who were allotted plots along with the petitioner for development of Technology Parks in Sector 8, IMT Manesar were at the completion stage. The complaint regarding encroachment of plot of petitioner by owners of plot No. CP-7 was found to be incorrect on checking and verification of the same in the presence of the representatives of the petitioner. Regarding lack of provision of water supply it was clarified that the water supply line already existed in front of the plot and the petitioner could have obtained water connection both for construction and drinking purposes. Reference was also made to clause 16 of the agreement, as per which the plot was allotted for setting up a Technology Park to generate employment opportunities to contribute to the overall economy of the State. It was pointed out that the Corporation could not wait for an indefinite period for implementation of the project.

The petitioner submitted its reply dated 20/27th January, 2010 contending mainly that the project could not be implemented as a result of orders passed by the Courts from time to time. The various steps undertaken to commence construction and implementation of the project were also listed. The Corporation sent a letter dated 23.07.2010 pointing out

petitioner, it had only been restrained from alienating/leasing/mortgaging the constructed portion to the extent of 30% without the prior permission of the Court but there was no bar against raising construction. The petitioner was given a final notice and yet another opportunity to start construction on the plot according to the approved building plan within a period of next 60 days upto 25.09.2010 failing which it would be presumed that it was not interested in implementing the project and the plot would be resumed.

The petitioner replied vide letter dated 16/19.08.2010 (Annexure P-10) stating that as per legal advise received by it, the order of the High Court dated 08.04.2010, required the petitioner to maintain status quo in all respects till the final decision of the case. It was stated that the petitioner has been advised that in view of the High Court order dated 08.04.2010, the operation of the order dated 15.06.2009, had been stayed and consequently the lower Court order dated 24.09.2008 which had directed that status quo in all respects be maintained was revived. Not satisfied with the aforesaid reply, the respondents vide order dated 18.10.2010 resumed the site of the petitioner. The refundable amount towards the cost of the site, after making deductions as per the agreement was ordered to be sent to the petitioner.

The petitioner filed appeal against the aforesaid order, which was dismissed by the Appellate Committee. After noticing that in some other cases of default the Corporation had offered re-allotment of plots at the current prevailing rate, a similar offer was made to the petitioner. But the representatives of the petitioner did not agree to the said offer. Therefore, the Committee decided to uphold the decision of the Corporation.

Sh. Amit Jain, learned counsel for the petitioner argued that the resumption order was wholly unjustified. The petitioner company had always been willing to commence the construction and comply with the

terms of the letter of allotment but the same had not been possible as a result of order passed by the Courts from time to time and also due to certain conditions obtaining at the site mainly encroachment and non existence of water connection. He contended that the petitioner had taken effective steps to commence the construction and implement the project namely: it had completed excavation work soon after taking possession of plot; it had submitted building plans together with relevant documents for approval on 04.02.2009; Master Planning for the project was completed; the Environment Clearance for the project has been obtained; approval from the Airport Authority/DGCA have been obtained; tenders for award of civil works and other contracts had been floated but the same were kept in abeyance; entire consideration of the plot had been paid; the company and its promoter had been sufficiently financially geared up to undertake the development of the entire project without requirement of external financial tie up.

On the other hand, Sh. Kamal Sehgal, learned counsel appearing for the Corporation argued that the petitioner had woefully failed to comply with the time schedule prescribed in the letter of allotment. He argued that the stay on construction remained operative only from 24.09.2008 to 15.06.2009 i.e., for about nine months. In the period of two years and five months between the taking of possession on 18.5.2006 and the stay order by the Trial Court dated 24.09.2008 the petitioner had already defaulted in the construction schedule leading to issue of show cause notices and reminders. He contended that the petitioner had been given opportunities and extensions time and again to complete the project but to no avail.

Heard learned counsel for the parties and perused the record.

The question for consideration is whether the petitioner has

willfully defaulted in complying with terms and conditions of the allotment

letter and thereby rendered itself liable to resumption as per the agreement or the failure of the petitioner to complete the project as per the time schedule indicated in the agreement was for reasons beyond its control because of specific orders of the Courts restraining it from raising construction and hence, the resumption order is not sustainable as argued by Ld. Counsel for the petitioner.

The petitioner was allotted the plot vide letter of allotment dated 18.04.2006. The agreement was executed between the petitioner and the Corporation on 10.05.2006. The possession of the plot was handed over to the petitioner on 18.05.2006. As per clause 8 of the agreement the petitioner was required to start construction within six months. As per clause 6 thereof it was required to execute 30% of the project within two years, 50% of the project within three years and 75% of the project within five years. But the petitioner defaulted in that regard, hence the Corporation issued a show cause notice dated 06.03.2007 in response to which the petitioner vide its letter dated 12.03.2007 informed that it would start excavation work within one or two days. When, despite this assurance, it failed to take any steps a show cause notice dated 02.05.2008 was issued calling upon it to explain the reasons for the default. The petitioner vide letter dated 19.05.2008 requested for grant of extension. Vide letter dated 4.6.2008 it was granted six months extension to complete 30% of the project by 17.10.2008 subject to its starting construction within 30 days. However, about a month before the expiry of the six month period, Ld. Trial Court vide its order dated 24.09.2008 directed stay on construction which was vacated on 15.06.2009 and the petitioner was only restrained from alienating/ leasing/ mortgaging the constructed portion to the extent of 30%. After the vacation of the stay on construction the Corporation again requested the petitioner vide letter dated 15.07.2009 to commence construction. It issued a notice dated

06.01.2010 to the petitioner to show cause as to why the plot be not resumed. The petitioner replied on 27.01.2010. A personal hearing was afforded to the petitioner on 31.05.2010. It was explained to the petitioner that the order dated 8.4.2010 in the Civil Revision did not restrain it from raising construction and only restrained the alienation/ lease or mortgage to the extent of 30% of the constructed area without the permission of the Court. Ultimately vide letter dated 23.07.2010 the Corporation again provided last opportunity to the petitioner to start construction on the plot as per approved building plans within 60 days i.e., upto 25.09.2010. But the petitioner remained adamant and took shelter behind some legal opinion which it claimed to have obtained as per which in terms of the order dated 8.4.2010 in the Civil Revision the status quo order of the trial court restraining the petitioner company from proceeding further with the project was revived.

A plain reading of the order dated 08.04.2010 does not lend itself to such an interpretation, for if the Court intended reviving the order dated 24.09.2008 as per which there was an absolute stay on construction etc. then there was no question of Court by the same order further restraining the petitioner from alienating/ leasing/ mortgaging the constructed portion to the extent of 30% till the decision of the case without the permission of the court. The latter part of the order restraining alienation etc. of 30% of the constructed portion without permission of the Court implies there was no stay on construction. For if the construction itself was stayed where was the question of construction being raised and further seeking permission to alienate etc. the constructed portion. Even, granting, that there was any doubt about the interpretation of the order of this Court, the least that was expected of the petitioner was to have sought a clarification from the Court.

resumption for not starting the construction. It chose not to do so. The petitioner surely has to suffer the consequences of its action or inaction.

There would have been some merit in the petitioner's claim, if before the stay order dated 24.9.2008 in the civil suit (which was two years five months after taking possession) the petitioner had adhered to the schedule of construction and such construction had only been stopped consequent on the stay order. But the very first letter (Annexure P-3) which the petitioner has annexed as demonstrating that it had started construction immediately on taking possession is dated 19.09.2008, which is about two years and four months after taking possession. All that this letter says is that while carrying out the initial excavation the petitioner had taken all the safety measures as suggested by the Corporation. Regarding construction it states that presently no construction work is being carried out at the site due to non availability of water and the company intends to start work as and when the water supply is made available by HSIIDC.

The stay order dated 24.09.2008 was modified in appeal and vide order dated 15.06.2009 the petitioner was permitted to raise construction in terms of the allotment but only restrained from alienating/leasing the constructed portion to the extent of 30%. Even after this, for the next ten months till 08.4.2010 there was no progress towards construction, though even as per the petitioner during this period there was no restraint on construction.

Thus, it appears that till the passing of the order of resumption dated 18.10.2010 only the excavation work had been completed. Construction had not even commenced.

The petitioner had been allotted the plot for setting up of a Technology Park and thereby generating employment opportunities and contributing to the overall economy of the State. The Industrial Policy 2005

of the State of Haryana envisaged such allotments. The Industrial Policy as also the agreement specified the period within which the project was to be implemented. This project implementation period was the core of the agreement. If the allottee does not put up the construction within the stipulated time or even extended time, the idle un-utilized plot becomes counter-productive, defeats the objectives of the allotment and is unfair to other entrepreneurs who are in search of plots.

The respondents were right in concluding that the petitioner had failed to adhere to the terms and conditions of allotment of the site; was not constrained by any orders of the courts in completing construction except for a short period of nine months and had failed to take necessary corrective steps in spite of number of opportunities granted by the Corporation.

Thus, we feel that the impugned orders for resumption cannot be faulted.

Accordingly, the writ petition is dismissed.

It is admitted case of the parties that after passing the impugned order of resumption, the respondent Corporation sent a cheque of Rs.14,68,86,581/- (Rupees Fourteen crore sixty eight lakhs eighty six thousand five hundred eighty one only) towards refund of principal after deducting 10% of the total amount on 10.11.2010. But the petitioner returned the same to the respondent Corporation on 16.11.2010.

Ld. Counsel for the petitioner argued that in the facts and circumstances of this case, there was absolutely no justification for deducting the amount of 10% of the price of the plot consequent on the resumption. He argued that the conduct of the petitioner had been bona fide throughout and it would have implemented the project, but for the litigation against the petitioner which, at the very least, should be considered to have

created uncertainty about the project and hence the petitioner should not be

additionally burdened with this deduction. He further prayed that the respondents be directed to refund the amount of Rs.14,68,86,581/- (the cheque in respect whereof had been returned by the petitioner to the Corporation on 16.11.2010) with interest from that date.

Mr. Kamal Sehgal on the other hand argued that as per Clause 25 of the Agreement, upon resumption the amount deposited by the Allottee is to be refunded after deducting 10% of the price of the plot without paying any interest.

We do not express any opinion on this aspect beyond observing that the petitioner may represent to the respondents to reconsider the question of deduction 10% of the price of the plot and also to pay interest on the refund amount returned by the petitioner. If such a representation is made, the respondents would consider that request and take a decision thereon in view of the peculiar facts of this case and also the fact that the respondents have had the use of the amount at least from 16.11.2010.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

November 07, 2017
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No