

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18973-2015

Date of Decision: May 25, 2017

M/s Kamboj Laboratories

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE HARI PAL VERMA

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Vikram Singh, Advocate
for the petitioner.

Mr.Suvir Sehgal, Advocate
for respondent Nos.2 and 3.

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SURYA KANT, J.

The petitioner seeks quashing of orders dated 01.06.2009, 11.08.2009 and 04.08.2015 passed by HUDA authorities/State Government whereby Industrial Plot No.743, measuring 225 sq.meters, situated in Sector 58, Faridabad, was resumed and the appeal/revision petition filed by the petitioner have been dismissed.

[2] The above-stated plot was allotted on 06.11.2002 and the possession was delivered on 03.12.2002. Clause 16 of the allotment letter reads as follows:-

“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 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 & Country Planning Department, Haryana.”

[3] Regardless of the stipulation that the petitioner was to start construction work after getting the building plan approved within a period of six months from the date of offer of possession and the Industrial unit was required to come into production in a time-bound manner, the petitioner neither raised the construction nor, obviously, set up the industrial unit. It was in these circumstances that HUDA authorities served the petitioner with a show cause notice under Section 17(1) of the Haryana Urban Development and Authroity Act, 1977 (in short 1977 Act), and having found no substance in the excuses made by the petitioner, the site was resumed for non-construction and non-commencement of the production. As noticed earlier, the appeal etc. filed by the petitioner were also dismissed.

[4] The petitioner has taken a plea in the writ petition that the construction work has started. Photographs of part construction have also been appended. It is, however, not in dispute that the building plan has not been got sanctioned for which the petitioner does not blame HUDA authorities. The petitioner, however, placed reliance on the judgment dated 24.01.2014 rendered by this Court in CWP No.5281 of 2011 (**Sanjay Wadhwa vs State of Haryana and others**) pertaining to Industrial Plot

due to non-construction. This Court, having regard to the principles laid down by Full Bench in **Dheera Singh vs U.T.Chandigarh Administration** (2013-1)169 PLJ 1 laying down that the 'resumption' should be resorted to as the last step only in a case where the allottee is in repeated and continuous breach of terms and conditions, the Industrial plot was restored subject to the following terms and conditions:-

“(i) The petitioner shall submit the building plan, if already not submitted, complete in all respect as per the zoning plan of the area;

(ii) No sooner the building plans are sanctioned, the petitioner shall be required to complete the construction to the satisfaction of HUDA-Authorities within a period of 6 months.

(iii) As soon as the completion certificate is issued, the petitioner shall set up the industrial unit and make it functional within a period of another 6 months.

(iv) As a substitute of the resumption order we impose penalty of ₹5 lac on the petitioner to be deposited in 2 quarterly installments, failing which the resumption order shall be deemed to have been upheld.”

[5] Having heard learned counsel for the parties we are satisfied that the petitioner has to blame itself for not raising the construction and for its failure to start the production. There is no fault attributable to HUDA authorities in this regard. At the same time we are of the view that one last opportunity deserves to be granted to the petitioner on the analogy of **Sanjay Wadhwa's** case (supra).

[6] Consequently, the instant writ petition is allowed. The orders dated 01.06.2009, 11.08.2009 and 04.08.2015 are set aside subject to the

following conditions:

“(i) The petitioner shall get the building plan sanctioned, if already not submitted, within a period of two months from the date of receipt of a certified copy of this order; and

(ii) The construction shall be completed within six months from the date of sanctioning of the building plan.

(iii) The petitioner shall simultaneously take steps for installation of machinery etc. and the industrial unit must become functional within a period of three months from the date of completion of the construction.

(iv) Instead of resumption of the site, a penalty of Rs.10,00,000/- is imposed on the petitioner to be deposited in two equal installments of Rs.5,00,000/- each, in two quarters of three months each.

[7] In the event of non-compliance of any of the terms and conditions, respondent-authorities shall be at liberty to seek revival of this petition which shall then be dismissed with exemplary costs.

(SURYA KANT)
JUDGE

May 25, 2017
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(HARI PAL VERMA)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |