

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

CWP No. 22514 of 2014

Date of decision:- 12.10.2017

Exciting Fashion & Emb. Pvt. Ltd.

.. Petitioner

vs.

State of Haryana and others

.. Respondents

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

Present:- Mr. Tushar Sharma, Advocate
for the petitioner.

Mr. Deepak Balyan, Advocate
for HSIIDC.

Mr. R.K.S. Brar, Addl. A.G., Haryana

S.J. VAZIFDAR, CHIEF JUSTICE

The petitioner seeks a writ of certiorari to quash the respondent's letter dated 14.08.2014 (Annexure P-17) rejecting its claim for rebate of 20% on the cost of the land. The petitioner's case is that it is entitled to the rebate in terms of an industrial policy dated 11.11.1999.

2. The Industries Department of the Government of the State of Haryana issued a notification dated 11.11.1999. The notification is also known as the Estate Management Procedure-1999 (EMP-1999). Clause 5 thereof in so far as it is relevant to this petition, reads as under:-

“

Rebate equivalent to 20% of the land cost shall be given if the industrial unit starts commercial production within three years of offer of possession of industrial plot”

3. Respondent No.2- Haryana State Industrial and Infrastructure Development Corporation (HSIIDC) issued a Regular Letter of Allotment

(hereinafter referred to as the RLA) dated 05.03.2004 in favour of the petitioner whereby they allotted an industrial plot admeasuring 4050 square meters to the petitioner at Industrial Model Township, Manesar (Haryana) for setting up an industrial project namely an 'Embroidery Unit'.

Clause 29 of the RLA reads as under:-

“The policy changes and guidelines issued by the State Government or the Corporation from time to time regarding extension in time, transfer & leasing, charges for various activities or any other issue pertaining to the allotment of industrial plot/shed shall be binding on the allottee.”

The heading of the RLA refers to “N.I.D.P. of November 1999) which the parties inform us is the EMP-1999/notification dated 11.11.1999. The parties agreed that EMP 1999/notification dated 11.11.1999 was applicable to the petitioner's case at least on the date of the issuance of the RLA.

4. On 11.07.2005 Estate Management Procedure-2005 (EMP-2005) was issued by HSIDC. The “Note” at the end of the policy reads as under:-

- The provisions of this Estate Management Procedure-2005 relating to transfer, leasing etc. shall also be applicable for industrial plots/sheds already allotted under the previous policies/ procedures.
- These guidelines shall be effective w.e.f. 11.7.2005.

5. We will deal with the effect of EMP-2005 on the petitioner's case after narrating the facts.

Admittedly on 11.12.2005 commercial production at the petitioner's unit commenced. On 29.09.2006 a deed of conveyance was executed between the parties in respect of the said plot. The second recital

of the conveyance states that the said plot was allotted to the petitioner pursuant to its application for the same as per the terms and conditions, contained in the Regular Letter of Allotment dated 5.3.2004 and agreement dated 27.05.2000 which shall continue to remain part and parcel of the deed.

Clause 36 thereof reads as under:-

“That the changes made in the Industrial Policy-2005 and/or EMP by the State Govt. or transferor, from time to time/as well as the changes and guidelines issued by the State Government or transferor from time to time regarding extension in time, transfer & leasing or any other issue pertaining to the allotment of industrial plot/shed and any other matter related to Estate Management shall be applicable and binding on the transferee.”

6. The impugned order dated 14.08.2014 passed by HSIIDC/respondent No.2 rejected the petitioner's application for rebate on the ground that clause 36 of the conveyance deed provided that the allotment was governed as per the provisions of EMP-2005 under which there is no provision for a rebate.

7. The question that falls for consideration, is therefore whether as far as rebate is concerned, the petitioner's right is governed by EMP-1999 which provides for a rebate or by EMP-2005, which does not provide for a rebate.

8. Mr. Balyan, the learned counsel appearing on behalf of the respondents submitted that when the RLA dated 05.03.2004 was issued in favour of the petitioner, EMP-1999 was applicable. However, commercial production at the petitioner's unit commenced and the deed of conveyance was executed after the EMP-2005 was introduced. He contended that, the petitioner's rights accordingly stood modified by EMP-2005, which does not provide for a rebate. Therefore, the petitioner is not entitled to the rebate.

He further contended that EMP-2005 would apply to the petitioner's case in view of clause 29 of the RLA, which provides that the policy changes and guidelines issued by the State Government or HSIIDC, shall be binding on the allottee.

9. We have accepted Mr. Tushar Sharma's submission that the petitioner is entitled to the rebate under EMP-1999 and that EMP-2005 did not affect this right.

There is no dispute that in the absence of EMP-2005 the petitioner would be entitled to the rebate. This is clear from the provisions of EMP-1999, which expressly stated that rebate equivalent to 20% of the land cost shall be given if the industrial unit starts commercial production within three years of offer of possession of the industrial plot. As we noted earlier, the RLA itself was issued on 05.03.2004. The petitioner unit commenced commercial production on 11.12.2005 which was within a period of three years. The petitioner was, therefore, entitled to rebate under EMP-1999. EMP-2005 did not alter this position.

10. We will assume that in view of Clause 29 of the RLA and Clause 36 of the Deed of Conveyance, the respondents could have withdrawn the benefit of the rebate granted by EMP-1999. In our view, Clause 29 of the RLA did not permit a change in the monetary benefit to the detriment of either of the parties and Clause 36 did not withdraw the benefit of the rebate.

11. Clause 29 of the RLA provides that the policy changes and guidelines issued by the State Government or the HSIIDC from time to time shall be binding on the allottee. The word "policy" applies to the word "changes" as well as to the word "guidelines". In other words Clause 29

refers to policy changes and policy guidelines. Hence, it is only policy changes and policy guidelines, which fall within the ambit of Clause 29 of the RLA that would be binding on the allottee. The clause does not refer to changes in respect of the financial terms and conditions stipulated in the RLA.

12. Parties enter into commercial transactions after assessing the technical and financial feasibility thereof. Price is obviously an important term in gauging the feasibility of the transaction. Normally parties would insist on certainty regarding the payment terms. There are cases however where the consideration stipulated is made subject to change on account of contingencies seen or unseen such as where the extent of the financial implication is not clear when the parties enter into the agreement. For instance when the land acquired by the Government is sold, there is a provision that the price is only tentative and would depend upon the decision of the Court in proceedings for enhancement under Section 18 of the Land Acquisition Act. Where parties agree to the price being finalised on the happening of an event they introduce a provision to that effect in clear terms. It would be rather unusual for a party to a transaction leaving it to the unilateral decision of the other party to alter the payment terms especially as to amount of consideration. The language of Section 29 of the RLA, does not indicate a clear intention foisting financial liabilities upon the allottee dependent upon the unilateral decision of the respondents.

13. Clause 29 of the RLA refers to the policy changes and policy guidelines 'regarding extension in time, transfer & leasing charges for various activities'. Rebate in the prices does not fall under any of these items. The words that follow namely '..... or any other issue pertaining to

the allotment....” must be read *ejusdem generis*. So read they would apply to any change in the policy or guidelines in matters similar to extension in time and to transfer and leasing charges. Clause 29 of the RLA would have been worded entirely differently if the intention was to permit the respondents to unilaterally enhance the consideration from time to time.

14. The least that must be said in favour of the petitioner is that clause 29 of the RLA is capable of two interpretation. The RLA was admittedly prepared by the respondents. The rule of *contra preferendum* must be applied in the petitioner's favour.

15. Clause 36 of the deed of conveyance does not support the respondents either. In fact, our view with respect to clause 29 of the RLA applies with greater force to clause 36 of the conveyance deed. Clause 36 of the conveyance deed is narrower than Clause 29 of the RLA. It makes applicable changes in EMP-2005 as well as changes and guidelines issued by the respondents “regarding extension in time, transfer & leasing, charges for various activities or any other issue pertaining to the allotment of industrial plot/shed” Rebate in price does not relate to extension in time or to a transfer or to a lease. The words 'any other issue pertaining to the allotment of industrial plot/shed' must be read *ejusdem generis*. The purpose of the use of the words 'any other issue pertaining to the allotment of industrial plot/shed' is clearly limited to issues pertaining to extension in time, transfer and leasing. There is nothing in clause 29 of the RLA or clause 36 of the conveyance deed that remotely indicates that the respondents intended a fluctuation in the price of allotment consequent upon a change in the policy or guidelines issued from time to time. The respondents rightly did not contend that if the allotment price in the

subsequent EMP or any other guidelines was reduced, the allottees would be entitled to the benefit of the reduced price. A change in the price, therefore, was not contemplated in EMP-1999 or in the conveyance. It is one of the factors that a party would take into consideration while negotiating the price for the purchase of property. It is impossible to hold that the price would have remained the same irrespective of the provisions for rebate.

16. Mr. Balyan also relied upon the first note at the end of EMP-2005 which states that the provisions thereof relating to transfer, leasing etc. shall also be applicable for industrial plots/sheds already allotted under the previous policies/ procedures. The note does not support the respondent's case.

17. As we mentioned earlier rebate does not relate to transfer or to leasing. Mr. Balyan rightly did not even contend to the contrary. He, however, relied upon the term 'etc.'. The abbreviation 'etc.' for the word *et cetera* however, does not support the respondents' case. It is used to indicate such like, or similar things. The purpose for using the word is clear from Clauses 7 and 10 of EMP-2005 itself.

(A) Clause 7 in so far as it is relevant, reads as under:-

“7. Transfer of Plots/sheds-

Transfer of plots/sheds shall be allowed only if the project has been completed and construction of building is as laid down norms and after expiry of one year from the date of commencement of commercial production. The transferee shall not be allowed to further transfer the plot for at least one year from the date of transfer of the plot in his name.

However, the transfer of plot/shed will be allowed without the above conditions in case of inheritance, succession due to the death of the owner/majority shareholders or take over by public financial institutions.

The change of management by transfer of majority shareholders shall also

be treated as transfer under the policy.

All transfer covered under the above provision shall entail payment of transfer fee as prescribed as in the table below.”

Clause 7 thereof does not apply only to transfer of ownership of the plot itself. In other words, Clause 7 is not restricted to the direct transfer of the plots/sheds themselves. It also applies to indirect transfers which is clear from the last but one sentence of Clause 7 quoted above namely “the change of management by transfer of majority shareholders shall also be treated as transfer under the policy”. It is obviously for this reason that the term 'etc.' is used.

(B) The term 'etc.' is also used for transfer by renting. Clause 10 of EMP-2005 in so far as it is relevant for the present purpose, reads as under:-

“ Leasing/Renting of Industrial Plots

In order to ensure optimum utilization of the industrial areas/industrial estate, leasing/renting of the balance 75% of premises of the building will be allowed if the allottee has made construction as per the standard norms and has remained in production for one year provided he retains 25% of the premises for his own manufacturing activities.”

Leasing is not the only manner in which the creation of rights in respect of the plots/sheds is contemplated under EMP-2005. Renting the plots is also contemplated under Clause 10 thereof. The term etc. in the note is therefore qua renting.

18. There is yet another circumstance that supports Mr. Sharma's submission.

The rebate under the EMP-1999 was stipulated in the 'Payment' clause. The Payment Clause in EMP-2005 (Clause 3) does not provide for rebate but nor does it withdraw the rebate under EMP-1999.

Moreover the Payment Clause in EMP-2005 is clearly with respect to

application for allotment and allotments made under EMP-2005 and not to those made under EMP-1999. This is clear from the very first requirement of Clause 3 of EMP-2005 which states “PAYMENT TERMS: 10% alongwith application (earnest money)”. The further payments are on subsequent dates. The clause therefore does not refer to applications made and granted under EMP-1999. EMP-2005 therefore did not deal with the payment terms under EMP-1999.

19. In this view of the matter, it is not necessary to consider whether the respondents could have altered the financial terms retrospectively to the petitioner's detriment.

20. In the circumstances, we hold that the petitioner is entitled to rebate as per EMP-1999. The petition is accordingly allowed. The impugned order is set aside. The respondents shall pay the sum equivalent to the rebate as per EMP-1999 to the petitioner by 15.01.2018 together with interest thereon at 10% per annum from the date it was payable till payment.

21. There shall however be no order as to costs.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

12.10.2017
dinesh/ravinder

Whether speaking/reasoned
Whether Reportable:

√ Yes/No
√ Yes/No