IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.22599 of 2014 (O&M)
Date of decision: **September 08, 2017**

Rana Sudarshan Singh ---Petitioner

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.Vikas Behl, Sr.Advocate with
Mr.Amandeep Singh, Advocate
for the petitioner.

Mr.Deepak Balyan, Addl. AG, Haryana.

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HARINDER SINGH SIDHU, J.

This petition has been filed impugning the show cause notice dated 12.08.2003, the resumption order dated 25.03.2005 passed by the Estate Officer, Haryana Urban Development Authority, Panchkula and orders dated 17.04.2007 and 01.08.2014, whereby, the appeal and revision of the petitioner against the order of resumption were dismissed.

The petitioner was allotted industrial Plot No.389, Phase-II, Panchkula vide allotment letter dated 14.02.1984. The allotment was on free hold basis. The possession of the plot was handed over to him on 18.05.1984. The allotment was subject to the terms and conditions as contained in the letter of allotment and was further subject to the provisions of the Haryana Urban Development Authority Act, 1977 (for short "the 1977 Act"). As per clause 11, in the event of breach of any condition of transfer the Estate Officer may resume the land in accordance with the provisions of Section 17 of the 1977 Act. As per clause No.12, the land/building shall continue to belong to the Authority until the entire consideration money is paid. It was further stipulated that till the full price was paid to the Authority, the allottee had no right to transfer in any manner any right, title or interest in the plot or building. Clause No.18 required the allottee to complete the construction within two years of the date of offer of possession, after getting the plans of the proposed building approved from the competent authority. The time limit was extendable by the Estate Officer on his satisfaction that the non-construction of the building was due to reasons beyond the control of the allottee. Otherwise, the plot was liable to the resumed.

The relevant conditions of the allotment letter are extracted below:

"7. The possession of the site will be offered to you on completion of the development works in the area.

11. In the event of breach of any other condition of transfer the Estate Officer may resume the land in accordance with the provisions of actions 17 of the Act.

12. The land/building shall continue to belong to the Authority until the entire consideration money together with interest and other amount, if any, due to the Authority on account of sale of such land or building or both is paid. You shall have no right to transfer by way of sale, gift, mortgage, or otherwise the plot/ building or any right, title or interest therein till the full price is paid to the Authority, except with the prior permission of the competent authority.

18. You will have to complete the construction within two years of the date of offer of possession, after getting the plans the proposed building approved from the competent authority in accordance with *the regulations governing the erection of buildings. This time limit is extendable by the Estate Officer if he is satisfied that non-construction of the building was due to reasons beyond your control, otherwise this plot is liable to be resumed and the whole or part of the money paid, if any, in respect of it forfeited in accordance with the rovisions of the said Act. You shall not erect any building or make any alteration/ addition without prior permission of the Estate Officer. No fragmentation of any land or building shall be permitted."*

The petitioner executed a registered Power of Attorney in favour of Abdul Zabbar on 22.12.1988 and communicated this fact to the Estate Officer, HUDA, Panchkula vide letter dated 02.08.2000.

On 27.09.2000, the petitioner deposited Rs.1,15,440/- as extension fee as per the demand raised in the letter dated 05.09.2000 from the Estate Officer, HUDA. The petitioner applied for approval of a fresh building plan on 29.09.2000 which was approved by the Estate Officer on 05.01.2001. The building plan was to be valid for a period of 2 years.

The Estate Officer, HUDA, issued a notice dated 12.08.2003 to the petitioner under Section 17(3) of the the 1977 Act to show cause within a period of 30 days as to why an order of resumption be not passed for not completing construction and starting production as per the terms and conditions of the allotment. The petitioner immediately thereafter submitted an application dated 25.08.2003 requesting for re-validation of the building plan. This was followed by reminder dated 10.09.2003. The petitioner also undertook that he would apply for completion certificate within 6 months of the date of re-validation of the building plan. No decision was taken on the said application. Meanwhile, the Estate Officer issued another notice dated 23.07.2004, whereby, the petitioner was asked to appear for personal hearing on 17.08.2004. The petitioner appeared before him and submitted a written reply. After considering the same, the Estate Officer passed order dated 25.03.2005 to resume the plot and building constructed thereon for failure to start production within two years of allotment as per condition No.18 of the allotment letter. 10% of the consideration money of the plot and other dues payable upto the date of resumption were also forfeited.

The appeal preferred by the petitioner was dismissed by the Chief Administrator, HUDA vide order dated 21.05.2007. The Chief Administrator, HUDA observed that it was strange that the building plan was sanctioned on 05.01.2001 after a gap of 17 years of the allotment. Even so, the petitioner failed to avail this opportunity. He held that the Estate Officer had rightly not re-validated the building plans as requested by the petitioner. It was further noted that a period of more than 21 years had elapsed after the allotment of plot till the order of resumption was passed by the Estate Officer on 25.03.2005.

The revision filed by the petitioner before the Principal Secretary, Government of Haryana Department of Town & Country Planning and Urban Estates was dismissed vide order dated 01.08.2014.

Mr. Vikas Bahl Ld. Senior Counsel for the petitioner raised the following contentions:

(i) Before the order of resumption was passed on 25.03.2005, the petitioner had already submitted an application for re-validation of the building plans on 25.08.2003. Respondents have admitted in the written statement that as per

Regulation 8 then existing, building plan is deemed to be sanctioned if acceptance or rejection is not conveyed within 60 days of such submission. As neither acceptance nor rejection was conveyed to the petitioner, the building plans would be deemed accepted. Hence there was no warrant for the resumption order being passed.

(ii) As per the Show Cause Notice dated 12.08.2003 issued by the Estate Officer the resumption proceedings were initiated against the petitioner for failure to start construction. But the Revisional Authority while dismissing the revision had held that the GPA executed by the petitioner was actually a sale under the garb of GPA which was illegal and against the terms and conditions of allotment. As this was not a ground mentioned in the Show Cause Notice, the revisional Authority could not have been based its order on a new ground without notice to the petitioner.

(iii) HUDA has issued a new policy dated 12.04.2013 doing away with the time limit within which allottee is required to complete construction. This policy though in terms applicable to residential/ commercial plots has been held to be applicable to industrial plots as well by this Court in **CWP No.3365 of 1991 'M/s Achal Metal Industries, Rewari vs. Haryana Urban Development Authority and others'** decided on 02.08.2013 and the **Review Application No.RA-CW-327 of 2013** decided on 19.03.2014.

Ld. Counsel for the respondents on the other hand contended that plot was rightly resumed as the petitioner had not completed the construction as per the terms and conditions of the allotment letter. He further stated that the State had preferred an SLP against the judgment of this Court in **M/s Achal Metal Industries** *(supra)* holding that the policy dated 12.04.2013 also applies to industrial plots.

We have heard the Ld. Counsel for the parties and perused the record.

We find no merit in any of the arguments of the Ld. Counsel for the petitioner for assailing the validity of the impugned orders.

Clause 18 of the allotment letter requires the allottee to complete construction within two years of the date of offer of possession after getting the building plans approved from the competent authority. The time limit is extendable by the Estate Officer on his being satisfied that non-construction of the building was due to reasons beyond the control of the allottee. Otherwise, the plot is liable to be resumed. The petitioner did not seek extension of the time for construction by pleading any circumstances beyond his control. Even after his building plans were approved afresh on 05.01.2001 i.e., about 17 years after the allotment, and were to be valid for two years thereafter, he did not complete the construction. The resumption order was passed about 21 years after the allotment. No fault can be found therewith.

Regulation 8 regarding deemed sanction of the building plans, if approval or disapproval is not conveyed within sixty days of the application also can be of no help to the petitioner. He had applied for re-validation after he had been issued the show cause notice for resumption for failure to raise construction as per clause 18. Surely, Regulation 8 cannot be invoked in such a situation to escape resumption proceedings already initiated for breach of conditions of allotment which rendered him liable for resumption.

The argument of the Ld. Counsel for the petitioner that the revision petition cannot sustain as it was dismissed on the ground that the GPA being a sale was not permissible, which was not a ground in the show cause notice, also does not commend to us. The Revisional Authority has upheld the orders of the Estate Officer and the Appellate Authority on the grounds on which they were based i.e., construction not being competed within two years of the allotment and no compelling reason and circumstances beyond the control of the petitioner having been shown for not completing the construction within the said period. The reference to the GPA is only an additional ground referred to in the revisional order. Even without a reference to this, the orders of the Estate Officer and the Appellate Authority have to be held to be valid.

However, despite this the petitioner is entitled to succeed on the basis of the policy of 12.04.2013 which has done away with the upper time limit within which an allottee is required to complete the construction. This policy, though issued in respect of residential/ commercial plots has been held to be applicable to industrial plots as well by this Court in **M/s Achal Metal Industries** *(supra)*.

The relevant clauses of this policy are as under:

"Subject: Extention in time limit for construction on residential/commercial plots beyond the stipulated period of 2 years.

... ...

i) There shall be no upper limit of the time within which the allottee is required to complete the minimum required construction.

ii) The extention fee beyond the initial allowed period of 2 years shall be as under:

xxx xxx xxx

vi) The policy shall be applicable to all the cases where *resumption orders have been passed due to non-construction but the allottees have challenged the resumption orders and the litigation is pending in any Forum. In such cases, the Estate Officer shall inform the Court/Authorty whee the appeal of former allottee against the resumption order is pending, that the said Court/Authority may dispose off the appeal in terms of the new estension policy.*

vii) The plots which have been resumed after 31.12.2007 but the allottee has not challenged the resumption order as on the date of issue of this policy shall be restored by the Estate Officer after prior approval of the Zonal Administrator.

viii) The policy shall not be applicable where the litigation has attained finality and resumption order has been upheld."

As per clause (vi), the policy shall be applicable to all the cases where resumption orders have been passed due to non-construction and the allottees have challenged the resumption orders and litigation is pending in any Forum. The policy requires the Estate Officer to inform the Court/ Authority where the appeal against the resumption order is pending and the Court/ Authority may dispose of the appeal in terms of the extension policy.

In the present case, the resumption order was passed by the Estate Officer on 25.03.2005. On the date of the issue of the policy, the revision of the petitioner was pending. The revision petition was dismissed on 01.08.2014. The litigaion, thus, had not attained finality. Hence, the petitioner is entitled to the benefit of the policy in view of the judgment of this Court as referred to above. Though, Special Leave Petition against the aforesaid judgment is stated to be pending, but Ld. Counsel for the respondents fairly stated that there is no order of stay. As such, the judgment is binding.

Accordigly, the respondents are directed to consider the case of the petitioner in the light of the policy dated 12.04.2013 and the judgment of this Court referred to above. The non-construction by the petitioner be regularized by charging the extension fee as applicable. On the entire payment being made, the resumption order shall be recalled.

Disposed of accordingly.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

September 08, 2017
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Whether speaking/ reasoned:	*Yes/No*
Whether Reportable:	*Yes/No*