

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

CWP-25868-2014 (O&M)

Date of decision:- 04.12.2017

M/s Arksan Pvt. Ltd.

...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

Present:- Mr. Sanjay Majithia, Senior Advocate,
with Mr. Inderjeet Singh, Advocate,
for the petitioner.

Mr. Deepak Balyan, Additional Advocate General, Haryana,
for respondent No. 1.

Mr. Padamkant Dwivedi, Advocate,
for respondents No. 1A to 3.

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S.J. VAZIFDAR, C.J. (ORAL)

The petitioner has challenged the order of the revisional authority dated 30.09.2014 setting aside the order of the appellate authority dated 27.06.2008.

2. The appellate authority granted the petitioner time to start production in the industrial unit set up on the plot that was allotted by the respondents to the petitioner on 29.02.1980. Pursuant thereto, a conveyance deed was executed between the parties on 01.12.1994. The respondents served a notice dated 06.05.2002 calling upon the petitioner to show cause why the plot ought not to be resumed, inter alia, on the ground that the petitioner had failed to commence the commercial production within two years from the date of allotment of the plot.

3. On merits, there is much to be said in favour of the respondents in this regard. We do not, however, wish to express a conclusive opinion in this regard. Mr. Majithia, the learned senior counsel appearing on behalf of the petitioner, however, has raised a new contention. He contends that the Letter of Allotment (LoA) dated 29.02.1980 and the conveyance deed dated 01.12.1994 do not contain a condition compelling the petitioner to commence commercial production within a stipulated period. This point was not raised on behalf of the petitioner before any of the authorities including the appellate and the revisional authorities. One of the questions that arises is whether such a condition did exist either in the LoA or in the deed of conveyance even by way of incorporation of an industrial policy or any other directive issued by the respondents. The LoA and the conveyance deed do not expressly refer to any such condition. As at present, the learned counsel appearing on behalf of the respondents is able only to refer to the Estate Management Procedure and the orders or instructions of the respondents issued prior to the deed of conveyance. However, the respondents ought not to be precluded from referring to any other material, if it is available. They have never been given an opportunity of meeting this aspect.

4. Despite the fact that the petitioner has not taken this point earlier, it is a point of substance. The ends of justice require that the petitioner be given an opportunity of raising this contention and the respondents be given an opportunity of meeting it on facts and on law.

5. On facts, the issue would be whether there were any directions or instructions which compelled the petitioner to commence commercial production within any stipulated period. On

law, an issue that may arise is whether any policy or direction

issued after the date of LoA and/or after the deed of conveyance would have retrospective effect and affect the rights of the petitioner.

6. In these circumstances, the impugned order dated 30.09.2014 is quashed and set aside. The petitioner shall be entitled to raise only this contention before the revisional authority. It is, however, clarified that even if this issue is decided against the petitioner, the petitioner would be entitled to challenge the same as well as the findings in the order that is presently impugned in this writ petition. The petitioner shall not before or after the fresh order is passed dispose of, alienate, encumber, part with possession of or create any third party rights without the written permission of the respondents. The interim orders to that effect and the affidavits filed thus far shall continue to operate.

7. The writ petition is accordingly disposed of.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

04.12.2017
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No