IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 27484 of 2015
Date of Decision: August 10, 2017

M/s Decibels India Pvt. Ltd.

......Petitioner

versus

Haryana State Industrial & Infrastructure Development Corporation Ltd. and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE SUDHIR MITTAL.

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Present: Mr. Ashwani Bhardwaj, Advocate
for the petitioner.

Mr. Sudeep Mahajan, Advocate
for respondents No. 1 and 2

Mr. Arvind Rajotia, Advocate
for respondent No. 3

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Sudhir Mittal, J.

The bone of contention in this writ petition is Industrial Property No. 58, Type-D, Phase V, Udyog Vihar, Gurgaon measuring 316.10 square meters.

An entity known as M/s Myron Electrical (P) Ltd. had secured funding amounting to ₹ 1.25 crores from respondent No. 3 – Andhra Bank. To secure this loan M/s Suri Associates through its proprietor Sh. R.K. Suri stood as guarantor and mortgaged Industrial Property No. 58 mentioned hereinabove. The property i.e. Industrial Plot No. 58 had been allotted to M/s Suri Associates by respondent No. 1 vide letter dated 20.07.1994. Possession was delivered on 01.08.1994. Registered sale deed dated 14.06.1994 was also executed in favour of M/s Suri Associates. Mortgage in favour of respondent No. 3 was created on 12.02.2002. M/s Myron Electrical (P) Ltd. failed to repay the loan amount and its account was declared as NPA. Possession of the property was taken after issuing notice dated 02.12.2004 and the same was put to sale through public notice inviting tenders dated 02.09.2005. The petitioner gave the highest bid in auction held on 03.10.2005 and vide letter dated 13.10.2005 respondent No. 3 informed the petitioner that the sale in its favour was confirmed subject to certain conditions. The petitioner fulfilled the conditions laid down and sale certificate dated 02.01.2006 was issued in its favour. It may be mentioned that the petitioner had paid a sum of ₹ 73.10 lacs for purchasing the property in dispute. Pursuant to the sale certificate issued in favour of the petitioner, the petitioner had applied to respondent No. 1 for transfer of the property in its name. During the proceedings for this transfer, it was realized that the property in dispute had already been 'resumed' by respondent No. 1 vide resumption order dated 12.09.2003 on account of -

(i) *construction of shed without getting building plans approved;*

(ii) *occupation certificate had not been obtained and;*

(iii) *maintenance charges and external development charges had not been paid.*

It further came to light that the said resumption order had been challenged by Sh. R.K. Suri by filing a Civil Suit No. 365 of 2003. In this suit an order dated 04.10.2007 was passed by the learned Civil Court relegating the parties to an Arbitrator for resolution of their dispute. The Arbitrator passed an award dated 03.10.2011 in favour of the petitioner and held that the property in dispute be transferred in favour of the petitioner and that the petitioner would make payment of all outstanding dues of respondent No. 1. This award was challenged by way of petition under Section 34 of the Arbitration and Conciliation Act, 1996 by respondent No. 1 and the learned Additional District Judge, Gurgaon set aside the same declaring it null and void vide order dated 24.03.2015. Thereafter, the petitioner submitted a representation dated 15.05.2015 to respondent No. 1 for transfer of the property in dispute but no action was taken thereupon, hence, the present writ petition has been filed.

In the reply filed on behalf of respondent No. 1 the facts are not disputed. It is only stated that M/s Suri Associates did not seek permission from respondent No. 1 before mortgaging the property in favour of respondent No. 3. In contradiction to this statement, it was stated further that an NOC had only been issued for mortgaging the property in dispute in favour of Haryana Financial Corporation.

Counsel for the parties have been heard in detail and the record has been perused.

From the undisputed facts, it emerges that the property in dispute had been transferred in favour of M/s Suri Associates by way of registered sale deed. Thus, title in this property no longer remained with respondent No. 1. M/s Suri Associates through its proprietor Sh. R.K. Suri was the full owner of the property on the date it was mortgaged in favour of respondent No. 3, therefore, respondent No. 1 had no right to resume the same. Moreover, it is settled law that resumption is a weapon of last resort and must be utilized only after exhausting all other weapons available in the armoury of the authority concerned. Reference in this regard may be placed on a Full Bench decision of this Court in ***Shri Ram Puri vs. The Chief Commissioner, Chandigarh and others, 1982 PLR 388*** wherein it has been held that “However, there is no manner of doubt that resumption in the sense of divestiture of title would be ultimate civil sanction in the armoury of the authorities...” This view has been reiterated by another Full Bench of this Court in

Dheera Singh vs. U.T. Chandigarh Administration, 2012(4) RCR(Civil) 970 as follows "it necessarily means and the respondent cannot be heard to say otherwise except that the power of resumption can be invoked as a last resort and the action of the Estate Officer is required to be judged on the touch-stone of Article 14..." Even the Hon'ble Supreme Court of India in ***M/s Teri Oat Estates Pvt. Limited vs. U.T. Chandigarh and others, 2004(1) RCR(Civil) 540*** has laid down the same principle. It is, thus, obvious that apart from the fact that respondent No. 1 had no authority or power to resume the property in dispute once it had been divested of its title, the action of resumption itself was arbitrary because in the resumption order dated 12.09.2003 there is no finding that the owner of the property was a willful and persistent defaulter and that despite being warned earlier by imposition of penalties or otherwise, had continued with the violations complained of. Further, the violations complained of are petty and the petitioner had offered to make the building conformed to the existing bye-laws and also to pay any dues which were recoverable, during the course of legal proceedings initiated by the original owner of the property in dispute. Opportunity of hearing was also not granted before passing the resumption order. The order of resumption (Annexure P-6) is, therefore, illegal and liable to be set aside. Respondent No. 3 had acted validly in exercise of authority vested in it by virtue of the loan agreement. On the loan account being declared NPA it was justified in putting the property in dispute to public auction. The petitioner is the purchaser in the said public auction and the holder of a valid sale certificate. It is, thus, the full owner of the property in dispute and is entitled to be declared as such.

For the reasons mentioned hereinabove, this writ petition is allowed and the resumption order dated 12.09.2003 (Annexure P-6) is quashed. However, the petitioner would be bound to bring the construction raised on the plot within the parameters of the building bye-laws after getting the building plans sanctioned. It would also be bound to pay the amount due to respondent No. 1, as on the date of order of resumption, within a period of one month from the date of receipt of certified copy of this order. The petitioner is directed to submit a compliance report within a period of six months from the date of receipt of certified copy of this order, failing which the Registry is directed to put up this case before the concerned Bench.

[SUDHIR MITTAL] **JUDGE**	**[SURYA KANT]** **JUDGE**

August 10, 2017
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No