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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-COM No.8 of 2016
Date of decision:20.03.2017

M/s. Jindal Green Corp. International Pvt. Ltd. …Petitioner

Versus

The State of Haryana and another ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. S.P.Arora, Advocate, with
Mr. Himanshu Arora, Advocate, for the petitioner.

Mr. Ravi Partap Singh, AAG, Haryana,
for respondent no.1.

Mr. Girish Agnihotri, Senior Advocate, with
Mr. Arvind Seth, Advocate, for respondent no.2.

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Rakesh Kumar Jain, J. (Oral)

The petitioner has prayed for the issuance of a writ in the nature of *certiorari* for quashing the order dated 12.09.2016 by which Haryana State Industrial and Infrastructure Development Corporation Limited (hereinafter referred to as the "Corporation") has asked the petitioner to pay the enhanced price of the industrial plot allotted to it.

In brief, the Corporation introduced a policy called "Estate Management Procedure (EMP)-2015 (hereinafter referred to as the "EMP-2015") for the purpose of management of industrial estate covering industrial, residential, institutional and commercial plots developed by the respondents, prescribing the terms and conditions of allotment, transfer, lease, resumption of plot and all other related processes and procedure to be followed by the respondents and allottees. Clause 2.3 (B) of the EMP-2015 read as under:-

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> "2.3 (B) Allotment of industrial Plot/Sheds made after coming into force of EMP-2015:-
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> In the enterprises promotion policy 2015 announced by the State Government, a decision has been taken that no enhancement will be charged in respect of industrial plots/sheds to be allotted by HSIIDC in future. HSIIDC was mandated to formulate a suitable scheme in this regard. Accordingly, no enhancement will be charged by the HSIIDC in respect of allotment to be made after coming into force of EMP-2015. In order to give effect to the above no Enhancement policy of the State Government, a fund as 'Enhanced Compensation Equalization Fund' (ECEF) is being created at the State Government Level to meet such liability in future. HSIIDC would be contributing to the said fund out of the sale proceeds against allotment of plots/shed to be made in future. However, the existing allottees who have been allotted plots before coming into force of EMP-2015 shall be required to pay enhanced cost on proportionate basis as per the terms and conditions of their allotment, against enhancement in land compensation awarded/to be awarded by the Competent Court."

The petitioner applied for allotment of 12 acres of land in the Food Park, Barhi under the EMP-2015, pursuant to which it was offered to allot 12 acres of land in the Food Park, Barhi at the tentative allotment rate of ₹6,740/- per square metres, applicable for the financial year 2015-16, for setting up an industrial project of Composite Food Processing unit for cold storage, ready to eat (RTE) snack food and fried dal packing etc. with an investment of ₹98.77 crores. Subsequently, a regular letter of allotment (with offer of possession) was also issued on 21.04.2016 containing number, size of plot(s) measuring 48600 square metres @ ₹6,740/- per square metre for a total amount of ₹32,75,64,000/-. It is further submitted that the petitioner was required to deposit ₹4,89,19,000/- with the Corporation towards 15% of the tentative price of the aforesaid plot so as to make it 25% thereof after including ₹3,29,72,000/- deposited towards 10% earnest money. The aforesaid amount was stated to have been deposited, as has been mentioned in the regular letter of allotment. It is further averred that the said allotment letter was not having the condition regarding demand of enhanced amount. The acceptance of the regular letter of allotment was also submitted on 11.05.2016. The agreement, as required, was executed between the petitioner and the Corporation on 06.06.2016, in which it was mentioned that the plot has been allotted on `as is where is' basis and the Corporation will not be responsible for levelling the uneven site. It also contained a specific condition that in regard to allotment of the plot having been made by the Corporation after coming into force of EMP-2015, no enhancement in price on account of acquisition of land will be charged by the Corporation from the allottee. However, vide letter dated 12.09.2016, the Corporation, after having the impact of enhancement, fixed the rate of allotment of land @ ₹12,000/- per square metre as on 01.04.2016 in Industrial Estate, Barhi and asked the petitioner to deposit ₹6,39,09,000/- with the Corporation for completing 25% amount towards price of the allotted plot.

Counsel for the petitioner has submitted that it is stipulated in the EMP-2015 that no enhancement would be charged in respect of the industrial plot/shed by the Corporation in future. It is further submitted that revision of rates would not apply to the plot allotted to the petitioner because the said rates are prospective in nature and would apply to the plots to be allotted after the revision as according to the petitioner the rates of allotment was already determined when the allotment was made.

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On the other hand, counsel for the respondents has submitted that the plot was allotted to the petitioner at the tentative rate of ₹6,740/- per square metre, as applicable for the financial year 2015-16, and it is provided in Clause 2.4 of the EMP-2015 that the rates would be revised of the plots of various categories on 1st April of every year by the Board of Directors of the Corporation. Clause 2.4 of the EMP-2015 is reproduced as under:-

> "**2.4 Revision of Prices of Plots in various categories:**
> The prices of plots shall be revised on 1st April each year by the Board of Directors of the Corporation. Subsequently, the prices shall be revised from time to time on quarterly basis by the Managing Director, taking into consideration the weighted average of auction price during the last auction; keeping in view that as per Enterprises Promotion Policy 2015 (EPP-2015), the State Government has decided not to charge any enhanced compensation from the allottees for allotments to be made by HSIIDC in future, the prices of industrial plots/sheds have been revised, which shall be effective from date of coming into force of EMP-2015. The revised rates of industrial plots/sheds for financial year 2015-16, applicable w.e.f. 16.10.2015 are given in Annexure 2.1."

It is further submitted that in the case of the petitioner, the allotment of the plot was finalized in the financial year 2016-17, therefore, the rates of the financial year 2016-17 @ ₹12,000/- per square metre are applicable, which were fixed by the Board of Directors of the Corporation in its 334th meeting held on 08.08.2016. It is also submitted that in Clause 3 of the agreement, it is mentioned that in case of allotment of plot having been made by the Corporation after coming into force of EMP-2015, no enhancement in price on account of acquisition of land will be charged by the Corporation from the allottee but Clause 35 of the said agreement provides that the allottee is fully aware of the provisions of EPP-2015 and EMP-2015 and

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has gone through the same and undertakes to abide by and be bound by the said provisions of EPP-2015 and EMP-2015, as amended from time to time.

In nut-shell, the stand taken by the respondents is that the Corporation had the competence to revise the rates from 1st April of every year and since the rates have been revised w.e.f. 01.04.2016 in respect of the Industrial Estate, Barhi Phase III, therefore, the same has to be paid by the petitioner.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The positive case of the respondents is that the Board of Directors of the Corporation has the power to revise the rates of the industrial plots on 1st April of every year. There is no dispute that the rates were fixed for the year 2015-16, during which the petitioner had applied for allotment of the plot. The petitioner had paid the tentative price of the plot at the time of allotment. The agreement was entered into between the parties on the price of the plot prevailing for the financial year 2015-16. The respondents did not take this plea even in the impugned order that the rates of the plot have been enhanced because of the revision of the price w.e.f. 01.04.2016 and simply mentioned that due to enhancement impact, the enhanced rates are being demanded from the petitioner.

Actually the price of the plot was frozen in the year 2015-16. There is no dispute that the Board of Directors of the Corporation has the jurisdiction to revise the price of the plot of its industrial estates on 1st April of every year and there is also no dispute that in this case, the price of the Industrial Estate, Barhi, in which the plot in question is situated, was fixed @

₹6,740/- per square metre and it was revised w.e.f. 01.04.2016 @ ₹12,000/- per square metre but the petitioner is not liable to pay the revised rates as they had applied for allotment of plot in the financial year 2015-16 when the prices were fixed @ ₹6,740/- per square metre.

Insofar as the enhanced cost of the plot due to enhancement in land compensation awarded by the Competent Court is concerned, that has to be borne by the respondents from the Enhanced Compensation Equalization Fund created at the State Government level to meet such liability, as is clear from Clause 2.3(B) of the EMP-2015, referred here-in-above.

Thus, to my mind, the impugned order is patently illegal and erroneous because the respondents cannot ask the petitioner to pay the price, revised w.e.f. 01.04.2016, only on the ground that the formal Regular Letter of Allotment was issued to it after 01.04.2016.

Consequently, the writ petition is hereby allowed and the impugned order is set aside, though without any order as to costs.

March 20, 2017 **(Rakesh Kumar Jain)**
vinod* **Judge**

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No