Gurbax Singh
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6467 of 2016
Date of decision: 08.02.2018

M/s SPL Industries Limited

……Petitioner

Vs.

State of Haryana and others

…..Respondents

CORAM: **HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Girish Agnihotri, Sr. Advocate with
Mr. Saurav Gulia, Advocate for he petitioner.

Mr. D.R.Singla, DAG, Haryana.

Mr. Deepak Balyan, Advocate for respondent Nos. 2 and 3.

Ajay Kumar Mittal,J.

1. Through the instant petition filed under Articles 226/227 of the Constitution of India, the petitioner prays for quashing the impugned letter/order dated 11.2.2006, Annexure P.17 as the same is against the provisions of Estate Management Procedure (EMP-2011), Annexure P.5 and as per clause 4.7 thereof, the petitioner company falls under exempted category. Direction has also been sought to the respondents to issue transfer permission to the petitioner with regard to Plot No.7, Sector 6, Faridabad. In the alternative, prayer for quashing the provision has been made which imposes condition of prior permission.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. On 20.5.1965, the

respondent authorities allotted Plot No.7, Sector 6, Faridabad in favour of M/s Sovrin Knit Works. Thereafter, M/s Sovrin Knit Works executed a sale deed in favour of the petitioner by way of sale deed dated 9.7.2002. The permission for transfer of the said plot in the name of the petitioner company was duly obtained from HUDA, Faridabad. According to the petitioner, the original allottee had been running its business and sold the same to it in the year 2002. The Commissioner, Municipal Corporation, Faridabad issued occupation certificate in respect of the aforesaid plot in favour of the petitioner on 25.2.2004. Industrial Policy 2011 announced by the State Government provides for laying of guidelines for the management of estates, allotment, transfer, leasing, renting etc. of plots and other assets by the State Developing agency. The Haryana Urban Development Authority is governed by the EMP-2011. Clause 4 of EMP-2011 deals with transfer of plots/sheds. In Clause 4.5 thereof, it has been specifically mentioned that "no transfer fee would be charged by the HUDA in case of subsequent transfers, provided the first transfer has been made with the permission of HUDA. However, every subsequent transfer would entail payment of processing charges and execution of a registered sale deed as per the law." Clause 4.7 of EMP-2011 deals with the categories exempted from payment of transfer fee. In other words, no transfer fee will be payable in the case of transfer of plot after the allottee has run his industrial unit for a period of more than five years and in the case of second and all subsequent transfers, with prior permission of HUDA. The petitioner fulfilled all eligibility conditions for transfer. It executed an agreement to sell dated 15.1.2013 for sale of Plot No.7, Sector 6, Faridabad with M/s Shivalik Prints Limited. On the basis of the said agreement, the petitioner on 22.4.2013 requested to the Estate Officer, HUDA, Faridabad to issue transfer eligibility certificate and project completion certificate. The petitioner also deposited process fee of ₹ 10,000/-. Accordingly, the Estate Officer, HUDA, Faridabad on 8.4.2015 issued eligibility certificate for transfer and project completion certificate in favour of the petitioner. The petitioner had also applied for transfer permission on 22.4.2013 but it only obtained certificate of eligibility and project completion certificates. The petitioner paid process fee of ₹ 11,400/-. The petitioner on 10.4.2015 submitted reminder to Estate Officer, HUDA. The petitioner had availed huge credit facilities of ₹ 81 crores from State Bank of India, Overseas Branch, New Delhi. The account had been declared as a non performing asset by the Bank. The plot in question was mortgaged with the bank to secure the credit facilities availed by the petitioner. The Bank was pressing hard for repayment of outstanding loan and threatening to sell the properties. Under such circumstances, pending prior permission for transfer of the plot in the name of M/s Shivalik Prints, Limited, the petitioner executed sale deed in favour of M/s Shivalik Prints Limited vide sale deed dated 6.5.2013, Annexure P.14. The petitioner deposited the processing fee of ₹ 10,000/- for the plot in question. When no reply was received from HUDA, the petitioner on 4.1.2016 requested Faridabad Industries Association to raise this matter with Administrator, HUDA. On 28.1.2016, the petitioner requested Estate Officer, HUDA to take necessary action on its application for transfer permission. The petitioner received letter from Estate Officer, Faridabad on 11.2.2016 regarding payment of transfer fee of ₹ 92,39,994/- and service tax of ₹ 9,93,670/- totalling ₹ 1,02,33,664/- so that further action be taken regarding transfer permission of plot in question. According to the petitioner, the plot in question was allotted in the year 1965 and was first time transferred/sold in the year 2002 with the prior permission from HUDA and thereafter transferred for the second time in the year 2013. The petitioner referred to clause 4.7 of EMP-2011 which deals with categories exempted from payment of transfer fee. The petitioner asserts that necessary permission for transfer of plot in question was granted by HUDA at the time of first transfer by HUDA in its name and only thereafter the sale deed was executed and registered in its name. Hence the instant writ petition by the petitioner.

3. Learned counsel for the respondents relied upon Clause 4.8(iii) of EMP-2011 to submit that wherever, the transfer is otherwise permissible without payment of any transfer fee, but the same has been effected without prior permission of HUDA, the same may be regularized on payment of the applicable transfer fee as mentioned under para 4.6(i) alongwith interest payable from the due date. Clause 4.8(iii) of EMP-2011 reads thus:-

> "Wherever, the transfer is otherwise permissible without payment of any transfer fee, but the same has been effected without prior permission of HUDA, the same may be regularized on payment of the applicable transfer fee as mentioned under para 4.6(i), alongwith interest payable from the due date."

4. On the other hand, learned counsel for the petitioner placed reliance upon sub clause (v) of Clause 4.5 of EMP-2011 to submit that no transfer fee would be charged by the HUDA in case of subsequent transfers, provided the first transfer has been made with the permission of HUDA. However, every subsequent transfer would entail payment of processing charges and execution of a registered sale deed as per the law.

5. We have heard learned counsel for the parties.

6. Admittedly, noticing the factual matrix, in the present case, Plot No.7, Sector 6, Faridabad was allotted by the respondent authorities on 20.5.1965 in favour of M/s Sovrin Knit Works. Sale deed was executed on 9.7.2002 in favour of the petitioner. Permission for transfer of the said plot in the name of the petitioner was obtained from HUDA on 21.1.2003. The Municipal Corporation issued occupation certificate on 25.2.2004 in favour of the petitioner. As per industrial Policy, 2011 announced by the State Government, the HUDA was to be governed by the Estate Management Procedure i.e. EMP 2011. The petitioner executed an agreement to sell for the plot in question with M/s Shivalik Prints Limited on 15.1.2003. It requested the Estate Officer, Faridabad on 22.4.2013 to issue transfer permission, transfer eligibility certificate and project completion certificate and deposited the process fee. Eligibility certificate for transfer and project completion certificate in favour of the petitioner was issued on 8.4.2015. The petitioner executed sale deed in favour of M/s Shivalik Prints Limited on 6.5.2015. The Estate Officer, HUDA demanded transfer fee of ₹ 1,02,33,664/- including service tax on 11.2.2016 from the petitioner. The issue is whether the said demand by HUDA is justified and legally sustainable in the facts as noticed hereinbefore.

7. Examining the question involved herein, necessarily reference is made to Clause 4.5 of EMP-2011 which reads thus:-

> ‘**4.5. Subsequent transfers**
>
> Once an allottee has been allowed to transfer the plot/property, the transferee is expected to use it for permissible industrial activity. However, there will be no

preconditions on subsequent transfer by the reallottees so long as:

i) to (iv) xxxxxxxxxxxxxxx

v) No transfer fee would be charged by the HUDA in case of subsequent transfers, provided the first transfer has been made with the permission of HUDA. However, every subsequent transfer would entail payment of processing charges and execution of a registered sale deed as per the law."

8. A perusal of the above clause shows that in case of subsequent transfers, no transfer fee would be charged by the HUDA provided the first transfer has been made with permission of HUDA. However, there would be processing charges and execution of a registered sale deed on every subsequent transfer. As noticed earlier, the plot in question was initially allotted in the year 1965. The first transfer was made in the year 2002 with the prior permission of HUDA. The second transfer was made in the year 2013. Thus, the case of the petitioner falls under sub clause (v) of clause 4.5 and not under clause 4.8(iii) of EMP-2011 as urged by the respondent-HUDA. Once that was so, there was no justification for passing the impugned order dated 11.2.2016, Annexure P.17 demanding transfer fee of ₹ 1,02,33,664/- from the petitioner. Consequently, the petition is allowed and the impugned order dated 11.2.2016, Annexure P.17 is quashed and the respondent-HUDA is directed to issue transfer permission to the petitioner expeditiously.

(Ajay Kumar Mittal)
Judge

February 08, 2018 **(Anupinder Singh Grewal)**
'gs' **Judge**

Whether speaking/reasoned **Yes**
Whether reportable **Yes**