

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 3443 of 2017 (O&M)

Date of Decision: July 18, 2019

Nehru Place Hotels and Real Estate Pvt. Ltd.

.....Petitioner

versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MR. JUSTICE SUDHIR MITTAL.**

Present: Mr. Aashish Chopra, Advocate with
Ms. Rupa Pathania, Advocate
for the petitioner

Mr. Deepak Sabharwal, Addl. A.G. Haryana

Sudhir Mittal, J.

The petitioner is a Company duly incorporated under the Companies Act, 1956. It was allotted an Institutional Plot in Gurugram for setting up its Corporate Offices, Research and Development Centre and other ancillary purposes. After payment of all the dues, a conveyance deed was executed by the respondent – Haryana Urban Development Authority (HUDA) in its favour. Thereafter, the petitioner wanted to transfer the said plot by way of sale but the HUDA has refused to grant necessary permission. Hence, the present writ petition has been filed.

2. Some time in the year 2012, HUDA advertised allotment of Institutional Plots in Gurugram on freehold basis. The petitioner made an application dated 03.05.2012 for one such plot and vide allotment letter dated 11.03.2013 Institutional Plot No. 87, Sector 32, Gurugram, was allotted to it for a total price of Rs. 14,94,45,000/-. The area of the plot was 4050 sq. mts. One of the terms of allotment was payment of Rs. 2,23,61,250/- within 30 days from the

date of issue of the allotment letter to complete 25% of the total tentative price. The balance amount was payable in lump sum within 60 days from the date of issue of allotment letter or in four half yearly installments, the first of which was due after six months of the date of issue of the allotment letter. The petitioner accepted the allotment letter and made the payment as required. Physical possession was handed over on 15.04.2013. The building was completed in accordance with the building plans sanctioned by the respondent and occupation certificate dated 22.04.2016 was issued. Conveyance deed dated 10.11.2014 was executed prior to the issuance of the occupation certificate. Thereafter, vide letter dated 06.05.2016, the petitioner sought permission for sale of the plot and building constructed thereupon. However, vide memo dated 10.08.2016, an office memo dated 28.05.2016 was communicated to the petitioner whereby permission sought was refused.

3. A detailed written statement has been filed on behalf of the respondents whereby maintainability of the writ petition has been disputed on account of availability of alternate remedy of arbitration. On merits, it has been averred that the Institutional Plots were advertised with a pre condition that the same would not be transferable under any circumstances. It was so mentioned in the brochure inviting applications as well as in the allotment letter. Having accepted the terms of allotment, a concluded contract came into being and the petitioner is bound by the same. Such terms were included pursuant to policy decision taken by the HUDA in 1990s and has been applied uniformly in respect of all Institutional Plots in the State of Haryana. Certain modification was made vide policy dated 26.02.2009, according to which organizational structure of the allottee could be changed with prior approval of the Chairman HUDA subject to the

original allottee retaining 51% shares. Thus, the refusal of permission to sell has been defended.

4. It is necessary to note that vide order dated 31.07.2018, this Court directed HUDA to reconsider the matter in the light of judgment of the Supreme Court in *The Andhra Pradesh Industrial Infrastructure Corporation Limited and others vs. S.N. Raj Kumar and another*, 2018 SCC OnLine SC 350, as the impugned communication dated 28.05.2016 did not seem to be lawful. Thereafter, speaking order dated 18.03.2019 has been passed by the Chief Administrator of the respondent-authority reiterating the earlier decision while distinguishing the case of *The Andhra Pradesh Industrial Infrastructure Corporation Limited (supra)*.

5. Learned counsel for the petitioner submits that the plot in dispute is freehold plot as is evident from the brochure issued in the year 2012. Having paid the entire consideration and having obtained the conveyance deed, the said property stood transferred to the petitioner. The term of the allotment letter, restraining an allottee from transferring an allotted plot was applicable only till the consideration remained unpaid. Once the title stood transferred in favour of the petitioner, it became the absolute owner of the plot in dispute and had the absolute right to transfer it to anybody subject to the condition that it could not be so transferred unless permission had been taken from HUDA and the transferee would not change the user thereof. In its application seeking permission for transfer, the petitioner had specifically mentioned that the user of the plot was not being changed and, thus, the refusal of permission to transfer is illegal. Reliance has been place upon the case of *The Andhra Pradesh Industrial Infrastructure Corporation Limited (supra)*, wherein, it had been held that post issuance of conveyance deed, title stood transferred in favour of the allottee and the authority concerned was debarred from exercising control over the same.

6. Learned counsel for the respondent-authority supported the impugned decision by arguing that the brochure inviting applications and the allotment letter included a specific condition that transfer of institutional plot in any manner would not be permitted. This condition was accepted by the petitioner by accepting the allotment and, thus, it cannot not now be permitted to take a somersault. The judgment in *The Andhra Pradesh Industrial Infrastructure Corporation Limited (supra)* is sought to be distinguished on the ground that the terms of allotment in the said case did not include a stipulation as mentioned in the present case.

7. In the light of the pleadings and arguments of the parties, it is necessary to refer to certain clauses relied upon by the parties.

Clauses 6 and 7 of the brochure dated 09.04.2012 inviting applications are reproduced below :-

6. *The land and buildings shall continue to vest in the Authority until the entire consideration money alongwith interest or any other amount due to the Authority on account of sale of such land or building or both is paid.*

7. *The allottee shall have no right to transfer by way of sale, gift, mortgage or otherwise the plot/buildings or any right, title or interest therein till the full price is paid to the Authority, except with prior permission of the Competent Authority.*

Clauses 10 and 23 of the letter of allotment dated 11.03.2013 are as follows:-

10. *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. The plot allotted for institutional purpose shall not be allowed to be transferred in any case.*

23. *The transfer of ownership of plots/site shall not be allowed*

under any circumstances, except in the case of death or succession.

Clause (2) of the deed of conveyance dated 10.11.2015 is as follows:-

(2) The Vendor shall have a first and paramount charge over the said sale for unpaid portion of the sale price and the transferee shall have no right to transfer by way of sale, gift, mortgage or otherwise the land or any right, title or interest therein (except by way of lease on a monthly basis) without the previous permission in writing of the Estate Office, the Estate Officer while granting such permission may impose such conditions as may be the chief administrator from time to time.

The reason mentioned in the impugned memo dated 28.05.2016, for refusing permission to transfer is as follows:

“The subject cited matter has been examined and considered. It is intimated that in the condition No.23 of the allotment letter issued by the Estate Officer-II, HUDA, Gurgaon vide letter No.514 Dated 11.03.2013 it has clearly mentioned that “the transfer of ownership of plots/sites shall not be allowed under any circumstances except in case of death or succession”.

The policy decision dated 26.02.2009 relied upon by the respondent-authority is in the following terms:-

“The matter has been re-examined and it has been decided that permission may be granted for changes in organizational structure of individual allottee of various sites for construction of Corporate Offices, Research and Development Centres, Staff-Education and Training Centers, Offices of Professional Group/Associations/Societies not engaged in Commercial/Manufacturing activities with the prior approval of Chief Ministers-cum-Chairman, HUDA. Such permission shall be subjected to the following conditions:-

- 1. The original allottee will have retain 51% share in the ownership of plot.*
- 2. No change of land use will be allowed.*
- 3. The allottee shall abide by the terms and conditions as prescribed in the original allotment letter/policy of*

HUDA.

- 4. The processing fee of Rupees 5000/- shall be changed in such case.*
- 5. The allotment of land shall be governed by HUDA Act, 1977, rules and regulations framed thereunder.”*

Relevant part of speaking order dated 18.03.2019 passed by the Chief Administrator of the respondent-authority is reproduced here under:-

- 3. In this regard, it is worth mentioning here that the condition to bar sale of institutional plot has been incorporated in the terms and conditions by the 'Pradhikaran' in the year 1990 pursuant to the meeting dated 30 March 1990 as Item No.A-52(19). The brochure for allotment of institutional plots in Sector-32, Gurugram was issued in the present case in the year 2012 wherein the term of the allotment that the plot cannot be transferred was duly reflected. The petitioner applied only after satisfying itself about the said condition. The said terms were also made part of the allotment letter which was accepted by the allottee-petitioner. The petitioner after verifying the terms of allotment mentioned in brochure applied for such allotment and in case he had any reservation about any condition, the same should have been objected to at time of submission of application itself.*

In 'The Andhra Pradesh Industrial Infrastructure Corporation Limited and others vs S. N. Raj Kumar and another 2018 SCC Online SC 350', there was no such condition and the corporation imposed a condition with regard to demand 50% of the prevailing market value as a condition for giving extension/another opportunity to the respondents to raise construction on the plots sold to them subsequently after execution of sale deed. But in present case, condition not to allow transfer existed since the year 1990 and was part of the conditions of brochure as also the allotment letter. Not only this, this condition was also a part of the conveyance deed. The deed of conveyance had not created any absolute interest in favour of

the allottee in respect of the plot conveyed. For a transferee to deal with interest in the property transferred “as if there were no such direction” regarding the particular manner of enjoyment of the property, the instrument of transfer should evidence that an absolute interest in favour of the transferee has been created. This is clearly discernible from Section 11 of the TP Act. The section rests on a principle that any condition which is repugnant to the interest created is void and when property is transferred absolutely, it must be done with all its legal incidents. In the present case, there is no absolute transfer of the plot involved as only a limited right was created and even otherwise, there is no absolute bar on transfer as transfer by retaining 51% share has been allowed on completion of formalities.

- 4. It is worth pointing out here that the institution plots were planned as per development plan and are meant for specified use and cannot be used for speculative purpose of sale and purchase. In case, the allottee is unable to carry on the purpose for which allotment was made then the plot was to revert back to the Haryana Shehri Vikas Pradhikaran. Therefore, the disposal of institutional plots has its own special features. Further, the Haryana Shehri Vikas Pradhikaran allots the institutional plots on a rate which is much lesser than the market rate and permitting sale of institutional plot would invite speculative element in it, thereby allottee making undue enrichment at cost of public exchequer.*
- 6. It is also pointed out that there is no absolute bar on transfer of plot as the 'Authority' modified the existing policy/guidelines to provide that change in organizational structure of individual allottees with the prior approval of the Chairman, HSVP is permissible subject to the condition that the original allottee shall have to retain 51% share and instruction to that effect has been issued on 26.02.2009.”*

8. The relevant terms and conditions of the brochure dated 09.04.2012, inviting applications for institutional plots, provide that the land and building shall continue to vest in the authority until the entire consideration alongwith interest has been paid and that an allottee can not transfer the property until the full price has been paid. Here too an exception has been provided, inasmuch as competent authority may permit a transfer even earlier. Clause 10 of the allotment letter dated 11.03.2013 provides a similar stipulation but it further goes on to stipulate that an institutional plot shall not be allowed to be transferred in any case. Clause 23 of the said letter of allotment provides that no transfer will be permitted except in case of death or succession. The relevant terms of the deed of conveyance dated 10.11.2014 i.e. clause 2 provides that the vendor shall have a first and paramount charge over the property for unpaid portion of the sale price and that the transferee may not transfer the property except without the previous permission of the Estate Officer, who would be competent to impose such conditions as may be prescribed by the Chief Administrator from time to time.

9. While refusing permission, the Chief Administrator of the respondent-authority has relied upon Clause 23 of the allotment letter according to which a transfer can not be permitted except in case of death or succession.

10. Once the conveyance deed is executed, transfer of the property which is subject matter of the same is complete in all respects. Section 8 of the Transfer of Property Act, 1882 (hereinafter referred to as TPA) can be referred to with advantage in this regard. This provision states that on transfer of property, the transferor passes all the interest in the property which he is capable of passing to transferee unless a different intention is expressed or necessarily implied. A perusal of the conveyance deed shows that no different intention is expressed or implied therein except that the transferee shall seek prior permission which may be

granted subject to conditions. Further, Section 10 TPA declares conditions restraining alienation to be void. Thus, in law, even if the conveyance deed contained a condition restraining transfer, the same would be void. The terms of allotment and the terms of brochure inviting applications, will apply only till the entire consideration has been paid and conveyance deed has been executed. On execution of the conveyance deed, a fresh contract comes into being and the parties shall then be governed only by the terms thereof. The judgment of the Supreme Court in ***The Andhra Pradesh Industrial Infrastructure Corporation Limited (supra)*** is squarely applicable to this case as the ratio thereof is that on execution of a regular sale deed the vendor can not enforce terms of the letter of allotment. Keeping in view this position in law, the impugned order dated 28.05.2016 can not be sustained and is hereby quashed.

11. As has been mentioned earlier, the respondent-authority had been directed to reconsider the issue in view of judgment in ***The Andhra Pradesh Industrial Infrastructure Corporation Limited (supra)***. The relevant part of speaking order dated 18.03.2019 has been reproduced hereinabove. The reasons for not reconsidering the earlier order are :-

(i) *The petitioner applied after verifying the terms of allotment and having applied for allotment with open eyes he can not now say that the terms of allotment restraining transfer is illegal;*

(ii) *the condition not to allow transfer is part of the conveyance deed also and no absolute interest has been created.*

(iii) *the judgment in ***The Andhra Pradesh Industrial Infrastructure Corporation Limited (supra)***, is distinguishable because the allotment letter did not contain the stipulation sought to be enforced by the authority concerned; and*

(iv) transfer is permissible only if the original allottee retains 51 % share.

12. Taking the last reason first, terms of the policy dated 26.02.2009 have been reproduced hereinabove. A perusal thereof shows that the same pertains to permission for grant of changes in organizational structure of individual allottees of various sites for construction of Corporate Offices, Research and Development Centre, Staff-Education and Training Centres, Offices of Professional Groups/Associations/Societies not engaged in Commercial/Manufacturing activities. This policy relates only to change in organizational structure of an allottee and has nothing to do with transfer of property. Thus, reliance thereupon by the Chief Administrator of the respondent-authority, is not only misconceived but mischievous also. As has already been stated earlier on execution of conveyance deed, the parties are governed only by the terms thereof and terms of allotment letter cease to apply. Thus, reliance upon terms of the allotment letter and brochure seeking applications, is illegal. The attempt to distinguish the judgment in ***The Andhra Pradesh Industrial Infrastructure Corporation Limited (supra)***, shows that the authority concerned has an adamant attitude and is not willing to exercise his mind. A condition being part of the terms of the allotment or not is irrelevant after a conveyance deed has been executed and this proposition of law is well known. There is no condition in the conveyance deed absolutely restraining transfer. The only requirement is of seeking permission before a transfer is made so that the transferee is also bound by the condition of no change of user of the plot. In any case, as has been stated hereinabove in view of Section 10 TPA, the condition barring transfer absolutely would be void. The approach of the concerned authority is pedantic and unusually bureaucratic. It shows that he is not open to reason despite being goaded by this Court. Such administrators can

only harm public interest rather than promoting the same.

13. The writ petition is, thus, allowed and order dated 18.03.2019 passed during the pendency thereof is also quashed. The concerned authority is now directed to pass a fresh order within four weeks of the date of receipt of a certified copy of this order. For his intransigence the incumbent Chief Administrator Sh. D. Suresh, IAS is burdened with costs of Rs. 50,000/- to be paid to the Army Central Welfare Fund, A/c No. 520101236373338, Corporation Bank, IFSC Code CORP 0000205, to be paid from his personal resources. The needful be done within four weeks from the date of receipt of a certified copy of this order.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

July 18, 2019
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No