

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

RSA No. 3515 of 2018(O&M)

Date of Decision: 24.02.2020

M/s Singhal Print Media Pvt. Ltd.

.....Appellant

VS.

Haryana State Infrastructure and Industrial Development Corporation and
another

....Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.Sudhir Aggarwal, Advocate
for the appellant.

AMOL RATTAN SINGH, J. (Oral)

1. This is the second appeal of the plaintiff, after its suit was dismissed by both the courts below, by which a declaration was sought by the plaintiff/appellant, firstly to the effect that it be declared the lawful owner/allottee of the suit property (in the industrial estate IMT Manesar, District Gurugram measuring 1012.50 sq.meters), and further, that the resumption order dated 07.03.2005, issued by the respondents/defendants, and the subsequent order dated 13.01.2006, passed in the appeal against that order, were illegal, void, non-est and not binding on the plaintiff.

It also sought a decree of permanent injunction restraining the defendants from forcibly taking possession of the suit property and from interfering in the plaintiffs' enjoyment thereof, with a decree of mandatory injunction further sought, for grant of extension of time of one year to construct upon the suit property, with that year running from the date of sanction of the building plan.

2. The defendants/respondents having entered their defence by way

of a written statement it was stated that in terms of the agreement entered into between the parties on 09.09.2000, the conditions of allotment were spelt out therein, by which the plaintiff was to start construction of the factory building within a period of two years from the offer of possession, i.e. construction was to start by 06.07.2003, which in fact was an extension on the initial period of one year granted from the date of offer of possession.

No construction having been undertaken even after three years, a show cause notice dated 28.06.2004 was served upon the plaintiff-company, after which also no action was taken by it, with another show cause notice issued on 07.10.2004, after which the resumption letter dated 07.03.2005 was issued, with a cheque for an amount of Rs.13,66,875/-, by way of refund, also sent alongwith the said letter, after which an amount of Rs.1,500/- as had been paid by the plaintiff thereafter, was also sent back to it. The factum of the appeal against the resumption order having been dismissed and the order being legal and valid in terms of the conditions of allotment was reiterated by the respondents/defendants.

3. A replication having been filed by the appellant/plaintiff, which the following issues were framed by the trial court:-

- i. Whether the present suit has been filed by a duly authorised person?OPP
- ii. Whether the plaintiff is entitled to relief of declaration and injunction as prayed for?OPP (modified vide order dated 18.02.2012).
- iii. Whether the plaintiff has no locus standi to file the present suit?OPD
- iv. Whether this court has no jurisdiction to try and entertain the present suit?OPD
- v. Whether the plaintiff estopped from filing the present suit by his own act, conduct, default waiver and acquiescence?OPD
- vi. Whether the suit of the plaintiff is rejected u/o 7 rule 11 CPC?OPD
- vii. Relief.

4. Thereafter, upon considering the evidence led by both the sides, eventually the reasoning given by the plaintiff that it could not construct the factory due to the sickness of one of the directors of the company, was found to be on unfounded ground taken, as she had been ill only for two months, (in October, 2003 and January, 2004), with the other ground taken as regards finances not having been arranged, also not found tenable by the learned trial court, in view of the fact that even the date, month and year in which a sanction for the building plan was applied for could not be produced by the plaintiff.

As regards the plaintiff otherwise having funds to complete the construction, evidence was led by way of a certificate of a bank, issued on 21.07.2004, stating therein that an amount of Rs.38 lakhs could be sanctioned to the company, subject to it meeting with the requirements of the bank.

That certificate was held by the learned trial court to be no proof of actual funds available with the the company, it only being an offer made by the bank, which was still to receive its approval upon the company meeting with the requirements thereof.

The last ground raised by the appellant/plaintiff for not being able to complete the construction on time was that in fact time was not the essence of the contract. That ground was also rejected in view of the conditions laid down in the allotment letter, with the period of six months for construction having further been extended.

Consequently, the primary issue having been decided against the plaintiff/appellant herein, the other issues were held to be not pressed and the suit was therefore dismissed.

5. The learned first appellate court, essentially on the same reasoning, dismissed the appeal.

6. Before this court, learned counsel submits that once the appellant had paid the full consideration for allotment of the plot, it no longer remained the property of the respondents-HSIIDC and in fact it had become the personal property of the appellant and consequently, simply because it was unable to construct the factory within the allotted time given, that would not be reason enough for resumption of the plot and in fact the appellant is ready to pay any reasonable penalty for non-construction upon the plot, and for not starting production of the product that he was supposed to manufacture in its production unit.

He also reiterates the argument raised before the courts below, as regards the ailment of one of the directors and the efforts to obtain funds for construction.

7. Having considered the matter, as regards the first contention of learned counsel, that the plot stood purchased by the appellant-company upon payment of full consideration and therefore non-construction was only a violation of the building norms/zoning plans etc., that contention is rejected at the threshold, in view of the fact that allotment of an industrial plot, even on payment of consideration, is not made on the ground alone that the consideration is being paid for such plot, but in fact consideration is allowed to be paid only upon a viable project being submitted for the setting up of an industrial unit, for which purpose infact industrial plots are carved out to enable production to take place, for the purpose of enhancement/growth of the economy.

Hence, though there may be many people willing to pay the consideration for an industrial plot, eventually plots are offered only to those who have viable industrial projects that would afford employment

opportunities etc. and create growth in the economy. That, in fact, is an essential condition for allotment of an industrial plot.

8. Learned counsel, even on query, has not been able to refute the aforesaid observation of this court by relying upon any law to the contrary to support his contention, or from pointing to any allotment letter to show that such allotment was not subject to such conditions.

Thus, simply because consideration for the plot had been paid, that did not imply that the other conditions of the allotment need not have been adhered to.

It is to be noticed, of course, that it not denied to that a stand had been taken in the written statement filed by the respondents/ defendants, that the amount as was refundable to the appellant for purchase of the plot, was in fact refunded to him at the time that the letter/order directing resumption of the plot was issued.

9. As regards the issue of one of the directors of the company being sick due to which the company could not start its operation on time, it is seen that both the courts below have recorded a finding of fact that she was admitted to hospital in October, 2003 and January 2004. Obviously therefore, that is not reason enough at all for a company to not start production, with the appellant not even having started construction on the plot.

Consequently, finding no merit in the appeal, it is dismissed *in limine*.

February 24, 2020

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**(AMOL RATTAN SINGH)
JUDGE**

Whether speaking/reasoned : YES
Whether Reportable : YES