

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.7715 of 2023(O&M)

Date of Decision: 17.04. 2023

M/s DRS Plastchem Pvt. Ltd.

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr.R.S.Khosla, Senior Advocate with
Mr.Aman Sharma, Advocate for the petitioner.

Mr.Ankur Mittal, Advocate with
Ms.Kushaldeep Kaur, Advocate for respondents No. 2 and 3.

HARPREET SINGH BRAR, J.

1. The petitioner has approached this Court praying for :-

Issuance of a writ of Certiorari for quashing of the resumption order dated 13.03.2020 (Annexure P-3) passed by respondent No.3 as well as quashing of order of the Appellate Authority dated 10.01.2023 (Annexure P-11) and further prayed for directing the respondents to restore the resumed site in favour of the petitioner

2. The plot bearing No. 483, Sector 8, Phase IV, IMT Manesar measuring 1012.50 square meters was allotted to the original allottee M/s Sunbeam Construction Pvt. Ltd. for setting up fabrication workshop. The Regular Letter of Allotment (RLA) was issued on 13.12.2004 and the possession of the plot was offered on 01.04.2006. Thereafter, the plot was re-allotted to the present petitioner on 01.07.2011. The plot was resumed by

the Estate Manager, HSIIDC, Manesar on 13.03.2020 vide letter bearing memo No. 3993 on the ground of default in payment of enhanced compensation and maintenance charges. In this regard, show cause notices dated 08.07.2015, 10.11.2015, 23.07.2019 and 09.09.2019 were issued to the petitioner. But as per the record, no reply was given by the petitioner. Thereafter, an opportunity of hearing was provided to the petitioner on 30.07.2019, 11.11.2019 and 29.11.2019 but no one appeared at the time of hearing on behalf of the petitioner. Hence, the plot was resumed on 13.03.2020 on account of non-payment of the enhanced compensation. The appeal preferred by the petitioner against the order of resumption dated 13.03.2020 was also dismissed vide order dated 10.01.2023 (Annexure P-11) by the Appellate Authority.

3. Learned senior counsel for the petitioner submits that the resumption order (Annexure P-3) was passed by respondent No.3 without affording any opportunity of hearing to the petitioner, in a very cursory manner, without dealing with the contention raised by the petitioner in the appeal (Annexure P-4). He further relies upon *State of Orissa vs. Dr. (Miss) Binapani Dei and others, 1967 AIR 1269* to contend that the impugned resumption order and the show cause notice dated 09.09.2019 mentioned in the resumption order was never served upon the petitioner. As such, it is abundantly clear that the petitioner had not been given any opportunity of hearing before passing the impugned resumption order dated 13.03.2020 (Annexure P-3). Learned senior counsel for the petitioner placed reliance upon a Division Bench judgment of this Court in *Smt. Nisha vs. State of Punjab 2001(4) RCR(Civil) 40*, to contend that without furnishing the details of enhancement to the petitioner the impugned orders ought not to

have been passed. As such, the resumption order is liable to be set aside.

Learned senior counsel has relied upon the decisions of this Court *Ajay Singh Mann v State of Haryana and Ors, 2009(1) RCR (Civil) 474, Kalyan Singh and another v Estate Officer Chandigarh and others, 2014(5) RCR (Civil) 600, Smt. Fana alias Maina Devi and others vs. The Financial Commissioner and Principal Secretary to Government of Haryana and others, 2015 (1) RCR (Civil) 887.*

5. Per contra, learned counsel for respondents No. 2 and 3 put in appearance on having been served with the advance copy of the writ petition asserts that the petitioner, had earlier approached this Court by filing CWP No. 14038 of 2022 which was disposed of vide order dated 14.07.2022 which is reproduced as under:-

“ Consequently, while deciding any appeal filed by the petitioner before her/him, the Appellate Authority would duly go into the issue of whether or not the amount of enhanced compensation demanded from the petitioner is actually as per law and would give an opportunity to the petitioner to present its case qua the amount that actually should be paid; and thereafter would deal with the matter in detail on that issue also (if any appeal is filed by the petitioner in terms of the order dated 08.07.2022 passed in CWP No. 14304 of 2022).

In compliance of the above orders, on 07.11.2022 vide Annexure P-10, a copy of the calculation sheet was provided to the petitioner and he was also given an opportunity of personal hearing. He further contends that the petitioner is a wilful defaulter and he has deliberately chosen not to pay the enhanced compensation and now after the resumption order is passed, the excuse of not providing the calculation is taken just to save the 14% p.a.

penal interest. The amount of enhancement was first due on 31.01.2013 and he has slept over the demand of the enhanced compensation for 7 years till the resumption order was passed on 13.03.2020.

6. Having heard learned counsel for the parties, after careful perusal of the record and giving thoughtful consideration to the rival contentions, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case in hand, the impugned order passed by the official respondents have been found to be factually correct and legally justified and the writ petition is liable to be dismissed.

7. Undisputedly, there was a specific clause contained in the allotment letter (Annexure P-1) with regard to the demand of enhanced compensation which reads as follows:-

“ Any additional price of the plot/shed as a consequence of enhancement in compensation awarded by the court(s) shall be payable by the allottee in lump sum within 30 days from the date of demand notice failing which a penal interest @ 18% p.a. shall be charged from the date of notice. In the event of non-payment of such enhanced compensation within a period of three months of the notice, the plot shall be liable to be resumed.”

There is a clear cut stipulation in the above clause that in the event of non-payment of such enhanced compensation within a period of three months of the notice the plot shall be liable to be resumed. The petitioner while accepting the re-allotment from the original allottee has agreed to abide by the terms and conditions of the allotment. A perusal of the resumption order (Annexure P-3) further reveals that as per terms and conditions of agreement of re-allotment, the petitioner was required to pay any additional price of the

aforesaid plot as a consequence of enhancement in compensation awarded by the court(s) in lump sum within 30 days from the date of demand notice, failing which a penal interest @ 14% p.a. was also payable from the date of notice. In the event of non-payment of such enhanced compensation within a period of three months of the notice, the plot was liable to be resumed.

8. The petitioner has defaulted on account of enhanced compensation (Ist & IInd) amounting to Rs. 93.06 lakhs (subject to audit), enhanced compensation (IIIrd) of Rs. 4.68 lakhs (subject to review) and Rs. 1.92 lakhs on account of maintenance charges (subject to audit) as on 22.07.2019. It is further discernible from Annexure P-3 that a show cause notice was also issued on 09.09.2019 and petitioner was even called for personal hearing on 11.11.2019 and 19.11.2019. It is a settled principle of law that one cannot approbate and reprobate, once the petitioner has exercised his choice to accept re-allotment and agreed to be bound by the terms and conditions of re-allotment, he cannot now deny the validity of the binding effect of those terms on him. The petitioner has enjoyed the fruits of his allotment of an industrial site and remained silent for 7 years. The enhanced compensation was due since 31.01.2013 and the petitioner only became proactive and took recourse to legal remedies after the passing of the order of resumption on 13.03.2020. As such, petitioner being a ranked defaulter cannot be allowed to approbate and reprobate to deny his liability as per the terms and conditions of the allotment to which he has agreed to abide by accepting the re-allotment.

The Hon'ble Supreme Court in *State of Punjab and others vs. Dhanjit Singh Sandhu, (2014) 15 SCC 144* has discussed the doctrine of estoppel by election which falls under the broader head of equitable

estoppels (also known as estoppel in pais) which is a rule in equity and the following was held:-

“22. The doctrine of “*approbate and reprobate*” is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (vide [C.I.T. vs. Mr. P. Firm Maur](#), AIR 1965 SC 1216). It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground (vide *Maharashtra State Road Transport Corporation vs. Balwant Regular Motor Service, Amravati & Ors.*, AIR 1969 SC 329). In *R.N. Gosain vs. Yashpal Dhir*, AIR 1993 SC 352, this Court has observed as under:—

“Law does not permit a person to both *approbate and reprobate*. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that “a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage.”

23. This Court in *Sri Babu Ram Alias Durga Prasad vs. Sri Indra Pal Singh (Dead) by Lrs.*, AIR 1998 SC 3021, and *P.R. Deshpande vs. Maruti Balram Haibatti*, AIR 1998 SC 2979, the Supreme Court has observed that the doctrine of election is based on the rule of estoppel- the principle that one cannot *approbate and reprobate* inheres in it. The doctrine of estoppel by election is one of the species of estoppel in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would

have had.

24. The Supreme Court in The Rajasthan State Industrial Development and Investment Corporation and Anr. vs. Diamond and Gem Development Corporation Ltd. and Anr., AIR 2013 SC 1241, made an observation that a party cannot be permitted to “blow hot and cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

9. Keeping in view the above principles this Court is of the considered opinion that equities cannot emerge in favour of such allottees who have defaulted on the payment due for such a long period without pleading any compelling circumstances for non-payment.

10. The next contention of learned senior counsel for the petitioner that the extreme power of resumption has to be applied as a last resort, is required to be dealt with. The Hon’ble Supreme Court in somewhat similar case in ***Smitra Jain vs. Haryana Urban Development Authority and another, 2020 (13) SCC 465*** has laid down as under:-

*“..... the Estate Officer did not commit any illegality by resuming the Booth Site because the petitioner had persistently failed to pay the instalments of price despite the notices issued to her under Sections 17(1) (2) and (3). A ranked defaulter like the petitioner is not entitled to relief under Articles 226 or 227 of the Constitution. This is also the ratio of the judgment of this Court in ***Municipal Corporation Chandigarh vs. Shantikunj Investment (P) Ltd. (2006) 4 SCC 109, UT Chandigarh****

Administration v. Amarjeet Singh (supra) and Haryana State Agricultural Marketing Board v. Raj Pal (supra).

In Sukhpal Singh Kang's case, the Punjab and Haryana High Court considered a somewhat similar issue and observed:

"...the petitioners cannot avoid their liability to pay the instalments of premium and ground rent. That apart, after having taken in part in the auction with full knowledge of the terms and conditions notified by the respondents and having accepted the leases of the sites on the basis of terms and conditions incorporated in the letters of allotment without any protest, the petitioners will be deemed to have agreed to pay the amount of premium along with interest and ground rent in terms of Rules 12 and 13 of the 1973 rules. In our considered opinion, the petitioners cannot seek intervention of the court for getting themselves relieved of their obligation to pay the amount due to the respondents in accordance with the terms of contract."

11. Further reliance on the case of ***Smt. Nisha vs. State of Punjab, 2001(4) RCR (Civil) 40*** by the petitioner is totally misplaced. The facts of the case are clearly distinguishable as the Respondent-Corporation in the above referred case has allotted plots to the petitioner therein with a clear understanding that there will be no revision of the price and, therefore, it is estopped from seeking the enhanced cost. But in the present case there is a specific stipulation with regard to the liability of the petitioner to pay the enhanced cost in the allotment letter (Annexure P-1).

12. Learned senior counsel for the petitioner further asserts that the impugned orders were passed in utter violation of the principles of natural justice by placing reliance on ***State of Orissa vs. Dr. (Miss) Binapani Dei and others (supra)***. The Hon'ble Supreme Court has dealt with a similar

issue in *State of Haryana and others vs. Northern Indian Glass Industries Ltd. 2015(5) SCC 588* with regard to the power of resumption and the implication of the principles of natural justice. In the above referred judgment, the State of Haryana had challenged the judgment dated 11.12.2007 passed by this Court in CWP No. 3750 of 2005 whereby the notice to resume the land of the allottee had been set aside and the State of Haryana was directed to comply with the principles of natural justice and this Court remanded the matter to hear the allottees and then decide the issue of resumption. The Hon'ble Supreme Court had set aside the judgment dated 11.12.2007 passed by this Court and allowed the appeal of the State of Haryana and the following was observed:-

“ In the impugned judgment the Division Bench has opined that the principles of natural justice applied irrespective of the nature of the cause or the gravity thereof and are not mere platitudes. In our analysis of the exposition of law contained hereinabove, we think that this unjustly sets far too broad and wide a parameter to the perceptions of natural justice. Quite to the contrary, Courts should be “pragmatic rather than pedantic, realistic rather than doctrinaire, functional rather than formal and practical rather than precedential”. We cannot lose perspective of the fact that protracted litigation had already taken place between the parties as a consequence of which the legal position of all affected parties had already become well known. It seems to us that in the writ petition, the challenge was predicated on the perceived failure to adhere to the audi alterem partem rule and not to the correctness of the decision to resume possession of the land. In any event, we harbour no manner of doubt that the circumstance of the case warrant the issuance of Resumption Notice of the land by the Appellant State. We also note that the 'Resumption Notice' has been issued to the Respondent alone which, because of its

actions, has forfeited whatsoever rights it may have enjoyed over the land in question.”

13. In view of the above discussion, the facts and circumstances of the case warrant no interference only on the ground of violation of the principles of natural justice, especially in the background of the specific rebuttal by respondent No.3 in the resumption order (Annexure P-3) with regard to serving four notices issued on 08.07.2015, 10.11.2015, 23.07.2019 and 09.09.2019 on the petitioner before passing the resumption order.

14. In the light of the aforesaid principles we do not find any ground to interfere with the orders passed by respondents No. 1 and 3. Respondent No.3 has not committed any illegality by ordering the resumption of the site on account of non-payment of the enhanced compensation- as the same was specifically stipulated in the allotment letter (Annexure P-1). Resultantly, with the above-said observations made, the present writ petition stands dismissed, however, with no order as to costs.

(AUGUSTINE GEORGE MASIH)
JUDGE

(HARPREET SINGH BRAR)
JUDGE

April 17, 2023
sunita

Whether Reasoned/Speaking : Yes/No

Whether Reportable :Yes/No