
(2010) 06 P&H CK 0054

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6237 of 1989 (O and M)

DCM Limited

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 29-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Transfer of Property Act, 1882 — Section 10

Citation : (2010) 159 PLR 629 : (2011) 1 RCR(Civil) 122

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.

I. Permission to sell a portion by the petitioner as affording proof of an intention not to use the property for the purpose for which it was conveyed

1. The writ petition challenges the action of the respondents to resume the land which had been assigned to the petitioner for what it perceived to be breach of covenant by the petitioner. It all started with the petitioner making a plea for approval of the Government to sell a portion of the vacant land which it had not utilized when the Financial Commissioner and Secretary to Government considered and rejected the plea by proceeding dated 27.04.1988. On 11.04.1989, the Government found that the action of management of the Mill in applying to the Government for sale showed that the work-sheds of the residential quarter or portion of both had become a liability for the management and the intended action for sale of land and buildings amounted to an expression to commit breach of covenants of the original deed of assignment. Referring to clause in the conveyance deed that if the breach was capable of rectification, the vendor would not resume the land unless issued a written notice requiring the vendee to rectify the breach within a reasonable time, the Governor of Haryana had authorized the Collector (Deputy Commissioner), Hisar to take appropriate

action. By virtue of the operative clause 10 that enabled the State to demand a rectification for the breach on the pain of resumption of property, an opportunity had been given to the management to rectify the breach within a period of 45 days from the date of issue of notice. The Collector claimed that he had visited the property subsequent to the notice and had also appointed a Committee of Officers to visit the petitioner-Mill and submit a report in terms of verification of clauses in the conveyance deed to satisfy himself about the manner of upkeep of the Mill, as made possible through clause 5 of the Conveyance. The authority of the State to enter upon the premises after issuance of notice to ascertain that the vendee had performed and observed all the covenants of the conveyance came through clause 8. The Collector had found that within 400 acres of property that had been conveyed to the petitioner, an area of 250 acres remained unutilized and taking notice of the fact that the application of the management itself showed a desire of the management to sell the property, the Collector held that the management had not merely committed the breach of the covenants but that the breach was not capable of rectification by any stretch of imagination. A decision was, therefore, taken to resume the unutilized land through the impugned proceedings.

II. Circumstances that brought about the conveyance to the petitioner

2. Some more details are necessary to examine the legality of the action of the respondents. On 17.11.1953, the Government of Punjab sanctioned the sale of 400 acres of land at a market price of 6 lakhs with a clear understanding that the factory would be set up and the property would be utilized for purpose of establishing an industrial unit that would pave way for providing employment and to promote industrial growth. It is not in dispute that after taking possession of the property, the petitioner-Company had incurred substantial expenses in leveling and developing the land for the setting up the industry and housing complex for the workers and employees. The industrial production commenced in the year 1954 with a capacity of 25000 spindles. The conveyance deed was executed subsequently on 03.09.1956 with full proprietary rights in favour of the petitioner-Company.

III. The incipient labour trouble and decision to close down the factory

3. The petitioner has given the details of the developments made in plant and machinery by referring to the fact that an additional capacity of 40,000 spindles had been installed and it had also established a swimming pool for the employees and workers. In the year 1966-67, yet another Mill called C-Mill was set up with additional 16,000 spindles. In 1967-68, a ginning factory had been set up and in the year 1973, out of the extent of 400 acres that had been conveyed, 25 acres of land had been acquired by the Government from the petitioner-Company for laying bye-pass road. In the year 1975-76, a steam power plant had been set up due to power shortage, but trouble started between the years 1975 to 1983, when due to serious labour disputes about 5000 workers struck work. The Mill stood closed by persistent labour problems w.e.f.

03.06.1984. The decision of the petitioner to close down the Mill was upheld by this Court as well as the Hon''ble Supreme Court on the ground that the circumstances existed beyond the control of the establishment to run the Mill.

IV. Revival of the company and expansion activities after the institution of the writ petition

4. All was not however lost and the petitioner-Company sent a proposal to the Revenue Department to facilitate the revival of the Mill with a request that the petitioner-Company might be permitted to dispose off a portion of the land. The objective was to raise funds to pay compensation to workmen on account of closure of the Mill and for modernization of existing machines and for purchasing of new and latest machines for revival of the Mill. This proposal was rejected by proceedings of the respondent on 27.04.1988. We have already begun the narration with the rejection of the request for sale of the property as a starting point for assertion that the petitioner had caused a breach of covenant of not utilizing the property for the purpose for which it was conveyed and the conduct showed an un-rectifiable breach that provided a justification for resumption of the property. While the Cloth Mills at Delhi had remained closed, a serious attempt had been made for revival of the Mill at Hisar. The petitioner-Company had proposed to shift the machinery from the Mills at Delhi to Hisar to revive the closed Mill and a memorandum was received by the Deputy Commissioner, Hisar informing that a Committee had been constituted to inspect the Hisar premises. The petitioner claimed it had no idea about the purpose of inspection and came from the blue as it were that a show cause notice had been slapped on the petitioner and an order of resumption had been passed that gave rise to the institution of the writ petition on 10.05.1989. An interim order passed on 18.05.1989 saved the day for the petitioner to retain possession of the property. During the pendency of the proceedings, the DCM Textile was started at the property where the Mill had been established by utilization of 150 acres and the proposal had been given to the Government to set up a textile city on 250 acres of remaining land in August 1996. The petitioner claims that the installed capacity of the Mill was gradually increased upto 39204 spindles and there were 900 employees working in the Mill. It is further claimed that there have been periodical increases in installed capacity over a period of time.

V. Appraisal of the justification of the action for resumption

(a) The alleged non-use and the extent of power of resumption

5. The objection of the petitioner to action for resumption is founded on a contention that the conveyance deed dated 03.09.1956 conferred full proprietary rights over 400 acres of land. The property was assigned by the Government with the hope that it would be put to best public interest by establishing a factory and providing employment. Sale price for the property Was well above the market price. Clause 4 in the conveyance deed required by the petitioner shall establish a textile mill within 12 months. It is not denied that a textile mill did

get established. Since the petitioner had claimed that the property was put to full optimal use and an application by the petitioner for permission to sell the property ought not to be taken as a lack of interest to develop the property. The petitioner contended that even in the area of 250 acres which was sought to be resumed, there are officers' colony containing several houses, a sewerage plant and a canal pump room. During the course of writ petition, the Haryana Urban Development Authority and the workers' union have also been impleaded as parties. HUDA's interest in the land has come through plans to develop various sectors for residential/commercial activities within Hisar and the land of the petitioner covered in the sale deed had also been alleged to be included as one of the sectors (sector 23) for residential purposes.

6. I have seen plans and the photographs where the constructions have been put up for establishing the Mill, the staff quarters, the canteen etc. It is fairly widespread with the factory premises at the center. It is an admitted fact that the 150 acres of property had been fully used for construction. There appears to be also a school within the same premises and it is claimed that more than 3000 workers are presently working in the factory. In my view, the power of the Government to resume the property itself is suspect. The power to resume must be understood strictly for we are dealing with a situation where the Government had transferred its ownership to the petitioner-Company as a freehold. That would require us to examine the relevant clauses in the conveyance that purports to give the State the power of resumption.

(b) Examination of clauses in the conveyance deed

7. In the preamble of the conveyance deed, it is set out that the vendor namely, the State which had full proprietary rights had sanctioned the sale of the property to the petitioner and the conveyance was made with the following expressions, "the vendor hereby grants and conveys upto the vendee all that piece or parcel of land described in the schedule hereto attached and more particularly delineated in the plans filed in the office of the Colonization Officer, Punjab signed by the Colonization Officer, Punjab...." The extent of the power that the purchaser was to have is further declared through clause, "to have and to hold the same unto and to the use of the vendee in full proprietary right/ever subject nevertheless to the exceptions, reservations, conditions and covenant hereinafter contained and each of them, that is expressed are: Clause 1 reserves the right of the Government for the mines and minerals and clauses 2 to 13 as originally stipulated have been struck off and instead fresh clauses have been introduced which through clause No. 2 subjects the petitioner to a liability of land revenue; Clause 3 casts an obligation to pay general and local taxes; Clause 4 requires the vendee to complete the construction within 12 months.; Clause 5 requires the purchaser to keep and maintain the Mill in a state of repair; clause 6 obligates the vendee not to dig or cause damage and clause 7 restricts the user of the building only to purposes for which it was intended and requires permission from the Government for any other type of user. Since the petitioner

claims that it had applied to the State for permission to sale of a portion of land under this clause, it becomes necessary to reproduce clause 7:

The vendee shall not use the said building to be erected on the said land as aforesaid for any purpose inconsistent with that for which the said land is hereby granted, that is, for any purpose other than mat of a Textile Mill or ancillary purposes of the Mill, such as Shops etc. or permit the same to be so used or shall he use or allow any part of the said land to be used for any purpose other than that for which it is hereby granted except with the prior approval of the State Government.

Clause 8 empowers the vendor to enter upon the property within 24 hours for the purpose of ascertaining that the vendee was using the property properly. Clause 9 enables the vendor to enforce "the compliance of the terms and Clause 10 details the consequences of non-observance. Since the power of resumption is purported to have been carried out by application of Clause 10, it becomes necessary also to reproduce it:

(10) In the event of the breach or non-observance by the vendee or any of the covenants herein on its part to be observed then, and in any such case, it shall be lawful for the vendor, notwithstanding the waiver or any previous cause or right for re-entry, to enter into and upon the said land or building thereon or any part thereof and to repossess, retain and enjoy the same as of his former estate and the vendee shall not be entitled to a refund of the purchase money or any part thereof or to any compensation whatsoever on account of such resumption.

Provided that if the breach is capable of rectification, the vendor shall not resume the land unless he has issued a written notice requiring, the vendee to rectify the breach within a reasonable time, not being less than one month, to be stated in the notice and the vendee has failed to comply with such notice;

Provided further that in the event of such resumption, the vendee shall be entitled to remove the building material, other material and the machinery installed by the vendee on the land within six months of the date of resumption.

Clause 11 provides for determination of dispute between parties through the arbitral process and clause 12 gives, the purchaser the warranty of peaceful possession and obligates the vendor to secure the vendee in full and peaceful enjoyment of the rights and privileges contained in the document.

(c) Arbitral clause not pressed forth, will not bar writ remedy

8. It is not seen as to why when there was a provision for arbitration, the same was not resorted to. The case has stood for consideration for more than two decades and I do not propose to non-suit the petitioner on the ground that the arbitral clause had not been put into effect. An exclusion of the power of a Court to entertain a dispute is never absolute. A right to objection to an adjudicatory forum in the face of an arbitral agreement shall be immediately resorted to. It was not urged before me by the government even at the time of arguments. In

any event, the power of the Court to exercise jurisdiction under Article 226 could never be eclipsed by a clause for arbitration and more so, when no objection was taken as to jurisdiction at the time of arguments (Please see Uttarakhand Power Corporation Ltd. and Another Vs. ASP Sealing Products Ltd., .

(d) No misuse or violation of covenant shown; restriction of rights of ownership must be strictly construed

9. The case would, therefore, require an adjudication of the power only in the light of Clauses 7, 8 and 10 that we have extracted above. The power to resumption of the property is not unqualified. It must be remembered that a right of transfer in a property is a necessary incident of ownership and any restriction of such user shall be strictly construed. Even as per Section 10 of the Transfer of Property Act, a property which is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest would be void, except in the case of a lease where the condition is for the benefit of the lessor. The power of resumption shall be statutorily rooted and the covenant to restrict the transfer ought to be available through specific legislative sanction and cannot be always inferred merely because the transfer instrument contains restrictions. If the petitioner had applied under Clause 7 of the conveyance deed for permission to sell, it should be understood that such permission is necessary if only an attempt is made by a vendee to put it for a use which was not authorized in the terms of conveyance. Consequently, the whole of the property which had been conveyed for establishing a factory could not have been put to use either by the petitioner or any person claiming under him for a purpose otherwise than for such use and the approval that clause 7 contemplates must be understood as an approval for putting it to any other use than for establishing a factory. I do not believe that clause 7 by itself causes a restriction to a power to sale itself. Assuming the worst, it could have created an embargo against a purchaser from the petitioner from putting up to any use other than for putting up a factory or a Mill or a company for a purpose not ancillary to the Mill. Hypothetically speaking, it should have been possible for the petitioner to transfer the property to a person, who was interested in establishing any other industrial activity that was ancillary to the petitioner's Mill itself. In such a case, even a sanction could not have been necessary. Clause 8 of the conveyance again empowers the vendor to enter upon the property for ensuring that the covenants of the deed had been complied with. I have set out various clauses under the covenant through the various clauses 2 to 7 and I have not been shown to any violation of any other clauses which could justify the State to resume. Clause 9 again empowers the State to enforce compliance of the terms but does not give the power to resume the property. In this case, when a notice was sent complaining that the property had not been fully utilized, the State would have a cause for complaint only if the conveyance deed also contained a clause that every inch of the property must have been used for establishing a factory. It is common knowledge that in any given place for establishing a building, there has to be some reserve place as

vacant, as necessary adjunct for enjoying the building. An optimal use of a given property cannot be understood always as securing construction in the entire extent. Consequently if 400 acres of property had been assigned for establishing a factory, it will be foolhardy to believe that the entire extent of 400 acres would be covered with brick and mortar.

(e) An application for permission to sell a portion, so long as it was not sanctioned and so long as a breach did not occur could not justify action for resumption

10. An application for permission to sell a portion of the property which had been kept vacant ought not to have been understood as violating the terms of covenant in not establishing a factory. The factory and the premises had been established in an extent of 150 acres was good enough justification that the entire property had been used for putting it to the use for which it had been conveyed to the petitioner. The power to re-possess or retain and enjoy the property by a right of resumption under Clause 10 cannot come into play after more than 3 decades after conveyance that there has been a non-user of a portion of the property. A notice that had been issued by the petitioner under Annexure P-3 is itself treated as justification for an order of resumption under Annexure P-2 issued on the same day. Clause 10 definitely contemplates a procedure for putting the vendee on notice of a breach of a covenant and an opportunity for the petitioner to rectify the breach. A notice of breach and an order of resumption cannot be set in motion on the same day. If there was a satisfaction by the authority that there had been a breach, such a decision could not be taken without an opportunity to the petitioner to explain his stand. In this case, I find the notice which had been issued on 11.04.1989 refers to the petitioner's request for permission to sell a portion as a conclusive proof that the petitioner had no intention to rectify an alleged breach. Therefore, it has gone on to pass an order of resumption on the same day. The exercise of the power of resumption has been done autocratically when the petitioner has clearly expressed that it is not intending to put it to any other use. It had accepted the decision of the State not to permit them to effect the sale when Mill was not under operation. It concluded the matter, as far as the petitioner was concerned and the petitioner had not committed any further breach or violation. The permission sought could not have been taken as an instance of misuse or non-use or as an evidence of misutilization. The impugned notice and the order of the State are clearly wrong and untenable and they are required to be quashed and accordingly quashed.

11. The writ petition is allowed with costs of Rs. 25,000/- assessed against the State.