(2015) 03 P&H CK 0200

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition Nos. 24882, 24878, 24879, 24880, 24881, 24883, 24884, 24885 and 24886 of 2014

Deepak Chaudhary and Others — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 18-03-2015

Acts Referred:
Constitution of India, 1950 — Article 226
Haryana Urban Development Authority Act, 1977 — Section 20

Citation : (2015) 03 P&H CK 0200

Hon'ble Judges : S.J. Vazifdar, Acting C.J.;Gurmeet Singh Sandhawalia, J.

Bench : Division Bench

Advocate : Rupinder S.Khosla, Senior Advocate and Aman Shama, for the Appellant; Mamta Singal Talwar, Additional Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.J. Vazifdar, Actg. C.J.—Learned counsel for all the parties stated that the main issues in these writ petitions are the same. We, therefore, dispose of the above writ petitions by this common order and judgment. We will for convenience refer to the facts in Civil Writ Petition No. 24882 of 2014.

2. The petitioner has sought a writ of certiorari to quash the communications dated 27.03.2014, 30.06.2014 and 18.09.2014 issued by respondent No. 5-Haryana Urban Development Authority (HUDA).

3. The Department of Excise and Taxation of the State of Haryana-respondent No. 1 had been issuing policies for each financial year for the issuance of licences for wholesale and retail sale of country liquor and Indian made foreign liquor under the provisions of the Punjab Excise Act, 1914 as applicable to the State of Haryana and the Rules framed therein. The policy had made provisions for one Permit Kaksh (Ahata) i.e. an authorized place of drinking with retail vend per retail outlet of liquor in urban areas and along and near the borders of other

States. The excise policy from year to year contained such provisions. The relevant provisions of the Excise Policy for the year 2013-14 are as under:-

"1.4 Permit Kaksh

1.4.1 One permit kaksh, authorized place of drinking with retail vend, shall be allowed by the Deputy Excise and Taxation Commission (Excise) strictly as per the provisions of the Excise Policy and relevant Excise Rules/Intoxicants License and Sales Orders, 1956, for each retail outlet of liquor (L-14A/L-2) in urban areas and sub-urban areas falling within 5 Kms from the outer limit of respective Municipal Committees and borders with other states to prevent rowdy and drunken behaviour in public.

1.4.2 The DETC (Excise) shall decide an application for establishment of permit kaksh within10 days from the date of receipt of application and if no decision is taken by him in the stipulated period, the applicant licensee shall make an appeal to the Collector and disciplinary action against the DETC (Excise) concerned would be taken.

1.4.3 The license fee for PERMIT KAKSH shall be fixed as under:-

1.4.4 The licensee shall have proper structure and furniture, shall maintain cleanliness and hygienic environment and would not serve liquor in the permit kaksh.

Xx xx xx

12.17 Provision of Space for running of vends in Urban Areas:-

It has been decided that the Government and its agencies will try to provide space for running of vends in urban areas of the State wherever available and possible at reasonable rates for operating liquor vends in pre-fabricated structure."

4. The petitioner states that prior to the year 2013, the rent for the space provided by respondent Nos. 4 and 5 for operating the retail outlet and Permit Kaksh was reasonable and as per the excise policy and that the petitioner had accordingly been making the payments as demanded. For instance, the rent for the period 01.04.2010 to 31.03.011 was Rs.1,83,515/-. The petitioner has been operating liquor vends and Permit Kaksh(s). The petitioner himself stated in paragraph-12 of the petition that no rent of the spaces to be provided for operating the retail outlets and Permit Kaksh was mentioned in the policy. The petitioner''s bid for the year 2013-14 was accepted. The petitioner had been operating the liquor vends and Permit Kaksh(s), in respect whereof according to him, no rent was either fixed or agreed upon.

5. It is important to note that the premises from which the vend(s) and permit kaksh are operating belong to HUDA respondent Nos. 4 and 5.

The case of the parties itself is that there was never any direct correspondence or transaction between the petitioner and HUDA. The petitioner states that he was, therefore, surprised to receive the impugned notice (Annexure P-5) by which the HUDA demanded payment of various amounts which the petitioner contends is totally unreasonable.

6. Before referring to the impugned correspondence, it is necessary to refer the policy of HUDA dated 11.08.2011. The policy is contained in a communication from the Chief Administrator of HUDA to all the Administrators and Estate Officers of HUDA. The relevant part thereof reads as under:-

"Subject: Guidelines regarding providing space for opening of liquor vends.

The matter regarding formulating specific guidelines for providing space for liquor vends has been engaging the attention of the authorities. After deliberations it has been decided that the department of Excise and Taxation, Haryana shall intimate the concerned Estate Officer, the requirement of space for opening of liquor vends sector-wise. The department of Excise and Taxation may opt for commercial sites like booth, SCO which can be considered for allotment in their favour on reserve price.

In case the Department of Excise and Taxation, Haryana does not opt for allotment of built up booth/SCO sites/buildings and go for other available spaces, then the sites can be identified out of following areas:-

(a)......

(b)......

(c).......

(d) Areas designated as "HUDA land" land to be planned later on" "unplanned use" which are away from residential areas.

The allotment shall be following terms and conditions:-

i) The Collector rate (for commercial property, if available separately) as revised from time to time in that sector/area shall be the basis for computing the price and the rental should be 6% of that price for the full excise year.

ii) 12 months advance rent shall be deposited either by the department of Excise and Taxation or by the vendors in advance, only thereafter possession of the leased out spaces shall be given. Besides refundable security of Rs.20,000/- shall also be got deposited in advance.

iii) The setting up of liquor vends/shops should not be allowed to operate from open spaces, green belts, parking and parks etc. under any circumstances. Further no liquor vend shall be allowed to run in the residential areas/premises.

iv) The Department of Excise and Taxation shall not auction/allot liquor vends near any community site building, schools, colleges, religious buildings, hospitals etc.

v) The vender shall raise only the temporary structures, as approved by the Excise and Taxation Department/HUDA.

vi) The arrangement of water electricity shall be made by the liquor vendor itself. The expenditure thereof shall also be incurred by him. The liquor vendor shall ensure that there is no nuisance in the area. In case of any such complaint, the lease shall be cancelled.

vii) It shall be the responsibility of the vendors to ensure cleanliness of the area.

viii) Vehicles shall be parked in nearest designated parking lot only. No road side parking shall be allowed under any circumstances.

ix) The damages to the existing infrastructure, like roads, water supply, sewerage system, plantation etc. caused, if any, by the vendor or his customers shall be made good by the vendors."

A copy of this communication was also forwarded to the Excise and Taxation Commissioner, Haryana, Chandigarh.

7. This brings us to the impugned communication.

By a letter dated 27.03.2014, HUDA informed the petitioner that he had not paid the rent for the financial year 2013-14. By a letter dated 30.06.2014, HUDA informed the petitioner that the rent for the financial year 2014-15 must be paid in advance. The latter stated that the premises had been given to the petitioner for two years from 01.04.2013 and as per the terms and conditions of the rent policy the petitioner was required to pay 12 months'' advance rent of an area 90.72 sq. yards for the financial year 2014-15 aggregating to Rs. 13,45,515/- alongwith Rs. 20,000/- as a security as per the said policy. By a further communication dated 18.09.2014 HUDA informed the petitioner that it had ascertained the area of the wine shop and found that the petitioner was in occupation of an area of 803.14 sq. yards and that as per the policy an amount of Rs. 1,19,11,787/- was due and payable for the period 01.04.2014 to 31.03.2015 and not merely an amount of 13,45,515/- as stated in the earlier letter. The petitioner was also called upon to pay the same.

8. The petitioner contends that the policy is not binding on him; that he was unaware of the said policy and that there was no contract between the HUDA and himself. The petitioner accordingly contends that he is not bound to pay the amounts as demanded by the HUDA. He further contends that he was put in possession of the demised premises by the Excise Department. The petitioner further denies that he was in possession of an area of 803.14 sq. yards.

9. The respondents, on the other hand, contend otherwise. They contend that the petitioner was fully aware of the policy and had agreed to the same and, in any event, must be deemed to have agreed to pay the amount as per the policy. They further contend that the petitioner had trespassed in respect of a large area. Out of the area of 803.14 sq. yards of which the petitioner is in possession,

he was entitled, at the highest, to possession of only 90.72 sq. yards. Accordingly, the respondents contend that the petitioner is entitled to pay compensation and rent in respect of the entire area of 803.14 sq. yards. It is also pertinent to mention that an eviction order dated 19.12.2014 (Annexure R-5) has also been passed by respondent No. 5 on the ground that the noticee''s were in unauthorized occupation of the premises belonging to HUDA. The said order is also stated to be an appealable order under section 20 of the Haryana Urban Development Authority Act, 1977.

10. It is not possible in these writ petitions to entertain the various seriously disputed questions of law and of fact. The main dispute and a large part of the dispute pertains to various facts in issue. It will be necessary for instance to ascertain whether policy dated 11.08.2011 is binding on the petitioner. Assuming it is not binding on the petitioner, it would be necessary to ascertain what is the reasonable rent. It would also be necessary to ascertain whether there was any agreement or deemed agreement between the petitioner and HUDA. Another question, which is likely to arise, is whether the petitioner or the Excise Department is liable to the HUDA. In the event of the answer to this question being in the negative, it would be necessary to ascertain whether the petitioner is liable to the first respondent/Excise Department.

11. We do not deem it appropriate to entertain this writ petition for two reasons. Firstly, even assuming that an action for the reliefs claimed in this writ petition is maintainable, the writ petition under Article 226 of the Constitution of India would not be an appropriate remedy in view of various seriously disputed questions of fact which, in all probability, would require extensive evidence. It would be necessary for the petitioner to adopt appropriate proceedings other than by way of the present writ petition. Secondly, in any event, the petitioner''s contentions, can always be taken in proceedings that the respondents may adopt to recover the rent allegedly due by the petitioner to respondent Nos. 4 and 5. The impugned notices by themselves do not entitle respondent Nos. 4 and 5 to recover the rent forcibly. Respondent Nos. 4 and 5 would themselves have to adopt proceedings in accordance with law either by filing proceedings or by taking any other appropriate action. In such proceedings or in respect of any other action that respondent Nos. 4 and 5 may take, the petitioner can always raise the various issues raised in this writ petition as well as any other issues to resist the claim of respondent Nos. 4 and 5 for the said rent.

12. We cannot part with this judgment without expressing our surprise at the manner in which the respondents especially respondent Nos. 4 and 5 have dealt with their properties. Assuming what they say is correct, it is surprising that for all these years respondent Nos. 4 and 5 have permitted the alleged encroachment by the petitioner in respect of such a large area to continue without taking any coercive steps against him. It is surprising that even at this stage no enquiry is instituted by the concerned respondent''s especially respondent Nos. 4 and 5.In such circumstances it would also be appropriate that

respondent No. 6-the Chief Administrator, HUDA, should ensure that for the future public land is not allowed to be utilized, without payment of any fee.

13. We have not made any observations on the merits of the case. The contentions of all the parties are kept open.

14. In the circumstances, the writ petition is dismissed but subject to the above observations. It is reiterated that all the contentions of the parties are kept open including in proceedings that any of the parties may adopt.

There shall, however, be no order as to costs.