

(2002) 02 SC CK 0001

In the Supreme Court Of India

Case No : Civil Appeal; Special Leave Petition (Civil) 1340 of 2002, 3745 of 2001

Gagan Foods Processors (P) Ltd.

APPELLANT

Vs

Union Territory, Chandigarh and Others

RESPONDENT

Date of Decision : 19-02-2002

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 8A
Constitution of India, 1950 — Article 226

Citation : (2002) 1 JT 88 Supp

Hon'ble Judges : M. B. Shah, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted.
2. Heard Mr. J.K. Sibal, learned senior counsel for the appellant and Ms. Kamini Jaiswal, learned counsel for the respondent.
3. It is the say of the appellant that in an auction conducted by the estate officer, union territory Chandigarh, on or about April, 1990, the appellant company was the highest bidder with a bid of Rs. 76,10,000/- in respect of a plot No. 332-33-34, sector 34, City center, Chandigarh and the appellant was required to pay 25% of the bid amount at the time of auction, which was paid by the appellant. An allotment letter, in favour of the appellant, was issued on 5th April 1990 and as per the said letter, the appellant was required to pay the remaining amount by three equal annual installments of Rs. 19,20,000/- each commencing from the year 1991 onwards. It is also stated that the appellant completed the construction of the said property immediately but could not utilise the property in yielding income so as to finance the payment of installment because of lack of timely completion of infrastructural facilities like approach roads and parking by the estate officer, Chandigarh. Hence, the appellant filed civil writ petition No. 4342 of 1993 before the Punjab & Haryana High Court.

4. After hearing learned counsel for both the parties, the said petition was finally disposed of by the High Court by the judgment and order dated 21st September, 1993 and was ordered as under :

"After hearing counsel for the parties and keeping in view the nature of the controversy which has been raised with regard to the work to be completed and the amenities to be provided and also the financial requirements necessary for the purpose, we dispose of this writ petition with the direction to the respondents to complete the approach road to the premises of the petitioners and parking lot in front of their premises by on or before March 31, 1994. The petitioners are in the meanwhile, given time to pay the entire amount due including interest and penalty as may be due on the date of payment by on or before December, 15, 1993. If the amount is not paid by that date, it would be open to the respondents to take necessary proceedings against the petitioner in accordance with law."

5. Against the said order, the appellant preferred SLP before this Court. This Court refused to interfere with the aforesaid order, however by order dated 14th December, 1993 further time to deposit the remaining amount of the installments was given.

6. It has been pointed out that in the meantime, pending writ petition before the High Court, by order dated 5th May, 1993, allotment of the plot in favour of the appellant was cancelled by the assistant estate officer, Chandigarh and the amount deposited by the appellant was forfeited. It is stated that this order was not brought to the notice of the High Court in the pending writ petition.

7. Subsequently, the appellant approached the revisional authority by filing an application that the aforesaid order of forfeiture be cancelled and it be given time to deposit the amount. After hearing both the parties, the revisional authority, namely, advisor to the administrator, union territory, Chandigarh, by order dated 25th October, 1995 allowed the said revision application by holding as under :

"In view of these circumstances and in view of the eagerness shown by the petitioner to clear the outstanding dues, I take lenient view in the matter and restore the site to the petitioner by accepting this revision petition subject to the condition that the petitioner pays Rs. 31.00 lacs within 15 days from the dispatch of this order and all the other outstanding amounts including forfeiture, ground rent and interest as imposed by the estate officer in the two equal installments first installment to be paid within one month and the second installment is to be paid within two months from the dispatch of this order failing which the order of the estate officer shall become operative. Estate officer is directed to reconcile the account statement of the petitioner within a period of 15 days from the dispatch of this order and for this purpose petitioner should be associated."

8. It is admitted position that in pursuance of the aforesaid order, the appellant deposited Rs. 31 lacs towards the part payment. However, it failed to deposit the remaining amount with interest. Thereafter, the appellant applied to the

competent authority for extending the time for making the payment of remaining amount. That application was dismissed by order dated 9th February, 2000 by the competent authority after considering the orders which were passed by the High Court, the Supreme Court as well as the order passed by the advisor to the administrator, who took a lenient view in favour of the appellant. The chief administrator observed that the appellant has failed to comply with the orders of the advisor to the administrator and this was not a fit case for granting further time to make the payment. Hence, the appeal filed by the appellant was dismissed.

9. That order was challenged by filing a revision petition no. 53 of 2000 before the advisor to the administrator. That revision application was dismissed on 31st March 2000 by considering the orders passed by the High Court as well as by this Court. Review application, filed by the tenant who was occupying the premises, was also dismissed on the ground that the tenant was not having any locus standi to challenge the resumption order.

10. Hence, the applicant approached the High Court by filing writ petition no. C.W.P. No. 11376 of 2000. That writ petition was dismissed by the High Court by taking into consideration its previous order and the order passed by this Court in the special leave petition. The High Court also held that it was the duty of the appellant to challenge the resumption order dated 5th May, 1993 in the previous petition and despite the order passed by the High Court as well as this Court, it continued to retain the possession of the premises. The court arrived at the conclusion that the appellant was trying to raise the plea that de novo proceedings had to be commenced and such contention cannot be accepted. The court also held that admittedly an amount of more than a crore of rupees was due and payable by the appellant. The appellant, thereafter, filed this SLP before this Court.

11. At the time of admission hearing of this matter, on 27th July, 2001, this Court issued notice to the respondents and it has ordered as under:

"In the meantime petitioner to deposit Rs. 1,10,00,000/- (Rupees one crore ten lacs) with respondent No. 1 - authority. That deposit shall be accepted by the authority without prejudice to its rights to resume possession of the disputed property."

12. At the time of hearing of this matter, learned counsel for the appellant submitted that the impugned order of resumption passed by the authority is, on the face of it, illegal and erroneous. The direction given by the High Court in previous writ petition to complete the approach road to the premises of the appellant and parking lot in front of their premises were not complied with by the authorities. He also submits that even at present the appellant is prepared to deposit the remaining amount, if any, with penal interest at the rate of 24%. It is his contention that forfeiture powers are to be resorted only in extreme cases and are not to be used when the appellant is willing and prepared to pay the

entire amount. These powers are discretionary and the discretion is to be exercised after taking into consideration the facts and circumstances of each case. As against this, learned counsel appearing on behalf of the respondent submitted that, despite the specific direction given by the High Court as well as by this Court, the appellant has failed to deposit the amount and therefore, the authority was not justified in taking the drastic action of resuming the plot allotted to the appellant.

13. It is an admitted fact that the appellant has deposited Rs. 31 lacs, as directed by the revisional authority on 16th October, 1995. It applied for giving more time for depositing the remaining amount. That prayer was rejected finally by the revisional authority on 31st March, 2000. Thereafter, it approached the High Court and at that time it prayed that it was prepared to deposit the entire amount due and payable by it with interest. That prayer was rejected by the High Court on an erroneous ground that the appellant has suppressed some facts. It is apparent that there is no suppression on the part of the appellant because the appellant has already produced the order dated 31st March, 2000 before the High Court in which the facts relating to previous proceedings are narrated. The High Court also wrongly placed a burden on the appellant that the appellant had not disclosed that there was a resumption order on 5th May, 1993 at the time when the previous petition was heard. In our view, at the time of hearing of the said petition, the respondents were also represented by the learned counsel. It was the duty of the respondents to point out that the petition for giving the relief, as prayed for in the petition, had become infructuous on the ground that there was a resumption order. In any set of circumstances, that resumption order was set-aside by the revisional authority in 1995 by giving it time to deposit the amount. In compliance with the said order, the appellant deposited Rs. 31. lacs immediately and for remaining amount, it sought time. That prayer was rejected. Hence, these proceedings arise. Further, in pursuance of our direction, admittedly, the appellant has deposited a sum of Rs. 1,10,00,000/-, as directed by the respondent authority. Undisputedly, appellant has constructed multi-storied buildings on the allotted plot. It is to be borne in mind that the power of resumption of the plot u/s 8A of the Capital of Punjab (Development and Regulation) Act, 1952 (Punjab Act No. 27 of 1952) is a discretionary and enabling power. It is not mandatory for the authority to order resumption in each and every case, but to consider the facts and circumstances of each case before passing the order of resumption . The authority has to exercise its judicial discretion fairly before passing such order. In the facts of the present case as stated above, the authority ought to have exercised its discretion by giving some time to the appellant to deposit the remaining amount by charging penal interest.

14. Learned counsel appearing on behalf of the appellant further submits that the appellant is prepared to deposit further amount as calculated by the respondent authority as per the sheet at page-155 subject to a rider that whatever it has recovered from the tenants, should be adjusted on due dates of its receipt towards the payment. The result would be that the respondents are

directed to recalculate the amount payable by the appellant after giving credit of the rent amount from the date of its receipt from the tenants. It is the submission of learned counsel for the appellant that if the amount is recalculated accordingly, hardly any amount would be due and payable by the appellant. Hence, the impugned order passed by the competent authority resuming the plot and forfeiting the amount deposited by the appellant requires to be set aside.

15. In this view of the matter, this appeal is allowed. The impugned order of resumption passed by the competent authority is set aside on the basis of the facts of this case. However, the appellant shall pay any amount, which is found due and payable by the respondents, within one month from the date of the receipt of the demand letter after proper calculation as indicated above. No costs.