
(2002) 12 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 17821 of 1997

G.S.R. Hotels Ltd.

APPELLANT

Vs

Municipal Corporation and Others

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Chandigarh Lease Hold of Sites and Buildings Rules, 1973 — Rule 10
Constitution of India, 1950 — Article 226

Citation : (2003) 134 PLR 3 : (2003) 1 RCR(Civil) 619

Hon'ble Judges : R.L. Anand, J;K.S. Garewal, J

Bench : Division Bench

Advocate : Vinod Sharma, for the Appellant; R.N. Raina, for the Respondent

Final Decision : Allowed

Judgement

R.L. Anand, J.—By this judgment, we dispose of two Civil Writ Petitions i.e. C.W.P. No. 17821 of 1997 M/s G.S.R. Hotels Limited v. Municipal Corporation, Chandigarh and others, and Civil Writ Petition 6376 of 2000 of the same title as in our considered opinion both these writ petitions can be disposed of by the judgment having common question of law and fact.

2. In Civil Writ Petition No. 17821 of 1997 the petitioner has made a prayer under Articles 226/227 of the Constitution of India seeking direction of this Court against respondent No.1 to refund 25% of the premium paid by the petitioner for the sale of 5-Star Hotel site in Sector 35-B, Chandigarh along with interest at the rate of 18 per cent per annum from the date of receipt till its refund on account of its failure to hand over the site to the petitioner, in violation of the statutory rules as contained in the Chandigarh Leasehold of Sites and Building Rules, 1973.

3. The prayer made in Civil Writ Petition No.6376 of 2000 is that a writ in the nature of certiorari be issued against the respondents quashing the impugned order passed by respondent No. 2 (Annexure P-12) vide which the petitioner-company was called to deposit the ground rent amounting to Rs.37,57,69,916/-

and a sum of Rs. 1,87,88,496/- as a penalty (5% of amount due) within three months from the date of the issuance of the said notice.

4. The brief facts of both the writ petitions are that petitioner is a Company registered under the Companies Act. The Municipal Corporation of Chandigarh, respondent No.1, issued an advertisement in all the leading newspapers for the auction of 5-Star Hotel site in Sector 35-B, Chandigarh and the date of public auction was fixed as 28.4.1997. The general terms and conditions of sale of Hotel site in Sector 35-B, Chandigarh by auction for 99 years leasehold basis, were circulated at the time of auction which provided that in addition to the auction premium, rent at the rate of 2 1/2 per cent premium was payable every year for the first 33 years. The rent could be 3-3/4 per cent for the next 33 years and 5 per cent of the premium for the remaining 33 years of the lease period.

Clause 4 of the terms and conditions as circulated reads as under:-

"4. 25% of the bid shall be accepted in cash or by means of demand draft at the fall of the hammer and remaining 75% premium may be paid either in lump sum within 30 days (including date of auction) from the date of auction without any interest or the balance 75% premium shall be payable in three equated annual instalments along with interest at the rate of 18% per annum. The first instalment shall become payable after one year of the date of auction. In case the instalment of premium and ground rent are not paid on due date, interest @ 24% per annum shall be payable from the due date to the date of actual payment. The Assistant Commissioner, may in his absolute discretion allow the successful bidder to deposit, in the prescribed mode of payment, not less than 10% of the bid on the condition that the difference between the amount deposited and 25% of the bid shall be deposited in the same manner within 30 days of auction (including the date of auction)". It was also provided that the sale of site was to be governed by the provisions of the Capital of Punjab (Development and Regulation) Act, 1952 and the Chandigarh Leasehold of Sites and Building Rules, 1973 as amended from time to time and the rules made thereunder.

5. As per clause 10 of the terms and conditions it has been further provided that after receipt of 25 per cent of the premium, it was incumbent upon the lessee to execute a lease deed within six months of the date of auction or within such extended period as was to be allowed by the Assistant Commissioner for sufficient reasons and failing which the Assistant Commissioner was given a right to cancel the lease and forfeit up to 10 per cent of the premium. The petitioner states that Chandigarh Leasehold of Sites and Buildings Rules, 1973 provides that in case of auction of a site, 25% of the bid as accepted by the Auctioning Officer is to be paid on the spot by the intending lessee in the prescribed mode of payment in accordance with rule 12 of the Rules, with a proviso that the Estate Officer in his absolute discretion can allow a successful bidder to deposit in the prescribed mode of payment 10 per cent at the time of auction and the difference i.e. 15 per cent within 30 days of auction.

Rule 10 of the Rules reads as under: -

"10. Delivery of possession: - Actual possession of the site/building shall be delivered to the lessee on payment of 25 per cent of the premium in accordance with rule 8 or rule 9 as the case may be:

Provided that no ground rent payable under rule 13 and interest on the instalments of premium payable under sub-rule (2) of rule 12 shall be paid by the lessee till the actual and physical possession of the site/building is delivered or offered to be delivered to him, whichever is earlier."

6. The petitioner maintains that the reading of Rule 10 (supra) shows that it was incumbent upon respondent No.1 to hand over the physical possession of the site to the petitioner on receipt of 25% of the premium on 27.5.1997, as on the date of auction i.e. 28.4.1997 the petitioner had deposited 10 percent of the bid amount and balance 15% was paid on 27.5.1997 i.e. within 30 days of the date of auction. Thus, a total amount of Rs.9,13,75,000/- (Rupees nine crores thirteen lacs seventy five thousand only) was deposited by the petitioner with respondent No. 1. With the hope that the possession of the site would be immediately handed over as per the statutory rules governing the terms and conditions of auction, the petitioner immediately took steps to implement the project to avoid escalation in the cost, as the project cost had already been worked out by the petitioner and means of financing were tied up. The petitioner alleges and maintains that after the payment of 25% of the premium on 27.5.1997, he negotiated for undertaking civil work with M/s R.S. Builders and paid an earnest money of Rs. 10 lacs on the condition that detailed civil work agreement would be executed latest by 31.10.1997, as according to the statutory rules, lease deed between the parties was to be executed within six months of the date of auction i.e. by 28th of October, 1997.

7. The grouse of the petitioner now is that respondent did not take any step with respect to the sale of site in spite of having been informed that the petitioner is taking active steps with regard to implementation of the project and is incurring heavy expenses in this regard. It is also alleged by the petitioner that besides the payment to the civil contractor, the petitioner also tied up with the Architect, Electrical, Air Conditioning, Plumbing contractors and paid Rs.2,50,000/- to the Architect and Interior Decorators, Rs. 5,00,000.00 to the Electrical, Air Conditioning and Plumbing Contractor Dr. Jain, and Rs. 1,00,000.00 were paid towards services in out houses to Mr. Narinder Verma. Besides that the petitioner had also developed infrastructure and appointed employees for execution of the project, in addition to the expenses incurred for registration of the Company with the Registrar of Companies amounting to Rs.7,56,960/- besides other expenses incurred for the purposes.

8. Now the case set up by the petitioner is that the possession of the site was not handed over in terms of rule 10 of the rules aforesaid in spite of receipt of 25 per cent of the premium, and a letter was written to respondent No.1 for handing

over the possession, copy of which is Annexure P-2 on the record and this letter was issued on 7.7.1997. Besides making the above request, the petitioner-company also requested respondent No. 1 to allow the change of architectural design to be in consonance with the 5-Star Hotel to be set up in Sector 35-B, Chandigarh and copy of letter dated 14.7.1997 written in this behalf is Annexure P-3 and without assigning any reason the request was rejected by respondent No.3 vide order dated 19.8.1997. The petitioner again brought to the notice of the respondents that as per discussion with the multinational Hotel Chains, it was noticed that the proposal given by the respondents was not in consonance with the status of a 5-Star Hotel but no action was taken on this letter of the petitioner nor the respondents took any step to hand over the physical possession to enable the petitioner to proceed with the construction of the Hotel. The petitioner repeated his request for delivery of possession on 30.9.1997 vide Annexure P-6 but to no effect. The petitioner further alleges that according to the statutory rules governing the allotment of leasehold sites, it was incumbent upon the respondents to hand over the physical possession of the site on receipt of 25 per cent of the premium and to execute lease deed within six months thereof but the respondents in violation of the statutory conditions imposed on them, started negotiations with the Chandigarh Administration for finalisation of the draft lease deed enabling it to give the possession. This was done in spite of the fact that vide letter dated 13.8.1997, it was clearly pointed out by the petitioner that according to the rules, possession was to be handed over on 27.5.1997 i.e. on the date of receipt of 25 per cent of the premium. The petitioner finally alleges that respondents besides making payment along with interest are also liable to pay for the damages suffered by the petitioner on account of the lapse on the part of the respondents in the performance of their statutory duties and the petitioner reserves its right to claim damages by taking appropriate legal action. In short the case of the petitioner-company is that as the delivery of possession was supposed to be given by the respondents as per statutory clause 10 referred to above on receipt of 25% of the amount and it has not been given and so much so even the reminder of the petitioner had not yielded any results, therefore, the petitioner is entitled to seek the relief for the quashment of the allotment letter and also for the refund of 25% of the premium deposited by it along with interest at the rate of 18%.

9. Notice of the writ petition was given to the respondents who filed the joint written statement and it was pleaded by them that no legal or fundamental right of the petitioner has been infringed, therefore, the petitioner company has no legal right to file the present writ petition.

10. Respondent Nos.1 to 3 admitted that Hotel site was auctioned in favour of the petitioner and that it also received premium amount of 25% but it is the case of the respondents that possession was offered to the petitioner vide Memo dated 4.12.1997 as per document R-1 but the petitioner company did not come forward to take the possession of the Hotel site. Again the petitioner was asked to take the possession of the site on 9.12.1997 but it failed to turn up to take the

possession. The respondents also denied the other allegations of the petitioner company that it was negotiating with the third party for the implementation of the project with regard to the change of architectural design. It is the stand of the respondents that as per the terms and conditions of the auction the petitioner company was not entitled to any change or relaxation after accepting the condition of auction. In reply to Para No. 22/23 of the writ petition, it was submitted by the respondents that as the possession of the site could not be offered within six months of the auction, therefore, in the instant case six months time will be counted from the date of the possession of the site for the purpose of the execution of the documents. The demand of the petitioner company for the refund of the premium amount is not justified nor the petitioner company is entitled to any interest. In short, the defence of the respondents is that the petitioner company has failed to perform its part of the contract, therefore, it is not entitled to the refund of the amount of Rs.9,13,75,000.00 which is 25% of the total premium which comes to Rs. 36.55 crores. As the respondents have not violated any conditions of the auction, therefore, the writ is liable to be dismissed.

11. The petitioner company filed a rejoinder to the written statement of the respondents in which it reiterated the averments of the writ petition by denying those of the written statement.

12. Yet a short rejoinder to the replication was also filed by the Municipal Corporation in which it has reiterated the stand of the written statement.

13. Along with the writ petition some documents have been placed on record by the petitioner. Annexure P-1 is letter dated 15.6.1997 written by R.S. Builders to the petition vide which it was proposed that M/s R.S. Builders will charge a sum of Rs.10 crores for construction of 130 rooms and other civil works as per the specifications. Annexure P-2 is that letter issued by the petitioner company through its Director on 7.7.1997 vide which the respondent No.1 was informed that the petitioner has incorporated a company under the name and style of G.S.R. Hotels Ltd. Annexure P-3 is the letter issued by the petitioner company to the Administrator vide which the petitioner-company requested for the change of the design by showing some flexibility as the proposed design would increase the viability of the project. Annexure P-4 is the letter of the respondents vide which request of the petitioner for the change of the design has been rejected. Annexure P-5 is the letter dated 18.9.1997 vide which the petitioner company made a request for the relaxation of its design etc. Annexure P-6 is a very material letter dated 30.9.1997 which has been issued by the petitioner company in continuation of its earlier letter dated 13.8.1997 and vide this letter the respondent authorities were requested to hand over the possession of the site. It was specifically brought to the notice of the respondents through this letter that it was incumbent upon the respondents to hand over the actual possession of the site on payment of 25% of the premium which stands deposited with the respondents on 27.5.1997, The possession of the site has not been handed over

to the petitioner and this amounts to the violation of the statutory rules known as Chandigarh Leasehold of Sites and Building Rules, 1973. It was also pointed out that in spite of the receipt of Rs.9,13,75,000/- respondent No.1 has not even issued allotment letter, resulting in the blockade of the money of the petitioner company as well as loss of interest to the Corporation. Finally a request was made that the instalment of premium amount will be delayed as the respondent has not delivered the possession of the site. Annexure P-7 is the copy of the letter dated 13.8.1997 vide which a request for handing over the physical possession of the site in question was made and in the letter dated 13.8.1997 again a grouse was raised with the respondents that they are not complying with their statutory obligations in spite of the fact that 25 per cent of the premium has been received by them and the possession of the site in question is not being delivered to the petitioner company so as to allow it to proceed ahead with the project. Annexure P-8 is the copy of the legal notice dated 8.11.1997 and it was categorically alleged by the petitioner that project had failed due to the lapse on the part of the respondents in not handing over the possession of the site in violation of the statutory rules governing the allotment of the plot and not accepting the genuine request of the petitioner for the implementation of the project and the respondent authority was called upon that they have unauthorisedly withheld the amount of Rs.9,13,75,000/- from 27.5.1997 and therefore, the said amount may be released along with interest at the rate of 18 per cent.

14. Some more documents were also field by the petitioner along with its rejoinder which are Annexures P-10 and P-11 on the record agitating the same thing which has been shown in the earlier letters Annexures P-6 and P-7,

15. The respondents have also placed on record the letter dated 4.12.1997 Annexure R-1 vide which the petitioner-company was informed to take the possession immediately by visiting its office and the possession could be taken on 9.12.1997. With the short rejoinder, documents Annexures R.2 to R.31 have also been placed on record but for our purpose Annexure R-25 is a relevant document. This Annexure R-25 pertains to the general terms and conditions of the sale of the Hotel site in Sector 35-B Chandigarh.

16. We have heard Shri Vinod Sharma, learned counsel appearing on behalf of the petitioner and Shri R.N. Raina, learned counsel appearing on behalf of the respondents and with their assistance have gone through the record of this case.

17. The point which survives for determination in Civil Writ Petition No.17821 of 1997 is whether there was any breach/violation on the part of the respondent authority when it failed to deliver the possession of the site in question to the petitioner within a reasonable time and also whether the petitioner company is entitled to the refund of the amount of Rs.9,13,75,000/- if so at what rate of interest?

18. It is the case of the parties that the site in question was auctioned for the

purpose of a 5-Star Hotel to the petitioner company which was the highest bidder. Rule 10 of the relevant Rules lays down that actual possession of the site/building shall be delivered to the lessee on payment of 25% of the premium in accordance with Rule 8 or 9 as the case may be and as per the provision of Rule 10, no ground rent payable under Rule 13 and interest on the instalments of premium shall be paid by the lessee till the actual physical possession of the site/building is delivered or offered to him whichever is earlier. We can take a judicial notice of the things that cost of constructions rising day by day. We can further take notice that this project is going to run into crores and any delay on the part of the respondent authorities in the non-implementation of its obligation would be an extra burden on the financing of the petitioner which has arranged the finance from several sources. So much so the construction of hotel is not a one day job nor it is a one man show. For the implementation of such a huge project many things are required such like contractor who will construct the building, contractor who will do the electrical work, contractor who will do the wooden work, contractor who will do interior decoration and so on. Every day will cost to the petitioner if the respondent authority does not obey its terms. There is no dispute that 25% of the premium amount was deposited by the petitioner on 27.5.1997 and in these circumstances, it was obligatory on the part of the respondents authorities to deliver the possession of the site immediately on receipt of the amount because the obligation was reciprocal. Receipt of the premium amount and the delivery of possession were the simultaneous responsibilities which were supposed to be performed by the respective parties. In the present case, it is the admitted position that respondents were unable to deliver the possession to the petitioner. Firstly, the letter (Annexure R-I) written by the respondent authorities to the petitioner on 4.12.1997, cannot be said to be written within a reasonable time. By this letter, it was intimated to the petitioner that its company can take the possession through its authorised representative on 9.12.1997. Respondent authority through written statement has not been able to show why the possession could not be delivered when they had already received 25% of the premium amount. This delay of 7 months in the given circumstances, is a culpable delay/negligence, which gives right to the petitioner company to call upon the respondent authorities for the refund of the premium amount which was deposited earlier. When the respondent authority was not in a position to deliver the possession of the site to the petitioner, in that eventuality, to call upon the petitioner through Annexure P-I2 filed in Civil Writ Petition No.6376 of 2000 to deposit a sum of Rs.37,57,69,916/- and also a sum of Rs. 1,87,88,496/- by way of penalty, would be unjustified act and such an act cannot be endorsed. This demand, in our opinion, is wholly arbitrary and has to be quashed and it is ordered accordingly. We are of the opinion that the attitude of the respondents in the present case when they have not offered the possession within a reasonable time is unfair, arbitrary and such an attitude cannot be accepted in any civilised society much less in a democracy where the people are governed by rule of law and not of man. In this regard we can place reliance upon the judgment of the Hon'ble Division Bench of this Court reported as

2001(1) P.L.J. 312 Opinder Pal Singh and others v. The Adviser to the Administrator U.T. Chandigarh, where a similar point has been decided. The respondent authorities cannot take the benefit of its own wrongs.

19. Faced with this difficulty, learned counsel appearing on behalf of the respondents submitted that the present writ petitions are not legally maintainable as the petitioner company is invoking the exercise of a contractual right which is not permissible under Article 226 of the Constitution of India and in support of his contention Shri R.N. Raina relied upon the judgment of the Hon"ble Supreme Court reported as Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, We have gone through this judgment. It is not applicable to the facts in hand.

20. Here is a case where the petitioner company is agitating its fundamental rights for the refund of the amount on account of the failure of the consideration as respondents failed to discharge its obligations. It is the grouse of the petitioner that respondents did not offer to deliver the possession on receipt of the 25% of the amount nor it could offer the possession within a reasonable time. The respondent authority rose from slumber somewhere on 4.12.1997. On the contrary it is established on the record that petitioner company had been asking for the early delivery of the possession. In these circumstances, the pleas taken up by the respondent authority against its own citizens for the forfeiture of the amount and further calling upon the petitioner to deposit the premium amount along with interest will be wholly unjustified.

21. In this view of the matter, we allow both the aforesaid writ petitions and give directions to the respondent authorities to refund a sum of Rs. 9,13,75,000/- (Rupees nine crore thirteen lacs and seventy five thousand) with interest at the rate of 12% which shall be calculated with effect from 1.6.1997 till the date of the payment. We further quash the notice dated 3.5.2000 Annexure P-12 of Civil Writ Petition No. 6376 of 2000 vide which the petitioner company was called upon to deposit a sum of Rs. 37,57,69,916/- (Rupees thirty seven crores, fifty seven lacs, sixty nine thousand, nine hundred and sixteen) besides a sum of Rs. 1,87,88,496/- (Rupees one crore, eighty seven lacs, eighty eight thousand four hundred and ninety six) as a penalty, within three months, as in our opinion, this demand was totally arbitrary and unjustified. There shall be no order as to costs in both the writ petitions.

Sd/- K.S. Garewal, J.