
(2015) 09 P&H CK 0030

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 20613 of 2014 (O&M)

Jay Nikki Industries Limited

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Citation : (2015) 09 P&H CK 0030

Hon'ble Judges : S.J. Vazifdar, A.C.J; Tejinder Singh Dhindsa, J

Bench : Division Bench

Advocate : Harsh Bunger, for the Appellant; Rahul Dev Singh, DAG, Advocates for the Respondent

Judgement

S.J. Vazifdar, Acting C.J—The petitioner seeks a writ of certiorari to quash a letter dated 19.03.2013 resuming the plot allotted to it, a letter dated 26.03.2013 cancelling the possession of the plot, an order of the appellate authority/Committee dated 06.08.2013, a letter/order dated 15.04.2014 declining the petitioner's representation and an order dated 06.08.2014 rejecting its application for review. The petitioner has also sought a writ of mandamus directing the respondents to consider its claim for restoration of the plot on the original terms and conditions.

2. By an order dated 27.01.2009, respondent No. 4-Haryana State Industrial and Infrastructure Development Corporation Limited (HSIIDC) allotted in favour of the petitioner a plot admeasuring 7200 square metre at a tentative price of about Rs. 6.48 crores. The petitioner accepted the allotment. Pursuant thereto an agreement dated 23.12.2009 was entered into between the parties. Under cover of a letter dated 23.12.2009, the petitioner forwarded two demand drafts of the aggregate value of Rs. 46.53 lacs and requested respondent No. 4 to reschedule the payment of the balance amount into ten equal half-yearly instalments and to reduce the rate of interest by three per cent.

Respondent No. 4, however, by a letter dated 20.04.2010 revised the payment

schedule by permitting the petitioner to pay the balance amount in eight half-yearly instalments commencing from 27.7.2009 and ending on 27.01.2013. By a further letter dated 24.09.2010, respondent No. 4 submitted a revised schedule of payment granting the petitioner the facility for payment of the balance amount in five instalments commencing from 01.01.2011 and ending on 01.07.2013. The petitioner was informed that in case of default interest @ 14% per annum would be charged.

3. On 01.01.2011 Estate Management Procedure (EMP)-2011 was introduced.

4. By a letter dated 14.07.2011, addressed to the petitioner, respondent No. 4 stated that physical possession of the plot was made effective from 27.01.2009; that as per the terms and conditions of the allotment and the said agreement the petitioner was required to start construction on the plot within a period of two years from the date of the offer of possession and to implement the project within three years and also observed that construction had not even been started. The petitioner was, therefore, called upon to deposit the extension fee along with interest and to submit an undertaking that it would start construction activity immediately and implement the project within three years with a one year general extension. Several other conditions were also imposed. The petitioner was informed that it was governed by the Industrial Policy 2011/EMP-2011.

5(A). The petitioner by a letter dated 16.08.2011 replied to an earlier letter of respondent No. 4 dated 13.05.2011. After referring to the letter of allotment and the agreement, the petitioner stated that due to the instalments being rescheduled, it was not eligible to take possession of the said plot till 24.09.2010. As we mentioned earlier, by the letter dated 24.09.2010 respondent No. 4 had finally rescheduled the instalments. The petitioner accordingly requested respondent No. 4 to offer it possession of the above plot to enable it to complete the project by 27.01.2013.

(B) By a letter dated 23.11.2011, respondent No. 4 requested the petitioner to approach its Senior Manager for taking over possession of the plot. Thus, according to petitioner, the possession of the plot was offered only on 23.11.2011.

6. Under cover of a letter dated 24.01.2012, respondent No. 4 forwarded to the petitioner the zoning plan which entitled it to commence construction. The letter was received by the petitioner on 27.01.2012. On behalf of the respondents, Clause 4.3 (ii) of EMP-2011 was relied upon. The Clause provides that the offer of possession shall be accompanied with a copy of the zoning plan as applicable to the said category of plots. The petitioner contends that after taking physical possession of the plot, it immediately applied to HSIIDC for the zoning plan in respect of the plot allotted but that the same was approved only on 23.01.2012.

7. Thus, according to the petitioner, the period for complying with the terms and conditions of the letter of allotment and the agreement commenced at the

earliest only on 23.11.2011 when it was offered possession of the plot. In fact, according to the petitioner, the period would commence only from 27.01.2012 i.e. the date on which it received the zoning plan under cover of the fourth respondent's said letter dated 24.01.2012.

8. This brings us to the impugned action.

"(A) Respondent No. 4 by the impugned letter dated 19.03.2013 stated that the petitioner had failed to comply with the terms and conditions of the allotment letter and the agreement, inasmuch as, it had failed to pay the balance amount as required and it also failed to commence construction as per the schedule stipulated. The letter referred to a show cause notice dated 17.01.2013 and to the petitioner having been afforded an opportunity of being heard. The petitioner was informed that the committee had refused the application for further extension and that respondent No. 4 had, therefore, resumed the plot.

(B) By the impugned letter dated 26.03.2013, respondent No. 4 informed the petitioner that the possession of the plot stood cancelled and withdrawn and would revert to respondent No. 4.

(C) The petitioner filed an appeal against the aforesaid decision. The appeal was disposed of on 25.04.2013 by the Appellate Committee headed by the Principal Secretary, Industries and Commerce Department, Haryana, constituted under the EMP-2011. The appellate authority held that the plot had been rightly resumed. The appellate authority, however, passed the following order:--

"4. However, considering the standing of the appellant as an Industrialist and keenness of the Appellant to implement the project and their willingness for payment of current price of the plot, the committee declared to re-allot the plot in favour of the Appellant company, at the rate applicable for financial year 2013-14 enhancement, if any. The amount deposited by the Appellant towards the price of the plot (towards principal excluding interest and penal interest shall be adjusted towards the revised price of the plot. The allotment shall be governed by the provisions of EMP-2011."

(D) Under cover of a letter dated 06.08.2014, respondent No. 4 forwarded a copy of the order of the Appellate Authority and raised the following demand:--

"Accordingly, fresh Regular Letter of Allotment (RLA) on account of re-allotment of the plot at allotment rate of Rs. 12,500/- (Applicable for financial year 2013-14) plus enhancement @ Rs. 2687/- per sqm., as per decision of the committee shall be issued to you separately."

9. Mr. Bunger, the learned counsel appearing on behalf of the petitioner, submitted that the observations in paragraph-4 of the order of the appellate authority do not indicate a concession on the petitioner's part. According to him, the petitioner had not abandoned its challenge to the impugned order resuming the plot by accepting the directions in paragraph-4 of the order. He contends that at the highest, paragraph-4 contains the decision of the appellate authority to

grant the petitioner a facility to retain the plot despite its finding that the plot had been rightly resumed. The petitioners' willingness to pay the current price of the plot as recorded in paragraph-4 is only in the alternative to the main challenge.

10. The above submission ought really to have been raised by way of an application for clarification to the Appellate Authority. In paragraph-4, the appellate authority has recorded the petitioner's willingness to pay the current price of the plot. Whether it was in the circumstances and in the manner as suggested by Mr. Bunger or not is a matter that the Appellate Authority ought to clarify. If that is not possible for any reason, it may be necessary for this Court to interpret the order. As we intend remanding the matter in respect of another contention which we will refer to shortly, we leave it open to the petitioner to seek a clarification in this regard before the appellate authority.

11. As we mentioned earlier, Mr. Bunger relied upon Clause 4.3(ii) of EMP-2011 to contend that the zoning plan ought to have been given to the petitioner when the possession of the plot was offered but that the same was offered only on 27.01.2012. We, however, see no reason to interfere with the finding that there was, in fact, non-compliance with the terms and conditions of the allotment letter and the agreement on this ground. Although the zoning plan was issued on 27.01.2012, the question still remains as to whether the petitioner was prevented from obtaining the same earlier or from submitting the same for approval earlier. The petitioner had not raised such a contention before the authorities. There is nothing on record that suggests that the petitioner had asked for the zoning plan when possession of the plot was offered. Nor is there anything on record to suggest that despite the same the respondents failed to furnish the zoning plan.

12. We intend interfering with the order only to a limited extent and in a restricted manner. Mr. Bunger raised an additional point before us. He contended that in identical circumstances an associate/sister concern of the petitioner, namely, M/s. Jay Yushin Limited also faced proceedings for resumption. M/s. Jay Yushin Limited also filed an appeal against the order of resumption contending before the Appellate Authority that the zoning of the plot was not prepared by the Corporation and was not even given to the Company at the time of possession and, therefore, the company was not at fault for not complying with the requirements of the letter of allotment. The appellate authority passed the following order:--

"3. After going through the facts of the case on record, the committee observed that the corporation was obliged to prepare a zoning plan and provide the same to the Appellant alongwith the offer of possession. The Appellant could not be penalized for non-availability of zoning plan with the building plan approval authority. Finding merit in the appeal, the Committee decided to allow the appeal and set aside the resumption order dated 21.03.2013. The Committee further held that the allottee would be allowed three years time from the date of issue of

zoning plan dated 15.11.2012, excluding the period of resumption i.e. from 21.03.2013 to the date of communication of decision of the Appellate Committee."

13. It is not possible for us to decide whether there is any comparison between the case of M/s. Jay Yushin Limited's case and the petitioner's case before us. It will be necessary to examine the facts of both the cases to see if there is in fact any comparison between them. This exercise obviously has not been undertaken as yet. As fresh facts are likely to be involved, it will be necessary for the appellate authority to consider this issue.

It is clarified, however, that even this point would be open to the respondents only in the event of the Appellate Authority coming to the conclusion that the petitioner had not abandoned its challenge to the order of resumption and had expressed its willingness for payment of the current price of the plot as observed in paragraph-4 of the impugned order of the Appellate Authority. If the Appellate Authority observes that the petitioner had consciously abandoned its challenge on merits and had unconditionally confined the appeal only to the revocation of the order of resumption upon being permitted to pay the current price of the plot, the contention regarding parity with the case of M/s. Jay Yushin Limited shall not be considered. Even in this respect, all the contentions on facts and on law are kept open.

14. In this view of the matter, we confirm the finding of resumption as well as the facility granted by the Appellate Authority to re-allot the plot in favour of the petitioner. The only issue to be decided by the Appellate Authority on remand is whether there is any comparison, similarity or parity between the case of M/s. Jay Yushin Limited and the petitioner's case entitling the petitioner to be granted the same facility. Depending upon the finding, the Appellate Authority shall determine the rate at which the allotment of the plot ought to be made in favour of the petitioner. This issue shall, however, be decided by the Appellate Authority only in the event of it coming to the conclusion that the petitioner had not consciously abandoned the challenge to the order of resumption and had unconditionally confined the appeal only to the revocation of the order resuming the plot upon being permitted to pay the current price of the plot.

The writ petition is accordingly disposed of.