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(2014) 06 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3947 of 1990 (O&M)

M.P. Gaur APPELLANT

Vs

Haryana State Industrial Development Corporation Limited RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Citation : (2014) 06 P&H CK 0034

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Rajesh Arora, Advocate for the Appellant; Rajvir Singh Sihag, Advocate for the Respondent

Judgement

K. Kannan, J.—The review application has been filed at the instance of Haryana State Industrial Development Corporation Limited (now Haryana State Industrial and Infrastructure Development Corporation Limited), pointing out to the fact that the case had been decided in its absence by merely following yet another decision rendered in CWP No. 16258 of 1989, dated 12.09.2011, quashing the order of cancellation of allotment and directing the sale of the property. The application is brought for review for two reasons: (i) the court has not verified the actual fact relevant for consideration in CWP No. 3947 of 1990 were not congruous to the case dealt with in CWP No. 16528 of 1989. The application of the decision to the facts of the case was not, therefore, correct; (ii) the second reason given was that the Corporation itself was not represented through counsel on the date of disposal and, therefore, the presentation of the case on behalf of the Corporation was not done in its proper perspective. This, according to the petitioner, not resulted in miscarriage of justice.

2. I have already held that the case disposed of earlier by merely relying on the decision of CWP No. 16528 of 1989 was erroneous and it would require to be dealt with on its own merits. I have heard the counsel for the parties.

3. The petitioner had been originally given a provisional allotment of an industrial

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plot and Rs. 11,000/- being 10% of the cost of the plot was received on 28.02.1984. The allotment had been subject to an important condition of presenting a viable project and for completion of the same before a particular date. The time specified was crucial, since the allotments had been on special considerations for industrial growth and was not for mere speculative transaction of sale. The provisional letter of allotment which was issued contained a direction to the allottee (i) to secure a letter of intent from the Director General of Technical Development; (ii) get drawings of the unit approved by the Senior Town Planner; (iii) secure loan to meet the cost of the land, building and machinery; and (iv) furnish a list of plant and machinery to be installed. It is matter of record that all these transactions could not be completed within the period mentioned and according to the petitioner, the delay had been caused by the Corporation itself. A major obstacle was only with regard to presenting a viable source of funding for the project. The Corporation was contending that the petitioner had not been able to give any authentic proof for documentation to set up the unit. As regards the actual machineries also, it was clear that the petitioner did not have the funds to purchase the same, but he has a curious case of his intention to shift the machinery from yet another unit. The transactions to test the capabilities of the petitioner could be done through the documents Annexures P1, P4, P8, P17, P25 and P27.

4. We have already set out the important four terms of provisional allotment under Annexure P1. By the letter issued by the petitioner on 28.08.1985, the petitioner was asking for extension of time on the ground of some domestic problems. While the petitioner was able to get the unit registered with the Director of Industries and an approval of the building plan from the District Planner, he was unable to show the source of funding for the project within the time. The petitioner was himself giving a reason under Annexure P7 that without taking possession of the property, it would be difficult to secure the necessary funding. It is not as if, the petitioner did not know the conditions imposed requiring of fulfillment of the formalities mentioned in the letter of allotment. It is in that context Annexure P8-the letter written by the Corporation on 28.11.1985, assumes significance. They pointed out in that letter that the question of delivery of the property cannot be considered at all, for, that would mean giving of new concession to the petitioner and allowing him to take possession even without getting due approval for raising the amount for setting up an industry. Annexure P8 did not actually close the offer, it kept the prospect of allotment formalities to be completed alive by providing a further period of 60 days, but when the petitioner was making a letter on 19.05.1986 (Annexure P12), the petitioner was still explaining to the Corporation about how he was proceeding with the IDBI and HFC to apprise the project proposals and clear the loans. The letter dated 19.05.1986 makes evident that the funding had still not been approved and the petitioner was only seeking to secure the approvals in a short time and inform the Corporation. Still later on 24.10.1986, the Corporation had pointed out to the petitioner that against the project cost of Rs. 20 lakhs as originally submitted by

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the petitioner, he was able to show his own bank account only to the tune of Rs. 4 lakhs and there was a large gap of the amount that was necessary for the project to take off and the resources that were available to the petitioner. The Corporation still provided for time of 15 days to give the source of balance of money. In response to this letter, the petitioner had suddenly sliced down the entire budget and he was trying to make out a case that the existing amount which he had was itself sufficient and the total cost as originally envisaged may not be necessary. It could be noticed at least that on 06.05.1987, all the necessary documents that had to be furnished even as per the original allotment letter had not been furnished. The last extension had been made on 24.06.1987 for a period of 6 months and a notice to that effect had been issued under Annexure P27. The final order which is impugned in the petition has been passed on 15.03.1989 pointing out to the fact that the balance-sheet furnished merely evidenced the fixed assets to a motor car and furniture without mentioning even plant and machinery available with the firm for shifting and, therefore, it was being cancelled. The petitioner was trying to explain that the machineries were intended to be shifted from yet another place in Delhi-39 where a similar project of copper wire drawing in the name of M/s. Gaur Electrical existed and, therefore, all the machineries were available.

5. From the several communications which were sent, it could be noticed that the project which must have been started immediately within 3 months was getting delayed more than a period of 4 years, essentially on account of inability of the petitioner to convince the Corporation both the source of funding and the viability of the project with the existing resources. In the ultimate bargain in the year 1989, it appears that the petitioner attempted to show that Rs. 20 lakhs was not necessary and that the machineries worth about Rs. 6 lakhs from yet another place could be shifted and the work begun.

6. If the Corporation found that the petitioner had not acted with alacrity to get the project functional within the time stipulated and if in its management wisdom, they chose not to make a final allotment in favour of the petitioner, I cannot substitute the court''s wisdom for recalling the decision to cancel the allotment. The examination of the court for the decision could be only to satisfy whether there was any arbitrariness on the part of the Corporation in cancelling the allotment and whether reasons given were only make believe to defeat the legitimate expectation of an original allottee. I find the decision to cancel the allotment was supported by sufficient reasons and only it can be noticed that even the original allottee has expired. It is perhaps possible for the legal representatives to start a new project in the same place but from the time when it was originally allotted provisionally to the time when this court has taken a decision, nearly 3 decades have passed. The needs of industry have changed, cost factors would have also gone several times fold and I cannot believe that the project that was conceived 3 decades ago, still has relevance now. The only benefit which the petitioner could get under this order is to secure back Rs. 11,000/- which the Corporation had received to be refunded to the petitioner

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with interest at 18% instead of forfeiting the same from the time of receipt of the money till the date of payment. The writ petition seeking for quashing the order of the authority for cancelling the allotment is dismissed. The petitioner''s right shall be only to secure refund of the amount in the manner referred to above. The Corporation shall make the money ready and dispatch to the deceased 1st petitioner''s legal representatives in the name to whom they may wish to secure. The legal representatives who have been impleaded as petitioners are at liberty to communicate the name of the payee within 12 weeks from the date of receipt of copy of this order to secure balance of the directions for payment within a period of 2 months.

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