

(2012) 03 P&H CK 0409
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 6045 of 2012

M/s Los Angeles Food Processing Limited	APPELLANT
Vs	
Haryana State Industrial and Infrastructure Development Corporation and Others	RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Citation : (2012) 03 P&H CK 0409

Hon'ble Judges : Hemant Gupta, J;A.N. Jindal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to the order (Annexure P-20) dated 14.11.2008, whereby the plots No. 47-58, Sector 6, at Growth Centre, Bawal was cancelled and the order in appeal (Annexure P-28) dated 9.11.2009, whereby the appeal against the said order was dismissed. The petitioner was allotted plots in dispute measuring 21600 square meters at a tentative price of Rs. 1,72,80,000/-for the project of setting up a candy plant as per the allotment letter dated 23.6.2005 (Annexure P-1) appended with the petition. In terms of the conditions of letter of allotment, petitioner was to start construction of the building as per the approved building plans within a period of one year of the offer of possession and was required to start commercial production within a period of three years from the date of offer of possession. Relevant clauses from the letter of allotment reads as under:

8. Schedule of Construction & Going into production:

a. The allottee shall start construction of building as per approved building plans within a period of one year of offer of possession and will be required to start commercial production within a period of three years from the date of offer of possession. However, in case, the allottee is not able to start construction within one year, extension can be granted by the HSIDC, Competent authority for a

maximum period of one year, if the allottee is able to satisfy the authority that the allottee could not start construction for reasons beyond his control. A further extension of six months can also be allowed to start construction on payment of prescribed extension fee if the allottee has taken any of the following effective steps for implementation of the project:

- i) Approval of building plans.
- ii) Placement of orders for machinery and other capital goods.
- iii) Financial tie up including public offer of shares.
- iv) Technical and marketing tie up.
- v) Force-Majeure.
- vi) Any other vagary of circumstances beyond investor's control inflicting a serious handicap on his ability to implement the project i.e. severe sectoral or global recession.

Similarly, the period of commencement of production can be extended by the HSIDC/Competent authority for a period of one year subject to the allottee satisfying the authority that he could not go into production within three years of the date of offer of possession for reasons beyond his control and he took effective steps for implementation of the project. Extension in such period for commencement of commercial production beyond three years shall be granted only if 10% of the permissible ground coverage has been constructed and effective steps have been taken by the allottee for the completion of project. Similarly, second extension of one year for completion of the period i.e. after four years from the date of offer of possession will be allowed in case where the allottee has achieved at least 20% of the permissible ground coverage and machinery has been ordered. Both these extensions i.e. for 4th year & 5th year from the date of possession will be subject to payment of extension fee at the rate as determined from time to time and shall be payable by the allottee to the Corporation.

2. In terms of letter of allotment, an agreement (Annexure P-3) was executed between the parties, wherein, the relevant clauses in respect of such construction read as under:

4. *That the allottee shall be required to implement the project, for which aforesaid plot has been allotted, within a period of three years from the date of offer of possession; and that implementation of the project shall mean the commencement of commercial production, after coverage of construction in accordance with the norms specified in EMP and installation of the plant and machinery.

* That the allottee shall be required to implement the project, for which the aforesaid shed has been allotted, within a period of two years from the date of offer of possession; and that implementation of the project shall mean the

commencement of commercial production, after installation of the plant and machinery.

* Strike whichever is applicable.

5. That notwithstanding the period of three years stipulated qua implementation of the project on the plot, the allottee, as far as possible, shall take the following steps within the period of two years from the date of offer of possession of the aforesaid plot:

- a. Taking over possession of the plot.
- b. Submission of building plans.
- c. Placement of orders of machinery and other capital goods.
- d. Financial tie-up.
- e. Technical and marketing tie-up.

The period of three years for implementation for the project on the plot shall be further extended by HSIDC by one year subject, however, to the conditions that the allottee has achieved construction coverage in accordance with the norms specified in EMP, on the aforesaid plot and satisfies that the allottee had taken effective steps for the implementation of the project within the requisite period of three years, but for the reasons beyond his control, he could not commence the commercial production. Provided further that second extension of one year for the completion of the project i.e. after four years from the date of offer of possession, may be granted, only in exceptional circumstances.

The period of two years for implementation of the project by allottee of the shed, may be further extended for one year by HSIDC, in case the allottee has installed/placed orders for installation of the substantial part of the plant & machinery.

Upon failure on the part of the allottee to adhere to the schedule/time available for the implementation of the project HSIDC shall be competent to resume the aforesaid plot/shed after giving show cause notice.

6. That in case the allottee has been granted extension in the implementation of the project beyond the stipulated period of implementation, the allottee shall be required to pay extension fee at the rates, laid down in the EMP, which may be revised from time to time.

3. The undisputed facts are that the possession was offered in letter of allotment itself but at the site, the land was found to be 22860 square meters on actual measurements instead of 21600 square meters allotted. The petitioner was asked to deposit the cost of excess/additional area on 17.2.2006. Petitioner deposited an additional amount of Rs. 10,08,000/-as demanded on 13.6.2006. It was on 20.7.2006, the physical possession of the entire land measuring 22860 square meters was handed over to the petitioner. On 22.6.2007 (Annexure R/5),

petitioner communicated to the respondents that they are in the process of preparation of submission of drawing and will take another 1 or 2 working days to submit the same for approval. In terms of the said letter, on 29.6.2007, building plans were submitted for sanction but the same were sanctioned only on 1.4.2008 (Annexure P-15).

4. The grievance of the petitioner is that without any show cause notice, the plot has been resumed vide the communication dated 14.11.2008 (Annexure P-20). The petitioner filed an appeal which stands dismissed vide the order dated 24.12.2009 (Annexure P-28). Aggrieved against the orders dated 14.11.2008 and 24.12.2009, petitioner invoked the writ jurisdiction of this Court.

5. In the written statement, respondents have attached the documents to show that show cause notice was served upon the petitioner and also that the petitioner who has committed default in raising construction of the building, therefore, the order of resumption has rightly been passed.

6. Mr. Dahiya has vehemently argued that the petitioner could start construction on the basis of self-certification process, as observed in the order dated 24.12.2009 (Annexure P-28) as well. But since, the petitioner has failed to start the construction within three years; and to commence commercial production & also the failure of petitioner to seek extension of time for construction, the order of resumption has been rightly passed in terms of condition of letter of allotment and the agreement executed between the parties.

7. Reliance is placed upon (Annexure R-2) dated 1.2.2008, wherein, time for starting the construction and implementation of the project was extended up to 23.6.2008. Though, the petitioner has denied the receipt of the said communication but for the reason, herein discussed, we need not to examine the question of receipt of show cause notices or of the aforesaid letter as we find that the action of respondents in taking time to sanction building plans and then resuming the building without giving sufficient time to the petitioner to raise construction and to commence production is manifestly arbitrary and illegal.

8. The letter of allotment is categorical to the effect that construction shall be raised in terms of the approved plans. In the agreement also, the terms are that the building will be raised as per the approved building plans. Petitioner has sought approval of the building plans on 29.6.2007. The respondents have taken almost 9 months to sanction the building plans. The petitioner was never informed in pursuance of the communication dated 22.6.2007 (Annexure R-5) and communication dated 29.6.2007 that the approval of the building plans is not necessary and that construction can be raised by the petitioner on the basis of self-certification. Penal consequences of delay of 9 months in communicating the sanction of the building plans cannot be attributed to the petitioner.

9. Still further, once the respondents have decided to extend the time vide the communication (Annexure R-2) dated 1.2.2008, such extension has to be meaningful and not totally illusory. Though, Mr. Dahiya has pointed out that only

10% of the total construction was required to be raised but in terms of letter of allotment, commercial production was also to be commenced within three years, The period of four months available as per the communicated in Annexure R/4 dated 18.8.2008 was just not possible for any reasonable person to raise construction; installation of the plant and machinery and to start commercial production. Therefore, the communication to extend the period of construction was not serving any purpose. Such extension could not be intended to be only extension in paper without granting any benefit to the allottee.

10. The possession was handed over on 20.7.2006. The letter of allotment has the provision of extension of time for another two years subject to the condition mentioned therein whereas the agreement provided for extension for another three years. Still further the petitioner has relied upon a policy dated 16.7.2009 (Annexure P-27), contemplating the extension of period for raising construction. The said policy came to be issued within the period permissible for extension to raise building and start commercial production. Though, the said policy came to be in existence after the order of resumption was passed by the Estate Officer but the said policy was available when the appeal was decided on 9.11.2009. The beneficial provisions of the policy circulated on 16.7.2009 should have been taken into consideration by the Appellate Authority while deciding appeal. The order of resumption was passed within three years of allotment even though the possession was not handed over immediately nor the building plans sanctioned.

11. In view of the said fact, we find that the order of resumption dated 14.11.2008 and the order in appeal (Annexure P-28) dated 9.11.2009, suffers from patent illegality. The said orders are set aside in view the facts and circumstances of the case. Therefore, the present writ petition is allowed with the following directions:

1. The petitioner shall file an affidavit within 30 days from today that the petitioner shall complete construction within one year and start commercial production within next six months i.e. 18 months from the date of handing over of the possession and that it shall pay all charges including extension fee in terms of letter of allotment/ agreement and the policy dated 16.7.2009 within 30 days of the communication of the such dues.
2. The respondents shall deliver the physical possession of the plot to the petitioner on furnishing of the above said affidavit within next 30 days and on deposit of such dues as communicated.
3. The failure of the Petitioner to perform any of the conditions and obligations as mentioned above, the allotment shall be deemed to be cancelled.
4. Liberty is given to the petitioner to file copies of the affidavit in terms of this order before this court as well.