(2005) 10 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 3000 of 1996

Sun Pharmaceutical Industries Ltd. and Others — APPELLANT

Vs

GIDC — RESPONDENT

Date of Decision : 06-10-2005

Acts Referred:
Companies Act, 1956 — Section 4

Citation : (2006) 26 GLH 509 : (2006) 1 GLR 178

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : B.H. Chhatrapati, for Petitioners 1-3, for the Appellant; M.B. Gandhi, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

K.S. Jhaveri, J.—By way of the present petition the petitioner challenges the action of the respondent in refusing to return the transfer fee amounting to Rs. 8,73,600/- levied and recovered from the petitioner No. 1 company.

2. The short facts of the case can be sumamrised as under:

2.1 The petitioners had approached the respondent for a plot at Panoli Industrial Estate for the purpose of setting up a project for bulk drugs. Accordingly the petitioner was allotted Plot No. 25, admeasuring 33600 square meters at Panoli Industrial Estate. An allotment letter dated 28.1.1993 was also issued.

2.2 Petitioner No. 1 is a holding company of petitioner No. 3 Sankalp Laboratories Ltd. Petitioner No. 1 holds about 61% of the paid up equity capital of the petitioner No. 3. All the Directors of petitioner No. 1 company are also Directors of the petitioner No. 3 Sankalp Laboratories Ltd. and accordingly petitioner No. 1 controls the Board of Directors of the petitioner No. 3 Sankalp Laboratories Ltd.

2.3 According to the petitioner, it was decided that the said plot be transferred from petitioner No. 3 to the petitioner No. 1. Petitioner No. 1, therefore, approached the respondent by letter dated 19.3.1993 for transfer of Plot No. 25 at the Panoli Industrial Estate from its subsidiary Sunkalp Laboratories Ltd. to itself. The respondents by letter dated 14.6.1993 issued a transfer order with certain conditions. One of the conditions incorporated in the said letter was that the petitioner company was required to pay a transfer fee at the rate of 20% of the then prevailing price which worked out to Rs. 8,73,6000/-.

2.4 According to the petitioner, it had represented to the respondent requesting it not to charge any transfer fee. The respondent, while granting the transfer, informed that the request would be submitted to GIDC Board and that if ultimately the Board decides not to charge the transfer fee, the same would be refunded or adjusted against the dues. Ultimately in pursuance of the order dated 27.7.1993 permission was given to transfer the plot and plot stood transferred in the name of the petitioner No. 1 company. A supplementary agreement to that effect was also executed.

2.5 The petitioner company thereafter reiterated their request for not charging transfer fee and under protest paid the sum of Rs. 8,73,600/-. According to the petitioner, they have written many letters for refund of the transferee. Ultimately respondent by its letter dated 27th June 1995, rejected the request of the petitioner for refund of the transfer fee which is challenged in this petition.

3. Mr. Chhatrapati, learned counsel appearing for the petitioners submitted that the respondent has acted in disregard and in violation of its own guidelines which are binding upon the respondent. He submitted that according to Clause (1) of the Guidelines the respondent ought not to have charged such transfer fee.

3.1 Learned counsel submitted that the transfer policy of the Respondent has been introduced from 1st March 1992 before M/s Sankalp Laboratories Ltd. came to be allotted the plot and therefore at the time of transfer the said policy was in operation and the respondent should not have levied any charge for transfer of the same.

3.2 Learned counsel for the petitioners submitted that the decision of the respondent in not refunding the transfer fee paid by the petitioner company is a non-speaking order and it does not specify as to why it should not be refunded. He submitted that the decision is in total contradiction to the transfer policy announced by the respondent itself. He, therefore submitted that the present petition requires to be allowed.

4. Mr. M.B. Gandhi, learned Advocate appearing for the respondent GIDC submitted that the transfer of the plot took place from the name of M/s Sankalp Laboratories Ltd. to M/s Sun Pharmaceuticals Industries Ltd. According to him the plot in question though allotted way back on 28.1.1993 to the petitioner No. 3, the same was unutilized and the unit had not started. He submitted that as per the policy of the respondent GIDC, the transaction of transfer was termed as that of informal nature of transfer of unutilized plot, it was decided to levy

transfer fees at the rate of 20% of the allotment price prevailing at the relevant point of time.

4.1 Mr. Gandhi submitted that once the transfer fee is paid and the transaction is complete, there cannot be any dispute and this Court may not interfere in the matter.

4.2 Mr. Gandhi submitted that in view of the exception clause to this policy the the transfer fee can be levied. The restrictions are as under:

1. No unutilized sheds shall be allowed for transfer.

2. Unuitilised plots shall also not be allowed for transfer after 28.2.1993.

He submitted that the plot in question was unutilized and its transfer was sought by the petitioners and therefore the respondent was within its right to charge transfer fee. In view of the above facts and circumstances Mr. Gandhi submitted that the petition requires to be rejected.

4.3 Mr. Gandhi for the respondent Corporation has relied upon a decision rendered in Special Civil Application No. 4745 of 1996 dated 23.12.1996 wherein this Court declined to interfere in the matter of levy of transfer fee.

5. As a result of the hearing and perusal of the record, certain facts are admitted and undisputed. The petitioner No. 3 M/s Sankalp Laboratories Limited had approached the respondent for a plot which was granted and allotted to them. Petitioner No. 1 company is a holding company of petitioner No. 3 Sankalp Laboratories Ltd. within the meaning of Section 4 of the Companies Act, 1956. It holds about 61% of the paid up equity capital of the petitioner No. 3. All the Directors of the petitioner No. 1 company are also Directors of the petitioner No. 3 Company and petitioner No. 1 company controls the Board of Directors of the petitioner No. 3 company. Thus the transfer was sought from petitioner No. 3 company to petitioner No. 1 company. Their request was granted on condition of payment of transfer fee at the rate of 20% which the petitioners paid under protest. Now the question before this Court is whether the respondent can charge such transfer fee from the petitioner or not.

5.1 Before proceeding further it is required to be noted that in the letter dated 22.2.1993 addressed to the petitioner by the respondent Corporation, in para 3 it is stated as under:

3. Further we would like to inform you that in case of plot up to 1000 square meter the utilisation period is of 2 years wherein you have to obtain approval of plans within 6 months. You are also required to complete the building within a period of 2 years from and commence the production.

In case of plot having an area of more than 10000 sq.mts. the utilisation period is of 3 years and approval of plans is to be obtained and commence the production as mentioned in case of area less than 10000 sq.mtrs.

5.2 In this connection it is relevant to note Clause (1) of Transfer Policy of the Corporation, copy of which is produced at Annexure-G to the petition. The said clause reads as under:

Category-II. Formal nature of transfers within the utilization period:

The Corporation has also decided not to charge any transfer fee for such transfers which are as under:

(i) Transfer from/in favour of holding company/subsidiary company as per Companies Act.

xxx xxx xxx

All the transfers explained in Category-II above will attract 10% transfer fee when a transfer is (i) of unutilised plots upto 20,000 sq. mtrs., for a time limit beyond 2 years from the date of allotment, for (ii) unutilised plots above 20000 sq. mtrs for a time limit beyond 3 years and in case of sheds it is for a period of one year.

It is an admitted position that petitioner No. 1 is a holding company of petitioner No. 3 company. In view of the above clause the case of the petitioners squarely falls within this provision since the petitioner No. 1 company is a holding company, within the meaning of Section 4 of the Companies Act. The transfer which is the subject matter of dispute is between the petitioner No. 3 and the petitioner No. 1 company i.e. from subsidiary to the holding company which is permissible under the aforesaid clause. The respondent has not objected to the fact that the petitioner No. 1 company is a holding company of respondent No. 3 company. Therefore as per category II it is a formal nature of transfer where there is no stipulation of transfer fee.

5.3 From the record it is clear that the third petitioner was allotted the plot on 28.1.1993. The petitioner No. 1 company approached the respondent for transfer of the plot by letter dated 19.3.1993 and the transfer was effected by order dated 14.6.1993. Therefore I am of the opinion that the respondent is not correct in categorizing the transfer as being an informal nature of transfer. As per the guidelines the transfer in the instant case clearly falls within the category II. As stated above, the plot was allotted on 28.1.1993 and transfer was applied for on 19.3.1993. Therefore, it cannot be said that it is transfer of an unutilized plot because the gap between the period is very short.

5.4 I also do not find any merits on the contention that in view of the exception clause the respondent is entitled to charge transfer fee. The exception clause provides that no unutilized shed shall be allowed for transfer and unutilized plots shall also not be allowed for transfer after 28.2.1993. However, what is required to be noted is that the respondent is unable to point out that the said exception clause does not at all refer to the subject of levy of transfer fees. In the instant case the transfer has been permitted, no reference can be made to this exception clause. Further, there is no merit in the contention that the policy does not contemplate the question of transfer without transfer fee, since this runs contrary to proviso to category II & III which clearly prescribes for transfer without transfer fees.

5.5 In any case it cannot be said that the plot was unutilised since the application for transfer was made within three months and the plot is admeasuring more than 10000 square meters whereas the period prescribed is three years. In that view of the matter the contention that the plot is unutilised is without any substance.

5.6 In substance, being a holding company of petitioner No. 3 company, in view of clause (i) of the Guidelines, the petitioner No. 1 company is entitled to get the plot transferred to its name without any transfer fee. Further, it is required to be noted that the plot is not being transferred to an outsider so as to attract the transfer fee. The transfer is only to the holding company and that too without involving any financial transactions. I am, therefore, of the opinion that the action of levying transfer fee from the petitioners is unlawful and arbitrary.

5.7 The contention raised by the respondent that they have right not to transfer is not tenable in view of the fact that they have already transferred the plot in the name of the parent company by accepting the fact that the it has a subsidiary company. In that view of the matter the contention raised invoking general clause is misconceived. Even otherwise the case falls within the category II wherein the proviso to the said category states that the transfer fee is leviable if the transfer is beyond the period of 2 years which is not so in the present case. In that view of the matter the petitioner is entitled for transfer without any transfer fee. Even otherwise, the transfer was made and payment by the petitioner was under protest.

5.8 It is also required to be noted that at the time of transfer the transfer fee was paid under protest which has been accepted by the respondent. Therefore it is not a case that the petitioner had accepted that the petitioner is liable to pay such transfer fee.

5.9 A perusal of the judgement rendered in SCA No. 4745 of 1996 dated 23.12.1996 would reveal that the facts of the said case is entirely different from the one on hand. Therefore, I am of the opinion that the ratio laid down in the said judgement would not be applicable to the facts of the present case.

6. In the premises aforesaid, the petition is allowed. The impugned decision at Annexure-I is quashed and set aside. The respondent shall refund the transfer fee of Rs. 8,73,600/- to the petitioner No. 1 along with interest at the rate 6% per annum from 7.7.1993 till date of payment. Rule is made absolute accordingly with no order as to costs.

