
(2015) 02 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5738 of 1993

Wattson Paper Board

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-02-2015

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 17(3), 17(4)

Citation : (2015) 02 P&H CK 0081

Hon'ble Judges : Hari Pal Verma, J.; Hemant Gupta, J.

Bench : Division Bench

Advocate : Arun Jain, Senior Advocate and K.B.S. Sidhu and Ajay Jain, for the Appellant; P.K. Jangra, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—Challenge in the present writ petition is to an order dated 31.08.1992 (Annexure P-16) resuming Industrial Plot No. 8, Sector-18, Gurgaon on account of failure to complete construction within two years or even within the extended period as well as to the order dated 16.12.1993 (Annexure P-18) passed in an appeal by the Administrator exercising the powers of the Chief Administrator.

2. The petitioner was allotted Industrial Plot No. 8, Sector-18, Gurgaon, measuring 9680 sq. yards i.e. 2 acres approximately, vide allotment letter dated 14.08.1972 (Annexure P-1) for the purpose of setting up "manufacturing of sum dried mill board" under Punjab Urban Estates (Development and Regulation) Act, 1964 and the Punjab Urban Estates (Sales of Sites) Rules, 1965. Clause 20 of the allotment letter contemplates that the petitioner was to complete the construction within two years of the date of allotment. The said Clause reads as under:

"20. You shall have to complete construction within two years of the date of allotment." 3. Pursuant to such allotment letter, the possession of the said plot

was delivered to the petitioner on 28.05.1973 vide Annexure P-2. Subsequently, a deed of conveyance was executed on 10.12.1979 (Annexure P-3). The relevant condition in the Deed of Conveyance reads as under:

"5. The transferee shall have to complete the construction within two years from the date of offer or possession on the such land in accordance with the relevant rules/regulations. Provided that the time limit for construction may be executed by the Estate Officer, in case the failure to complete the building by the stipulated date was due to reason beyond the control of the transferee." 4. It has also come on record that after serving notices under Sections 17(3) and 17(4) of the Haryana Urban Development Act, 1977 on 09.08.1990 and 07.08.1992 respectively, the order of resumption was passed on 31.08.1992.

5. In an appeal against the said order, the stand of the petitioner is that after taking possession of the plot, necessary infrastructural work such as construction of tubewell, boundary wall, shed with temporary roofing and installation of required machinery etc. was completed and production commenced in 1982. It is also pointed out that on account of severe financial hardship due to closure of factory and payments towards installment of loan etc., there was no other option except to dispose of the plot in question. Therefore, the petitioner entered into an agreement with M/s. Munjal Showa Ltd. in January, 1987. It is also pointed out that due to delaying practices adopted by M/s. Munjal Showa Ltd. for non-submission of necessary project report and payment of transfer charges etc., the petitioner served a notice for cancellation of agreement for sale of the plot in question, but an injunction has been issued by the Senior Sub Judge, Gurgaon restraining the petitioner from doing any construction at site.

6. However, the Administrator, HUDA exercising the powers of the Chief Administrator dismissed the appeal on 15.4.1993. The Administrator, HUDA found that the petitioner earlier applied for transfer of plot in favour of M/s. Milk Food Ltd., New Delhi on 09.11.1984 and necessary permission was granted by the Estate Officer, HUDA, Gurgaon on 13.11.1984 subject to certain conditions, but such conditions were not fulfilled. Therefore, the transfer permission was cancelled on 23.02.1987. Thereafter, the petitioner again applied for transfer of plot in favour of M/s. Munjal Showa Ltd. on 20.10.1987. The petitioner was asked to deposit transfer fee alongwith other documents, but due to non-submission of required documents, the application was filed by the Estate Officer, HUDA, Gurgaon. The show cause notices for resumption of the plot were thereafter issued. The Administrator returned the following finding:

".....Therefore, the Estate Officer, HUDA, Gurgaon considered the non-construction as willful on the part of the appellant and passed resumption orders dated 31.08.1992. During the course of hearing of appeal, the appellant submitted photographs as proof of construction at site. The latest site report has been obtained from the Estate Officer, HUDA, Gurgaon submitted on 22.01.1993 there is a structure of 32" - 6" x 114" and 12" - 6" x 16" erected at site without roof and old machinery is also fixed which is not in working order. In view of the

facts narrated above the plot remained with the appellant since 1972 and the appellant had failed to set up the unit in 20 years. The appellant is not sincere to run a factory because he is in process to dispose of the prime land at handsome premium just to earn profit. I have given a considered thought to the whole matter. The resumption orders passed by the Estate Officer, HUDA, Gurgaon are very much legal and as per rules, hence I dismiss the appeal." 7. In the written statement filed, it is inter alia submitted that all the basic amenities were provided as per the terms and conditions of the allotment letter and that the petitioner failed to comply with the conditions of allotment letter, which led to passing of an order of resumption after complying with the procedure contemplated in law.

8. In the rejoinder, the petitioner relies upon a communication dated 04.07.2012 (Annexure P-19) to the effect that the first connection of sewer was given to M/s. Milk Food, Plot No. 5, Sector-18, Gurgaon on 05.05.1990 and the second connection of sewer was given to M/s. Munjal Showa Limited, Plot Nos. 9-10-11, on 28.05.1991. It is, thus, contended that the petitioner could not raise construction on account of lack of proper sewerage.

9. It may be noticed that respondent No. 5 - M/s. Munjal Showa Ltd. entered into an agreement to sell with the petitioner on 21.01.1987 to purchase Plot No. 8, Sector-18, Gurgaon for a sum of Rs.14 lac. Since the sale deed was not executed, the said respondent filed a suit for specific performance, which was dismissed on 02.01.2008. An appeal preferred by respondent No. 5 against the said judgment and decree stands allowed by the Additional District Judge on 15.02.2013. The present petitioner is in second appeal before this Court by way of RSA No. 1921 of 2013. Since any decision in the present writ petition had an effect on the said regular second appeal, the same was ordered to be heard alongwith the present writ petition.

10. Learned counsel for the petitioner has vehemently argued that the petitioner has raised construction of the shed and started commercial production though he has not obtained completion certificate. It is contended that the petitioner could not raise roof on the shed on account of financial constraints, but commenced commercial production by using tarpaulin to cover the four walls. Therefore, the petitioner having raised construction and started commercial production, the plot could not have been resumed. It is also contended that lack of construction was inter alia for the reason that there was no civic amenities provided, which is evident from Annexure P-19 to the effect that first sewer was given in the year 1990. Therefore, for the deficiency in services by the respondents, the plot could not be resumed.

11. Having heard learned counsel for the parties at length, we do not find any merit in the present writ petition. In terms of the letter of the allotment and the Deed of Conveyance, as reproduced above, the petitioner was required to complete the construction within two years from the date of allotment. The nature of construction as mentioned by the petitioner in appeal filed before the

Chief Administrator reads as under:

"After taking possession of the aforesaid plot, necessary infrastructural work such as construction of tubewell boundary wall shed with temporary roofing and installation of required machinery etc. was completed and production commenced in 1982.

A sample of the product is paper board was then submitted to Haryana Financial Corporation for release of balance amount of sanctioned loan so that the left over construction work could be completed, but loan was not released. Also working capital for factories etc. was stopped to be sanctioned by the Banks at that time.

On the other hand, on running of factory, the used water, needed for manufacturing paper board, in absence of sewer line which was to be laid by HUDA, started spreading over on our plot and neighbouring fields. On account of drinking of used polluted water, cattles concern. They started giving threats and verbal notices by Inspector of Pollution and Environment Department, the production has had to be suspended.

On account of severe financial hardship due to closure of factory and payments towards installment of loan etc., there was no other option except to dispose of the plot in question. For the purpose, we entered in sale deed with M/s. Munjal Showa Ltd. in January, 1987, and necessary intimation was given to HUDA in this regards on our part."

12. It is admitted during the course of hearing that only a shed and facility of making pulp was erected at the site in question, but there was no roof over the construction so raised, but the production of the card board was taken in hand. The requirement in the allotment letter and the Deed of Conveyance is to "complete construction". Admittedly, the petitioner has not completed the construction as no roof was laid nor the petitioner even applied for completion certificate. The stand of the petitioner is due to financial constraints, the plot has to be sold. Not only the petitioner entered into an agreement to sell with M/s. Milk Food Ltd. in the year 1984, but also later on entered into another agreement with respondent No. 5 - M/s. Munjal Showa Ltd. on 21.01.1987. Thus, the petitioner is not a willing entrepreneur, who has the capacity to establish the industry for which the site was allotted. The petitioner wants to sell the land without raising construction.

13. Though the argument of the learned counsel for the petitioner is that there was no facility of sewer prior to 1990, but we find that the petitioner cannot be permitted to raise such an argument. The plot was allotted in the year 1972, the possession of which was taken in the year 1973. Though there are certain communications to the Estate Officer pointing out the discharge of water on surface and the protest by the villagers, but the fact remains that lack of sewer was not a ground for not raising construction within the stipulated period. In fact, the Hon"ble Supreme Court in U.T. Chandigarh Administration and Another Vs. Amarjeet Singh and Others, has held that lack of amenities is not a ground on

the basis of which an allottee can seek deferment of payment of installments etc. It was held to the following effect:

"14. Where there is a public auction without assuring any specific or particular amenities, and the prospective purchaser/lessee participates in the auction after having an opportunity of examining the site, the bid in the auction is made keeping in view the existing situation, position and condition of the site. If all amenities are available, he would offer a higher amount. If there are no amenities, or if the site suffers from any disadvantages, he would offer a lesser amount, or may not participate in the auction. Once with open eyes, a person participates in an auction, he cannot thereafter be heard to say that he would not pay the balance of the price/premium or the stipulated interest on the delayed payment, or the ground rent, on the ground that the site suffers from certain disadvantages or on the ground that amenities are not provided. With reference to a public auction of existing sites (as contrasted from sites to be "formed"), the purchaser/lessee is not a consumer, the owner is not a "trader" or "service provider" and the grievance does not relate to any matter in regard which a complaint can be filed. Therefore, any grievance by the purchaser/lessee will not give rise to a complaint or consumer dispute and the fora under the Act will not have jurisdiction to entertain or decide any complaint by the auction purchaser/lessee against the owner holding the auction of sites". 14. Though the petitioner has paid the entire price, but the fact remains that the financial constraints was the main reason for not raising the construction and commencing production and not the lack of sewer. Therefore, such plea cannot be permitted to be raised as a desperate attempt for restoration of the plot, when the petitioner has proved to be lacking in resources to start industry on the large plot of almost 2 acres.

15. The argument that there was an interim order by the Civil Court in raising construction on 27.09.1990 and that such order came to be vacated on 08.10.1992 as a ground to justify non-raising of construction cannot be entertained. As per the terms and conditions of the allotment letter, the building was to be constructed within two years. Since the possession was delivered in the year 1973, the building could be constructed till the year 1975. The Haryana Urban Development Authority has granted general extension to raise construction from time to time i.e. up to 31.12.1987. The petitioner has advantage of such extension of time, but the building should have been constructed on or before 31.12.1987. From the year 1987 till 1990, still there was a period of more than two years. The building was not constructed even after the expiry of the extension period and before the grant of injunction by the Civil Court. In the meantime, the petitioner entered into an agreement to sell with M/s. Munjal Showa Ltd. on 21.01.1987, who has been granted a decree for specific performance in its favour. Therefore, such conduct of the petitioner leaves no manner of doubt that the petitioner is not a willing entrepreneur, who wants to establish the industry, but wants to earn money by selling the plot defeating the very purpose of allotment of plot for the last 42 years.

16. In view of the above discussion, we do not find any merit in the present writ petition. The same is dismissed.