

Indu Kakkar

Vs

Haryana State Industrial Development Corporation Ltd. and Another

SLP (C) No. 8368 of 1998

(S. B. Majmudar, K. T. Thomas JJ)

02.12.1998

JUDGMENT

THOMAS, J. -

1. The petitioner who virtually purchased a litigation has now reached the Supreme Court seeking special leave to appeal against a judgment by which the High Court of Punjab and Haryana has dismissed a second appeal. The suit was filed by M/s. York Printers and during its pendency, the present petitioner bought the rights which the original plaintiff had in the subject-matter of the suit for a consideration of rupees forty thousand. The petitioner got himself impleaded as additional plaintiff and from then on, it was the petitioner who fought the litigation, as the original plaintiff has vacated from the scene.

2. M/s. York Printers filed the suit on the following facts :

On 28-7-1977, a plot of land admeasuring approximately 450 sq. metres had been allotted to M/s. York Printers (which will hereinafter be referred to as the allottee) as per a letter of allotment issued by the Haryana State Industrial Development Corporation Limited ("Corporation" for short). The said plot is situated within the industrial complex at Dundahera in Gurgaon District (Haryana). The price for such allotment was tentatively fixed at Rs. 13,455 and the allottee was put in possession thereof. On completion of remittance of the entire amount payable by the allottee, a registered deed of conveyance was executed on 10-12-1982 by the Corporation in favour of the allottee. In fact, the said plot was transferred by the Haryana Urban Development Authority (HUDA - its acronym) in favour of the Corporation for facilitating the objects and purposes of the Haryana Urban Development (Disposal of Land and Buildings) Regulation, 1978.

3. As the allottee failed to establish the industrial unit till the end of 1983, a notice was issued by the Corporation on 6-1-1984 calling upon the allottee to show cause why the plot should not be resumed. In the reply which the allottee sent to the Corporation, certain reasons were highlighted for showing why it could not complete construction of the building for the proposed industrial unit. But the Corporation was not satisfied with the reply and hence on 16-3-1984, the Corporation resumed the plot.

4. The allottee thereafter made representation to the Corporation for revocation of the resumption order. According to the allottee, the construction work was actually commenced but its progress was hampered on account of power supply not being made available by the Haryana State Electricity

Board for more than two years, besides the difficulty regarding availability of water. However, the Corporation was unwilling to revoke the resumption order and hence the representations made by the allottee were rejected.

5. On 3-8-1985, the allottee filed the civil suit for a declaration that the order of resumption is illegal and void and also for certain other consequential reliefs. During pendency of the suit, the petitioner got a registered sale deed from the allottee on 27-12-1989 of his rights in respect of the plot in question and got herself impleaded as second plaintiff in the suit.

6. The trial court decreed the suit and declared the resumption order as "manifestly illegal and beyond jurisdiction". But the first appellate court reversed the decree and dismissed the suit holding that the Corporation was well within its power to resume and that the resumption was made in accordance with the terms of allotment. The first appellate court further found that the petitioner has no locus standi as the sale in her favour was hit by Section 52 of the Transfer of Property Act, 1882.

7. In the second appeal, the petitioner assailed the said findings before the High Court. Learned Single Judge who heard the appeal agreed with the contention of the petitioner that Section 52 of the Transfer of Property Act is not a bar against transferring property pendente lite. However, learned Judge has observed the following :

"The question in this case is not in regard to validity of the sale of plot to the second plaintiff by the allottee, but the question is whether the second plaintiff has any locus standi to question the order of resumption which had been passed against the allottee. In my view, the second plaintiff has no locus standi to question the validity of order resuming the plot. There has been no privity of contract between the second plaintiff and HSIDC. Contract was between the allottee and HSIDC and the same was subject to fulfilment of certain terms and conditions by the allottee. Since the allottee failed to abide by the terms and conditions of the allotment, the plot was rightly resumed by HSIDC. On resumption of the plot it became the absolute property of HSIDC and the allottee had been left with no right, title or interest in the property which he could transfer to the second plaintiff."

8. The High Court further noted that the plot which could fetch only a bid amount of Rs. 10,000 per square metre has subsequently registered an escalation reaching its price up to rupees forty-five lakhs. Accordingly, the High Court held that the petitioner purchased the plot for speculative purposes and hence, "no indulgence of any kind can be shown by the Court to a claim which is not bona fide, nor can the Court come to the aid of a person trying to resile from the express obligation undertaken by him with the State or its agencies".

9. Learned counsel for the respondent did not make any endeavour to show that Section 52 of the Transfer of Property Act (for short the TP Act) is a bar to the petitioner to purchase the subject-matter of the suit, presumably because the bar contained therein is intended not to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the court and on such terms as it may impose.

10. Learned counsel for the petitioner contended that the Corporation has no power of resumption inasmuch as the Corporation has failed to prove that there is any binding clause in the deed of conveyance which empowers the Corporation to do so. Alternatively, it was contended that the allottee cannot be said to have controverted any condition regarding construction of building on the

plot since the allottee has already commenced constructing an edifice thereon. A further argument advanced is that inability of the allottee to establish the industrial unit was due to causes beyond his control and, therefore, the Corporation was duty-bound to grant more time to the allottee.

11. The prefatory portion of the deed of conveyance which was executed on 10-12-1982 between the Corporation and the allottee contains the following statements :

"Whereas the site hereinafter described and intended to be hereby conveyed is owned by the vendor in full proprietary rights.

Whereas the vendor has sanctioned the sale of the said site to the transferee in pursuance of its application dated 17-1-1977.

The said site situated in the industrial area was to be used for the purpose of industry only, the terms and conditions relating to the said sale were settled in the agreement to sell. This agreement was executed on 6-8-1979 between the parties."

12. The pro forma of the agreement is produced as Annexure P-42. The petitioner cannot escape from the position that he is to abide by the terms and conditions of the agreement admitted to have been executed between the parties. If that agreement was not in accordance with the pro forma, it is for the petitioner to show that there was some other agreement which is different from it. However, the petitioner has not even chosen to adduce any evidence in that line. Hence, we have no difficulty in believing that the agreement was executed in the said pro forma. Clause 7 of the aforesaid agreement reads thus :

"That the allottee shall start on the said site construction of the building for setting up the aforesaid industry within a period of 6 months and complete the construction thereof within two years from the date of issue of the allotment letter, the plans of which shall be in accordance with the rules made and with the directions given from time to time by the Town and Country Planning and Urban Estates Department in respect and approved by the Director, Town & Country Planning Department or any other office duly authorized by him in this behalf. Further, the allottee shall complete the erection and installation of machinery and commence production within a period of 3 years from the date of allotment of the plot, failing which the plot be liable to be resumed by the Corporation :

Provided that the time under this clause may be extended by the MD, HSIDC Ltd. in case the failure to complete the building and commencement or production by the stipulated date was due to reasons beyond the control of the allottee.

The Corporation shall also have the right to call for periodical reports every six months from the allottee starting from one year after the date of delivery about the progress in implementation of the project and if after hearing the allottee, in the opinion of the MD, the progress is found to be unsatisfactory, he may order the plot resumed."

13. On 6-1-1984, the Corporation issued a notice to the allottee calling upon him to show cause why the plot should not be resumed as per clause 7 of the agreement. It is useful to extend the contents of the said notice as under :

"You were allotted Plot No. 70 in the industrial complex at Udyog Vihar Phase I on 28-7-1977. It is indeed disheartening to note that you have not taken any step towards the implementation of your proposed industrial unit thereby defeating the basic purpose of allotment in your favour. Retaining an industrial plot without any firm programme is against the tenets of industrialisation. Your inaction deprives a genuine entrepreneur of an opportunity to set up his unit. We are, therefore, constrained to issue a show-cause notice to you as to why your plot should not be resumed under clause 7 of our agreement. Your explanation should reach this office positively within 30 days of the date of issue of their letter, failing which your plot would stand automatically resumed and no further correspondence will be entertained on this subject."

14. The allottee who received the notice sent a reply to it in which a plea was made for helping the allottee to set up the industrial plant. The allottee has practically admitted that it had to abandon the scheme for establishment of a plant. A reproduction of the reply will show the clear stand of the allottee :

"We thankfully acknowledge the receipt of your Letter No. 6218 dated 6-1-1984 and wish to inform you that even after our repeated efforts, the power connection is not installed in our constructed premises. We had to abandon our scheme of shifting our workers and plants to Delhi since no drinking-water supplies are provided in the area. However, we have managed the total investments from our sources in land, buildings, machines, etc. and functioning of our unit shall depend on supplies of power and water. Will you please help us in the setting up of the plant ? We have met your Shri R. K. Kaushik and Mr. B. S. Ojha highlighting the problems of water and power. He assured us with prompt action. Please advise us what to do and what you are going to do for us. Please acknowledge the receipt considering the fact that we have already obtained the conveyance deed of the said plot."

15. It is, therefore, clear from the said reply that the allottee did not dispute that it has not taken any steps towards implementation of the proposed industrial unit. So the petitioner who is only a transferee of the allottee cannot claim any other right which even the allottee did not have.

16. However, the allottee has contended before the trial court that clause 7 of the agreement is unenforceable in view of Section 11 of the TP Act. But that contention was repelled, according to us, rightly because the deed of conveyance had not created any absolute interest in favour of the allottee in respect of the plot conveyed. For a transferee to deal with interest in the property transferred "as if there were no such direction" regarding the particular manner of enjoyment of the property, the instrument of transfer should evidence that an absolute interest in favour of the transferee has been created. This is clearly discernible from Section 11 of the TP Act. The section rests on a principle that any condition which is repugnant to the interest created is void and when property is transferred absolutely, it must be done with all its legal incidents. That apart, Section 31 of the TP Act is enough to meet the aforesaid contention. The section provides that

"on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen".

Illustration (b) to the section makes the position clear, and it reads :

"(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases."

17. All that Section 32 of the Transfer of Property Act provides is that "in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the event to which it relates be one which could legally constitute the condition of the creation of an interest". If the condition is invalid, it cannot be set up as a condition precedent for crystallization of the interest created. The condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the agreement between the parties is, therefore, valid and is binding on the parties thereto.

18. According to the High Court, the petitioner who claims to be the assignee of the allottee, has no locus standi to question the validity of the order of resumption. Learned counsel for the petitioner has seriously assailed the said view of the High Court. He contended that having found that Section 52 of the TP Act is not a bar, the High Court should have further found that there is no other bar against assignment of the plot in favour of the petitioner and hence the petitioner could step into the shoes of the allottee and claim whatever the allottee could have claimed.

19. In fact, the question is not whether there is any legal bar for the allottee to make assignment of the plot. The real question is whether the assignee has a legal right to claim performance of any part from the allottor. The answer of the said question depends upon the terms of allotment. Assignment by an act of the parties may cause assignment of rights or of liabilities under a contract. As a rule, a party to a contract cannot transfer his liabilities under the contract without consent of the other party. This rule applies both at the common law and in equity (vide para 337 of Halsbury's Laws of England, Fourth Edition Vol. 9). Where a contract involves mutual rights and obligations, an assignee of a right cannot enforce that right without fulfilling the correlative obligations. The aforesaid principle has been recognized by a Constitution Bench of this Court in *Khardah Co. Ltd. v. Raymon and Co. (India) (P) Ltd.* (AIR 1962 SC 1810 : (1963) 3 SCR 183) T. L. Venkataramiah, J. who spoke for the Bench has observed thus :

"The law on the subject is well settled and might be stated in simple terms. An assignment of a contract might result by transfer either of the rights or of the obligations thereunder. But there is a well-recognised distinction between these two classes of assignments. As a rule obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities. On the other hand rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties."

20. Here the agreement was entered into between the Corporation and the allottee as a sequel to the request made by the allottee to give him an industrial plot for the purpose of setting up an industry. The Corporation reciprocated to the request on being satisfied that the allottee was able to carry out the obligations so as to accomplish the purpose of allotment. The assurance given by the allottee that he shall start construction of the building for setting up the industry within a period of six months and complete the construction thereof within two years from the date of issue of the allotment letter was verified and found acceptable to the Corporation and then only the Corporation has chosen to enter into the agreement with the allottee. It is a matter of confidence which the

Corporation acquired in the promise made by the allottee that the latter would perform such obligations. If the allottee evacuates from the scene after inducting someone else into the plot without the consent of the Corporation, it is not legally permissible for the inductee to compel the Corporation to recognize him as the allottee.

21. Viewing the assignment from the aforesaid angle, we are in agreement with the conclusion of the High Court that the petitioner has no locus standi to question the validity of the order of resumption. Hence, the impugned judgment is unassailable as from that angle also.

22. The special leave petition is accordingly dismissed.