

SUPREME COURT OF INDIA

Haryana State Industrial Development Corporation

Vs.

Cork Manufacturing Co.

C.A.No.3940 of 2007

(Tarun Chatterjee and P.K. Balasubramanyan JJ.)

27.08.2007

JUDGMENT

P.K. BALASUBRAMANYAN, J.

1. Leave granted.

2. The defendant in Suit No. 8 of 1995 in the court of Senior Sub-Judge, Gurgaon is the appellant in this appeal. The appellant allotted plot No. 259 on 12.3.1986 to the respondent through its sole proprietor Om Prakash Saharan. The approximate area of the plot is 1000 square meters and the tentative price was Rs. 1,20,000/-. On 12.2.1988, a formal agreement was entered into between the parties. According to the agreement, the allottee had to start construction of a building for the setting up of an industrial unit within a period of three months and had to complete the construction within one and half years from the date of issue of the letter of allotment. The construction had to be completed and the installation of the machinery had also to be completed and the commercial production was to be started within a period of two years from the date of allotment. The Agreement also provided that failing compliance with the above condition by the allottee, the plot was liable to be resumed and 10% of the cost of the plot deposited by the allottee at the time of allotment was liable to be forfeited. The letter of allotment was issued on 24.12.1987. The allottee did not fulfil the condition of starting commercial production within two years of the letter of allotment. This fact is not in dispute. The appellant thereupon issued various notices to the allottee. On 19.7.1991, the allottee requested for extension of time. That request was rejected.

On 13.9.1991, according to the appellant, the appellant issued an order of resumption which specifically referred to the contravention of the terms and conditions of allotment by the allottee. According to the appellant, possession was taken back on 20.9.1991. The plot was thereafter re-allotted to M/s Insulation & Electrical Products (P) Ltd., New Delhi on 2.4.1992. Since that allottee also did not fulfil the conditions, the said allotment was cancelled on 6.1.1994.

3. The respondent, the plaintiff, filed an application for referring the dispute to Arbitration. The same was rejected. Respondent then approached the Consumer Forum, but that complaint was also dismissed.

4. On 5.10.1995, the respondent filed the present suit No. 8 of 1995 for a permanent injunction restraining the defendant appellant from interfering, disturbing or in any manner tampering with the possession of the plaintiff over the plot in dispute, and restraining the defendant appellant from re-

allotting the plot in question to any other person on the basis of the resumption order, if any, or otherwise. Though there was no prayer regarding any resumption order, it was asserted that the resumption order, if any passed by the defendant was void, illegal, non-est and not binding upon the plaintiff in any manner.

A decree for mandatory injunction directing the defendant appellant to remove an existing high-tension wire going over the plot in question and also to remove an electrical pole existing in the plot and to make available the plot free from all kinds of hindrances for raising the construction was also prayed for. The plaint was signed by one Uma Shankar who was said to be a power of attorney of the plaintiff firm. The plaint proceeded on the footing that there was also an agreement between the parties that the electric pole located in the plot would be got removed by the appellant and it was in view of the failure of the appellant to get it done, that the construction could not be started by the plaintiff. It was also admitted in the plaint that there might have been an order of resumption of the plot, but if there was any such order, it was illegal, void and ineffective and not binding on the rights of the plaintiff because of lack of opportunity of hearing given to the plaintiff. The plaint proceeded to state that the defendant was threatening to dispossess the plaintiff pursuant to that order of resumption; that the plaintiff was in possession and that the plaintiff was entitled to relief as claimed.

5. The defendant filed a written statement contending that the plot in question was resumed on 13.9.1991 in view of the plaintiff contravening the terms of the allotment and possession was taken back on 25.9.1991. The plot had been re-allotted to another concern. The plaintiff had neither any right over the plot in question nor any possession over the same. Since the plaintiff had defaulted, the plot had been rightly resumed.

There was no stipulation or condition in the allotment that the appellant had the obligation to remove the electric post located in the plot or the overhead electrical line. The plaintiff was not in possession. The suit was liable to be dismissed.

6. On behalf of the plaintiff, one Jai Bhagwan was examined as P.W. 6. He gave evidence to the effect that the plot in dispute was allotted to Om Parkash Saharan.

He had been appointed as General Power of Attorney by the said Om Parkash Saharan on 9.4.1996. Om Parkash Saharan was the sole proprietor of the business of the plaintiff company. Obviously, this witness who entered the picture by virtue of a power of attorney executed on 9.4.1996, was not a party to any of the things that had taken place prior to the grant of power of attorney in his favour and had no knowledge of them. Om Parkash Saharan in whose name the allotment was made did not go to the box. In the box, P.W. 6 admitted that the company had received the letter warranting of the proposal to resume the plot because of its failure to fulfil the condition of allotment. He stated that because of the high-tension wire passing over the plot in dispute, it was not possible to raise construction thereon. He admitted that one week prior to the institution of the present suit, the plaintiff came to know that defendant had resumed the plot in dispute and had also prepared a report that possession had been taken back. He asserted that the plaintiff had not surrendered the possession of the suit property and the plaintiff was in possession till date. He stated that letters sent intimating the proposal to resume the plot were illegal and void. No opportunity of hearing was afforded prior to the resumption of plot in dispute.

He admitted that the defendant had issued Exhibit PW4/11 letter to Om Parkash Saharan, but no payment was made by Saharan in pursuance thereof. He stated that he knew Om Parkash Saharan

since 1983. He admitted that the allottee had to start construction within two years from the date of allotment. He admitted that within the prescribed period, no construction was raised but claimed that that was because of the passing of the high-tension wire over the property. He denied the suggestion that the plot was resumed on 13.9.1991 and possession was taken on 25.9.1991. He pleaded ignorance of the fact that the plot in question was re- allotted to another Om Parkash, son of Arjan Lal and that possession had been given to him since 2.9.1994. He denied the suggestion that he was aware at the time of execution of the Power of Attorney in his favour that the plot in dispute was re-allotted to Om Parkash son of Arjan Lal. He pretended ignorance of the filing of a complaint in the District Consumer Forum earlier by the plaintiff and about the dismissal of the same. He also pretended ignorance of the fact that a petition under the Arbitration Act was filed by the plaintiff and that was also dismissed.

But, he admitted that no construction was started by the time the suit was filed. He denied the suggestion that he had no right to file the present suit. The power of attorney in his favour was marked as PW6/1.

7. Letter PW-4/5 produced by the plaintiff and proved through P.W. 4 examined on behalf of the plaintiff, was a final show cause notice given to the plaintiff company on its failure to set up an industrial unit in the plot in question. In that notice, after informing the plaintiff that no further extension of time was possible, the plaintiff was called upon to show cause within a period of 35 days from the date of issue of that letter as to why the plot allotted to the plaintiff be not resumed on account of the failure of the plaintiff to set up the unit within the extended period. The plaintiff was informed that in case no satisfactory explanation was received within the period specified, the Corporation would be constrained to resume the plot without making any further reference to the plaintiff. Exhibit PW4/16, the letter dated 1.4.1991 sent in reply to the above letter dated 4.3.1991 after acknowledging the threat of resumption stated that the plaintiff was quite eager and sincere in its desire to set up an industrial unit but since Shri Om Parkash Saharan, who signed the letter, was under severe stress and strain due to a serious accident which made him almost incapacitated for a long period, he could not take effective steps to undertake the work, and that the plaintiff hoped to take up the work and complete it in four months and praying that some more time may be allowed for that purpose. It is also seen from an earlier letter PW 4/6 dated 27.3.1991, that the appellant had specifically brought to the notice of the plaintiff that the plaintiff had contravened the terms of the agreement by not taking up the construction and calling upon the plaintiff to show cause within 35 days why the plot of land should not be cancelled. This was followed by PW4/9 dated 15.9.1991 conveying the decision of the appellant to resume the plot for non-compliance with the terms of allotment. Thus the correspondence marked on the side of the plaintiff itself clearly indicated that the plaintiff had been given notice of the resumption for failure of the plaintiff to fulfil the terms of the allotment. The correspondence produced by the plaintiff also indicates that there was no stipulation outside the terms of the written allotment letter about any promise of removal of any electrical pole or electrical line passing over the plot in question. Otherwise, that would have been mentioned in Ex. PW4/16 dated 1.4.1991.

8. The case tottered out on behalf of the plaintiff in the trial court was that the authorities had agreed to have the electrical pole removed from the plot and since it was not removed, the work could not be started. This is not reflected by the written allotment letter. In other words, there is no term therein to that effect. Such a claim is also belied by the letters written by the plaintiff which have been marked on the side of the plaintiff as exhibits and reference to one of them has been earlier made. Some correspondence with some officers of the appellant regarding the removal of the electric pole was relied on to say that outside the written agreement, the appellant had agreed to get

the electric pole and overhead line removed.

There was also no evidence to prove the possession claimed by the plaintiff as on the date of suit.

9. In spite of such glaring factors emerging, the trial court proceeded to accept the story of the plaintiff that it had not been given notice of the resumption of the land and that it continued to be in possession and that there was a condition for removal of the electric pole and the electrical line and since the pole and the line were removed only by 30.11.1995, the plaintiff had time to take up the project thereafter. I must say that the decision of the trial court shows total lack of application of mind and non consideration of the pleadings and the evidence in the case. The suit was thus decreed declaring the resumption order dated 13.9.1991 illegal and against the principles of natural justice and setting it aside, a relief that does not even seem to be sought in the plaint. The lower appellate court also toed the line of the trial court and dismissed the appeal, again, without proper advertence to the relevant materials available in the case and even without advertent to the fact that P.W. 6, the power of attorney holder had no knowledge of what had transpired earlier even on his own showing and that the original grantee Om Parkash Saharan had not even come forward to speak to the case of the plaintiff. The appeal was dismissed by the Appellate Court. I must say that as a court of first appeal and as the final court of facts, the Appellate Court had a duty to reappraise the entire material to decide the points arising and the appellate court in this case has miserably failed to perform its duty.

10. The defendant filed a Second Appeal. Along with the Second Appeal, since the plaintiff had pretended ignorance of the order of resumption, on behalf of the defendant, a legal notice sent by counsel for the plaintiff was also produced by way of additional evidence by invoking Order 41 Rule 27 of the Code of Civil Procedure.