

SUPREME COURT OF INDIA

Dalip Singh

Vs.

State of Haryana

C.A.No.10718 of 2018

(R.Banumathi and Indira Banerjee,JJ.,)

25.10.2018

JUDGMENT

R.Banumathi,J.,

SLP(C) No.36225 of 2014

1. Leave granted.

2. This appeal arises out of the order dated 16.09.2014 passed by the High Court of Punjab and Haryana at Chandigarh in CWP No.19256 of 2014 in and by which the High Court dismissed the Writ Petition filed by the appellants thereby upholding the orders of the Authorities resuming the Industrial Plot No.306, Industrial Area, Phase-II, Panchkula allotted to M/s. Shiva Dairy & Oil Mills.

3. Brief facts of the case which led to filing of this appeal are that Industrial Plot No.306, Industrial Area, Phase-II, Panchkula was allotted to Rabinder Nath, in his capacity as MD of M/s Shiva Dairy & Oil Mills vide Memo No.21015 dated 25.07.1984 and the possession of the said plot was given on 19.09.1984. Letter of allotment was subject to the provisions of Haryana Urban Development Authority (HUDA) Act, 1977 and the Rules and Regulations applicable there under as amended from time to time and also the Industrial Policy of the State of Haryana. The terms and conditions of the allotment letter, specifically Condition No.18, required the allottee to complete the construction over the allotted plot within two years of the date of offer of possession after completing the necessary formalities governing the construction of the building; otherwise the plot was liable to be resumed and the whole or any part of the money in respect of the same is liable to be forfeited in accordance with the provisions of the HUDA Act, 1977.

4. Since the allottee Rabinder Nath (NRI) did not comply with the terms and conditions of the allotment and did not commence the production within the stipulated time, Show Cause Notice dated 26.08.2003 was issued to the allottee under Section 17(4) of the HUDA Act, 1977. One Rakesh Sarna claiming to be the Power of Attorney sent the reply dated

14.11.2003 saying that the original documents are missing and requested for issuance of duplicate copies. In the said reply, the said Rakesh Sarna (GPA) stated that they would “construct the building within six months from the date of receipt of the missing documents ” Not being satisfied with the reply received, the allottee was offered an opportunity of personal hearing vide Memo dated 06.01.2004. The said Rakesh Sarna (GPA) appeared and gave a written reply. On perusal of the reply dated 14.11.2003 and report submitted by the Junior Engineer of HUDA, the Estate Officer, HUDA held that the allottee failed to commence the production in spite of grant of sufficient opportunities and vide order dated 25.02.2004 resumed the plot forfeiting 10 per cent of the consideration money.

5. Being aggrieved by the order of resumption of plot, Satyawati wife of Rabinder Nath through her GPA Rakesh Sarna filed appeal under Section 17(5) of the HUDA Act, 1977 before the appellate authority-Administrator, HUDA. During the pendency of said appeal, the application was moved on 07.03.2006 to the effect that the appellant Satyawati had expired on 03.10.2005 leaving behind a will dated 02.09.2005 in favour of her four children namely the appellants. The said application was allowed and the appellants were impleaded as parties. The appeal was dismissed by respondent No.3-Administrator, HUDA vide order dated 11.01.2008 on the ground that the appellants did not start the construction as well as the production over the plot in question and the appellants have not been able to give even a single reason for not starting construction as well as production for a long time of twenty years. It was held that the reasons stated by the power of attorney that the original papers were lost somewhere in September, 2003 does not carry any weight for explaining the delay of twenty years.

6. The order of the Appellate authority dated 11.01.2008 was assailed by the appellants before Principal Secretary, Government of Haryana, Department of Town and Country Planning and Urban Estates (the Revisional authority) under Section 30(2) of HUDA Act, 1977 and the same was dismissed by order dated 15.04.2014 inter alia on the following grounds:-

- That the allotment of industrial plot was made at concessional rates with a view to generate employment for the unemployed and keeping in view the economic development of the State and the allottee has defeated the very purpose of allotment of such industrial plot by not commencing the production for twenty years from the date of allotment and delivery of possession;
- That the revision preferred by the appellants is barred by limitation having been filed after a delay of one year and three months and that too without any application for condonation of delay; and
- That the plot was allotted to M/s Shiva Dairy & Oil Mills and the appellants could not show how they stepped into the shoes of the firm and it was an act of the appellants to appropriate the plot to the exclusion of the legal heirs of the partners of the firm.

7. Being aggrieved by the dismissal of the revision, the appellants filed Writ Petition (C) No.19256 of 2014 before the High Court which came to be dismissed by the impugned order dated 16.09.2014. The High Court noted that as rightly observed by the Revisional authority, the plot was allotted at a concessional price with the object of commencing production or industrial activities within a reasonable time which would generate employment for the unemployed youth and also generate revenue in the form of leviable taxes for the public exchequer besides adding to the economic development of the nation. The High Court held that the failure of the allottee to start production for such a long time after the allotment defeated the very purpose of allotment of the plot.

8. We have heard Mr. Nidhesh Gupta, learned senior counsel appearing on behalf of the appellants and Mr. Gautam Sharma, learned counsel appearing on behalf of the respondents and perused the impugned order and materials placed on record.

9. Even at the outset, it is to be noted that the appellants-legal heirs of the allottee Rabinder Nath, MD of M/s Shiva Dairy & Oil Mills were unsuccessful before the Estate Officer, Appellate authority and the Revisional authority and also before the High Court. All the authorities as well as the High Court recorded concurrent findings that the allottee has not commenced production for twenty long years from the date of allotment and handing over of possession till passing of the order of resumption in 2004 and also building was not constructed and there was breach of terms and conditions of the allotment and such non-commencement of production defeated the very purpose of allotment of such industrial plots. The question falling for consideration is whether such concurrent findings recorded by the Authorities and also by the High Court suffer from any serious infirmity warranting interference by this Court.

10. With a view to ensure rapid industrial growth on sustainable basis to achieve the twin objects of economic development and generation of adequate employment, the industrial estates/areas were established in order to achieve the said purpose, the industrial policy was framed by the State of Haryana aiming at balancing regional development. After completion of various formalities, Industrial Plot No.306, Industrial Area, Phase-II, Panchkula was allotted vide letter dated 25.07.1984 and possession thereof was delivered on 19.09.1984. The undertaking of the production as per the approved project is the foundation for the allotment of industrial plots. These plots are allotted at a very reasonable rate/concessional rate with a view to provide incentives to the allottees/entrepreneurs with intent to encourage industrialization and growth in employment opportunities. These allotments are not only governed by the provisions of the HUDA Act, 1977 and the Rules and Regulations framed thereunder but also by the provisions of the industrial policy of the State of Haryana. The allotment of the industrial plot in question to Rabinder Nath as MD of M/s Shiva Dairy & Oil Mills was subject to the terms and conditions of the allotment. As per clause (18) of the allotment, the allottee has to complete the construction within two years from the date of offer of possession. Clause (11) stipulates that in the event of breach of any other condition of transfer, the Estate Officer may resume the land in accordance with the provisions of Section 17 of the HUDA Act, 1977. Clauses 18 and 11 read as under:-

“18. You will have to complete the construction within two years of the date of offer of possession, after getting the plans of the proposed building approved from the competent authority in accordance with the regulations governing the erection of buildings. This time limit is extendable by the Estate Officer if he is satisfied the non-construction of the building was due to reasons beyond your control, otherwise this plot is liable to be resumed and the whole or part of the money paid if any, in respect of it forfeited in accordance with the provisions of the said Act. You shall not erect any building or make any alteration/addition without prior permission of the Estate Officer, no fragmentation of any land or building shall be permitted.

11. In the event of breach of any other condition of transfer the Estate Officer may resume the land in accordance with the provisions of Section 17 of the Act."

The appellants have admittedly not commenced the industrial production on the plot for twenty long years after allotment and delivery of possession. The appellants seem to have woken upon only after issuance of the Show Cause Notice. Evidently, there is breach of condition of allotment of the plot.

11. Contention of the appellants is that Rabinder Nath (NRI), MD of M/s Shiva Dairy & Oil Mills who was allotted the plot, was detected with cancer and died of cancer in 1987. Satyawati Devi w/o Rabinder Nath who became the sole proprietor of M/s Shiva Dairy & Oil Mills also remained disabled and she was also detected with cancer in 2004 and she was getting disability allowance from 1992 to 2003 as per the documents on record. It is therefore, the submission of the appellants that legal representatives could not do anything or take any constructive action from 1985 till 2003 despite the fact that they have constructed a building without a completion certificate. It is the contention of the appellants that the default was not wilful and extreme step of resumption of land ought not to have been resorted by HUDA.

12. As pointed out earlier, in reply to the Show Cause Notice, one Rakesh Sarna claiming himself as General Power of Attorney filed the reply dated 14.11.2003. In the said reply, Rakesh Sarna (GPA) has not stated anything about the illness or the disability of Satyawati. In the said reply, Rakesh Sarna (GPA) only took excuse for non-construction of the building and non-production stating that original documents like (i) Allotment Letter; (ii) Possession Letter; (iii) No Due Certificate; (iv) Deed of Conveyance; (v) Occupation Certificate; and (vi) Building Plans were missing and he has asked for issuance of duplicate copies of relevant documents. The said Rakesh Sarna (GPA) further stated that they would construct the building within six months from the date of receipt of missing documents.

13. As pointed out earlier, the allotment of industrial plot was with the twin objects of economic development and generation of adequate employment. In order to achieve the said purpose, the industrial policy was framed by the State of Haryana aiming at balanced regional development and with a view to generate adequate employment. The allotment of industrial plot was at concessional rate and was subject to terms and conditions and the allottee was bound to comply with the terms and conditions. In such kind of allotment of

industrial plots, based on government industrial policy with twin objectives of economic development and generation of adequate employment, sympathy cannot be the ground for considering the case of the appellants as to their non-compliance of the terms and conditions of allotment especially for twenty long years after the allotment.

14. The learned senior counsel for the appellants contended that the opportunity of personal hearing rendered was a mere formality and no opportunity was given to the appellants for commencement of production. Contention of the appellants is that though the show cause Notice dated 26.08.2003 and the Resumption order dated 25.02.2004 were passed on the ground of non-commencement of production; the appellate and revisional authority as well as the impugned order passed by the High Court upheld the resumption of the plot on altogether distinct premise of non-construction of the building. Learned senior counsel had drawn our attention to the Resumption order dated 25.02.2004 passed by the Estate Officer wherein it is stated that the "plot and building constructed thereon " are resumed in exercise of powers vested under Section 17(4) of the HUDA Act, 1977. The learned senior counsel submitted that buildings were actually constructed by the allottee and the inconsistency between show cause notice and the order of Revisional authority was not kept in view by the High Court.

15. As discussed earlier, the industrial plots were allotted at a very reasonable rates/concessional rates with a view to provide incentives to the allottees/entrepreneurs with intent to ensure industrial growth and economic development of the State and generation of adequate employment opportunities. These allotments are not only governed by the provisions of HUDA Act, 1977 Rules and Regulations framed thereunder but also by the provisions of the industrial policy of the State. Construction of building and commencement of production are the integral part of the terms and conditions of the order of allotment. The appellate and Revisional authority as well as the High Court cannot be faulted for the observation that the buildings were not constructed for twenty long years after allotment. If the construction of the building was really complete, the appellants could have very well filed the completion certificate; but that was not to be so. It is pertinent to note that in the reply dated 14.11.2003 of the said Rakesh Sarna (GPA) of Satyawati, it is stated that "we will construct the building within six months from the receipt of missing documents". We fail to understand that why the said Rakesh Sarna (GPA) should undertake to construct the building within six months from the date of receipt of missing documents. In this regard, we may usefully refer to the order of the Revisional authority which has referred to the comments of the Estate Officer received vide Memo No.19584 dated 23.12.2013 where it was stated as under:-

“...it is clear that there was no construction till the passing of resumption order and whatever construction was raised, was raised illegally after expiry of stipulated period. Therefore, on this ground also, the Revision Petition deserves dismissal ”

16. Contending that the extreme step of resumption of plot is erroneous, the learned senior counsel for the appellants placed reliance upon *Teri Oat Estates (P) Ltd. v. U.T. Chandigarh and others*¹, wherein it was inter alia held that one of the questions which the Estate Officer

must always pose is as to whether the drastic power of resumption and forfeiture has been taken recourse to as a last resort. It was submitted that the present case is not the one where the extreme step of resumption of plot ought to have been resorted to. The facts of the said case are distinguished from the case in hand. In *Teri Oat Estates* case, the appellants thereon were merely to pay the balance amount of 75 per cent of the consideration amount in instalments. The appellants, pursuant to the order of the Supreme Court, not only paid the entire amount but also paid ground rent and further paid 10 per cent penalty on the forfeited amount. *Teri Oat Estates* case, thus related to the default in payment of instalments of premium and interest thereon and ground rent in terms of allotment; but default was found to be not wilful and dishonest. In such facts and circumstances of the said case, this Court held that the authorities were not justified in resorting to the extreme step of resumption of the land. In the case in hand, per contra, the allottee has failed to complete construction within the stipulated time as per condition No.18 and commence production for a period of almost twenty years despite there being a clear stipulation in the allotment letter requiring them to complete construction within a period of two years. They have also failed to explain sufficient cause for this inordinate delay occasioned by them. As rightly held by the authorities, the allottee has defeated the very purpose of allotment of such industrial plot.

17. Learned senior counsel for the appellants has also drawn our attention to the judgment of High Court of Punjab and Haryana at Chandigarh passed in CWP No.15672 of 2008 *Anup Chauhan v. The Financial Commissioner & Secretary and others*¹ wherein the High Court directed the Respondent Authority to consider the claim of the petitioner. However, the facts of the case in hand have to be distinguished from those of the *Anup Chauhan* case. In the writ petition, the petitioners had applied for an extension till 2006 to complete the project and had also paid the extension fee for the same and the Estate Officer had passed an order on 30.11.2004 resuming the plot and in such facts, the High Court set aside the order of resumption of plot.

18. Similarly, in another case relied upon by the appellants, i.e. *Haryana Urban Development Authority, Faridabad & Another v. Mrs. Manu Gupta and another* in RSA No.908 of 2012, the appeal filed by HUDA was dismissed with a direction that HUDA cannot be allowed to take advantage of their own wrong and burden the respondent with further payment, despite their making the payment under the order of the court, which the appellant HUDA deliberately avoided to accept. But in the case in hand, it is the appellants who have defaulted in fulfilling the terms and conditions of the allotment letter for a long time of about twenty years.

19. All the judgments relied upon by the appellants are distinguishable on facts. Even assuming that for some other allottees, order of resumption of plot had been quashed/cancelled, the appellants cannot claim equality of treatment. Article 14 is a positive concept and cannot be enforced by a citizen in a negative manner. In *State of Orissa and another v. Mamata Mohanty*², it was held as under:-

“56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated

persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief. (*Vide Chandigarh Admn. v. Jagjit Singh*³, *Yogesh Kumar v. Govt. of NCT of Delhi*⁴, *Anand Buttons Ltd. v. State of Haryana*⁵, *K.K. Bhalla v. State of M.P.*⁶, *Krishan Bhatt v. State of J&K*⁷, *Upendra Narayan Singh*⁸ and *Union of India v. Kartick Chandra Mondal*⁹”

20. This Court issued notice (vide order dated 07.01.2015) on the basis of submissions made on behalf of the appellants that they are agreeable to pay the present market value of the plot in question. The learned senior counsel Mr. Nidhesh Gupta appearing for the appellants submitted that the appellants are ready to pay the present market value of the plot in question. Refuting the said submission, the learned counsel for HUDA has submitted that at present, there is no HUDA policy to allot the resumed industrial plot on the current market price. It was submitted that allotment of industrial plots at present is governed by Estate Management Procedure (EMP), 2011 and the subsequent EMP, 2015 as per which, industrial plot is to be allotted or disposed of only as per Regulation/policy. It was submitted that industrial plots are disposed of as per EMP and in this regard, the learned counsel has drawn our attention to the counter filed as to the EMP governing the allotment of the industrial plots including the invitation of applications through advertisements. When allotment of industrial plots is thus governed by EMP, the prayer of the appellants that they are ready to pay the current market rate for the industrial plot cannot be considered.

21. The allotment of Industrial Plot No.306, Industrial Area, Phase-II, Panchkula in 1984 to Rabinder Nath was in his capacity as Managing Director of M/s Shiva Dairy & Oil Mills. The plot was thus allotted to the partnership firm. The appellants have not been able to show as to how they stepped into the shoes of the partnership firm, apart from the mere fact that they are legal heirs of Rabinder Nath. As discussed earlier, at the time of making application for allotment of industrial plot, the applicant has to clearly disclose all the facts regarding the type of industry to be started, licence if necessary under law, project report, estimated cost of project, details regarding time required in completing the project, details of employees required, source of fund etc. The project so submitted is then approved by the competent authority after considering its viability. The applicants are then issued letter of intent/provisional allotment letter with condition to complete the other formalities within the stipulated period of time and after completion of formalities, regular allotment letter is issued in favour of the applicant. As pointed out earlier, the undertaking of the production as per the approved project is the foundation for the allotment of the industrial plots which is with twin object of economic development and generation of employment opportunities. Over the years, the State has undergone substantive changes and economic growth. Land/industrial plots now becoming very scarce, governed by the present EMP, the appellants cannot seek for revocation of resumption by contending that they are ready to pay the current market rate.

22. The court can interfere with the revocation of resumption of land only if the executive has not carried out its duty or acted in violation of the procedure. Clause (11) of the terms and conditions of allotment clearly stipulates that in the event of breach of any of the conditions of transfer, the Estate Officer may resume the land in accordance with the provisions of Section 17 of the HUDA Act, 1977. The order of resumption of the plot is as per the terms and conditions of the allotment order and the High Court rightly refused to

interfere with the order of the Revisional authority. The appellants having failed before all the forums including the High Court and also the Revisional authority, we do not find any serious infirmity or illegality in the order of resumption of the plot and therefore, this appeal is liable to be dismissed.

23. In the result, the appeal is dismissed. No costs.

Judgment Referred.

¹(2004) 2 SCC 0130

²(2011) 3 SCC 0436

³(1995) 1 SCC 0745

⁴(2003) 3 SCC 0548

⁵(2005) 9 SCC 0164

⁶(2006) 3 SCC 0581

⁷(2008) 9 SCC 0024

⁸(2009) 5 SCC 0065

⁹(2010) 2 SCC 0422