S. Gupta

Before Jasbir Singh & Rameshwar Singh Malik, JJ.

M/S MAJESTIC AUTOCOMP PVT. LTD.—*Petitioner*

versus

HARYANA STATE INDUSTRIAL & INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. AND OTHERS—*Respondents*

CWP No. 19017 of 2012

September 24, 2012

Constitution of India 1950 - Art. 226 - Writ jurisdiction - State Government's Industrial Policy, 2005 - Estate Management Procedure, 2005 - Allotment of Industrial Special Project Scheme by jumping queue on 'as is where is basis' - Petitioner failing to comply with terms and conditions of allotment - Show Cause Notice and opportunity of hearing afforded but Petitioner failed to avail of opportunity of hearing - Plot resumed -Appeal dismissed by reasoned and speaking order - Project to be completed within two years from offer of possession as per Clause 5 of Agreement - Undertaking by Petitioner to abide by these terms and conditions and Government Industrial Policy 2005 - Reminders by HSIIDC-Respondent for completion of project - Failure on part of Petitioner to take possession of plot - Liability of Petitioner not absolved simply by depositing total amount of plot especially since plot allotted

under Special Scheme with privileges - Petitioner was not a sincere and genuine allottee - Order of resumption does not suffer from illegality - Writ Petition dismissed.

Held, that a combined reading of these official communications shows that petitioner was reminded even after expiry of 1½ years but it failed to take the possession of plot in question. The letter dated 9.12.2009 also shows that letter dated 18.2.2009 was also written to the petitioner pointing out clear cut violations of the terms and conditions of the agreement. In this view of the matter, we are satisfied that petitioner was interested only in delaying the matter without showing any interest towards setting up of the project, much less in time bound manner, as stipulated in the letter of allotment and agreement. Thus, the impugned resumption order as well as appellate order do not suffer from any illegality and the same deserve to be upheld.

(Para 15)

Further held, that faced with this unwarranted situation created due to casual approach of the petitioner and having been left with no other option, respondent authority passed the impugned resumption order dated 8.11.2011 (Annexure P-21), which does not suffer from any illegality. The amount deposited by the petitioner was refunded to it, vide letter dated 13.12.2011 (Annexure P-24), after making the deduction as per terms and conditions of the allotment. In this view of the matter, we have no hesitation to conclude that the impugned resumption order was rightly passed by the competent authority. Petitioner not only glaringly violated the terms and conditions of the allotment/agreement but also its own undertaking given vide Annexure P-4.

(Para 20)

Further held, that the liability of the petitioner does not get absolved simply by depositing total amount for the plot. It needs emphasis even at the cost of repetition that petitioner having been allotted this plot under a special scheme, allowing the petitioner to jump the queue, vis-a-vis, other applicants, the petitioner was to be more careful and cautious for setting up the project within the stipulated period.

(Para 25)

Further held, that in the present case, the petitioner has failed to establish its bonafide throughout this period. If the contention raised on behalf of the learned counsel for the petitioner is to be accepted, the very purpose and object of the scheme would get defeated. It was not a case of general allotment. The plot in question was allotted to the petitioner under a particular scheme wherein he did not have to compete with the other applicants. When the petitioner came forward to apply under the particular scheme claiming the privileges available thereunder, the petitioner was also under obligation to comply with the terms and conditions of allotment. The petitioner cannot be permitted to claim only the privileges under a special scheme, altogether ignoring his obligations flowing from that very scheme.

(Para 27)

Amit Jhanji, Advocate, *for the petitioner.*

RAMESHWAR SINGH MALIK J.

(1) The present writ petition is directed against the order dated 29.8.2012, whereby appeal of the petitioner was dismissed and resumption order dated 8.11.2011, was upheld.

(2) The relevant factual background of the case, necessary for disposing of the issue involved herein, is that petitioner was allotted plot No. 204 in Sector 4, Phase II, Industrial Estate, G.C. Bawal, District Rewari, measuring 10104.27 square meters. This plot was allotted to the petitioner for setting up the project for manufacturing of auto components, vide regular letter allotment dated 3.4.2008 (Annexure P-2), under an on-going prestigious projects scheme. It is relevant to note here that the land was allotted to the petitioner on fast track basis, wherein the applicant did not have to wait for the advertisement for allotment of plots. The allotment was made under a special scheme allowing the petitioner to jump the queue, vis-a-vis, other intending entrepreneurs, who were also planning to set up such projects under the non prestigious category.

(3) The plot in question was allotted to the petitioner under the State Government's Industrial Policy-2005 and Estate Management Procedure-2005 ('EMP' for short), of the HSIIDC-respondent No.1, subject to certain terms and conditions.

(4) As per Clause 3 of the agreement between the parties, executed pursuant to the letter of allotment, the plot was allotted on the "as is where is basis". When the petitioner failed to comply with the terms and conditions of allotment, show cause notice dated 3.5.2011 (Annexure P-14), for resumption of the plot, was issued but it was not replied by the petitioner. Thereafter, the petitioner was called upon for personal hearing on 30.8.2011, 2.9.2011 and 20.9.2011, but nobody appeared on behalf of the petitioner. Yet, another opportunity was granted to the petitioner to appear on 18.10.2011. Since as per the site inspection report dated 14.10.2011, the plot was still found vacant, the impugned resumption order dated 8.11.2011, was passed by respondent No.3.

(5) Dissatisfied with the resumption order dated 8.11.2011, the petitioner filed an appeal before the appellate authority. One of the Directors of the company appeared before the appellate authority and he was granted an opportunity of being heard. The appeal of the petitioner was found without any substance and the same was dismissed by the appellate authority, vide impugned order dated 29.8.2012 (Annexure P-28), thereby upholding the resumption order.

(6) Feeling aggrieved against the above said resumption order as well as appellate order, (Annexure P-21 andAnnexure P-28, respectively), the petitioner has approached this Court by way of instant writ petition.

(7) Learned counsel for the petitioner vehemently contended that since the measurement of the plot in question, was carried out by the respondents at a much later stage without informing the petitioner, vide letter dated 11.8.2010 (Annexure P-9), the resumption order ought not have been passed because the petitioner was not at fault. He further submits that period within which the petitioner was to raise construction and start manufacturing process, ought to have been computed from the date of delivery of actual possession and not from the offer of possession. In such a situation, resumption of the plot on the ground of non construction, immediately after handing over the actual possession, was illegal on the face of it.

(8) Learned counsel for the petitioner next contended that since there were tubewell pump and Majaar in the plot as well as high tension wires were crossing over the plot in question, the respondent-corporation was under the obligation to remove these, which they have failed to do.

Learned counsel for the petitioner concluded by submitting that since the petitioner had deposited total amount of the plot in question, the same should not have been resumed simply for the reason that petitioner could not comply with the terms and conditions of the allotment, while not raising the construction and starting the production, in time.

(9) To buttress his arguments, learned counsel for the petitioner relies upon the judgment dated 26.3.2012, passed by this Court in **Civil Writ Petition No. 6045 of 2012 (M/s Los Angeles Food Processing Limited versus Haryana State Industical & Infrastructure Development Corporation and others)**

(10) We have heard the learned counsel for the petitioner and with his able assistance, have gone through the record the case.

(11) Having given our thoughtful consideration to the contentions raised and also in view of the peculiar fact situation of the present case, we are of the considered opinion that the petitioner has failed to make out a case for invoking the writ jurisdiction of this Court. We say so for more than one reasons, being recorded hereinafter.

(12) Firstly, it is an undisputed position on record that pursuant to the allotment of the plot in question, vide Annexure P-2 dated 3.4.2008, he entered into an agreement with the respondentcorporation, vide Annexure P-3. As per clause 3 of the agreement, the plot was allotted to the petitioner on "as is where is basis'. The allottee was required to implement the project within a period of two years from the date of offer of possession. The implementation of the project would mean the commencing of commercial production after installation of plant and machinery. It is pertinent to note here the specific terms and conditions of the agreement, particularly the time schedule provided under Clause 5 of the Agreement and the same read as under:-

> *"That notwithstanding the period of three years stipulated qua implementation of the project on the plot, the allottee shall comply with the following norms:*
>
> > *(a) That allottee shall be required to take possession of plot, submit building plans and start construction at site within six months of allotment.*

(b) The allottee shall raise construction at least to the extent of plinth level within one year of allotment.

(c) The allottee shall complete the minimum required construction for completion of project and finalize tie up for procurement of plant and machinery within two years.

(d) The allottee shall implement the project after constructing at least 25% of the permissible covered area and raising investment in fixed capital assets (minimum of Rs. 30 crores) in the project as per project report within three years of allotment and submit documents in this regard to the Corporation.

Upon failure on the part of the allottee to adhere to the schedule/time available for the implementation of the project and investment of minimum Rs. 30 Crores in fixed capital assets in the project, HSIIDC shall be competent to resume the aforesaid plot."

(13) It is the pleaded case of the petitioner itself that vide its letter dated 2.6.2008 (Annexure P-4), it gave an undertaking to abide by the abovesaid terms and conditions, admitting itself to be fully aware about the Government's Industrial Policy-2005 and also EMP of the HSIIDC. It would be appropriate to reproduce the relevant part of the undertaking given by the petitioner and the same reads as under:-

"I/We have carefully gone through the RLA as well as the terms and conditions, contained in the format annexed thereto as appendix A. I am/we are also aware of the State Government's Industrial Policy, 2005 and the Estate Management Procedure-2005 (EMP) of HSIIDC. I/We hereby accept the allotment of plot No. 204 Sector/Block/Phase 04, Phase II, measuring 10104.27 sq. meter (approximately subject to actual measurement) in Industrial Estate, G.C.Bawal for setting up an industrial project of manufacturing of Auto components on the terms and conditions contained in the RLA and appendix A referred to hereinabove and undertake to abide by the provisions of IP and EMP, as amended from time to time.

I/We further undertake to execute the agreement, as per format of the agreement annexed as appendix -A with the RLA with the HSIIDC at Panchkula within the period of 60 days from the date of issuance of the RLA."

(14) It is equally important to note that during this period, the respondent-authorities kept on reminding the petitioner, about its casual approach towards the setting up of the project in question, which is clear from communications dated 25.9.2009 (Annexure P-6) and dated 9.12.2009 (Annexure P-7).

(15) A combined reading of these official communications shows that petitioner was reminded even after expiry of 1½ years but it failed to take the possession of plot in question. The letter dated 9.12.2009 also shows that letter dated 18.2.2009 was also written to the petitioner pointing out clear cut violations of the terms and conditions of the agreement. In this view of the matter, we are satisfied that petitioner was interested only in delaying the matter without showing any interest towards setting up of the project, much less in time bound manner, as stipulated in the letter of allotment and agreement. Thus, the impugned resumption order as well as appellate order do not suffer from any illegality and the same deserve to be upheld.

(16) Secondly, present one is not a case wherein it can be alleged that petitioner was not granted due opportunity of hearing, before passing the impugned resumption order as well as appellate order. A show cause notice dated 14.1.2011 was issued to the petitioner, vide Annexure P-13. The petitioner was called upon to show cause within a period of 30 days, failing which the corporation would have no alternative, except to initiate the resumption proceedings as per terms and conditions. However, petitioner failed to respond to the show cause notice.

(17) Thereafter, another show cause notice dated 3.5.2011 (Annexure P-14) was issued to the petitioner, granting it another opportunity to show cause within 30 days. A perusal of the record further shows that vide letter dated 18.8.2011, the petitioner was called upon for personal hearing on 2.9.2011, so as to explain its position with regard to non implementation of the project in time, but it again failed to appear. Thereafter,

vide letter dated 6.9.2011 (Annexure P-16), petitioner was given yet another opportunity to appear before the Estate Management Committee ('EMC' for short), on 20.9.2011.

(18) It is interesting to note here that vide letter dated 17.8.2011 (sic) 17.9.2011, petitioner apologised for not attending the personal hearing on 2.9.2011, on the ground that competent person of the petitioner company was out of India. It was further stated that as and when the competent person comes to India, the petitioner would appear before the EMC, with concrete proposal along with schedule for implementation of the proposed project. The respondent afforded another opportunity of hearing to the petitioner, vide letter dated 3.10.2011 (Annexure P-19), for 18.10.2011 and in response thereof, a letter was sent by the petitioner to the respondent on 18.10.2011 (Annexure P-20), seeking still further time.

(19) However, representative of the petitioner company appeared before the competent authority on 18.10.2011 but he failed to substantiate the ground raised on behalf of the petitioner company, seeking more time in this regard. In fact, petitioner company could not show any definite plan towards the implementation of the project.

(20) Faced with this unwarranted situation created due to casual approach of the petitioner and having been left with no other option, respondent authority passed the impugned resumption order dated 8.11.2011 (Annexure P-21), which does not suffer from any illegality. The amount deposited by the petitioner was refunded to it, vide letter dated 13.12.2011 (Annexure P-24), after making the deduction as per terms and conditions of the allotment. In this view of the matter, we have no hesitation to conclude that the impugned resumption order was rightly passed by the competent authority. Petitioner not only glaringly violated the terms and conditions of the allotment/agreement but also its own undertaking given vide Annexure P-4.

(21) Thirdly, the petitioner was granted opportunity of being heard. Even during the course of hearing of the appeal against the above said order of resumption, petitioner was granted due opportunity which is clear from communication dated 13.3.2011 (Annexure P-26). The appellate authority has also discussed every material aspect of the matter before arriving at a judicious conclusion that appeal of the petitioner was bereft of any merit and without any substance. Accordingly, the appeal of the petitioner was dismissed by passing a reasoned and speaking order dated 29.8.2012 (Annexure P-28). So far as the contention of the learned counsel for the petitioner regarding measurement of the plot in question is concerned, it is

misconceived on the face of it. The difference in the area of the plot was just negligible. The originally allotted plot was measuring 10104.27 sq. meters, whereas after measuring it at the site, it was found to be measuring 10120 sq. meters, i.e. 15.73 sq. meters in excess of the originally allotted area, which is clear from communication dated 11.8.2010 (Annexure P-9).

(22) It does not appeal to reason as to how this negligible difference in the area of the plot, could be a ground for the petitioner to violate the terms and conditions of the allotment, despite its undertaking dated 2.6.2008 (Annexure P-4), particularly when the allotment was on "as is where is basis". Similarly, the contention of the learned counsel for the petitioner that the date of possession ought to have been computed from handing over the actual possession to the petitioner and not from the offer of possession, is without any force. We say so because it was obligatory on the part of the petitioner, to come forward for taking the possession immediately after the allotment was made. When the petitioner was not showing any interest in this regard, the respondents had to remind the petitioner repeatedly, vide communications dated 25.9.2009, 9.12.2009 (Annexures P-6 and P-7). It was pointed out to the petitioner that physical possession of the plot was made effective from 3.4.2008 and this factual aspect of the matter was never challenged by the petitioner.

(23) The next argument raised by the learned counsel for the petitioner that it was for the respondent authorities to remove the tubewell, pump, peepal tree, Majaar etc. from the plot in question, is again without any substance for the simple but strong reason that the allotment was made to the petitioner on "as is where is basis". The petitioner, as a matter of fact, did not raise this issue at any relevant point of time. Further, we see no reason as to why the petitioner could not have removed the tubewell, pump, peepal tree, Majaar etc from the plot in question. There is no explanation forthcoming from the petitioner in this regard. Thus, since this contention also does not carry any weight, the same is rejected.

(24) The final argument raised by learned counsel for the petitioner that since the petitioner had deposited the total amount of plot in question, the resumption order should not have been passed only because of violation of terms and conditions of the allotment letter, is also wholly misplaced. In terms of the conditions provided under Clause 5 of the agreement between the parties, reproduced above, it was obligatory on the part of the petitioner,

to set up the project on the plot in question, strictly within the timeframe. The petitioner utterly failed to comply with the specific and unambiguous terms and conditions of the allotment.

(25) The liability of the petitioner does not get absolved simply by depositing total amount for the plot. It needs emphasis even at the cost of repetition that petitioner having been allotted this plot under a special scheme, allowing the petitioner to jump the queue, vis-a-vis, other applicants, the petitioner was to be more careful and cautious for setting up the project within the stipulated period. The judgment relied upon the by the learned counsel for the petitioner is of no help to the petitioner, for the reason that the same is clearly distinguishable on facts.

(26) In the cited judgment, the plot originally allotted was measuring 21600 sq. meters whereas on the actual measuring it was found 22860 sq. meters. Thus, difference of 1260 sq. meters was found. Further, facts in the cited case were altogether different than the present one. It is the settled proposition of law that peculiar fact situation of each case is to be considered and appreciated first, before applying any codified or judgemade law thereto.

(27) In the present case, the petitioner has failed to establish its bonafide throughout this period. If the contention raised on behalf of the learned counsel for the petitioner is to be accepted, the very purpose and object of the scheme would get defeated. It was not a case of general allotment. The plot in question was allotted to the petitioner under a particular scheme wherein he did not have to compete with the other applicants. When the petitioner came forward to apply under the particular scheme claiming the privileges available thereunder, the petitioner was also under obligation to comply with the terms and conditions of allotment. The petitioner cannot be permitted to claim only the privileges under a special scheme, altogether ignoring his obligations flowing from that very scheme.

(28) Second limb of final argument that the petitioner was denied the benefit of circular dated 16.7.2009, Annexure P-5, although seems attractive at first blush, yet the same is without any substance, when considered in the totality of facts of the case. A careful perusal of impugned resumption order will make it abundantly clear that despite expiry of 3½ long years, the plot was lying vacant. In view of the clear violations of the terms and

conditions noted at serial No. 2, 3 and 4 in the resumption order itself, the order was perfect and fully justified not only on facts of the case but in law as well. Nobody could have put the clock back. The petitioner was to blame none but itself.

(29) Another issue that falls for consideration of this Court is whether the petitioner, in the given circumstances of the case, is entitled for any sympathy. Keeping in view the peculiar fact situation of the present case, we are of this considered opinion that the petitioner is not entitled for the sympathy nor we are inclined to exercise our sympathy to affect our judgment. The view taken by this Court finds support from the judgment of Hon'ble Apex Court in the case of ***M/s Teri Oat Estates (P) Ltd*** versus ***U.T., Chandigarh and others (1).*** The relevant observations made by the Hon'ble Supreme Court in paras No. 36 to 39 in Teri Oat's case (supra), which can be gainfully followed in the present case, read as under:-

SYMPATHY :

36. We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extra-ordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision.

37. As early as in 1911, Farewell L.J. in Latham v. Richard Johson & Nephew Ltd., (1911-13 AER reprint p. 117) observed :

> *"We must be very careful not to allow our sympathy to affect our judgment with the infant plaintiff. Sentiment is a dangerous will O'the wisp to take as a guide in the search for legal principles."*

(See also Ashoke Saha v. State of West Bengal & Ors., CLT (1999) 2 H.C. 1).

38. In Sairindhri Ddolui v. State of West Bengal, (2000) 1 SLR 803, a Division Bench of the Calcutta High Court wherein (one of us Sinha, J. was a Member), followed the aforementioned dicta.

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(1) (2004) 2 SCC 130

39. This Court also in C.B.S.E. and Another v. P. Sunil Kumar and Others, [1998] 5 SCC 377 rejecting a contention that great injustice would perpetrate as the students having been permitted to appear at the examination and having been successful and certificates had been issued in their favour, held :

> *". . . We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students. . ."*

(30) Considering the totality of facts and circumstances of the case noted above, coupled with the reasons aforementioned, it is unhesitatingly held that petitioner has violated the terms and conditions of the allotment even after repeated letters, reminders and show cause notices having been issued by the respondentauthorities. Repeated opportunities of being heard were also granted. Petitioner was granted due opportunities to put up its case at every relevant point of time before passing the impugned resumption order as well as the appellate order.

(31) In this view of the matter, we have no hesitation to conclude that petitioner was not a sincere and genuine allottee. It wanted to gain more and more time for the reasons best known to it, which was defeating the very object of the scheme.

(32) No other argument was raised on behalf of the petitioner.

(33) No case for interference has been made out.

(34) Resultantly, having found the instant civil writ petition bereft of any merit and without any substance, the same is hereby ordered to be dismissed.

S. Gupta