

(2000) 03 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 17278 of 1991

Sikka Promoters Private Limited

APPELLANT

Vs

The Adviser to the Administrator,
Union Territory and Others

RESPONDENT

Date of Decision: March 27, 2000

Citation: (2000) 125 PLR 631 : (2000) 3 RCR(Civil) 372

Hon'ble Judges: Iqbal Singh, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: M.L. Sarin and Hemant Sarin, for the Appellant;

Final Decision: Dismissed

Judgement

Iqbal Singh, J.

The facts of the case are as under:-

The petitioner-Company was the highest bidder of S.C.O. No.62-63 (measuring 371.82 square yards), Sector 34, Chandigarh, in an open auction held on 13.3.1988. The site was auctioned on lease-hold basis at a premium of Rs.30,55,000/-. The petitioner-company deposited Rs.7,63,750/- by 12.4.1988 with the Estate Officer, Union Territory, Chandigarh (respondent No.3) being 25 per cent of the bid value. It was issued allotment letter Annexure P-1) on the same date i.e. 12.4.1988.

2. On 28.4.1988, vide letter Annexure P-2, the petitioner-Company wrote to the respondent No. 3 that it was unable to take possession of the site due to the presence of telephone/electricity pole and wires on the plot. It (petitioner-Company) requested that the same be removed from the plot and it be given vacant possession of the site. It also requested that no ground rent be charged till vacant possession of the plot was given. The respondents, however, did not get the site cleared of pole/wires.

3. On 16.6.1988, Mr. M.L. Sharma, Special Attorney of the petitioner-firm submitted the affidavit (Annexure P-3) to the respondent No.3 stating therein that he shall

arrange to get the pole removed through the department concerned. On the same date i.e. 16.6.1988, the petitioner-company was issued possession letter (annexure P-4) delivering symbolic possession to it. However, on the insistence of respondent No.3, Mr. M.L. Sharma, was asked to state on the back of the possession letter that there were no visible encumbrances on the site. It has been averred in the petition that actual and physical possession of the site could not and was not delivered to the petitioner on 16.6.1988. The petitioner-Company wrote to the respondent No.3 on 25.6.1988, 24.8.1988 and 21.9.1988 requesting him to get the pole/wires removed from the site so that construction could be started. As the electric wires/pole were not removed, the petitioner-company again wrote letter dated 14.2.1989 (Annexure P-5) mentioning therein about the existence of pole and wires at the spot. The petitioner-Company time and again wrote to the respondent No.3 that since it had not been delivered actual and physical possession of the plot, it could not be charged ground rent till the time actual possession was delivered. The petitioner-company also pointed out that it was incurring huge monetary loss being unable to begin construction on the plot. However, during this time, the petitioner-Company paid the instalments of premium as they became due.

4. The respondent No.3 wrote letters dated 7.7.1988 and 15.9.1988, Annexure P-6 and P-7, respectively, to the Superintending Engineer, Elect., OP Circle, Chandigarh requesting him to remove telephone pole/wires from the spot.

5. On 12.6.1989, the petitioner-Company received letter (Annexure P-8) from the respondent No.3 advising it to contact the Sub Divisional Officer (Electricity) OP. Sub Division No.7, Chandigarh, for removal of the pole. In reply to letter Annexure P-8, the petitioner-Company wrote letter dated 16.6.1989 (Annexure P-9) to the respondent No.3 mentioning therein that it was the liability of the respondents to remove pole/wires from the spot. The petitioner-company sent representations to the Estate Officer, Chief Commissioner, Finance-Secretary and to the Governor of Punjab on various dates mentioned in para No.12 of the writ petition, but its grievances remained unheeded. Rather, respondent No.3 insisted on recovering ground rent and interest and imposed penalties upon the petitioner for the period when the site was still not free and it was unable to carry out any construction thereon. The petitioner-company had paid about Rs.31 lacs by April, 1991.

6. The respondent No.3 issued letter dated 1.1.1991 (Annexure P-10) to the petitioner-company informing it that its request for waiving ground rent penalty and interest had been rejected. The petitioner-company was asked to remit Rs.94,945/- as penalty, Rs.76,375/- as ground rent and Rs.1,09,331/- as interest.

7. Thereafter, the petitioner-company sent representation dated 14.1.1991 (Annexure P-11) to the respondent No.3 highlighting therein that in similar situations, no ground rent or interest was charged from others who were similarly situated in view of the judgment of the High Court dated 23.5.1990 delivered in Civil Writ Petition No.16844 of 1989 (Tilak Raj Sachdeva and Co. and Ors v. Union

Territory, Chandigarh and Ors). The petitioner also made a representation dated 14.1.1991 (Annexure P-13) to the respondent No.1. The respondent No.1 treated the representation Annexure P-13 as a revision-petition.

8. Vide order dated 26.6.1991 (Annexure P-14), the respondent No.1 partly allowed the revision petition. While reducing the penalty from 10 percent to 2 per cent, the respondent No.1 refused to waive the ground rent or interest. The respondent No.1, accepting the plea of the petitioner-company that unencumbered possession of the site could not be delivered to it due to the failure of respondent No.3, extended the time for completion of construction. The petitioner-Company was allowed to complete the construction within three years from the date of the order Annexure P.14 i.e. 26.6.1991. Thereafter, the petitioner-company received memo, dated 14.8.1991 (Annexure P-17) from respondent No.3 calling upon it to pay a sum of Rs.5,02,020/- as government dues.

9. In this petition filed under Article 226 of the Constitution of India, the petitioner-company has prayed for issuance of a writ of certiorari quashing the order Annexure P-10 passed by the respondent No.3 and the order Annexure P-14 passed by the respondent No.1.

10. The respondents, in their written statement, took the preliminary objections that disputed questions of fact are involved in this writ petition and, therefore, the petition is not maintainable and that damages cannot be claimed in the writ petition.

11. On merits, it has been stated that on the representation of the petitioner-company, the respondents took active steps to write to the department concerned to have the poles removed. It has been denied that an affidavit was taken from the representative of the petitioner-company under compulsion. In fact, the petitioner insisted on taking physical possession on the plea that it (petitioner-company) would get the pole removed at its own instance. It has been further stated that the petitioner cannot be allowed to approbate and reprobate at the same time inasmuch as earlier the petitioner-company gave an affidavit in the anxiety to take immediate possession and, now, to avoid payment of ground rent and interest, the petitioner-company is trying to set up a false case that the affidavit was given under compulsion. It is denied that symbolic possession was delivered to the petitioner. In fact, actual possession was given as is clear from the certificate issued at the site to Mr. M.L. Sharma, Special Attorney of the petitioner, as also a note given on the back of the possession letter annexed with the petition as Annexure P-4. It has been further stated that the respondents took all steps to assist the petitioner-company in having the pole removed; that physical possession was delivered at the instance of the petitioner-company; that unreasonable request of the petitioner-company was rightly rejected; and that the cases cited by the petitioner-company are on different facts.

12. In the replication filed by the petitioner-company, the grounds taken in the writ petition were reiterated.

13. We have heard Mr. M.L. Sarin, Senior Advocate, assisted by Mr. Hemant Sarin, Advocate, and have gone through the records of the case.

14. There is no dispute that electric poles existed at the site in dispute. After having been successful in an open auction held on 13.3.1988, the site in dispute was leased out to the petitioner-company. Letter (Annexure P-2) was written by the petitioner-company to respondent No. 3 though for reasons best known to the petitioner the date on Annexure P-2 has not been given, but perusal of the record shows that it was written on 28.4.1988. In the said letter, it was stated that when the petitioner came to take vacant possession of the plot, it was informed by the staff of respondent No.3 that possession of the plot could not be delivered to the petitioner-company as the pole was existing in the plot. By this letter, the petitioner-company requested the respondents to remove the pole/wires etc. from the spot and give vacant physical possession of the plot immediately. It was further requested that no lease rent should be charged from the petitioner-company till the time it gets vacant possession of the plot. On 17.5.1988, respondent No.3 forwarded a copy of the letter (Annexure P-2) to the Superintending Engineer, Electrical, Union Territory, Chandigarh to remove the encumbrances of site in question. In response to the endorsement dated 17.5.1988, the Superintending Engineer, Electricity, "OP" Circle, Chandigarh, wrote letter dated 10.6.1988 to respondent No.3 that from the contents of letter Annexure P-2, it was not clear as to wherefrom the encumbrances were to be removed and requested that plot number and Sector be intimated to his office.

15. On 16.6.1988, the petitioner-company again sent a reminder praying that the, above-said hindrances be removed. Again, a reminder was issued by the petitioner-company on 25.6.1988. On this, respondent No.3 wrote to the Superintending Engineer, Electricity, "OP" Circle, Chandigarh, for removing the above-said hindrances.

16. There is a certificate dated 12.4.1988 given by Mr. M.L. Sharma, Special Attorney of the petitioner-Firm, which is as under:-

"Certified that I, M.L. Sharma, son of Late Shri R.R. Sharma, have this day taken possession of site No.62-63, S.C.O. No. 34-C, City Centre at Chandigarh measuring 371.83 square yards allotted to me on lease hold basis vide allotment No.5662/CPL-4554/CIA-1 dated 12.4.1988 from the Executive Engineer, C.P. Divn. No.3/Div. No. 2 (Roads), Chandigarh."

17. The learned counsel for the respondents has drawn our pointed attention to letter date 27.6.1988 which reads as under:-

"From:

Executive Engineer,
Capital Project,
Chandigarh.

To,

The Estate Officer,
U.T., Chandigarh.

Memo No. 4623

Dated: Chandigarh the 27.6.1988.

Subject: Handing over possession of plots.

Reference authority letter No.5652/CPL/No.4554/CIA-1 dated 12.4.1988 to the address of the Executive Engineer, Chandigarh Project Division No.7, Chandigarh.

2. Possession of plot S.C.O. No.62-63, Sector 34, City Centre, Chandigarh, has today the 16.6.1988 been handed over to M/s Sikka Promoters (P) Limited, 5 Sikka Complex, Preet Vihar, Delhi-92, through Mr. M.L. Sharma, partner (1) Sh.Gurinder Singh Sikka (2) Smt. Kusum Kaur.

His acknowledgement is enclosed herewith.

The area of the plot as laid out at site is :-

Sq. Yds. 371.83."

On the back of this letter, there is a certificate issued by Mr. M.L. Sharma, which reads as under:-

"Certified that I have seen the site of S.C.O. N.62-63.in City Centre, Sector 34, at the site and there is no visible encumbrance."

This certificate is carbon copy of the original. However, it is signed in original by Mr. M.L. Sharma, on behalf of the petitioner-firm.

18. It is quite strange that the" petitioner-firm, subsequent to the issuance of the above-said two certificates regarding taking possession, Was writing letters for getting possession. The argument of the learned counsel for the petitioner-company that these certificate were obtained from Mr. M.L. Sharma; under compulsion/coercion and duress, is without any force. There is nothing on the record to show that any pressure was put on the petitioner-company much less on Mr. M.L. Sharma, to give these certificates. However, it may be added here that the electric wires etc. had been removed from the site in question as is clear from the letter dated 31.10.1988 written by respondent No. 3 to the petitioner-company after getting intimation from the Superintending Engineer, Electricity "OP" Circle, Union Territory, Chandigarh vide his letter dated 4.10.1988. In spite of this intimation, it is

surprising that the petitioner vide its letter dated 2.11.1988 again wrote to respondent No.3 for removal of telephone poles etc.

19. Not only this, but Mr. M.L. Sharma, has also given an affidavit dated 16.6.1988 (Annexure P-3), which is as under:-

"(BEFORE THE EXECUTIVE ENGINEER CHANDIGARH PROJECT DIVISION NO.2, CHANDIGARH).

I, M.L. Sharma son of Shri B.R. Sharma, resident of 67-A, Baldev Park, Delhi-51 do hereby solemnly affirm and declare as under:-

1. That I am the Special Attorney of the owners of S.C.O. No.62-63, Sector 34, Chandigarh.
2. That Electric Pole is lying on the said site.
3. That I shall arrange to remove the said pole through the department concerned.

Sd/-
M.L: Sharma,
Deponent .

Verification

Verified that the above statement of mine is true and correct to the best of my knowledge and belief and that nothing has been concealed therein.

Chandigarh
Dated 16.6.1988

Sd/-
M.L: Sharma,
Deponent .

20. It cannot be said that this affidavit was obtained from Mr. M.L. Sharma under duress or compulsion. It is attested by an Oath Commissioner at Chandigarh and not by any officer of the respondents. Therefore, we find that the petitioner-company was writing letters to the respondents just to evade payment of penalty, ground rent and interest. If the representative of the petitioner-company, namely, Mr. M.L. Sharma, undertook to remove the poles etc., from the site in question, the responsibility of the respondents ceased. However, assistance could be taken from the respondents in this regard.

21. In view of the facts stated above, we are of the view that the action of the petitioner-company in writing again and again for removal of the poles etc. from the site in question was nothing else but a ploy to evade payment of ground rent, interest etc.

22. Consequently, we do not find any merit in this writ petition and the same is hereby dismissed.