(2014) 04 P&H CK 0255

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 15164 of 2011 (O and M)

Minder	APPELLANT
Vs	
State of Haryana	RESPONDENT

Date of Decision: April 25, 2014

Acts Referred:

- Haryana Development and Regulation of Urban Areas Act, 1975 - Section 3, 7, 7(iv)(c)
- Land Acquisition Act, 1894 - Section 4

Citation: (2014) 3 RCR(Civil) 563

Hon'ble Judges: Hemant Gupta, J; Fateh Deep Singh, J

Bench: Division Bench

Advocate: Puneet Bali, Senior Advocate (Amicus Curiae) and Vibhav Jain, Advocate for the Appellant; Kamal Sehgal, Additional Advocate General, Haryana, Ashok Aggarwal, Senior Advocate and Mukul Aggarwal, Advocate, Sanjeev Sharma, Senior Advocate and Shekhar Verma, Advocate and R.S. Rai, Akshay Bhan, Senior Advocates, Abhinav Sood and Animesh Sharma, Advocate for the Respondent

Final Decision: Disposed Off

Judgement

Hemant Gupta, J.

The challenge in the present writ petition is to the licence No. 19 of 2008 to develop a commercial colony in Sector 65, Gurgaon, to respondent Nos. 5 and 6. Initially, the present writ petition was filed by Petitioner Minder and others, but vide order dated 30.10.2012 this Court found that the Petitioners have no locus standi to dispute the licence granted as it noticed large number of discrepancies in the process of grant of licence. Such discrepancies were in fact noticed at one stage by the department. The department issued a show cause notice to respondent Nos. 4 to 6 for cancellation of the licences on 22.6.2010 and after considering the reply filed such show cause notice was decided to be withdrawn on or about 9.12.2010. The Bench noticed that the licence was not granted as per the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (for short ''the Act'') and that

the present petition cannot be dismissed on the ground that the petitioners have no locus standi to challenge the licence granted to the respondents. Consequently, the same was ordered to be treated as a Public Interest Litigation.

2. Subsequently, an application was filed on behalf of respondent Nos. 4 to 6 so as to delete the prayer No. iii) in the writ petition, which was to grant licences to the petitioners in view of their eligibility. Such application was allowed on 22.1.2013. With this background the writ petition came up for hearing before this Court.

3. Some facts leading to the present petition are that the respondent Nos. 5 and 6 applied for a licence to develop a commercial colony in terms of Section 3 of the Act on 12.3.2007 over the land measuring 7.15 acres situated in Villages Nangli Umarpur and Tigra, Gurgaon. However, on 10.4.2007, respondent No. 5, sold 7/10th share of its land situated in Village Nangli Umarpur to respondent No. 9. Respondent No. 5 sold another 2/10th share to respondent No. 8 on 11.4.2007. It was on 31.12.2007, a Letter of Intent was issued in favour of respondent Nos. 5 and 6 and they were directed to obtain certificates from the office of District Revenue Officer that ownership of the land is still in their name. Such certificate was issued by the District Revenue Officer on 22.10.2007 in respect of the land situated in village Nangli CWP Umarpur. Consequent to the said certificate in respect of the verification of the title of respondent Nos. 5 and 6, the licence was granted on 4.2.2008.

4. It was noticed by the Department that in fact, respondent Nos. 5 and 6 have transferred the land in favour of respondent Nos. 8 and 9. To avoid the possibility of cancellation of the licence, respondent Nos. 8 and 9 sold the land back to respondent No. 5 vide two separate transfer deeds dated 31.7.2008. Such sale was after the grant of licences in favour of respondents Nos. 5 & 6. But thereafter, on 10.12.2008, respondent No. 5 again transferred the land in favour of respondent No. 7. It was thereafter, respondent No. 5 sought permission from respondent No. 2 for transfer of licence in favour of respondent No. 7. In the meantime, a notification u/s 4 of the Land Acquisition Act, 1984, was issued on 12.12.2008 in respect of certain land in the villages in question, but since the licence was granted to respondent Nos. 5 and 6 prior to the acquisition, so the land subject matter of the licence was not made part at the subsequent stages of the acquisition proceedings.

5. In reply, the State has referred to the circular dated 11.10.2000, which refers to Notification No. 1 dated 16.1.1937 issued by the General Board of Revenue, Finance Department and Para 119 of Haryana Stamp Manual, 1970 so as to state that the stamp duties are not payable on the instruments evidencing transfer of property between companies limited by shares as defined in the Indian Companies Act, 1913. It is the stand of the respondents that all the Companies i.e., respondent Nos. 5 to 9 are the subsidiary companies of respondent No. 4 and all such Companies satisfy the requirement of the notification dated 16.1.1937, as reiterated in Para No. 119 of the Haryana Stamp Manual, 1970 and in the circular dated 11.10.2000. Therefore,

the sale deeds executed without payment of stamp duty are legal and valid.

6. The transfer of land to respondent No. 5 and 6 by respondent Nos. 7, 8 and 9 was not felt sufficient to avoid the cancellation of licences, therefore, two civil suits were filed. The first suit was filed on 9.3.2010 to avoid the transfer in favour of respondent Nos. 8 and 9. A consent decree was granted on 29.3.2010. Another suit was filed on 22.7.2010 for the same purpose so as to avoid the sale deeds effected by respondent Nos. 5 and 6. Such suit was decreed on 26.7.2010. Relying upon the civil suits and consequential decrees passed, it is argued that on the strength of the said decrees, respondent Nos. 5 and 6 regained their status as that of the owners and consequently, the licence granted complied with the statutory requirements.

7. Shri Puneet Bali, learned Amicus Curiae, referred to the judgement of the Hon''ble Supreme Court in Centre for Public Interest Litigation and Others Vs. Union of India (UOI) and Others, and also to the judgment in Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others, and other judgements to contend that the grant of licence by the State should always be done in a fair and equitable manner and element of favouritism or nepotism should not be exercised by the functionaries or officers of the State. It is, thus, contended that the statutory authorities have exercised the power to grant licence on the basis of misleading assertions and false reports in violation of the Rule 3 of the Haryana Development and Regulation of Urban Areas Rules, 1976. The Act and the Rules contemplate that the licence shall be granted on proof of ownership of the land. Therefore, the grant of licences to respondent Nos. 5 and 6 is wholly arbitrary and not in public interest.

8. Shri Aggarwal, learned Senior Counsel, appearing for respondent Nos. 4 to 6, has vehemently argued that the licence granted to respondent Nos. 5 and 6 cannot be made the subject matter of the Public Interest Litigation, therefore, the legality and validity of the licence granted should not be made subject matter of the judicial review. It is argued that the interests of none of the deprived person are jeopardised as the licence has been granted in terms of the Statute and that such licence can be granted in favour of an entity competent and willing to develop commercial colony. The present petition is by a rival developer and thus, no public interest is involved.

9. However, we do not find any merit in the argument that the present is not a petition in the public interest. This Court has passed an order to treat the present petition as a Public Interest Litigation noticing the discrepancies in the licence granted to respondent Nos. 5 and 6. Therefore, it is not a petition by any individual but the proceedings are being continued in order to verify the transparency and probity in the process of grant of licence in terms of the orders passed by this Court. Thus, the argument that public interest litigation is not maintainable does not warrant acceptance.

10. On merits, we find that main thrust of the argument of Mr. Bali is upon the fact that the sales of the land in question and later suffering of the consent decrees will not render the licence granted as valid. It is argued that on the date of grant of Licence, respondents Nos. 5 and 6 were not the owners of the land and thus, they do not meet the basic requirement that an aspirant for licence should be owner of the land, in respect of which the licence is to be granted.

11. A perusal of the record shows that firstly two sale deeds were executed by respondent Nos. 5 and 6 in favour of respondent Nos. 8 and 9. Secondly, one sale deed each was executed by respondent Nos. 8 and 9 in favour of respondent Nos. 5 and 6. Lastly the sale deed has been executed by respondent Nos. 5 and 6 in favour of respondent No. 7. Subsequently, the Civil Suits have been filed challenging all the sale deeds, but without affixing proper court fee as per the valuation of the sale deeds. All such sale deeds have been set aside on the basis of consent decree by the Civil Court, resultantly, the respondent No. 5 & 6 claim to be owners of the land as per their original application on the basis of which, the license has been granted. The other ground of challenge is the reports by the revenue officials in respect of title of respondents No 5 & 6 to develop a commercial colony.

12. We have heard learned counsel for the parties and find that the non payment of the stamp duty on the sale deeds is on the basis of a circular issued by State Government in the year 2000 reiterating notification dated 16.1.1937. In case, the documents of sale require stamp duty and the same is not paid, one of the possible consequences is that the transfer of land itself was not valid. In that eventuality, respondent Nos. 5 and 6 would continue to be owner. In fact, none of the parties suggested this aspect. The other aspect is that if the sale deeds are valid, then whether such sale deeds could be executed without payment of stamp duty and if not, as to whether respondent Nos. 5 to 9 could be directed to make up the deficiency in the Stamp Duty. We further find that if the transfers and consent decrees are not found to be vitiated, the reports of title would be insignificant, in view of the fact that respondent Nos. 5 and 6 would be owners of the land in question.

13. The provisions of the Indian Companies Act, 1913 (for short 1913 Act) are different than the provisions of Companies Act, 1956 (for short 1956 Act) in respect of inter-se relation of holding and/or subsidiary companies. Therefore, the notification issued by Governor General in Council on 16th January 1937 when 1913 Act was in force, shall not be applicable to the transfers between holding and subsidiary companies. Sub-section (2) of Section 2 of the 1913 Act as inserted by Act No XXII of 1936, is that where the assets of a Company consist in whole or in part of shares in another Company, whether held directly or through a nominee and whether that other company is a company within the meaning of the Act or not deals with the holding and the subsidiary Companies, that other company shall be deemed to be a subsidiary company within the meaning of the said Act. The

provision reads as under:-

(2) Where the assets of a company consist in whole or in part of share in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and (a) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent of the issued share capital of that other company or such as to entitle the company to more than fifty per cent of the voting power in that other company or (b) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company, that other company shall be deemed to be a subsidiary company within the meaning of this Act, and the expression ''subsidiary company'' in this Act means a company in the case of which the conditions of this subsection are satisfied and includes a subsidiary company of such company:

Provided that where a company the ordinary business of which includes the lending of money holds shares in another company as security only, no account shall, for the purpose of determining under this section whether that other company is a subsidiary company, be taken of the shares so held.

Section 86H of the 1913 Act restricts the right of the Directors of a public company or a subsidiary company to sell or dispose of the undertaking of the company and to remit any debt due by a Director except with the consent of the company in its general meeting. Section 87E prohibits a company to give any loan to or guarantee any loan made to any company under management by the same managing agent but the loans made or guarantees given by a company to or on behalf of a company under its own management or loans made by or to a company to or by a subsidiary company thereof or to guarantees given by a company on behalf of a subsidiary company are not prohibited. Section 132A mandates that the Balance sheet of a holding company shall include the particulars of a subsidiary company or companies when the holding company, holds shares, either directly or through a nominee, in such company or companies such as the last audited balance sheet, profit and loss account and auditors'' report of the subsidiary company or companies, and a statement signed by the persons by whom, the balance-sheet of the holding company is signed staking how the profits and losses of the subsidiary company, shall be attached for the purposes of the accounts of the holding company. Thus, under the Companies Act, 1913, the subsidiary company is subject to control and restrictions in its working existence, whereas each of the Company registered under the 1956 Act is completely independent juristic entity. The Supreme Court in the judgement reported as Vodafone International Holdings B.V. Vs. Union of India (UOI) and Another, , held that each of the incorporated Company (under the 1956 Act) is a distinct juristic entity and the fact that all its shares are owned by one

person or by the parent company has nothing to do with its separate legal existence. It was held as under:-

101. A company is a separate legal persona and the fact that all its shares are owned by one person or by the parent company has nothing to do with its separate legal existence. If the owned company is wound up, the liquidator, and not its parent company, would get hold of the assets of the subsidiary. In none of the authorities have the assets of the subsidiary been held to be those of the parent unless it is acting as an agent. Thus, even though a subsidiary may normally comply with the request of a parent company it is not just a puppet of the parent company. The difference is between having power or having a persuasive position. Though it may be advantageous for parent and subsidiary companies to work as a group, each subsidiary will look to see whether there are separate commercial interests which should be guarded.

102. When there is a parent company with subsidiaries, is it not the law that the parent company has the "power" over the subsidiary. It depends on the facts of each case. For instance, take the case of a one-man company, where only one man is the shareholder perhaps holding 99% of the shares, his wife holding 1%. In those circumstances, his control over the company may be so complete that it is his alter ego. But, in case of multinationals it is important to realise that their subsidiaries have a great deal of autonomy in the country concerned except where subsidiaries are created or used as a sham. Of course, in many cases the courts do lift up a corner of the veil but that does not mean that they alter the legal position between the companies.

13A. Therefore, we find that the reliance of the respondents on the Notification No. 1 of 1937 issued in terms of the Companies Act, 1913 as amended by Act No. 22 of 1936 cannot be applied to the transactions of sale and purchase of the immovable properties between the holding and/or the subsidiary companies. The Notification issued in the year 1937 would not be valid as the basic substratum of the notification have undergone sea change with the enactment of 1956 Act.

14. Similarly, the civil suits also attract ad. valorem court fees in terms of the provisions of Section 7(4)(c) of the Court fees Act, 1879. A Division Bench of this court vide its order dated 15.7.2011 passed in CR No. 4753 of 2005 titled as Tarsem Singh v. Vinod Kumar, examined the Supreme Court order in Suhrid Singh @ Sardool Singh Vs. Randhir Singh and Others, and held to the following effect:-

(i) If the executant of a document wants a deed to be annulled, he is to seek cancellation of the deed and to pay ad valorem Court fee on the consideration stated in the said sale deed.

(ii) But if a non-executant seeks annulment of deed i.e. when he is not party to the document, he is to seek a declaration that the deed is invalid, non-est, illegal or that it is not binding upon him. In that eventuality, he is to pay the fixed Court fee as per

Article 17(iii) of the Second Schedule of the Act.

(iii) But if the non-executant is not in possession an d he seeks not only a declaration that the sale deed is invalid, but also a consequential relief of possession, he is to pay the ad valorem Court fee as provided u/s 7(iv)(c) of the Act and such valuation in case of immovable property shall not be less than the value of the property as calculated in the manner provided for by Clause (v) of Section 7 of the Act." In terms of the said judgment, since the executants of the sale deeds have sought to avoid the sale deeds, the plaintiffs are liable to affix ad-valorem Court fee on the civil suits.

15. Shri Aggarwal, learned Senior Counsel, representing respondent Nos. 4 to 6 and Shri Sanjeev Sharma, learned Senior Counsel for respondent Nos. 7 to 9, accepting the legal proposition, state that respondents shall pay the stamp duty on all the five sale deeds. It is also stated that the plaintiffs in the two Civil Suits shall also pay the Court fee as per the valuation of the sale deeds involved in such suits within a period of two months from today. In view of the statements of the learned counsel for respondent Nos. 4 to 9, the present writ petition is disposed of with a direction that in the event, the stamp duty on the sale deeds and court fees on the two civil suits, is affixed within two months, the license shall remain valid and legal. But in case, the deficit in the stamp duty and/or court fees is not made up, the licence shall be deemed to be set aside for the violation of the Statutes.