

(2014) 04 P&H CK 0274

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1733 of 2014

Punjab National Bank

APPELLANT

Vs

Haryana State Industrial and
Infrastructure Development
Corporation Limited

RESPONDENT

Date of Decision: April 29, 2014

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2014) 176 PLR 671

Hon'ble Judges: Sanjay Kishan Kaul, C.J; Arun Palli, J

Bench: Division Bench

Advocate: N.K. Mankotia, Advocate for the Appellant; Kamal Sehgal, Advocate for the Respondent

Judgement

Sanjay Kishan Kaul, C.J.

Learned counsel for the respondents accepts notice. At the request of learned counsel for the parties, the petition is taken up for hearing.

2. Haryana State Industrial and Infrastructure Development Corporation, respondent No. 1 (for short "the Corporation), on an application filed by one Shri Rajnish Behl as Sole Proprietor of M/s. Parth Industries, allotted Plot No. 460, Phase-III, Udyog Vihar, Gurgaon, to him for setting up of a project of Sheet Metal and Wire Formed Components, on 5.8.1992. In terms of the allotment letter, the project was required to be completed within a period of two years. In terms of this agreement, the allottee was required to complete the erection and installation of machinery within the said period of two years from the date of transfer of the plot, failing which, the Corporation could resume the plot. This agreement to sell, subsequently, gave rise to a transfer deed being executed on 12.1.1993, which was duly registered.

3. It may be noted that learned counsel appearing for the respondents has not been able to establish from a perusal of either the agreement or the transfer deed that there was any restriction on sale or transfer of the property in question. Thus, absolute title was conferred on Shri Behl and even the clause qua right of resumption was neither included in this deed of transfer nor was the earlier agreement dated 18.8.1992 (signed by Shri Behl on 9.9.1992) made a part of the transfer deed, specifying that the clauses contained therein would be binding between the parties. We are saying so as something turns on this. The transfer deed was a final registered document, which was a composite document and would, thus, govern the rights and obligations of the parties.

4. It appears that some construction was made on the plot. Not only that, the transferee obtained a No Objection Certificate for mortgage of the property in favour of the Haryana Financial Corporation on 22.1.1993, but it appears that no such mortgage was created. The Excise and Taxation Officer, Gurgaon, served on the Corporation, an attachment order dated 18.11.1998 for a sum of Rs. 3,28,994-00 towards Excise Duty.

5. It is the stand of the respondents that one Mrs. Anita Karer approached the Branch Office of the Corporation in Gurgaon, on 12.6.2000, for transfer of the plot in her favour, claiming that she had purchased the property vide a registered sale deed dated 31.1.1996 and also enclosing Form 34-A issued by the Income Tax authorities. Vide another letter dated 10.12.2000, she informed that she was in the process of transferring this property to Shri Bijay Madan, Proprietor, M/s. M & M Industries, in pursuance to an agreement to sell dated 27.7.2000, executed by her. The Corporation, vide its letter dated 12.2.2001, advised Shri Behl to submit a No Objection Certificate from the Excise and Taxation Officer, Gurgaon, and to clear the maintenance charges of Rs. 17,552-00, calculated up to 31.3.2000. Respondents, in their affidavit, have admitted that, on site inspection, M/s. M & M Industries was found operating. A show cause notice is stated to have been issued to Shri Behl on 25.2.2003 for non implementation of the project and unauthorised multiple transfers, to which no reply was received from him, but Mrs. Anita Karer, vide letter dated 3.3.2003, requested for the transfer of the plot in her favour and, thereafter, in favour of M/s. M & M Industries. It appears that, in the meantime, Shri Behl had left India. There was some intra-departmental processing, which went on. A representative of M/s. M & M Industries was called on 22.5.2007. In the meantime, the dues from the Excise and Taxation Department had risen to Rs. 20,99,282/-, as per a letter dated 30.9.2010. It is only on 9.3.2011 that the respondents sought to resume the property, marking copies to both Mrs. Anita Karer and M/s. M & M Industries. This order is predicated on the terms and conditions of the agreement, alleging unauthorised sale. There is no mention of the subsequent relevant document, being the deed of transfer. It also refers to the amount due to the Excise and Taxation Department.

6. On the endeavour of the respondents to take possession of the premises, it was found that the possession of the property had already been taken over by the petitioner, Punjab National Bank. It is averred in sub para (xvi) of Para-1 of the Preliminary Objections of the written statement filed by the respondents that the Punjab National Bank, Recovery Management Branch, vide its letter dated 18.8.2011, intimated that the possession of the Unit was taken over by the Bank on 24.9.2010 against the outstanding amount of Rs. 13.73 crores due from M/s. Skan Gables and Wires Private Limited, a company promoted by Shri Bijay Madan, and the property being the security for the said loan. The possession was result of the proceedings taken under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short the Act"). The Corporation, in turn, vide its letters dated 25.10.2011 and 4.11.2011, is stated to have forwarded the resumption order to the Bank.

7. The result of the aforesaid exchange is that while the petitioner, a Nationalised Bank, is seeking a right to deal with the mortgaged property under the Act, the respondents are seeking to rely on the resumption order as also the factum of there being outstanding dues to the Excise Department. The petitioner-Bank has, thus, filed the present writ petition under Article 226 of the Constitution of India seeking quashing of the resumption order dated 9.3.2011.

8. We have perused the pleadings and heard learned counsel for the parties.

9. Insofar as right of the Corporation to deal with the property is concerned, it flows from the agreement dated 18.8.1992. However, the resumption could only take place on account of failure to complete the erection and installation of machinery and commence production. The very imposition of Excise Duty shows that the production did commence. There is no power of resumption if any transfer is made or mortgage created. In fact, the deed of transfer is worded in such a manner that it does not reserve any right to the Corporation for the transferee to obtain prior permission for any subsequent transfer or to obtain prior permission for mortgage. The stand of the learned counsel for the respondents is that Clause 14 of the agreement dated 18.8.1992 requires prior permission but the same is in respect of change in the project or constitution. It does not talk about any transfer to a third party but uses the word "right". Learned counsel for the respondents submits that this word should be read as "transfer", thus, stating that there was some mistake in drafting of the format.

10. In our opinion, this is not possible as these are standard format documents of the Corporation. If the Corporation has not drawn the document correctly, then, it cannot abrogate to itself a right which it has not reserved. Be that as it may, it is worth noting that the petitioner despite the aforesaid position, had actually intimated to the Corporation, vide a letter dated 26.11.2008, about the equitable mortgage created in its favour, requesting the Corporation to mark a charge against the petitioner. M/s. M & M Industries had also sent a letter on 5.1.2009 followed by a

reminder on 15.1.2009. It is only on 25.10.2011 that, for the first time, the Corporation informed the petitioner of the resumption of the plot.

11. The petitioner-Bank has dues outstanding from the borrower and the property in question is a security for the same, by reason of creation of equitable mortgage by deposit of title documents. The mortgage was created much prior to the alleged order of resumption. The intimation of the mortgage was also given to the Corporation. All this happened three years prior to the alleged order of resumption. Public money is involved of the petitioner-Bank, which is a Nationalised Bank. The action taken by the petitioner-Bank is in pursuance to rights conferred under the Act. In these circumstances, we are of the view that there is no basis for the resumption order at all, as the deed of transfer does not abrogate any such right to the Corporation and whatever rights were otherwise under the agreement, were also qua construction of the property in question and to commence production. The full price consideration already stands paid to the Corporation prior to the execution of the deed of transfer.

12. We may note that the petitioner-Bank had already volunteered, on the first date of hearing on 30.1.2014, that the dues payable by the original allottee to the Excise Department or any maintenance charges of the Corporation would be cleared by it.

13. We, thus, allow this writ petition and quash the impugned order of resumption dated 9.3.2011. The petitioner, as mortgagee, is entitled to deal with the property in question subject to the condition that the payment of the dues of the Excise Department as well as any maintenance charges of the Corporation will be made over to them, which will be the first charge on the sale consideration. The Corporation may inform of the up to date arrears of maintenance charges, if any, up to 30.6.2014, within 15 days. The petition is allowed in the above terms, leaving the parties to bear their own costs.