

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 572-573 OF 2010

AMAN SEMI-CONDUCTORS (PVT.) LTD.

...APPELLANT(S)

VERSUS

HARYANA STATE INDUSTRIAL
DEVELOPMENT CORPORATION LTD. & ANR.

...RESPONDENT(S)

JUDGMENT

S. RAVINDRA BHAT, J.

1. The present appeals, by special leave, are directed against orders {Dated 11.01.2007 in RP No.3125/2003 and order dated 07.11.2008 in Misc. Application No. 711/2008 in Revision Petition No. 3125/2003.} of the National Consumer Disputes Redressal Commission (hereinafter "NCDRC"). The NCDRC allowed a revision petition filed by the respondent corporation.

2. The brief facts of the case are that the appellant, a proprietary concern applied for an industrial plot of the proposed project on 28-02-1994 in Industrial State Udyog Vihar, Gurgaon. The respondent corporation (hereinafter "HSIDC") called the appellant's proprietor, Modi Lal Gupta, for an interview on 09-09-1994. A letter of intent was issued indicating certain conditions on 05-10-1994. The appellant informed that he could not start the production in time on the ground that there were no basic infrastructure facilities as electricity, sewerage, telephone and proper road, etc., and requested for

extension of time of three months. After sanction of the loan by HSIDC, on 13-09-1995, a letter of allotment of plot was issued which stipulated certain terms and conditions. On 02-11-1995 possession was handed over to the allottee/appellant.

3. The appellant did not fulfil the required conditions of the allotment. No concrete step to set up the industrial unit on the allotted site was initiated by it. As a result, HSIDC issued a notice, on 13-12-1996 asking the appellant to show cause why the plot should not be resumed on account of its failure to fulfil the terms and conditions of the allotment. In response, the appellant, on 12-02-1998, wrote back to the HSIDC. The letter or reply alleged that no basic infrastructure facilities as electricity, sewerage, telephone and proper road, etc., existed near the site, and, as a result, it was not possible to start the construction. The appellant sought extension of time by a year.

4. On 23-03-1998, HSIDC issued final notice asking why the plot should not be resumed for the appellant's failure to fulfil the terms and conditions of allotment. The appellant wrote a letter, again on 19-04-1998 requesting for extension of time. Since appellant did not come forward to satisfy the HSIDC by producing any document in response to its letter dated 19-04-1998 about the steps taken, HSIDC, on 18-09-1998 resumed the plot stating that the appellant was not serious in implementing the project and that the plot was lying vacant. HSIDC enclosed a cheque for a sum of ₹ 1,66,425 with the letter towards the refund and the appellant was requested to handover the possession of the plot to the Field Officer.

5. The appellant approached the District Forum, Gurgaon with a complaint. The District Forum, Gurgaon, assumed that since the State Government has changed the policy without referring to the policy, it went on to hold that the complainant was unable to complete the project not on account of negligence on the part of the complainant but because of the circumstances which were beyond its control. HSIDC appealed to the State Commission. The State Commission dismissed the appeal, upon which HSIDC filed a revision petition before the NCDRC, which was dismissed on the ground of delay. The HSIDC's special leave petition to this court succeeded, and an order was made on 10.11.2003 directing the NCDRC, to hear and dispose of the appeal on its merits.

6. The NCDRC, after remand, allowed HSIDC's revision application. It held that the grounds taken and the reasons given by the appellant were vague and evasive and does not disclose any particular date or any time frame for taking up and completing construction. It was also held that the appellant did not show what concrete steps were taken and that his conduct and correspondence could not be taken to be a proper explanation or sufficient ground for non-completion of the construction and non-installation of the machines and not starting the production in terms of the agreement. The NCDRC also held that the plot remained in possession of the complainant from 29-12-1995 till 18-12-1998. Relying on the decision of this court in *Indu Kakkad v Haryana State Industrial Development Corporation Ltd*, where this court relied on a clause

similar to clause 6 of the current agreement, the NCDRC held that the HSIDC was justified in resuming the plot.

Contentions of the appellant

7. Mr. Rajiv K. Garg, learned counsel appearing for the appellant, urged that the appellant did not violate any of the terms of the allotment letter and took due steps in terms of the allotment letter. After the allotment of the plot (No 182-M, Udyog Vihar, Phase - IV, Gurgaon) he took all the required steps such as:

- (a) obtaining the required certificate from the Industrial Department;
- (b) applying to the electrical department for grant of power connection for which he had deposited the requisite amount with the HSEB;
- (c) applying for financial assistance with the Financial Corporation.

However, on account of change in policy of the Government, the same was not granted, therefore, the appellant arranged the same from outside. Thus, the appellant took all effective steps for implementation of the project which were within his power and control.

8. It was urged that the appellant is a duly qualified engineer, who wanted to be an entrepreneur, and acted upon the novel idea of manufacturing components for FM radios and audios. However, the delay in granting permission and not releasing capital resulted in no construction.

9. Learned counsel further submitted that the NCDRC's impugned order is in error, because it overlooked the fact that the resumption order was issued without granting any opportunity to the appellant; furthermore, the order was also vitiated as it was non-speaking. Learned counsel relied on the judgment of this court in *Managing Director, Haryana Industrial Development Corporation & Ors. V. Hari Om Enterprises & Ors.* {7 *Managing Director, Haryana Industrial Development Corporation & Ors. v Hari Om Enterprises & Ors*, 2009 (16) SCC 208}, in support of the argument that cancellation of allotment without adherence to principles of natural justice vitiates the action of HSIDC.

Contentions of HSIDC

10. Mr. Alok Sangwan, learned Additional Advocate General for Haryana, urged this court not to interfere with the findings of the NCDRC. He submitted that the record would show that sufficient opportunity was granted to the appellant, and show cause notice too was issued to him, asking him why steps were not taken to construct the industrial unit upon the plot. Counsel relied on several letters exchanged between the

parties. He argued that the appellant did not show any, much less substantial progress or interest in carrying on industrial activity on the plot.

11. Mr. Sangwan submitted that the object behind allotment of plots in industrial areas, was to promote industrial activity, especially by qualified engineers. He highlighted that allotment is based on appraisal of the project proposed by applicants, and having regard to their feasibility. The overall objective of the scheme under which plots were allotted was to promote industrialization and thereby promote economic growth, and also ensure employment. The persistent inaction of the appellant and his inability to show any inclination to fulfil these objectives, despite grant of several opportunities, and most importantly his inability to take any initiative despite lapse of five years from allotment, meant that he was not interested in constructing upon, or using the plot for any industrial activity, but rather to speculate and wait for its value to increase, and thereafter dispose it off.

12. Learned counsel relied upon several conditions in the allotment letter and stated that the appellant was obliged to not only take swift and timely action towards putting up the unit, but also the allotment was hedged with several conditions, many of which, upon violation, entailed cancellation. Therefore, there was nothing abhorrent or reprehensible in HSIDC's action in resuming the plot.

Analysis and Reasoning

13. The record in this case indicates that the appellant had applied for allotment of the industrial plot on 28-02-1994. After he was interviewed and his credentials verified, he was issued with the letter of intent on 09-09-1994. The final payment was made in respect of the plot on 06-09-1995. Later the next month on 27-10-1995, an agreement was executed between HSIDC and the appellant in which he agreed to complete the project in 2 years. The agreement also contained the condition that extension could be granted upon payment of a fee. The appellant took possession of the plot on 29-12-1995. The appellant was called upon to show cause why he did not complete construction and set up the unit, in 1997. Upon receiving this notice, he replied on 12-02-1998 that he could not start the unit due to lack of infrastructural facilities. He alleged that road and electricity facilities were not adequate, which had hindered his project. The HSIDC issued a show cause notice to the appellant, again on 23-03-1998. Yet again on 29-04-1998, another show cause notice was issued by HSIDC, asking the appellant to indicate the steps that he had taken to put up the industrial unit and start production. However, the appellant did not apparently respond to this. Finally, on 18-09-1998, the HSIDC communicated that it had resumed the plot and cancelled the allotment. It refunded the sum of ₹1,66,425, through a cheque, which was sent to the appellant. The latter upon receipt of this intimation did not accept the cheque and returned it back on 06-10-1998.

14. In the meanwhile, the appellant approached the District Consumer Forum, Gurgaon, on 30-09-1998. The District Consumer Forum allowed the complaint on 16-05-2000 and directed the HSIDC to withdraw the resumption order. It also directed HSIDC, not to allot the plot to any other person; HSIDC was granted 3 months' time to comply with the requirement of allotting the plot to the appellant. The HSIDC's appeal was rejected on 29-04-2003 by the State Consumer Commission. It approached the NCDRC belatedly. On 10-11-2003 NCDRC dismissed its revision petition as time-barred. Subsequently, the HSIDC approached this court, which remitted the matter by its order dated 20-01-2004 to the NCDRC for fresh consideration on merits. By the impugned order, the revision petition was allowed.

15. As the previous discussion reveals the appellant's arguments are twofold. The first is that HSIDC violated principles of natural justice, did not grant him a hearing and unilaterally cancelled the allotment. The added point made was that the allotment was followed by payment of full consideration and that, in these circumstances, some minimum hearing ought to have been given before adverse action of resumption was taken. It was also alleged in this regard that cancellation order did not disclose any application of mind; no reasons are forthcoming. The second substantial argument made was that in the absence of essential infrastructural facilities such as roads, overall development of the industrial area availability of electricity and other amenities, HSIDC could not have expected the appellant or any other allottee to construct the plot within the time granted, i.e two years.

16. The allotment made in favour of the appellant by HSIDC contains several conditions. The HSIDC and the appellant entered into an agreement on 27-10-1995. Clause 4 (iii) of the agreement stipulates that the allottee would enjoy the right of possession as long as he complied with all terms and conditions of allotment contained in the agreement. Clause 6 which is important in the present context reads as follows:

"6. That the allottee shall start on the site construction of building for setting up the aforesaid industry within a period of 6 months and complete the construction thereof within 1 1/2 years from the date of the possession. The plans thereof shall be in accordance with the rules made as per the directions given from time to time by the Town and country planning and Urban estate Department, in this respect and approved by the Director Town & Country planning department or any officer duly authorised by him in this behalf.

Further the allottee shall complete the construction and installation and machinery and commence production within a period of 2 years from the date of possession after constructing a minimum of 25% of the permissible covered area, failing which the plot shall be liable to be resumed by the Corporation.

Provided that the scheme shall be deemed not to have been implemented unless the allottee starts commercial production after completing construction to the extent of at least 25% of the permissible covered area of the plot as per the approved Zoning Plan of the concerned estate within the aforesaid period failing that event, the plot shall liable to be resumed by the Corporation.

However, the Corporation shall have the right to call for periodical reports every 6 months from the allottee about the progress /implementation of the project and if, after hearing the allottee the Corporation is of the opinion that the progress is unsatisfactory it may order the plot to be resumed.

In the event of reasons beyond the control of the allottee to set up the unit within the prescribed period/the Corporation may grant the suitable extension depending upon the merits of the case. However, such extension shall be granted on payment of a fee in accordance with the rules/policy of the Corporation”.

17. Besides this, there were other mandatory stipulations such as that regular payment of maintenance charges, proportional conservation charges, proportionate external development charges as could be determined by HSIDC and importantly the condition that the allottee could not change its constitution and if it did so, it should in any event, hold not less than 51 % shareholding in its concern. Similarly, any request of the allottee for transfer of plot, could be considered where the final allotment letter had been issued and the project had been completed and approved by the HSIDC. The embargo on transfer was subject to the condition that the HSIDC had the final say or approval, in this regard.

18. The development of industrial areas, was part of the state's overall project for promoting industries and growth of its economy, with the objective of providing livelihood. The HSIDC therefore, correctly contends that the stipulation in the allotment letter, requiring allottees to construct their respective projects and start it, was essential. The appellant too had furnished a project report, proposing to set up an FM radio and audio component manufacturing unit. This project was appraised, he was interviewed and after satisfying itself about its feasibility, HSIDC allotted the plot. There is no denial of the fact that the allottee did not take any step towards setting up the unit he proposed. His pleading, before the District Consumer Forum, was that the infrastructural facilities, such as road and external development had not come up. He claims to have applied for electricity connection. On the other hand, there is nothing on the record- even till date- pointing to any plan to construct a factory or industrial unit. He did not supply any plans for approval; nor did he ever show inclination to procure

the needed machinery and equipment required for his proposed industrial unit. Other steps such as securing tax registration, etc., too were not shown to have been done. In these circumstances, the conclusion which this court is compelled to draw is that the appellant was always insincere and perhaps never intended to follow up and set up the industrial project, which he proposed to HSIDC, as the basis for allotment of his plot.

19. The judgment of this court in *Indu Kakkar* had concluded that Clause 7 of the agreement, entered into between the parties (in that case), was binding. That condition required construction of the building for setting up the industry, in respect of which land was allotted to the appellant, to start within a period of six months. Construction had to be completed with two years from the date of issue of the allotment letter. Since the appellant failed to commence construction within the stipulated time, show-cause notice was issued as to why the plot be not resumed in terms of the agreement; that was in challenge and relied on [Section 11](#) of the Transfer of Property Act, 1882. This court negated the plea in the following manner:

"16. However, the allottee has contended before the trial court that Clause 7 of the agreement is unenforceable in view of [Section 11](#) of the TP Act. But that contention was repelled, according to us, rightly because the deed of conveyance had not created any absolute interest in favour of the allottee in respect of the plot conveyed. For a transferee to deal with interest in the property transferred "as if there were no such direction" regarding the particular manner of enjoyment of the property, the instrument of transfer should evidence that an absolute interest in favour of the transferee has been created. This is clearly discernible from [Section 11](#) of the TP Act. The Section rests on a principle that any condition which is repugnant to the interest created is void and when property is transferred absolutely, it must be done with all its legal incidents. That apart, [Section 31](#) of the TP Act is enough to meet the aforesaid contention. The Section provides that "on a transfer of property an interest therein may be created with the condition super-added that it shall cease to exist in case a specified uncertain event shall happen, or in case a specified uncertain event shall not happen." Illustration (b) to the Section makes the position clear, and it reads:

(b) A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

17. All that [Section 32](#) of the Transfer of Property Act provides is that "in order that a condition that an interest shall cease to exist may be valid, it is necessary, that the event to which it relates be one which could legally

constitute the condition of the creation of an interest". If the condition is invalid, it cannot be set up as a condition precedent for crystallization of the interest created. The condition that the industrial unit shall be established within a specified period failing which the interest shall cease, is a valid condition. Clause 7 of the agreement between the parties is, therefore, valid and is binding on the parties thereto."

20. The decision in Hari Om in this court's opinion, does not in any manner assist the appellant. In that case, the court had dealt with several appeals. In the main appeal, the allotment was offered on 20.12.2001; however actual possession was handed over on 08.12.2003. The appellant applied for approval of building plan, thereafter, which was given by HSIDC on 20.03.2004. The construction of the industrial unit was completed in May 2005. In the meanwhile, alleging non compliance with the terms of allotment, the plot was resumed on 03.03.2005. Having regard to these facts, the High Court had set aside the resumption order. This court repelled the HSIDC's argument that writ proceedings were not maintainable, and held in the facts and circumstances, that the setting aside of the resumption was justified.

21. The idea behind development of industrial plots and allotting them to deserving applicants is to act as a catalyst to promote economic growth; this aspect was underlined in Hari Om in the following manner, while describing the functions of HSIDC:

"4. [...] Its principal function is allotment of industrial plots belonging to the State of Haryana. It was set up as a catalyst for promoting economic growth and accelerating the pace of industrialization. It not only provides financial assistance to the industrial concerns by way of term loans; it also develops infrastructure for setting up of industrial units. The Corporation also invests money in developing the industrial estates at strategic locations. In exercise of its functions, it also allots industrial plots to entrepreneurs for setting up their industries on "no profit no loss" basis. The entrepreneurs, according to the Corporation, must be the deserving ones. For the said purpose, it keeps in mind the principle that allotment of land should not be made to speculators who invest in property for getting high returns on escalation of price."

22. In the present case, as discussed earlier, the facts are stark; the appellant never made any genuine effort to start its unit. There is no material to disclose that upon receipt of no less than three show cause notices, the appellant showed any sense of urgency in taking steps to live up to the bargain, (of setting up an industrial unit). The inference which this court is left to draw, is that the allottee's intention was perhaps never to set up any industrial unit, despite its promise to the contrary, and speculatively deal with the plot. Having regard to these facts and circumstances, the court is of the opinion that the impugned order does not call for interference.

23. In view of the above conclusions, this court would have been justified in holding that the appellant is only entitled to refund of the sum of ₹ 1,66,425/- which was paid for the plot. However, there is no denial of the fact that the cheque issued to him was returned and HSIDC had the benefit of those monies all these years. In these circumstances, HSIDC is directed to refund the sum of ₹ 1,66,425/- with interest at 6% p.a. from 18.09.1998 till date. The amounts shall be paid to the appellant, within six weeks from today.

24. The appeals are dismissed, but subject to directions contained in the previous paragraph; there shall be no order on costs.

.....J.

[S. RAVINDRA BHAT]

.....J.

[DIPANKAR DATTA]

New Delhi,

February 27, 2023.