



CWP No. 30604 of 2019 (O&M)

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In the High Court of Punjab and Haryana at Chandigarh

CWP No. 30604 of 2019 (O&M)

Reserved on: 27.2.2025

Date of Decision: 08.4.2025

M/s Penguin Enterprises Pvt. Ltd.

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. B.B.Bagga, Advocate for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana,
Ms. Svaneel Jaswal, Addl. A.G. Haryana,
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.
Mr. Saurabh Mago, DAG, Haryana,
Mr. Gaurav Bansal, DAG, Haryana and
Mr. Karan Jindal, AAG, Haryana
for the respondent-State.

Mr. Pankaj Gupta, Advocate and
Mr. Vaibhav Gupta, Advocate for respondents No. 2 and 3.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner seeks a direction upon the respondents concerned, to act strictly in accordance with law in the context of resumption proceedings, and, to further direct the respondents concerned, to desist from continuation of arbitrary and illegal action of consequential eviction of the petitioner from the subject property.
2. Furthermore, the petitioner seeks the quashing of the impugned notice/order of resumption dated 24.10.2016 (Annexure P-31), and, also seeks the quashing of the impugned order of eviction dated 6.8.2019 (Annexure P-32) in respect of the Industrial Shed No. 61, Type-A, Electronic City, Sector-18, Gurgaon.

Brief facts of the case

3. It is averred in the instant petition, that the petitioner is a

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company registered under the Companies Act, 1956 with the Registrar of Companies, Punjab, Chandigarh and Himachal Pradesh. The petitioner company under the relevant policy, became allotted Industrial Shed No. 61, Type-A, Electronic City, Sector-18 Gurgaon, in response to application dated 11.7.1994. The petitioner deposited the requisite amount, and, subsequently, a possession letter dated 17.7.1997 (Annexure P-7) was issued to it. On 22.5.1998, an agreement to sell (Annexure P-8) was executed between the petitioner and the respondent concerned, and, subsequently on 28.9.2006, deed of conveyance (Annexure P-9) became executed in favour of the petitioner company.

4. It is further averred in the instant petition, that initially there were two main promoters of the company i.e. namely Sh. Asheem Vij and Sh. Lalit Trehan. However, since one of the promoter/director i.e. Lalit Trehan died on 22.10.2007, therefore, Ms. Kanika Trehan, widow of Lalit Trehan, upon completion of necessary formalities, stepped into the shoes of her deceased husband with regard to his shareholding in the company. The efforts of the company to arrange necessary funds to complete construction of the shed and to install the State-of-Art machinery, to run the project concerned were effectively pursued. However, the demise of the promoter (supra) resulted in total disruption of the planning of the company. It is further averred that Ms. Kanika Trehan took over as a Director of the company, which led to various initial level complications in the managerial functions and decision making endeavours of the company. Therefore, taking advantage of the above situation, two senior employees of the petitioner company attempted to grab the assets and income of the company, which led to the filing of three separate court cases on 20.1.2010. However,

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the said cases became withdrawn on 22.9.2016 pursuant to the amicable resolution of the matters.

5. Furthermore, it is averred that during the pendency of the above disputes, the Directors of the company could not visit any of the properties i.e. M/s Penguin Enterprises Pvt. Ltd. at Bombay, Bangalore and Gurgaon. However, upon the resolution of the disputes of the company, thus the Directors of the company made strenuous efforts to resume the business of the company, and, upon their visiting the disputed shed, they found that the said property stood resumed by the respondent concerned. It is also averred that neither any notice was ever received by any of the Directors of the company, nor any notice was received at the registered office of the petitioner company, and, that no order regarding resumption of the property in question was ever served to any of the Directors of the company. It is further averred that as per the information received through RTI, by the petitioner, it transpired that though certain notices were issued by the Harton to M/s Penguin Enterprises Pvt. Ltd. However, none of the said notice was sent by the respondent at the registered office of the company or even at the address mentioned by the company at the time of execution of conveyance deed. The petitioner company also submitted a representation dated 19.5.2019 to the respondent concerned, however the same has not been decided by the respondent concerned.

Submissions on behalf of the learned counsel for the petitioner

6. The learned counsel for the petitioner submits-

(i) That the impugned action of the respondents concerned, qua resumption of the property, even after the execution of the registered deed of conveyance, is not in conformity with the principles of natural

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justice, and, also s impermissible in law.

(ii) That while issuing the impugned notice of resumption (Annexure P-31), the respondents have relied upon the earlier issued notices respectively dated 3.3.2000, dated 31.10.2001, dated 28.4.2009 and dated 18.6.2015, which admittedly became not served upon the present petitioner.

(iii) That vide an unserved letter dated 13.1.2009 (Annexure P-24) whereby the petitioner was asked to furnish the necessary documents to the office of the respondent concerned, besides other notice dated 28.4.2009 (Annexure P-25) was neither sent to the registered office of the company at Chandigarh, nor at the address mentioned in the conveyance deed. Moreover, another unserved notice (Annexure P-26) and notice dated 18.6.2015 (Annexure P-27) were also not sent to the registered office of the company or at the address mentioned in the conveyance deed. Furthermore, through RTI information, it transpired that a peon of the respondent, who was deputed for personal service of notice, had reported that the office of the petitioner company is not situated at Kailash Plaza, 252H, Sant Nagar, New Delhi. Therefore, despite the said unserved notices, becoming neither sent at the registered office of the company, nor at the address mentioned in the conveyance deed, yet the impugned notice (Annexure P-31) and eviction notice (Annexure P-32) became passed.

(iv) That respondent company, which is registered under the Companies Act, 1956, does not have any legal authority of resumption, as resumption is an integral extension of the power of *eminent domain* and only the State, under certain terms and conditions duly notified, can exercise such power(s).

7. Therefore, it is prayed, that the impugned resumption notice



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(Annexure P-31) as well as eviction notice (Annexure P-32) be quashed and set aside.

Submissions on behalf of the learned counsel for respondents No. 2 and 3.

8. The learned counsel for respondents No. 2 and 3 submits that-

(i) That since the physical possession of the industrial shed was handed over to the petitioner company on 17.7.1997, and, as per clause 8 of the agreement dated 22.5.1998, clause whereof becomes extracted hereinafter, the petitioner company was required to implement the apposite project on or before 16.7.1998 i.e. within one year of the physical possession. However, the petitioner company failed to implement the project concerned within the stipulated time frame.

“8. The allottee shall commence commercial production in the independent industrial shed within a period of 1 year from the date of possession, failing which the independent Industrial Shed be liable to be resumed by the Corporation.

(ii) Since as per clause 8 of the agreement, rather the petitioner company failed to implement the project within one year, thereupon the Corporation concerned, issued notices/show cause notices respectively dated 3.3.2000, dated 31.10.2001, and dated 13.1.2009 (Annexure P-24), dated 28.4.2009 (Annexure P-25), dated 18.9.2013 (Annexure P-26) and dated 18.6.2015 (Annexure P-27), upon the petitioner company to show cause as to why the industrial shed allotted to it should not be resumed. Public notices (Annexures P-29 and P-30) in the said regard were also got published in the newspapers concerned.

(iii) Since the industrial shed remained unutilized by the petitioner company for more than 19 years, and, also no communication was sent by the petitioner company, therefore the Corporation concerned, vide



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order dated 24.10.2016 (Annexure P-16) resumed the industrial shed, thus on the ground of non-implementation of the approved project. Furthermore, vide notice dated 6.8.2019, the petitioner company was directed to hand over the possession of the said industrial shed to the Corporation concerned.

(iv) That even after signing the agreement (Annexure P-8) and the conveyance deed (Annexure P-9) no absolute right of ownership vested in the petitioner company over the industrial shed allotted to it.

(v) That in view of the arbitration clauses envisaged at Sr. No. 25 of the agreement to sell (Annexure P-8) and at Sr. No. 13 of the conveyance deed (Annexure P-9), clauses whereof become extracted hereinafter, the present petition is not maintainable, and, is liable to be dismissed.

Clause 25 of the Agreement to sell (Annexure P-8)

x x x x

“25. Any dispute or difference arising out of or in any way touching or concerning this agreement shall be referred to the sole arbitration of the nominee of the Secretary to Govt. of Haryana, Electronics Dept. acting as such at the relevant times. The award of such arbitrator shall be final and binding on the Corporation and the allottee.

In case the nominee so appointed by the Secretary to Govt. Haryana, Electronics Dept. refuses, or in case he is unable to proceed, the Secretary to Govt. of Haryana, Electronics Dept. shall nominate another arbitrator in his place for the purpose of the dispute.”

Clause 13 of Deed of Conveyance (Annexure P-9)

x x x x

13. That in the event of any dispute or difference arising out of this agreement, shall be referred to the sole arbitration of the nominee Competent Officer of the Secretary to Government of Haryana Electronics Department. The decision/award of such arbitrator shall be final and binding on the Corporation and the Allottee.”

Inferences of this Court

9. The impugned order of resumption of the subject plot, despite it



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becoming unfolded by the hereinafter extracted certificate of registration, qua the said plot becoming entered in the records maintained by the office of the Sub-Registrar concerned, thereupon for the hereinafter inter alia reasons, the said order becomes rendered completely vitiated.

“प्रमाणित किया जाता है कि यह प्रलेख क्रमांक 13,469 आज दिनांक 28.9.2006 को बही नः 1 जिल्द नः 8489 के पृष्ठ नः 173 पर पंजीकृत किया गया तथा इसकी एक प्रति अतिरिक्त बही संख्या 1 जिल्द नः 1323 के पृष्ठ संख्या 3 से 4 पर चिपकाई गई। यह भी प्रमाणित किया जाता है कि इस दस्तावेज के प्रस्तुतकर्ता और गवाहों ने अपने हस्ताक्षर/निशान अंगूठा मेरे सामने किए हैं।

दिनांक: 28.9.2006

उप/संयुक्त पंजीयन अधिकारी
गुड़गांव”

10. The deed of conveyance bearing No. 13469, was executed between the authorized representative of the present petitioner, i.e. the vendee, thus with the authorized representative of the contesting respondent i.e. the vendor, whereby there is but naturally conferment of the completest right, title and interest over the subject property vis-a-vis the vendee concerned.

11. The empowerment to rescind or cancel the supra registered deed of conveyance, thus executed between the vendor and the vendee, rather is solitarily vested in the Civil Court of competent jurisdiction, and, the said jurisdiction was to be exercised only upon a civil suit in the said regard becoming constituted before the learned Civil Court of competent jurisdiction. As such, only on a decree rather rescinding the registered deed of conveyance (Annexure P-9), thus becoming rendered by the Civil Court of competent jurisdiction, that thereby there would be an effective annulment of the absolute right, title and interest endowed thereunders vis-a-vis the vendee i.e. the present petitioner, and, not in the manner, as has been done through the passing of the impugned order.

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12. Naturally therebys, there was no vestment of jurisdiction in the respondent concerned, to upon any breach being made, thus at the instance of the vendee, qua the hereinabove extracted clause, as, mentioned in the agreement to sell (Annexure P-8), rather to resume the subject plot. The reason for stating so becomes sparked from the factum, that the said condition though became incorporated in the agreement to sell (Annexure P-8), but the same remained unIntroduced in the registered deed of conveyance (Annexure P-9). Therefore, the effect of non mentioning of the said clause, in the registered deed of conveyance, rather made it completely ineffective or unenforceable against the rights acquired over the subject plot by the vendee i.e. the present petitioner, besides therebys the conferment(s) of complete right, title and interest over the subject property vis-a-vis the vendee i.e. the present petitioner, but would remain completely unaffected, thus even on account of any breach thereto becoming made.

13. Even otherwise, if the said clause became introduced in the registered deed of conveyance, therebys also it would be completely antithetical to the vestment of complete right, title or interest over the subject property vis-a-vis the vendee, especially when the said occurred through the execution of a registered deed of conveyance. The execution of the registered deed of conveyance qua the subject property, thus completely forbade the invocation of the said clause against the vestment of complete right, title and interest thereins vis-a-vis the present petitioner. Therefore, to validate the said clause but would, as stated (supra), result in the snatching of the power of the Civil Court of competent jurisdiction to rescind the registered deed of conveyance, especially when the power to do so becomes solitarily vested in the Civil Court of competent jurisdiction. Resultantly, the

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said power, even if the said clause became introduced in the registered deed of conveyance, reiteratedly rather was unenforceable or uninvokeable at the instance of the vendor. If the said is permitted to be done, thereby there would be an untenable snatching of the right vested in an absolute owner, thus through the execution of a registered deed of conveyance qua the vendor. Moreover, if the said is permitted, thereby, there would be an unjust expropriation of the right, title and interest rather vested in a lawful owner through a registered deed of conveyance becoming executed inter se him, and, the vendor concerned. The said would also violate the Right to Property as enshrined in Article 300-A of the Constitution of India, which otherwise can be restricted but only after lawfully employing the power of eminent domain, besides upon the said power becoming employed for the public purpose.

14. Since the subject property has not been strived to be acquired through the invocation of the relevant statute appertaining to lawful acquisition thereof. Therefore, the instant invocation of the power of assumption, thus on any purported breach of supra condition, which otherwise exists, only in the agreement to sell (Annexure P-8) and remained unintroduced in the registered deed of conveyance (Annexure P-9) but naturally is completely arbitrary, besides militates against the Right to Property, as enshrined in Article 300-A of the Constitution of India.

15. Though, an arbitration clause, is contended to exist in the registered deed of conveyance, whereby it is contended, that in case any dispute emerges between the vendor and the vendee, thereby the said dispute is resolvable only through the mechanism of arbitration becoming undertaken by the aggrieved.

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16. The said argument also negates the exercisings of powers of resumption, as becomes mis-anviled on a complete misreading of the registered deed of conveyance, whereby the power of resumption is unamenable to be exercised vis-a-vis any lawful owner of the subject property. Even if assumingly, the recourings vis-a-vis the arbitration clause, may be an avenue for resolving the differences, as arise between the vendor and the vendee, but the said manner of resolution of disputes, if any, if they are permissible to be resolveable through recourse being made to the arbitration mechanism, rather would be so resolveable therethroughs, but yet prior to the invocation of the power of resumption, if at all, was exerciseable by the executive. The dispute resolution mechanism of arbitration also does not permit the exercisings of powers of resumption but even if assumingly it has some validity, the same only endows rights to the aggrieved, to without invoking the power of resumption, thus resolve the differences which emerge amongst the vendor and the vendee.

17. The arbitration clause does normally become embodied in standard contracts, which are drawn pursuant to the apposite successful respondee, to an invitation to offer, thus executing the work contracts' with the work awarding agency, besides in case, disputes emerge inter se the work executing agency, and, the successful respondee to the invitation to offer, thereby the apposite arbitration clause, as becomes embodied in the standard contract, becomes available for being recoured by the aggrieved.

18. Moreover, if the existence of an arbitration clause in a contract of the supra genre is permissible, but an arbitration clause is unknown to exist in a registered deed of conveyance. If it does become incorporated therein, as has been done instantly, thereby the said clause prima facie



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limits or restricts the otherwise absolutely conferred right, title and interest over the subject property by the vendor upon the vendee. In sequel, therebys too, the arbitration clause *prima facie* appears to restrict, abridge or limit the otherwise absolute conferment of right, title and interest in the vendee by the vendor. As such, *prima facie* therebys, the said arbitration clause is a cleverly introduced clause rather merely to give leeway to the vendor to somehow or the others, untenably restrict or scuttle the rights of the vendee over the subject property, and, that too in garb thereof to make an impermissible order of resumption vis-a-vis the subject property.

Final order

19. Accordingly, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed, but with an exemplary compensation of Rs. 5.00 lacs (Rupees Five lacs) becoming paid to the present petitioner by the respondents concerned. The impugned annexures are quashed, and, set aside.

20. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

April 08, 2025

Gurpreet

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No