
Before H. S. Bhalla, J

M/S K. K. RESORTS PRIVATE LTD.—*Petitioner*

versus

CHANDIGARH ADMINISTRATION, CHANDIGARH AND
OTHERS—*Respondents*

C.W.P. No. 457 of 2004

31st May, 2007

Constitution of India, 1950—Art.226—Allotment of a SCO site in an open auction—No development work and basic facilities on the site—Petitioner failing to deposit installments in time—Cancellation of site—Respondents failing to disclose exact date on which the basic amenities were provided at the site—In the absence of basic amenities petitioner deprived of the benefit of amount spent by it for running hotel—Respondents not entitled to payment of interest and penalty till basic amenities are not provided—Petition partly allowed while directing petitioner to clear all outstanding dues within a period of two months on receipt of communication from respondents with regard to outstanding dues.

Held, that the plea of non-availability of the amenities in the area has no legal basis for non-payment of the installments provided in the allotment letter, but at the same time, if these basic amenities were not provided, then the allottee is not liable to pay interest and penalty amount prior to the providing of basic amenities. In the absence of parking facilities, the petitioner has been deprived of the benefit of the amount spent by it for running the hotel. A person, who is to make the payment of installment of money is also burdened with the payment of interest and penalty, but at the same time, if basic amenities are not provided, then, till it is provided, respondents are not entitled to interest and penalty.

(Para 7)

Further held, that in response to petitioner's letter dated 30th July, 1988, the respondents have no-where asserted that the site has been completely developed. Rather, this letter proves on record that no parking facility was available at the site and nor sewerage facilities

and street lights etc. were provided. Therefore, in such like circumstances, the respondents cannot claim interest prior to 1999 and the demand of interest and penalty prior to 1999 is certainly illegal. However, it is made clear that the petitioner is liable to pay the installment as per schedule already given by the respondents and it will be open on the part of the allottees to deny payment of interest and penalty prior to 1999, but as far as payment of installment is concerned, the allottees are under obligation to pay the same keeping in view the fact that the petitioner is ready and willing to pay the entire amount, within two months after receiving a certified copy of this order.

(Para 8)

A K. Chopra, Senior Advocate with Gagandeep Singh and
C. M. Munjal, Advocates for the petitioners.

K. K. Gupta, Advocate for the respondents.

H. S. BHALLA, J.

(1) By this common judgment, I shall be disposing of two petitions, being Civil Writ Petition Nos. 8597 of 1998 and 457 of 2004 together as the questions of fact and law involved therein are identical in nature. However, for the sake of convenience, facts are being extracted from Civil Writ Petition No. 457 of 2004.

(2) The petitioner-Company, by virtue of this petition, has knocked at the door of this court by filing the present writ petition under Article 226 of the Constitution of India praying for quashing the order dated 12th September, 2000 passed by Assistant Commissioner-I (Exercising the Powers of the Estate Officer), Municipal Corporation, Chandigarh (respondent No. 5) and 21st November, 2001 passed by Commissioner, Municipal Corporation, Chandigarh (Exercising the powers of Chief Administrator, U.T., Chandigarh) (respondent No.4) (Annexures P-6 and P-7) respectively as also the order dated 31st December, 2003 (Annexure P-14), passed by the Advisor to the Administrator, Union Territory, Chandigarh (respondent No. 3), whereby the review petition filed by the present petitioner was dismissed. The petitioner-Company has also sought a direction to charge interest/lease money from the petitioner with effect from July, 1999 onwards when the work for providing basic facilities like sewerage

parking and street lights was got completed by the respondents and to accept the Demand Drafts worth Rs. 59,51,500 which has been illegally returned by the respondents after keeping it them for more than one year.

(3) The other facts required to be noticed for the disposal of this petition are that petitioner purchased S.C.O. No. 902 and 903, Pocket 6. Manimajra in an open auction, which was got conducted by the respondents on 17th April, 1997 for Rs. 1,65,02,000 and Rs. 1,61,00,000 respectively. As per the terms and conditions of the auction the petitioner had to deposit 25% of the bid money within 30 days. The petitioner deposited 25% of the consideration/bid money amounting to Rs. 41,25,500, i.e., 25% of Rs. 1,61,00,000 within 30 days. Thereafter, the respondents issued allotment letters of site/plot No. 902 and 903 respectively on 22nd May, 1997 in favour of the petitioner. As per the allotment letters, the petitioner had to pay the balance 75% of the amount in three equal installments of Rs. 56,10,680 and Rs. 54,74,000 respectively by 10th May, 1998, 10th May, 1999 and 10th May, 2000. In addition to this, the petitioner was required to pay annual Ground Rent of Rs. 4,12,550 and Rs. 4,02,500 per annum. In view of the allotment letters (Annexures P-1 and P-2) respectively, the petitioner took the possession of the site on 30th May, 1997 and found that there was absolutely no development carried out by the respondents and even the basic amenities like leveling of pits, provision of Sewerage system, parking facilities, parking and street light and pucca approach roads was totally non existent on the site. In the absence of above mentioned facilities, it was very difficult for the petitioner to start construction of the hotel. It is further pointed out that since the date of auction, which was announced by the respondents that the site is fully developed, parking facility is there, pavement/roads have been constructed, street light/electricity is available, sewerage and other basic facilities are available, but after taking possession, the petitioner found that the development work had not been carried out by the respondents and therefore, the petitioner wrote many letters, including letter dated 30th July, 1998 (Annexure P-3) to the respondents and pointed out that the basic development work had not been provided by the Corporation, it is very difficult to run the hotel and it will become further difficult for them to pay the installments. Despite the various letters written by the petitioner to the respondents, respondents did not take any step to carry out the

development work and provide basic amenities. Since the respondents had failed to provide the basic amenities, therefore, the petitioner could not pay the amount of installment fixed by the respondents in time. In order to compel the respondents to provide basic amenities and to complete the development work, the petitioner filed Civil Writ Petition No. 8597 of 1998 before this Court with a prayer that the respondents be directed to complete the development work at site Nos. 902 and 903, Pocket 6, Manimajra. In this writ petition, notice was issued to the respondents and thereafter, the above said writ petition was admitted to hearing. It is further pointed out that the petitioner had got sanctioned loan of Rs. 300 lac in March, 1998 from Small Industries Development Bank of India. The petitioner approached respondents and offered to make the lump-sum payment of the auction amount, but the respondents refused to accept the same and on account of this reason, the petitioner could not avail the loan. The Bank wrote a letter to the petitioner on 20th October, 1999 to the effect either to avail the loan or the said loan shall be cancelled. In the absence of development work carried out by the respondents, the petitioner could not deposit the installments in time. Accordingly, respondent No. 5,—*vide* dated 12th September, 2000 cancelled the lease of SCO Nos. 902 and 903 and forfeited 10% of the amount of consideration money, interest and other dues payable in respect of the said site. Copy of order dated 12th September, 2000 passed by respondent No. 4 is annexed with the petition as Annexure P-6. Against the order passed by respondent No. 4, the petitioner filed appeal before respondent No. 5, but respondent No. 5 also dismissed the appeal of the petitioner,—*vide* order dated 21st November, 2001, without appreciating the facts of the case, a copy of which is annexed with the petition as Annexure P-7. The petitioner again filed revision before respondent No. 3 against the order dated 21st November, 2001. Respondent No. 3 allowed the revision and set aside the orders and restored the site to the petitioner, but subject to the condition that outstanding amount along with reduced forfeiture of 2% is paid within six months. The petitioner filed civil suit for declaration challenging the orders dated 12th September, 2000, 21st November, 2001 and 6th March, 2002 (Annexure P-6 to P-8) respectively before the learned trial Court. The learned trial Court, after hearing both the parties, passed an order dated 17th September, 2002 (Annexure P-9) directing the respondents not to resume/cancel/forfeit money or to take any further action regarding the suit property subject to the

deposit of balance principal amount within 10 days. In view of the order Annexure P-9, the petitioner deposited Rs. 59,51,500, i.e., balance principal amount on 26th September, 2002 by way of four bank drafts. However, subsequently, the learned trial Court returned the plaint of the petitioner with liberty to approach appropriate forum within one month. It is further pleaded that the respondent-Corporation came into existence from 24th May, 1994 and provisions of Capital of Punjab (Development and Regulation) Act, 1952 and Rules framed thereunder were made applicable to all the properties being controlled and auctioned by Municipal Corporation. As per Rule 12 (3) of the Chandigarh Lease Hold of Sites and Building Rules, 1973, the amount of annual equated installment was required to be calculated with an ingredient of interest @ 10%, but in the case of the petitioner, the respondent-Corporation has calculated the amount of equated installment at the higher rates. It is further categorically pleaded that in identical circumstances, where Municipal Corporation allotted different commercial sites and thereafter failed to provide basic amenities for the use and occupation of the sites sold to them, Civil Writ Petition No. 959 of 1999 titled Shakti Kunj Investment (P) Limited *versus* U.T. Administration and others, was filed before this Court. It is further categorically pleaded that the sites allotted to the petitioner, i.e., SCO Nos. 902 and 903 is located on Pocket No. 6 on Chandigarh Kalka Road and is popularly known as Housing Board Chowk, Manimajra. There were approximately 12 sites which were put to auction, which took place on 17th April, 1997. The sewerage pipes were to be laid down from site No. 914 which was at the end and it had to be connected with the main sewerage pipe located near site No. 901, which was situated on the other side of the road. The petitioner purchased site Nos. 902 and 903 being highest bidder on 17th April, 1997 and deposited 25% of the amount. The allotment letter was issued to the petitioner on 22nd May, 1997 and the petitioner took the possession on 30th May, 1997. Petitioner has further pointed out that letter (Annexure P-13) clearly spells out that other facilities like sewerage was not available at the time of issuance of allotment letter and is also proved from the fact that work of laying down of sewerage started on 29th May, 1998 and the same was in progress in February, 1999. This fact becomes clear from the perusal of third running bill prepared by the respondents, which shows that even Rs. 1,47,441 was paid to the contractor on 24th February, 1999,

therefore, in view of letters (Annexures P-12 and P-13), it is clear that the contention of the petitioner that basic facilities like sewerage, parking and street lights were not available and therefore, respondents were not entitled for interest/lease money till basic amenities becomes available. Since the petitioner was not aware of existence of letters (Annexures P-11 to P-13) at the time of passing of orders (Annexures P-6 to P-8), therefore, the petitioner filed review application before respondent No. 3 and highlighted the facts of the case and requested that the order (Annexure P-8) be reviewed, but,—vide Annexure (P-14), respondent No. 3 dismissed the review application on the ground that there is no power of review in the Act. Respondents returned the bank drafts, which were deposited by the petitioner,—vide Annexure P-10 after the passing of the order Annexure P-9. The petitioner has finally prayed that the two sites were allotted in the year 1997, yet the basic facilities like sewerage, parking, streetlights and pavements were not provided despite the repeated representations. This fact also becomes clear from the perusal of Annexure P-11 whereby the respondents had rescheduled the installments of allottee of site number 906 and also from the perusal of Annexure P-12, which reflects that the work of laying sewerage pipes were in progress in February, 1999 and was still incomplete, therefore, the petitioner has also prayed that it has been done in the case of allottee of site No. 906, the installments of the sites of the petitioner should also be re-scheduled from the date when the work for providing the basic facilities got completed and the interest/lease rent must be charged from that date.

(4) On the other hand, the petition has been contested by the respondents denying most of the assertions raised in the petition. They prayed that the petition be dismissed, but they also categorically pleaded that since the SCO sites has already been resumed,—vide order dated 12th September, 2000 (Annexure P-6) after giving opportunity to the petitioner for the remittance of the due amount and the appeals against the said orders of resumption has also been dismissed,—vide separate orders dated 21st November, 2001 (Annexure P-7) and the revision petitions also dismissed,—vide separate orders dated 6th March, 2002 (Annexure P-8) after giving sufficient opportunity to the petitioners for depositing the entire amount, therefore, the only remedy available to the petitioner is to first clear the entire payment as per the statement of account enclosed as Annexure R-1 and R-2 and then to apply to the competent authority for re-transfer

of the site as provided under the Rules. It is further pointed out that as per the statement Annexure R-1, a sum of Rs. 2,26,94,963 is payable in respect of SCO No. 902 and another sum of Rs. 2,30,65,109 is payable in respect of SCO No. 903. However, it has been admitted that the petitioner took possession of the sites on 30th May, 1997. The area surrounding the sites of the petitioner was fully developed and all the basic amenities were available in the area and that is why the petitioner even got constructed both the sites after taking possession thereof. The plea regarding non-providing of the amenities in the area is totally frivolous and has not even been relied upon by this Court, while dealing with the adjoining site of SCO No. 904 and this plea has been raised just to avoid the timely payment of the installments, interest and the ground rent etc. No such representation or protest was made either at the time of giving the bid in the open auction or even at the time of taking possession of the sites. However, it has been admitted that the petitioner had earlier filed Civil Writ Petition No. 8597 of 1998, which was simply admitted by this Court, but no stay was granted to the petitioner. It is further admitted to the extent that when the petitioner failed to pay any amount beyond the initial payment of 25% of the premium amount in spite of giving repeated opportunities and notices, the competent authority was left with no other alternative but to cancel the lease of the sites. The petitioner then filed separate appeals against the resumption orders and when the petitioner failed to clear the outstanding amount even at the appellate stage, both the appeals were also dismissed,—*vide* separate orders dated 21st November, 2001 (Annexure P-7). The revision petitions of the said orders passed in the appeals were also dismissed in the absence of fulfilling the undertaking by the petitioner with regard to the payment of the balance amount. The petitioner was granted six months time by the appellate authority for making the balance payment, but the petitioner failed to pay the remaining amount within the said period in spite of giving an undertaking to that effect and thereby the order of the appellate authority dismissing the appeal and upholding the resumption of the sites came into operation. It is further admitted that the petitioner deposited the bank drafts amounting to Rs.59,51,500 on the directions of the Civil Court, but the same were not taken into account by the answering respondents and were returned back on the dismissal of the Civil Suit and review application filed by the petitioner. It is further pleaded that although

providing of basic amenities in the area is not linked with the payment of the installments, yet it is submitted that the same were available near the sites of the petitioner as has also been noticed by this Court in the case filed by the adjoining site No. 904 as pleaded above. The equated installments in the case of the petitioner has been calculated with the ingredient of interest @ 10% itself in the statement of accounts attached as Annexure R-1 and R-2 with the written statement and not @ 18% as alleged by the petitioner. It is finally pleaded that the impugned orders are legal and the same have been passed in accordance with law.

(5) I have heard the learned counsel for the parties and with their assistance have also gone through the entire record pertaining to the case meticulously.

(6) The sequence of events, as noticed above, clearly spells out that the hotel site was allotted to the petitioner and for this purpose, the respondents were required to provide basic facilities like sewerage, street lights, parking etc. and it is admitted case of the parties that these facilities were not in existence at the time of allotment of the site to the petitioner and that is why, in the absence of these facilities, respondents rescheduled the quarterly statement of the allottee of another site bearing No. 906 located at the same place adjoining the site in question and,—vide Annexure P-12, respondents have admitted the fact while preparing third running bill, which shows that the work of laying of sewerage pipe started on 29th May, 1998 and the same was in progress on 24th February, 1999. Once it is proved that laying of sewerage pipe was not completed in the year 1999, then the respondents are not entitled for interest on the balance amount of installments till the basic facilities are complete. Learned counsel for the respondents failed to show as to in which month of the year 1999, the entire work was completed, but it is admitted that development work was completed in the year 1999 and in the absence of basic amenities like parking and street lights, respondents can not charge interest, inasmuch as in the absence of these basic amenities, it is not possible to run a hotel. I am conscious of the fact that it is settled law that providing of necessary facilities with full enjoyment of the same by the allottees, was not a condition precedent, but at the same time for the enjoyment of the allotted site, the basic amenities are required to be provided and in the absence of these facilities only proportionable

relief in the matter of penalty of payment can be granted with regard to penalty and interest etc., but as far as installment is concerned, the allottees are bound to pay the same and they cannot postpone the payment of installment merely on the ground that basic amenities have not been provided. At this stage. I would also like to observe that during the course of arguments, learned counsel for the petitioner has suffered a statement that the entire remaining amount of the site in question will be deposited, within two months from the date a certified copy of the order is received by it and in case the amount is not paid within two months, then the writ petition be treated as dismissed. Meaning thereby that, the petitioner is ready and willing to pay the balance amount of the installment but they are certainly disputing the payment of interest and penalty since basic amenities like parking and sewerage etc. were not provided to them till 1999 and at the same time, the Court can take a judicial notice of the fact that in the absence of parking facilities, it is not possible to run the hotel. Document, Annexure P-13, is third running bill, which clearly spells out that the commencement of the work took place on 29th May, 1998 through contractor Om Parkash. This bill further spells out that the work is in progress and this running bill was passed on the basis of measurement, which took place on 2nd February, 1999. Meaning thereby that, sewerage work was not completed till February, 1999.

(7) Learned counsel for the respondents has not been able to show the exact date with regard to the completion of the work of laying of sewerage pipe in the area but during the course of arguments, he has submitted that the work was completed by July, 1999, but no such record could be produced before the Court, which could show the exact date with regard to the completion of sewerage work and parking facilities. The grievance of the petitioner is that although the two sites were allotted in the year 1997 yet basic facilities like sewerage and parking etc. were not provided despite repeated representations. After having gone through the written statement filed by the Municipal Corporation, I find that they have only pleaded that the basic amenities were provided, but they have not disclosed the exact date on which the basic amenities like sewerage and parking etc. were provided at the site. It is true that as already discussed above, that the plea of non-availability of the amenities in the area has no legal basis for non payment of the instalments provided in the allotment letter, but at the same time, if these basic amenities were not provided, then the

allottee is not liable to pay interest and penalty amount prior to the providing of basic amenities. In the absence of parking facilities, the petitioner has been deprived of the benefit of the amount spent by it for running the hotel. A person, who is to make the payment of instalment of money is also burdened with the payment of interest and penalty, but at the same time, if basic amenities are not provided, then, till it is provided, respondents are not entitled to interest and penalty. It is an admitted case of the parties that the petitioner had purchased SCO Nos. 902 and 903 in an open auction, which was conducted by the respondents on 17th April, 1997 for Rs. 1,65,02,000 and Rs. 1,61,00,000 within 30 days. The petitioner deposited 25% of the bid money amounting to Rs. 41,25,500 i.e. 25% of Rs. 1,61,00,000 within 30 days. Thereafter, respondents issued allotment letters to the abovementioned site on 22nd May, 1997 in favour of the petitioner. As per allotment letter, the petitioner had to pay balance 75% of the amount in three equal instalments and in addition to this, the petitioner was required to pay annual ground rent of Rs. 4,12,550 and Rs. 4,02,500 per annum. In view of the allotment letter, the petitioner took possession of the site on 30th May, 1997. At the time of auction, it was announced by the respondents that the site is fully developed and when the petitioner found that development work had not been carried out by the respondents, they informed through letter Annexure P-3 that it is very difficult to run the hotel and it will become difficult for them to pay the instalment. All this shows that the petitioner asserted its right,—*vide* letter dated 30th July, 1998 by virtue of which it was informed to the respondents that the site has not been developed at all. The relevant portion of this letter runs as under :—

".....We have already written to you so many times that the site has not been developed at all. There are 10—12 feet deep ditches around the site and is difficult to reach the site particularly in rainy seasons, because ditches are completely filled with water. You have not provided sewerage, parking facilities, pavements, street lights etc. Sites are not being put to any use...."

(8) In response to this letter, the respondents have no-where asserted that the site has been completely developed. Rather, this letter proves on record that no parking facility was available at the

site and nor sewerage facilities and street lights etc. were provided. Therefore, in such like circumstances, the respondents cannot claim interest prior to 1999 and the demand of interest and penalty prior to 1999 is certainly illegal. However, it is made clear that the petitioner is liable to pay the installment as per schedule already given by the respondents and it will be open on the part of the allottees to deny payment of interest and penalty prior to 1999, but as far as payment of installment is concerned, the allottees are under obligation to pay the same keeping in view the fact that the petitioner is ready and willing to pay the entire amount, within two months after receiving a certified copy of this order.

(9) Learned counsel for the petitioner has rightly pointed out that a Bank Draft amounting to Rs. 85,00,000 and another Bank Draft amounting to Rs. 15,00,000 was handed over to the respondents,— *vide* orders dated 18th March, 2004 and 25th March, 2004 passed by this Court respectively, which remained with them for a certain period. The respondents, without assigning any valid reason, returned the drafts to the petitioner-Company and in this regard no plausible explanation could be furnished by the respondents even after the queries were made by this Court at the time of hearing of this petition. The period during which the amount aforesaid in the shape of Bank Drafts remained with the respondents, the petitioner-Company would not be liable to suffer in the shape of interest etc. in any manner and in such like circumstances, the canon of justice do require that some relief in this regard is also required to be given to the petitioner and as such, it is made clear that the petitioner-Company is not liable to pay interest on the aforementioned amount for the period during which the drafts remained pending with the respondent-department.

(10) In view of what has been discussed above, both the writ petitions bearing No. 8597 of 1998 and 457 of 2004 are partly allowed. Orders dated 12th September, 2000 and 21st November, 2001 i.e. Annexures P-6 and P-7 passed by respondent Nos. 5 and 4 respectively and order dated 31st December, 2003. Annexure P-14, passed by respondent No. 3 by virtue of which review petition of the petitioner was dismissed, are ordered to be quashed. Respondent No. 4 Municipal Corporation is directed to communicate in writing with regard to outstanding dues, which shall be payable by the petitioner-Company, within a period of one month from the date a certified copy of this order is received. On receipt of the aforesaid communication, the petitioner-Company would clear all the aforesaid

outstanding dues, within a period of two months thereafter. In case all the aforesaid outstanding dues are paid by the petitioner-Company, then the order of resumption passed by the respondent authorities shall be treated as non est.

(11) Before I part with this order of mine, it is made clear that the petitioner-Company is not liable to pay penal interest prior to July, 1999 and the petitioner is entitled to this proportionate relief in the matter of payment of penalty under Rule 12.3 of 1973 Rules and delay in payment of equated instalment or ground rent or part thereof under Rule 12.3(A) only since facilities were not provided prior to July, 1999. The allottees have a right to deny the payment of interest and penalty.

R.N.R.

Before M. M. Kumar and Rajesh Bindal, JJ.

SARUPINDER SINGH,—*Petitioner*

versus

PUNJAB STATE ELECTRICITY BOARD AND
ANOTHER,—*Respondents*

C.W.P. No. 16241 of 2005

7th May, 2007

Constitution of India, 1950—Art. 226—Punjab State Electricity Board Employees (Punishment and Appeal) Regulations, 1971—Regs. 8 and 10—Charges against petitioner for causing financial loss to Board—Petitioner controverting allegation and contesting charge sheet—Board imposing minor penalty stopping two increments without future effect—Challenge thereto—Punishing authority failing to consider reply of Petitioner—No reason given for rejecting reply—Order does not disclose any good and sufficient reasons to record findings that the petitioner was guilty of the charges—Petition allowed, order imposing minor penalty quashed.

Held, that the punishing authority has failed to consider the reply of the petitioner submitted by him in response to the charge-sheet. In the first recital of the order, only mention with regard to reply has been made that the petitioner did not admit the allegation levelled