

COCP No. 3107 of 2014

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

COCP No. 3107 of 2014**Date of Decision: April 20, 2015****Pawan Bhatia & others**

...Petitioners

Versus

T.C. Gupta & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Naveen S. Bhardwaj, Advocate
for the petitioners.

Dr. Sushil Gautam, D. A.G., Haryana.

AUGUSTINE GEORGE MASIH, J. (Oral):

Petitioners have approached this Court alleging the violation of the undertaking given by the respondents in affidavit dated 19.12.2013, on the basis of which, order dated 21.12.2013 (Annexure P-2) was passed in CWP No.21942 of 2013 preferred by the petitioners.

It is the contention of the counsel for the petitioners that as per the affidavit filed by Shri T.C. Gupta, IAS, Principal Secretary, Department of Town & Country Planning and Urban Estates Department, Government of Haryana-respondent No.1, in para 4 it was stated as follows:-

“4. That the area of Sector 63A, Final Development Plan, Gurgaon, Manesar Urban Complex, 2031AD in which the petitioner is claiming Licence for setting up of Group Housing Colony is 378.86 acres of which 20% area come to 75.772 acres from which licence for Group Housing

can be granted. The State Government has granted licence only for area measuring 26.075 acres till date and has decided not to grant licence for an area measuring 13.61875 acres for which the petitioner has applied for licence in this sector till the final conclusion of legal proceedings. It is respectfully submitted that the State Government reserves its right to take recourse to legal proceedings upto Hon'ble Supreme Court, in case the need arises but till then the area measuring 13.61875 acres shall be kept free from licensing for Group Housing in this Sector 63A. Therefore, the rights of the petitioners shall not be jeopardized in any manner.”

In the said affidavit, it was mentioned that the petitioners were claiming licence for setting up a Group Housing Colony in 13.61875 acres. It was mentioned therein that no licence will be given to any Group Housing Society during the pendency of the writ petition. He states that it was also mentioned that licence for the area mentioning 13.61875 acres shall not be granted in favour of any person. The order passed by this Court in the Miscellaneous Applications and the Writ petition also indicated the same. The said order reads as follows:-

“CM Nos.18403, 15659-60 & 15740-41 of 2013

The Principal Secretary, Town and Country Planning Department, Haryana is present. He has filed an affidavit dated 19.12.2013 which is taken on record. In para 4 of the affidavit, it has been expressly stated that the State Government shall not grant licence for a area measuring 13.61875 acres for which the petitioner has applied for

grant of licence, till final conclusion of the legal proceedings.

Since the above-stated undertaking duly protects the petitioner's interest, the order dated October 3, 2013 is modified and while deleting the direction to the effect that “no licence/CLU/LOI shall be granted in favour of respondent No.7 to 10”, the official respondents are directed to abide by their undertaking mentioned in para 4 of the affidavit dated 19.12.2013. It is also clarified that the above-stated protection pertains to the Group Housing Licence only and not for any other licence.

CWP-21942-2013

List on 19.02.2014”

Status report was called upon vide order dated 10.11.2014, to be filed by the respondents. In pursuance thereto, an affidavit dated 05.01.2015 of Shri Anurag Rastogi, Director General, Town & Country Planning Department, Haryana-respondent No.2 has been filed. In paras 2 to 4 thereof, it has been stated as follows:-

“2. That it is submitted that main contention of the petitioners in COCP is that with the grant of Licence No.77 of 2014 for an area measuring 14.025 acres to Mahamaya Exports Pvt. Ltd. by the Department vide letter no.17507 dated 06.08.2014 for setting up a Group Housing Society in Sector-63A Gurgaon-Manesar Urban Complex and grant of Licence No.82 of 2014 to Smt. Kiran W/o Sh. Dharam and Sunrays Heights Pvt. Ltd. for development of an affordable housing colony over an area measuring 5.9 acres in

Sector-63A Gurgaon vide letter dated 07.08.2014 would increase the maximum permissible area of 20% earmarked for Group Housing Colony in Sector-63A Gurgaon. Hence, this action of the State respondents is in violation of the undertaking/affidavit dated 19.12.2013 filed by the then Principal Secretary, Town and Country Planning Department Haryana, wherein, it was specifically undertaken that the State Govt. shall reserve an area measuring 13.61875 acres for grant of licence for Group Housing Colony for which the petitioners have applied for grant of licence till final conclusion of the legal proceedings. However, this contention of the petitioners is misleading, misconceived, baseless and based on mere apprehensions. It seems that the petitioners without checking the actual record had filed the present petition.

3. That it is clarified that the answering respondents have reserved an area measuring 13.61875 acres owned by the petitioners and thereafter considered the other applicants for grant of licences for group housing colonies in Sector-63A Gurgaon. The total area of the Sector-63A is 378.86 acres and 20% component permissible for grant of licences for Group Housing Colony is 75.772 acres. The Department reserved the area owned by the petitioner i.e. 13.61875 acres and considered the remaining applications on the basis of the balance available area of the sector i.e. 62.15325 acres. Though, it is admitted that the licence was granted to Mahamaya Exports Pvt. Ltd. On 06.08.2014 but the same has been granted viz-a-viz permissible

area of 62.15325 acres i.e. after reserving the rights of the petitioners. Even it was noticed that after reserving the rights of the petitioners. Even it was noticed that after reserving the rights of the petitioners, the licence granted to Anant Raj Industries Pvt. Ltd. for an area measuring 26.075 acres required to be freezed for an area measuring 10 acres. The Department accordingly had issued directions to Anant Raj Industries Pvt. Ltd. by freezing the said area and issued the revised zoning of the group housing colony on 09.04.2014.

4. That as far as issuance of Licence No.82 of 2014 is concerned, it is not disputed that Smt. Kiran W/o Sh. Dharam and Sunrays Heights Pvt. Ltd. have been granted the above said licence on the land measuring 5.9 acres in Sector-63A Gurgaon. However, it is clarified that this licence is under the scheme of Affordable Housing Colony as per policy issued vide office memo no. PF-27/48921 dated 19.08.2013 (copy enclosed as **Annexure R-1**). As per this policy, licences upto 5% of the net planned area of a sector, maximum upto 10 acres (in addition to 20% area earmarked for Group Housing Colony) can be granted. The grant of licence under the Affordable Housing Colony has no concern with the licence granted for setting up Group Housing Colony for which area of 20% is earmarked in a residential sector. Therefore, apprehension of the petitioners that the grant of licence for 5.9 acres under Affordable Group Housing Colony in Sector-63A Gurgaon from the reserved area of 13.61875 acres for the petitioners is quite baseless and imaginary.”

A perusal of the affidavit of Shri T.C. Gupta, the order passed by this Court and the now filed affidavit clearly indicate that the intent of the order and the text thereof have been rightly understood by the respondents and in pursuance thereto, have reserved an area measuring 13.61875 acres owned by the petitioners for grant of licences for Group Housing Colonies in Sector 63-A, Gurgaon. This, in any case, is ultimately depend upon the final outcome of the writ petition.

The assertion of the counsel for the petitioners that there was a blanket ban on issuance of a licence for 13.61875 acres of land cannot be read out from the affidavits which have been referred to above or the order passed by this Court in the writ petition. The interest of the petitioner has been duly taken care of during the pendency of the writ petition.

In the considered view of this Court, there has been no violation of the order passed by this Court which would lead to a conclusion that the contempt proceedings should be initiated against the respondents.

The present petition, therefore, stands dismissed.

April 20, 2015
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE