

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.12644 of 1999

DATE OF DECISION: DECEMBER 03, 2015

Smt.Roshni Devi Gupta

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. Indresh Goyal, Advocate and
Mr.Harsh Garg, Advocate for the petitioner.

Mr.Rahul Dev Singh, Deputy Advocate General,
Haryana.

Mr.Deepak Balyan, Advocate for HUDA.

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TEJINDER SINGH DHINDSA, J.

Petitioner impugns the demand of ₹2,20,500/- raised by the HUDA Authorities towards extension fee in respect of Plot No.57, Phase I, Panchkula. Writ of mandamus is sought directing the respondents to issue the completion/occupation certificate. Further prayer is towards seeking refund of the amount of extension fee and other charges that the petitioner has already deposited in respect of the plot. It may be noticed that while issuing notice of motion on 9.9.1999 the impugned demand notice had been stayed. The restraint order has continued in operation thereafter.

2. A brief factual backdrop would be necessary:

The plot in question was, initially, allotted to one Shri NK Goel on 5.8.1974. Possession was offered on 27.1.1976. As per terms and conditions of the allotment letter, construction of the plot was to be completed within three years from the date of offer of possession. Construction, however, was not raised by the original allottee. In the year 1987, HUDA introduced a policy whereunder extension in time for construction could be given to the plot holders upon deposit of requisite extension fee on a year-to-year basis. The plot in question was transferred in the name of Shri Vishnu Kumar Gupta i.e. husband of the petitioner on 27.3.1990. The transfer was effected only upon a 'No Due Certificate' having been issued in favour of the original allottee. Husband of the petitioner unfortunately expired on 21.7.1991. An application was submitted by the legal heirs for transfer of the plot in the name of the widow Smt.Roshni Devi, present petitioner. At that stage, the 4th respondent i.e. Estate Officer, HUDA, Panchkula issued an order dated 30.3.1993 raising a demand of ₹40,425/- towards extension fee as also other charges in respect of the plot. Petitioner contested the same by filing an appeal before the Administrator, HUDA, but the same was rejected on 11.9.1996. A revision having been filed, the Commissioner and Secretary to Government, Haryana, Town and Country Planning Department passed an order dated 26.2.1997 giving partial relief to the petitioner. The revisional authority held that the outstanding dues towards price of enhanced area of the plot as also extension fee were payable, but as regards

component of interest accruing thereupon, the same was partly waived. Accordingly, 4th respondent was directed to prepare a new calculation sheet and to convey the same to the petitioner. Directions were further issued that after deposit of the outstanding dues so conveyed, the plot was to be transferred in the name of the petitioner. In terms of such decision of the revisional authority, intimation was sent to the petitioner on 2.10.1997 that an extension fee of ₹2,16,180/- was due against the plot.

3. Petitioner feeling dissatisfied filed Civil Writ Petition No.987 of 1998 impugning such demand. The writ petition was disposed of vide order and judgment dated 23.1.1998 and a copy thereof has been appended as Annexure P2 along with the petition. Perusal of the same would reveal that the Division Bench was not inclined to accept the challenge raised by the petitioner, but acceded to the request of the counsel that the petitioner be granted one month's time to deposit the outstanding dues. The writ petition was disposed of in terms of the following directions:

“(i) Within one month from today, the petitioner shall deposit the amount in terms of Annexures P23 and P26.

(ii) The petitioner shall also apply before the Estate Officer, Haryana Urban Development Authority, Panchkula for supply of the latest account statement and the concerned officer shall furnish the same to her within next 15 days.

(iii) If the petitioner finds any discrepancy in the account statement, she shall be free to make representation before the Estate Officer concerned who will objectively examine such representation and adjust the amount, if any, paid in excess of the amount due and also the claim of the petitioner that nothing was payable by her as on the date of application for transfer.

(iv) The petitioner shall comply with the time schedule fixed by the revisional authority for raising the construction within next six months of the validation of the sanctioned building plan failing which the plot shall stand resumed to the Haryana Urban Development Authority and the concerned authority shall be free to take appropriate steps for securing possession thereof.

Copy of this order be given dasti on payment of prescribed fee.

Jan.23, 1998

*Sd/-
G.S.SINGHVI (JUDGE)*

*Sd/-
K.S.KUMARAN (JUDGE)"*

4. The petitioner deposited the extension fee amount of ₹2,16,180/- on 13.2.1998. Plot in question was transferred in the name of the petitioner thereafter vide order dated 16.7.1998 at Annexure P3. To raise construction upon the plot, the petitioner submitted building plans for re-validation. Respondent-Authorities not taking any action thereupon, the petitioner was constrained to file COCP No.1076 of 1998. The contempt petition

was disposed of as infructuous on 8.12.1998 after recording statement made by counsel appearing for HUDA that the building plans would be re-validated within a period of two weeks. Vide memo dated 14.12.1998, Annexure P5, the building plans were re-validated carrying validity upto 13.12.2000. Petitioner immediately applied for issuance of DPC certificate and the same was issued vide memo dated 27.1.1999, Annexure P6, with a clear rider that since the building plans had been re-validated on 14.12.1998, as such, the construction would have to be completed on or before 13.6.1999 in terms of the directions issued by this Court in the order dated 23.1.1998 while disposing of Civil Writ Petition No.987 of 1998. Petitioner completed the construction and applied for occupation/completion certificate on 20.5.1999. Occupation certificate has not been issued to the petitioner on account of the impugned demand of extension fee of ₹2,20,500/- vide memo dated 24.5.1999, Annexure P10. Petitioner having represented against the same, respondent No.4 issued memo dated 15.6.1999, Annexure P12, re-iterating the demand. It is under such circumstances that a writ of certiorari has been prayed for quashing of the orders dated 24.5.1999 and 15.6.1999 at Annexures P10 and P12.

5. In response to the petition, a joint written statement on behalf of respondents No.3 and 4 has been placed on record. An utterly vague stand has been taken justifying the impugned demand by stating that the petitioner is liable to pay extension fee on account of non-construction of the building in time and such extension fee being leviable upto June 1999.

6. Having heard learned counsel for the parties at length and having perused the record, we are of the considered view that the demand towards extension fee from the petitioner is totally unjustified.

7. In the written statement, it has been stated that after the decision of the revisional authority dated 26.2.1997, an amount of ₹2,16,180/- had been conveyed to the petitioner that had become payable towards extension fee upto "*September 1997*". It has also been admitted that in terms of directions of this Court dated 23.1.1998 while disposing of Civil Writ Petition No.987 of 1998, the petitioner had deposited the extension fee of ₹2,16,180/- on 13.2.1998. It would be seen that even after deposit of the requisite extension fee, transfer of the plot in the name of the petitioner was made only on 16.7.1998. The petitioner thereafter having immediately submitted the building plans for re-validation, the respondent-Authorities chose not to act. It was only upon contempt proceedings having been initiated and an undertaking having been recorded by the Contempt Court that the decision to re-validate building plans was taken on 14.12.1998 by the HUDA Authorities. It stands conceded that the petitioner completed construction upon the plot within the stipulated six months' time-frame as directed by this Court and submitted an application on 20.5.1999 for issuance of completion/ occupation certificate.

8. The position that clearly emerges from such glaring facts is that after the petitioner had deposited the extension fee of ₹2,16,180/- on 13.2.1998, it was HUDA Authorities who had

delayed the matter in the first instance as regards transfer of plot and thereafter for re-validation of building plans. Insofar as the petitioner is concerned, after issuance of the directions passed by the Division Bench dated 23.1.1998, she has not been remiss. Extension fee was deposited immediately, building plans for re-validation were submitted and the same having been sanctioned, even construction on the plot was raised well within the stipulated six months' time-frame. The action of the respondent-Authorities in raising a further demand towards extension fee and in not issuing the occupation certificate smacks of arbitrariness. Viewed against the directions that had been issued by the Division Bench dated 23.1.1998, action of the respondents borders on contempt. It is a typical case of non-application of mind at the hands of the competent authority and which has led to the impugned demand for extension fee. The action is held to be bad in law.

9. We, however, cannot accept the additional prayer raised by the petitioner as regards refund of extension fee/other charges that she had already deposited in respect of the plot in question. Such extension fee of ₹2,16,180/- had been deposited as the same was due against the plot upto September 1997. This very demand had been impugned by the petitioner while filing Civil Writ Petition No.987 of 1998 and the challenge had not been upheld. Rather, the deposit was made in pursuance to the directions dated 23.1.1998 passed by this Court.

10. In view of the above, the writ petition is partly allowed. Impugned orders dated 24.5.1999, Annexure P10, and dated 15.6.1999, Annexure P12, raising the demand towards extension

fee are set aside. Respondent-Authorities are directed to issue the occupation certificate in respect of the plot in question within a period of four weeks from the date of receipt of a certified copy of this order.

11. Petition is allowed in the aforesaid terms.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

DECEMBER 03, 2015
SRM

Note: Whether referred to Reporter? (Yes/No)