

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 2455 of 1996 (O&M)
Date of Decision: 4th September, 2015

International Christian Education Foundation Governing St. Xavier's High School.

..Petitioner

versus

Chandigarh Administration and another

..Respondents

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present : Mr. Arun Jain, Senior Advocate with
Mr. Indivar William Gosain, Advocate, for the petitioner.

Mr. A.P.Setia, Advocate, for the respondents.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner has sought a writ to quash and set-aside three notices dated 22.03.1995, 25.07.1995 and 26.09.1995, respectively. The first notice called upon the petitioner to pay the first installment of ₹ 17,31,581/- and ground rent of ₹ 1,43,956/- which allegedly fell due on 12.11.1994 stating the terms and conditions of an allotment of a plot of land admeasuring 19194.12 sq. yard in Sector 44-C, Chandigarh together with penal interest and also to show cause why a penalty not exceeding 10% of the amount be not imposed and recovered under the Chandigarh Lease Hold of Sites and Building Rules, 1973.

The second impugned notice was similar to the first one except that the demand was in respect of the subsequent installments. The petitioner

has also sought an order directing the respondents to charge them at the rate of ₹ 60/- per sq. yard for lease of the plot.

The third notice directed the petitioners to appear before the Assistant Estate Officer exercising the powers of the Estate Officer, Union Territory, Chandigarh. The notice stated that the petitioners had remained absent pursuant to an earlier notice as well.

2. In our view the petitioners must in the first instance avail the opportunity granted by the impugned notice dated 26.09.1995 and appear before the Officer concerned to explain the position. This is especially so in view of the fact that the petitioners have understandably decided to pay the amount legally due and do not wish to have the allotment cancelled. The petitioners, however, bonafide do not believe that they are liable to pay the amount demanded. According to them, the demand is excessive, unfair and discriminatory. Considering the nature of the matter, it would be for the respondents in the first instance to decide the amount that is payable and then to decide whether in the facts and circumstances of the case the petitioners ought to be granted any indulgence including by way of reducing the amount and in any event the interest demanded.

3. The petitioners had applied for allotment of a plot to run the school. By a letter dated 04.04.1988, the petitioners were advised to improve the financial position so as to pay an amount of 25% of the cost of land and 25% of the cost of construction aggregating to about ₹ 36 lacs and to apply only when they had collected the funds alongwith 10% of the earnest money. The amount was worked out at a tentative price of ₹ 60/- per sq. yard. By a further letter dated 20.01.1989 the respondents called upon the petitioners to forward certain documents and bank balance certificate indicating the

availability of funds. The rate of ₹ 60/- per sq. yard was stated to be tentative and subject to upward revision by the Administration.

4. The petitioners by a letter dated 21.01.1989 forwarded the documentation and the earnest money. The respondents by their letter dated 05.07.1990 informed the petitioners that they had decided to allot 4.5 acres of land in Sector 25-C, Chandigarh for the construction of a school building on lease hold basis for 99 years at 500 per sq. yard. The tentative price was worked out as ₹ 1,08,90,000/- in addition to the premium, ground rent and certain other charges. The allotment was subject to the conditions mentioned therein which included the petitioners furnishing an undertaking that the same were acceptable to them. The letter stated that the allotment letter would be issued on receipt of payment of at least 25% earnest money, the undertaking and an area list/NECs from the Engineering Department, Union Territory, Chandigarh. The petitioners did not accept the allotment in Sector 25-C, Chandigarh and raised a grievance regarding the conditions upon which the allotment was proposed to be made. The main grievance relates to the location of the plot and the enhanced rate of ₹ 500/- per sq. yard from the original rate of ₹ 60/- per sq. yards. The petitioners stated that the plot proposed to be allotted was on the strip of the cremation ground which was not suitable for running a school. The respondents by a letter dated 16.07.1991 agreed to reduce the rate to ₹ 300/- per sq. yard and demanded the payment accordingly.

5. Mr. Arun Jain, learned Senior counsel appearing on behalf of the petitioners invited our attention to the correspondence and certain documents whereby suitable and appropriate plots were allotted to three other schools at ₹ 60/- per sq. yard in the year 1991 itself. This he did in

support of his submission that the respondents have discriminated against the petitioners. He submitted that there was no justification to charge five times the lease premium from the petitioners. He referred to the enormous service done by the petitioners in the cause of education not only in Chandigarh but all over India.

6. The petitioners in response to the respondents' letter dated 01.02.1993 deposited certain amounts in consideration of an allotment of about 4 acres of land in Sector 44-C, Chandigarh worked out at the rate of ₹ 300/- per sq. yard but under protest. The grievance regarding location of the plot, therefore, stood redressed by shifting the allotment from Sector-25 to Sector 44-C, Chandigarh. The grievance regarding the increase in the rate was partly redressed inasmuch as the demand had been reduced from ₹ 500/- per sq. yard. to ₹ 300/- per sq. yard.

Further correspondence ensued in the course of which the respondents reiterated the demand of premium at ₹ 300/- per sq. yard and the petitioners reiterating that the rate ought to be only ₹ 60/- per sq. yard.

7. Mr. Jain also invited our attention to the 95th report of a Committee on Petitions of Rajya Sabha signed by the Chairman, Chandigarh Recognized Schools' Management Association, Chandigarh praying for fixation of land premium and ground rent of the land allotted to two Chandigarh Schools and matters connected therewith. He stated that the committee had made several observations in favour of the applicants including that the rate prevalent in November, 1979 ought to be applied.

8. As we intend directing the petitioners to appear before the respondents pursuant to the impugned notices, it is not necessary for us to deal with the report ourselves. The effect of the report and the relevance

thereof to the petitioners' case can be pleaded by the petitioners at the hearing which they have been offered before the respondents.

9. It is not possible in this writ petition to fix the rate. There are several issues even on facts which would have to be taken into consideration. For instance on the one hand the petitioners contend that the rate had already been fixed at 60/- per sq. yard and it is only the location thereof that was under consideration. The respondents had agreed to shift the location to a more appropriate one. The petitioners contend that there was no occasion or justification for the respondents to raise the premium. The respondents on the other hand contended that an allotment had not been made in favour of the petitioners by the said letters which referred to the premium of ₹ 60/- per sq. yard. They also relied upon those very letters expressly stating that the rate was tentative and subject to upward revision. The concluded contract, therefore, had not been arrived at. The rate had not been fixed. The petitioners on the other hand rebutted this submission by contending that the reference to the rate being only tentative and subject to upward revision was only formal. Moreover, the petitioners have raised a serious grievance regarding discrimination. They state that the other educational institutions had been allotted the plots at appropriate places at the rate of only ₹ 60/- per sq. yard. around the same time and that there was no justification for the respondents altering the rate in the petitioners' case. According to the respondents, there are distinguishing features. Both the parties contended that the entire record regarding the facts and circumstances in which the allotments were made to the other parties on the one hand and to the petitioners on the other hand would have to be examined and compared. We agree. This exercise has not been undertaken for all these

years in view of the pendency of this writ petition. In our opinion, these issues must be examined by the respondents.

10. Mr. Jain also submitted that the demand of interest at 20% per annum and 24% per annum is unjustified as the rates are exorbitant. He submitted that the premium is fixed at the rate of ₹ 300/- per sq. yard. There was no justification for the respondents charging an exorbitantly high rate of interest. The respondents will no doubt consider this point as well.

11. We are confident that the respondents will consider the case in its right perspective including keeping in mind that the petitioner is an educational institution.

12. The petition is, therefore, disposed of by directing the respondents to consider the petitioners' case including for reduction of lease premium and/or rate of interest. The petitioners have agreed to pay the amount as demanded in accordance with law. They have made it clear that they positively intend retaining the allotment. The only question, therefore, before the respondents is the rate at which the premium/lease rent is to be charged and the rate of interest. The demand or direction, if adverse to the petitioners, shall not be enforced for a period of eight weeks after the service thereof upon the petitioners.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

04.09.2015
'ravinder'

(TEJINDER SINGH DHINDSA)
JUDGE