

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

CWP No. 17747 of 1999

Date of Decision:-06.02.2015

New Beach Candy Health Care Private Limited

...Petitioner

Versus

Union Territory, Chandigarh and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

Present:- Mr. B.R. Mahajan, Senior Advocate with
Mr. Padamkant Dwivedi, Advocate
for the petitioner.

Ms. Smriti Dhir, Advocate
for the respondents.

HEMANT GUPTA J.(Oral)

The petitioner has invoked the writ jurisdiction of this Court for issuing of directions to the respondents to defer charging of ground rent, installments, interest etc. from the petitioner for the period the main holes containing telephone cables exist on the site in question.

In response to an advertisement in the daily newspapers in November 1996, Harbans Singh Bajaj and others participated in auction and were the highest bidder of SCO Nos.13-14-15 in Sector 34-A, Chandigarh. Subsequently the said allottees sought to incorporate a private limited company, which change was allowed.

The grievance of the petitioner is that after sanction of the building plans on 10.8.1998, when they started construction, they found a main hole in the area on 23.9.1998. The petitioner requested for removal of the main hole. The Department of Telecommunication informed the Estate Office, Chandigarh that telephone main hole along with cables have been shifted on 20.8.1998 and the site is free from any encumbrance vide

communication dated 09.10.1998 (Annexure P-6).

It is, thereafter, when the petitioner was in the process of construction, it found out that there is underground bunker type duct erected by Telecommunication Department having telephone ducts, wherein cables for 80,000 telephone lines were passing through. Because of the said duct, the petitioner could not complete construction and requested for shifting of the duct on 21.7.1999. On the basis of such communication, the Estate Officer requested the General Manager Telephones for shifting of telephone main hole. Learned counsel for the respondent has pointed out that earlier the Telecommunication Department communicated on 24.9.1999 (Annexure R-6) that it is not possible to remove these main hole because there are underground duct was constructed in an open area. However, subsequently vide communication dated 5.11.1999 (Annexure P-8), the Department of Telecommunications communicated to the Estate Officer that the underground cables are passing through the duct located in part of SCO Nos.13-14-15, Sector 34-A, Chandigarh. This duct was constructed by the Department of Telecommunications in the year 1988 when the place was reported to be green belt. It is only in 1995, the Estate Officer auctioned the plots without obtaining Non-Encumbrance Certificate from the Department of Telecommunications.

The arguments of learned counsel for the petitioner is that for the period 23.9.1998 till 5.11.1999 when it was made clear that ducts cannot be shifted, the petitioner re-organized the plans and completed construction. It is, thus argued that because of latent constructions raised by the Department of Telecommunications, the petitioner could not complete construction and, therefore, the petitioner cannot be held liable to pay interest on the balance amount of installments, ground rent and penal rent etc. for such period.

The petitioner also relies upon an order dated 29.9.1999 passed in

CWP No. 17747 of 1999

CWP No.19277 of 1997 titled 'Indira Arora v. Chandigarh Administration' wherein the payment of installments and ground rent was deferred for the reason that the underground pipeline was found to be in existence, which were shifted by the Municipal Corporation.

On the other hand, Ms. Smriti Dhir, Advocate relies upon an order Annexure R-4 passed in CWP No.17278 of 1991 titled 'Sikka Promoters Private Ltd. V. The Adviser to the Administrator, U.T. Chandigarh and others', on 27.3.2000 wherein in respect of SCO site in Sector 34, Chandigarh itself, where the request for deferment of ground rent and installments was declined when the telephone and electric poles were found at the spot.

We have heard learned counsel for the parties at length and also perused the original record submitted by Ms. Dhir containing the original building plans sanctioned on 10.8.1998 and also the revised building plans sanctioned on 11.2.2000. It is also not disputed that the partial completion certificate to occupy the ground floor was granted to the petitioner on 13.8.2000. A perusal of para 10 of the writ petition shows that the petitioner came to know about the bunker type main hole in July 1999, when it addressed a letter dated 21.7.1999. It is on the basis of said letter, the Estate Officer asked the General Manager Telephones to shift the bunker type telephone main holes.

In terms of the letter of allotment dated 18.2.1997, wrongly mentioned as 18.2.1999 in Annexure P-2, there was a specific clause authorizing the purchasers to take possession of the site leased for use. The Estate Officer also asked the Executive Engineer of the capital project to deliver possession. The letter of offer of possession on behalf of the Estate Officer to the Executive Engineer has been produced on record as Annexure P-3. It was on 16.6.1997 (Annexure P-4), the Estate Officer sought the indulgence of the Superintending Engineer, Municipal

Corporation for removal of main hole falling under the site of SCO Nos.13-14-15, Sector 34, Chandigarh. It is subsequently vide Annexure P-5 dated 26.5.1998, the possession was delivered to the petitioner. The petitioner at the time of taking possession has given the following endorsement:-

“Certified that I have taken the possession of SCO Site No.13-14-15 at Sector 34, City Centre Chandigarh. The site has been shown to me and found from the visible encumbrance except one Manhole falls in the site that Directors of New Beach Candy Health Care Pvt. Ltd. Have no objection to take over the possession of SCO site 13-14-15 Sector 34 City Centre Chandigarh alongwith Manhole and the Directors of the Company will get it removed at their own through the concerned department of Chandigarh Admn. before the commencement of work and will not ask for any compensation from the UT Admn. on this account. That in case of any discrepancy, Directors of the Company will be fully responsible.”

In view of the categorical writing as reproduced above, the petitioner cannot be permitted to make a grievance in respect of existence of main hole till the delivery of possession on 26.5.1998.

However, we find merit in the contentions raised by the petitioner that in the process of construction, they encountered an underground bunker type duct having around 80,000 telephone cables. It was on 5.11.1999 when the petitioner was informed that the duct cannot be shifted, the petitioner re-planned the construction and completed the same. The underground duct constructed by the Department of Telecommunications, was said to be constructed when the area was shown to be a park as per the communication (Annexure P-8). Though at an earlier stage, the Department of Telecommunications has informed that these main holes are existing in an open area and that there is no hindrance to the owners of these SCOs. The fact remains that there was an encumbrance over the plot in question, which hindered the complete utilization of the plot. Thus, it would be fair and reasonable if such period

i.e. period from 21.7.1999 to 5.11.1999 is excluded for the purpose of charge of ground rent; interest on installments as such underground duct has impaired the rights of petitioner to utilize the plot allotted in the intended manner.

The order relied upon by Ms. Dhir in 'Sikka Promoters Private Ltd. (Supra) (Annexure R-4) cannot be used as against the petitioner as the allottee in the said case has given an affidavit that he will remove the electric poles at his own costs and that has taken the possession certifying that there is no visible encumbrance. The encumbrance in the aforesaid case was visible to the naked eyes in the shape of electric pole whereas the encumbrance in the case in hand is underground duct, which came to the notice of the petitioner only during the process of construction. Therefore, the said judgment cannot be used against the petitioner for declining the relief claimed.

In 'Indira Arora's case (Supra) it was underground pipeline, which hindered the construction activity. This Court has granted benefit for the period, the site could not be utilized to its optimum advantage. In view of the aforesaid fact, the said order has the parity as in the present case.

Consequently, we dispose of the present writ petition with direction to the respondents to re-calculate the amount due and payable by the petitioner on the amount of interest and ground rent by excluding the period from 21.7.1999 to 5.11.1999. It is clarified that except for the benefit on the ground rent, interest on installments and penal interest, the said period will be counted for other purposes including lease period.

(HEMANT GUPTA)
JUDGE

February 06, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE