

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 13791 of 2014

Date of Decision: 24.4.2015

Manohar Lal

....Petitioner.

Versus

State of Haryana and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE REKHA MITTAL.**

PRESENT: Mr. Ashwani Kumar Chopra, Senior Advocate with
Ms. Divya Khanna, Advocate for the petitioner.

Ms. Palika Monga, Deputy Advocate General, Haryana.

Mr. Ajay Nara, Advocate for the respondent-HUDA.

Mr. Namit Gautam, Advocate for respondent No.5.

AJAY KUMAR MITTAL, J.

1. This order shall dispose of two petitions bearing CWP Nos. 13732 and 13791 of 2014 as according to learned counsel for the parties the factual matrix and the issues involved therein are similar. For brevity, the facts are being extracted from CWP No. 13791 of 2014.

2. In this petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the orders dated 17.6.2014 (Annexure P-10) passed by respondent No.1 directing the petitioner to remove the unauthorized construction and dated 8.4.2004 (Annexure P-11) passed by respondent No.1 whereby the conveyance deed executed

by respondent No.4 for the additional area measuring 255.51 square yards and waiving of the extension fee for the plot allotted in the year 1973 was found to be in violation of the Rules of the Haryana Urban Development Authority (HUDA) and for quashing of orders dated 17.10.2003 (Annexure P-8) and dated 2.9.2005 (Annexure P-9).

3. Put shortly, the facts necessary for adjudication of the writ petition as narrated therein are that plot No. 117-D Block, Mandi Township, Sirsa was purchased by the father of the petitioner on 12.12.1972 from an open auction vide allotment letter dated 14.7.1973 (Annexure P-1). The installments of the said plot were made and the construction was made in the years 1975 and 1976, respectively. The family was residing in the said premises from the year 1977 and were paying the house tax regularly. After the demise of Shri Buta Ram, the property was transferred in the name of the petitioner. In the year 1996, vide policy dated 23.2.1996, the petitioner was asked to submit forms BR-IV and V in the Estate Office, HUDA, Sirsa. The petitioner on coming to know that he is in possession of an excess area of 255.51 square yards, applied for the excess area as the same was adjoining to his plot. He deposited the price of the excess area amounting to ₹ 3,28,400/- vide receipt dated 3.9.2001 (Annexure P-2). He deposited the requisite amount vide receipts dated 14.9.2001 and 3.12.2001 (Annexure P-4 Colly) in favour of the Indian Red Cross Society, Sirsa for the issuance of conveyance deed in respect of the plot and the additional area measuring 255.51 square yards in his favour. On receipt of the said amount, the conveyance deed qua the additional area of 255.51 square yards along with the allotted area of 250 square yards was duly executed and registered in favour of the petitioner on

12.9.2001 and 13.11.2001 (Annexures P-5 and P-6). As per the said policy, the extension fee was waived off for the plot in question by the then Estate Officer-respondent No.4. Successor of Estate Officer-respondent No.4 filed an appeal under Section 20 of the Haryana Urban Development Authority Act, 1997 on 9.9.2002 (Annexure P-7) challenging the question of waiving off the extension fee and execution of conveyance deed in favour of the petitioner. The said appeal was allowed by respondent No.2 vide order dated 17.10.2003 (Annexure P-8). Being aggrieved, the petitioner challenged the said order, Annexure P-8, before respondent No.1 who vide order dated 8.8.2004 (Annexure P-11) remanded the matter to the Administrator with a direction to find out the year of construction on the basis of record produced by both the parties and further direction to find out the compoundable area otherwise of construction to be taken as per Building Bye-laws and as per the prevailing policy. However, the finding with regard to the allotment of additional land was upheld observing that since it is a part of green belt, it should not be given to the allottee. In pursuance thereto, respondent No.3 vide order dated 2.9.2005 (Annexure P-9) held that the construction was of the year 1976 whereas the issue regarding compoundable area, the Sub Divisional Surveyor found unauthorized possession of HUDA land being non-compoundable violation directed to remove the same. The petitioner challenged the order dated 2.9.2005 (Annexure P-9) before respondent No.1 who vide order dated 17.6.2014 (Annexure P-10) dismissed the revision petition. Hence, the present writ petition. Upon notice of motion, respondents No.2 to 4 filed written statement controverting the averments made in the writ petition. It was pleaded that the construction over the plot was unauthorized as the

petitioner had never got sanctioned any site plan from the respondents and no permission regarding water/sewerage connection was granted to the petitioner. The petitioner has encroached upon an area of 101.64 square yards and in connivance with Shri Deveshwar Dayal, the then Estate Officer deposited the cost of the excess area along with simple interest and succeeded in allotment of excess area in his name. It was further pleaded that the then Estate Officer was not competent to allot an area of 101.64 square yards to the petitioner and to execute the conveyance deed of an excess area. Even the petitioner succeeded in getting refund of ₹ 1,86,957/- along with interest. It was also pleaded that the then Estate Officer has wrongly waived off extension fee. The other averments made in the writ petition were denied and a prayer for dismissal of the same was made. The averments made in the written statement filed on behalf of respondents No.2 to 4 were controverted and that of the writ petition were reiterated by the petitioner by filing replication.

4. We have heard learned counsel for the parties and perused the record.

5. In the written statement filed by the respondents, it is their stand that the area measuring 101.64 square yards was encroached by the petitioner and the said area was illegally allotted by the earlier Estate Officer Shri Deveshwar Dayal and further an amount of ₹ 1,86,957/- had been paid back to the petitioner along with interest. Thus, there was no legally and valid ownership of the petitioner on the land in dispute. Even the receipt of amount of ₹ 1,86,957/- has not been denied by the petitioner in the replication filed by him. Once that is so, there is no legal ownership of the petitioner and the orders have been validly passed by

the authorities.

6. In view of the above, no illegality or impropriety could be found in the impugned orders, Annexures P-8 to P-11, passed by the respondents. Consequently, finding no merit in the writ petitions, the same are hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

April 24, 2015
gbs

(REKHA MITTAL)
JUDGE

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 13732 of 2014

Date of Decision: 24.4.2015

Hari Chand

....Petitioner.

Versus

State of Haryana and others

...Respondents.

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Mr. Namit Gautam, Advocate for respondent No.5.

AJAY KUMAR MITTAL, J.

For orders, see **CWP No. 13791 of 2014 (Manohar Lal v.
State of Haryana and others).**

**(AJAY KUMAR MITTAL)
JUDGE**

April 24, 2015
gbs

**(REKHA MITTAL)
JUDGE**