

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 13951 of 2015

Date of Decision: 15.7.2015

Kuldip Kumar

....Petitioner.

Versus

The Chief Administrator, Haryana Urban Development Authority & others
...Respondents.

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

PRESENT: Mr. Roshan Lal Sharma, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

1. The petitioner through the instant petition filed under Articles 226/227 of the Constitution of India, has prayed for issuance of a writ in the nature of certiorari for quashing the orders dated 30.3.2012 (Annexure P-10) and dated 12.5.2015 (Annexure P-13) passed by respondent No.3 vide which his claim for payment of extension fee could not be made together with claim for refund of extension fee for construction already deposited under protest was rejected.

2. Plot No. 254P, Section 12-A, Panchkula was originally allotted to one Moti Ram on 30.5.1983. The said allottee after getting sanctioned from respondent No.3, transferred the plot in question in favour of the petitioner vide letter dated 8.10.1987 (Annexure P-1) and the petitioner got possession thereof on 8.11.1987 (Annexure P-2). The conveyance deed of the plot was also executed on 8.2.1988. The petitioner sought permission from the respondents for mortgaging the

plot in question which was granted on 29.2.1988. Respondent No.3 also sanctioned the building plan regarding the building to be raised on 3.3.1988 and the petitioner had raised construction thereof upto DPC level and obtained the requisite certificate from respondent No.3 on 11.5.1988. The transfer of the plot was ordered to be cancelled vide order dated 29.8.1988 (Annexure P-3) on the complaint made by the original allotted, namely, Shri Moti Ram and the earlier transfer of the plot in favour of the petitioner was ordered to be kept in abeyance. Respondent No.3 also withdrawn the permission to mortgage the plot vide order dated 1.10.1988 (Annexure P-4). Respondent No.3 had also lodged a criminal case against the petitioner on the basis of the allegations made by said Moti Ram. Moti Ram also filed a civil suit seeking declaration and permanent injunction against the petitioner on 25.3.1989 which was dismissed by the trial court vide judgment and decree dated 14.5.2003 (Annexure P-5) and temporary injunction restraining the petitioner from raising of construction on the plot in question was passed. Against the interim order, the petitioner filed an appeal which was dismissed by the District Judge, Panchkula. The original allottee filed an appeal before the 1st appellate court and had obtained the stay regarding raising construction on the plot during the pendency of the appeal. However, the appeal was dismissed by the Additional District Judge, Panchkula vide judgment and decree dated 21.8.2003 and RSA No. 5111 of 2003 filed against the said judgment is lying admitted in this Court. During the pendency of the said appeal in this Court, the petitioner moved an application before the respondents seeking permission for raising construction of the said plot by depositing necessary fee for sanction of building plan. Respondent No.3 vide order

dated 8.2.2006 (Annexure P-6) granted permission to raise construction of the plot at his own risk and a communication dated 8.2.2006 was issued to the petitioner. The original allottee moved an application dated 20.2.2006 (Annexure P-7) before this Court seeking injunction restraining the petitioner for not raising construction and for maintaining the status quo. The petitioner filed reply to the said application. This Court vide order dated 10.3.2006 (Annexure P-8) directed that the appellant or respondents No.4 and 5 therein shall not be entitled to raise any construction on the plot in question till further orders and even restrained respondents No.1 to 3 from charging any extension fee from the parties for non-construction on the plot. The appeal was ordered to be listed for final hearing within six months. Ultimately, the appeal filed by the original allottee was dismissed by this Court vide judgment dated 7.3.2011. Thereafter, the petitioner moved an application dated 25.6.2011 (Annexure P-9) before respondent No.3 for permission to raise construction on the plot in question who vide order dated 30.3.2012 (Annexure P-10) directed the petitioner to deposit the extension fee of ₹ 8,38,500/-. As per policy dated 13.10.2006 (Annexure P-11) issued by the respondents, the allotted time of 15 years for raising construction on the plot stood automatically extended as such no fee could have been claimed by respondent No.3 regarding seeking extension for raising construction. However, the petitioner deposited the demanded amount as extension fee within the prescribed period under protest on 17.5.2012 along with interest. Thereafter, he served a legal notice dated 16.3.2015 (Annexure P-12) upon the respondents which was rejected by respondent No.3 vide order dated 12.5.2015 (Annexure P-13). Hence, the present writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, the petitioner has sent a legal notice dated 16.3.2015 (Annexure P-12) to the respondents which was rejected by respondent No.3 without passing a speaking order and without affording an opportunity of hearing.

4. After hearing learned counsel for the petitioner, perusing the present petition and without expressing any opinion on the merits of the case, we dispose of the present petition by directing respondent No.3 to take a decision on the legal notice dated 16.3.2015 (Annexure P-12), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner within a period of two months from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

July 15, 2015
gbs

(REKHA MITTAL)
JUDGE