

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.16035 of 2014 (O&M)

Date of decision: 27-05-2015

M/s Aggarwal Trading Company

....Petitioner

State of Punjab and others

....Respondents

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

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Mr. D.S.Mann, AAG, Punjab.

Mr. Aman Sharma, Advocate for Mr. S.S.Dhaliwal, Advocate for
respondent Nos. 3 and 4.

Ajay Kumar Mittal,J.

1. The petitioner-firm seeks a writ in the nature of mandamus directing the respondent authorities to issue No Due Certificate with regard to the payment of instalments for the plot allotted to it as per the terms and conditions of the allotment letter dated 27.10.2010, Annexure P.1.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner firm was allotted SCF No.13 measuring 121 square yards vide allotment letter dated 27.10.2010, Annexure P.1 by the respondent authorities. As per the terms and conditions thereof, 25% of the amount alongwith 4% cess to the tune of ₹ 14,23,500/- was deposited by the petitioner firm immediately and with regard to the remaining 75% amount, the allotment letter provided for schedule of payment alongwith interest. The said letter also provided for payment of 18% interest in case of default in payment of any instalment as per the schedule. Since the first, second and third instalments were delayed, the petitioner firm deposited the amount with 18% penal interest. However,

the fourth and fifth instalments were deposited by the petitioner firm well before the due date. The petitioner firm deposited the entire sum of money i.e. ₹ 47,92,494/- before the due date i.e. on 4.4.2013. Since the petitioner firm intended to dispose of the site, it entered into an agreement to sell with one Smt.Sukhwinder Kaur and in order to transfer the site in her name, necessary application alongwith documents were submitted to respondent No.4. Respondent No.5 who was dealing clerk proclaimed to the partners of the petitioner firm that either they had to deposit ₹ 2,94,000/- or in case they intended to waive off the said amount, they should pay ₹ 50,000/- as gratification to him to which the partners of the petitioner firm did not agree and finally the said amount was reduced by him to ₹ 35,000/-. Since the partners of the firm were not bound to deposit any penalty, they asked the clerk to transfer the said site to which he did not agree. A written complaint was given to respondent No.3 on 26.6.2014, Annexure P.3. The petitioner firm in the meantime also applied for issuance of No Due Certificate on 27.6.2014, Annexure P.4. The respondents did not issue any such certificate. Reminder was given by the petitioner firm to the respondent authorities on 4.7.2014. It sought information under the Right to Information Act, 2005. The petitioner again made a complaint to respondent No.4 for issuing No Due Certificate on 11.7.2014, Annexure P.6. Complaint was again made to respondent No.3 on 15.7.2014 by the petitioner-firm which was sent to SDM, Patiala for holding enquiry. Even then no action was taken. On receipt of documents under the RTI Act, it transpired that the respondent authorities had calculated a sum of ₹ 3,07,720/- as due towards the petitioner-firm. Aggrieved thereby, the petitioner firm made several

representations to the competent authority but no action was taken. The petitioner firm also got served a legal notice upon the respondent authority through its counsel. Having received no response, it filed the present writ petition.

3. We have heard learned counsel for the parties.

4. Affidavit filed on behalf of respondent Nos. 3 and 4 dated 20.3.2015 by the Deputy Commissioner-cum-Chariman, Improvement Trust, Patiala, in Court is taken on record. It was stated therein that if an allottee failed to abide by the conditions of the allotment letter and defaulted in making the payment for more than six months, then the Trust could charge interest at the rate of 18% alongwith penalty at the rate of 20% per annum. The petitioner had deposited the principal amount alongwith simple interest. The balance amount on account of interest at the rate of 18% alongwith penalty at the rate of 20% on the principal amount was due. The allottee of site No.114 had deposited the amount with interest at the rate of 18% alongwith penalty at the rate of 20% without any objection.

5. In the additional affidavit filed by Deputy Commissioner-cum-Chariman, Improvement Trust, Patiala on behalf of respondent Nos. 3 and 4 dated 30.3.2015, it was stated that the petitioner was laible to pay penalty and penal interest as per the conditions of allotment letter. Further, there was delay in the deposit of the amount. Accordingly, an amount of ₹ 3,99,399/- was claimed to be due to the petitioner as per para 4 of the said affidavit, which reads as under:-

“4. That on the failure of the petitioner in depositing the amount in time, a penalty and penal interest, as per the condition of allotment letter, was charged for the intervening period.

Accordingly, an amount of ₹ 3,99,399/- is due from the petitioner as on 31.3.2015.”

6. Learned counsel for the petitioner produced a photo copy of the demand draft No.441332 dated 25.5.2015 whereby an amount of ₹ 3,99,399/- had been deposited by the petitioner-firm with the respondent Improvement Trust.

7. In view of the above, the petitioner having deposited the amount as claimed by the respondents, the writ petition is disposed of by directing the respondents to issue No Due Certificate with regard to the payment of instalments as per allotment letter dated 27.10.2010, Annexure P.1 to the petitioner-firm.

8. Further, averement was made by the learned counsel for the petitioner that the petitioner-firm is entitled for refund as certain payments were made which were in excess to the claim of the respondents. It was, thus, submitted that the petitioner firm shall make a detailed and comprehensive representation regarding refund with the Principal Secretary, Local Bodies, Punjab, respondent No.1 who be directed to decide the same expeditiously. It is observed that in case, such a representation is filed by the petitioner with respondent No.1, the same shall be decided by him within three months from the date of receipt of the representation after hearing the petitioner by passing a speaking order in accordance with law.

(Ajay Kumar Mittal)
Judge

May 27, 2015
‘gs’

(Rekha Mittal)
Judge

