

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 16381 of 2014 (O&M)

Date of Decision: 16th September, 2015

Nalin Khanna

..Petitioner

versus

Principal Secretary to Government of Haryana and others

..Respondents

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

Present : Mr. Ashwani Bhardwaj, Advocate, for the petitioner.
Mr. Deepak Sabharwal, Advocate, for the respondents.

S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner seeks a writ to set-aside an order of resumption dated 20.07.2010 passed by the Estate Officer, Haryana Urban Development Authority (HUDA), Gurgaon; order dated 18.01.2011 passed by the Administrator, HUDA and order dated 10.06.2014 passed by the Principal Secretary to the Government of Haryana, Town & Country Planning, HUDA. The petitioner has also sought an order directing the respondents to restore the plot to him.

2. On 03.11.2005, an industrial plot in Gurgaon was allotted to the petitioner. A possession certificate dated 30.12.2005 was issued to the petitioner and thereafter the entire consideration in respect thereof aggregating to about ₹ 3,62,250/- was paid. The possession of the plot was allegedly offered to the petitioner on the same day.

3. The petitioner had sought approval of the respondents regarding the building plans submitted by him. The date on which the building plans

for approval were submitted is not furnished. By a letter dated 30.11.2006, the petitioner informed the Estate Officer that he had applied for approval of the building plans long ago but had not received the same. The petitioner thereafter once again requested for approval of the building plans.

4. On 29.05.2008, the petitioner had deposited a sum of ₹ 5000/- towards extension fee despite the fact that the building plans had not been approved. The construction was to be completed by 03.11.2008 as per the terms of the allotment letter.

5. It is of vital importance to note that the building plans were approved on 13.06.2008 and the petitioner was conveyed and granted approval by a letter dated 17.06.2008. It is equally important to note that the plans were approved as submitted. The delay in approval of the building plans, therefore, cannot be attributed to the petitioner. Further, the petitioner could hardly be expected to meet the scheduled date of completion of construction i.e. 03.11.2008 as the plans were approved only on 17.06.2008.

6. By a letter dated 11.02.2009 and reminders dated 24.03.2009 and 01.06.2009, the petitioner informed the respondents that he had started the construction long ago and requested the respondents to grant him an extension of one year to complete the same. He undertook to pay the extension fee. There was no response to the petitioner's request for extension of time.

7. The petitioner's case is that he visited the respondents' office on 30.04.2010 where he came to know that a show cause notice dated 04.08.2009 under section 17(3) of the Haryana Urban Development Authority Act, 1977 (for short 'the Act') and a further notice under section 17(4) of the Act dated 11.03.2010 had been issued to him. He contends that he did not appear and show-cause as he had not received the aforesaid

notices. The petitioner, therefore, addressed a letter on the same day stating the above facts and once again requested the respondents to grant him an extension of time and stated that he would pay the extension fee as applicable. The respondents on the other hand, however, contend that the aforesaid notices issued under the Act were duly served upon the petitioner.

8. Sub Sections 3 and 4 of Section 17 of the Act read as under:-

17. Resumption and forfeiture for breach of conditions of transfer.—

- “(3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub section (2), or commits a breach of any other condition of sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the land or building, or both, should not be made.
- (4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer, may for reasons to be recorded in writing, make an order resuming the land or building or both as the case may be, and directing the forfeiture as provided in sub-section (3) of the whole or any part of the money paid in respect of such sale.”

9. The Estate Officer by the impugned order dated 20.07.2010 ordered the plot to be resumed and forfeiture of 10% of the costs of the plot. The order merely refers to the allotment of the plot, the possession of the plot having been handed over and the construction not having been completed. It does not refer to any of the other facts including the respondents’ delay in approving the building plans. It is possible that the Estate Officer was unaware of all the facts as the petitioner did not appear and show cause before him. The petitioner ofcourse, however, cannot be blamed for the same for he had admittedly not received the show cause notices issued under Sections 17(3) and 17(4) of the Act.

10. The Appellate Authority by the impugned order dated 18.01.2011 dismissed the petitioner's appeal against the order of the Estate Officer dated 20.07.2010. The Appellate Authority held that the petitioner would have been entitled to the first extension for a period of one year only if he had constructed 20% of the permissible covered area and taken effective steps to implement the project and that the petitioner would have been entitled to the second extension for a further period of one year if he had made out an exceptional case. The Appellate Authority, however, referred to the Estate Officer having mentioned in his memo dated 11.10.2010 that the petitioner had failed to fulfill the requirements entitling him to an extension of time. Curiously the Appellate Authority also did not refer to the facts set out by us above especially the fact that the respondents had approved the plans only on 17.06.2008.

11. The Principal Secretary to the Government of Haryana, Town & Country Planning, Urban Estates Department-cum-Revisional Authority dismissed the revision petition filed by the petitioner. He observed as follows:- As per condition-17 of the allotment letter, the petitioner was required to commence the construction within one year as per the approved building plans from the date of issue of the allotment letter and the production was to commence after constructing minimum 25% of the permissible covered area of the plot within a period of three years. The petitioner had submitted the building plans only on 30.11.2006 although the plot had been allotted a year prior thereto on 03.11.2005. There was, therefore, a delay in submission of the building plans for approval. Under condition-17 of the allotment letter, the petitioner was to start the construction within one year. He had, however, not even sought approval of the building plans for about a year after he was allotted the plot. He quoted

the relevant part of Estate Management Procedure (EMP-2005) of HUDA which reads as under:-

“The period for implementation of the project can be extended by the respective Estate Officer, HUDA, for a period of one year subject to the allottee having completed construction equivalent to 20% of Permissible Covered Area (PCA) in case of plot size is upto one acre and 10% of PCA in case plot size is more than one acre. Further, the allottee will satisfy the Authority that he could not go into production within three years from the date of offer of possession for reasons beyond his control and he took effective steps for implementation of the project.

Second extension of one year for completion of project i.e. after four years from the offer of possession will be granted only in exceptional circumstances with the approval of Zonal Administrator, HUDA.”

The Appellate Authority held that EMP-2005 does not come to the petitioner's rescue as the requests for extension were not based on any cogent ground.

12. We will presume that there was a delay of one year at the initial stage on the petitioner's part in seeking approval for plans. The plot was allotted to the petitioner on 03.11.2005 and the petitioner submitted his plans for approval on 30.11.2006. The respondents, however, infact approved the plans on 17.06.2008. They, therefore, impliedly if not expressly, condoned the delay, if any, on the petitioner's part in submitting the plans for approval. On 29.05.2008, the petitioner deposited a sum of ₹ 5000/- towards extension fee. The respondents accepted and appropriated the same. They have not returned the same till date. This also indicates that the respondents had condoned the initial delay. Having condoned the delay it is not open to the respondents to resume the plot on the ground of the initial period of delay. Relying upon and pursuant to the approved building plans, the petitioner altered his position to his detriment inter-alia by investing the amount towards construction upon the plot and not purchasing another plot. In so far

as it is based on the initial delay, the impugned orders are, therefore, not sustainable.

13. The petitioner could thereafter have commenced the construction only upon receipt of the approved building plans on 17.06.2008. The petitioner obviously could not have completed the construction and put the unit into commercial production by the original scheduled date of completion, namely, 03.11.2008. In these circumstances, the petitioner was entitled to an extension to the extent of the original period as stipulated in the allotment letter commencing from 17.06.2008.

14. As we mentioned earlier, the petitioner had by his letters dated 11.02.2009, 24.03.2009 and 01.06.2009 sought an extension of time. The same was not considered and instead proceedings under section 17 of the Act commenced from July, 2009 and ended with the revisional order dated 10.06.2014.

15. In these circumstances, it would be unfair and unreasonable to resume the plot. To uphold the order of resumption would amount to permitting the respondents to take advantage of their own wrong. The ends of justice demand that the petitioner be given time to the extent and in the manner provided in the original letter of allotment dated 03.11.2005 commencing from the date of this order.

16. The petition is, therefore, disposed of by setting aside the impugned orders and granting the petitioner an extension of time to the extent and in the manner provided in the original letter of allotment.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

16th September, 2015

(TEJINDER SINGH DHINDSA)
JUDGE

‘ravinder’