

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.26896 of 2013 (O&M)

RESERVED ON: 07.09.2015

DATE OF DECISION: 16.09.2015

S.K. Vats

....Petitioner

versus

State 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. Ashish Aggarwal, Senior Advocate with
Mr. Vijay Kumar Kajla, Advocate for the
petitioner

Mr. Rahul Dev Singh, DAG, Haryana

Mr. Lokesh Sinhal, Advocate for respondents
No.2 to 5-HUDA

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

The petitioner has sought a writ to quash notices dated 22.08.2013 and 08.10.2013 issued by respondent No.3 - Estate Officer, Haryana Urban Development Authority (HUDA), Karnal, demanding a sum of Rs.44,30,624/- as extension fee with respect to a plot of land allotted to him and an order directing the respondents to hand over physical possession of the plot of land and the additional area.

2. By a Memo dated 22.05.1987, the petitioner was allotted a plot of land under the discretionary quota admeasuring 299 square yards for a consideration of Rs.58,152.51. The petitioner deposited Rs.14,538/- being 25% of the total consideration within the prescribed time. As the plot was allotted under the discretionary quota, the allotment was cancelled. However, in view of a judgment of this Court, the allotment of this plot was retained. The

petitioner had paid the entire consideration in respect of the plot. Respondent No.3 by a letter dated 20.04.1990 informed the petitioner that possession of the plot could be obtained on any working day. The petitioner contended that despite his repeated visits to the respondents, the physical possession was, in fact, not handed over to the petitioner.

3. By a letter dated 06.09.1994, the respondents demanded a sum of Rs.1,69,375/-, although the petitioner had already paid the entire amount as per the original letter of allotment together with interest, of Rs.1,08,512.45 and a further amount of Rs.10,000/-. The demand included a sum of Rs.1,32,670/- for an additional area of about 163 square yards. The petitioner had not asked for this additional piece of land. The respondents, however, insisted that he ought to accept the additional area and to pay for the same.

4. The respondents were not entitled to compel the petitioner to accept the additional area and to pay for the same. The petitioner by his letter which was received by the respondents on 08.11.1994, responded to the letter dated 06.09.1994. He *inter alia*, stated that had he been informed about the additional area he would have tried to arrange for the additional funds. He, therefore, requested that the additional area be given to him without charging any interest and that he also be afforded the facility of paying the same in instalments. He requested a hearing, which was granted by a letter dated 06.12.1994.

5. It appears that by a letter dated 22.01.1995, the respondents demanded extension fee for not having constructed the building within the period stipulated. The petitioner by his letter dated 18.02.1995 sought information regarding the provision

under which the amount was demanded and whether intimation in this regard had ever been sent to him earlier. He expressly stated that the possession of the plot had never been given to him and requested the respondents to give him a demarcated plot so as to enable him to take steps to construct his house thereon. There was no reply to this letter. In the year 1997, again merely paper possession was given. The plot had not been demarcated.

6. As there was no reply to the above letter, the petitioner addressed a further letter dated 22.09.1995 in which he set out the facts regarding this case in considerable detail. The letter referred to an earlier communication dated 01.07.1987 cancelling the allotment and the order of this Court setting aside the cancellation. It is important to note that the petitioner once again stated that the possession of the plot had not been handed over and requested that he be put in actual physical possession thereof. He, therefore, resisted the demand for extension fee.

There was no reply to the above letter.

7. Ultimately, on 10.04.1997, the petitioner sent a Possession Certificate in a format furnished by the respondents stating that he has seen the plot and that he agreed to accept the possession thereof. The petitioner alleges that in fact only paper possession was given and that physical possession of the plot was not given to him. Proceedings were adopted by the petitioner before the District Consumer Forum, Panchkula. Ultimately, it was held that the complaint was not maintainable before the District Consumer Forum.

8. The petitioner thereafter submitted a building plan in the year 2007. The respondents, however, demanded extension fee and other amounts. Respondent No.3 issued a further Memo dated 02.11.2007 demanding further amounts for the approval of the building plan. The demand notices dated 22.08.2013 and 08.10.2013 have been impugned in this petition.

9. This brings us to the two orders passed by the earlier Division Benches in this writ petition.

(A) By an order dated 10.02.2014, the Division Bench took notice of the fact that the petitioner was being forced to accept the allotment of additional land at an exorbitant rate determined by the respondents unilaterally. The Division Bench advised the authorities to reconsider the matter as to why the petitioner has not been offered the additional land at the same rate at which the plot was allotted to him.

(B) By an order dated 31.03.2014, the Division Bench referred to a communication dated 28.03.2014, handed over by learned counsel for HUDA, whereby the authorities had decided to allot the additional piece of land admeasuring 163 square yards to the petitioner at the original rate of allotment but with a stipulation that the interest on the allotment price of the additional land would be leviable with effect from 06.09.1994. The Division Bench held that there was no justification for the imposition of the condition as the decision to allot the additional area had been taken by the respondents that month itself. The Division Bench, therefore, directed the respondents to communicate the allotment price of the additional area to the petitioner and directed the petitioner to deposit the same within a period of one

month from the date of receipt of such communication, failing which the respondents were directed to levy interest on the allotment price of the additional area with effect from March, 2014. The Division Bench also directed the respondents to file a written statement as regards the issue of extension fee leviable on the petitioner.

10. In view of the said orders dated 10.02.2014 and 31.03.2014, two issues stand concluded. Firstly, the respondents are bound to hand over the additional area of 163 square yards at the original rate of allotment. Secondly, the respondents are not entitled to charge interest thereon. Thus, the only issue open at this stage is the issue of extension fee levied on the petitioner.

11. We will assume that the actual physical possession of the original plot was offered to the petitioner by virtue of the letter dated 20.04.1990, but that the petitioner failed to take possession thereof. The petitioner has strongly denied this fact, but we will assume it to be so. However, as we also noted earlier, in or about September, 1994, the respondents had insisted upon the petitioner accepting the additional area of 163 square yards. The petitioner was not bound to accept the additional area. The respondents were not entitled to compel the petitioner to accept the same. After 1994, there was a virtual stalemate between the parties in view of this issue. There were offers and counter-offers between the parties especially as regards the price and the other terms and conditions if the petitioner was to take over the additional area. Suffice it to note that the respondents insisted upon the petitioner accepting the additional area. The record indicates that the respondents were willing to handover the

possession of the original plot as well as of the additional area. There is nothing to indicate that the respondents had agreed to hand over the actual physical possession of the original plot without prejudice to their right to insist upon the petitioner accepting the additional area. Thus, there could be no question of levying any extension fee upon the petitioner for not constructing upon the plot after 1994. Moreover, there was no reply to the petitioner's letters dated 18.02.1995 and 22.09.1995 wherein he had expressly stated that physical possession of the plot had not been handed over.

The only period when the petitioner could have put up the construction was between April, 1990 and September, 1994. In the original letter of allotment, the petitioner was to put up the construction within two years. Thus, the petitioner, would at the highest, be liable to pay extension fee only for the period from May, 1992 to September, 1994 for after 1994 possession was once again not offered on account of the dispute regarding the respondents' insistence upon the petitioner accepting the additional area of 163 square yards.

12. The petition is accordingly disposed of by quashing and setting aside the impugned orders and by holding that the petitioner is liable to pay extension fee only from May, 1992 to September, 1994.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

16.09.2015
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(TEJINDER SINGH DHINDSA)
JUDGE