

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP No.7764 of 2014 (O&M)

Date of Decision: 08.01.2015

Laxmi Devi

...Petitioner

Versus

Haryana Urban Development Authority & others

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Vivek Khatri, Advocate, for the petitioner.
Mr. Arvind Seth, Advocate, for respondent Nos.1 & 2.
Mr. P.K.Jangra, Addl. AG, Haryana, for respondent No.3.
Mr. Sudershan Goel, Advocate, &
Ms. Rupinder Kaur, Advocate, for respondent No.5.

HEMANT GUPTA, J.

Challenge in the present writ petition is to the communication dated 15.11.2013 (Annexure P-12), whereby the Estate Officer, HUDA, Hissar has granted permission to respondent No.5 to erect/re-erect or addition of building on a part of released land in Sector 13P-II, Hissar in accordance with the plans submitted by the said respondent.

The petitioner is an allottee of plot bearing No.1392, Sector 13-P, Hissar, wherein the petitioner is residing after constructing a residential house. On the other hand, Sudama Aggarwal and K.C.Khurana were the owners of land measuring 650 square meters comprising in Khasra No.4798/2 min. The said land was subject matter of acquisition vide declaration dated 21.03.1991 issued under Section 4 of the Land Acquisition Act, 1894. However, the said land was released from acquisition by the Director, Town & Country Planning, Haryana, Panchkula through a communication addressed to the Administrator, HUDA, Hissar on

03.03.1997 (Annexure P-3). The communication dated 03.03.1997, when translated, reads as under:

“It is to inform you on the aforesaid cited subject that in Hissar the land belonging to Shri Sudama Aggarwal and K.C.Khurana, which falls in Khasra No.4698/2 min, measuring 650 sq. mtr. on which shops have been constructed, stands released subject to the conditions by the Government of Haryana in favour of the applicant. The applicant has to deposit the development charges according to its respective ratio. An agreement in respect of the charges incurred on development and all other conditions has also to be executed. In this regard, necessary instructions have already been issued to you. Besides this, if the applicant had received any compensation with regard to acquired land then firstly after taking information from the Land Acquisition Collector, Hissar, the same be recovered from the applicant. You are requested to send the agreement to this office after executing the same from the applicant at the earliest.”

The said land was gifted by Sudama Aggarwal son of Ram Narain to Jaswant Rai son of Ram Narayan – respondent No.5 vide gift deed dated 13.12.2002 (Annexure P-4). Thus, respondent No.5 claims to be owner of the part of the land released by State.

Pursuant to the grant of release, an agreement was executed on 19.12.2003 (Annexure P-5) between the owners of the land and the Government of Haryana acting through the Director, Urban Estates Department, Haryana -cum- Chief Administrator, HUDA, Panchkula. In terms of the conditions of the agreement, the owner had to pay development charges of Rs.1,25,760/-, whereas the building plans were to be approved from the competent authority before commencing any construction. Some of the relevant conditions from the agreement read as under:

“(a) That the promise had to pay towards development charges a total sum of Rs.1,25,760/- as determined vide letter No.23899 dated 17.12.2002 of the Estate Officer, HUDA, Hissar for the release land/building to Haryana Development Authority and

the promise has already deposited the entire sum of Rs.1,25,760/-.

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- (c) That the promise shall arrange to get the building plan approved from the competent authority before commencing any construction on the said land provided that in the case of sites having built up structure, the promise shall submit the building plan for record and obtain approval for additions and alterations from the Competent Authority.
- (d) That the promise shall not, except with the previous permission of the promisor, sell the said land/building or portion thereof. The promise shall use the said land/building only for the purpose for which it has been released and in accordance with the plans approved by the Competent Authority and not for any other purpose whatsoever. In case the promise the land for any other purpose, the released land will be re-acquired. No obnoxious trade or activity shall be carried out in any portion of the said land/building. This release of land would not provide immunity from the provisions of other legislation in vogue for the present in the area in which the site is situated.

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- (g) That the promisor (Haryana Urban Development Authority) may, by its officers and servants at all reasonable times and in reasonable manner after 224 hours notice in writing enter in or upon any part of the said land/building erected thereon for the purpose of ascertaining that the promise has duly performed and observed the conditions of release.

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- (i) That the promise shall not claim any amount of compensation for land acquired by the Governor.

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However, an issue; whether the Haryana Urban Development Authority (HUDA) is the competent authority to sanction the building plans or the Municipal Corporation, arose consequent to a communication dated 11.10.2004 (Annexure P-6) addressed by the Chief Administrator, HUDA, Panchkula to the Estate Officer, HUDA, Hissar, when Sudama Aggarwal

submitted building plans for sanction. The Estate Officer was advised to take action in the matter on the following lines:

- “(i) In case released land falls in controlled area, building plan will be sanctioned by Director, Urban Development/Director, Town & Country Planning Department after giving change of land use.
- (ii) In case released land falls under original Municipal limits, then plan will be sanctioned by Municipal Committee after charging the internal development charges.

HUDA has no role to plan in sanction of building plan.”

Learned counsel for the petitioner has also produced Annexure P-17, a copy of the judgment in a suit for mandatory injunction filed by Sudama Aggarwal against the Haryana Urban Development Authority before the Civil Judge (Junior Division), Hissar on 06.04.2004. The said suit was decreed and the defendants were directed to decide the proposed building plan within a period of three months and further to issue no objection certificate or to reject the building plan, so that the plaintiff may initiate further remedy. In pursuance of such directions of the Civil Court, the building plan was not sanctioned vide order dated 20.11.2007 for the reason that the released land of the applicant falls within the original municipal limits.

In the written statement filed on behalf of respondent Nos.1 & 2, reference was made to the communication dated 09.07.2014 by the Estate Officer, Hissar to the District Town Planner, Hissar to the effect that the released land is within the municipal limits of Municipal Corporation, Hissar and that necessary action with regard to the approval of building plan and subsequent approval is to be taken by Urban Local Bodies.

In the short reply by way of affidavit on behalf of respondent No.3 through the District Town Planner, Hissar, it was stated that the building plan for the released land within the municipal limits of Municipal

Corporation is to be approved by the Urban Local Bodies and that vide communication dated 10.07.2014, the matter has been remitted to HUDA that the sanction granted to the building plan may be withdrawn.

In a reply filed on behalf of respondent No.4 - the Municipal Corporation, Hissar, it is averred that the building plan was submitted for approval on 11.02.2005, which was approved subject to deposit of External Development Charges (EDC) amounting to Rs.2,72,048/-. Since the charges were not deposited, the building plan was rejected. An appeal was preferred by respondent No.5, which was dismissed by the Deputy Commissioner on 24.07.2007.

In a reply filed on behalf of respondent No.5, reference is made to sanction of building plans by HUDA in respect of plot Nos.1446, 1447, 1451, 1452 and Jawa Hospital. It is asserted that the said plots fall within the Municipal Corporation and were also part of the released land for which building plan has been sanctioned by HUDA. It is also pointed out that the petitioner has intentionally approached this Court after the construction of the building has reached 4th floor and that the said respondent has raised a loan of Rs.90 lac on 25.02.2014 to raise construction of the commercial building. It is also pointed out that the Municipal Corporation vide communication dated 09.04.2013 (Annexure R-5/5) has informed that the building plan will be sanctioned by HUDA alone as a released land. It is also pleaded that the entire HUDA sector is a part of municipal area, therefore, the building plan is to be sanctioned by the HUDA. Respondent No.5 has also attached a communication dated 03.03.2006 as Annexure R-5/11 submitted by the petitioner raising an objection that respondent No.5 is violating the terms and conditions of release letter by HUDA authorities and that commercial building is not allowed in the residential area. In fact, the building plan was sanctioned by HUDA vide communication dated

15.11.2013 (Annexure P-12), the subject matter of challenge in the present writ petition.

During the course of hearing of the writ petition on 08.12.2014, this Court sought the response of HUDA on the following questions:

- “1. Whether that area in question for which the said plan has been sanctioned forms part of residential area?
2. To produce the lay out plan of the area in question.
3. As to whether any condition was imposed while releasing the land in respect of user thereof?
4. Whether in terms of the agreement specifically Clause ‘a’, ‘g’ & ‘i’, the Haryana Urban Development Authority will not be bound to sanction building plans keeping in view the lay out planning of the sector?”

In response thereto, the Estate Officer, HUDA, Hissar has informed vide communication dated 17.12.2014 that the area in question for which building plan has been sanctioned does not form part of residential area. Lay out plan of the area in question was attached thereto. In respect of question No.3, it was pointed out that the land was released for the reason that Sudama Aggarwal and K.C.Khurana have constructed the shop, whereas in respect of question No.4, it is stated that in terms of the agreement specifically clauses ‘a’, ‘g’ & ‘i’, it seems that HUDA can sanction building plans.

We have heard learned counsel for the parties at length and find no merit in the present writ petition. The land in question was part of the land intended to be acquired for the purpose of HUDA. The same was released for the reason that the land owners have constructed shop. Thereafter, an agreement has been executed between the land owners and the State through HUDA. The development charges have been paid by the land owners to the HUDA and that the provisions of the Haryana Urban Development Authority Act, 1977 and the Rules and Regulations made there

under have been made applicable to the land in question as per the terms of the agreement so executed.

The different Authorities have been taking different stand at different times. The Municipal Corporation vide communication dated 9.4.2013 have taken a stand that the building plan has to be sanctioned by HUDA, whereas in the written statement, the stand is different. On the other hand, the HUDA has sanctioned the building plan, but taken a stand in the written statement that the building plan is to be sanctioned by the Municipal Corporation. The Town & Country Planning Department, Haryana, has taken a stand that the HUDA has been asked to withdraw the sanction of the building plan.

There is ambiguity in the agreement regarding who is the competent authority. Since the land, which was part of the acquisition process for the benefit of HUDA, stands released and an agreement was executed between the land owners and the HUDA, it is the HUDA alone, which would be the competent authority. The reading of the terms & conditions of the agreement, as reproduced above, leaves no manner of doubt that the area in question is governed by the Haryana Urban Development Act, 1977 and the Rules and Regulations framed there under. Therefore, the building plan for the land in question has to be sanctioned by the said Authority alone. The area in question is not the part of the residential zone as per the lay out plan submitted by the HUDA. Therefore, the approval of the building plan as a commercial complex cannot be said to be violative of the zoning plan. Since the land in question has been released in favour of the land owners and on payment of development charges, it will be deemed to be part of HUDA land. The civic amenities are to be provided by the HUDA, which alone has charged the development charges.

In view of the above discussion, we do not find any merit in the present writ petition. The same is accordingly dismissed, as the building plan has been rightly sanctioned by HUDA.

However, if the petitioner is aggrieved that the light and air to her residential property stands impaired, it shall be open to the petitioner to avail such other remedy from the Civil Court as may be available to her in accordance with law.

(HEMANT GUPTA)
JUDGE

08.01.2015
Vimal

(HARI PAL VERMA)
JUDGE