

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 8496 of 2014

Date of decision: 16.01.2015

Sandeep Prashar

.....Petitioner

versus

Haryana Urban Development Authority and others

..... Respondents

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

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Sushil Bhardwaj, Advocate
for the petitioner.

Mr. Raman Gaur, Advocate for respondents No. 2 & 3.

HARI PAL VERMA, J.

Through the instant writ petition, the petitioner has challenged the order dated 28.01.2014 conveyed vide letter dated 06.03.2014 (Annexure P-14), wherein appeal filed by the petitioner against the demand notice dated 03.01.2014 (Annexure P-11) has been dismissed. Further challenge has been laid to Demand Notice dated 04.04.2014 (Annexure P-12), whereby in continuation to the demand notice dated 03.01.2014 (Annexure P-11), petitioner has been asked to deposit an outstanding amount of Rs.3,61,518/- .

Briefly stated House No.704, Sector-5, Urban Estate, Kurukshetra measuring 220 sq.mts was allotted to Smt. Asha Rani wife of

Anjani Kumar Prashar vide allotment letter dated 04.03.1987/06.01.1992 on free-hold basis for a consideration of Rs.47,678/- as per the terms and conditions contained in the allotment letter. The possession of the said plot was offered on 16.06.1995 i.e. after 8 years from the date of allotment. Smt. Asha Rani i.e. the original allottee, was the mother of the petitioner and was not keeping good health as she was suffering from Cancer. Therefore, the allottee in order to maintain and manage the property made an application to the respondents for permission to transfer the plot in the name of her son Sandeep Parshar i.e. petitioner. On the basis of the said application for transfer, re-allotment letter dated 16.10.2007 was issued in favour of the petitioner. After the re-allotment of the plot in the name of the petitioner, petitioner enquired from the respondent-authority about the conditions to be fulfilled and in response thereto the petitioner was apprised to get his house constructed as early as possible, failing which he would be liable to pay per year extension fee. However, the petitioner was never apprised or informed about any instructions regarding construction of the plot within any specified time nor any such instruction was incorporated in the letter of allotment. Even no such notice was ever issued to the petitioner by the respondents.

In order to raise construction over the plot in question, the petitioner approached the respondent for possession and for approval of the site plan in the year 2008 and possession certificate dated 04.12.2008 was given to the petitioner followed by approval of a fresh building plan vide letter dated 21.01.2009. Interestingly, vide both the letters, the petitioner was never informed about any instructions of the department pertaining to application/approval of occupation certificate within which

specific time or particular date the same is required to be obtained.

The petitioner stated to have completed the construction over the plot in question before 30.06.2010, but could not apply for occupation certificate due to some unavoidable circumstances and he applied for such certificate vide letter dated 28.12.2010 along with report of Architect and requisite documents. The documents were received by the respondent, but were returned with the complete original file vide letter dated 28.01.2011 with the observation that the petitioner has failed to apply to get the occupation certificate by 30.06.2010 and therefore the respondent's office is unable to issue an occupation certificate. Thereafter, respondents issued a show cause notice dated 07.02.2011 (Annexure P-3) to the petitioner for resumption of house in question. The show cause notice was replied by the petitioner on 01.03.2011 stating therein that petitioner has completed the construction over the plot in question and the dwelling unit is ready to be occupied and occupation certificate was applied on 28.12.2010. After submission of the reply, petitioner was given an opportunity of personal hearing by the respondent and was asked to appear on 28.03.2011. Petitioner submitted his written application dated 28.03.2011 with a request to depute some authorized official to inspect the construction of the house in question and to issue the occupation certificate. However, without considering the request of the petitioner, the respondent No.3 had passed the order dated 22.04.2011, whereby the house in question has been ordered to be resumed with a direction to the Junior Engineer to take possession of the house and to submit report.

Aggrieved by the order of resumption dated 22.04.2011, petitioner preferred an appeal on 23.05.2011 before respondent No.2 and while appeal of the petitioner was pending for consideration, the respondents framed a New Extension Policy dated 12.04.2013 and pursuant to the said policy dated 12.04.2013, appeal filed by the petitioner was disposed of by the respondent on 02.07.2013 with a direction to the respondent No.3 to examine and take action in accordance with the new policy instructions contained in Annexure P-6 dated 12.04.2013. The order in appeal was passed on 02.07.2013, but was conveyed to the petitioner vide letter dated 05.08.2013 (Annexure P-7). When a sufficient period of 30 days passed and respondent No.3 had not taken any action in consonance to the policy instructions dated 12.04.2013, petitioner moved an application to the respondent on 06.09.2013 to take further action and to issue the much awaited occupation certificate. In response to the request of the petitioner, he received a demand letter dated 10.12.2013 issued by the respondent No.3, by virtue of which, the petitioner was asked to deposit Rs.2,22,475/- (Extension Fee-Rs.1,98,000/- and Rs.24,475/- as Service Tax) on account of balance amount as per the policy instructions dated 12.04.2013. On receipt of the said demand letter dated 10.12.2013, petitioner moved an application dated 16.12.2013 to the respondent seeking details of demand, as to for which period the extension fee and service tax is being demanded from him. In response to the letter dated 16.12.2013, the respondent No.3 issued a demand letter dated 03.01.2014 (Annexure P-11), whereby the petitioner was asked to deposit Rs.3,61,518/- as extension fee from the year 2010 to 2014.

Petitioner has challenged the said demand notice dated 03.01.2014(Annexure P-11) by filing an appeal before the respondent No.1 and the respondent No.2 while exercising the power of respondent No.1, dismissed the said appeal vide order dated 28.01.2014. Subsequently, another demand notice dated 04.04.2014 (Annexure P-12) was issued to the petitioner, asking him to deposit the outstanding amount of Rs.3,61,518/- as conveyed vide letter dated 03.01.2014 (Annexure P-11).

It is in the aforesaid circumstances, petitioner has challenged the demand notices dated 03.01.2014 (Annexure P-11) and dated 04.04.2014 (Annexure P-12) as well as the order dated 28.01.2014, (Annexue P-14) whereby the appeal has been dismissed.

On notice having been issued to respondents, respondents No.2 and 3 have filed their written statement. In the written statement, it is submitted that the present writ petition has been filed to challenge the order dated 28.01.2014 conveyed through letter dated 06.03.2014, whereby the appeal of the petitioner has been dismissed by the respondent No.2, as being not maintainable against the demand notice. It has been further averred that the present writ petition is also not maintainable as an alternative remedy to file the revision under the provision of Section 17 (8) of the HUDA Act, 1977 is available to the petitioner.

The plot was resumed on 22.04.2011 on the ground of failure to raise the minimum construction and also failure to apply for occupation certificate within the stipulated period, which was 30.06.2010, as the 15 years period allowed to raise construction expired

on the said date. The petitioner was offered possession in the year 1995. The New Extension Policy dated 12.04.2013 (Annexure P-6) was also applicable to the resumed plots. The counsel for the petitioner prayed for relief in terms of the policy dated 12.04.2013, when the appeal against the order of resumption came up for hearing on 05.08.2013. The appeal was disposed of in terms of the policy dated 12.04.2013 with a direction to the respondent No.3 to examine and take action in terms of the aforesaid policy. Therefore, once having got his appeal disposed of in terms of the aforesaid policy, the respondent is bound to comply with the terms of the said policy dated 12.04.2013 and that it cannot be allowed to raise demand as a condition for restoration of a resumed residential plot on payment of the extension fee.

We have heard learned counsel for the parties.

Having considered the rival contentions of the parties, we find that the possession of the plot in question was offered to the allottee on 16.06.1995 and as per the terms and conditions of the allotment letter, construction was to be completed within a period of two years, which was further extendable up to 15 years subject to deposit of extension fee as per the HUDA policy and the byelaws. As such, the petitioner was required to complete the construction on the plot by 30.06.2010. However, the petitioner applied for Occupation Certificate as on 28.12.2010, which was not granted to him, being late and consequently, resumption order dated 22.04.2011 (Annexure P-5) was passed. The said order of resumption was challenged by the petitioner by way of an appeal. However, it is during the pendency of the appeal, New Extension Policy dated 12.04.2013 was framed through which the upper limit of

time for raising construction was removed and accordingly, at the request of the petitioner, the appeal was disposed of vide order dated 02.07.2013 in terms of the aforesaid new extension policy dated 12.04.2013 with a direction to respondent No.3 to examine the matter in accordance with said policy instructions. The New Extension Policy shall become applicable to the case of the petitioner, as in the case in hand, the resumption order has not attained finality. Thus the demand could be raised only in terms of the extension policy but the demand notices dated 03.01.2014 and 04.04.2014 have been issued to the petitioner without giving any details as per the New Extension Policy.

Accordingly, we allow the present writ petition and set aside the order dated 28.01.2014 (Annexure P-14) with a direction to the respondents to consider the case of the petitioner in the light of the New Extension Policy dated 12.04.2013 (Annexure P-6) in terms of the order passed in Appeal by the Administrator within 6 months from the date of receipt of certified copy of this order. The petitioner shall also be given an opportunity of personal hearing before passing of any order.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

January 16, 2015

Naveen/Anjal