

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.746 of 2015(O&M)
Date of Decision: December 18, 2015

The Parja Co-operative House Building Society Ltd.

....Petitioner

versus

Punjab Urban Planning and Development Authority and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.**

Present: Mr.Harminderjeet Singh, Advocate, for the petitioner.

Mr.Balwinder Singh, Advocate for respondent Nos.2&3

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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?

Surya Kant, J. (Oral)

The petitioner is a Co-operative House Building Society, said to be dominated by Class-III employees of the State of Punjab/Nationalized Banks. It assails the order dated 09.12.2014 whereby Greater Ludhiana Area Development Authority (GLADA) has declined to issue 'No Dues Certificate' without deposit of Extension Fee/Non-Construction Charges.

[2] The petitioner-Society was allotted a residential site for construction of multi-storeyed apartments for its members at the cost of Rs.2,83,04,320/-. As per the terms and conditions of the allotment letter dated 26.07.2006 (P-3) the petitioner-Society could pay allotment price in lump-sum or 25% in advance and balance 75% in four equal installments.

[3] The petitioner-Society has admittedly paid the allotment price alongwith interest etc. wherever there was

delay in payment of any installment.

[4] Clause 4(i) of the allotment letter stipulates that possession of the plot shall be handed-over within 90 days of issuance of allotment letter and its sub-clause (iii) further states as follows:-

“4(iii). Within 90 days of payment of entire money as per (ii) above, allottee shall be required to execute a deed of Conveyance in prescribed form and prescribed manner. The expenses for registration and execution of conveyance deed shall be borne by the allottee.....”

[5] Clause 5(i) of the allotment letter provides that “construction of plot shall be completed within a period of four years from the date of issue of allotment letter after getting the building plans duly sanctioned from the concerned Estate Officer....”

[6] Clause 6 contains a provision for extension of period to complete the construction subject to levy of extension fee.

[7] Since the controversy in the instant case pertains to levy of extension fee/non-construction charges, it is not necessary to refer to other clauses of the allotment letter.

[8] Adverting to the relevant dates so as to determine the petitioner-Society's liability towards extension fee, it may be mentioned that the possession of the plot was handed-over to it vide letter dated 24.10.2006. Immediately on 06.11.2006, the petitioner-Society requested the respondent-authorities to issue 'Zoning Plan' as without that the drawings for construction of multi-storeyed building could not be

submitted.

[9] It was after great efforts the respondent-authorities issued the zoning plan on 22.03.2008. The Society without wastage of time, submitted the building-plans which were sanctioned on 06.08.2008.

[10] The petitioner-Society thereafter started construction work and we are informed that out of four blocks, two have already been completed and third block is under construction. Learned counsel for the petitioner, on instructions, states that the entire construction shall be got completed by the end of year 2017.

[11] The members of the petitioner-Society belong to middle income group. As it was extremely difficult for them to contribute towards the allotment price as well as ongoing construction out of their own monthly income, they decided to avail loan facilities from the Banks. The Banks are not inclined to advance house-loans unless there is a Conveyance Deed of the subject plot in favour of the petitioner-Society. It is in this backdrop that the petitioner-Society applied for 'No Dues Certificate' as it had already deposited the entire allotment price, so that the Conveyance Deed could be executed in terms of Clause 4(iii) of the allotment letter which, *inter-alia*, provides that on payment of entire allotment money, Conveyance Deed is required to be executed in the prescribed form and prescribed manner.

[12] The respondent-authorities have declined to issue 'No Dues Certificate' on the plea that the petitioner has not completed the construction "within a period of four years from the date of issuance of allotment letter.....", hence it is liable to the levy of extension fee under Clause 6 of the

allotment letter and unless the petitioner would deposit such extension fee, 'No Dues Certificate' cannot be issued.

[13] The petitioner-Society has taken a very fairly stand, admitting its liability to deposit the extension fee/non-construction charges provided that such charges are assessed in accordance with law and in a fair, just and equitable manner. Why the Society say so?

[14] As has been noticed earlier, the 'zoning plan' was issued on 22.03.2008 and building-plans were sanctioned on 06.08.2008.

[15] In the light of these two dates, the respondents cannot be permitted to levy extension fee by calculating the permissible construction period of four years from the date of "issuance of allotment letter/delivery of possession". In other words, mere delivery of possession was meaningless for the petitioner-Society as it could have not commence the construction unless 'zoning plan' was issued and building plans were sanctioned. To say it differently, the permissible period of four years to raise the construction will have to be counted after 06.08.2008 only, i.e., the date when building-plans were sanctioned, say 01.09.2008 onwards. The construction cannot be started mechanically. Some breathing time has to be given for making necessary arrangements. Applying the principles of reasonableness, we are satisfied that the permissible period of four years to raise construction, in the case in hand, should be taken to have commenced w.e.f. 01.01.2009. In this manner, the petitioner-Society was required to raise construction on or before 31.12.2012. The extension fee/non-construction charges thus are leviable on it w.e.f. 01.01.2013. Further, the non-construction charges will have to be calculated as per the

norms prescribed in the allotment letter minus the penalty as the same cannot be levied in advance. Further, the petitioner-Society has been pursuing its case before the Court and/or authorities, therefore, the extension fee/non-construction charges shall have to be levied as per the allotment price of the subject-plot and not the revised rates.

[16] The respondent-authorities are accordingly directed to calculate the non-construction charges payable by the petitioner-Society and communicate the exact amount within one month from the date of receiving a certified copy of this order. The petitioner-Society shall deposit the same within two months thereafter and no sooner the amount is deposited, the 'No Dues Certificate' shall be issued in favour of the petitioner-Society within two weeks.

[17] The extension fee shall be firstly levied on the petitioner-Society upto 31.12.2017. In case of any further delay, the respondent-authorities shall be at liberty to proceed against the petitioner-Society in accordance with law.

[18] The writ petition stands disposed of accordingly.

[19] *Dasti.*

[SURYA KANT]
JUDGE

December 18, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE