IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 10374 of 1995 (O&M)
Date of Decision: 11.02.2016

Urban Improvement Company Pvt. Ltd. ..Petitioner

Versus

The State of Haryana and others ..Respondents

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI.

Present : Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Ranjit Singh Kalra, Advocate, for the petitioner.

Mr. Deepak Balyan, Addl. Advocate General, Haryana,
for respondent Nos.1 and 2.

Mr. Lokesh Sinhal, Addl. Advocate General, Haryana,
for respondent No.3 (HUDA).

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S.J.VAZIFDAR, ACTING CHIEF JUSTICE

The petitioner seeks an order directing the respondents to refund an amount of ₹ 5,84,08,365/- paid as interest together with interest at the same rate as claimed by the respondents. In the alternative, the petitioner seeks an order directing the respondents to claim/charge interest only at the rate of 10% per annum and to refund the balance amount with interest at the rate determined by the Court.

2. The status of the petitioner is important in understanding the exemption orders in its favour which we will refer to later. On 23.06.1976 the Company Law Board in exercise of powers conferred under section 408 of the Companies Act, 1956 appointed the Directors for a period of three years to effectively safeguard the interests of the petitioner and the public interest.

Respondent No.2 is the Director, Town & Country Planning, Haryana; respondent No.3 is the Haryana Urban Development Authority

(HUDA); respondent No.4 is the Green Fields Plot Holders Association and respondent No.5 is the Lt. Col. Kulwant Singh Mangat.

3. In the year 1960-61, the petitioner purchased about 440 acres of land in Gurgaon and obtained 'No Objection Certificate' from the District Board, Gurgaon to develop the same as a colony. The petitioner contends that at that time there was no legislation for regulation and development of residential colonies and therefore, the petitioner started developing the colony and selling plots on receipt of the 'No Objection Certificate'. There was no provision requiring the developers or colonizers to pay the external development charges.

4. The petitioner applied for the licence under section 7 of the Punjab Scheduled Roads and Controlled areas restriction of unregulated Development Act, 1963 (hereinafter referred to as 'the 1963 Act') to develop the colony.

5. In the year 1966 the State of Punjab was bifurcated bringing into existence the State of Punjab and the State of Haryana. The petitioner on being so advised made a fresh application to respondent No.2, namely, Director, Town and Country Planning, Haryana, for a licence to develop the said colony. On 11.04.1969, the Department of Town & Country Planning, Haryana, approved the layout plan of the colony which was referred to as 'Green Fields Colony', situated in Faridabad. The letter informed the petitioner that it would be allowed to start the development after furnishing the bank guarantee and complying with the other terms and conditions prescribed in the Punjab Scheduled Roads and Controlled Areas restriction of Unregulated Development Rules, 1965 (hereinafter referred to as 'the 1965 Rules'). The letter did not require the petitioner to pay the 'External Development Charges' (EDC).

6. Pursuant thereto, the petitioner bifurcated, demarcated and carved out plots in the colony. It also entered into agreements to sell the same to various parties.

7. The Haryana Restrictions of (Development and Regulation of Colonies) Act, 1971 (hereinafter referred to as 'the 1971 Act') was enacted on 16.11.1971. Respondent No.2 called upon the petitioner to submit fresh plans and to apply for fresh licences under the 1971 Act. The Petitioner's application for permission/licence pursuant thereto was granted on 08.08.1973. However, the 1971 Act was held *ultra-vires* by a Division Bench of this Court in *Jai Chand Bhagat and another v. The State of Haryana and others 1975 PLR 277*. The above judgment was affirmed by the Supreme Court.

8. Whether as submitted by Mr. Kalra, learned counsel appearing on behalf of the petitioner, as a consequence thereof, the petitioner was relegated to the position as it stood on 11.04.1969 or not is immaterial in view of what transpired thereafter. We referred to the letter dated 11.04.1969 by which the petitioner's lay out was sanctioned and the petitioner was permitted to commence the development works after complying with the conditions stipulated therein.

9. The Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as 'the 1975 Act') was enacted in the year 1975. Section 23 thereof reads as under:-

> **"23.** ***Power to exempt***.—If the government is of the opinion that the operation of any of the provisions of this Act causes undue hardship or circumstances exist which render it expedient so to do, it may, subject to such terms and conditions as it may impose, by a general or special order, exempt any class of persons or areas from all or any of the provisions of this Act."

10. (A) The petitioner made an application dated 23.02.1981 for grant of exemption under section 23 of the 1975 Act.

(B) The Commissioner and Secretary to Government, Haryana, Town and Country Planning Department, by a letter dated 05.04.1982 in exercise of the powers conferred under section 23 of the 1975 Act granted the petitioner exemption for setting up a residential colony subject to the following terms and conditions. Paragraphs-2(i) and (vi) and 3 of the said letter read as under:-

> 2(i) That you shall submit a bank guarantee to the tune of ₹ 1,58,12,59/- equal to 10% of the total estimated cost of all internal development works within period of 30 days from the issue of this letter (bank guarantee already received).
>
> (vi) That you shall pay proportionate development charges if the main lines of roads, drainage, sewerage and electricity etc. are to be laid out and constructed by the Govt. Haryana Urban Development Authority or any local authority. The proportion in which and the period within which such payment is to be made shall be determined by the Directors.
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> 3. If the above terms and conditions are acceptable to you, please give an undertaking to this effect on non-judicial stamp paper of Rs.3/- within a period of 15 days of the issue of this letter to the Director, Town and Country Planning, Haryana, Chandigarh, failing which this exemption shall be deemed to have been cancelled.”.

(C) Pursuant to paragraph-3 of the letter set-out above, the petitioner furnished the necessary undertaking in writing on 12.04.1982. Clause-6 thereof reads as under:-

> “Central external services:- That we shall pay proportions to development charges, if the main lines of roads, drainage sewerage and electricity etc. are to be laid out and constructed by the Government, Haryana Urban Development Authority or any local authority. The

> proportion in which such payments are to be made shall be determined by the Director."

11. It must be noted that there was no provision for interest either in the letter dated 05.04.1982 or in the said undertaking dated 12.04.1982.

12. On 28.09.1987, the colony was completed and the petitioner submitted an application for the zoning plan.

13. (A) By a letter dated 20.04.1988 addressed to the petitioner, respondent No.2 stated that EDC was being revised and that the private colonizers who had been granted exemption under the 1975 Act and the Rules framed thereunder would be required to pay the proportionate EDC at the revised enhanced rates which were yet to be finalized. The letter further stated that before the extension in the time limit for development was granted, the petitioner should furnish an undertaking to the effect that it would pay the EDC at the revised rates in accordance with the time schedule determined by respondent No.2 and that the revised service plans/zoning plans would be approved only on receipt of the said undertaking.

(B) Respondent No.2 by its letter dated 29.08.1989 addressed to the Secretary General, PHD, Chamber of Commerce and Industry, New Delhi, stated that after considering the recommendations of the committee constituted by the State Government for the purpose of determining the quantum of EDC payable by the private developers, it had been decided to recover the EDC at the rate of ₹ 1,31,500/- per acre as stated therein. The letter contained the description of the services and the proportionate costs in respect of each of them aggregating to ₹ 1,31,500/- per acre. The EDC payable by the petitioner accordingly was ₹ 5,78,60,000/-.

14. The petitioner filed a Civil Writ Petition No. 2555 of 1991 for quashing the letter dated 20.04.1988. During the pendency of this writ

petition, respondent No.2 addressed a letter dated 07.01.1992 to the petitioner upon which respondent No.2 lays considerable emphasis. By the said letter, the petitioner was called upon to pay the EDC at the rate of ₹ 3.68 lacs per gross acre. Paragraph-2(a) of the letter reads as under:-

> "2(a) The external development charges will be paid (after adjusting the principle amount paid). It is made clear that no credit on account of interest on payments already made shall be given. These charges shall be payable to Chief Administrator, HUDA, Manimajra, UT, Chandigarh, through Director, Town & Country Planning, either in lump-sum within 30 days from the date of issue of this letter or in accordance with the following schedule, terms and conditions:-
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> i) 25% of the net amount (total amount of EDC worked out Rs.3.68 lacs per gross acre minus the principle amount already paid) within 30 days from the date of issue of this letter.
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> ii) Balance 75% in two years from the date of issue of this letter in four six monthly installments alongwith interest @ 18% per annum which shall be charged on unpaid portion of the amount worked out at the rate of ` 3.68 lacs per gross acre.
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> iii) If there is any delay in the payment of installment penal interest @ 3% shall be charged in addition. The delay in payment will be allowed only for three months.
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> iv) Furnish 25% bank guarantee of the net amount of EDC worked out at the rate of 3.68 lacs per gross acre of the colony, minus the principle amount already paid."

15. A Division Bench of this Court by an order and judgment in *Urban Improvement Co. (P) Ltd. v. State of Haryana 1993(2) PLR 317/ 1994 AIR (Punjab) 53*, quashed the communications dated 20.04.1988 and 07.01.1992 as well as a communication dated 14.09.1992 by which the

petitioner was required to execute a fresh undertaking, furnish a bank guarantee and deposit further amount by way of installments. The Division Bench also quashed a show-cause notice dated 15.04.1993 as being arbitrary and traveling beyond the scope of the 1975 Act. The Division Bench issued a writ of mandamus directing the respondents to sanction the zoning and other service plans submitted by the petitioner within a period of two months.

16. Prior to and during the pendency of Civil Writ Petition No. 2555 of 1991, the petitioner had deposited in Court EDC aggregating ₹ 6,28,02,900/- and furnished a bank guarantee in the sum of ₹ 15,81,258/-. Pursuant to the judgment of the Division Bench of this Court, the petitioner was permitted to withdraw the same.

17. The respondents thereafter filed a petition for Special Leave to Appeal bearing No. 9331 of 1993. The Supreme Court passed the following interim order on 17.01.1994:-

> "The respondent No.1 M/s Urban Improvement Co. Pvt. Ltd. shall pay to the petitioner-State Rs. 5.16 crores which amount includes the principal amount payable towards EDC dues till 6th January, 1994 plus interest thereon calculated till that day. The said amount to be paid by the Ist respondent on or before 30th April, 1994. The petitioner-State will give the details of the principal amount and the interest to the first respondent within one week from today.
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> The amount of interest that the first respondent is required to pay will be subject to the first respondent's right to challenge its correctness and validity. The first respondent may challenge it in such forum as it may be advised.
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> The petitioner shall adhere to the time table providing basic services covered under EDC to make the colony functional which time table is handed over to the Court and will form part of this order.
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> It is made clear that since the amount of Rs.5.16 crores is to be paid by 30th April, 1994, the amount will

have to be paid with interest on the same from 7th January, 1992 till the date of payment. The interest to be paid at the rate of 18 percent per annum.

The petitioner State will clear the zoning plan within one week from the payment of the entire amount of Rs.5.16 crore with interest, if any.

The respondent No.3 is permitted to submit his written arguments."

The petitioner thereupon deposited a sum of ₹ 5,33,63,013/-.

18. The Special Leave Petition was finally disposed of by an order and judgment of the Supreme Court dated 06.10.1994 which reads as under:-

"It is common ground before us that in compliance of the directions given by this Court date4d 17.01.1994 deposit of the required amount has been made by respondent No.1-Urban Improvement Company P. Ltd. Learned counsel for the petitioners submits that nothing therefore survives in this matter.

Learned counsel for respondent No.1 then submitted that even though the respondent No.1 has made the required deposit as directed by this Court yet the petitioners have not provided the basic services covered under the EDC to make the colony functional, which is the obligation of the petitioners. Shri Jaitley, learned counsel for the petitioners informs us, on instructions, that two of the five actions required to be taken by the petitioners, namely, the provision of roads and street lights have been substantially complied with by the petitioners while steps have been taken to provide the remaining services as well. He adds that all the services, as required would soon be provided. As observed in the order dated 17.01.1994 the direction given to the respondent No.1 to make the deposit the consequent deposit made by respondent No.1, are without prejudice to the rights of the respondent No.1 in this behalf including enforcement of the petitioners' liability to provide all the basic services. This is not dispute.

> The Special Leave petition is disposed of accordingly."

19. From the order of the Supreme Court dated 06.10.1994 it is apparent that the respondents did not press the challenge to the order and judgment of the Division Bench of this Court at least and including in so far as it quashed and set-aside the communications dated 20.04.1988 and 07.01.1992. After the order of the Supreme Court, the respondents have not issued any fresh notice demanding interest or any further amount. The interim order dated 17.01.1994 and the final order dated 06.10.1994 passed by the Supreme Court clearly state that the petitioner deposited the amount without prejudice to its rights.

20. In *Urban Development Co. (P) Ltd. v. State of Haryana 1993(2) PLR 317* (supra) noted that on 23.06.1976 the Company Law Board in exercise of powers conferred under section 408 of the Companies Act, 1956 appointed the Directors for a period of three years to effectively safeguard the interests of the petitioner and the public interest. The Division Bench noted the special status of the petitioner, its peculiar position and the operation aspect of 'no profit no loss basis' being managed by the persons of status appointed by the Company Law Board and opined that the same extended the creditability to the fair functioning of the company on the basis whereof necessary exemption was granted by the respondents under section 23 of the 1975 Act. This status of the petitioner continues.

21. As rightly submitted by Mr. Kalra, in view of the special status of the petitioner, inter-alia, on account of the Company Law Board having constituted its Board of Directors, the respondents in exercise of the powers conferred under section 23 of the 1975 Act granted the petitioner the said exemption for setting up the colony on the terms and conditions stipulated

therein. We set out paragraph-2(vi) of this exemption order earlier. It does not require the petitioner to pay interest. This is probably because of the special circumstances relating to the petitioner and the predicament of the purchasers of the plots from the petitioner prior to the order of the Company Law Board. The special status of the petitioner obtaining at that time incidentally continues to date. Whatever be the reason, the exemption order contains no provision regarding the payment of interest. Paragraph-3 of that letter required the petitioner to communicate its acceptance of the terms and conditions which the petitioner did by filing the said undertaking. This undertaking also contains similar clauses and also does not mention any interest.

22. Mr. Kalra rightly submitted that in the facts and circumstances of this case, it is apparent that no interest was payable by the petitioner. In fact they suggest that the intention was not to levy interest as ultimately the petitioner may have recovered the same from the purchasers.

23. As also rightly submitted by Mr. Kalra, the agreement between the parties stood crystallized by virtue of the exemption order dated 05.04.1982. The demand thereafter through communications dated 20.04.1988 and 07.01.1992 was a unilateral act and the petitioner never accepted the same. The petitioner in fact challenged the same by filing Civil Writ Petition No. 2555 of 1991. The same were quashed by the order and judgment of this Court dated 03.05.1993 in *Urban Development Co. (P) Ltd. v. State of Haryana 1993(2) PLR 317 (supra).* This part of this order has not been disturbed by the order and judgment of the Supreme Court dated 06.10.1994. We are bound by the same. No claim, therefore, can be made on the basis of the said communications.

24. As is evident from the interim order of the Supreme Court dated 17.01.1994 and the final order dated 06.10.1994, the petitioner deposited the amount without prejudice to its rights and contentions. The petitioner is, therefore, entitled to maintain this writ petition and to claim the amounts. In this view of the mater it is not necessary to refer to the judgments cited by Mr. Kalra in support of his submission that in the absence of any statutory or contractual provision, the respondents are not entitled to charge interest.

25. Mr. Kalra also challenged the quantum of EDC demanded. He contended that if the quantum is reduced, its effect would also be on the interest paid. He relied upon a communication from respondent No.2 to the Secretary General, PHD Chambers of Commerce and Industries, which stated that after considering the recommendations of the committee constituted by the State Government regarding the quantum of development charges to be levied in the case of colonies the EDC be recovered for sewerage system at ₹ 22,550/- per gross acre and for storm water drainage at ₹ 20,400/- per gross acre. He stated that this cannot be justified in view of a further communication dated 18.02.1993 from the Chief Engineer, HUDA to respondent No.2-Director, Town and Country Planning, Haryana, which stated, inter-alia, that the proportionate cost of external sewerage and external storm water was only ₹ 26.93 lacs and ₹ 16.19 lacs, respectively. This letter, however, notes that the exact amount spent even till that date was not available. This was almost 33 years ago.

Learned counsel appearing on behalf of the respondents stated that EDC as far as the petitioner is concerned is final.

26. It is not possible in this writ petition to determine this issue firstly because no relief on the basis thereof has been sought and secondly the entire facts in this regard are not before us. In the present petition, the

petitioner has only sought an order directing the respondents to refund an amount of ₹ 5,84,08,365/- paid as interest. The petitioner is always entitled to approach the respondents for the same and/or take appropriate steps in this regard.

27. It is necessary, however, to clarify one thing. The petitioner is not entitled to recover this amount from the purchasers of the premises. Moreover in the event of the petitioner having recovered the same, it must refund the same to them with interest at 12% per annum. This is to ensure that the benefit of this order accrues to the purchasers and not to the petitioner. The respondents shall ensure that this part of the order is complied with.

28. The petition is, therefore, allowed by directing the respondents to refund the amount of ₹ 5,84,08,365/- together with interest thereon at 12% per annum from the date on which it was paid to the respondents pursuant to the order of the Supreme Court dated 17.10.1994 till the payment and/or realization thereof. This order shall be complied with by 31.05.2016.

The petitioner shall, however, not claim the said amount from the purchasers of the premises. Further, in the event of the petitioner having recovered the same from such purchasers, it shall refund the same to them together with interest thereon at 12% per annum.

(S.J.VAZIFDAR)
ACTING CHIEF JUSTICE

11.02.2016
'ravinder'

(ARUN PALLI)
JUDGE

To be referred to the reporter	√Yes	No.