

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

CWP No.18068 of 1998
Date of decision: 12 .04.2016

M/s Northern India Land and Finance Corporation

... Petitioner

Versus

The Municipal Corporation, Faridabad

... Respondent

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

Present: Mr. Adarsh Jain, Advocate for the petitioner.
Mr. Sumeet Sheokand, Advocate for the respondent.

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

ARUN PALLI J.

A writ of certiorari is prayed for to quash the order dated 19.03.1998 (Annexure P18), office memos dated 25.05.1998 (Annexure P19), dated 15.07.1998 (Annexure P21) and dated 07.10.1998 (Annexure P23), issued by the respondent-Corporation, vide which possession of the site, for construction of public utility and community benefits building, was sought to be obtained. Further, directing the respondent and its officers to forebear from taking possession of the said site and issue approved zoning plans

to the petitioner so that public utility buildings could be constructed upon the said land.

In brief, the case set out in the petition is that the petitioner purchased a land, measuring 44 acres 1 kanal 15 marlas, situated at village Atmadpur, to set up a residential colony. Department of Town and Country Planning, Haryana, accorded approval for construction of a residential colony; Spring Field Extension-1 upon the said land. A formal agreement between the petitioner and Faridabad Complex Administration, Faridabad, was entered into on 25.06.1985 (Annexure P1). In terms of the agreement, the internal development works at site; laying of roads, open spaces, public parks and public health facilities were to be carried out by the petitioner within five years. And post development, were to be transferred to the local authorities free of cost for their maintenance. Further, petitioner was also required to set apart a piece of land upon which schools, hospitals, community centres and other public utility buildings were to be constructed by the petitioner. However, the respondent-Corporation never provided the requisite plans therefor. As a result, the site that was set apart could not be constructed. Eventually, it was agreed between Faridabad Complex Administration (the predecessor body of the respondent-Corporation) and the petitioner that internal development works would be carried out by the Administration on payment of Rs.47,83,000/-. And petitioner was required to deposit the said amount in four equal installments. Details of fresh agreement were set out in the letter dated 09.11.1992 (Annexure

P2) issued by the Administration. Likewise, clause 4 of the original agreement dated 25.06.1985 was substituted by another clause, set out in the letter dated 11.11.1992 (Annexure P3), which required construction works, for community/public utility buildings, to commence within three months. Entire construction was to be completed within two years. As agreed, petitioner furnished the first installment valuing Rs.11,85,750/- to enable the administration to carry out internal development works. However, external development charges were to be borne by the plot holders. For, the petitioner defaulted in payment of installments, administration did not undertake the internal development works. Resultantly, the zoning plans that were even approved by the then Senior Town Planner, were not released. As a result, petitioner could not construct public utility infrastructures. Faced with the situation, vide letter dated 27.08.1993 (Annexure P6), petitioner requested the Administration to delink the approval of zoning plans from the non-payment of installments for internal development works. Later, Municipal Corporation, Faridabad (respondent), came into existence in the year 1994 and insisted for payment of remaining installments, vide letters dated 18.10.1994, 30.05.1995 and 11.04.1997 (Annexures P7, P8 & P9, respectively). Petitioner furnished the second installment on 11.04.1997 and also remitted Rs.23,71,500/-qua the third and fourth installments, vide letter dated 05.05.1997 (Annexure P10). Respondent-Corporation was also requested to calculate interest, the petitioner was required to pay on delayed payment. So much so, a cheque of

Rs.26,00,000/- was sent on account of interest, though the authorities were yet to apprise the petitioner of the exact amount. Another cheque, duly signed, was also sent in the name of the respondent-Corporation as regards fee for sanctioning the zoning plans, vide letter dated 02.06.1997 (Annexure P12). But to no avail, for zoning plans to construct public utility buildings were still not issued. Not just that, despite having received the entire amount of Rs.47,83,000/- to carry out internal development works and also Rs.29,31,898/- on account of interest, the respondent-Corporation failed to commence the necessary work at site. Rather, vide order dated 19.03.1998 (Annexure P18), respondent sought to obtain possession of both the sites i.e. upon which the internal development works were to be carried out, as also the site that was to be utilized for construction of public utility buildings. Once again, vide letter dated 05.06.1998 (Annexure P20), petitioner clarified to the respondent-Corporation that public utility buildings were to be developed within two years of the receipt of the approved zoning plans, which were still awaited, therefore, site that was set apart for the purpose could not be taken over. That is how, as indicated above, the petitioner is before this court.

In the written statement filed on behalf of the respondent, it is maintained, inter alia, that permission to execute the development works conforming to the layout plan in Spring Field Colony, Extension-1 was granted to the petitioner by the Director, Town and Country Planning, Haryana, Chandigarh, vide memo dated 24.07.1971, in accordance with the agreement in

Form CL-II, executed by the petitioner, under Rule 19 of the Punjab Scheduled Roads and Controlled Areas Restrictions of Unregulated Development Rules, 1965. However, for the petitioner failed to carry out the development works, the plot owners were unable to construct their respective houses. And it was at the instance of the plot owners, erstwhile Faridabad Complex Administration held a meeting with the colonizers as also the plot owners on 01.10.1992. And, in terms of the decision arrived at between the parties, Administration was required to take over the colony to carry out the deficient development works at the estimated cost of Rs.47,83,000/-, which was to be deposited by the colonizer. External development charges were to be paid by the plot owners individually in terms of the decision arrived at. Construction of community buildings was to commence within three months from the date of the agreement, dated 12.11.1992, and was to be completed within a period of two years thereafter. And in the event of breach, the site was liable to be transferred, free of cost, to the Administration in terms of Rule 19(e) of the Controlled Area Rules, 1965. However, petitioner failed to construct the site for community buildings. Therefore, respondent was constrained to take over the Spring Field Colony Extension-1, for it had already received full and final amount of deficiency estimates from the colonizer. However, actual physical possession of the site earmarked for community buildings could not be obtained due to existence of certain Jhugies at site.

Learned counsel for the petitioner submits that the orders being assailed are unsustainable, for petitioner could not be accused of having failed to construct the site that was set apart for constructing the public utility buildings as respondent itself failed to issue the requisite plans despite repeated requests and reminders. Further, he submits that authorities could not withhold the zoning plans just because the petitioner failed to furnish the installments as regards internal development works in time, for one could not be linked with the other. In any case, he submits that the petitioner had deposited all the installments as also the interest on delayed payment and, therefore, there was hardly any occasion to take over the possession, management and control of the said site.

Per contra, learned counsel for the respondent submits that as the petitioner failed to furnish installments, to enable the respondent-Corporation to carry out internal development works, in terms of the schedule set out in the letter dated 09.11.1992 (Annexure P2), there was hardly any occasion to still issue zoning plans to the petitioner to construct the site for public utility buildings. In any event, he submits that the petitioner could construct the community centre site as per the approved lay out plan.

We have heard learned counsel for the parties and perused the records.

It appears that respondent-Corporation did not release the approved zoning plans, for construction of a site that was set apart for public utility services, for the petitioner had failed to

furnish the requisite installments on account of deficiencies in respect of internal development works, in terms of clause 6 set out in the letter dated 09.11.1992 (Annexure P2). And, that being so, it would be apposite to refer to clause 6 as also clause 4 set out in the letter dated 11.11.1992 (Annexure P3), which postulates a time span within which the petitioner was required to construct the said site;

Clause 6:

“That a sum of Rs. 47,83,000/- (Rs. Forty seven lacs eighty three thousand only) will be deposited by you on account of deficiencies in respect of internal development works in four quarterly installments as per schedule given below alongwith Bank rate interest on the outstanding amount of installment:

10.11.92 Ist installment Rs. 11,85,750/-

11.2.93 2nd installment Rs. 11,85,750/-

11.5.93 3rd installment Rs. 11,85,750/-

11.8.933 4th installment Rs. 11,85,750/-”

Clause 4:

“That the colonizer / company undertake to start the construction of Community / public buildings such as school, hospital, community centres in Spring Field Extn. 1 Colony, Faridabad within a period of three months from their own sources or through any other agency from the date of agreement and construction will be completed within two years, failing which as per clause 19-E of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965, the site shall stand transferred free of cost to Faridabad Complex Administration, Faridabad.”

Ex facie, even if it is assumed for a moment that the authorities were justified in withholding the approved zoning plans, but once the petitioner furnished all the installments i.e. Rs.47,83,000/- and also paid interest i.e. Rs.29,31,898/- for the delay that had occurred, there could hardly be any reason, least plausible, to still withhold the plans. Particularly, when respondent had even acknowledged the receipt of Rs.1,78,950/- (Annexure P16) as fee for the approval of zoning plans. Therefore, delay, if any, that had occurred in constructing the public utility buildings stood condoned. Thus, the authorities were obliged to release the zoning plans to the petitioner with a revised time schedule to construct the site. We are also reminded to point out, at this juncture, that it has never been the case of the respondent in any of its communication that the plans were withheld, for the petitioner had failed to adhere to the payment schedule in terms of clause 6. Though, learned counsel for the respondent initially maintained that the petitioner could always construct the site in terms of the approved lay out plan and, therefore, in terms of clause 4, once he failed to complete construction within the stipulated time, respondent-authority were entitled to take over the said site. However, on being asked pointedly; whether the petitioner could indeed construct the site in the absence of zoning plans, he fairly answered in negative. Once that is so, it defies logic that in the absence of the approved zoning plans the petitioner could still be expected to construct the site within the time stipulated in clause 4.

That being so, the writ petition is allowed and consequently, the order dated 19.03.1998 (Annexure P18), office memos dated 25.05.1998 (Annexure P19), dated 15.07.1998 (Annexure P21) and dated 07.10.1998 (Annexure P23) are quashed. Respondents are directed to release the approved zoning plans to the petitioner within two months from today with a fresh time schedule within which he would be required to construct the site that was set apart for constructing public utility buildings.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

12 .04.2016
Rajan