

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10038 of 2014
Date of decision: 18.01.2016

Anita Mehta

... Petitioner

Versus

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. VK Jindal, Senior Advocate with
Mr. Maninder Singh Punia, Advocate for the petitioner.
Mr. Rahul Dev Singh, DAG, Haryana
for respondent No.1.
Mr. Deepak Manchanda, Advocate
for respondents No.2 to 4.

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?
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ARUN PALLI J.

A writ in the nature of certiorari is prayed for to quash the order dated 01.02.2012 (Annexure P9), rendered by the Chief Administrator, HUDA (Town Planning Wing), Panchkula, vide which prayer of the petitioner for merging 12 feet wide side corridor in SCF No.76 was declined; memo dated 27.02.2012 (Annexure P10) conveying the rejection; as also the order dated 25.03.2014 (Annexure P11), vide which the revision petition preferred by the petitioner against the order dated 01.02.2012 was dismissed by the revisional authority. Accordingly, a mandamus is also prayed for to

direct the respondents to assimilate (merge) the side corner verandah in the area of SCF No.76, on the ground floor.

In brief, SCF No.76, Sector CUE-1, Urban Estate, Hisar, was re-allotted to the petitioner, pursuant to a re-allotment letter dated 29.03.2010 (Annexure P2). The said property is situated at the rear end (North East corner), CUE-1, which is a dead end. Vide representations dated 20.01.2011 and 26.02.2011, the petitioner represented to the Administrator, HUDA, Hisar for permission to merge the corridor, that exist adjacent to her SCF No.76, in her site. The Administrator recommended the case of the petitioner to the Chief Administrator, HUDA (Town Planning Wing), Panchkula for elaboration and endorsement. However, vide order dated 01.02.2012, the Chief Administrator (Town Planning Wing) declined to accord approval, as merger of 12 feet wide side corridor in SCF No.76 was not found justifiable. And particularly as it would amount to conversion of public corridor to be a part of the premises of the allottee. That being so, the petitioner assailed the order dated 01.02.2012 (Annexure P9) vide a revision petition and also prayed for permission to raise construction on the alleged corridor. But again, on a consideration of the matter, respondent No.1, vide order dated 25.03.2014 (Annexure P11), dismissed the revision petition being not maintainable as also on merits. The conclusion recorded by the revisional authority in support of its order reads as thus:

“... If the public corridor in question is permitted to be merged with the SCF in question, the width of the SCF would increase from 17.25 feet to 29.25 feet as a result of which area of the SCF will increase from 1380 sq. feet to 2340 sq. feet i.e. almost by 70% that too, after almost

27 years of the auction of the same. Most importantly, the same request of the petitioner for merger of side corridor has already been rejected on 18.09.2012 by the then Financial Commissioner, Town and Country Planning Department, Haryana on administrative side, which has been concealed by the petitioner at the time of arguments. The issue in question has already been decided. No provision of the HUDA Act empowers the Revisional authority to review its own decision. Moreover, the corridors meant for movement of public cannot be allowed to be sold to the allottee in such a fashion. Therefore, the present revision petition is dismissed on the ground of non maintainability as well as on merits.”

We have heard learned counsel for the parties and perused the paper book.

Learned senior counsel for the petitioner submits that vide letter of allotment dated 08.04.1985 (Annexure P1), issued in favour of the original allottee, SCF site measuring 260 square yards (29'-3" X 80'-0") was allotted by the authorities. Possession certificate dated 17.03.2003 (Annexure P3), issued by the Estate Officer, HUDA, Hisar (respondent No.4), also indicates the length of the plot as 80'-0" and breadth thereof as 29'-3". And the actual physical possession of the said site was accordingly delivered to the allottees. Thus, it is contended that the petitioner indeed is the owner of the site measuring 260 sq. yards, which consists of an area measuring 80'-0" in length and 29'-3" in breadth. Therefore, the alleged corridor is part of SCF No.76 and the petitioner is fully entitled to raise construction therein.

Per contra, learned counsel for the respondents submit that permission to merge the side corridor was rightly declined by the authorities, for that never formed part of the allotted site. And if the said public corridor was actually a part of SCF No.76, petitioner would have never sought the permission of the authorities for its merger in her site.

Apparently, the reason assigned by the revisional authority in support of its order is; **that in case the public corridor is permitted to be merged with the SCF, the width of the SCF would increase from 17.25 feet to 29.25 feet and as a result even the area of SCF will increase from 1380 sq. feet to 2340 sq. feet i.e. almost by 70% and after almost 27 years of the date of auction.** Whereas, a bare analysis of the letter of allotment dated 08.04.1985 (Annexure P1) reveals that a site measuring 260 sq. yards consisting of an area measuring 29'-3" X 80'-0" was allotted to the predecessor-in-interest of the petitioner. Likewise, even the possession certificate dated 17.03.2003 (Annexure P3), which reveals Length of the plot: 80'-0", Breadth: 29'-3" and Area: 260 sq. yards, fortifies the claim of the petitioner. Therefore, the observations recorded by the revisional authority that by clubbing the alleged corridor with the SCF site, the width of SCF would increase from 17.25 feet to 29.25 feet seems erroneous, for the site allotted to the petitioner was as it is 29'-3" in width and not 17.25 feet as demonstrate above. Further, the observation that merger of 12 feet wide corridor in the site of the petitioner would also increase the area of the SCF from 1380 sq. feet to 2340 sq.

feet, rather corroborates the claim of the petitioner, for 2340 sq. feet would be equal to 260 sq. yards and that is the total area that was allotted to the petitioner. Ex facie, the revisional authority failed to examine the matter in the wake of the letter of allotment and other crucial documents referred to above. Further, even if, it is assumed that the alleged corridor is part of the site allotted to the petitioner, yet, it shall also have to be examined whether the petitioner could still be permitted to raise construction in the said corridor under the relevant rules or approved building plans.

That being so, the order dated 25.03.2014 (Annexure P11) is set aside and the matter is remitted to the revisional authority i.e. respondent No.1, to re-consider the matter as a whole, after affording an opportunity of hearing to the parties, strictly in accordance with law. Needless to assert, this order shall not constitute any expression of opinion on merits of the claim of either party. Writ petition is disposed of in the above terms.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

18.01.2016

Rajan