

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No.17373 of 2014
Date of Decision: 06.12.2016

Blossom Residents Welfare Association (Regd.), Sikand Tower,
Dr. Heera Singh Road, Civil Lines, Ludhiana, through its General Secretary
Mrs. Monica Negi wife of Shri Vijay Negi.

..Petitioner

versus

The Commissioner, Municipal Corporation, Ludhiana and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Rajat Malhotra, Advocate, for the petitioner.

Mr. A.K.Bajaj, Advocate, for respondent no.1

Mr. Ayush Gupta, Advocate, for respondent
Nos.2,3,6 and 7.

Mr. Anil Rathee, Advocate, for respondent no.9-BSNL

RAMENDRA JAIN, J.

1. Invoking extra-ordinary writ jurisdiction under Article 226 of the Constitution of India, the petitioner-association has prayed for issuance of a writ in the nature of mandamus to direct the competent authority to initiate appropriate action on its representation, dated 13.05.2014 (Annexure P-4) against all the partners of M/s Sikand Builders, Ludhiana (respondent nos.2 to 8 herein), for violations in utter disregard to the provisions of the Punjab Apartment Ownership Act, 1995 (hereinafter referred to as “the 1995 Act”) and not providing basic necessities such as car parking/lift facility, to the owners of the apartment, known as Sikand Tower, Dr. Hira

Singh Road, Ludhiana, The petitioner-association has further prayed that the respondents be directed to remove all the encroachments and installations illegally raised by them forthwith. It is worth mentioning that vide order dated 27.4.2016, at the oral request of the petitioner, Bharat Sanchar Nigam Limited (for short "the BSNL") was impleaded as respondent no.9 in the instant petition.

2. According to the petitioner, the partners of M/s Sikand Builders, Ludhiana, constructed a commercial-cum-residential complex instead of residential apartments known as Sikand Tower situated at Dr. Hira Singh Road, Ludhiana, and later on manipulated to get the non-compoundable violations compounded. The owners of the Apartments formed a registered association (petitioner), known as the Blossom Residents' Welfare Association, with an object to administer, manage, upkeep the common area, facilities, and common services, but the promoters did not transfer these facilities to the petitioner-association. Even in the sale deeds executed by the promoters, an assurance was given by them, to the members of the petitioner association, to provide lift and parking facility in the basement of the building but they, instead of providing the facility of lift and parking at the basement, have themselves encroached upon it and raised illegal structures therein. The promoters were carrying on illegal commercial activities in the basement as well as on the roof top of the building. It was only with the intervention by the public authorities, the petitioner-association could be able to get them removed. The owners of the top floor of the building are facing a constant problem of leakage of the roof, thereby causing a great danger to their lives by way of short-circuit etc. That apart, the promoters have illegally installed a Mobile

Tower on the roof top of the building in utter violation of the guidelines formulated by this Court as it is established by now that the radiation emitting from the mobile tower cause a havoc to the lives of its residents. It is further the case of the petitioner-association that the plea of the promoters that since the members of the petitioner association have failed to pay them the maintenance charges for the common facilities, therefore, the same could not be provided to them, is false. However, the fact remains that the upkeep and maintenance of the building is to be taken care of by the petitioner-association, so formed, by the flat owners and not by the promoters of the building. In the end, the petitioner-association has prayed that a direction be issued to the developers/builders, to hand over the common facilities, besides the upkeeping and maintenance of building, to them.

3. All the respondents, except respondent no.8, have filed their respective written statements which have been placed on the record of the case.

4. According to the reply filed by Assistant Town Planner, Zone-D, Municipal Corporation, Ludhiana, the instant writ petition suffers from the vice of “delay and laches” and as such, is liable to be dismissed. The petitioner-society has disputed pure questions of fact, which, admittedly, cannot be gone into by this court in exercise of powers conferred under Article 226 of the Constitution. The petitioner-association or any of its members never intimated with respect to purchase of portion of the building. In fact, it is the buyer who is to ensure before entering into any transaction that whether the promoter has complied with all requirements of law and that the building is structurally safe and all necessary fire safety

equipment provided therein. Vide its policy/instructions no. CTP(LG)-ATP-2004/1543-1558, dated 16.07.2004, the government has issued the guidelines for grant of permission “ *for installation of towers and exchanged node sites for providing state of Art telephonic and other services to the citizens of Punjab*” and as such, the installation of Mobile Tower is permissible as per the policy referred to above. It was prayed that the writ petition is liable to be dismissed.

5. Respondent nos. 2, 3, 6 and 7 have filed joint written statement controverting the pleas taken up by the petitioner-association in the instant writ petition. In para 3 of the preliminary objections of the written statement, it has been specifically pleaded that the respondents have filed a civil suit against the members of the petitioner association for recovery of the maintenance charges, which have to be paid by the residents of the society every month, according to the recital in the sale deeds that “the purchasers shall be and shall remain liable to pay maintenance charges in respect of lift, stair case, common passage, verandah and parking in the basement...”. In fact, mobile tower on the roof top of the building is in existence since last so many years and a proper permission, in this regard, had already been obtained. Therefore, the same has not been installed illegally. It is further the case of the respondents that in case, the residents of the association (petitioner) pay maintenance charges, then they will be allowed to use the basement meant for parking. Finally, dismissal of the writ petition has been prayed.

6. Respondent no.9-BSNL has filed written statement also denying averments in the writ petition. According to it, the building in question was being used as commercial-cum-residential complex as per the

sanctioned site plan. The BSNL entered into an agreement with the owners of the apartment, i.e., Sukhminder Singh, Sunita Rani, Bharat Bhushan, Ms. Reena Kumari, Shri Amarjit Singh Chawla, Shri Rajiv Mahindru for installation of a telephone tower on the roof top of the apartment. Initially, on 20.10.2003, the said agreement was executed between the parties at the rate of Rs.9900/- per month for a term of 5 years which may further be extended for a term as set out in clause 11 of the agreement, a copy whereof is annexed as Annexure R-9/1. The aforementioned agreement was further extended vide lease agreement, dated 30.01.2010 (Annexure R-9/2). Since the apartment was meant for the commercial use, therefore, for that reason, respondent no.9-BSNL took the roof top of the building for installation of mobile telephone tower for the benefit of the dwellers of the building. The tower was not causing any impediment in the use of roof top by the owners of the flat. After eleven years of the installation of the mobile tower on the roof top of the flat owners, the residents of the apartment now cannot take the plea that the mobile tower has been installed illegally and the radiation emitting therefrom is a health hazard to them. In fact, the owners in collusion with the petitioner-association have got filed the instant petition just to harass it. This fact is fortified from an undertaking given by the promoters on 15.2.2016 before this court that the mobile tower will be removed from the roof top of the building by 15.4.2016. It is nothing, but is an apparent attempt to cause financial loss to the BSNL and loss of facility to the inhabitants of the area. If, at all, the petitioner-association or respondent nos 2, 3, 6 and 7 would have any grievance whatsoever, they have a right to approach the arbitrator as per terms and conditions of the lease agreement. The filing of the writ petition after about 11 years of the

installation of tower is nothing, but is a mala fide act on the part of the petitioner-association and as such, the petition is liable to be dismissed.

10 We have heard learned counsel for the parties.

11 A co-ordinate Bench of this Court, while considering the matter in its entirety, during the course of hearing, issued certain directions on 25.8.2015, to the Commissioner, Municipal Corporation, Ludhiana, (respondent no.1), which read as under:-

“The Commissioner, Municipal Corporation, Ludhiana is directed to deploy the enforcement staff, who shall periodically inspect the subject building to ensure that the basement is used only for parking purposes. If the basement is found under unauthorised occupation or being used for business or commercial purposes, the municipal authorities shall stop such unauthorised activities and restore the basement for being used for the purpose for which it was sanctioned i.e., parking; the petitioner-association/flat owners may submit revised building plan for installation of lifts at their own expenses and if they do so, the same be sanctioned subject to feasibility and Building by-laws etc. The roof top shall not be permitted to be misused by way of mobile tower etc. without the express consent of the flat owners.

The Commissioner, Municipal Corporation shall be at liberty to assess the maintenance charges required to be paid by the flat owners for the maintenance of roof top and the basement and such charges shall be payable to the builder (s) through municipal authorities subject to satisfactory

maintenance of building.

Compliance report be submitted on 05.10.2015”.

12 That apart, from the status report filed by Mr. Surinder Singh Bindra, Assistant Town Planner, Municipal Corporation, Ludhiana in regard to compliance of order dated 15.10.2015/17.11.2015 passed by this court, clearly spells out that a civil suit with respect to payment of maintenance charges in between the builder and the Apartment owners is already pending in the civil Court at Ludhiana. A relevant extract from paragraph 4 of the affidavit dated 15.2.2016 reads as follows:-

“.....It is, however, respectfully submitted that during site visit, it has come to notice that civil suit in between the Builder and the Apartment owners as regards the payment of maintenance charges is already pending in the Hon'ble Civil Court at Ludhiana. It is also humbly referable here that on directions of the Hon'ble High Court, the Municipal Corporation has since assessed and reported to this Hon'ble High Court by way of affidavit dated 05th October 2015 that for proper maintenance and upkeep of the building, henceforth, every apartment owner is required to pay a sum of Rs.800/- per month to the builder.”

13 As far as the dispute between the petitioner-association and respondent nos. 2 to 8 with respect to installation of mobile tower at the roof top of the flat owners by respondent no.9 has been set at rest in view of order, dated 15.2.2016, passed by a co-ordinate Bench of this court that the developers/builders had agreed and gave an undertaking, to remove the mobile tower from the roof top of the building by 15.4.2016.

14 A perusal of the orders, referred to hereinabove, clearly spells out that the controversy involved in the instant petition is with regard to payment of maintenance charges, parking at the basement of the building and lift facility to be provided by the promoters, to the flat owners. These points being questions of fact which are required to be established by leading cogent and convincing evidence, thus, cannot be gone into by this Court as they are required to be raised before the appropriate forum. However, it is evident from the status report, dated 15.2.2016, filed by Mr. Surinder Singh Bindra, Assistant Town Planner, Municipal Commissioner, Ludhiana, as also the averments in the written statements filed by the respondents that the petitioner association had already taken all these pleas in the civil suit filed in the Civil Courts at Ludhiana, which it has raised now in the instant writ petition. However, if at all, the petitioner-association is aggrieved by the action of the respondents, it may avail appropriate remedy before the appropriate forum that may be available to it under the statute.

15 With the aforesaid observations, the writ petition is disposed of.

(RAMENDRA JAIN)
JUDGE

06.12.2016
VK

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No