

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

CWP No.21090 of 2015
Date of decision: 08.07.2016

Sarvjeet

... 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. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate for the petitioner.
Mr. Rahul Dev Singh, DAG, Haryana.
Ms. Manjit Saini, Advocate for
Mr. Sudeep Mahajan, Advocate for respondents No.2 and 3.

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 in the nature of certiorari is prayed for, to quash the communication, dated 22.05.2015 (Annexure P15), vide which Estate Officer, HUDA, Panipat (respondent No.3) has raised a demand for Rs.4,31,16,700/-, on account of extension fee upto 2015. Further, a writ of mandamus is sought to direct the authorities to re-calculate the extension fee, excluding the litigation period i.e. from the date of the order of resumption till the site was restored.

Facts that are required to be noticed are limited.

A shop site bearing No.185, Sector 25, Transport Nagar, Panipat, was allotted in favour of M/s Delhi Sonapat Transport Company - a sole proprietor firm of the father of the petitioner i.e. late Sh. Hansraj Chaudhary, vide letter of allotment dated 01.02.1988 (Annexure P1). The total cost of the site was Rs.4,11,732/-. And, the actual physical possession of the site was delivered to the allottee vide possession certificate dated 01.03.1988 (Annexure P2). Clause 16 of the allotment letter required the allottee to complete the construction within two years of the date of offer of possession. For, the allottee failed to furnish the revised price of the site, owing to an enhancement in the compensation awarded to the landowners by the reference court, vide order dated 20.03.2002 (Annexure P5), respondent No.3 resumed the site. The appeal as also the revision preferred by the petitioner against the order of resumption were dismissed vide orders dated 13.08.2008 (Annexure P6) and 12.11.2009 (Annexure P7), respectively. However, a writ petition preferred by the petitioner was allowed by this court, vide order dated 16.12.2011 (Annexure P8), and, as a result, the order of resumption, as also the orders passed by the appellate and the revisional authorities were set aside. The authorities were directed to restore the site to the heirs of the original allottee, for in the meanwhile Sh. Hansraj Chaudhary (original allottee) had passed away. The conclusion arrived at by the Division Bench reads thus:

“We have considered the ratio of the above judgment and are satisfied that as the original consideration was paid and the unpaid amount relates to enhancement of the price as compensation for acquisition of land, the appellate and the revisional authorities should have taken a pragmatic

view of the matter and granted an opportunity to the petitioner, to pay the amount along with interest, penalty etc.

The petitioner's explanation, based upon the extreme illness of his minor daughter who is suffering from Leucodystrophy and Cervical Dystonia, illness of his mother, the original allottee's passing away, notices returned unserved should, in our considered opinion, have to be accepted. The petitioner has deposited Rs.5,30,000/- under interim orders passed, during pendency of the writ petition. The principle of proportionality as set out by the Hon'ble Supreme Court and the doctrine of equity, inherent in Article 226 of the Constitution of India, persuades us to hold that the order of resumption should be set aside. We, however, do not propose to set down any rule of law that in all cases, where payment is offered during the writ petition, the resumption order must be set aside, but hold that each case of resumption must be adjudged in its own peculiar facts and the offer to make payment with penalty, interest etc. is one of the factors that may be considered.

In view of what has been stated hereinabove, we allow the writ petition, set aside the impugned orders dated 20.03.2002, 13.8.2008 and 12.11.2009, Annexures P-6, P-7 and P-8, respectively, and direct the respondents to restore the shop/site no.185, Sector 25, Transport Nagar, Panipat, to legal heirs of the original allottee. The amount of

Rs.5,30,000/- paid by the petitioner during pendency of these proceedings, shall be adjusted towards any amount that may be due against the above shop/site. The respondents will be free to levy interest and penalty in accordance with law. NO orders as to costs.”

Concededly, the order rendered by this court has since attained finality. But, after over a year, the authorities, vide letter dated 19.02.2013 (Annexure P9), required the petitioner to furnish the names of all the heirs of the deceased (original allottee) in whose names the site was to be restored. In response, vide letter dated 08.03.2013 (Annexure P10), petitioner furnished separate affidavits of all the heirs of the deceased, vide which they had relinquished their interests in the site in favour of the petitioner, and the authorities were requested to transfer the site in his favour. As a result, vide letter dated 31.10.2013 (Annexure P11), the authorities changed the ownership of the site in favour of the petitioner. Vide letter, dated 16.03.2015 (Annexure P13), petitioner requested the authorities to issue a possession certificate of the site, but his request was turned down, for an amount of Rs.4,23,09,222/- was outstanding against the site. And, vide letter dated 22.05.2015 (Annexure P15), respondent No.3 required the petitioner to deposit Rs.4,76,55,292/-, of which Rs.4,31,16,700/- were due on account of extension fee upto 2015, and Rs.45,38,592/- as service tax. A complete breakup, vide a calculation sheet (Annexure P16), as to how the extension fee w.e.f. 1990 till 2015 was worked out was also furnished to the petitioner. This is how, as indicated above, the petitioner is before this court.

Learned senior counsel for the petitioner submits that the demand raised by the authorities qua extension fee, even for the period when

the property was under resumption i.e. w.e.f. 20.03.2002 to 16.12.2011, is wholly erroneous. For, during the litigation between the parties, petitioner had no right in the property and, thus, could not have raised any construction thereupon. In reference to a decision rendered by this court in **Mr. Deepak Uppal and another v. Haryana Urban Development Authority** – CWP No.24582 of 2012, decided on 10.04.2013, he contends that the period between the order of resumption and till its restoration has to be treated as “zero period” for the purpose of calculation of extension fee. Reliance is placed upon a decision rendered by the Division Bench of this court in **Subhash Chander and another v. Haryana Urban Development Authority and another**, 2009(1) PLR 675.

In reference to letter, dated 19.02.2013 (Annexure P9), he submits that after a period of over one year, the authorities expressed its willingness to comply with the decision rendered by this court, therefore, even for this period the petitioner could not be burdened to pay any extension fee.

As opposed to this, learned counsel for the respondent-HUDA contends that in terms of the rules and regulations of the Haryana Urban Development Authority, the petitioner was liable to pay the extension fee and the service tax. He submits that the Accounts Officer had worked out the requisite amount that was outstanding against the site, in terms of the policy dated 12.04.2013, therefore, the demand raised by the authorities was fully justified.

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

Concededly, the site in question was allotted to the predecessor-in-interest of the petitioner on 01.02.1988. The actual physical possession of the site was delivered to the allottee on 01.03.1988. Clause 16 of the letter of allotment required the petitioner to construct the site within two years of the date of offer of possession, after getting the plans of the proposed building approved from the competent authority. For, the petitioner failed to furnish the revised price of the site, the authorities, vide order dated 20.03.2002 (Annexure P5), ordered its resumption. Needless to assert, as a consequence, the contract between the parties stood rescinded. Post resumption, neither could the petitioner ask for extension to construct the site nor the authorities would have accorded any such extension. Construction of site, in the face of the order of resumption, was impossible. For, the authorities would never have approved/sanctioned the building plans, which was a pre-requisite to construct the site. Likewise, even the period, envisaged in the relevant policy, upto which the authorities could actually grant extensions also ceased to operate, for the site had re-vested in the authorities. Once that is so, it defies logic that even for the period when the site was under resumption, the authorities would still have expected the petitioner to construct the site, and demand extension fee for non-construction. In fact, in a similar situation, in CWP No.24582 of 2012, the authorities furnished an affidavit before this court to treat the litigation period from 18.05.1991 to 10.10.2007 as **zero period**, for the purpose of calculating the extension fee. Accordingly, the matter was disposed of vide order dated 10.04.2013 (Annexure P18), which reads thus:

“On March 22, 2013, the learned Senior counsel for the respondents requested for a short adjournment to have

instructions with regard to sanctioning of the building plan by charging the extension fee of the period excluding the litigation period and the case was adjourned for today.

In pursuance of the said order, an affidavit of Sh. Narender Yadav, Estate Officer-I, Haryana Urban Development Authority, Gurgaon has been placed on record, stating that the Administrator, HUDA, Gurgaon has decided to treat the litigation period from 18.05.1991 to 10.10.2007 as zero period and petitioners are liable to pay extension fee for non-construction of the plot, amounting to Rs.1,53,734/- as per HUDA rates. It has also been stated that on deposit of the said amount, the building plan submitted by the petitioners would be sanctioned immediately.

Accordingly, in view of the said affidavit, this writ petition is disposed of in the aforesaid terms. If the petitioners deposit the said amount, within one month, the respondent-HUDA is directed to sanction the building plan, in accordance with law, within a period of one month thereafter.”

The observations recorded by the Division Bench of this court in Subhash Chander and another v. Haryana Urban Development Authority and another, 2009(1) PLR 675, also fortifies our view:

“... However, the request of the petitioners for sanctioning of building plan has not been accepted on the ground that

the site has not been constructed for more than 15 years, which is the maximum period provided as per policy dated 02.07.2007. It is undisputed that the re-allotment letter was issued on 29.10.2007 and the petitioners could not have raised construction before the aforementioned date as the resumption order dated 23.01.2002 was operating and the same has been set aside by the intervention of the civil court. The policy instructions dated 02.07.2007 would not apply for counting of 15 years from the date of original allotment of 1988. The guidelines dated 02.07.2007 cannot apply retrospectively to the allotment letter issued in the year, 1988. The application of the period of 15 years in accordance with the guidelines dated 02.07.2007, without excluding the period for which the site has remained under resumption, would be wholly unjust and unfair. It is conceded position that the plot of the petitioners was resumed on 23.01.2002 and it could be re-allotted to them only on 29.10.2007. Accordingly, the period from 23.01.2002 to 29.10.2007 is liable to be excluded from counting the period of 15 years. Therefore, the petitioners would obviously be well within time and are entitled to be granted sanction to their building plans. Once the aforesaid legal position emerges for the purposes of granting time for construction then it follows that no extension fee could be charged by virtue of the fact that the petitioners could not have raised construction on the site.”

In conspectus of the position, as sketched out above, what comes to fore is; the authorities could not demand extension fee w.e.f. 20.03.2002, when the site was resumed, till 16.12.2011, when the Division Bench ordered its restoration. Ex facie, vide letter dated 19.02.2013, after over a year, the authorities for the first time communicated to the petitioner, for it had decided to implement the decision, dated 16.12.2011 (Annexure P8), the names of all the heirs of the deceased (allottee) be furnished so that the site could be restored in their names. It appears that after the Division Bench rendered its decision, the authorities were contemplating to assail the said order, but eventually decided to implement the same. But, in the interregnum, a period of over one year had gone by. Therefore, even for the period i.e. 16.12.2011 to 19.02.2013, the demand for extension fee cannot be sustained. For, the delay to implement the said decision occurred purely at the end of the respondents.

However, in terms of clause 16 of the allotment letter, the petitioner was required to construct the site within two years from the date of offer of possession. For, the actual physical possession of the site was delivered to the allottee on 01.03.1988, he was required to complete construction upto 1990. Whereas, the petitioner failed to construct the site for a period of 12 years, before it was resumed on 20.03.2002. Thus, the petitioner is under obligation to make good the demand for this period and with interest, in terms of the policies of HUDA.

That being so, the petition is allowed in the terms indicated above. Consequently, the demand for extension fee for the period the site was under resumption and even thereafter upto 19.02.2013 is set aside. The

authorities shall re-calculate the extension fee, after excluding the period indicated above, in accordance with law. No order as to costs.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

08.07.2016
Rajan