

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

CWP No. 20596 of 2016

DATE OF DECISION : 05.10.2016

Residents Welfare Association

.... PETITIONER

Versus

State of Haryana and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Shiv Kumar, Advocate,
for the petitioner.

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RAMENDRA JAIN, J.

1. By way of this petition under Articles 226/227 of the Constitution of India, the petitioner Association is seeking a writ in the nature of mandamus directing respondents No.1 to 6 to take appropriate action against the Faridabad Ex-Sainik & Karamchari Cooperative House Building Society, Sector 49, Faridabad (respondent No.7 herein) for not implementing the agreements signed between the official respondents and respondent No.7 Society.

2. Briefly stated, respondent No.7 Society formed a residential colony for its members in the year 1970-71 in village Nawada Kho, Tehsil and District Faridabad on the land measuring 109.5 acres. Accordingly, on 28.02.1985, an agreement (Annexure P-2) was executed between the respondent No.7 Society and the Director, Town & Country Planning Department, Haryana (respondent No.4 herein), in which the terms and

conditions of development of residential plots for its members were agreed upon. Thereafter, on 09.04.1985, respondent No.7 Society was granted a license (Annexure P-1) under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as 'the Act') and the Rules framed thereunder, for setting up a residential colony in the aforesaid village Nawada Kho. After the grant of license, respondent No.7 executed two other agreements dated 30.11.1994 and 05.12.1995 (Annexures P-3 and P-4) with the Municipal Corporation, Faridabad (respondent No.5 herein), for setting up residential colonies on the land measuring 43 acres and 22 acres, respectively, of the same village. All the residents/members of the respondent No.7 Society formed the petitioner Association.

3. It is the case of the petitioner Association that they have paid all the external and internal development charges to the respondent No.7 Society well in time, but the office bearers of the respondent No.7 Society did not deposit the said amount either with respondent No.4 or with respondent No.5. Therefore, the development works of the Society were not carried out by the concerned Department. All the members of the petitioner Association are also paying the statutory dues/taxes to respondent No.5, but still they are facing the problems of shortage of drinking water, overflowing of sewerage, worst conditions of roads, non maintenance of parks and green belts etc., whereas according to the provisions of the Act as well as terms and conditions of the agreements (Annexures P-2, P-3 and P-4), it is the bounden duty of respondent Nos. 4 and 5 to complete the development works and recover the amount from the respondent No.7 Society. Since

respondent No.7 Society did not deposit such amount with respondent Nos. 4 and 5, therefore, vide order dated 10.12.2009, respondent No.4 cancelled the license granted to respondent No.7 Society. In appeal filed by respondent No.7 Society against the said order, the matter was remanded to respondent No.4 for fresh decision. After considering the matter again, respondent No.4 cancelled the aforesaid licence and the application filed by respondent No.7 seeking review of the said order has also been dismissed vide order dated 11.10.2013 (Annexure P-5). As per Section 8 (2) of the Act, after cancellation of the license, the Department of Town & Country Planning has to carry out the development work in the Colony of the petitioner Association and recover such charges which may have incurred on the said development work from the colonizer and the plot holders. Since the petitioner Association claims that its all the members have already paid the External and Internal Development charges to the respondent No.7 Society, therefore, it is the respondent No.7 Society who has to deposit the same with respondent No.4, failing which the authorities shall have the right to sell the commercial properties of the respondent No.7 Society and also to invoke the Bank guarantee, if any, submitted by the respondent No.7 Society. Similarly, as per agreements, Annexures P-3 and P-4, executed between respondent No.5 and the respondent No.7 Society, in case the respondent No.7 Society fails to complete the external and internal development works of the Society, respondent No.5 shall complete the development works, and recover the amount from the respondent No.7 Society. The petitioner Association submitted a number of representations (Annexures P-6 to P-9) to the concerned authorities for the implementation

of the aforesaid agreements, but to no avail. Instead of taking any action against the respondent No.7 Society, respondent No.5 issued a letter dated 21.04.2016 (Annexure P-13) to the respondent No.7 Society for the recovery of external and internal development charges amounting to ₹ 2,11,13,014/- upto 12.01.2016. Hence, the petitioner Association has approached this court seeking direction to respondents No.1 to 6 to take appropriate action against the respondent No.7 Society.

4. The only grouse of the petitioner Association is that in spite of the fact that its all the members have paid the external and internal development charges to the respondent No.7 Society well in time, and they are also paying the statutory dues/taxes to respondent No.5, the external and internal development works of the Society have not been carried out. The petitioner Association claims that as per the provisions of the Act as well as the terms and conditions of the agreements, Annexures P-2 to P-4, the amount paid by its members to the respondent No.7 Society was to be further deposited with respondent Nos.4 and 5. However, respondent No.7 Society did not deposit the said amount, due to which its license stood cancelled. Due to inaction on the part of the respondents, all the members of the petitioner Association are suffering for want of external and internal development works in the Society.

5. The question as to whether all the members of the petitioner Association have paid the requisite charges to the respondent No.7 Society or not, and execution of the agreements, Annexures P-2 to P-4, by the respondent No.7 Society with respondent Nos.4 and 5, are to be decided on the basis of evidence, as these are disputed questions of facts. Hence, in

exercise of the writ jurisdiction of this court, we are not inclined to entertain the instant petition. However, to get the aforesaid agreements implemented, the petitioner Association may avail appropriate remedy in accordance with law.

6. Dismissed.

(RAMENDRA JAIN)
JUDGE

October 05, 2016
ndj

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No