

CWP No.22697 of 2015

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

CWP No.22697 of 2015
Date of decision: 09.11.2016

Om Parkash

..... Petitioner

Versus

State of Punjab and others

..... Respondents

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

Present: Mr. Sandeep Jasuja, Advocate, for the petitioner.
Mr. Rajinder Goyal, Addl. A.G., Punjab.

RAMENDRA JAIN, J.

Under scheme No.2 launched by respondent No.2 – Improvement Trust, Abohar, petitioner applied for allotment of plot and he was allotted Plot No.21, near Gaushala Road, Abohar, measuring 167 sq. yds. for a total consideration of ₹ 20,875/- vide allotment letter dated 17.03.1983 (Annexure P-1). As per the conditions of the allotment, petitioner deposited the entire consideration amount within time prescribed. After the allotment, respondent No.2 got an agreement executed with the petitioner in which the petitioner was required to complete the 50% construction over the plot within a period of three years. The respondents were required to develop the area and execute the sale deed in favour of the petitioner. As per condition of the allotment, petitioner submitted the site plan of his house for approval in the year 1985 and after getting the land demarcated from the patwari of respondent No.2, started raising

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construction over the said plot in the year 1987. After starting the construction over the said plot, petitioner got installed electricity meter/connection. Despite completion of construction work by the petitioner over his plot, respondent No.2 did not get the sale/conveyance deed executed in his favour nor developed the area. The area around the house of the petitioner was being used as a dumping ground. Respondent No.2 vide letter dated 05.08.1987 directed the petitioner to remove the illegal construction. In response to the letters of respondent No.2, petitioner submitted his reply that he has occupied the land measuring 30'x50', demarcated by the patwari of respondent No.2. It was also submitted that information regarding starting of construction over the said plot was given to respondent No.2 and even site plan for approval was also submitted in July, 1985. Thereafter, respondents No.2 and 3 did not take any action in the matter. Even after 20 years of allotment, respondents failed to develop the locality and remove the garbage from the dumping ground near the house of the petitioner. Petitioner also made a representation in this regard. On 10.11.2008 petitioner found a public auction notice/pamphlet along with the newspaper whereby he came to know that his house/plot and the plots of other plot holders were going to be re-auctioned vide public auction on 18.11.2008 for the reason that petitioner and others failed to raise construction over the allotted plots. Respondents never issued any notice regarding initiation of resumption proceedings qua the plot of the petitioner. Against the action of resumption of plot by the respondents, petitioner filed CWP No.19509 of 2008 before this Court whereby resolution (Annexure P-

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quashed and liberty was granted to respondent No.2 to pass fresh order after giving reasonable opportunity of hearing to the petitioner. On 13.09.2010 in a meeting of the board it was decided that petitioner be granted one opportunity for raising construction. In view of the said decision, vide letter dated 18.10.2010 (Annexure P-13) respondent No.3 informed the petitioner to take the possession of the plot. However, despite repeated requests, possession of the plot was not given to the petitioner. Finally vide letter dated 07.03.2011 (Annexure P-14) respondent No.3 asked the petitioner to take possession of the plot. On receipt of said letter, petitioner enclosed proposed building plan for approval vide letter dated 24.03.2011 (Annexure P-15) along with demand draft of the required fee for the said approval. Respondent No.3 issued letter dated 13.04.2011 (Annexure P-16) allowing the construction over the plot in question. Petitioner could not start the construction within the given time, therefore, vide letter dated 04.04.2012 (Annexure P-17) requested for extension of one year for construction over the plot. Respondent No.2 vide letter dated 30.04.2012 (Annexure P-18) demanded ₹ 25,050/- as extension fee for extending the period for one year. Petitioner deposited the extension fee and completed the construction thereafter. After completion of construction, vide letter dated 29.11.2012 (Annexure P-19) petitioner requested respondent No.3 to issue completion certificate in respect of plot in question. However, respondent No.3 issued letter dated 27.03.2015 (Annexure P-21) asking the petitioner to deposit compounding fee of ₹ 4250/- and non-construction fee of ₹ 6,55,550/-. Petitioner was never conveyed that permission for construction/re-construction given to him was subject to the payment of non-construction

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charges of some period, which he came to know only through information received under Right to Information Act, 2005. Petitioner approached Chairman of respondent against the charging of non-construction fee but to no avail.

2. Hence, by way of present writ petition filed under Articles 226/227 of the Constitution of India, petitioner has sought issuance of writ in the nature of *certiorari* for quashing letter No.NSTA/172 dated 30.04.2012 (Annexure P-18) and letter dated 27.03.2015 (Annexure P-21) issued by respondent No.3 demanding the non-construction fee/compounding charges in respect of the allotted plot. Further prayer has been made for issuance of a writ in the nature of *mandamus* for directing the respondents to execute the sale deed/conveyance deed in respect of the said plot.

3. Learned counsel for the petitioner contended that demand of non-construction charges by the respondents is illegal and non est in the eyes of law. Vide letter dated 30.06.1987, petitioner had already intimated the respondents regarding starting of construction work. While setting aside the resumption/allowing the construction no condition for demand of non-construction charge was imposed.

4. After perusal of the record and giving our thoughtful consideration to the contentions raised by learned counsel for the petitioner, we find that this writ petition is completely devoid of any merit. From the record, it is discernible that petitioner was allotted the plot in question on 17.03.1983 and due to non-deposit of the amount in time the allotment was

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the petitioner deposited the amount of plot along with 20% penalty and the allotment was restored vide resolution dated 14.12.1984. Vide letter dated 01.03.2000 the respondent-Trust asked the petitioner to complete $\frac{1}{4}^{\text{th}}$ of the construction and on 16.07.2002 petitioner was asked to deposit the non-construction charges. Thereafter, in spite of various notices petitioner neither deposited the non-construction charges nor started construction work at the site. As a result thereof, the plot of the petitioner was again resumed. Against the resumption order petitioner approached this Court and in pursuance of the decision of this Court, he was granted one opportunity to construct the building. Since the respondent-allottee failed to abide by the terms and conditions and did not raise construction, he was liable to pay non-construction/extension fee, which was demanded from him in order to enable him to avoid resumption of the plot.

5. In view of above, we do not find any illegality or perversity in action of the respondents in demanding the non-construction charges from the petitioner.

6. Dismissed.

(RAMENDRA JAIN)
JUDGE

November 09, 2016
R.S.

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No