

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-21995-2016

Date of decision: 21.10.2016

M/s AVR India Private Ltd.

..... Petitioner

Versus

District Town Planner (Enforcement), Gurgaon and another

..... Respondents

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

PRESENT: Mr. V. Ramswaroop, Advocate for the petitioner.

RAMENDRA JAIN, J.

1. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has, *inter alia*, prayed for issuance of a writ of Certiorari for quashing the order dated 28.07.2016 (Annexure P-5) passed by respondent No. 1 whereby the application of the petitioner for issuance of 'No Objection Certificate' was declined. Further a writ of mandamus has been sought directing respondent No. 1 to grant 'No Objection Certificate' for execution of sale deed in respect of plot bearing No. R-116 measuring 1128 Sq. Yards situated within the revenue estate of village Pawala Khusropur, Tehsil and District Gurgaon, in terms of judgment and decree dated 22.10.2013 (Annexure P-2).

2. Put pithily, the petitioner-Company filed Civil Suit No. 123 of 2007 (Annexure P-1) for specific performance in the Court of Additional

Civil Judge (Senior Division), Gurgaon against respondent No. 2-Smt. Rajni Mahajan, in respect of the plot bearing No. R-116 measuring 1128 Sq. Yards part and parcel of Rectangle Killa No. 12//8 situated within the revenue estate of village Pawala Khusropur, Tehsil and District Gurgaon, which was decreed vide judgment and decree dated 22.10.2013 (Annexure P-2). Thereafter, on the basis of aforesaid judgment and decree, the petitioner had preferred an Execution Petition No. 45 dated 31.01.2015 (Annexure P-3), in the Executing Court at Gurgaon wherein the Executing Court had appointed Sh. Atam Parkash, Reader of the Executing Court as Local Commissioner to execute the sale deed in favour of the petitioner vide order dated 16.10.2015 (Annexure P-4). Consequently, the petitioner filed an application before the Tehsildar-cum-Sub Registrar, Gurgaon for issuance of 'No Objection Certificate' for execution of the sale deed. However, respondent No. 1 vide order dated 28.07.2016 (Annexure P-5) declined to grant the said certificate to the petitioner on account of two reasons (i) due to non-appearance and in the absence of respondent No. 2 before it and (ii) the suit property had already been sold by respondent No. 2 to one Smt. Beena Mehta W/o Sh. Bhisham Mehta. As per the petitioner, respondent No. 1 could not have refused for issuance of 'No Objection Certificate' because the sale of suit land by respondent No. 2 in favour of Smt. Beena Mehta was during the pendency of aforesaid civil suit filed by the petitioner and, thus, was hit by the doctrine of *lis pendens*.

3. Learned counsel for the petitioner contended that respondent No. 1 was not competent to decline the application of the petitioner for issuance of 'No Objection Certificate' for execution of the sale deed, on the ground of sale of suit property by respondent No. 2 to Smt. Beena Mehta,

during the pendency of the suit.

4. After giving our thoughtful consideration to the submissions made by learned counsel petitioner, we find no merit in the instant petition for the simple reason that admittedly, the execution petition Annexure P-3 filed by the petitioner is still pending before the Executing Court at Gurgaon and, thus, the grievance raised by the petitioner in the present petition would be meted out by the Executing Court in all respects for all intents and purposes. The petitioner has filed the instant petition without bringing into the notice of the Executing Court about the order Annexure P-5 passed by respondent No. 1. The petitioner cannot be permitted to take recourse to the same remedy before two Courts i.e. before the Executing Court and simultaneously before this Court, as the grouse raised by the petitioner herein would be very well meted out by the Executing Court.

5. Consequently, finding no merit in the writ petition, the same is hereby dismissed.

(RAMENDRA JAIN)
JUDGE

October 21, 2016
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(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No