

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25459 of 2014
Date of Decision:-4.2.2016.

Jagdish Kumar and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Naresh Kaushik, Advocate for the petitioners.

Mr. Rajesh Bhardwaj, Additional A.G. Punjab.

Mr. Ashish Grover, Advocate for respondent No.2.

Mr. Sumeet Jain, Advocate for
Mr. Pankaj Jain, Advocate for respondent No.4.

Mr. D.V. Sharma, Senior Advocate with
Mr. Harit Sharma, Advocate for
respondent Nos.6 to 8.

SURYA KANT, J. (ORAL)

1.) The instant writ petition has been filed by the residents of Model Town, Extension-I, Kharar which is a private residential colony developed by respondent No.6 builder-cum-developer. Respondent Nos.7 and 8 are its Directors. The petitioners seek a direction to the

official respondents to take over their residential colony and complete the pending development works including basic amenities. Directions for taking action against developer etc. have also been prayed for.

2.) Having regard to the conflicting stand taken by the parties in respect of the status of the development works or completion of amenities, the following order was passed on 5.11.2015:-

“Though respondent Nos.6 to 8 were required to file a written statement in terms of the previous order which they have not done so far but their learned counsel states at the Bar that all the amenities in terms of the conditions of the licence granted to them have been provided at the site and this fact may be got verified through a Local Commissioner who may be appointed at the expenses of these respondents. He has also relied upon a set of photographs to substantiate his plea.

Before entering into the further controversy, we appoint Sh. Nitesh Sharma, Advocate as the Local Commissioner who shall visit the spot with one day advance notice to learned counsel for the petitioners as well as respondent Nos.6 to 8 and submit a report with reference to the alleged deficiencies highlighted by the petitioners in para 9 of the writ petition. The photographs produced by the private respondents today in Court be handed over to the Local Commissioner for ascertaining of correct facts. Respondent Nos.6 to 8 are directed to pay Rs.22,000/- to the Local Commissioner towards his fee and travelling

expenses.

In addition, let the Executive Officer of the Municipal Council Kharar visit the site at his own and submit his report to the Court.”

3.) In deference thereto, the Local Commissioner has submitted a very comprehensive report, according to which only the following works are yet to be completed:-

(i) No drainage exit in the area and the Municipal Council, Kharar has also not put any drainage system up to entry point of the Colony;

(ii) For want of drainage system, rain water disposal system has also not been provided;

(iii) Community school site is there but school is yet to be constructed;

(iv) Fire hydrants are not installed.

4.) The Local Commissioner has further reported that the maintenance work is poor as the majority number of residents are allegedly not paying the maintenance charges.

5.) The Executive Officer, Municipal Council, Kharar has also filed a separate status report dated 3.2.2016 pointing out the following deficiencies:-

(i) The boundary wall of parks is damaged at many places and there is no seating arrangement and plantation in the parks.

(ii) Street light in Colony requires repair.

(iii) There is a school site available but no construction has been made.

(iv) Community Center site is available but no such Center has been constructed.

(v) There is no arrangement for disposal of rainy water.

(vi) The boundary wall of the colony is damaged at many places and requires repair.

(vii) There is need for more plantation in the colony.

6.) It may be seen that as per the report of the learned Local Commissioner as well as of the Executive Officer, three major development works, namely, (i) the construction of school, (ii) construction of Community Center and (iii) drainage system including disposal of rain water are yet to be executed.

7.) Learned counsel for the builder-cum-developer refers to the terms and conditions of the licence dated 3.9.2004 granted to develop the Colony and Clause XXII thereof reads as under:-

“The promoter shall construct or get constructed at his own cost schools, hospitals, community centres and other community buildings, on the land set apart for this purpose or transfer such land to the State Government either free cost or upon payment of actual cost of developed land, as directed by the State Government, which shall be at liberty to transfer such land to any local authority or any person or institution on such terms and conditions as it may deem fit.”

8.) Learned counsel for the builder further points out that the School or Community Center sites have not been constructed as the Colony is not fully habitated but he submits that the promoter shall abide by the above reproduced condition(s). According to him, Municipal Council, Kharar has already resolved to take over the said residential Colony within its administrative control for upkeep and the maintenance of all amenities and the existing development works.

9.) Having heard learned counsel for the parties, we are satisfied that there is no further necessity of periodical monitoring by this Court of the development works or amenities. It is otherwise not possible for a writ Court to supervise the day-to-day needs of a Colony, moreso when there exists a wholesome mechanism created under the Punjab Apartment and Property Regulations Act, 1995 (in short 'the 1995 Act').

10.) Suffice to say that the Authorities are duty bound to honour their respective obligations. Equally, the residents are also liable to pay the maintenance charges as are leviable under the 1995 Act. The developer too is obligated to provide the amenities and execute the works as agreed to while obtaining the licence. Further, the developer is willing to undertake before the Competent Authority/Municipal Committee to complete the remaining works as per the terms and conditions of the licence and thereafter, subject to any other legal impediment, we see no reason as to why the Municipal Committee should not take over the petitioners' Colony.

11.) The writ petition is, thus, disposed of with a direction to the Regional Deputy Director, Local Government, Patiala to intervene; call a meeting of all the stakeholders and take necessary steps to ensure that all the parties perform their respective obligations so that the Colony can be brought within the ambit of Municipal Committee at the earliest. It shall be appreciated if all the pending issues are decided within a period of six months.

**(SURYA KANT)
JUDGE**

**(P.B. BAJANTHRI)
JUDGE**

February 4, 2016.

sandeep sethi