

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No.25357 of 2016
Date of Decision: 08.12.2016

Raheja Vedanta Flat Buyers Association, Palam Vihar, Gurgaon

..Petitioner

versus

State of Haryana and others

..Respondents

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

Present: Mr. Rajiv Kataria, Advocate, for the petitioner.

RAMENDRA JAIN, J.

1. The petitioner, a registered association formed by the owners of flats purchased by them in a multi storeyed building, in the Group Housing Project, namely, 'Vedanta', developed by M/s Raheja Developers Limited (respondent no.12), in Sector 108 Gurgaon, has prayed for issuance of a writ of certiorari under Articles 226/227 of the Constitution of India, to declare that the occupation certificate, dated 17.11.2014 (Annexure P-19), issued by the Director General, Town and Country Planning, Haryana, Chandigarh (respondent no.2) in favour of M/s Raheja Developers Limited, is illegal, and in contravention to the settled legal position of law. The petitioner-association has further prayed that 'No objection Certificates dated 21.5.2014 (Annexure P-18) as also, dated 15.9.2015 (Annexure P-27) granted by the Director, Fire Service Station, Panchkula and the Commissioner, Municipal Corporation, Gurgaon, respectively, may be

declared as null and void, inasmuch as the instructions laid down therein, have not been complied with by M/s Raheja Developers Limited (respondent no.12) in letter and spirit. A Prayer for writ of mandamus has also been made for directing the Director, Town and Country Planning, Haryana, Chandigarh (respondent no.2), to withdraw the occupation certificate, dated 17.11.2014 (Annexure P-19) and also for initiating appropriate action against respondent nos. 12 to 20 (Director and functionaries of the Company), inasmuch as they had violated the various provisions laid down in the Punjab Scheduled Roads and Controlled Area Restriction of Unregulated Development Act, 1963 (as applicable to Haryana) (hereinafter referred to as “the Scheduled Road Act 1963”) and to further direct respondent no.12 not to violate the terms and conditions of the licence as also the various provisions of the National Building Code.

2. Learned counsel for the petitioner-association has assiduously argued that the Director General, Town and Country Planning, Haryana, Chandigarh, has issued the occupation certificate, dated 17.11.2014 (Annexure P-19), to M/s Raheja Developers Limited (respondent no.12) without considering the fact that it has not complied with all the stipulations as enumerated in clause 9 of the Occupation certificate and, therefore, the occupation certificate is required to be withdrawn. It is further submitted that before necessary permission for the development and construction of the building is granted to the promoter/builder, the State and its functionaries are to ensure that there

are no violations of the provisions of the rules and regulations on the part of the builder so that there may not be any impediment of any kind at a later stage, when the possession of the building is being handed over to the management of the Society. Learned counsel for the petitioner-association has further pointed out that in order to raise construction at the site, a developer/promoter is required to obtain a licence under the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as “the 1975 Act”) and also under the Scheduled Road Act, 1963, as the land falls within an area, which has been declared to be a controlled area, within the meaning of the Scheduled Road Act, 1963. It is further submitted that as per the notification dated, 14.9.2006 (Annexure P-5), issued by the Ministry of Environment and Forests, before raising of the construction, a developer was required to obtain an environmental clearance under the Environment (Protection) Act, 1986 (for short “the 1986 Act”). The environmental clearance, obtained in year 2009, had lost its validity after revision of the site plan thrice, in years 2011, 2012 and 2013, respectively, because, as per the 2006 notification, the builder was required to obtain a fresh “No Objection Certificate” (environmental clearance) every time after revision of site plan but the builder, in contravention to the said provisions, went on carrying out construction activities illegally in violation of various provisions of law. Much stress has been laid that due to the violations of the provisions of the 1986 Act and other Acts, the entire building has been rendered unsafe.

Learned counsel for the petitioner-association has lastly argued that as per the initial site plan shown, it was mandatory on the part of the builder to provide minimum width of the road as 12 meters, so that in case of any eventuality, the fire tender could enter the building easily, but surprisingly enough, the builder has not complied with all the fire safety norms as enumerated in the National Building Code and thereby clearly violating the provisions of the Fire Safety Act, 2009 (for short “the 2009 Act”).

3. We have heard learned counsel for the petitioner-association and have also gone through the documents annexed with the writ petition carefully.

4. A perusal of the contentions, as noted hereinabove, clearly spells out that before raising of any construction at the site, the builder was required to obtain various necessary permissions as also “No Objection Certificates” from the concerned authorities. The petitioner-association, in support of its pleas, has annexed various documents with the writ petition which are necessary to be considered for the sake of facility of reference:- letter of intent, dated 30.7.2007 (Annexure P-2), issued by the Director, Town and Country Planning, Haryana, Chandigarh, in favour of M/s Raheja Developers Private Limited, 150-A, Central Avenue, Sainik Farms, New Delhi; Notification dated 14.9.2006 (Annexure P-5) issued by the Joint Secretary to the Government of India, Ministry of Environment and Forests with respect to certain directions to be complied with by the developers

before raising of the construction; environmental clearance for construction of Residential Complex “Vedanta” at Sector 108, Dharampur, Gurgaon, Haryana,, dated 7.7.2009, (Annexure P-8), issued by the Government of Haryana, State Environment Impact Assessment Authority, Haryana, in favour of the developers; revised sanctioned plans (Annexures P-9 to P-11), “No Objection Certificate”, dated 21.05.2014 (Annexure P-18), issued by the Director, Fire Service, Haryana, Panchkula, holding the building perfectly safe and the occupation certificate, dated 17.11.2014 (Annexure P-19), issued in favour of M/s Raheja Developers Limited imposing all stipulations enumerated therein.

5. The main grievance of the residents of the association (petitioner) is with respect to the whole construction, that is raised, is utterly in disregard to the stipulations laid down in the notification, dated 14.9.2006 (Annexure P-5), issued by the Joint Secretary to the Government of India, Ministry of Environment and Forests, the grant of occupation certificate, dated 17.11.2014 (Annexure P-19), to M/s Raheja Developers Private Limited, Gurgaon; non-obtaining of fresh environmental clearance on account of revised sanctioned site plans thrice by the builder (Annexures P-9 to P-11), though obtained once initially, on 07.07.2009 (Annexure P-8), which was valid for five years as also non-compliance of the instructions for installation of fire safety equipments in the building, in letter and spirit, and then the alleged nexus between the developers and the concerned authorities of

the departments in procuring the necessary permissions as also seeking no objection certificates from the respective departments of the concerned authorities.

6. The question that now survives for consideration is whether in the facts and peculiar circumstances of the instant case, can a writ of certiorari/mandamus be issued to protect the rights of the petitioner-association, which are based upon a contract entered into by its members with the builder, especially when the pleas taken up by the petitioner-association, in the instant petition, are primarily based on factual matrix, which are required to be established by leading cogent and convincing evidence. Thus, in our considered opinion, these pleas could not be gone into, while exercising the writ jurisdiction under Articles 226/227 of the Constitution of India and, therefore, no direction can be issued in favour of the petitioner-association and as such, the writ petition is liable to be dismissed.

7. Further, no relief can be granted to the petitioner-association, in exercise of writ jurisdiction under Articles 226/227 of the Constitution of India, inasmuch as in the writ petition, the petitioner-association has levelled serious allegations against the builder in regard to procuring the alleged necessary permissions as also no objection certificates from the concerned authorities of the respective departments in contravention to the requirements of the procedure laid down in the Act/Rules. This again would require evidence which would not fall within the domain of extra-ordinary writ

jurisdiction under Articles 226/227 of the Constitution of India.

8. In view of the foregoing reasons, no case is made out for interference by this court in exercise of writ jurisdiction conferred by Articles 226/227 of the Constitution of India and as such, finding no merit in the writ petition, the same is dismissed. However, the petitioner-association is at liberty to agitate its grievance by availing appropriate remedy before the appropriate forum that may be available under the statute, in accordance with law.

9. The registry is directed to bring this order to the notice of the respondents so as to avoid any concealment of this order by the similarly situated persons, if any, while filing any such petition before this court in future.

(RAMENDRA JAIN)
JUDGE

08.12.2016
VK

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned Yes/No

Whether reportable Yes.