IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 2804 of 2014
Date of Decision:- 17.05.2016

The Mahalaxmi Cooperative Group Housing Society Ltd. ....Petitioner(s)

vs.

State of Haryana and others ....Respondent(s)

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CORAM:- HON'BLE MR. JUSTICE S. J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

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Present:- Mr. Manoj Kumar, Advocate,
for the petitioner.

Mr. Rahul Dev Singh, DAG, Haryana.

Mr. Anshul Jain, Advocate for
Mr. Amar Vivek, Advocate,
for respondents No.2 and 3-HUDA.

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S. J. VAZIFDAR, ACTING CHIEF JUSTICE (ORAL):

The petitioner has sought a writ of Certiorari to quash a demand notice dated 3.12.2013 (Annexure P-31) by which the respondents have demanded enhanced compensation of ₹ 1104.54 Ps. per square yard aggregating to ₹ 48,62,710/- from the petitioner.

2. The petitioner was allotted a plot ad-measuring 4000 square meters by Haryana Urban Development Authority-respondent No.2 (hereinafter referred to as 'HUDA') for constructing a group housing society on the terms and conditions contained in a letter of intent dated 26.3.1999 (Annexure P-1).

The petitioner was handed over possession of the property on the same date i.e. 26.3.1999. A regular letter of allotment dated 27.12.1999 was issued in favour of the petitioner. Clause 6 of the letter of allotment reads as under:-

> "6. The above price is tentative to the extent that any enhancement in the cost of land awarded by the competent authority under the land acquisition act, shall also be payable proportionately, as determined by the authority. The additional price determined shall be paid within 30 days of the demand."

The petitioner contends that by 4.5.2001, the construction had come up to the D.P.C. level and an occupation certificate was issued by HUDA on 22.7.2003 (Annexure P-6).

Ultimately, HUDA executed a deed of conveyance dated 14.5.2009 in favour of the petitioner in respect of the said plot. Clause 11 of the conveyance deed reads as under

> "11. In the event of non payment of additional price within the fixed period by transferee, or in the event of breach of any other condition of sale, the Estate Officer may impose a penalty or resume the land, or both, in accordance with provision of the Act and the rules/regulations made thereunder. In the event of resumption it shall be lawful for the Estate Officer, not withstanding the waiver of any previous cause or right for re-entry thereon or any part thereof, to possess, retain and enjoy the same as to his former Estate Officer and the transferee shall not be entitled to refund of the sale price or any part thereof or to any compensation whatsoever on account of such re-entry except in accordance with the

provisions of the said Act."

3. It is contended that the petitioner is not liable to pay the respondents any further amount on account of the enhancement in the cost of land.

4. The submission is not well founded for more than one reason. Firstly, the regular letter of allotment dated 27.12.1999 expressly stated that the price mentioned therein was only tentative and that the petitioner would be liable to pay the enhancement in the cost of land awarded by the competent authority under the Land Acquisition Act proportionate to the area allotted to the petitioner. This clause was never altered. The conveyance was executed subsequently on 14.5.2009 without affecting the validity or the operation of clause 6 of the regular letter of allotment. It has hardly been suggested that merely by virtue of the conveyance, the liability of the allottee under the regular letter of allotment is defeated. There is nothing in principle or on the basis of the terms and conditions of the transaction between the parties that persuades us to take a view that on account of the execution of the conveyance, the respondents would in effect subsidize the acquisition of the property by the petitioner.

5. In any event, clause 11 of the conveyance deed also makes the petitioner liable to pay the said amount. The opening words of clause 11: "in the event of non-payment of additional price within the fixed period by the transferee............." establishes the same. The doubt, if any, is set at rest by Clause I which expressly provides that the petitioner would have the right of possession and enjoyment only so long as it pays the additional price, if any, determined by the vendor i.e. HUDA within the prescribed

period. The additional price obviously refers to the enhanced price referred to in clause 6 of the regular letter of allotment.

6. The liability to pay the additional price on account of the enhancement granted in the land acquisition proceedings is also contained in regulation 2(b) and regulation (10) of the Haryana Urban Development (Disposal of Land & Building) Regulation, 1978. The said regulation reads as under:-

> "**2. Definitions**.- In these regulations unless the context otherwise requires:
>
> (a) xxxx xxxx xxxx
>
> (b) "ADDITIONAL PRICE" and "ADDITIONAL PREMIUM" means such sum of money as may be determined by the Chief Administrator in respect of the sale or lease of land or building by allotment, which may become payable by the transferee or lessee with respect to land or building sold or leased to him in a sector on account of the enhancement of compensation of any land or building in the same sector by the court on a reference made under section 18 of the Land Acquisition Act, 1894, and the amount of cost incurred in respect of such reference.
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> Explanation. For the purpose of this Regulation, the expression "the Court" means the court as defined in clause (d) of section 3 of the Land Acquisition Act, 1894, and where an appeal is filed, the "Appellate Court".
>
> (bb) to (i) xxxx xxxx xxxx
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> 10. ***Liability to pay additional price/premium.-*** (1) In the case of sale/lease of land/building by allotment the transferee or lessee shall be liable to pay to the Authority, in addition to the tentative price/premium, the additional

> price/premium, if any, determined in respect thereto under these regulations.
>
> (2) The additional price/premium shall be payable by the transferee or lessee within a period of thirty days of the date of demand made in this behalf by the Estate Officer without interest or in such number of instalments with interest as may be determined by the Chief Administrator."

7. Thus, the additional price as defined in regulation 2(b) means *inter alia,* such sum of money as may be determined by the Chief Administrator in respect of the sale or lease of the land or building by allotment on account of enhancement of compensation of any land or building in the same sector by the Court on a reference made under Section 18 of the Land Acquisition Act, 1894. Regulation 10 provides that in the case of sale of land by allotment, the transferee is liable to pay, in addition to the tentative price, the additional price determined under the regulations.

8. We have already referred to the definition of the term "additional price". A conjoint reading of regulation 2(b) and regulation 10 puts the matter beyond any doubt that the liability to pay the enhanced compensation proportionate to the land allotted to the allottee arises when the conveyance has been executed. The petitioner's liability to pay the enhanced compensation proportionate to the land allotted to it arises fresh both in law namely under the said regulations of 1978 and in terms of the contract, namely, the regular letter of allotment and the conveyance deed.

9. The disputes, if any, regarding the calculations, ought to be raised in appropriate proceedings and not in a petition under Article 226 of the Constitution of India. We note that the conveyance also contains an

arbitration agreement as contained in clause 12 of the conveyance deed.

10. The petition is, therefore, dismissed but with liberty to the petitioner to challenge the quantum in appropriate proceedings.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

May 17, 2016 **(ARUN PALLI)**
poonam **JUDGE**