

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

CWP-5883 of 2013

Date of decision:- 27.05.2016

HUGHES Communications India Ltd.

...Petitioner

Versus

Municipal Corporation of Gurgaon and others

...Respondents

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

Present:- Mr. Ashok Aggarwal, Sr. Advocate with
Mr. Ashish Chopra, Mr. Dharmesh Misra, Mr. Mukul Garg
and Ms. Shreya Puri, Advocates, for the petitioner.

Mr. Arvind Seth, Advocate, for respondent Nos.1 & 2.

Mr. Vishal Garg, Advocate, for respondent No.3.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Amandeep Singh Talwar, Advocate,
for respondent No.4.

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE

Respondent No.2 is the Assistant Divisional Fire Officer of the first respondent. Respondent No.3 is the Estate Officer-1 of the Haryana Urban Development Authority (HUDA) and respondent No.4 is the Imaging Solutions Pvt. Ltd. Respondent No.4 has granted a lease in respect of the premises in favour of the petitioner in terms of a lease deed dated 23.03.2001. There are disputes between the petitioner and respondent No.4 which for the purpose of this order are not relevant.

2. The petitioner has challenged an order dated 14.03.2013 and an order dated 01.10.2014 and sought a writ of

mandamus directing respondent Nos.1 and 2 to grant and issue a Fire Clearance Certificate/Inspection Report in respect of the premises in question. By the impugned order dated 14.03.2013 respondent No.2-Assistant Divisional Fire Officer recorded that the petitioner had put up construction beyond the sanctioned area and that due to the same orders had been passed for the removal of the illegal construction and that the occupation certificate had been cancelled. The order further stated that according to the inspection report dated 03.10.2012, if any objection is registered by any department in connection with the validity of the building, the inspection report would be considered as cancelled. Respondent No.2, therefore, cancelled the inspection report. By the impugned order dated 01.10.2014, the Appellate Authority set aside an order of the Estate Officer and remanded the matter for a fresh decision with certain directions. The matter is at present pending with the Estate Officer.

4. HUDA granted the petitioner an occupation certificate dated 01.09.2003. By a letter dated 13.07.2009 respondent No.3-Estate Officer-1 HUDA, stated that there were building violations including that the petitioner had built 3051 sq. meters, although the permissible area was 2500 sq. meters which was non-compoundable. It was further alleged that the petitioner had constructed offices in the basement which were to be used only for storage. Further heavy machinery, gas cylinders, air condition refrigeration plants and generator sets were used in the basement. Respondent No.3, therefore, cancelled the occupation certificate and was granted 25 days to remove the violations failing which it was stated that HUDA would demolish the illegal construction and/or resume the property.

5. The petitioner challenged the above order dated 13.07.2009 by filing Civil Writ Petition No. 11065 of 2009 which was disposed of by the order and judgment of the learned Single Judge dated 10.11.2010. The impugned order was set-aside with liberty to the Estate Officer to pass a fresh order in accordance with law.

6. In the result, therefore, the occupation certificate as on date does not stand revoked. The respondents, however, did not thereafter initiate proceedings for passing a fresh order. Nor did they pass a fresh order cancelling the occupation certificate despite the liberty granted by the order of the learned Single Judge dated 10.11.2010. Instead HUDA resorted to proceedings for resumption of the property. Respondent No.3 served a notice dated 08.08.2011 calling upon the petitioner to show cause why the property ought not to be resumed. This show cause notice is not on record. By a letter dated 25.10.2011 addressed to the petitioner, respondent No.3-Estate Officer stated that the petitioner had failed to avail an opportunity of personal hearing and had not even filed a reply. The petitioner was directed to remove all the unauthorized construction as per the annexure attached and as per the details in the show cause notice within 30 days failing which it was stated that the same would be removed at the petitioner's cost. The annexure alleged various violations including construction admeasuring 2248.11 sq. meters against the sanctioned construction of 750 sq. meters.

7. The petitioner challenged this order by filing Civil Writ Petition No. 21307 of 2011 which was disposed of by an order and judgment dated 17.11.2011. The petitioner was permitted to withdraw the petition with liberty to file an appeal under section 17(5) of the Haryana Urban Development

Authority Act, 1977 (for short 'the Act') before the Chief Administrator. The Chief Administrator was directed to decide the appeal within two months. The building was ordered not to be demolished till the decision in the appeal. By an order dated 23.01.2012 the appeal was dismissed.

8. The petitioner filed a revision petition. The Revisional Authority by an order dated 17.04.2012 remanded the matter to the Estate Officer with a direction to hear the parties concerned and pass a detailed speaking order.

9. The Estate Officer issued a fresh notice dated 28.06.2012 calling upon the petitioner and respondent No.4 to show cause why an order of resumption of plot and forfeiture of whole or any part of the money deposited be not passed.

Ultimately by an order dated 26.11.2012 the Estate Officer stated that he had taken a lenient view by not passing an order of resumption and directed the SDE(S) office to take immediate necessary action to correct the violations as per the HUDA law regarding the illegal/excess construction raised thereon within 30 days. The petitioner challenged this order in Civil Writ Petition No. 24050 of 2012. The Division Bench by an order dated 10.12.2012 relegated the petitioner to the remedy of an appeal before the Chief Administrator. The order states inter-alia as follows:-

"The Chief Administrator shall make an endeavour to ascertain as to whether the foundation strength of the building in dispute is such that it can bear the load for the construction raised thereon. Minor amendments here and there can be compounded, if those are not the major violations. It is further directed that in case, order went against the petitioner, the Chief Administrator will give seven days time to file a revision etc. and to avail any other remedy, as per law, before taking any further action. We expect that the Chief Administrator, HUDA will take a fair decision in order

to protect interest of both the parties. Till such time the appeal is not disposed of, there shall be interim stay of the order, under challenge."

10. By the other impugned order dated 01.10.2014, the Appellate Authority set-aside the order of respondent No.3 dated 26.11.2012 and remanded the matter to him with a direction to get the structural stability of the building assessed from the PWD (B&R) department or empanelled structural engineers/agencies of the PWD (B&R) department and thereafter pass a reasoned and detailed speaking order taking into consideration the report of the independent agency, contentions of the appellant therein as well as the owner i.e. respondent No.4 herein and the issues raised in the order itself.

11. Respondent No.4 had filed Civil Writ Petition No. 6661 of 2015 against the other parties which was disposed of by an order and judgment dated 28.04.2015. The Division Bench noted the statement on behalf of the petitioner that as the matter had been remanded to the Estate Officer, HUDA, the petition would not be pressed. The order records the petitioner's prayer (now respondent No.4) that its representation dated 24.04.2015 to the Chief Administrator, HUDA, praying for initiation of proceedings under Rule 11 (c) of the Haryana Urban Development Authority (Erection and Building) Regulations, 1979, be decided expeditiously. The Division Bench directed the Chief Administrator, HUDA, to examine the 4th respondent's representation after considering

the reply, if any, filed by the other party. We are informed that this representation is also pending before the Estate Officer. It is desirable that the Estate Officer deals with this representation also simultaneously with the matter on record.

12. Thus all the issues between the parties are pending before the Estate Officer and the Chief Administrator. Their decisions in the pending proceedings and on the fourth respondent's representation would deal with almost all the issues between the parties at least so far as the impugned orders are passed. It is clarified that the official respondents may even consider commencing fresh proceedings for the revocation of the occupation certificate especially as liberty in that regard was granted to them by the order and judgment dated 10.11.2010 in Civil Writ Petition No. 11065 of 2009.

13. In the circumstances, the petition is disposed of by directing respondent No.3-Estate Officer-HUDA to pass an order pursuant to the order of remand dated 01.10.2014 and the Chief Administrator HUDA shall pass an order on the fourth respondent's representation as directed by the order and judgment dated 28.04.2015 in Civil Writ Petition No. 6661 of 2015. The orders shall be released on the same day. As agreed between all the parties the interim orders granted in this petition shall continue till the orders are passed and if

adverse to the petitioner for a period of two weeks after the same are served upon the petitioner. The orders if adverse to the petitioners shall also not be given effect to for a period of two weeks after the same are served upon the petitioners.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

27.05.2016
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To be referred to the reporter	Yes	No.
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