

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.4165 of 2016 (O&M)
DATE OF DECISION: 02.03.2016

M/s Mayor International Ltd.

....Petitioner

versus

The State of Haryana and others

.....Respondents

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

Present: Mr. Vikas Singh, Advocate for the petitioner

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

The petitioner seeks a refund of various amounts paid by it in consideration of the official respondents' issuing an occupation certificate.

2. The petitioner was the owner of a large piece of land. It obtained a No-Objection Certificate (NOC) dated 31.12.2010 from the District Town Planner Enforcement, Gurgaon, subject to certain conditions. It was clarified that the NOC would not provide immunity from any other Act or Rules applicable in respect of the land.

3. The petitioner had entered into an agreement to sell the property to another party in the year 2010. The sale deed is dated 26.05.2011. The petitioner's case is that its purchaser insisted on an occupation certificate. The petitioner accordingly made an

application to the respondents for an occupation certificate. By a communication dated 06.04.2011, the Senior Town Planner, Gurgaon Circle, pointed out various violations/deviations on the petitioner's part. For instance, a DPC Certificate had not been taken for construction of an area admeasuring about 5200 square metres. The construction was raised without the revised building plan being sanctioned. The communication further stated that the petitioner had not obtained the occupation certificate within the validity period of the Change of Land Use (CLU) permission granted to it. The communication, therefore, stated that the petitioner was liable to pay the additional fees mentioned therein. This included an amount of Rs.3,03,457/- as scrutiny fees, difference in conversion charges paid at the time of grant of CLU amounting to about Rs.20 lacs, EDC aggregating to about Rs.3.08 crores and an amount of about Rs.1,05,000/- towards labour cess. The petitioner voluntarily and unconditionally paid the amounts without reserving to it the right to challenge the same. In view thereof, the occupation certificate was granted. The petitioner has taken full benefit of the occupation certificate by selling the property to a third party.

4. Four years later, the petitioner seeks to challenge the demand contained in the communication dated 06.04.2011. The petitioner having taken the benefit of the order granting the occupation certificate by paying the amounts demanded unconditionally and without demur or protest cannot ordinarily be permitted to question the same. The petitioner, in other words, cannot be permitted to take the benefit of the communication and refuse the burden stipulated therein of payment of the various amounts.

5. It is also pertinent to note that the petitioner obtained an order for release of the land from acquisition by virtue of an order and judgment dated 22.12.2009 in CWP No.17937 of 2005. The Division Bench noted that the stand taken by the official respondents had been accepted by the petitioner and, accordingly, disposed of the writ petition with a direction to the State Government to issue the necessary release order in respect of the petitioner's land subject *inter alia* to the condition that the petitioner will obtain the CLU and pay the applicable External Development Charges and Internal Development Charges to the HSIIDC. The petitioner, therefore, has also taken the benefit of the release of its land on the express condition that it would pay the EDC and IDC. Having taken the benefit of that order as well, it would be impermissible now to direct the respondents to refund the amount.

6. The petitioner then contended that the conversion charges for grant of CLU could not have been charged as they were not charged when the conversion was allowed. It is not the case of the petitioner that the conversion charges were never leviable. The petitioner merely contends that not having levied the same while granting the permission, the respondents ought not to be permitted to do so later as a condition to the grant of the occupation certificate.

7. The petitioner was liable to pay the conversion charges. It agreed to do so as a condition precedent to obtain the occupation certificate. We see no reason to exercise our extraordinary jurisdiction under Article 226 of the Constitution of India to absolve the petitioner of the admitted liability of paying

the conversion charges merely because they were allegedly levied only later.

8. The writ petition is, therefore, dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

02.03.2016
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(ARUN PALLI)
JUDGE