

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

**CWP No.927 of 2016
Date of Decision: 12.5.2016**

M/s Emaar MGF Land Limited

..Petitioner

Versus

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. Ashok Aggarwal, Sr.Advocate with
Mr.H.P.Saini, Advocate for the petitioner.

Mr.R.K.S.Brar, Addl.AG Haryana.

Mr. Vikas Bahl, Sr.Advocate with
Mr.Anurag Jain, Mr.Aditya Jain and Mr.Amandeep Singh,
Advocates for respondent No.3.

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

The only reason we are interfering in this matter is because the order of this court dated 21.1.2011 has not been fully complied with. The petitioner and respondent No.3 had filed review applications before respondent No.2. The petitioner has filed the application for review against the order returning its application dated 19.5.2010 for grant of a license. Respondent No.3 on the other hand, had filed a review application against an order dated 12.3.2009 passed by respondent No.2 rejecting their application for Group Housing Scheme. The learned Single Judge of this Court by the said order dated 21.1.2011 in CWP No.23022 of 2010 directed

as under:-

“It is noticed that the application submitted by respondent No.3 is under consideration for review. Infact, it is revealed that the Director has already sent the case to the Government with his recommendation. The grievance of the petitioner is that respondent No.3 is being favoured by reviewing the earlier application and giving it a priority on that basis, whereas the application of the petitioners then would go down in priority. This issue is pressed in the light of the reply filed by the State that the application of the petitioners has been returned. The petitioners concededly have also sought review of the order returning their application. Prayer accordingly is that their application for review may also be considered simultaneously. After initial objections and counter objections, the counsel for the parties have agreed for disposing of the petition with direction to the official respondents to consider and decide the application for review and then to pass an order on the request for grant of licence. It is agreed between the counsel for the parties that the review of the order returning the application, which has been sought by the petitioners, may also be considered and the State be given liberty to pass any appropriate order for grant of LOI.

It can be observed that powers of issuing licence is yet to be finalised. No final order has been passed. Without going into the aspect of maintainability of the writ petition at this stage, I deem it appropriate to dispose of this petition with direction to the official respondents to consider the applications filed by the petitioners as well as by respondent No.3 for review. In fact it is a duty cast on the official respondents to consider this request in accordance with the law and pass an appropriate order. To remove any ambiguity that may arise, it is made clear that this Court has not expressed any opinion on merit and it will be

entirely in the discretion of the official respondents to pass any order on the review application of both the parties. The State may, thereafter, take any decision in accordance with law on the ground of request of LOI of both the parties, if found eligible. If parties feel aggrieved against any order that is passed, it would be at liberty to approach any appropriate Forum including this Court. If the official respondents decide to grant LOI in favour of any party then further process to grant licence may continue but the licence, if issued shall remain in abeyance for a period of 4 days to enable the aggrieved party to have their remedy in accordance with law.”

Respondent No.2 held that the decision to assign seniority to respondent No.3 from 10.4.2007 was correct. Having said so respondent No.2 dealt with the petitioner's review application dated 24.12.2010 by stating as under:

“Regarding decision on the review application dated 24.12.2010 submitted by Emaar MGF Land Ltd. against the order dated 20.12.2010 passed by the then DTCP, it is submitted that only 20% net planned area of a sector is considered for grant of licence for Group Housing Colony. Since, the matter regarding grant of licence to Kay Kay Buildhomes Pvt. Ltd. for area of about 11 acres in Sector 66 Gurgaon is subjudice and if licence is granted for this area to Kay Kay Buildhomes Pvt.Ltd. no area would be left against which application of Emaar MGF Land Ltd. could be considered. Therefore, application of the said company could be considered only if no licence is granted to Kay Kay Buildhomes Pvt.Ltd. In view of this position, no final decision on the review application dated 24.12.2010 filed by Emaar MGF Land Ltd. has been taken by the Department. The

decision on the review application would be taken once the issue regarding grant of licence to Kay Kay Buildhomes Pvt. Ltd. is finally decided.

In view of my above said discussions, I am of the opinion that the order dated 1.1.2014 passed by my predecessor is perfectly legal and in accordance with the available office record. There are no fresh grounds to interfere in the said order at this stage. I order accordingly.”

The main issue in this matter is as to which of the applications are entitled to priority. It is possible that the result in one review application would effect the result in the other review application. However, in view of the order of this Court it was incumbent upon respondent No.2 to pass a final order in both the review applications. This has not been done by respondent No.2 as yet.

Mr.Bahl's contention that respondent No.2 was entitled to pass any order meaning thereby even an order which did not dispose of the review applications is not well reasoned. The order of respondent No.2 says that it will entirely be the discretion of the official respondents to pass any order on the review application of both the parties. However, the order read as a whole makes it clear that the review applications were to be disposed of finally.

Respondent No.2 had already disposed of the third respondent's review application. Whether the decision taken therein affects the petitioner's review application or not is a different matter altogether. That is for respondent No.2 to decide while passing a final order in petitioner's review application but a final order he must pass on the petitioner's review

application.

In the circumstances, this petition is disposed of by directing respondent No.2 to pass a final order on the petitioner's review application. The order would be passed only after hearing the petitioners and respondent No.3. Since the matter has already been substantially heard by respondent No.2 we request him to pass an order in the petitioner's review application preferably by 31.7.2016. Interim direction granted by the learned Judge dated 21.1.2011 shall continue for the same period after the order on the petitioner's review application.

(S.J.Vazifdar)
Acting Chief Justice

(Arun Palli)
Judge

12.5.2016
Meenu