

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.16597 of 2015 (O&M)

Date of Decision: 19.01.2017

The Panipat HSEB Employees Co-operative
House Building Society Ltd.

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CWP No.16002 of 2015 (O&M)

M/s Ascot Hotel and Resorts Ltd.

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

Present: Mr. Jagbir Malik, Advocate;
Mr. Aman Chaudhary, Advocate for the petitioners

Mr. Deepak Balyan, Addl. AG Haryana

SURYA KANT, J. (Oral)

(1) This order shall dispose of the above-captioned writ petitions as the point in issue raised in both the cases is similar in nature. For facts, CWP No.16597 of 2015 is being treated as the lead case.

(2) The petitioner is a Cooperative House Building Society constituted by the Employees of erstwhile Haryana State Electricity Board now known as the "Uttar Haryana Bijli Vitran Nigam Ltd.". The Society purchased 8.13 acres of land in the revenue estate of village Patti Insar and Patti Makhdoom within the municipal limits of Panipat city for setting up a residential colony. The petitioner-Society's land was acquired by the State Government on 22.02.1990. The acquisition was successfully challenged by the Society and it was quashed by this Court on 26.03.2003.

(3) The petitioner-Society thereafter applied for the grant of licence on 01.12.2006 and deposited the requisite fee. The petitioner-Society was

again asked to deposit a sum of ₹ 26,02,000/- which was deposited in April, 2007. In this manner, the Society deposited a total sum of ₹ 37,44,021/-.

(4) The request of the petitioner-Society to grant it the licence to develop residential colony was rejected by State Government vide order dated 26.09.2008 (P6). The State Government, however, refunded the sum of ₹ 34,08,420/- after 7 years on 17.07.2015. A sum of ₹ 3,35,601/- has been deducted towards scrutiny fee.

(5) The petitioner-Society seeks refund of the 'scrutiny fee' deducted by the respondents as also interest on the delayed refund.

(6) In the connected case i.e. CWP No.16002 of 2015, the petitioner is a company incorporated under the Companies Act, 1956. The petitioner-Company owned land measuring 66 bigha 3 biswa within the revenue estate of Karnal City. It applied on 24.07.2006 for grant of licence in respect of 16 acres of land to set up a Group Housing colony. The petitioner was asked to deposit certain amounts on different dates and in this manner it deposited a total sum of ₹ 1,36,62,527/-.

(7) A part of the land of the petitioner for which it had applied for license to set up Group Housing Society was acquired by the State of Haryana vide notification issued under Section 6 notification dated 11.09.2012 of the Land Acquisition Act, 1894. Thereafter the petitioner was refunded a sum of ₹ 1,17,43,442/- after deducting the scrutiny fee on 06.05.2014.

(8) The petitioners in this factual backdrop seek refund of the scrutiny fee as well as interest on the delayed refunds of the amount deposited by them for the grant of licence.

(9) We have heard learned counsel for the parties and gone through the record.

(10) The respondents in their written statement(s) have mainly justified as to why the petitioners' applications for the grant of licence were rejected/returned. In the second case, licence could not be granted as part of the land stood acquired by State Government. There is, however, no explanation whatsoever as to what prevented the authorities from promptly refunding the amount which the petitioners were asked to deposit when the claim of petitioner in the first case for grant of licence had been rejected or when it was no longer feasible to grant licence to the petitioner in the second case due to acquisition of its land.

(11) The cardinal principle to govern the award of interest is founded upon the policy that when the amount which ought to have been paid to a person, remains in the hands of other and the latter continues to utilize it at the cost of the former, the latter must compensate the former for the deemed loss. This is what has precisely happened in the cases in hand where the petitioners were made to deposit one or the other charges towards their licence applications which could not be granted to them. There was, however, no justification in not refunding such amounts at the earliest and without any delay.

(12) So far as the 'scrutiny fee' is concerned, there is substance in the State's plea that the same was non-refundable. That the 'scrutiny fee' is nothing but reimbursement of the administrative charges assumed to have been incurred by the Department in processing the application for the grant of licence. It is not the case of petitioners that their applications were returned at the threshold without examining on merits. Since the process of

evaluating the applications on merits required devotion of time and energy both, the Department is entitled to compensate itself with the 'scrutiny fee' towards deemed costs incurred by it. The levy of 'scrutiny fee' is akin to the principle of "*quid pro quo*".

(13) For the reasons afore-stated, the writ petitions are allowed in part and it is held that though the petitioners are not entitled to refund of 'scrutiny fee', they are surely entitled to be suitably compensated with interest for the period during which the amounts deposited by them were unjustifiably withheld by the respondents. In the first case, the amount was deposited upto July, 2007 whereas it was refunded on 17.07.2015. There cannot be more than three months' time for processing and making actual refund. Consequently, the petitioner in the first case is held entitled to interest w.e.f. 01.08.2007 till 17.07.2015. The interest shall be paid @ 8% p.a.

(14) Similarly, the petitioner in the second case is held entitled to interest at the same rate w.e.f 01.02.2009 till 06.05.2014.

(15) The arrears of interest shall be paid to the petitioners within three months from the date of receipt of certified copy of this order.

(Surya Kant)
Judge

19.01.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No