

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

**C.W.P. No.15788 of 2016
Date of Decision:29.08.2017**

Commissioner Municipal Corporation FaridabadPetitioner

Vs.

**Principal Secretary to Government of Haryana
Department of Urban Local Bodies and othersRespondents**

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. R.D. Bawa, Advocate for the petitioner.

Mr. Sharad K. Yadav, DAG, Haryana.

Mr. Sunil Chadha, Senior Advocate with
Mr. Akshay Chadha, Advocate and
Mr. Johan Kumar, Advocate for respondents
No.3 to 11.

Rakesh Kumar Jain, J. (Oral)

The petitioner has challenged the order dated 04.09.2015 (Annexure P.16) passed by the Commissioner, Gurgaon Division, Gurgaon and order dated 03.05.2016 passed by the Principal Secretary to Government of Haryana, Department of Urban Local Bodies by which order passed by the Municipal Corporation, Faridabad dated 20.02.2015 in respect of four plots No.3 to 6, the building plans earlier sanctioned were revoked.

The facts given to me in Court, during the course of hearing are that on 17.02.2013, Tehsildar Sales, Faridabad intimated the petitioner for incorporation of residential plot of Hardware Residential Colony measuring 4586 sq. yards (Western part) (for short, 'the land in question') allotted under the occupation case No.58/VI/occupation vide conveyance deed dated 21.01.2014 to M/s Indian Hardware Industries Ltd. (for short, 'the IHI') in

the New Industrial Township, Faridabad (for short, 'the NIT'). He also informed that the area of the residential plot be shown in the site plan of Neighbourhood No.1, NIT, Faridabad. On 18.11.2013, the Chief Settlement Commissioner sold the aforesaid land in question to the IHI. The conveyance deed was executed on 21.01.2014 in favour of IHI. However, on the same day, i.e. 21.01.2014, IHI sold the land in question to the private respondents who are nine in number, i.e. respondents No.3 to 11. The land in question was incorporated in the lay out plan of NH1 as Indian Hardware Residential Colony. Subsequently, the vendees from the IHI sold the land in question in further smaller plots. Be that as it may, on 27.08.2014, Ajay Gupta, Director of the IHI made a request for sub division of the land in question in order to get the site plan sanctioned for the purpose of raising construction. The petitioner replied to this letter vide Memo No.MCF/CTP/2014/561 dated 07.10.2014 granting permission for sub division of the residential plot of residential colony into eight plots as submitted by them in the sub division plan. However, on 19.12.2014, the petitioner served a show cause notice vide Memo No.MCF/CTP/2014/748 for revocation of the permission for sub division of the land in question. It was averred in the show cause notice that during re-examination of the building plan applications of sub-divided plots, it came to the notice of the Corporation that the sale deed of sub-divided plots has been executed prior to the approval of sub-division plan and the application for sub-division of the residential colony filed by the Company after the execution of the sale deed in favour of nine other owners. It was found to be a material misrepresentation and fraudulent statement contained in the application

submitted by Ajay Gupta for the purpose of sub division alleging that since he was not the owner of the proposed sub division, the application submitted by him for the purpose of sub division is illegal. He was asked to file reply to the show cause notice within the prescribed period. The IHI through Ajay Gupta submitted the reply to the show cause notice received in the office of the petitioner on 22.12.2014. It was averred in the reply of the IHI that “after selling the said plot measuring 4586 sq. yards on 21.01.2014, the company was not left with any right, title and interest in the said plot, hence there is no question of applying for sub-division of the said plot.” One of the private respondents, who had purchased the property in question after sub-division also filed reply which was received in the Office of the petitioner on 23.12.2014. In this reply, it was averred that “when we contacted the MCF authorities in this regard with application from the subsequent owners, we were guided to apply for sub-division of the said plot in the name of IHI only as they received the request for incorporation from Tehsildar (Sales) in the name of IHI. We were further told that in some similar other cases, the sub-division has been done in the name of original registered owner. It is under these circumstances, that the applicant, i.e. IHI in a bonafide belief, having no malafide intentions, approached the MCF for carrying out the sub-divisions. Even at this stage, the applicant deposited the requisite fee as demanded by MCF for creation of sub-division.”

The petitioner passed the order of cancellation of revocation of the permission of sub-division on 07.05.2015. The text of the order require a ready reference and is thus reproduced as under:-

“Kindly refer to the reply submitted by you in the office of

CMC vide diary No.8925 dated 23.12.2014 in reference to the show cause notice issued for revocation of permission for sub-division issued vide this office memo No.MCF/CTP/2014/466 dated 26.8.2014 and memo No.561 dated 7.10.2014.

The office has examined the reply submitted by you in the office of Commissioner, MCF dated 23.12.2014 which was received in Planning Branch on 29.12.2014 and it has been observed that as your submission made in the said letter dated 20.12.2014 signifies that you have not filed an application for the alleged sub-division and it is pointed out that since the permission for sub-division of the plot under reference has been obtained as a consequence of material mis-representation and fraudulent statement contained in application submitted by the unknown on your behalf and since now you have stated that the application was not submitted by you for the proposed sub-division hence after considering the above facts the Commissioner, Municipal Corporation, Faridabad has decided to withdraw the said permission of sub-division which was issued vide this office memo No.MCF/CTP/2014/534 dated 22.9.2014 along with all such permission contained in the said permission letter. In furtherance the final permission letter issued vide this office memo No.MCF/CTP/2014/561 dated 7.10.2014 is also withdrawn as revoked with immediate effect.

In view of above it is further directed to you that it may be assured that no unauthorized structure is raised at your site

failing which necessary action will be initiated against you in due course of law.”

At this stage, counsel for the respondents has submitted that the said order was not passed against them, therefore, it was not challenged. In the meantime, it is also not in dispute that the building plan was submitted by the private respondents, on the basis of the sub division of the plots, at the hands of IHI. However, once the sub division was cancelled/ revoked, therefore, the petitioner decided to revoke the sanctioned building plan also and served individual notices on 12.01.2015 and 04.02.2015 etc. The private respondents to whom the show cause notice was issued as to why he sanctioned building plan be not revoked filed their respective replies. After considering the reply, the petitioner passed the impugned order on 20.02.2015 and the sanctioned building plan was revoked. Aggrieved against this order, the private respondents filed an appeal in the Court of Commissioner, Gurgaon Division, Gurgaon. The said appeal was allowed vide impugned order dated 04.09.2015, inter-alia, on the ground that the provision of Section 256 of the Haryana Municipal Corporation Act, 1994 (for short, the Act') though has been followed much but the private respondents were not afforded an opportunity of hearing in respect of sub division of the plots. Now it was the turn of the petitioner to go in an appeal before the Secretary to Government of Haryana, Department of Urban Local Bodies. The said appeal was dismissed vide impugned order dated 03.05.2016 primarily on the ground that the provisions of Section 256 have not been followed.

Counsel for the petitioner has submitted that the order of sub

division passed on 07.10.2014, on the asking of the IHI, was revoked vide order dated 07.05.2015 and the said order became final as it was not challenged by the IHI. It is also submitted that though the show cause notice was also replied by the private respondents but still they did not challenge the revocation of permission of sub division of the plot. It is also submitted that no order of further sub division has been passed on the application of the private respondents rather it is submitted that one of the respondents, namely, Suman Verma further sub divided the plot owned by her and sold it to 18 other persons. It is further submitted that the private respondents had applied for sanctioning of the site plan presuming the permission for sub division of plot in their favour. The petitioner also received the requisite fee from the private respondents for the purpose of sanctioning the building plan and ultimately the building plan was also sanctioned but it is submitted that when it came to the notice of the petitioner that a material misrepresentation and fraudulent statement was contained in the application filed at the instance of Ajay Gupta dated 27.08.2014, the petitioner served a show cause notice dated 19.12.2014 and even after receiving reply to the show cause notice at the instance of the private respondents, passed the order dated 07.05.2014. It is also submitted that the sanctioned site plan was revoked, after giving a show cause notice to the private respondents who had filed their respective replies and then the impugned order was passed on 20.02.2015. It is further submitted that the sub division of the plot could not have been asked by the private respondents as it could have been asked only by the original owner of the undivided plot and in this regard, he has referred to Rule 86 of the

Faridabad Complex Administration Building Rules, 1989 notified on 08.12.1989. The said Rule is also reproduced as under:-

“The responsibility for providing pucca roads for access and other services like water supply, sewerage etc. for sub-divided plot shall rest with the owners of the original undivided plot. The plot-holder applying for sub-division shall deposit, in advance, the estimated cost of laying services like roads, water supply, sewerage, street light etc. with the Faridabad Complex Administration before permission is granted and the work will be executed by the Complex Administration. These charges shall be in addition to the sub-division fee mentioned earlier.”

Counsel for the petitioner further submitted that the petitioner has not committed any error in cancelling the sanctioned site plan as they have complied with the provisions of Section 256 of the Act in which it is provided that an opportunity of hearing has to be provided before such cancellation. Section 256 of the Act is also reproduced for ready reference:-

“If at any time after the sanction of any building or work has been accorded, the Commissioner is satisfied that such sanction was accorded in consequence of any material misrepresentation or fraudulent statement contained in the notice given or information furnished under sections 251, 252 and 253 he may by order in writing, cancel for reasons to be recorded such sanction and any building or work commenced, erected, or done shall be deemed to have been commenced, erected or done without such sanction:

Provided that before making any such order the Commissioner shall give reasonable opportunity to the person affected as to why such order should not be made.”

On the other hand, learned senior counsel appearing on behalf of the private respondent has submitted that Rule 86 is not applicable as anybody could apply for seeking sub division of the plot and has referred to Rule 83 of the Rules which is also reproduced for ready reference as under:-

“Any person wishing to sub-divide the plot as mentioned above, shall make an application together with a sub-division fee @ Rs.5, Rs.10 and Rs.15 per square metre of the total plot area for the 1st, 2nd and 3rd time of sub-division respectively as the case may be accompanied by the following documents:-

- (i) site plan;
- (ii) Sub-Division Plan showing:
 - (a) the arrangement to sub-divided plots;
 - (b) means of access to the individual sub-divided plots;
 - (c) means of obtaining water supply and sewerage disposal.
- (iii) proof of ownership of land to be sub-divided;”

He has also submitted that application (Annexure P.3) though bears the name of Ajay Gupta but actually it was filed by Pushpinder Verma, one of the private respondents and in this regard, he has referred to the photostat copy of the original application attached with the petition. It is also submitted that insofar as the opportunity of hearing before cancelling the sanctioned site plan is concerned that has been afforded but no opportunity has given to the private respondents to contradict the

observations/ findings that the permission regarding sub division of the plot has been obtained by material misrepresentation and fraudulent statement. It is submitted that the competent authorities have passed the impugned order in their favour remanding the case back to the Municipal Commissioner only with this view that he would give an opportunity of hearing to the private respondents to explain that there was no material misrepresentation or fraudulent statement either at their instance or at the instance of Ajay Gupta, who had filed the application (Annexure P.3).

I have heard learned counsel for the parties and perused the available record with their able assistance. Certain facts are not disputed. Firstly that the land in question was allotted to IHI and the Tehsildar Sales had requested the Municipal Corporation, Faridabad as it was to show the land in question separately in the lay out plan of NIT as a residential Colony having purchased by the IHI for that purpose. There is also no dispute that after purchasing the said plot, the plot has been sub-divided. The private respondents have purchased the sub-divided plots. Application dated 21.08.2014 was made by one of the private respondents as alleged, however, name of Ajay Gupta is printed on the application. Be that as it may, even if it is presumed that sub-division was at the instance of the private respondents, the said sub-division was cancelled vide order dated 07.05.2015 which was never challenged either by Ajay Gupta, who was the original owner or by the private respondents, who were the subsequent vendees, therefore, the order with regard to revocation/permission for the sub division of the plot attained finality. Thereafter, the private respondents had filed an application for the purpose of seeking sanctioning of the site

plan. Site plan was though sanctioned but when it came to the notice of the petitioner that the sub-division has already been revoked, site plan was also cancelled. Even if the building plan was sanctioned before the revocation dated 07.05.2015, still the private respondents should have challenged the revocation order dated 07.05.2015 which attained finality and once the very basis on which the private respondents were asking for sanctioning of the building plan goes, the private respondents cannot be allowed to raise construction over the land in question which was earlier sub-divided.

Insofar as the provisions of the Rules are concerned, Rule 83 prescribes that any person wishing to sub-divide the plot can file an application. In this case, one of the respondents had allegedly filed the application, though the said application purported to have been filed bears the name of Ajay Gupta and does not explain anywhere as to how it happened.

Learned counsel for the private respondents has not been able to clarify Rule 86 of the Rules in which it is specifically provided that it would be the responsibility of the original undivided plot owner to provide the services like water supply, sewerage for the sub-divided plot. If he wants that the services should be provided by the Municipal Corporation then the said plot holder had to deposit in advance the estimated cost for laying services like roads, water supply, sewerage, street light etc. with the Faridabad Complex Administration before permission is granted.

The argument of the learned counsel for the private respondents is that Rule 86 operates in different field is of no avail as it clearly mentioned therein that it is for the owner of the original undivided plot to

provide the various facilities and if he cannot provide then he has to deposit the expenses with the Municipal Corporation before the permission is granted for the purpose of sub-division. Insofar as Section 256 of the Act is concerned, I am of the considered opinion that it has been fully complied with as opportunity of hearing was given and there is no grouse on the part of the private respondents in this regard. The only thing which has been argued before the Courts below who have passed the orders in favour of the private respondents is that they have not been given an opportunity of hearing at the time when the order of revocation for permission of sub-division was passed. In this regard, the said order has been passed when the private respondents had also filed reply to the show cause notice and that order remained unchallenged. It was not challenged even before the authorities concerned and thus after attaining finality, it cannot be brought in question at the instance of the private respondents.

With these observations, I am of the considered opinion that this writ petition has merit and is allowed and thus, both the impugned orders passed by the Commissioner, Gurgaon Division, Gurgaon and the Principal Secretary to Government of Haryana, Department of Urban Local Bodies are hereby set aside.

August 29, 2017
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(RAKESH KUMAR JAIN)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No