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

CWP No. 21200 of 2016
Date of decision: 10.10.2017

M/s Orion Infrastructure Ltd. .. Petitioner

vs.

The State of Haryana and others .. Respondents

**Coram: HON'BLE MR.JUSTICE S.J.VAZIFDAR,CHIEF JUSTICE
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU**

Present:- Mr. Sanjiv Sharma, Senior Advocate with
Mr. Rahul Sharma-I, Advocate
for the petitioner.

Mr. Deepak Balyan, Additional Advocate General, Haryana

S.J. VAZIFDAR, CHIEF JUSTICE (ORAL)

The petitioner has challenged the order of the Appellate Authority-Additional Chief Secretary, Government of Haryana, Town & Country Planning (Appeals) Haryana, Chandigarh dated 20.05.2016.

2. The petitioner had applied for a license for the development of a colony under Section 3 of the Haryana Development and Regulation of Urban Areas Act, 1975 (herein after referred to as 'the Act, 1975') on 17.12.2004. The petitioner also deposited the requisite license fee of about Rs.2.51 crores (Rs. Two crore and fifty one lacs only) by way of demand draft dated 16.12.2004. Under cover of a letter dated 20.12.2004 the petitioner forwarded the scrutiny fee under Rule 8 of the Haryana Development and Regulation of Urban Areas Rules, 1976 in the sum of Rs.1.00 crore. Under cover of a letter dated 22.12.2004 the balance license fee and scrutiny fee was also forwarded. It may only be mentioned at this stage that the balance scrutiny fee is Rs.1.33 lacs (Rs. One lac and thirty three thousand only). On 16.02.2005 the petitioner issued certain clarifications pursuant to a hearing granted to it on the previous date i.e. 15.02.2005.

3. Respondent No.3-The Director General, Town & Country Planning, Haryana (DGTCPH) rejected the petitioner's application for a licence on 19.09.2005 (Annexure P-5) essentially on three grounds. It is not necessary to consider the validity of those grounds in this petition.

4. The petitioner vide letter dated 19.10.2005 filed a detailed reply to the same and reiterated its request for a “Letter of Intent'. There was no response to this letter. Ultimately, the petitioner by its letter dated 24.11.2008 requested the respondents to refund the amounts paid towards the license fee and scrutiny fee. By a further letter dated 01.12.2009 the petitioner reiterated its demand for refund and also claimed interest @ 24% per annum

5. The Principal Secretary to Government, Haryana, Town and Country Planning Department, Chandigarh passed an order of refund of the entire license fee but only an amount of Rs.1.33 lacs towards scrutiny fee. As we mentioned earlier Rs.1.33 lacs was only the balance scrutiny fee, which was forwarded under cover of the letter dated 22.12.2004. The major part thereof namely Rs.1.00 crore having been forwarded under cover of letter dated 20.12.2004.

6. The respondents vide letter dated 12.11.2013 (Annexure P-11) stated that the scrutiny fee cannot be refunded. The petitioner duly served a legal notice under Section 80 of the Code of Civil Procedure on 30.01.2014 reiterating its demand for refund together with interest. Respondent No.3-DGTCPH vide order dated 20.05.2016 rejected the claim of the petitioner and finally upheld the order dated 20.052014.

7. Two questions arise in this matter. The first is whether the petitioner is entitled to refund of the scrutiny fee. The impugned order

furnishes no reason whatsoever for the same. There is much to be said in this regard even on the respondents' side. Mr. Balyan, the learned counsel appearing on behalf of the respondents referred to Annexure P-17 which indicates the reasons for imposing scrutiny fee. The second question is whether the petitioner is entitled to interest on the license fee that was refunded and on the scrutiny fee if found to be refundable. The Appellate Authority has not decided the issues at all. In fact, it accepted the department's statement that it would take the advice of the Finance Department regarding the issue of refund of interest on the delay of payment of license fee and directed the department to take into consideration the judicial reference made by the appellant in that regard. Detailed written submissions were submitted on behalf of the petitioner, none of which have been considered. There was no reason for the Appellate Authority to leave it to the department to take the advice of the Finance Department in this regard. The Appellate Authority must decide the matter on its own.

8. In these circumstances, the impugned order dated 20.05.2016 is set aside. The Appellate Authority shall pass a afresh order giving reasons for each of its findings and after affording the parties an opportunity of being heard. The Appellate Authority shall accord to the matter priority on the basis that it was filed on 03.12.2015.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

10.10.2017
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Whether speaking/reasoned Yes/No
Whether Reportable: Yes/No