

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

**CWP No.5914 of 2016
Date of Decision: 07.02.2017**

Puneet Kumar Sood and another

..... Petitioners

Versus

Haryana Urban Development Authority and another

..... Respondents

**CORAM: HONBLE MR. JUSTICE SURYA KANT
HONBLE MR. JUSTICE SUDIP AHLUWALIA**

Present: Mr. Gaurav Mohunta, Advocate,
for the petitioners.

Mr. Deepak Balyan, Addl. AG, Haryana.

SURYA KANT J. (ORAL)

1. The petitioners have laid challenge to the order dated 09.12.2015 whereby the Estate Officer, HUDA has asked them to deposit outstanding dues along with interest @ 10% as well as extension fee up to 31.08.2015 in respect of SCO No.188, Sector 5, Panchkula.

2. The facts are broadly not in dispute. The subject site was allotted to the predecessor of the petitioners in an open auction. The allottees, however, failed to deposit some of the due installments due to which, firstly, penalty was imposed and thereafter action for resumption of the site was taken under Section 17 of Haryana Urban Development Authority Act, 1977. The site was eventually resumed on 04.10.1995. The aggrieved allottees filed a civil suit for declaration before the Civil Court, Panchkula on 21.03.2006. The suit was substantially decreed in favour of the allottees vide judgment and decree dated 21.01.2008 in the following

terms:-

“25. Resultantly, in view of my findings on the foregoing issues, the suit succeeds and is, hereby, decreed with costs. It is held that action taken by the defendant no.4 under Section 17, the order passed by defendant no.3 and the other orders of review passed by the Financial Commissioner and Secretary to the Government of Haryana, Town and Country Planning Department, Chandigarh and the notices issued by defendant no.4 under section 18 of the HUDA Act are declared illegal null and void and against the Rules and Regulations of the HUDA Act., defendants are entitled to charge only simple interest @ 10% p.a. on the delayed payment from the date of offer of possession i.e. January 1993 as held by the Administrator, HUDA vide order dated 30.09.1997 and by Commissioner and Secretary to Government Haryana, Town & Country Planning Department vide order dated 5.11.1998 and the defendants are restrained from evicting the plaintiffs from the SCO site no.188, Sector-5, Panchkula. The extension fee is chargeable from plaintiffs only w.e.f. January 1995 i.e. after the expiry of two years from the date of possession. The plaintiffs are directed to deposit the amount in question with 10% simple interest to the department as early as possible. Decree-sheet be prepared and file be consigned to the record room.”

(emphasis applied)

3. The HUDA unsuccessfully challenged the Civil Court judgment and decree up to the Hon'ble Supreme Court. Its SLP was dismissed on 07.01.2014. Thereafter, the site was restored and the allottees/their successor were asked to deposit ₹6,04,45,624/- towards 'extension fee'. They represented against such huge demand. Their representation has been accepted in part vide the impugned order dated 09.12.2015 and the extension fee has been reduced to ₹23,17,500/-. Service

tax has also been waived off.

4. Still aggrieved, the petitioners have approached this Court. Their foremost contention is that no 'extension fee' is leviable during the period when the parties were litigating and the litigation period as per HUDA's own policy is to be treated as zero period. In this regard, reliance is placed on two decisions of this Court in (i) ***CWP No.24582 of 2012*** titled as **“Mr. Deepak Uppal and another Vs. Haryana Urban Development Authority”** and (ii) ***LPA No.133 of 2010*** titled as **“HUDA and another Vs. Ashok Kumar Chadha and another”** where such a stand was taken by HUDA. The other contention is that the site having been resumed, it was not feasible for the petitioners or their predecessor to occupy the same. Hence, the 'extension fee' which is levied for non-construction could not be otherwise imposed.

5. We have heard learned counsel for the parties and having considered the above contentions, we do not find any merit therein. Firstly, it may be seen from the Civil Court decree (Annexure P-3) that the HUDA was permitted to impose 'extension fee' w.e.f. January, 1995 i.e. after expiry of two years from the date of taking possession. The Civil Court decree to this extent was never challenged by the allottees or the petitioners and it has attained finality. The Civil Court decree is surely binding on the petitioners. Secondly, the plea that the 'extension fee' could be levied only from January 1995 till October, 1995 was very much available to the plaintiffs at the time of instituting the civil suit on 21.03.2006. If such a plea was taken or not accepted by the Civil Court, then it shall be deemed to have been rejected. Thirdly, the 'extension fee' has been levied from January, 1995 till 30.11.2015, namely, for the period during which the site was not

constructed.

6. Fourthly, the plea that the litigation period should be treated as 'zero period' too was very much available to the plaintiffs while filing the civil suit. No such plea appears to have been taken. As far as the cited decisions of this Court are concerned, it is difficult to draw even an inference from therein that there is any policy decision taken by HUDA to treat the litigation period as 'zero period'.

7. Learned counsel for HUDA states that there is actually no such policy. In this view of the matter, no interference with the impugned action is called for.

8. If the petitioners have deposited any excess amount, they are entitled for the refund of the same. The HUDA Authority shall do the needful within one month from the date of receipt of certified copy of the order.

(SURYA KANT)
JUDGE

07.02.2017

Bhumika

(SUDIP AHLUWALIA)
JUDGE

1. Whether speaking / reasoned : Yes

2. Whether Reportable : No