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

CWP No. 9984 OF 2015(O&M)
Date of decision: 26.07.2017

M/s GKN Driveline (India) Ltd. .. Petitioner

vs.

Chief Administrator, Haryana Urban Development Authority Panchkula, Haryana and ors.

.. Respondents

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

Present:- Ms. Radhika Suri, Senior Advocate with
Mr. Manpreet Singh Kanda, Advocate
for the petitioner.

Mr. Deepak Balyan, Additional Advocate General, Haryana
Mr. P. S. Chauhan, Advocate
for the respondents.

S.J. VAZIFDAR, CHIEF JUSTICE (ORAL)

The petitioner has sought a writ of certiorari to quash the order dated 02.12.2014 passed by respondent No.2-Administrator, Haryana Urban Development Authority, Gurgaon, Haryana dismissing its appeal filed under Section 17(5) of the Haryana Urban Development Authority Act, 1977 (for short 'HUDA Act, 1977'). The appeal was dismissed on the ground that it was not maintainable under Section 17(5) of HUDA Act, 1977.

2. The petitioner was allotted a plot on the terms and conditions contained in an allotment letter dated 11.02.1986. Clause 18 of the letter of allotment required the petitioner to complete the construction within two years of the date of the offer of the possession of the plot after getting the

plan of the proposed building approved from the competent authority. The time limit was extendable by the Estate Officer, failing which the plot was liable to be resumed and the amounts paid were liable to be forfeited. It is not disputed that the possession of the plot was handed over to the petitioner and a convenance deed dated 18.09.1986 in respect thereof was executed between the parties.

3. The respondents alleged that the petitioner had failed to construct the factory within the stipulated period and therefore, issued a show cause notice under Section 17(4) of HUDA Act, 1977. A order of resumption under Section 17(4) of HUDA Act, 1977 was passed by the Estate Officer, Gurgaon on 04.01.1992 on the ground that the petitioner had not completed the construction of the building within the stipulated period.

The petitioner's appeal was disposed of vide the Administrator's order dated 07.02.1995 setting aside the order of resumption subject to the condition that the petitioner shall commence construction within three months of the sanction of the building plans and also deposit the extension fee for the period 1987 to 1990.

4. The petitioner, thereafter deposited the extension fee and submitted the building plan, which was sanctioned on 09.06.1995. The petitioner also submitted an application for the occupation certificate. The respondents, however, required it to deposit a compounding fee and an extension fee of about Rs.1 crore.

The petitioner did not deposit the extension fee and challenged the same before the District Consumer Disputes Redressal Forum, Gurgaon, which was withdrawn.

The petitioner, thereafter, filed CWP No. 15000 of 2000 titled as M/s Invel Drive Shafts (India) Pvt. (the petitioner's previous name), which was disposed of vide order dated 17.10.2003 directing the respondents to decide the petitioner's legal notice/representation. The representation was rejected vide order dated 12.02.2004. The petitioner challenged the same by filing CWP No.5004 of 2004. The order was set aside and the matter was remitted to the Estate Officer to pass a fresh order.

5. It is in these circumstances that the Estate Officer passed the order dated 14.08.2008 rejecting the petitioner's challenge to the levy of extension fee. He held that on account of the failure of the petitioner to complete the construction within the stipulated time, it is liable to pay the extension fee as per HUDA Policy/ Rules. He granted the exemption from payment of extension fee for a certain period but rejected the claim as raised by the petitioner.

6. It is against this order that the petitioner preferred an appeal to respondent No.2 under Section 17(5) of the HUDA Act, 1977 which was held by the impugned order to be not maintainable.

7. Regulations 9 of the H.U.D.A.(Erection of Buildings) Regulations, 1979 reads as under:-

> "**9. Validity of sanctioned plan.** If a building is not completed within two years of the date of permission, the permission shall be deemed to have lapsed with respect to that portion of the building which has not been completed. In regard to the incomplete portion a fresh application alongwith the sanctioned set of plans together with prescribed fee shall be submitted:

Provided that multi-storeyed buildings(more than four storeyed or fifteen meters in height, as the case may be), shall be completed within five years of the date of permission or a may be specified by the Chief Administrator whichever is less."

These regulations are made in exercise of the powers under Section 54 (d) of the HUDA Act, 1977. Further pursuant to Regulations 9 of H.U.D.A.(Erection of Buildings) Regulations, 1979, the extension fee has been prescribed from time to time.

8. Section 16(1)(ii) and Section 17(5) of HUDA Act, 1977 read as under:-

"16. ***Imposition of penalty and mode of recovery of arrear.-(1)*** *Where any person makes default in the payment of-*

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(ii) any fee or contribution payable under this Act in respect of any land or building or both, the Estate Officer may direct that in addition to the amount of arrears, a sum not exceeding that amount shall be recovered from the person by way of penalty:"

"17(5): Any person aggrieved by an order of the Estate Officer under Section 16 or under this section may, within a period of thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed.

Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time."

9. It is not necessary in this writ petition to decide whether the extension fee was correctly levied or not. That is for the Appellate

Authority to decide in the first instance. The question is whether the appeal against the order of the Estate Officer levying the extension fee is maintainable under Section 17(5) of HUDA Act, 1977 or not.

10. An extension fee as the expression itself suggests, is a fee. The respondents alleged that the petitioner failed to pay the same. The Regulations are made under the Act. The extension fee is prescribed pursuant to the Regulations. The failure to pay the extension fee is, therefore, a default in the payment of a fee under the Act. In other words, according to the respondents, the petitioner made a default in payment of the extension fee, which falls within the ambit of the words 'any fee..... payable under this Act in respect of any land or building or both.....' . The order passed by the Estate Officer dated 14.08.2008 holding the petitioner liable to pay the extension fee was an order under Section 16(1)(ii) of the HUDA Act,1977.

Section 17(5) of HUDA Act, 1977 provides that any person aggrieved by an order of the Estate Officer passed under Section 16 may also prefer an appeal to the Chief Administrator. As we noted earlier, the order of the Estate Officer is under Section 16(1)(ii) of HUDA Act, 1977 which is clearly appealable under Section 17(5) of HUDA Act, 1977.

11. In these circumstances, the impugned order of the Appellate Authority is quashed and set aside. The appeal shall be decided on merits by respondent No.2.

(S.J. VAZIFDAR)
CHIEF JUSTICE

26.07.2017 **(HARINDER SINGH SIDHU)**
dinesh **JUDGE**

Whether speaking/reasoned Yes
Whether Reportable: Yes