

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

**CR No.3111 of 2018(O&M)
Date of Decision: 09.08.2018**

Municipal Corporation Faridabad

..... Petitioner

Versus

M/s NHPC Ltd.

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present:Mr. Vishal Garg, Advocate
for the petitioner.

Mr. Aman Arora, Advocate
for the caveator/respondent.

RAJ MOHAN SINGH, J.

[1]. This revision petition has been preferred by the petitioner/Municipal Corporation, Faridabad against the order dated 01.02.2018 passed by Additional District Judge, Faridabad whereby order dated 25.10.2016 passed by Civil Judge (Junior Division), Faridabad was upheld.

[2]. Respondent M/s NHPC Ltd. filed a suit for permanent injunction against the Municipal Corporation, Faridabad on the ground that the plaintiff M/s NHPC Ltd had purchased the land

measuring 35 acres falling in Sector-41, Faridabad situated within the revenue estate of village Sarai Khwaja from defendant Municipal Corporation, Faridabad vide allotment letter dated 20.01.2000 for a consideration of Rs.75,00,000/- per acre total amounting to Rs.26.25 crores.

[3]. After full payment of the consideration, unconditional conveyance deed dated 14.06.2001 was executed in favour of the plaintiff-Corporation. The land was purchased by the plaintiff-Corporation for setting up a residential colony for its employees and their families. Plaintiff applied to the defendant Municipal Corporation, Faridabad for approval of residential scheme/township vide letter dated 22.06.2001. At that time, Municipal Corporation, Faridabad asked to submit an undertaking to offer land for public purpose without payment of compensation making provision of community building/services in the proposed township as per Clause C of Sub Clause-I of Section 267 of Haryana Municipal Corporation Act, 1994. The aforesaid condition was imposed only in the process of approval of residential scheme and the same was never imposed at the time of execution of unconditional conveyance deed. Town planning scheme No.7 was approved and the same was finalized by the defendant Municipal Corporation, Faridabad and thereafter, the plaintiff-Corporation constructed a residential

colony on the aforesaid 35 acres of land purchased by the plaintiff from defendant Municipal Corporation, Faridabad as per approved scheme. Defendant-Corporation directed the plaintiff-Corporation to pay conversion charges, licence fee, external development charges which were duly paid by the plaintiff-Corporation.

[4]. The proposed action of the defendant-Corporation was sought to be enjoined by way of suit for permanent injunction as the defendant-Corporation was illegally threatening the plaintiff to demolish the eastern side boundary wall of NHPC colony to make provision of connectivity to others on eastern side. Already alternative approach is available to the eastern side to other society to reach to Badkhal Surajkund road and there is no public purpose involved in demolishing the eastern boundary wall of the plaintiff-Corporation. When the threat became eminent, the plaintiff filed the suit in question, challenging the letter dated 01.06.2015. Declaration was sought for declaring the said letter to be null and void and permanent injunction was also sought, restraining the defendant-Corporation from causing any demolition of any boundary wall of the plaintiff.

[5]. Trial Court accepted the application for *ad interim* injunction under Order 39 Rules 1 and 2 CPC. Defendant was restrained from constructing the road by removing the boundary

wall of the plaintiff society during pendency of the suit. Trial Court observed that the plaintiff has developed the residential colony after taking sanction in the form of town planning scheme from the defendant. The lay out plan of the plaintiff society was prepared accordingly. The intended effort of the defendant for opening of the road from the boundary wall of the plaintiff society in the eastern side after demolishing the boundary wall was negated as it would give unnecessary benefit to some private colonizers in the name of public interest. The opening of the passage would cause unnecessary hardship to the plaintiff society. The effort on behalf of the defendant was found to be *prima facie* dishonest as alternative passage to the private colonizers was available as per lay out plan of those societies.

[6]. In the appeal filed against the order dated 25.10.2016, the Lower Appellate Court has also found that in the conveyance deed, there was no such recital of transfer of unbuilt area for public purpose. Vide letter dated 20.01.2000, defendant Municipal Corporation, Faridabad offered to allot 35 acres of land to the plaintiff for the purpose of development of residential colony. There was no terms and conditions with reference to transfer of unbuilt area for public purpose as envisaged under Section 267 of the Haryana Municipal Corporation Act, 1994. It was for the first time that the defendant

cited Section 267 of the Haryana Municipal Corporation Act, 1994 in the letter dated 04.07.2001. The Court observed that even if the plaintiff has agreed at that stage, still the public purpose would remain to be debated. Lower Appellate Court did not find favour with the Municipal Corporation, Faridabad in vacating the interim order granted by the trial Court. Lower Appellate Court also observed that the defendant-Corporation has sold the land to private colonizers without any direct connectivity from the main road. The provision was made to peripheral road. In the event of connecting the land of the society of private colonizers/builders, the prices would escalate many fold and in such eventuality, the private colonizers would be the beneficiaries. The concept of public interest was negated by the Lower Appellate Court as well. The interim stay granted by the trial Court was upheld. It would be debatable as to whether allotment of units/flats to the allottees on higher rates on the basis of present assurance to provide direct connectivity would still be in a public interest.

[7]. During course of arguments before this Court on 15.05.2018, learned counsel for the petitioner sought time to file specific affidavit of the Commissioner, Municipal Corporation, Faridabad to show that the intended act of the petitioner is aimed towards public interest. This Court also asked details of

beneficiaries of such intended effort. Firstly, instead of filing of affidavit of Commissioner, Municipal Corporation, Faridabad, an affidavit of Senior Architect/Senior Town Planner, Municipal Corporation, Faridabad was filed. The said affidavit was inadequate in terms of required information sought by the Court on 15.05.2018. Thereafter, affidavit of Commissioner, Municipal Corporation, Faridabad was filed which was taken on record on 30.07.2018 and the case was adjourned for today for hearing.

[8]. In the affidavit so filed by the Commissioner, Municipal Corporation, Faridabad, details of beneficiaries of the proposed action have not come forth except to mention that alignment of 18 meter road connecting existing 12 meter wide road in T.P Scheme No.7 will be beneficiary of the public at large for better connectivity to 6 numbers upcoming Group Housing in Sector-41, Faridabad with Badkhal-Suraj Kund road through T.P. Scheme No.7 because length of road will be reduced by around 2.75 kms.

[9]. Having heard learned counsel for the parties, I am of the view that the impugned orders passed by the Courts below cannot be faulted with any error of jurisdiction or perversity. The allotment letter dated 20.01.2000 was unambiguous in terms of any condition in respect of transfer of unbuilt area for public purpose. No recital was made in respect of Section 267 of the

Haryana Municipal Corporation Act,1994. Plaintiff-Corporation has already paid consideration of Rs.26.25 crores to the defendant-Corporation on 25.01.2000. After delivery of possession, a society has come up on the land in question. Conveyance deed was executed on 14.06.2001 between the parties. Again there was no reference of Section 267 of the Haryana Municipal Corporation Act,1994 in the conveyance deed. The said deed does not make any mention of transfer of unbuilt area for public purpose. It was only at the time of finalization and approval of town planning scheme, a reference of Section 267(1)(c) of the Haryana Municipal Corporation Act, 1994 was made for the first time. From 2001 onwards till 2013, there was no such requirement/need of proposed action. It was during this period, the land falling at the back of the plaintiff society was allotted to the private colonizers who had the allotment, despite the lay out plan qua the connectivity through peripheral area. The concept of public interest in the given situation cannot be *prima facie* accepted in view of attending facts and circumstances of the case as the connectivity through the land of the plaintiff society would in any case give undue enrichment to the private colonizers who had all the knowledge and information with regard to connectivity to their site through peripheral sectors. Learned counsel for the respondent has also named the beneficiaries of six plots allotted by the respondent-

Corporation. At this stage, only three ingredients of Order 39 Rules 1 and 2 CPC are to be appreciated without meaning anything to the merits of the case.

[10]. For the reasons recorded hereinabove, I do not find any merit in the present revision petition. *Prima facie* conclusion drawn by the Courts below in the application under Order 39 Rules 1 and 2 CPC satisfies the ingredients of *prima facie* case, balance of convenience and causing of irreparable loss in the event of not granting interim injunction in favour of the plaintiff. There is no error of jurisdiction in the impugned orders. No law point worth consideration is involved in the present revision petition and the same is accordingly dismissed.

[11]. Nothing observed hereinabove shall be construed to be an expression of opinion on ultimate merits of the case.

August 09, 2018

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No