

CWP No.3506-2013(O&M)

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Sr.No.204

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP No.3506-2013(O&M)

Date of Decision: 08.05.2018

Ranbir Kaur

.....Petitioner

versus

Jalandhar Improvement Trust, Jalandhar and anotherRespondents

CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present Mr.A.K.Chopra, Sr. Advocate
with Mr. G.S.Bhandal, Advocate for the petitioner.
Mr. Sandeep Vermani, Addl. AG, Punjab.
Mr. G.S.Attariwala, Advocate for respondent no.1.

MAHESH GROVER, J(ORAL)

The petitioner has approached this Court questioning the order dated 13.07.2012 (Annexure P-26), passed by the Chairman, Jalandhar Improvement Trust, Jalandhar raising a demand upon him on account of non construction fee and withholding the execution of conveyance deed qua the property in dispute till the time the demand is satisfied.

The petitioner purchased the plot from the original allottee under the Jalandhar Improvement Trust in the 110 acre scheme which transfer was duly allowed by the Improvement Trust on 11.09.1987, on deposit of transfer fee by the petitioner.

The grievance of the petitioner is that he is not being issued the conveyance deed as was being allowed by the Government of Punjab under a notification dated 11.11.2009, pursuant to which the petitioner had submitted a request on 29.09.2009. The petitioner claims that despite all the requisites having been met, the conveyance deed was not being

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executed whereas demands raised by the trust were duly satisfied. Despite frequent correspondence *inter se* between the petitioner and the trust, the needful was not done which eventually led to filing of writ petition No. 1720 of 2010, which was disposed of with a direction to the Improvement Trust to decide the representation submitted by the petitioner within six weeks' from the date of receipt of copy of the order. The directions of this Court were not complied with and a contempt petition came to be filed where after the impugned order passed.

The Learned Senior counsel for the petitioner contends that in terms of the notification of 2009, respondents would have no reason to deny the execution of conveyance deed particularly when the entire amount due to the trust stands satisfied including the demand of ₹86,000/- raised when the petitioner was insisting on execution of the conveyance deed.

The respondents have filed the reply and justified their stand on the ground that the petitioner has raised construction on the plot in question without getting the building plan sanctioned.

The petitioner, however, has asserted in his petition that building plans were indeed submitted in the year 1986 but were returned only to be submitted with a revised lay out but no response was received from the trust thereafter. The trust in its reply denies the submission of revised plans altogether.

We are conscious of the fact that in view of the conflict of stand in this regard, it would be difficult for this Court to comment on it in the exercise of its jurisdiction under Article 226 of the Constitution of India for the simple reason when it is stated that the record of the respondents does not contain any such revised plan. Be that as it may, the fact remains that

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there is some material to show that the construction took place in the year 1987 whether with or without the sanctioned plan. During the course of hearing of the matter, this Court on 02.11.2015 passed the following order:-

“ *Heard learned counsel for the parties.*

List for further consideration on 28.01.2016.

Meanwhile, we direct the Trust's Engineer to send a team of Engineer, Architect and/or Town Planner of the Trust to inspect the building constructed by the petitioner and determine:- (i) whether the construction raised is in conformity with the Building Bye-laws or unauthorized? This issue shall be determined on the premise that if building plans were to be got sanctioned, whether such construction could be raised as per the norms applicable at the relevant time? (ii) whether the illegal/unauthorized construction, if any, is compoundable or non-compoundable and if it is compoundable, how much charges the petitioner is liable to pay? (iii) what can be the penalty leviable in case where the construction has been raised within the stipulated period but building plans were not got sanctioned?

Let a copy of this order be given dasti to Mr.G.S.Attariwala, Advocate, for information and necessary compliance. “

This, according to us, set the tone for settlement of the controversy on largely conciliatory approach to balance the equities. Pursuant thereto, an affidavit has been filed by the trust highlighting the requisites in the building and also indicating the violations that can be compounded as also the one which necessarily would need to be demolished. The petitioner, in turn, contends that this affidavit does not indicate whether violations have been established as per the prevailing guide lines / building bye laws on 1987 and if they are as per the existing bye laws then it ought not bind him.

Before we advert to this issue, we would also note in the passing that on one occasion this Court had directed the trust to produce any

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provision on the basis of which execution of conveyance deed could be kept in abeyance.

No such provision has been brought to our notice, although an affidavit was filed pursuant to our directions. We would thus derive an adverse inference against the trust in this regard.

This leads us to examine the impugned order which raises a demand of more than ₹21,00,000/- on the petitioner on account of non construction fee which, to our minds, seems to be unsustainable considering that the plots were constructed in the year 1987 or even if he does not assign a date to it undeniably, it stands constructed and the trust has not brought forward any material to show that the construction was not raised within the stipulated time. As to when the clock would start running for ascertaining the non construction fee is not manifesting itself either from the impugned order or from the stand of the respondent trust, assuming the construction was not carried out within the stipulated period either by the original owner or the present petitioner.

Learned counsel for the trust would then state that for the first time the building plan was submitted in 1986 by the erstwhile owner when the plot was allotted in 1981 and the construction had to be raised within two years.

We could have appreciated this argument only when there would be some material to indicate that the trust ever raised this issue either with the original owner or with the present petitioner. It is only for the first time that they have come up with such a plea in the impugned orders. We, therefore, cannot accept the plea of the trust in this regard and would outrightly reject it.

We, thus, find the impugned order to be unsustainable and if that be so and there being no outstanding amount qua the plot or property in question, coupled with the fact that no provision has been shown which could give the power to the trust to withhold the execution of a conveyance deed, order that the conveyance deed be executed when undeniably, the instructions of the State of Punjab do entitle a person to a conveyance deed provided ofcourse all the requisites of payment etc. are in order.

Therefore, while setting aside the impugned order, we also direct the trust to execute the conveyance deed subject, however, to satisfaction of payments due, if any, other than the one as that has been demanded by virtue of the impugned order on account of non construction

Since the issue has been lingering for some time, we direct that the deed be executed upon satisfaction of all contingencies within a period of six weeks' from the date of receipt of certified copy thereof.

We cannot, however, absolve the petitioner of her wrong doing and are constrained to comment that since 1987 not a single attempt has been made by the petitioner to act responsibly and get the building plans approved. It was her bounden duty to do so but evidently except to assert that revised building plan was submitted in 1986, to which, there is a firm denial, there is nothing on record to show that the petitioner ever attempted to have the building plans approved.

The respondent trust in its affidavit has pointed the following deficiencies and illegalities in the construction carried out by the petitioner which we intend to extract here below:-

“5 *That in regards to the query:*

(i) ***Whether the construction raised is in***

conformity with the Building Bye Laws or unauthorized?

It is humbly submitted that the area of the plot in question is 500 Sq. yards however the petitioner has raised construction on an area measuring 505 Sq. yards. Hence, the petitioner has encroached upon an area more than the area of the plot allotted. As per composition policy of State Government, only 55% area can be compounded of the plots measuring more than 500 Sq. yards. It is pertinent to mention here that 1 Sq. yard is equal to 9 sq. feet meaning thereby that the petitioner has been allotted a plot measuring 500 Sq. yards or 4500 Sq. feet. As per site inspection held on 26.11.2015 in compliance to the order passed by this Hon'ble Court it was found that the petitioner has raised construction on an area measuring 3132.39 sq. feet on ground floor meanwhile only an area measuring 2499.75 sq. feet on ground floor i.e 55% can be compounded. Meaning thereby that the petitioner has covered an area measuring 632.24 sq. feet in excess of the fixed limit of 55% therefore, the same cannot be compounded as per policy of the State Government. Moreover, the petitioner has raised construction on the plot without getting the plan sanctioned by the Improvement Trust which is illegal. It is also pertinent to mention that even if the building plans were got sanctioned at the relevant time the petitioner could not have encroached upon an area more than the area allotted to her and could not have raised construction beyond 55% of the plot area. A copy of the policy dated 14.12.2009 is appended as Annexure A-3 with the affidavit for the kind perusal of this Hon'ble Court.

6. *That in regards to the query:*

(ii) Whether the illegal/unauthorized construction, if any, is compoundable or non compoundable and if it is compoundable, how much charges the petitioner is liable to pay?

It is humbly submitted that as per composition policy of State Government, only 55% area can be compounded of the plots measuring more than 500 Sq.yards. It is pertinent to mention here that 1 Sq. Yard is equal to 9 Sq. feet meaning thereby that the petitioner has been allotted a plot measuring 500 Sq. yards or 4500 Sq. feet. As per site inspection held on 26.11.2015 in compliance to the order passed by this Hon'ble Court it was found that the petitioner has raised construction on an area measuring 3132.39 sq. feet on ground floor meanwhile only an area measuring 2499.75 sq. feet on ground floor i.e 55% can be compounded. Meaning thereby that the petitioner has covered an area measuring 632.24 Sq. feet in excess of the fixed limit of 55% therefore, the same cannot be compounded as per policy of the State Government.

Even as per the Layout plan of the scheme, the House Line of the plot in question has to be 15' however as per spot inspection, it was found that the petitioner has left 20' feet open space instead of 15 feet and cantilever measuring 6'-0' has been extended from the open area of 20' feet. Thus the same has come under House Line measuring 1'-0" in excess to the House Line of 15 feet leaving the house line from 15 feet to 14 feet. As per the composition policy of the State Government, the construction raised in excess of the House Line cannot be compounded.

7. That in regards to query

(iii) i.e what can be the penalty leviable in case

where the construction has been raised within the stipulated period but building plans were not got sanctioned?

It is submitted that the answering respondent sent a letter dated 31.12.2015 asking the petitioner to submit the completion site plan however the petitioner has not submitted the same till date for the reasons best known to her. A copy of the letter dated 31.12.2015 sent to the petitioner is appended as Annexure A-4 for the kind perusal of this Hon'ble Court. It is only the Municipal Corporation, Jalandhar who can calculate as to what can be penalty leviable in case where the construction has been raised within the stipulated period but building plans were not got sanctioned as the competent authority regarding the same is now the Municipal Corporation, Jalandhar and not the Improvement Trust, Jalandhar since the scheme has been transferred to Municipal Corporation, Jalandhar."

One of the glaring illegality committed by the petitioner is of raising construction on area measuring 505 Sq. yards as against the entitlement of 500 Sq. yards.

We also direct the trust to carry out another exercise only to ascertain the unauthorized constructions existing at the site in accordance with the 1987 regulations / bye laws and the permissible area of construction allotted according to them.

Once this exercise is concluded, the petitioner would on her own bring the building in conformity with the bye laws. We also make it clear that after notice is given to the petitioner in this regard to remove the violations and on account of her failure to do so the respondents shall carry

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out the demolition forthwith within a period of four weeks thereafter.

Disposed of in the aforesaid manner.

(MAHESH GROVER)
JUDGE

08.05.2018
mamta

(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No