IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 3718 of 2016 (O & M)
Reserved on: 08.05.2018
Date of decision: 17.05.2018

M/s. Gemz Real Estate ....Petitioner(s)

Versus

State of Punjab and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Anand Chhibbar, Sr. Advocate,
with Mr. Nitin Thatai, Advocate,
for the petitioner.

Mr. Kanisth Ganeriwala, AAG, Punjab.

Mr. Harsh Aggarwal, Advocate,
for respondents no. 2 and 3.

G.S.SANDHAWALIA, J.

The petitioner challenges the communication dated 30.03.2015 (Annexure P-20) whereby, recovery of due amount in respect of EDC license fee for Shiv Enclave Colony pertaining to Licence No. 2011/05 was issued by respondent no. 3 whereby, the overdue amount till 31.12.2014 and from 01.01.2015 till 31.12.2015 could be deposited within 30 days. Challenge has also been raised to the order passed on 13.05.2015 (Annexure P-22) by respondent no. 3 whereby, the benefit of the policy dated 28.10.2014 (Annexure P-19) and the compounding fee according to the new notification was declined on the ground that the colony of the petitioner was no longer an unauthorized colony in view of the license granted on 16.12.2011. The said order has been further upheld in appeal under Section 33 of the Punjab Apartment and Property Regulation Act, 1995 (in short 'the

1995 Act') by respondent no. 4-the Appellate Authority and the benefit of the regularization policy dated 21.08.2013 was denied since the petitioner's case had been compounded and license had already been granted vide earlier policy dated 09.12.2010 (Annexure P-4).

Senior counsel for the petitioner , Mr. Anand Chhibbar, has vehemently submitted that once the new policy dated 28.10.2014 as such had come into force, it superseded the earlier notifications dated 21.08.2013 and 05.11.2013 and, therefore, the benefits under the subsequent policy should be granted as such for calculating the balance amount of the compounding charges and accordingly, a writ in the nature of mandamus is sought. It was accordingly argued that the Division Bench had stayed the implementation of the policy vide order dated 31.07.2012 regarding the regularization of unauthorized colonies and, therefore, once the new policy had come in, the benefit of the same should be given.

State, on the other hand, has argued that the demand as such upon the petitioner was in pursuance of the CLU granted on 25.03.2011 (Annexure P-6) and a letter of intent had been thereafter issued on 24.06.2011 (Annexure P-9) and a license had been issued on 16.12.2011 (Annexure P-11). The petitioner could not thereafter seek the benefits in view of the fact that the subsequent policy as such had come into force and he was bound by the same terms and the amounts which had already been quantified.

It is the case of the petitioner that for compounding the unauthorized colony namely Shiv Enclave at village Chuharpur, Hadbast No. 104, Tehsil and District Ludhiana having total area of 10.2625 acres, he submitted an application dated 15.02.2011 (Annexure P-5) in pursuance of the notification dated 09.12.2010 (Annexure P-4). He had deposited Rs.46,48,915/- towards change of land use (CLU) charges, Rs.1,39,470/- towards social infrastructure fund. The CLU was granted on 25.03.2011 (Annexure P-6). On certain conditions enumerated in Annexure P-6, a license had to be taken under the 1995 Act prescribed vide notification dated 09.12.2010. The lay out plan was also granted on 20.05.2011 (Annexure P-7) and the letter of intent was accordingly issued on 24.06.2011 (Annexure P-9). The EDC to the extent of 25% was to be deposited within 30 days from the issuance of the letter and the balance 75% was to be recovered into six early equal installments with 10% rate of interest. The compounding fees was also to be paid on similar conditions. The terms and conditions are as under:-

> *"Sub: Issue of Letter of Intent (LOI) for compounding an unauthorized residential colony namely "Shiv Enclave" Village Chuharpur, (HB No. 104), Tehsil & Distt. Ludhiana on a land measuring 10.2625 Acre under Pb. Govt. notification no. GSR41/PA14/1995/Ss.38 and 45/Amd.(2)/2010 dated 09.12.2010 and PAPRA Act, 1995.*
>
> *Ref: Your application dated 15.02.2011 & this office letter no. 6585 dated 20.06.2011, on the subject sited above.*
>
> *Reference your application for compounding an offence for developing residential colony "Shiv Enclave" Village Chuharpur, (HB No. 104), Tehsil & Distt. Ludhiana on the subject sited above. Your application for Change of Land use of 10.2625 acre land for residential purpose in village Chuharpur, teh. & Distt. Ludhiana has been considered at Government Level/Senior Town Planner, Ludhiana subject to the*

term & conditions vide letter no: 1243/STP (L)/TW-12A dated 25.03.2011. It is proposed to grant a license to you for the said colony as per the layout plan submitted by you bearing drawing no.704R dated 03.03.11 technically checked and approved by Chief Town Planner, Punjab vide his letter No.4066/CTP (PB)/SL-184 dated 08.06.2011 and further received from the office of the Senior Town Planner, Ludhiana vide their letter No.2138-STP(L) TW-8 dated 09.6.2011. You are, therefore, called upon to fulfil all the conditions laid down in rule 12 of the Punjab Apartment and Property Regulation Rules, 1995 and other condition as given below within a period of 30 days from the date of issue of the notice.

You shall deposit the following due within 30 days from the issue of this letter.

a) EDC (25% of 1,93,33,500-00) = 48,33,375-

b) License fees (25% of 44,76,375-00) = 11,19,094-

c) UDF = 26,358-00

d) SIF = 7,14,296-00

Total = 66,93,123-

Balance 75% EDC will be recovered in 06 yearly equal instalments with 10% rate of interest from the date of issue of license. In case of defaulter, penal interest will be charges as per rules. The schedule of payment regarding EDC, License Fees & Other charges will be issued, separately.

<u>As regard balance 75% of the compounding fee, the same will be recovered in 6 equal instalments with</u>

> *10% compound interest, provided that if such amount is paid within one year from the date of order of compounding such offence i.e. From 20.6.2011 than no interest shall be charges. In case, the payment of balance amount is not made within the stipulated period, the promoter shall pay further interest at the rate of 3% on the balance amount.*
>
> *In case balance 75% amount is paid within a period of 30 days from the date of order of compounding and offence by the competent authority i.e. 20.06.2011, then the promoter shall be entitled to a rebate at the rate of 10% on such balance amount.*

In pursuance of the same, the petitioner deposited sum of Rs.69,69,873/- towards compounding fees, EDC, license fees, UDF and SIF vide demand drafts dated 22.07.2011 (Annexure P-10). He was issued a license on 16.12.2011 (Annexure P-11) and asked to deposit the EDC in six installments from June 2012 to June 2017 amounting to Rs.2,45,23,110/- only and was bound to comply with the terms and conditions mentioned in the letter of intent issued on 24.06.2011 as per clause 43, which reads thus:-

> "*43. The promoter shall also bound to comply with the terms and conditions mentioned in LOI issued vide no.109-122 dated 24.06.2011 and the legal undertaking with affidavit submitted by him or any other instructions issued by Competent Authority of Govt. from time to time, failing of which the approval granted may be withdrawn by competent authority without any prejudice.*"

The first set of installment amounting to Rs.48,44,070/- was also duly deposited on 26.06.2012. Merely because the Division Bench in CWP No. 13012 of 2012 on 13.07.2012 (Annexure P-13) had directed that the policy to regularize the unauthorized colonies be kept in abeyance till further orders, did not as such absolve him of the demands which he had to met as per the license issued. Eventually, the State had brought to the notice of the Division Bench that the notification dated 26.06.2013 (Annexure P-16) had come into place which would supersede the previous notification dated 09.12.2010. Eventually, the same has now been superseded vide policy dated 21.08.2013 and led to the policy dated 28.10.2014 (Annexure P-19). The writ petition was eventually disposed of on 30.10.2013. The subsequent policies which had come into force were applicable for specific periods which would be clear from Clause 3 of the policy dated 26.06.2013 which provided that an unauthorized colony could take the benefit of compounding and regularization. The eligibility to apply was, thus, for a specific period, which would be clear from Clause 3 which reads thus:-

> *"3. Applicability of policy*
>
> *This policy shall be applicable for a period of one yeear i.e. From 01-04-2013 to 31-03-2014 in the entire State of Punjab except areas covered under Chandigarh Periphery controlled area and GMADA Regional Plan to:*
>
> ***A. Un-authorized Colonies***
>
> ***B. Un-authorized constructions/buildings in unauthorized colonies***
>
> *This policy shall not be applicable to the unauthorized Marriage Palaces for which the Government has already notified a separate policy."*

Similarly, vide policy dated 28.10.2014, the same was applicable for a period of one year and the cut off date was provided for the unapproved colonies which were developed before 01.04.2013 to be considered. The relevant clauses read thus:-

*"3. **Applicability of policy***

(i) This policy shall be applicable for a period of one year from the date of notification of The Punjab Laws (Special Provisions) Ordinance, 2014 in the entire State of Punjab and

(ii) Within municipal limits and FEZ area failling under the Punjab New Capital (Periphery) Control Act, 1952. However, this policy will not be applicable in rest of the area falling under the Punjab New Capital (Periphery) Control Area, 1952.

Provided that no unauthorized colony/ plot/ building shall be regularized if it falls within PLPA area, delisted PLPA area, Government/ wakf board land and in restricted area along scheduled roads.

(iii) If there is any pendency of applications received for regularization before the last date of submission of applications under this policy, they will be allowed to be dealt with after expiry of period of one year provided that no new application will be entertained after the expiry of this policy.

(iv) New applications of unauthorized colonies developed before 01-04-2013 and plots/buildings falling under these colonies will be received under this policy for regularization.

A. Un-authorized Colonies

B. Un-authorized constructions/ buildings in unauthorized colonies

This policy shall not be applicable to the unauthorized Marriage Palaces for whch the Government has already notified a separate policy.

xxx xxx xxx

*5. **Cut-off date for Regularization of Unauthorized***

Colonies/Buildings

Only those unapproved colonies or plots/ buildings within unauthorized colonies developed before 01-04-2013 will be considered under this policy.

Xxx xxx xxx

xii) All pending applications received under the policy dated 21.08.2013 and 05.11.2013 will be dealt according to the provisions of the previous policy."

The petitioner, as noticed, had applied for compounding on 15.02.2011 (Annexure P-5) under Rule 31 under form APR-V-A as per 09.12.2010 policy and already been issued a license in terms of the CLU dated 25.03.2011 vide the policy dated 09.12.2010 and agreed to pay charges, as noticed above. Merely because a subsequent policy came into force, it would not as such entitle him to claim the benefits of the said policy which he sought to do so vide communication dated 29.04.2015 once the show cause notice was issued on 30.03.2015. It would be pertinent to notice that the amounts had become overdue and notices were issued from 16.07.2013 to 13.05.2015 to the petitioners, details of which are:-

"Notice No.8624 dt. 16.07.2013
Notice No.16110 dated 26.11.2013
Notice No.5442 dated 24.06.2014
Notice No.10347 dated 09.12.2014
Notice No.51 dated 02.01.2015
Notice No.1296 dated 11.02.2015
Notice No.2851 dated 30.03.2015
Notice No.3949 dated 11.05.2015
Notice No.4090 dated 13.05.2015."

Even in the application as such on 29.04.2014, no reference as such was made that on account of the Division Bench staying the regularization, the amount was not being deposited and neither anything has been brought to the notice of this Court that any such communications were addressed that the payment was not being made on that account. The compounding, CLU, the letter of intent and the license issued were on the terms and conditions of the old policy which the petitioner has to fulfil. Merely because a subsequent policy came into force would not as such give him any right to seek a writ of mandamus once his license had been processed in accordance with the policy prevalent at that point of time. In fact, even pending applications received under the 21.08.2013 and 05.11.2013 policies were to be dealt under those policies. Neither it could be pointed out that in similar circumstances others had been given such benefits and that the petitioner had been discriminated against.

Resultantly, this Court is of the opinion that there is no scope for interference in the orders passed by the authorities below demanding the amount in terms of the contract which stood concluded between the parties.

Accordingly, finding no merit, the writ petition is dismissed.

17.05.2018 (G.S. SANDHAWALIA)
shivani JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No