

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

**EA No. 29 of 2015 in
CWP No. 10812 of 2011
Date of Decision: 16.1.2018**

Ashok Bansal

.....Applicant/Decree holder

v.

The State of Haryana and others

.....Respondents

CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Ms. Ritu Pathak, Advocate, for the applicant/Decree Holder
Mr. Vishal Garg, Addl. AG, Haryana

RAKESH KUMAR JAIN, J (Oral) :

Learned counsel for the applicant/Decree holder has submitted that the writ petition bearing CWP No. 10812 of 2011 was allowed on 4.9.2014. The applicant/petitioner has filed this execution for seeking refund of the amount deposited by him with the respondents. The writ petition was allowed by this Court with the following observations made in para 6 :-

“6. If he is seeking for return of the money, the nature of amounts which are submitted will have to be seen to assess whether the monies are refundable or not. The payment which had been made, namely, of the conversion charges or the licence fee or EDC have all to do with consideration for the actions on the part of the authorities. A fee is unlike a tax, quid pro quo to a service rendered. If the whole project did not start and it was on account of inaction on the part of the State to approve building plans which if done, could have enabled

the petitioner to carry on with the constructions, the whole amount of what was received by the respondents could not be retained. It is a case where the cancellation of permission has resulted by the State's own inertia and the petitioner is, therefore, entitled to the refund of the amount.”

Thereafter, the petitioner had filed a contempt petition bearing COCP No. 3405 of 2014, which was disposed of on 19.5.2015 and ultimately he filed another CM No. 12344 of 2015, in which the following order was passed on 29.9.2015 :-

“The petitioner is at liberty to file an execution petition for the amounts not refunded since there is already a finding by the Court that the petitioner is entitled to refund of all the amounts paid to the State and the inability to carry on with the project was on account of the State's change in stand in not allowing for the construction to come up. If such an application is filed for execution of the order, the petitioner will state the details of the amounts which are still being retained and amount which is claimable in the execution petition and the registry will number the same and bring it up before the Court as per roster.

The application is disposed of with the above observations.”

Vishal Garg, Addl. AG, Haryana, has submitted that except for the amount of 'scrutiny fee' and 'building plan fee', the entire amount has already been returned and the said amount has been withheld because application filed by the petitioner was scrutinized and the building plan was also sanctioned.

In reply, learned counsel for the applicant has submitted that the contentions regarding charging the amount on the head of 'Scrutiny Fee' and 'Building Plan Fee' was very much before the Single Bench of this Court

when the order dated 4.9.2014 was passed but at that time, this issue was

not raised by the respondents, which cannot be raised now in the execution.

I have heard learned counsel for the parties and after examining the record, am of the considered opinion that the Court has to execute the decree or order as it is. If the respondents were aggrieved against any condition laid down in the order, then they should have filed the appeal. But in the absence of any such effort made by them, they are bound to execute the order passed by the Court.

Accordingly, the present execution application is hereby allowed and directions are issued to the respondents to refund the entire amount of scrutiny fee and building plan fee which is allegedly withheld by them.

Needful shall be done by the respondents within 2 months from the date of receipt of certified copy of this order.

(RAKESH KUMAR JAIN)
JUDGE

16.1.2018
Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No