

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

DATE OF DECISION : 29.5.2019

1. C.W.P. No.6801 of 2019 (O&M)
Varinder Pal Singh and others v. State of Haryana and others
2. C.W.P. No.4197 of 2019 (O&M)
M/s Marconi Infratech Private Limited v. State of Haryana and others.
3. C.W.P. No.29239 of 2018 (O&M)
Martial Buildcon Private Limited v. State of Haryana and others
4. C.W.P. No.6773 of 2019 (O&M)
Raghav Sehgal and others v. State of Haryana and another.

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE LALIT BATRA**

Present:- Shri R.S.Rai, Senior Advocate with Shri Kunal Dawar, Advocate for the petitioner (in C.W.P. Nos.4197 of 2019 and 29239 of 2019).

Ms.Munisha Gandhi, Senior Advocate with Shri R.Karitikeya, Advocate for the petitioners (in C.W.P. No.6801 of 2019).

Shri Rajeev Anand, Advocate for the petitioners(in C.W.P. No.6773 of 2019).

Shri Ankur Mittal, Addtional A.G. Haryana.

Shri Sumeet Goel, Advocate and Ms.Ramandeep Kaur, Advocate for the C.B.I.

MAHESH GROVER, J.

By this order we shall dispose of four writ petitions the details of which have been given above.

For the sake of convenience, brief facts have been taken from C.W.P. No.6801 of 2019.

These petitions have been filed seeking this Court's intervention and directions to the respondents to grant Occupation Certificate/Possession Certificate qua the flats/residential units in which the petitioners have invested huge amounts.

It has been averred in the petition that respondent No.3 was granted a licence to develop an aggregate area of 11.1375 acres. The details of the land and the revenue estate in which they fall are as below :-

- “(i) 2.9125 acres situated at Village Maidawas
(Licence No.89 of 2010) ;
- (ii) 2.70625 acres situated at Village Maidawas
(Licence No.100 of 2010) ;
- (iii) 2.6875 acres situated at Village Maidawas and
Badshahpur, (Licence No.101 of 2010) ;
- (iv) 2.81875 acres situated at Village Maidawas and
Badshahpur (Licence No.11 of 2011) ;
- (v) 0.0125 acres situated at Village Maidawas and
Badshahpur (Licence No.36 of 2013).”

Respondent No.3 upon compliances in law from various authorities obtained a No Objection Certificate and Consent to establish the colony.

In short, what is pleaded, is that respondent No.3 is compliant in law in all respects and enabled to develop the project at hand while the petitioners having invested huge amounts, are not being given occupation certificate/possession of the flats in view of some dispute pertaining to the land in the vicinity where allegations of a fraudulent acquisition to benefit the land developers were made which is being probed by the Central Bureau of Investigation upon intervention by the Hon'ble Supreme Court vide its order in

November, 2017.

Respondent No.3 is also before us and states that there is absolutely no violation committed by him and the competent authorities have already granted occupation certificate qua Tower Nos.1 to 6, 9 and some portion of Tower No.2, but for the remaining part of the project and Tower No.2, the occupation certificate has not been released despite repeated applications in this regard. It has been argued before us that an area of 1465 acres was acquired vide notification dated 2.6.2009 issued under Section 4 of the Land Acquisition Act followed by notification dated 31.5.2010 and an award dated 22.12.2011. This acquisition came under a cloud and initially some petitions were filed in this Court resulting an order which was taken up by way of S.L.P. to the Hon'ble Supreme Court where on 1.11.2017 the Hon'ble Supreme Court directed the C.B.I. to look into the allegations of malicious acquisition.

Learned counsel for respondent no.3 has sated that only a miniscule area of the project comes under the scanner and therefore, the entire claims of the petitioners ought not be held up particularly when the occupation certificates have already been granted qua substantial numbers of the towers in the same project including a part of tower no.2.

The State, on the other hand, contends that the matter is being looked into by the C.B.I. and they were justified in not releasing the occupation certificates.

Learned counsel for the State has also argued that since the enquiry to the C.B.I. was entrusted by the Hon'ble Supreme Court, the petitioner ought to approach the same Court for any relief of the kind that they seek from the Court which argument, is immediately countered by the petitioners to state that they did indeed approach the Hon'ble Supreme Court which disposed of their plea in the following terms :-

“The learned senior counsel appearing for the petitioner seeks

permission to withdraw this Special Leave Petition with liberty to approach the High Court.

Permission granted .

The Special Leave Petition is, accordingly, dismissed as withdrawn with aforesaid liberty.”

We have heard the learned counsel for the parties.

The Hon'ble Supreme Court in **Rameshwar and others v. State of Haryana and others**)2018) 6 S.C.C. 215 in para-41 observed as below :-

“41. The relief to be granted in the matter has therefore to take care of all the aforesaid aspects. On one hand, the real and substantial relief to be granted in the matter would be not just restoring the status ante and invalidating of the transactions but the relief ought to be that the process of acquisition is taken to its logical end and the objective that said acquisition was to achieve must be subserved. On the other hand, even while passing appropriate directions in the nature that there was a deemed award, the interest of those landholders who had not parted with their holdings and had faced the acquisition and had not participated in the proceedings ought to be secured. Further, the interest of purchasers of individual apartments is also required to be protected. It is axiomatic that wherever a superior court finds that the exercise of power by the executive was mala fide or that there was fraud of power, the full and substantial relief must be granted. The principles of restitution and concept of unjust enrichment as explained in cases referred to hereinabove show that no person who directly or indirectly

was a party to the fraud of power be allowed to reap or retain any unjust enrichment. Though, it is through the acts on part of the landholders that the builders/private entities were brought on the scene, we don't hold them to be *pari delicto* along with builders/private respondents. But at the same time they cannot be given benefit of annulment of transactions and restoration of their holdings. The greater victim in the matter was the public interest. The landholders in any case had received considerations which were greater than what was awarded in the awards dated 9.3.2006 and 24.2.2007, which were the most proximate awards in terms of time. However, even when we propose to take the matter to its logical end and say that there was a deemed award, those who had not sold away their holdings and had not in any manner, either directly or indirectly, tried to jeopardize the process of acquisition, cannot at this length of time be subjected to any prejudice. We will, therefore, have to exclude that body of landholders who had not transferred their holdings unlike the writ petitioners and similarly situated landholders, so also the purchasers of individual apartments from the width of our directions. **Though fraud vitiates every resultant action and on that principle every beneficiary/purchaser in subsequent transaction must restore such benefit, an exception has to be made in favour of individual purchasers of flats or apartments who are being left undisturbed while moulding the relief. Any payments made by them can be adjusted towards the amounts payable to the colonizer and their possession can be**

regularized by HUDA/HSI IDC on suitable conditions by making allotment to them. This aspect will stand covered by directions issued hereafter.

... ..

42.8. The third parties from whom money had been collected by the builder/private entities will either be entitled to refund of the amount from and out of and to the extent of the amount payable to the builder/private entities in terms of above direction, available with the State, on their claims being verified or will be allotted the plots or apartments at the agreed price or prevalent price, whichever is higher. Every such claim shall be verified by HUDA or HSI IDC. **In cases where constructions have been erected and the entire project is complete or is nearing completion, upon acceptance of the claim, the plots or apartment shall be made over to the respective claimants on the same terms and conditions.** Except for such verified and accepted claims, the remaining area or apartments will be completely at the disposal of HUDA or HSI IDC, as the case may be, which shall be free and competent to dispose of the same in accordance with the prevalent policy and procedure. In order to facilitate such exercise all third parties who had purchased or had been allotted the plots or apartments shall prefer claims within one month from today, which claim shall be verified within two months from today.”

It is not disputed that petitioners have invested huge amounts of money and according to respondent No.3, 95% of the amount stands paid by them.

It is also not in dispute that substantial portion of the project has already found affirmation with the respondents in so far as Tower Nos.1 to 6, 9 and some portion of Tower No.2 is concerned. The Hon'ble Supreme Court also in its observations extracted above has recorded an acute concern for the flat owners and on the parity of that reasoning, we would also consider it appropriate to direct the respondents to grant the occupancy certificate to the petitiones and enable the allottees to take possession particularly when it has not been denied by the respondents that only a small portion of the project is under a scanner and even otherwise, the Hon'ble Supreme Court has observed that the interest of the allottees who have already paid almost 95% of the amount for their flats cannot be made to suffer by holding up the clearances.

We, therefore, dispose of these petitions in view of the observations made by the Hon'ble Supreme Court and direct the State authorities to release the occupancy certificates as expeditiously, as possible, preferably within a period of six weeks from the date of receipt of a certified copy of this order.

(MAHESH GROVER)
JUDGE

(LALIT BATRA)
JUDGE

May 29, 2019
GD

Whether speaking/reasoned	Yes
Whether reportable	Yes/No