

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP no. 10037 of 2019 (O&M)
Date of Decision : 16.05.2019

Aadarshini Real Estate Developers Private Limited

....Petitioner

Versus

State of Haryana and others

...Respondents

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

Present : Mr.R.S.Rai, Sr. Advocate with
Mr. Rajeev Anand, Advocate for the petitioner
Mr. Ankur Mittal, Addl. AG, Haryana

MAHESH GROVER, J.(ORAL)

CM Nos.7703 and 7815-CWP-2019

Allowed as prayed for. Written statement on behalf of respondents No.2 and 3 alongwith Annexures and rejoinder alongwith Annexures are taken on record.

Main case

The petitioner has virtually been coerced into second round of litigation. We have used the word 'coerced' and we believe that the facts would justify it.

In response to an e-auction notice the petitioner applied and was allotted land measuring 11.76 acres free hold basis for commercial development. Before entering upon the process, the petitioner had a round of pre-bid assessment on 10.1.2018. It would be relevant to state here that the bid document was disclosed on 31.12.2017. Clause 2.3 of the pre-bid

exercise notices certain queries/concerns of the petitioner with specific

response from the respondents and it reflects an endeavour of a prudent entrepreneur. Clause 2.3 is reproduced herebelow:-

Clause	Original clause	Queries	Response to query/ revised clause
Clause 2.3	Current status of site	A. Proof from HSIIDC that the site is free from all encumbrances. B. Clarification that the site is in no way impacted by the ammunition depot located in vicinity of the Project Site. C. Request to provide Title Certificate for the land. D. Request for Zoning Plan E. Request for dimensions of the section connecting the 9.569 acre and 2.192 acre land parcels.	A. Site is free from all encumbrances B. The project site is in no way impacted by the ammunition depot located in its vicinity. C. Regarding Title Certificate (Deed of Conveyance) potential bidders may visit HSIIDC office at Gurugram for verify the same. D. Copy of zoning plan with 175% FAR attached with this document E. Dimensions of the section connecting 9.569 acre and 2.192 acre land parcels mentioned in the zoning plan.

On 9.3.2018 letter of allotment was issued to the petitioner with conditions for payment upto 8.4.2018.

Prior to that on 8.3.2018 the petitioner represented that the land being offered to him is not free from all encumbrances as promised to him and on 16.3.2018 the petitioner received a response from the respondents- Corporation assuring the petitioner that the site is free from all encumbrances. For the purpose of reference, relevant portion of the communication sent by the Corporation to the petitioner is as below:-

“Reference your query received through e-mail dated 14.3.2018. In this regard, I am directed to inform you that the Corporation vide clause no.2.3 of Bid Document floated during the period had already

conveyed that the site offered is clear and free from all encumbrances. Accordingly, as referred a clause 2.3 of Bid Document captioned site will be handed over free from all encumbrances.”

On 5.4.2018 the respondents wrote to the petitioner conceding that the site was not free from all encumbrances but shall be cleared by 30.4.2018 and directed the petitioner to deposit 50% of the amount within 30 days commencing from 30.4.2018. Relevant portion of the said communication is extracted herebelow:-

“2. Regarding point No.'2'- Entire site including HSIIDC office premises will be vacated by 30.4.2018 and accordingly, you can take physical possession of the site as per terms and condition of RLA.

XXXX

In view of the issues detailed above, the Corporation has extended the period to deposit 15% amount towards costs of site till 30.4.2018 in place of the present schedule i.e 8.4.2018. Rest all the terms and conditions of RLA dated 9.3.2018 including all payment dates/schedule shall remain same. You are required to furnish acceptance of RLA dated 9.3.2018 within 30 days from the date of its issuance alongwith acceptance of this letter. In case of failure to submit acceptance, the 10% amount already deposited by you shall stand forfeited.”

It needs to be emphasized that the respondents categorically

gave an assurance that the site including HSIIDC office premises would be

vacated by 30.4.2018 to enable the petitioner to have physical possession of the site as per terms and conditions of the Regular Letter of Allotment (hereinafter referred to as 'RLA'). After this assurance, the respondents-Corporation in fact had no option but to abide by what it had offered to the petitioner repeatedly ever since the bid document was disclosed and pre-bid exercise conducted.

At this stage when the petitioner approached this Court by way of CWP No. 10713 of 2018. Incidentally some other person had also filed a writ petition bearing No. 6087 of 2018 titled as 'Rajnish Chaddha an others vs. State of Haryana and others' who was an allottee but with a different concern where he pleaded that existing road was touching his plot. Initially this Court while dealing with the petition directed the present petitioner who was a respondent in those proceedings to deposit a sum of Rs.224.40 crores with the Registrar of this Court. This writ petition was disposed of by this Court by separate order and the operative part is reproduced herebelow:-

“We have heard the learned counsel for the parties and perused the site plan appended to the petition.

Undeniably in the year 1993-94 when the plots were allotted to the petitioners there was no road/passage existing in the site plan which absolutely unambiguous and reflects no area intended for green belt or road. If with the the progress of time some portion of this vacant area came to be used as a passage or a road, it can not render any legitimacy on the basis of usage to persuade us to declare it as a sanctioned road visualised in the plan.

Merely because some people including the petitioners have benefitted from prolonged usage would be no cause to declare it as a public road or a street if the land belongs to the HSIIDC. . It would be within its rights to put it to use the way it was.

Learned counsel for the petitioners contends that the road was constructed by the HSIIDC itself and this should be sufficient to retain it as it is.

We are afraid that we can not accept this plea of the petitioners for the very reason that we have stated above. Even assuming that it was constructed by the HSIIDC but as long as it belongs to them they would be entitled to put it to the use of the deemed beneficiaries. Apart from that site plan also indicates that the plots of the petitioners have easy access to 12 metres road from both sides independently.

Learned counsel for the petitioners referred to the photographs to show existence of the green belt indeed some area which is behind the premises of the petitioners has been maintained in a decent manner by themselves but this itself would not give any assertive right to the petitioners as they put it to use themselves of course without any hindrance or objection from the respondents.

For the aforesaid reasons, we do not find any reason to interfere, therefore we disallow the petition.

Respondent No. 4 would be at liberty to proceed with the

project after seeking necessary approval from HSIIDC or any other agency.”

In so far as the petitioner's petition was concerned i.e CWP No.10713 of 2018 we noticed that the conduct of the Corporation was nothing sort of a fraud on the general public as it repeatedly offered the petitioner site free from all encumbrances conceding that there existed an office of the Corporation, with its attending infrastructure within the area offered to the petitioner. Even in the e-auction notice it was clearly given out that the site is free from all encumbrances. Likewise in the pre-bid deliberations the petitioner was promised site free from all encumbrances and even when he made representation, the respondents assured the petitioner that the site being offered it would be free from all encumbrances while admitting the existence of structures. The petition was disposed of in the following terms:-

“We cannot but help comment adversely on the conduct of the respondents where they have willfully misled the auction bidder. Therefore, his demand for issuing of a fresh regular letter of appointment may not be unjustified at all.

On the previous date of hearing, we had heard the matter and expressed our views in the manner that we have recorded today. Where after, learned counsel for the respondents prayed for some time to seek instructions as to whether the prayer of the petitioner could be answered. Today, an affidavit has been filed that the respondents are agreeable to revise the offer of

possession w.e.f 30.04.2018 in place of 09.03.2018. This is a partial acceptance of the claim of the petitioner and a confession to their own fault but does not entirely redeem the situation so far as the petitioner is concerned because possession of the site has not been delivered free from encumbrances as was given out. We, therefore, direct that the Cellular Tower or any other structure that may exist on the site be removed so as to rid the site of any encumbrances and the petitioner be handed over the possession and the fresh letter of allotment be issued effective from the date of issue.

Once regular letter of allotment is issued to the petitioner, they would be at liberty to show it to the Registrar Judicial who shall permit the HSIIDC to withdraw the amount deposited in their favour.

Disposed of in the above terms.”

We nurtured a fond hope that the Corporation will learn from not too subtle words used by us in our order but that was not to be as they instead offered the petitioner a site with a completely changed site plan and a new zoning plan on 1.3.2019 and 5.3.2019 respectively as they were unable to keep up their promise.

Prior to that the Corporation issued a fresh RLA on 3.7.2018 and by showing this letter to the Registrar of this Court withdrew an amount of Rs.224 crores ostensibly pursuant to our orders in CWP No. 10713 of 2018. Thereafter a show cause notice was issued to the petitioner relying on the terms of the fresh RLA dated 3.7.2018 and asking it to deposit the

balance 25% with interest. The petitioner confronted with this situation deposited another sum of Rs.83.2 crores.

It has to be noticed that it is after the deposit of this amount that the communication dated 1.3.2019 and 5.3.2019 were issued to the petitioner and through a communication dated 26.3.2019 the petitioner was apprised of the total outstanding dues and in this communication it is also written that the petitioner was offered physical possession of the site in terms of the RLA dated 3.7.2019 telephonically

The petitioner's grievance is limited. It says that the Company has invested Rs.765 crores on the assurance given by the Corporation of being plot free from all encumbrances which in fact was never the case. The Corporation did not have any authority to project even at the time of issuing a bid document in December, 2017 that the site was free from all encumbrances while their own office existed in it. Even in the pre-bid exercise they did not disclose this fact to the petitioner and continued to assure him that the site was free from all encumbrances whereas plenty of structures including a cellular tower existed thereon. This exposes the Corporation to the irrefutable charge of complete dishonesty considering that the petitioner made a representation and the Corporation responded to it and assured the petitioner of delivering the site free from all encumbrances including removal of the office of the HSIIDC. No matter what justification the Corporation offers which it does only by falling back on the terms and conditions of the allotment and the default of the petitioner, but it offers no justification for its own unethical conduct in business dealings. If we look at the plight of the petitioner it is he who has invested more than Rs.760 crores or perhaps sunk would be the correct word. Evidently the site cannot be put

to any use till the time zoning and the site plans are not in order. Initially zoning and the site plans offered to the petitioner were rendered inconsequential on account of the existing encumbrances which were removed only after the petitioner approached this Court. In the new zoning plan the passage which connects the two chunks of the land has been shrunk. Though the respondent-Corporation would say that it marginally alters the situation but it misses the point altogether of the fact that the petitioner cannot put this land to use unless the site plan and the zoning plan is in proper place. The facts cumulatively suggest that the site has merely been offered to him while the physical possession is illusory unless encroachments are removed and zoning plan is given. We are clearly of the opinion that the Corporation being a State entity has a greater responsibility on it to deal with the public in a fair manner. It cannot ensnare the people into huge investments of the kind that have been made by the petitioner while forcing him into rounds of litigation to seek what was promised to it by the Corporation. Finding no justification of the stand of the respondents-Corporation, we accept the petition and direct that the clock start running from 26.3.2019 and for all intents and purposes the fresh RLA be construed from that date. The petitioner would abide by all the terms and conditions of the allotment but the time schedule would commence from 26.3.2019. Needless to say when starting point is March, 2019 the payments would be re-scheduled and adjustments qua payments already made would be carried.

At this stage, Mr. Ankur Mittal, Additional AG, Haryana on instructions from Mr. Manoj Bansal, DSM, HSIIDC, Panchkula states that the site is totally free from all encumbrances and possession can be taken by the petitioner forthwith.

Learned counsel for the petitioner states that petitioner would do so within a period of 7 days from today.

Disposed of as above.

(Mahesh Grover)
Judge

16.05.2019
rekha
Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No

(Lalit Batra)
Judge