IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21220 of 2016 (O&M)

Date of Decision : May 22, 2019

M/s Malhotra Land Developers and Colonisers Pvt.Ltd.

....Petitioner

Versus

State of Punjab and others

...Respondents

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

Present : Mr.Kanwaljit Singh, Sr. Advocate with
Mr.Abhishek Bajaj, Advocate
for the petitioner.

Mr.Ayush Sarna, AAG, Punjab.

MAHESH GROVER, J.(O)

Multifarious prayers have been made in the present petition under Article 226 of the Constitution of India but primarily, for issuance of a writ in the nature of certiorari to quash the order dated 10.01.2012 (Annexure P-29) as also to quash the demand of revised external development charges and license fee from the petitioner.

The petitioner applied for permission to develop a Mega Housing Project under the then existing Industrial Policy of 2003. In this regard he submitted an application on 17.11.2005 and the project was cleared by the Empowered Committee headed by none else than the Chief Minister of the State of Punjab. The Mega Housing Project was cleared and revised Letter of Intent dated 09.05.2006 was issued in favour of the petitioner which contained certain concessions and the project was exempted from operation of Punjab Apartment and Property Regulation Act, 1995 (hereinafter referred to as “PAPR Act”).

On 19.07.2006 an agreement was signed by the petitioner with the State Government and on 02.08.2006 the petitioner filed an application seeking change of land use, pursuant to which on 22.11.2006 no objection certificate regarding CLU was granted. As per the procedure, the layout plan was approved on 07.12.2006 and the petitioner was asked to deposit the external development charges and license fee vide communication dated 21.12.2006. The entire EDC/license fee was deposited as per the prevalent rates and the final approval of the layout plan was also granted on 07.06.2007. All this was approved by the Chief Minister,Punjab on 16.08.2007, duly circulated and notified on 21.08.2007.

According to the petitioner, to state in brief, all the requisites stood complied on 16.08.2007 when the approval was granted by the Chief Minister.

On 17.08.2007, a revised notification was issued for levying external development charges and license fee for the projects of future and even though the Chief Minister had accorded approval to the layout plan on 16.08.2007, the same was withdrawn on 24.08.2007 on the premise that the Chief Minister though had approved the proposal but has ordered that in future the promoter shall be subjected to two conditions of obtaining environmental clearance certificate and NOC approved from the NHAI and the terms of notification dated 17.08.2017 would apply.

Even though the consideration given for clearance was different, a revised demand dated 29.08.2007 was raised upon the petitioner asking him to deposit the charges of EDC/license fee as per the new rates, against which the petitioner made several representations but to no avail. The petitioner was then left with no other option but to deposit the amount as per the revised demand and consequently he deposited 25% of the fresh demand. The notification of exemption earlier issued under Section 44(2) of the PAPR Act was re-issued upon deposit of 25% amount on 08.07.2008.

Since the petitioner found the imposition of revised demand to be unjust considering the approval granted to him earlier on 16.08.2007, he filed an appeal under Section 33 of the PAPR Act before the Appellate Authority, which ruled in favour of the petitioner to hold that the petitioner had paid the entire amount of EDC/license fee and the exemption under the PAPR Act granted earlier on 16.08.2007 could not be varied. The appeal was disposed of with a direction to the Chief Town Planner, Punjab to take the approval of the Chief Minister for charging EDC and license fee as per the rates prevalent on the date of grant of exemption i.e. 16.08.2007 and by making this as a base, demand the amount, if any, is outstanding.

It is pertinent to mention here that the entire revised demand raised by the Chief Town Planner, Punjab and the Secretary GLADA was specifically quashed.

Equally important is to note a fact that this order of the Appellate Authority under Section 33 of PAPR Act was never challenged by the State in any proceedings.

On 10.01.2012 the Superintendent wrote a note that the order of the Appellate Authority under Section 33 of PAPR Act was wrong and demand had to be made applicable from the date of notification i.e. 17.08.2007 and refused compliance despite several representations of the petitioner.

Confronted with this situation, the petitioner approached this Court by way of CWP-19320 of 2012, which was disposed of with a direction to the Principal Secretary to decide the representation of the petitioner afresh by giving him an opportunity of hearing within a period of three months. The petitioner once again represented to the Principal Secretary on 28.01.2013, but the same was rejected.

The petitioner then filed another CWP No.27323 of 2013 and in this petition pleaded that identically placed project in Ludhiana district itself, exemption was granted from the revised EDC and license fee by taking the date of grant of CLU as the final date and the said entity was treated favourably while the petitioner was not granted the same benefit.

This Court noticed the discrimination and vide order dated 19.11.2015 remanded the matter back with a clear stipulation that the case of the petitioner be examined in the light of the precedent cited by him i.e. M/s Janpath Estates Private Limited and a fresh decision be taken after affording opportunity of hearing.

That on 06.02.2015, the State of Punjab issued a notification to the effect that in future rates with respect to EDC/license fee would be applicable as per the rates prevalent at the time of technical approval of the layout plan unless the promoter asked for revised layout plan.

It is necessary to state here that the layout plan of the petitioner's project was approved firstly on 07.12.2006 and then on 07.06.2007, much prior to the issuance of the subsequent notification.

At the time of granting opportunity of hearing pursuant to the orders passed by this Court, the GLADA was also heard where the said authority conceded that the case of the petitioner was similar to the case of M/s Janpath Estates Private Limited and the decision was delayed only on account of the officials. Despite this, the impugned order dated 06.07.2016 was passed by the Principal Secretary in complete violation of the orders of the Hon'ble Division Bench and the existing fact situation and that too without giving any sufficient reason to distinguish the case of the petitioner from that of M/s Janpath Estates Private Limited.

It is in this background that the present petition has been filed with the prayers noticed above.

Learned counsel for the petitioner contended that once the layout plans were approved, the entire EDC/license fee paid, the approval of the Chief Minister granted on 16.08.2007, duly circulated and notified on 21.08.2007, any subsequent notification would have no bearing on the case of the petitioner. It is argued that the notification dated 17.08.2007 warranting levy of revised EDC and license fee and the decision of the Chief Minister rescinding the earlier approval would be completely wrong. Besides, once the matter has been dealt with by the statutory authority i.e. the Appellate Authority under the PAPR Act, which passed a reasoned order, that remained unchallenged, there would be no occasion to undo the order of the statutory authority unless the same was varied or set aside if challenged before the appropriate forum in accordance with law. It is further argued that the bona fides of the petitioner were not lacking in any manner as he had deposited 100% amount demanded in 2007 itself and even when revised demand was raised, though not justified, deposited 25% of the same. Besides, it is forcefully argued that the petitioner has been discriminated against by not treating his case at par with that of M/s Janpath Estates Private Limited even though it was specifically acknowledged by the GLADA that there was no distinction between the facts of the two cases. Even the High Court had mentioned so in the order and what was required to be done thereafter was merely to grant a similar benefit as the one given to M/s Janpath Estates Private Limited, but without assigning any reason the petitioner's plea has been rejected by virtue of the impugned orders.

It is next contended that the principle of promissory estoppel would forcefully apply to the facts of the case and lastly it is contended that a project of such a magnitude was held up only on account of official apathy and the State cannot complain if there is no investor friendly atmosphere.

As against this, the respondents have justified the demand to contend that the notification dated 17.08.2007 was specific with regard to the revised demand of EDC/license fee and the petitioner cannot escape its consequences. However, no meaningful argument was advanced as far as the plea of the petitioner on account of discrimination vis-a-vis the precedent of M/s Janpath Estates Private Limited is concerned and the order of the statutory authority under PAPR Act.

We have heard the learned counsel for the parties at some length.

The facts are largely not in dispute and what is to be examined is the justification of the stand of the respondents. Annexure P-1 is the Industrial Policy of 2003 under which the petitioner applied for development of a Mega Housing Project through an application which is on record as Annexure P-2. It also contained a prayer seeking certain exemptions in terms of the policy. The Empowered Committee in its meeting while discussing the application/project of the petitioner granted an approval in principle to 13 Mega Projects, one of them being that of the petitioner. For the purpose of reference the relevant portion of the minutes of the meeting of the Empowered Committee are extracted herebelow :-

"After project-wise detailed discussion, the Committee granted in principle approval to 13 (Thirteen) Projects as Mega Projects in the area and also the proposed investment scale, location etc.indicated against each Developers name:

S/n	Applicant Company	Project	Location	Land Area (in acres)	Invest-ment Rs.(in crores)
1.	Malhotra Land Developers & Builders Pvt.Ltd., SCF-12, Urban Estate , Phase-I, Dugri Road, Ludhiana.	Palm Garden on Ludhiana Ambala GT Road	Located on the Ludhiana-Ambala GT Road village Kohara, District Ludhiana.	Approx.200 acres	Approx. 255.50 crores.
II	Malhotra Land Developers & Builders Pvt.Ltd., SCF-12, Urban Estate, Phase-I, Dugri Road, Ludhiana.	Palm city on Chandigarh-Ludhiana Road.	Located on the Chandigarh-Ludhiana Road, village Kohara, District Ludhiana.	Approx.100 acres.	Approx. 135.50 crores”

On 09.05.2006 revised Letter of Intent was issued in continuation of the earlier application of the petitioner of 09.03.2006 and the petitioner was advised to proceed further as per the revised Letter of Intent. This letter is on record as Annexure P-4.

On the very same day i.e. 09.05.2006 the Empowered Committee under the Chairmanship of the Chief Minister, Punjab discussed several projects including the one of the petitioner under the Industrial Policy 2003 and decided to grant several concessions, some of which are extracted as under :

“iii) The project shall be exempted from operation of PAPR Act 1995. However, you will have to comply with the following provisions of the law :

a. You will have to pay external development charges in accordance with the PAPR Act 1995/Periphery Policy etc. whichever is applicable.

b. The Layout and Zoning Plan shall be got approved from the Competent Authority under PAPR Act 1995. In case of project falls within any Municipal area, relevant Municipal Laws and Building Rules shall be applicable, whereas in the remaining area Punjab Urban Planning & Development Authority Building Rules, 1996 shall be applicable. However, all such clearances shall be given by the Competent Authority within 30 days.

c. The competent authority, PAPR Act 1995, shall issue the final sanction of the layout plan only after the first installment in respect of EDC has been deposited remaining portion of the EDC, the promoter shall have the option of paying the same in lump sum or of submitting a bank guarantee or hypothecating property (Plots) of equivalent value."

On 07.06.2007, approval of the layout plan was also granted to the petitioner and the State while exercising its powers under Section 44(2) of PAPR Act, granted exemption from all provisions of PAPR Act except Section 32 thereof, subject to few conditions and the relevant portion of this order is extracted herebelow :-

"Now, therefore, in exercise of the powers vested in him under Section 44(2) of the Punjab Apartment and Property Regulation Act, 1995 (Punjab Act No.14 of 1995) and all other powers enabling him to act in this behalf, the Governor of Punjab is pleased to exempt the aforesaid Housing Project of M/s. Malhotra Land Developers & Colonisers Pvt.Ltd., from all provisions of Punjab Apartment and Property Regulation Act, 1995 (Punjab Act No.14 of 1995), except section 32, subject to the following conditions, alongwith other usual terms and conditions :-

(1) Before starting the development of proposed project, promoter shall obtain environmental clearance from the Ministry of Environment & Forests, Government of India, as required under EIA notification dated 14-09-2006.

(2) Before starting the development of proposed project, promoter shall obtain NOC/approval from National Highway Authority of India."

This order is of 16.08.2007 and on 21.08.2007 it was duly notified. The State has made much of this for the reason that the order was passed on 16.08.2007 and endorsement for notification was made on 21.08.2007 and thus it has been pleaded on their behalf that since in the meantime notification of 17.08.2007 was issued, it would bind the petitioner to revised demand and the earlier decision of 16.08.2007 would be rendered insignificant.

The impugned order dated 24.08.2007 makes interesting reading as it is noticed in para 2 thereof that a proposal regarding grant of exemption under Section 44 of PAPR Act granted in the case of the petitioner was submitted for approval of the Hon'ble Chief Minister, who had approved the proposal and ordered that in future any exemption under PAPR Act to a promoter shall be subject to the following two terms/conditions in addition to the ones already prescribed :-

"2. A proposal regarding grant of exemption under section 44 of PAPR Act, 1995 to M/s. Malhotra Land Developers & Colonisers (P)

Ltd. Ludhiana was submitted for the approval of Hon'ble Chief Minister. The Chief Minister has approved the proposal and has ordered that in future any exemption under PAPRA to a promoter shall be subject to the following two terms/conditions in addition to the already prescribed prevalent terms and conditions :-

(1) Before starting the development of proposed project, promoter shall obtain environmental clearance from the Ministry of Environment & Forests, Government of India, as required under EIA notification dated 14-09-2006.

(2) Before starting the development of proposed project, promoter shall obtain NOC/approval from National Highway Authority of India."

Towards the end of this letter in para 4 it is observed that the orders issued on 21.08.2007 are hereby withdrawn. Said para also reads as under :-

"4. The orders issued vide No.18/178/2006-5hg2/6777-78 DATED 21.08.2007 are hereby withdrawn."

This is the primary grievance from which other adverse consequences have flown to the petitioner.

On the face of it the arbitrariness of the respondents is writ large as once having granted the approval after accepting the entire amount on account of EDC and passing orders to that effect, there would be no occasion for them to order withdrawal without any justifiable ground. Apart from it, the respondents have been unable to justify as to how an order of statutory authority passed in appeal preferred by the petitioner, which remained unchallenged, could be set aside by any other official without assigning any reason assuming that such a power existed or vested in the said person. It would be important to set out the relevant portion of the order particularly when it was passed after directions were given by this Court which also need to be set out herebelow :-

> "7. Applicant Company filed CWP No.27323 of 2013 before the Hon'ble High Court against the order dated 28.01.2013 of Secretary, Housing and Urban Development. Hon'ble High Court vide order dated 19.11.2015 directed State Government to pass the orders keeping in view the parity claim with M/s Janpath Estate (P) Ltd. Operative part of the orders of Hon'ble High Court is as under :
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> > "In light of the above mentioned prayer but without expressing any views on merits or the rival contents raised by the learned counsel for the parties, we dispose off this writ petition with a direction to the State Government to consider the above mentioned parity claim of the petition with M/s. Janpath Estate (P) Ltd. and decide the same afresh by passing a reasoned order. It shall be appreciated, if the decision is taken after hearing the representative of the petitioner as well as GLADA and the matter is decided within a period of four months from the date of receiving a certified copy of this order."
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> 8. In terms of the order of Hon'ble High Court, the undersigned (Principal Secretary, Housing and Urban Development) heard the representative of promoter company on 18.03.2016. Applicant company requested that delay in issuing the exemption u/s 44 of PAPR Act, 1995 has been at the level of government, as such the charges as per old policy should be levied on the them in accordance with the case of M/s. Janpath

Estate (P) Ltd. The report and record from Chief Town Planner, Punjab was obtained. As per report and record, the applicant request to grant exemption u/s 44 of PAPR Act, 1995 was made on 19.07.2007 and considering the said exemption was issued on 21.08.2007 and the same was withdrawn on 24.08.2007. It is not out of place to mention here that as per Clause No.11 of the Notification No.17/17/01-5Hg2/6930 dated 19.09.2007, it is clear that charges are applicable from the date of issuance of exemption. Exemption to applicant company was issued on 21.08.2007 as such the rates were charged as per policy dated 17.08.2007. New Policy dated 17.08.2007 came into existence regarding rate of charges, if the notification dated 21.08.2007 will be continued in that case charges will also be charged/recovered as per policy dated 17.08.2007. Thereafter, policy regarding charges came into existence on 19.09.2007. Considering the request dated 26.06.2008 of Applicant Company, the exemption u/s 44(2) of PAPR Act, 1995 was granted on 08.07.2008 and recovered charges as per Policy dated 19.09.2007.

In view of above, it is established that both the times while issuing the exemption u/s 44(2) of PAPR Act, 1995, there was no delay on the part of government and earlier exemption issued was withdrawn on 24.08.2007. Therefore, the same could not be considered for exemption and exemption was granted u/s 44(2) of PAPR Act, 1995 on 08.7.2008 and charges recovered as per policy dated 19.09.2007 are correct. This case has no similarity with the case of M/s. Janpath Estate (P) Ltd. and as such the request of M/s. Malhotra Land Developers & Colonisers (P) Ltd.is hereby rejected."

Equally important for us would be to refer to Section 33 of PAPR Act, which unambiguously states that order of the appellate authority shall be final unless revised by the State Government under Section 34. Sections 44(2), 33 and 34 of the PAPR Act are reproduced herebelow :

"44. Exemption.--

(1) xx xx xx

(2) If the State Government is of the opinion that, the operation of any of the provisions of this Act, causes undue hardship, or circumstances exist which render it expedient to do so, it may exempt, by a general or special order, any class of persons or arrears from all or any of the provisions of this Act, subject to such terms and conditions as it may impose."

"33.Appellate Authority and Appeals.-- (1) The State Government may, by notification in the Official Gazette, appoint an office or an authority as appellate authority, (hereinafter referred to as appellate authority) with the power to decide appeals against the orders of the competent authority.

Provided that the State Government may appoint as appellate authority more than one officer or authority and distribute the work among them in the manner it may deem fit ;

(2) Any person aggrieved by any order of the competent authority under this Act, may, within a period of thirty days of the communication of the orders to him, prefer an appeal to the appellate authority in such form and manner as may be prescribed.

(3) The appellate authority may, after giving an

opportunity of being heard to the parties and to the competent authority, pass such order as deemed fit, either confirming, modifying or setting aside the order of the competent authority, and record its reasons in writing, and the order of the appellate authority so passed shall be final, unless revised by the State Government under section 34.

(4) In discharging its functions, the appellate authority shall have all the powers under the Code of Civil Procedure, 1908 (Central Act V of 1908) of a civil court while deciding an appeal.

34. Revision.-- The State Government, either *suo moto,* or, on an application from any party aggrieved by any order within sixty days of the date of the communication to him of such order, may call for the examine the record of any proceedings disposed of by the competent authority, or the appellate authority, as the case may be, for the purpose of satisfying itself as the correctness, legality or propriety or any proceedings and of any order passed therein, and may pass such order in relation thereto as it may deem fit :

Provided that no order adverse to any person shall be passed without giving him an opportunity to show cause against such proposed order :

Provided further that no revision application will be entertained when an appeal has been or could have been filed against the order."

A perusal of the above clearly leads to a conclusion that the State exercised it powers under Section 44(2) of PAPR Act in favour of the petitioner and concluded the process by granting essential approvals.

Having done so it could not backtrack without doing violence to the principle of promissory estoppel. Besides, the revised demand was challenged before the appellate authority under the Act, which order has to be treated as final, unless set aside in revisional proceedings. Concededly such a course was never adopted. Rather it was sought to be negated by an official of the department who neither had any authority in law, nor was empowered in any manner to set aside an order of an authority exercising its powers of the appellate authority.

That apart to our minds the conclusion of the appellate authority was just and proper and the State would have no authority to negate what it had earlier granted to the petitioner. Besides, we notice that no distinction has been offered by the State in treating the petitioner any differently from the case of M/s Janpath Estates Private Limited, which in similar circumstances was permitted to go ahead with the project without insistence on the revised demand. This was particularly important since this Court while disposing of CWP No.27323 of 2013 had specifically directed the State Government "to consider the above mentioned parity claim of the petition with M/s Janpath Estate (P) Ltd. and decide the same afresh by passing a reasoned order." The impugned order shows that no such distinction has been offered and none possibly could exist particularly when GLADA itself supported the case of the petitioner.

Since no reasons have been given to deny the petitioner the benefit claimed by him, it becomes important for us to set out the reasoning given by the State itself in the matter of M/s Janpath Estates Private Limited to understand that the case of the petitioner is hardly distinct from that of the precedent cited and apparently the State once confronted with a situation where it could not distinguish the the case of the petitioner from that of M/s Janpath Estate Private Limited, decided to skip reasons altogether despite the recommendations of the Chief Administrator. For the purpose of reference relevant portion of the order in M/s Janpath Estate Private Limited reads as under :

> "This office advised that NOC regarding change of land use was issued by the Government of Punjab, department of Housing & Urban Development on 22.11.2006 and layout plan was approved by the layout committee on 07.12.2006. The promoter deposited 25% amount of EDC amounting to Rs.152.50 lac, license fee amounting to Rs.3.36 lac and UDF amounting to Rs.3.53 lac was deposited by the promoter on 11.01.2007 and remaining 75% amount of EDC amounting to Rs.458.50 lac was also deposited on 06.07.2007. As per office record, thereafter no formality/action was pending at the level of promoter. Promoter completed all the formalities six month before for obtaining exemption u/s 44 of PAPR Act, 1995 and was allowed by the Hon'ble Chief Minister as Competent Authority on 16.08.2007 before the issuance of revised policy of EDC on 17.08.2007. Because the delay in the matter of M/s. Janpath Estates (P) Ltd. was at the level of various offices, it was decided in the meeting of the authority to give the benefit of old policy to M/s. Janpath Estates (P) ltd., but in the instant case the delay in issuing the exemption u/s 44 of PAPR Act 1995 appears at the level of various offices. Both the cases look similar. Keeping in view of the above said facts, if felt necessary, the instant case be considered according to the case of M/s.Janpath Estate (P) Ltd."

The State could not have rescinded its earlier decision in favour of the petitioner particularly when he had reported compliance in all respects and approval granted by State. 100% of the EDC and licence fee had been deposited by the petitioner and the approval granted by none other than the Chief Minister himself. There would thus be a clear estoppel upon the State to visit the petitioner with any other consequences except for the benefit of the approvals that he had successfully earned through compliance. The notification of 17.08.2007 would apply to the projects of future and could not bind the petitioner whose approval stood granted on 16.08.2007.

We conclude as above and allow the writ petition. The impugned demand is quashed and the respondent-State is directed to give the necessary clearances to the petitioner as prayed for by him in the petition on the permissions/approvals granted earlier and flowing from orders of 16.08.2007.

Petition allowed.

(MAHESH GROVER)
JUDGE

22.5.2019 (LALIT BATRA)
dss JUDGE

Whether speaking/reasoned Yes
Whether reportable Yes