IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-24541-2021 (O&M)
Date of Decision:03.12.2021

Rajbir Singh Kadian ... Petitioner

Versus

Haryana Shehri Vikas Pradhikaran & others ... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present:- Mr. Arpit Rai, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J. (ORAL).

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

Vide Memo dated 06.03.2019, the Haryana Shehri Vikas Pradhikaran (in short 'HSVP') issued a policy on the subject - “Extension in time limit for construction of residential/commercial plots beyond the stipulated period of two years”.

By way of filing the instant writ petition, petitioner lays a challenge to the afore noticed extension fee policy dated 06.03.2019 (Annexure P-6) to the extent that the same applies retrospectively to the 'pending cases'. Further challenge is to a communication dated 29.12.2020 (Annexure P-12) issued by the Estate Officer, HSVP, Rohtak informing the petitioner that there is no excess amount deposited as extension fee qua plot No.1868, Sector-3, Rohtak and as such, there is no amount to be refunded.

Petitioner seeks a mandamus directing the 2nd respondent i.e. the Estate Officer, HSVP, Rohtak to refund the excess amount of extension fee to the tune of Rs.3,88,152/- along with interest w.e.f. 06.03.2019 (date of the policy at Annexure P-6).

It has been averred that the petitioner was re-allotted a residential plot bearing No.1868, Sector-3, Urban Estate, Rohtak measuring 144 sq. meters on 27.11.2008. As per letter of re-allotment appended as Annexure P-1, extension fee paid by the previous allottee was valid upto the year 2008 and the same was payable by the petitioner from the year 2009. On 12.04.2013, the Chief Administrator, Haryana Urban Development Authority (now 'HSVP') issued a policy on the subject of extension in time limit for construction on residential/commercial plots beyond the stipulated period of 2 years. In terms of such policy after the expiry of 12th year, further extension in period of construction was to be granted only on payment of extension fee at double the rate of the previous year. Pleaded case of the petitioner is that in terms of policy dated 12.04.2013, petitioner made payments towards extension fee from the year 2014 to 2018 amounting to Rs.4,68,720/-. On 16.11.2018, petitioner completed the construction on the plot in question and was issued an occupation certificate. As such, after the year 2018, no extension fee was payable by the petitioner.

By way of office memo dated 06.03.2019, HSVP issued a fresh policy on the subject of grant of extension in time limit for construction of residential/commercial plots beyond the stipulated period of 2 years. As per policy dated 06.03.2019 (Annexure P-6), the matter stood reviewed and it was decided that after the 12th year, further extension in the period of construction may be considered to be allowed on payment of 20% increase in extension fee from 12th year to the next 3 years/5th block and so on instead of double of the extension fee of every year. However, such policy dated 06.03.2019 was made applicable retrospectively to the extent of "all pending cases".

Counsel submits that if the 2019 Policy was made applicable to the petitioner, then the petitioner was required to pay Rs.88,128/- only towards extension fee and resultantly was entitled for refund of Rs.3,88,152/-. Representations seeking refund are stated to have been submitted to the respondent/authorities. Counsel has adverted to the document placed on record as Annexure P-10 to assert that the status of the application moved by the petitioner seeking refund of the excess amount of extension fee on the website of HSVP i.e. www.hsvphry.org.in was shown as approved. However, vide impugned communication dated 29.12.2020 (Annexure P-12), petitioner was informed that there is no excess amount pending so as to be refunded. It is against such backdrop that the instant petition has been filed.

Counsel has argued that the 2019 Policy was introduced as a view was taken that the previous Policy of 2013 was very harsh and imposes a heavy penalty on the allottee, who is not able to construct the plot even in the extended period and as such, the aim and objective of the policy was to provide relief to all the allottees. Consequently, it is contended that all the allottees, who were liable to pay the "extension fee" would have equal right to receive the benefits of the liberalized extension fee policy and merely because an allottee has already paid the extension fee at a higher rate under the 2013 Policy, cannot be denied the benefit of a refund by reckoning and re-calculating the amount towards extension fee under the revised 2019 Policy. It has been vehemently argued that under the 2019 Policy, HSVP has carved out two categories of allottees, who may have paid the extension fee at different rates even though they are identically situated. It is asserted that there would be no basis for making such classification and the same comes directly in the teeth of Article 14 of the Constitution of India. The stipulation in the revised Policy dated 06.03.2019 (Annexure P-6) applying the same retrospectively only qua "pending cases" is stated to be unconstitutional, arbitrary and illegal. Yet another limb of the argument raised by counsel is that the purpose of levy "extension fee" is to encourage allottees of HSVP to carry out construction on their respective plots expeditiously and in the facts of the present case, the petitioner having completed the construction in the year 2018 and having been issued an occupation certificate cannot be treated unfairly and be denied the benefit of a liberalized extension fee policy dated 06.03.2019 (Annexure P-6). It has further been argued that the concerned authorities under the HSVP are maintaining a double standard and blowing hot and cold at the same time. One the one hand, the online status of the petitioner's application for refund of the excess amount of extension fee stands approved but on the other hand, vide communication dated 29.12.2020, the refund of extension fee as had been sought by the petitioner has been declined.

We have heard counsel for the parties at length and have perused the pleadings on record.

A glaring fact which emerges from the pleadings on record would require notice. An Allottee's Accounts Statement dated 26.10.2021 has been appended as Annexure P-3 along with the writ petition. A perusal of the same would reveal that the plot in question had initially been allotted in the year 1993. Possession had been offered to the initial allottee in the year 1998. Petitioner had been re-allotted the plot in November, 2008. In other words, as on the date of purchase of the plot by the petitioner and issuance of re-allotment letter in his favour, a period of more than 10 years from the date of possession had already lapsed. Counsel does not dispute that as per terms and conditions of the initial allotment letter, the construction was to be effected within a period of two years from the date of offer of possession. It is for such reason that in the re-allotment letter dated 27.11.2008 (Annexure P-1) issued by the competent authority under HUDA (now 'HSVP'), it had been clearly recited that extension fee already stands paid by the previous allottee upto the year 2008 and extension fee thereafter as per applicable policy has to be paid by the petitioner from the year 2009 onwards.

Concededly, the petitioner carried out construction on the plot and was issued an occupation certificate in Novermber, 2018. Since, he had been issued the re-allotment letter in year 2008, the petitioner availed the extended period for purpose of construction by paying extension fee as per prevailing policy dated 12.04.2013. In case, the petitioner had not paid the extension fee, it was open for the HUDA/HSVP to have initiated coercive steps against him. It was to obviate such coercive steps including resumption that the petitioner deposited the extension fee in terms of the prevailing policy dated 12.04.2013 at Annexure P-2. Such action on the part of the petitioner would be seen as a conscious decision on his part to delay construction and having elected to deposit extension fee even after expiry of the 12th year from the date of allotment/possession at double the rate of extension fee as applicable to the previous year. In case the petitioner had felt that the quantum of extension fee under policy dated 12.04.2013 (Annexure P-2) was harsh or exorbitant, it was open for him to have agitated such issue before the competent forum at the appropriate time. He, however, chose not to do so. As such, it would not lie in the mouth of the petitioner to now raise the issue of being given the benefit of a liberalized extension fee policy having been issued in the year 2019 after having already availed of the extended period for purposes of construction under the previous policy dated 12.04.2013 and after having completed construction in the year 2018 itself.

The matter needs to be viewed from other perspective. Whenever plots are carved out in a sector or a residential colony, the authority concerned and in this case, it being HUDA invariably a time frame for carrying out construction is laid down. The objective of formulating a policy whereby time period is extended for raising construction upon payment of extension fee is two fold. The first objective is to ensure that the residential colony/sector gets developed within a reasonable time frame. There, however, could be a situation, where the allottee is under a genuine hardship and has not been able to raise construction. It is to mitigate such situation that the initial period to raise construction is extended on deposit of extension fee. Further extensions sought obviously entail a heavier penalty/extension fee. The seond objective that is sought to be achieved by an extension policy is to lay down a deterent for such allottees, who may not be the end users but have merely invested their money and have purchased the plot for speculative purposes. For such allottees, the quantum of extension fee dissuades them from such speculative activity. Suffice it to observe that the extended period for purposes of construction provided under an extension policy upon payment of extension fee is not a vested right. It is in the nature of a concession. Viewed from such an angle, the plea of discrimination sought to be raised by counsel for the petitioner by adverting to the 2019 policy which laid down a liberalized extension fee structure, having already availed and taken advantage of the prevailing 2013 extension fee policy, is wholly misplaced.

Equally, without merit is the challenge being laid to a stipulation in the year 2019 policy laying down that the same would be applicable only to "pending cases". Needless to mention that an extension fee policy would only apply to cases whereby allottees have not raised construction within the fixed time frame. The extension time period/fee policy by its very nature cannot apply backwards to such plot holders/allottees, who have already raised construction, have been issued occupation certificate and that too, after availing of the prevailing extension policy at that point of time.

The submission advanced by counsel as regards an artificial classification having been brought about between allottees, who are otherwise similarly situated, is being noticed only to be rejected. To reiterate, the extension fee policy is in the nature of a concession and within the domain of policy decision making by the executive. Petitioner himself having not carried out construction for a long period of time availed the prevalent concession as per 2013 extension policy. Merely for the reason that subsequent to the petition having raised construction and having been issued an occupation certificate, an extension fee policy is introduced which carries an extension fee payable at liberal rates would not vest in the petitioner a right for the same to be extended retrospectively and for the petitioner to be entitled to a refund.

Counsel has attempted to take advantage of the status of the application moved by the petitioner seeking refund on the website of HSVP and the same being reflected as approved. Such submission would not cut any ice. As the matter thereafter stands settled in the light of communication dated 29.12.2020 (Anneuxre P-12) clearly spelling out that there is no excess amount towards extension fee and that is to be refunded to the petitioner. Things ought to rest at that.

For the reason recorded above, we do not find any merit in the instant writ petition and the same is dismissed in limini.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

03.12.2021
harjeet

i) Whether speaking/reasoned? Yes/No

ii) Whether reportable? Yes/No