

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

116

**CWP no.7871 of 2022
Date of Decision:20.04.2022**

M/s Fidato Buildcon Pvt. Ltd.

..... Petitioner

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Anand Chibbar, Sr. Advocate, and
Mr. Amit Jhanjhi, Sr. Advocate, with
Mr. Siddharth Bhukkal, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

Vide this petition, the petitioner company seeks issuance of a writ in the nature of *certiorari*, setting aside the order dated 07.04.2022, passed by respondent no.1 in an appeal titled as Triveni Faridabad Allottees Association v. Director Town and Country Planning and others, (the Triveni Faridabad Allottees Association having been impleaded as respondent no.4 in the petition).

The background of the matter is that the land in question, measuring 11.706 acres, is situate in Sector 89 Faridabad, which belonged to two 'groups'. Out of the land in question, 8.250 acres was initially owned by Triveni Ferrous Infrastructure Pvt. Ltd. (hereinafter referred to as TFIPL) and Sumit Mittal, which

they mortgaged in favour of the Punjab National Bank. As the account was declared to be a non performing asset (NPA), the possession of the land was taken over by PNB Bank under Section 13(6) of SARFESI Act, which was subsequently auctioned and the present petitioner is stated to have become the successful auction purchaser. Therefore, a sale certificate dated 26.11.2013 (Annexure P-5), and a sale deed dated 24.01.2014 (Annexure P-4), were executed by the Bank in favour of the present petitioner. The remaining 3.456 acres of land is stated to be owned by Ferrous Alloys Forging Pvt. Ltd. & Ferrous Infrastructure Pvt. Ltd., which was purchased by the present petitioner vide sale deeds dated 04.11.2015 and 05.11.2015.

It is pertinent to mention here that it is contended that the original owners had obtained a licence for the land in question, i.e. Licence no.138/2008, which was also transferred in favour of the petitioner, after purchase, vide an order dated 18.03.2016 (Annexure P-6), passed by respondent no.2. Subsequently, on an application of the petitioner, the migration of licence is contended to have been allowed to provide affordable plotted housing vide Licence no.66/2018 dated 25.09.2018. In view of the above licence, a RERA Registration dated 18.10.2018 (Annexure P-26) was granted, a completion certificate dated 27.07.2020 (Annexure P-22) has been issued and it is further contended by learned counsel that more than 200 sale deeds (which constitute most of the plots), have been executed by the petitioner in favour of its allottees, i.e. third party rights have already been created.

Respondent no.4/appellant filed an appeal which is pending adjudication before the Additional Chief Secretary (respondent no.1), challenging

the order dated 25.09.2018.

It is seen that the impugned order is obviously an interim order, which after noticing the arguments on both sides and some statutory provisions, goes on to hold as follows:-

“Therefore, it would meet the end of justice if complete stay is granted on the sale/transfer of properties in respect of licence no.66 of 2018 till next date of hearing i.e. 26.05.2022. On the next date of hearing the parties are directed to submit their contentions in writing with evidence/proof.

Copy of the stay order be sent to DC, Faridabad and DTP, Faridabad.

Adjourned to 26.05.2022 at 03:00 p.m. Parties have noted the date and directions.”

Thus, it is to be observed that the stay as has been granted by the appellate authority, is only as regards sale/transfer of property in respect of which the licence in question has been issued and the said order is operative at this stage only till 26.05.2022, that being the date of hearing before that authority, with the parties having been directed to file written submissions on that date alongwith any evidence that they wish to lead.

Hence, upon query to learned senior counsel appearing for the petitioner, that with no order having been passed directing eviction of any person from the properties in question as have been allotted, and with only an interim stay having been ordered on actual transfer/sale of the properties, as to why this court should interfere in the matter at this stage itself, it has been contended by both learned senior counsel that even while granting the interim stay, no reasoning whatsoever has actually been given by the appellate authority.

Learned senior counsel have also submitted that the aforesaid interim order has been passed despite a request for a short adjournment having been sought by counsel appearing for the present petitioner on the ground that the senior counsel who was to argue the matter before that authority was in difficulty on that date.

In fact, before this court, learned counsel for the petitioner has given detailed written submissions as regards their arguments, which are being reproduced *ad verbatim* as follows:-

“Without deciding application for condonation of delay:-

The appeal (Annexure P-1) filed by respondent no.4/appellant with a delay of 229 days, for which an application for condonation of delay was filed alongwith the appeal. To the said appeal, the petitioner filed his detailed reply alongwith its reply to application for condonation of delay. It is submitted that before passing the impugned order, no order has been passed allowing or rejecting the application of condonation of delay. It is submitted that it is the settled proposition of law that an appeal may be admitted after the period of limitation prescribed thereof when the appellant satisfied the court that he has sufficient cause for not preferring the appeal within the period of limitation. Further, as per settled proposition appellate authority has no power to condone.

Forum Shopping and concealment

It is pertinent to mention here that respondent no.4/appellant had filed a writ petition “CWP no.7778 of 2019” which was dismissed as withdrawn in order to avail the remedy of appeal or revision. The said writ petition was heard along with CWP no.5904 of 2019 which was dismissed imposing Rs.10,00,000/- (Ten Lacs) costs. Both the writ petitions were decided by common order dated 14.05.2019 (Annexure P-7).

The respondent no.4/appellant, during the pendency of appeal, also filed an application (CA no.655 of 2020 in CP no.39 of 2009) under Section 542 of the Companies Act, 1956 (Annexure P-2A) seeking same relief as sought in the appeal. The said application was duly replied by the official liquidator (Annexure P-28), whereby it is specifically stated (para5, page 111) that as per revenue record the land belongs to M/s Fidato Buildcon Pvt. Ltd. (present petitioner) and is in possession of the petitioner. While hearing the said application the Delhi High Court vide order dated 11.11.2020 (Annexure P-27), specifically held that the counsel for respondent no.4/applicant therein on a specific query put by the court was not able to satisfy the court that there was no material on record to show that the land in question belong to TIDCO, therefore, fail to satisfy the hon'ble Delhi High Court for grant of any ad interim relief. It is submitted here that respondent no.4/appellant has not brought the said order dated 11.11.2020 to the knowledge of respondent no.1 while obtaining the impugned order dated 07.04.2022.

It is settled principle of law that suppression of material document/fact amounts to fraud on court, and any advantage/order obtained by playing fraud can be taken away at the very outset. It is further submitted that respondent no.4/appellant is guilty of forum shopping as he is trying to seek same relief from different courts without disclosing the fact of pendency of applications before other courts.

Auction/sale certificate or sale deed/transfer of licence in favour of the petitioner never challenged

It is submitted that the present petitioner is an auction purchaser and also has registered sale deeds in his favour, thus, is a lawful owner of the land in question. It is settled proposition of law that registration of a document is a notice to the entire world. Thus, failing to challenge the same, the appellants have accepted the ownership of the petitioner. It is further submitted that even otherwise it is the

admitted case of respondent no.4/appellant that TIDCO is not the lawful owners of the land in question. It is the admitted case of respondent no.4/appellant that TIDCO is not having any right, title, interest or licence in the land in question.

Further, in the appeal (Annexure P-1) respondent no.4/appellant has challenged only the migration of the licence no.66/2018 dated 25.09.2018 to affordable plotted housing. However, it is submitted that the transfer of licence in favour of the petitioner vide order dated 18.03.2016 (Annexure P-6), has never been challenged by respondent no.4/appellant before any court of law or adjudicating authority, thereby has attained finality. Thus, the petitioner or its allottees cannot be prejudiced against by filing of the appeal by respondent no.4/appellant who is neither related to the petitioner in any way nor have any interest, right or claim in the land in question. It is further submitted that auction proceedings were carried out as per the provisions of law under the SARFAESI Act, and never been challenged by respondent no.4 or anybody else. Further, respondent no.4/appellant always had the knowledge regarding the said proceedings. Respondent no.4/appellant is trying to blackmail the petitioner for getting undue benefits and interest.

Objections of respondent no.4/appellant heard and decided

It is pertinent to mention here that respondent no.4/appellant filed a detailed objection dated 20.06.2018 (Annexure P-12) before respondent no.2, while the application of migration of licence of the petitioner was pending adjudication. Respondent No. 2 granted a personal hearing to respondent no.4/appellant which is evident from Annexure P-13 and the said objections were duly considered and rejected by respondent no.2 vide order dated 11.07.2018 (Annexure P-14). It is submitted that the order dated 11.07.2018 was never challenged by respondent no.4/appellant, thereby has attained finality.

It is clearly evident from bare perusal of Annexure P-17, that no objections were received after issuance of public notice (Annexure P-

16) in pursuance to LOI dated 20.07.2018 (Annexure P-15).”

Having considered the arguments of learned senior counsel, we are of the opinion that with no eviction from the properties in question having been ordered, simply because sale/transfer of properties has been stayed for slightly over one month from today, it would not warrant interference by this court in exercise of jurisdiction under Article 226 of the Constitution of India, at this stage at least.

Consequently, this petition is disposed of with the petitioner obviously at liberty to raise all arguments as it wishes to, including the arguments reproduced hereinabove, on the next date of hearing before the appellate authority with a direction issued to that authority to hear the petitioner and all those concerned in the litigation on that date of hearing and to preferably dispose of the appeal within one month from 26.05.2022; and if for any reason, the appeal itself is not decided within that period, at least a detailed speaking order be passed as regards continuation or vacation of the interim stay as has been ordered vide the impugned order dated 07.04.2022, by duly giving detailed reasoning on each argument raised with regard thereto.

(AMOL RATTAN SINGH)
JUDGE

April 20, 2022
dinesh

Whether speaking/reasoned
Whether Reportable

(LALIT BATRA)
JUDGE
Yes/No
Yes/No