

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

CWP No.15050 of 2022(O&M)

Reserved on 04.08.2022

Date of Decision:06.08.2022

Consolidate Realtors Pvt. Ltd. and another..... Petitioners

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. R.S. Rai, Sr. Advocate with
Mr. Kunwal Dawar, Advocate,
Ms. Rubina Virmani, Advocate and
Mr. Nitish Pathak, Advocate
for the petitioners.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. Pardhuman Garg, Advocate,
Mr. Inderjeet Singh Chawla, Advocate
Mr. J.S. Thakur, Advocate,
Mr. Monty Goyal, Advocate and
Mr. Chahit Bansal, Advocate
for respondents No.4 to 302.

Mr. Amit Jhanji, Sr. Advocate with
Mr. Eliza Gupta, Advocate
for respondent No.304.

Mr. Sushil Jain, Advocate
for respondent No.305.

RAJ MOHAN SINGH, J.

[1]. Petitioners have assailed the order dated 23.06.2022 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as NCDRC) in Consumer Case No.849 of 2020 titled Ajay Kumar Verma and others Vs. M3M India Private Limited and others on the ground that the Commission has no jurisdiction to adjudicate the issue of sanction or approval granted by the Director Town and Country Planning, Haryana. The issue of approval falls under the domain of statutory powers and statutory authority constituted under the provisions of Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963 and Haryana Development and Regulation of Urban Area Act, 1975.

[2]. National Consumer Disputes Redressal Commission (NCDRC) has held that the construction of new tower No.11 is a deficiency of service in terms of Consumer Protection Act, 2019 and Haryana Apartment Ownership Act, 1983 because the builder had failed to obtain the consent of the stakeholders while applying for change in the site plan along with permission for a new tower. The requirement has to be based on statutory provision. Since the consent has not been obtained, therefore, the construction of 11th tower has been held to be in violation of aforesaid statutes.

[3]. Learned Senior Counsel for the petitioners submitted that under the Haryana Apartment Ownership Act, 1983, Director Town and Country Planning is the appropriate authority and in the absence of impleadment of the said authority, the impugned order is without jurisdiction. Learned Senior Counsel further submitted that provisional building plans were approved vide memo No.5735 dated 28.02.2020 with a condition that the variations should be published in three newspapers and displayed at various locations. The public notice was published on 03.03.2020 in three newspapers. No response/complaint was received from the flat holders on the revision of the building plans. The letter dated 15.07.2020 vide which approval for revised building plans was granted stood revoked vide memo No.21407 dated 27.08.2021. The building plans approval has been reviewed at the level of Director and it has been decided to revoke the approval granted by letters/orders dated 15.07.2020 and 01.03.2021 on the ground that the building plans exceed the prescribed limit of maximum FAR permitted in the colony and several objections have been raised by RERA against the said approval of building plans. Vide the aforesaid decision of revocation, the petitioners have been directed to stop all construction activities at the site with immediate effect and submit a confirmation in writing in this regard. It has also

been observed that in case, the petitioners are interested to retain any construction already made at the site or undertake any additional construction within the prescribed limit of maximum FAR, the petitioners shall be required to submit fresh application for approval of building plans along with fulfillment of all related formalities in respect of revision of building plans.

[4]. Evidently, the order of approval dated 15.07.2020 was revoked by the order of revocation dated 27.08.2021. During interregnum period, tower No.11 has come up to some extent.

[5]. The grievance of the petitioners is that the impugned order will certainly create hurdle in the way of competent authority under the Haryana Apartment Ownership Act, 1983 and Directorate of Town and Country Planning, Haryana while processing the application of the petitioners for seeking approval afresh in the light of liberty granted in letter/order of revocation dated 27.08.2021.

[6]. Learned Senior Counsel for the petitioners submitted that though the High Court would normally not exercised its writ jurisdiction under Article 226 of the Constitution of India in the presence of efficacious alternate remedy available to the petitioners, but the existence of alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. There are exceptions to the aforesaid rule of

alternate remedy, in which, High Court exercise its jurisdiction when the writ petition is filed for the enforcement of a fundamental right protected by Part III of the Constitution of India, there has been a violation of the principles of natural justice and if the order is wholly without jurisdiction. The jurisdiction can also be exercised where vires of a legislation is challenged. The existence of alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution of India in an appropriate case. In **Magadh Sugar and Energy Limited Vs. State of Bihar and others, 2021 SCC Online SC 801**, the Hon'ble Apex Court has laid down the principles of law for exercising the powers by the High Court in certain cases i.e.

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the

*principles of natural justice; (c) **the order or proceedings are wholly without jurisdiction**; or (d) the vires of a legislation is challenged;*

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

Learned Senior Counsel also relied upon **Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka, 2020(13) SCC 308** in this regard.

[7]. On the other hand, learned counsel for respondents No.4 to 302 submitted that the High Court has no jurisdiction to deal with the matter against the order passed by the National

Consumer Disputes Redressal Commission as the same is appealable under Section 67 of the Act of 2019. In view of availability of statutory remedy of appeal, the High Court should not bypass the same. Respondents No.4 to 302 have already approached the Hon'ble Apex Court having been aggrieved with para No.38 (ii to iv). The Hon'ble Apex Court has taken cognizance and issued notice in the appeal for 09.09.2022 and directions issued in terms of paragraph No.38 (ii to iv) of the impugned judgment have been stayed. Petitioners herein have also been impleaded as party respondents before the Hon'ble Supreme Court in Civil Appeal No.4850 of 2022. In **Cicily Kallarackal Vs. Vehicle Factory, (2012) 8 Supreme Court Cases 524**, the Hon'ble Apex Court has expressly issued directions of caution to all the High Courts not to entertain writ petitions, challenging orders of National Commission as the same are incapable of being questioned under the writ jurisdiction of the High Court. The statutory appeal is available and the same lies to the Hon'ble Apex Court. Learned counsel also relied upon **Ibrat Faizan vs. Omaxe Buildhome Private Limited, 2022 LiveLaw (SC) 481** and contended that the availability of statutory remedy under Section 67 of the Act of 2019 would oust the writ jurisdiction.

[8]. Having considered the factual position of the case, I

deem it appropriate not to entertain this writ petition as the petitioners have already been impleaded in Civil Appeal No.4850 of 2022 before the Hon'ble Apex Court. The impugned order is appealable under Section 67 of the Act of 2019, therefore, it would be just and appropriate for the petitioners to agitate the issue before the Hon'ble Apex Court in accordance with law.

[9]. In view of above, the present writ petition is dismissed.

06.08.2022

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**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No