

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201

CWP-28062-2018 (O&M)
Date of Decision: 26.04.2022

Haryana Shehri Vikas Pradhikaran through Estate Officer-II, Gurugram

....Petitioner

versus

State of Haryana and another

....Respondents

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

Present: Mr. Deepak Sabherwal, Advocate,
for the petitioner.

Mr. Deepak Bhardwaj, DAG, Haryana.

Mr. G.S. Attariwala, Senior Advocate with
Mr. Ram Kumar Saini, Advocate,
for respondent No.2.

Amol Rattan Singh, J.

1. By this petition, the petitioner seeks quashing of the order dated 13.12.2017 (copy Annexure P-14), passed by respondent No.1 (Principal Secretary to Government of Haryana, Town and Country Planning Department, Chandigarh), disposing of the revision petition filed by

respondent No.2 herein against the order dated 10.02.2014 of the Chief Administrator, HUDA, vide which a delay in depositing 15% of the sale consideration in respect of Plot No.169, Sector-38, Gurugram, was decided to be condoned, subject to charging a price at the rate of Rs.24,400/- per square meter, in addition to a surcharge imposed and interest being charged.

2. Mr. Sabherwal, learned counsel for the petitioner HSVP, submits that the revisional authority has actually completely overreached the orders of the Supreme Court dated 18.10.2013 and 05.07.2016, inasmuch as, vide the former order though the SLP filed by respondent No.2 herein had been allowed to the extent that she was permitted to deposit the remaining amount due from her towards the petitioner (formerly HUDA) at the current market price then prevailing (in the year 2013), upon the Chairman of the Authority passing an order to that effect, she was to deposit the amount demanded within two months thereafter.

He next submitted that that decision as had been taken by the Chief Administrator, was conveyed to the petitioner vide a memo dated 21.02.2014 (copy Annexure P-9), directing her to deposit Rs.92,83,889/- upto 31.03.2014.

He further submits that the said amount included the then current market price @ Rs.24,400/- per square meter, in addition to which she was to pay a 10% surcharge on 15% of the price of the plot and 18% interest per annum for the delay in payment.

3. Respondent No.2 not having complied with abovesaid memo and instead having filed Interlocutory Application No.3-4/2016 (in SLP (C)

No.(s) 8198-99/2013) before the Supreme Court on 11.04.2016, and with that application having been dismissed vide the order dated 05.07.2016 (Annexure P-12), the revision petition filed by her before respondent No.1, should in fact have been dismissed, instead of which it has been allowed vide the impugned order dated 13.12.2017, to the extent that she was directed to pay Rs.91,10, 092/- within a further period of 60 days from 13.12.2017, though correctly she should have paid the amount of Rs.92,83,889/-, about three years and eight months prior to that date.

4. Mr. Attariwala, leaned senior counsel appearing for respondent No.2, on the other hand submits that firstly, the order of the Supreme Court dated 18.10.2013 (copy Annexure P-8) very clearly states that upon the said respondent making an application to the Chairman within 30 days from that date, alongwith an application for condonation of a delay, she would also file an undertaking to the effect that in the event of acceptance of her representation she would pay the current market price of the plot, which she was bound to comply with, but the petitioner Authority on the other hand, other than charging the current market price as was contended to have been prevalent in the year 2014, also directed her to deposit 10% surcharge on 15% the price of the plot (calculated @ Rs.24,400/- per square meter), and even above that, interest @ 18% per annum was demanded for the delay, whereas she would not liable to pay both these components as she was in any case being charged the current market price as was prevalent in the year 2014, in terms of the order of the Supreme Court.

He submits that therefore the total amount actually due from

her for the plot measuring 286 square meters, should have been only Rs.68,64,000/-, with no surcharge or interest payable thereupon.

[Note:- Actually even if Rs.24,400/- per square meter is multiplied in respect of a plot measuring 286 square meters, the amount comes to Rs.69,78,400/-.]

5. Mr. Attariwala next submits that respondent No.2 therefore deposited Rs.10,00,000/- on 26.03.2014 vide a demand draft, within the stipulated period, as Rs.92,00,000/- plus in any case was not chargeable from her, and consequently in fact that should have been the amount directed to be paid even by the revisional authority as per the impugned order; but be that as it may, that order has not been challenged by respondent No.2.

6. Having considered the matter, we are not at all convinced of the arguments raised on behalf of respondent No.2 as regards the impugned order, in view of the fact that the Supreme Court even on an interlocutory application filed by the said respondent in SLP(C) No.(s) 8198-8199 of 2013, has rejected that application and thereby had not extended the time for the 2nd respondent herein to make the deposit; and therefore the revisional authority could not have gone over and above that order.

7. Further, the bonafides of respondent No.2 in our opinion are also not at all established; because if she had any grievance about the calculations as regards the final price to be paid by her to the petitioner in terms of the Supreme Court order dated 18.10.2013, she should have at least deposited the amount that she was not disputing, which even as per learned

counsel for the petitioner would be at least Rs.68,64,000/- (though even in the impugned order it is mentioned that she had accepted that the amount to be was Rs.91 lakhs plus), but with her having deposited only Rs.10 lakhs within the time given to her.

8. Learned senior counsel appearing for respondent No.2 in this petition and Mr. S.K.S. Bedi appearing for her in CWP No.26363 of 2021, (with notice not issued in that petition), also submit that the order of the Supreme Court was not adhered to, inasmuch as it was not the Chairman of the HSVP who had actually considered her case.

Even that to our mind would be too late in the day to argue, with respondent No.2 also not having succeeded before the Supreme Court in her interlocutory application, as already observed hereinabove.

9. Thus, in a nutshell, respondent No.2 having been directed to deposit Rs.92,83,889/- upto 31.03.2014, even if we are agreeable that the said order having been conveyed to her only on 21.02.2014, she could have made a deposit upto 21.04.2014, yet even upto that date she deposited only Rs.10,00,000/- and not even Rs.68,64,000/- as per even her own calculation as per the market price shown by the petitioner -Authority.

Had she deposited at least that amount, whether or not she was to deposit the remaining amount of Rs.24,00,000/- plus by way of surcharge and interest, could have been considered by this court.

However, she having chosen to deposit only Rs.10,00,000/-, for whatever reason, possibly because she did not have even that amount of Rs.68,64,000/- with her (though with nothing said further on that issue), in

our opinion, she cannot be granted still further extension of time to now deposit even Rs.92,83,889/- as was originally demanded vide the communication dated 21.02.2014 (Annexure P-9), especially with the Supreme Court itself having dismissed her interlocutory application on 05.07.2016, seeking extension of time/seeking clarification of the order dated 18.10.2013.

10. Hence, we allow this petition and set aside the impugned order dated 13.12.2017 passed by the revisional authority (Annexure P-14), but as regards the issue of refund of the amount of Rs.10,00,000/- deposited by her vide the demand draft dated 26.03.2014 with the petitioner authority, we direct that the same be now refunded to her within a period of two months from today, alongwith interest @ 6% per annum, if the demand draft has been encashed by the petitioner-Authority.

Naturally, if it has not been encashed, there is obviously no question of refund thereof and as regards the refund of 10% of the consideration price as was originally deposited by her, though in our opinion even in terms of the order of the Supreme Court dated 18.10.2013, there is no such mention of a refund if the petitioner failed to comply with the condition of paying the market price for the plot after the Chairman had directed her to deposit Rs.92,83,889/-, yet she would be at liberty to make any representation if she wishes to with regard thereto, which would be considered by the competent authority, with a speaking order to be passed thereupon within a period of two months from the date of receipt of any application/representation, if such representation is made within two months

from today.

(AMOL RATTAN SINGH)
JUDGE

(LALIT BATRA)
JUDGE

26.04.2022
jitender/dinesh

Whether speaking/ reasoned : Yes
Whether Reportable : Yes