

2023:PHHC:130483-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCM-16777-CWP-2019 IN/AND
CWP-885-2005

Reserved on:20.09.2023

Date of Decision: 07.10.2023

TILAK RAJ

.....PETITIONER

VS.

HUDA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWANPresent: Mr. Brij Bhushan Kaushik, Advocate,
for the applicant-petitioner.Sh. Himmat Singh, Advocate,
for the respondents.

HARPREET KAUR JEEWAN, J.CM-16777-CWP-2019

Application has been filed for fixing the case to some actual date and to place on record some documents as Annexures P-4 to P-7.

In view of the averments made in the application, same is allowed. Case is taken up on Board for hearing today itself and the aforesaid documents are ordered to be taken on record as Annexures P-4 to P-7. Office to tag the same at appropriate place.

CWP-885-2005

[1]. The petitioner has approached this Court by invoking the extra-ordinary writ jurisdiction under Article 226 of the Constitution of India praying for issuance of a direction to the respondents to remove high power electric wire and electric pole from the plot in question and further

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to withdraw offer of possession and possession certificate dated 20.06.2002 (Annexure P-1). The petitioner has further prayed for issuance of a direction to the respondent to pay interest on the entire deposited amount from the date of the deposit till removal of the electric wires and poles from the said plot.

[2]. It is the case of the petitioner that he had purchased SCO No. 38P, measuring 5.612x22 meters, i.e. 123.53 square meters for a sum of ₹38,20,000/- from the Haryana Urban Development Authority-respondent No. 2 (for short 'the HUDA') in an open auction. After issuance of the allotment letter dated 01.12.2000, the petitioner deposited 25% price of the plot within 20 days. The paper possession was given to the petitioner on 20.06.2002 and certificate of possession (Annexure P-1) was issued. However, the petitioner found that high power electric wires and two electric poles were existing at the spot when he visited to take the possession. The petitioner requested Manohar Lal, Junior Engineer of office of the Estate Officer, HUDA (respondent No. 2) to remove the said electric poles but he was told that it is a lengthy procedure to remove these poles and electric wires, which will be done within 03 months. However, till the filing of the present petition, the said electric poles and wires were not removed and the petitioner could not start the construction of the plot despite the fact that he had purchased the plot for a sum of ₹38,20,000/-. The petitioner had even made a representation dated 17.11.2004 (Annexure P-3) to grant him interest on the deposited amount but to no effect. Hence, the present writ petition has been filed.

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[3] Written statement was filed on behalf of respondent No. 2 whereby the allotment of the plot to the petitioner and other terms and conditions of the allotment letter were admitted. However, it was alleged that the possession of the commercial site was given to the petitioner on 20.06.2002 (Annexure P-1) by Manohar Lal, Junior Engineer and as per record of the respondents, there is no mention about a pole or any wire existing at the site. For the first time, the petitioner made a request on 18.11.2004 (Annexure P-3) and he remained silent from 20.06.2002 to 18.11.2004. In response to the representation of the petitioner, respondent No. 2 requested the concerned Executive Engineer, Electrical Division, HUDA, vide memo dated 02.12.2004 and subsequent memo dated 09.03.2005 to remove the said electric pole. The said pole was removed which has been intimated by the Executive Engineer, vide memo dated 14.03.2005. It was submitted that the petitioner for the reasons best known to him was not keen to construct the SCO and he wanted to avoid the payment of interest, as such, the petitioner is not entitled to any interest from the respondents, as prayed by him.

[4] Learned counsel for the petitioner submitted that the petitioner could not construct the SCO despite the payment of the allotment price due to existence of electric wires and poles. He could not use the said property as such he is entitled for interest on the payment which he made to the respondents.

[5] On the other hand, Sh. Himmat Singh, Advocate, for the respondents contented that the petitioner is not entitled to any relief as the pole was removed immediately as and when pointed out by the petitioner.

Before that petitioner was not keen to raise construction.

[6] We have considered the aforesaid submissions.

[7] Admittedly, the allotment of the site in question was made in favour of the petitioner on 01.12.2000, vide allotment letter Annexure P-6. The total price of the plot was ₹38,20,000/-. As per the contentions of the petitioner, he had deposited 25% of price within 30 days of the allotment and he had paid all the outstanding installments. The last payment of ₹60,000/- was made on 20.09.2004. However, he was issued the possession letter on 20.06.2002 (Annexure P-1). It is the contention of the petitioner that it was merely a paper possession and at the actual site there were electric poles and wires, therefore he could not start construction despite the payment of ₹38,20,000/-.

[8] Keeping in view the contentions raised by the petitioner and the stand taken by the respondents in the written statement, we are of the considered opinion that it was the bounden duty to the petitioner to hand over clear possession of the plot. Having an electric pole and electric wires passing over the site are depicted in the photographs (Annexure P-2) attached with the writ petition indicate that construction was not possible at the site. The existence of the said electric pole is not disputed even in the written statement. The only plea has been taken that the petitioner has never requested for removal and when he filed a representation dated 18.11.2004 (Annexure P-3), the said wires were removed without any delay on 14.03.2005.

[9] In view of the said contentions, it is admitted that since the day of handing over the possession on 20.06.2002 (Annexure P-1) till the

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removal of the electric poles on 14.03.2005, the petitioner could not use the plot in question due to the obstacles at the spot on account of the electrical wires and the poles. The respondent has claimed the interest on the amount which was paid by him. The petitioner had opted for making the 75% balance payment in installments along with 15% interest on the said payment in terms of the allotment letter. However, he could not use the plot for raising a construction for a period about 02 years and 09 months w.e.f 20.06.2002 to 14.03.2005. As such, we are of the considered opinion that the petitioner is entitled for interest @ 15% per annum which has been charged by the respondent on the 25% of the amount of the plot he had deposited for the above said period. The said amount be paid within a period of two months from the date of receipt of the certified copy of this order.

[10] Consequently, in view of the observations made, the petition is thus, partly allowed.

[11] Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

October 07, 2023
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Whether Speaking	Yes
Whether Reportable	Yes