IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17185-2022 (O&M)
Date of Decision: 03.10.2023

VIRINDER KUMAR GUPTA AND ANOTHER ......PETITIONERS

Vs.

STATE OF HARYANA AND OTHERS .....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Virinder Kumar Gupta, petitioner No. 1 in person.

Mr. Deepak Bhardwaj, D.A.G., Haryana,
for respondent No. 1-State

Mr. Deepak Sabherwal, Advocate,
for respondents No. 2 and 3.

*****

HARPREET KAUR JEEWAN, J.

[1] By way of filing the present Civil Writ Petition under Article 226/227 of the Constitution of India, the petitioners have challenged the impugned order, dated 31.03.2022 (Annexure P-1), passed by the Administrator, Haryana Shehri Vikas Pradhikaran (for short ‘the HSVP’), exercising the power of the Chief Administrator, HSVP, Sector-6, Panchkula (respondent No. 2), whereby the request of the petitioners to refund the entire amount of their booth was declined while dismissing the appeal.

[2] At the time of filing of the present petition, the petitioners were represented by a counsel, i.e. Sh. Harish Mehla, Advocate. However, on 31.08.2023, petitioner No. 1, Mr. Virender Kumar Gupta appeared in person and sought an adjournment to engage a fresh counsel. Today, again petitioner No. 1 has appeared in person and submitted that he would

personally address the arguments and he does not want to engage any other counsel.

[3] On 05.08.2022 the only issue raised by learned counsel for the petitioners was that they had paid an amount of ₹1,10,00,000/- but on their request when the booth was surrendered, they have been refunded only an amount of Rs. 93,50,000/- and no reason has been given as to why the entire amount had not been refunded. The following order was passed:-

> "*The only issue raised by learned counsel for the petitioners is that they had paid an amount of Rs. 1,10,00,000/-(One crore ten lacs) in respect of Booth No. 52, Sector-11, Panchkula. Vide letter dated 06.11.2020 he had requested the respondents tha t they wish to surrender the booth and the amount be refunded to them after making necessary deductions as per policy . The petitioners have been refunded an amount of Rs.93,50,000/-.*
>
> *The grievance of the petitioners is that they have not been furnished any explanation as to why only Rs. 93,50,000/- is refunded.*
>
> *Ms. Tanisha Peshawaria, DAG, Haryana is requested to have instructions as to how the amount of refund has been calculated.*
>
> *Adjourned to 19.10.2022.*"

[4] It is the contention of petitioners that they were allotted a small booth No. 52, Sector-11, Panchkula, in an open auction held on 11.10.2013 and they were issued the allotment letter dated 11.10.2013 (Annexure P-3). Thereafter, possession certificate, dated 15.10.2013 (Annexure P-4) and a No Dues Certificate, dated 10/17.01.2014 (Annexure P-5) was also issued. The conveyance deed, dated 31.01.2014 (Annexure P-6) was also executed an occupation certificate, dated 14.03.2014

(Annexure P-7) was issued.

[5] Petitioner No. 1 contended that the respondents-HSVP issued a policy 18.01.2017 (Annexure P-9), permitting construction of stores on the booths and service booths in the HUDA markets, Haryana. As such, the petitioners submitted a request on the CM window, Haryana, dated 05.03.2020 (Annexure P-10), seeking permission to raise construction on the first floor, which was forwarded by the Deputy Commissioner to the Estate Officer, vide letter dated 19.05.2020 (Annexure P-11). However, they were declined permission to raise construction on the first floor by the Estate Officer, vide letter dated 17.06.2020 (Annexure P-12).

[6] It is the case of the petitioners that they were discriminated against as regard to the adjoining booths as they were granted permission to raise construction on the first floor. Due to the said action of the respondents, the petitioners were coerced to surrender the booth as such they requested for refund of the entire amount, including the site value, the expenditure made on execution of the Deed of Conveyance and construction cost by way of moving an application, dated 21.09.2020 (Annexure P-14). However, the petitioners were refunded only a sum of ₹93,50,000/-. Thereafter, the petitioners submitted a grievance letter on the CM window, dated 23.12.2020 (Annexure P-20). A communication dated 05.03.2021 (Annexure P-21), was issued by the Estate Officer, Panchkula (respondent No. 3) informing the petitioners that the booth had already been surrendered by him with his consent and the amount as per the policy has also been refunded to him. Thereafter, both the petitioners filed an appeal before the Administrator, HSVP, Panchkula (respondent No. 2) seeking return of the entire consideration amount paid towards the booth in

question. The Administrator, HSVP, vide order dated 31.03.2022 (Annexure P-1) dismissed the appeal and declined the request of the petitioners to return the whole amount. The petitioners were further directed to get the construction, fixtures and fittings removed from the site within 30 days failing which the Estate Officer, Panchkula (respondent No. 3) was ordered to get the construction removed at the cost of the petitioners.

[7] The petitioner contended that he was not permitted to raise the construction on the first floor despite there being a policy by the HSVP and as such, he was coerced to return the booth. Therefore, the respondents were not legally entitled to deduct any payment while returning the amount to the petitioners.

[8] Keeping in view the averments made in the petition and the order passed by the *quasi judicial* authorities, we do not find it necessary to issue a formal notice to the respondents, and call for the matter statement.

[9] Admittedly, the allotment of the booth site was made to the petitioners, vide allotment letter dated 11.10.2013 (Annexure P-3). In terms of the allotment letter, the petitioner made the entire payment and even got the conveyance deed executed. The possession was taken by the petitioners on 15.10.2013 as per possession certificate (Annexure P-4). As per condition No. 18 of the allotment letter, the time for construction was extendable by charging extension fee.

[10] It is the case of the petitioners that they were coerced into a situation where they had to surrender the site in question. On the basis of the policy dated 18.01.2017 (Annexure P-9), the booth and service booths owners were granted permission regarding the construction on the first

floor on the respective sites. However, the said permission was not granted by the respondents vide communication dated 17.06.2022 (Annexure P-12) despite the fact that petitioners made a request dated 05.03.2022 (Annexure P-10) and subsequent reminder on 19.05.2020 to the Deputy Commissioner (Annexure P-11).

11. We have considered the said submissions.

12. The request of the petitioners for raising the construction on the first floor was declined by the Estate Officer, HSVP, Panchkula (respondent No. 3), on the ground that the booth in question fall in the category of small booths though the area of the booth in question is more being a corner booth. As such, the construction of first floor can violate architecture control as per the discussion with the senior architect. As such, the permission was not granted for raising the construction on the first floor in view of the policy regarding construction on the first floor on booths and service booths which were got approved in the meeting held on 10.03.2017. The relevant portion of Annexure P-12 reads as under:-

> "*In this regard, it is submitted that Booth No. 52, Sector-11 falls in the category of Small Booths having size 2.75m x 5.50m. Being a corner booth size of your Booth No. 52, Sector 111, is 5.50m x 5.50m but it is in the lane of small booths and construction of FF on the above said booth can violate Architecture control. The matter has been discussed with Senior Architect Sh. Rajesh Sehgal and he told that it is allowed in the booth only have size 2.75m x 8.75m. The policy regarding construction of FF on the Booths and service Booths in the HSVP markets Haryana had been got approved in its 112th meeting held on 10.01.2017 vide agenda item No. 20 and circulated vide memo No. CTP/STP(S)/VY/11727 dated 18.01.2017.*"

13. A perusal of the policy dated 18.01.2017 (Annexure P-9) indicate that it was applicable to all the allotted single story shops having sized 2.75m x 8.25m and above and as per the said policy permission was to be allowed for raising the construction on the first floor on the booth. The permission was declined to the petitioners not on the ground that the area of the booth was less than the area as mentioned in the said policy but the permission was declined merely on the ground that the booth in question is of the category of small booths and the area is more merely because it is a corner booth. Another reason that has been recorded by respondent No. 3 is that the permission was declined as per the discussion with the senior architect. There is no opinion of the senior architect on record giving any reason for declining the said permission despite the fact that the area of the booth in question was more than the area on which the policy was applicable.

[14] In view of the aforesaid reasons, we are of the considered opinion that though the petitioners have said that they had themselves surrendered the plot but it was on account of the fact that they were not permitted to raise construction on the first floor. The petitioners had further requested for surrender of the plot by way of an application dated 06.11.2020 (Annexure P-17) and had also requested for refund of the payment made to the respondent-HSVP after standard deduction charges. An affidavit dated 05.11.2020 (Annexure P-18) in support of the said application was also filed. The request for surrender of the booth was accepted by respondent No. 3 and the same was communicated to the petitioners, vide communication dated 05.03.2021 (Annexure P-21). The

affidavit reads as under:-

> *"We, Virinder Kumar Gupta S/o late Sh. S.C. Gupta and Neeru Gupta w/o Sh. Virinder Kumar Gupta, R/o House No. 1050, Sector 11, Panchkula-134112, do hereby solemnly affirm and declare as under:-*
>
> *1. That, we are the absolute owner of Booth Small No. 52, Sector-11, Panchkula, size 18'18'.*
>
> *2. That, we want to surrender our above said property to HSVP, Panchkula and demand for the refund of the paid amount.*
>
> *3. That, we will not create any dispute/litigation or court case after getting the refund regarding above said property."*

[15] The grievance of the petitioners is as to why the entire amount paid by them had not been refunded and as to why the deduction has been made. The petitioners have sought a refund and permitted the respondents to make standard deductions, vide application dated 06.11.2020 (Annexure P-17). After moving the said application, they cannot challenge the said deduction by way of filing the present Civil Writ Petition especially when petitioner No. 1 has himself submitted an affidavit 05.11.2022 (Annexure P-18), along with the said application that he will not raise any litigation after getting the refund.

[16] As per the interim order dated 05.08.2022, counsel for the respondents requested to have instructions on the point as to how the refund was calculated. As per the interim order dated 13.03.2023 counsel for the respondent-HSVP produced the calculation sheet received from Executive Officer, HSVP, Panchkula and the same was supplied to the petitioners. As per the said calculation sheet the deductions were only

made on account of forfeiture of 10% of the EMD and on account of 5% rebate given by the HSVP on the total cost. The said calculation reads as under:-

> "*Calculation as under refund of surrender value amount to Rs. 93,50,000/-.*
>
> *Total cost of property= Rs. 1,10,00,000/-*
> *Forfeited 10% EMD (-)= Rs. 11,00,000/-*
> *Rs. 99,00,000/-*
> *5% rebate given by (-) Rs. 5,50,000/-*
> *HSVP on total cost*
> ***Total =Rs. 93,50,000/-***
>
> *(subject to audit).*
>
> *He was not given the benefits of rebate of 5% as he has surrender the plot."*

[17] The petitioners have themselves relied upon the instructions/policy dated 07.05.1999 (Annexure P-19) which was issued by the Chief Administrator to all the Estate Officers. As per the said instructions, a decision was taken as a matter of policy regarding the matter of acceptance of surrender of commercial/residential plots that the refund will be allowed after forfeiting the amount equal to 10% of the total amount of the consideration money, interest and other dues payable. The said decision was communicated on behalf of the Chief Administrator, HUDA to all the Estate Officer of HUDA in partial modification of the previous communication dated 14.12.1995. The petitioners have failed to show that the said policy was not applicable to them as such the deduction of 10% amount being EMD is justified specially when the petitioners have surrendered the plot by giving a consent for making standard deductions.

[18] The petitioners have further raised a claim that they are entitled for the refund along with interest on the basis of the exemptions provided in the policy dated 07.05.1999 (Annexure P-19). We are of the

considered opinion that the case of the petitioners does not fall in the exemption clauses where the surrender could have been permitted without forfeiture of the earnest money deposit (EMD) as per the policy dated 07.05.1999 (Annexure P-19). As per the said policy, exemption in forfeiture of the EMD upon surrender of a plot could have been permitted only in such cases where the respondent-HSVP cannot deliver the possession; or where the plot is not actually available on ground; or where the land is under unauthorized encroachement, which cannot be removed, and the respondent-HSVP cannot deliver the possession. The relevant portion of the said letter dated 07.05.1999 (Annexure P-19) reads as under:-

> "*However, in the following cases of surrender without forfeiture may be accepted with the permission of the Administrator, concerned:- Where HUDA could not deliver the possession of plots due to litigation pending in the Court by the original land owners.*
>
> *(i) Where HUDA could not deliver the possession of plots due to litigation pending in the Court by the original land owners;*
>
> *(ii) Where plot is not actually available on the ground as per layout plan;*
>
> *(iii) In case of death of allottee and the request from the legal heirs for refund has been received before the offer of possession.*
>
> *(iv) Where the land is under authorized encroachment which cannot be removed and HUDA cannot deliver the possession.*"

The case of the petitioners does not fall in any of the aforesaid exemption clauses as such, the petitioners are not entitled to any relief on the basis of the said guidelines.

[19] The petitioners are also claiming the refund of the construction made by them and also the conveyance charges incurred by them. However, the Administrator, HSVP, Panchkula, while dismissing the appeal as per order dated 31.03.2022 (Annexure P-1) directed the appellant to remove the construction from the spot within 30 days failing which, it was further ordered that the Estate Officer, Panchkula, shall get the constructed removed at the cost of the appellant. The observations made by the Administrator in the order dated 31.03.2022 (Annexure P-1) while dismissing the appeal to this effect are not sustainable keeping in view the fact that the petitioners have made full payment after the allotment was made. They have raised construction within the stipulated period. The petitioners had been requesting by making various communications to the respondents for permission to raise the construction on the first floor and it is the case of the petitioners that they were forced to surrender the booth as they were not permitted to raise the construction on the first floor. The *bona fide* on the part of the petitioners is evident that they had deposited the entire payment of the booth, took the possession, got the construction done within stipulated period and even got the conveyance deed executed. In such circumstances, we are of the considered opinion that the directions issued by the Administrator, HSVP, while passing the order dated 31.03.2022 for removal of the construction at the cost of the appellants are not justified and liable to be set aside. The petitioners cannot be burdened with the cost of removal of the construction rather they are entitled for refund of cost of the construction which was raised by them.

[20] Keeping in view the above, the petition is partly allowed and the directions issued by the Administrator to the petitioners to remove the construction and in case of failure direction to the Estate Officer, Panchkula, for removal of construction at the cost of the appellants are set aside. However, the order of the Administrator, Panchkula, to the effect that the respondents are entitled to make the deductions as per of the EMD amount as per the HSVP policy is upheld. It is further ordered that the petitioners are entitled for refund of cost of construction raised by them which shall be assessed by the respondents as per the Government rates. The assessment of the cost of construction be got done by the respondents within 2 months from the date of receipt of the certified copy of this order and the same be paid to the petitioners thereafter.

21 Pending miscellaneous applications, if any, also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

October 03 , 2023

nitin

Whether Speaking	Yes
Whether Reportable	No