

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 25849 of 2017 (O&M)

Date of Decision: 08.2.2023

M/s Gautam Garden

.....Petitioner

Versus

State of Haryana and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Varun Veer Chauhan, Advocate for
Mr. R.K.Saini, Advocate
for the petitioner.

Mr. Raman Sharma, Addl. A.G., Haryana.

Mr. Mohit Rathee, Advocate for
Mr. Aman Pal, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner herein one M/s Gautam Garden, having its registered office at FU-10, Pitampura, New Delhi, was granted the change of land user permission, by the competent authority concerned. The change of land user permission, as became granted to the petitioner, is carried in Annexure P-2. A reading of Annexure P-2 reveals, that it was drawn on 22.7.2005. Moreover, a perusal of the said annexure also reveals, that the CLU permission, as became granted for the relevant purpose, to M/s Gautam Garden, D-64, MGD Flats House, Azadpur, Delhi, was in respect of the land, as carried in khasra No. 92//20/1 min, 19/min, 93//16/1 min of the revenue estate of village Karhans, in controlled area, Panipat. It is obvious that the CLU was granted in the name of the partnership firm (supra). Moreover, it

was also not contested amongst the litigants appearing before this Court, that

at the time of granting of the CLU, the partnership firm was holding a validly drawn lease, in respect of the lands enclosed within the Annexure P-2.

2. However subsequently, the petitioner firm acquired a better title than as lessee over the lands, covered within Annexure P-2, inasmuch as, theirs becoming owners in possession of the said land, through a validly executed deed of conveyance by the vendors concerned, vis-a-vis the concerned.

3. Even the occupancy certificate, which is appended as Annexure P-5 to the writ petition, does reveal, that the said occupancy certificate was issued on 11.2.2010 but in favour of M/s Gautam Garden, FU-10, Pritam Pura, Delhi. Therefore, it is but apparent that the occupancy certificate was issued only when the entity concerned, had raised a construction on the land, in respect whereof, the CLU was issued.

4. Co-respondent No. 2-Krishan Kumar became aggrieved from the issuance(s) of both Annexures P-2, and, of P-5. The grievance nursed by co-respondent No. 2 was grooved in the factum, that since the vendor concerned, had executed with him a registered deed of conveyance, but also covering the land, as enclosed in Annexures P-2, and, P-5. Therefore, there was a breach of clause 26-D (e) of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Rules, 1965 (for short 'the Act'), and/or, of the therein expressed terms and conditions rather governing, and, regulating the issuance of the CLU, which become carried in Annexure P-2. The apposite condition of clause 26-D(e) is extracted hereinafter. Resultantly, the above annexures were prayed to be quashed. The above prayer was accepted through the making of the impugned annexure. The said annexure is challenged before this Court.

said land has been put to use permitted by the Director and to use the said land only for the purposes permitted by the Director”

5. The above extracted condition of the CLU, does on its reading, display that the above CLU would remain alive only when there is no breach of an undertaking made by the grantee against the alienation of the lands, covered within the CLU, or against alienating any portion thereof, but if the said land has been permitted to be used by the Director, and/or the user of the land covered within the CLU, is made only for the purposes, as, permitted by the Director, thereupon it appears that then lawful alienations of the whole or in part of the said land rather is not interdicted.

6. The import of the above imperative condition, is that, the grantee of the CLU, but is barred from selling the vacant lands covered within the CLU, and, also is barred from alienating any portion thereof, but if the lands covered within the CLU, are put to the relevant user, and, are not put to a user other than the purpose for which the CLU became granted, thereupon, both the completed constructions or a part thereof are amenable for lawful alienation(s).

7. As above stated, since the petitioner subsequent to its being a lessee, in respect of the lands covered within the CLU, did acquire a better title to the petition lands, inasmuch as, it became valid owner thereof, through a validly executed registered deed of conveyance, becoming executed in favour of the concerned, by the vendor concerned. Therefore, primarily the grantee of the CLU, did not breach undertaking (supra), nor they could be said, to obviously cause an attraction upon them of the provisions, as carried in Section 26-D(e) of the Act, provisions whereof embody the imperative conditions rather regulating the grant of CLU to the grantee concerned.

would be extremely harsh, and, oppressive, as it militates against the rights, conferred under the Transfer of Property Act, in a valid owner of the lands, to make alienations thereof, in accordance with law. Therefore, the said condition cannot be construed to satisfy the constitutional touchstone of the right of the property, as becomes vested in the grantee concerned.

9. Be that as it may, the lands in respect whereof the CLU became granted, were also, as revealed by Annexure P-5, annexure whereof is the occupancy certificate, rather became put to permissible construction. It appears that respondent No. 2 became aggrieved from the factum, that his vendor, despite assuring him, that the lands covered within the CLU are alienated to him, yet the said land not being covered within the registered deed of conveyance. If so, yet if the said lands covered within the CLU, are not made a part, and, parcel of the registered deed of conveyance, as, became executed inter se co-respondent No. 2, with his vendor, therefore, at this stage, the above argument that, he still has a valid right to the lands covered under the CLU, is an extremely weak, and, frail argument, and, is but liable to be rejected. In consequence, co-respondent No. 2, prima facie, does not have any lawful right, title or interest in respect of the lands, as, became covered within the CLU or qua those lands which are covered within the occupancy certificate.

10. However, yet the order rescinding the grant, which becomes enclosed in Annexure P-13, has capitalized, upon the pendency of a suit for partition inter se co-respondent No. 2, and, other co-owners. The said assigned reason is also frail, and, is liable to be rejected. The reason for forming the above inference, ensues from the factum, that a perusal of the plaint, as becomes appended to the petition, reveals that petition lands are not mentioned therein, rather to the CLU land becomes assigned khasra No.

a min number. Therefore, prima facie the ascription of min number, to the petition land, brings a natural consequence, that Patwari concerned, has assigned the min numbers to the petition lands, only after his receiving a valid order from the revenue officer concerned. Moreover, since a reading of the plaint, as above stated, does not disclose, that the petition lands are covered within the suit for partition. Therefore, the mere pendency of the suit of partition, which prima facie, does not cover the petition land, could not be construed hence by the rescinding authority to be yet a relevant factor for rescinding the grant, especially when the grant is made in respect of khasra numbers, hence carrying a min number. The sequel whereof, is that, the petitioner was after securing a valid dismemberment of the joint estate, did thereafter receive a validly drawn tatima from the Patwari concerned, and, thereafter proceeded to validly seek, and, also became respectively granted a valid CLU, besides a valid occupation certificate but subsequent to theirs completing construction on the land, covered within the CLU.

11. Consequently, this Court finds merit in the instant petition, and, is constrained to allow it.

12. Accordingly, the instant petition is allowed. The impugned order (Annexure P-13), is quashed, and, set aside.

13. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 08, 2023
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes