IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-15428-2024
Date of decision: 15.07.2024

Alka Gupta ....Petitioner

Versus

Union Territory of Chandigarh and others ....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Kunal Mulwani, Advocate,
for the petitioner.

Mr. Amit Jhanji, Senior Standing Counsel, with
Mr. Himanshu Arora, Panel Counsel,
for the respondent-U.T., Chandigarh.

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ARUN PALLI, J. (Oral)

On 09.07.2024, this Court had passed the following order:-

"The petitioner has prayed for the following substantive relief:

"Civil Writ Petition under Article 226 and 227 of the Constitution of India for issuance of a writ in the nature of Mandamus directing the respondents to pass appropriate order after making necessary calculations regarding the amount of unearned increase in terms of the order of the Chief Administrator (respondent No.2) dated 22.7.2022 (Annexure P-5)

And/Or

Issue a writ in the nature of Mandamus directing the respondents to transfer lease hold rights with respect to plot No.136-140/96, industrial area, phase-1, Chandigarh in favour of the petitioner."

Learned Senior counsel for the petitioner submits that vide application dated 21.01.2022, the petitioner had

sought transfer of lease hold rights with respect to an industrial plot/site No.136-140/93, Industrial Area, Phase-1, Chandigarh. However, vide communication/memo dated 12.02.2022 (P-4), she was conveyed to deposit an amount of Rs.24,81,419/- on account of un-earned increase, and also Rs.4,46,655/- as GST, before her prayer/request for transfer of rights in the said property/plot could be considered. He submits that apparently, the demand raised by the Administration was/is erroneous, for it was calculated, on the basis of the value of the property prevalent in the year 2007. Whereas, it ought to have been worked out, per its value in the year, 1998, when the agreement to sell was executed and registered, and transaction between the parties was concluded, as held even by the Collector, in its order dated 24.04.2007 (P-3) [page 38 of the paper book]. Accordingly, being aggrieved, the petitioner appealed to the Chief Administrator, U.T., Chandigarh, who, vide a detailed order dated 22.07.2022 (P-5), set aside the impugned communication/memo dated 12.02.2022 (P-4), and remitted the matter to the Estate Officer to re-examine the whole issue in the light of the observations recorded in the order, and pass a well-reasoned order:-

" After hearing both the parties and perusal of documents on record, it is transpired that the Agreement to Sell was executed in year 1998 and the Sale Deed was registered in year 2007 between the allottee and the appellants in pursuance of the Agreement to Sell dated 10.8.1998 which is evidence from the Order dated 24.4.2007 passed by the Collector, U.T., Chandigarh. The Collector, U.T., Chandigarh vide its Order dated 4.4.2007 held that the Stamp Duty in the present case is required to be calculated on the value of year 1998 when the Agreement to Sell was executed and not on the value of the year 2007 when the document was registered. When the respondent-department itself admitted that the Stamp Duty is to be charged on the value existed at the time of execution of Agreement to Sell i.e. 10.8.1998 then how they can calculate and demand Unearned Increase on the value existed at the time

of Registration i.e. 11.1.2007 instead of 10.8.1998 when the Agreement to Sell was executed. The Memo. Dated 12.2.2022 is also non-speaking in itself and without assigning any reason for such calculation. The counsel on behalf of the Estate Office failed to show anything in support of her contention or to explain the above said observation in true spirit.

Consequently, the impugned Memo. dated 12.2.2022 is set aside and the present case is remanded back to the Estate Office to re-examine the whole issue in light of the observation raised in the preceding para and pass a well-reasoned speaking order strictly in accordance with the relevant provisions of the Rules/Act by providing opportunity of hearing to the appellants.

The order was kept reserved and is being released today."

It is urged that a period of nearly two years has gone by since the order dated 22.07.2022 was passed by the Appellate Authority, but, to date, no order has been passed by the Estate Officer. In fact, he submits that the matter was heard by the Estate Officer on 17.02.2023, but thereafter, no further date has been assigned either. Thus, owing to an apparent indecision, at the end of the authority, rights/interest of the petitioner are gravely impaired.

Notice of motion.

Mr. Himanshu Arora, Panel Counsel, for the respondent-U.T., Chandigarh, accepts notice. He prays for a short accommodation to seek instructions, as also to furnish an affidavit justifying the delay that has occurred, post the matter was remitted to the Estate Officer.

Adjourned to 15.07.2024.

To be shown in the urgents."

Today, learned Senior Standing counsel for the respondent-Chandigarh Administration has shared with us copies of the communications dated 11.07.2024 and 12.07.2024, which are taken on record as "Mark X and Y.' Accordingly, he submits that the demand, as regards un-earned increase, was re-worked by the Administration, and thereafter, the petitioner was required to deposit a sum of Rs.4,00,194/- and Rs.72,035/- as GST. And, the requisite amount has since been deposited by the petitioner on 11.07.2024. Thus, he submits that the first prayer is rendered infructuous.

As regards transfer of lease hold rights to the extent of 100% share in the subject premises (Industrial shed No.136-140/93, Industrial Area, Phase-1, Chandigarh), he submits that vide communication dated 12.07.2024, the petitioner has since been conveyed to issue a public notice, as per the specified norms, in three leading newspapers. And which the petitioner is required to submit with the respondent authorities, after expiry of 30 days from the date of such publication. He submits that in the event, no objections are received in response to the publication, the respondent-Administration shall, soon thereafter, transfer the rights in favour of the petitioner, and carry out the necessary formalities.

That being so, learned counsel for the petitioner submits that nothing substantive survives in the petition and the same be disposed of, in terms of the statement made by learned Senior Standing counsel for the respondent-Chandigarh Administration.

In the wake of the position sketched out above and in terms of the statements made by learned counsel for the parties, the petition is accordingly disposed of.

However, in the event, despite the petitioner complying with all the requisite formalities, the necessary orders are not passed by the respondent-Chandigarh Administration, as indicated above, she shall be at liberty to move an application in this petition itself for itsrevival and appropriate orders.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

15.07.2024
Ak Sharma

Whether speaking/reasoned	Yes
Whether reportable	Yes/No