

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 13.03.2024
Pronounced on: 18.04.2024

1. CM-9087-CWP-2020 in/and
RA-CW-184-2020
in CWP-29545-2018

EMPIRE REAL TECH PRIVATE LTD.Petitioner

Versus

STATE OF HARYANA AND OTHERSRespondents

2. CM-9090-CWP-2020 in/and
RA-CW-185-2020
in CWP-29554-2018

INTERNATIONAL INFRATECH PVT. LTD.Petitioner

Versus

STATE OF HARYANA AND OTHERSRespondents

3. CM-9091-CWP-2020 in/and
RA-CW-186-2020
in CWP-29548-2018

CHD DEVELOPERS LTD.Petitioner

Versus

STATE OF HARYANA AND OTHERSRespondents

4. CM-9095-CWP-2020 in/and
RA-CW-187-2020
in CWP-29547-2018

CHD DEVELOPERS LTD.Petitioner

Versus

STATE OF HARYANA AND OTHERSRespondents

5. CM-9099-CWP-2020 in/and
RA-CW-188-2020
in CWP-29546-2018

CHD DEVELOPERS LTD.Petitioner

Versus

STATE OF HARYANA AND OTHERS

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Non-applicants/petitioner(s) proceeded against ex-parte
vide order dated 13.03.2024.

SURESHWAR THAKUR, J.

CM Nos.-9087-9090-9091-9095-9099-CWP-2020.

1. Considering the valid, and, good reasons, as meted in the respective application(s), thus explaining the apposite delay of 284 days, therefore, the application(s) are allowed.

2. Delay of 284 days in filing the review application(s) in the respective writ petition(s), is condoned.

Main cases.

3. The instant review application(s) in the respective writ petition(s) are instituted at the instance of the respondent-State. Since all the review petition(s) emanate from a common decision made on 07.05.2019 by this Court, upon CWP-29545-2018, and, connected therewith cases. Therefore, all the review application(s) are liable to be disposed of through a common order.

4. For the sake of brevity, the facts of CWP-29545-2018 are being taken here for making an adjudication upon the instant *lis*.

5. The respondents/non applicants (petitioners in the writ petition(s)) had assessed this Court through filing writ petition(s) (supra) before this Court wherein they claimed the according to them of the hereinafter extracted reliefs.

“Petition under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ. order or direction in the nature of mandamus directing the respondents to provide the facility of external development works in Sector 106 (village Daultabad) of the Gurugram-Manesar Urban Complex for the Group Housing Colony over an area measuring 12.344 acres and the amenities contemplated under the External Development Works within a time bound manner, and/or

Further for issuance of such other writ, order or direction in the nature of mandamus directing the respondents to reassess the charges recovered by the respondents towards external development works in exercise of the mandate under Rule 11(1)(C) mandating payment of proportionate development charges read with Section 3(3) of the Haryana Development and Regulation of Urban Areas Act, 1975 warranting determination of proportionate development charges and further as per the mandate under Rule 11 of Haryana Development and Regulation of Urban Areas Rules, 1976, which obligates the Director to ascertain whether certain amenities can be made available in the locality or not and on the basis thereof modify the undertaking to pay the proportionate development charges and other infrastructural/basic amenities in light thereof, and/or

Further for issuance of such other writ, order or direction in the nature of mandamus directing the respondents to adjust the excess external development charge paid towards liabilities to be discharged by the petitioner alongwith interest as charged by the respondent with respect to licences applied for by the company and to refund the excess charges, if any, paid by the petitioner towards the external development charge;

Further for the issuance of writ in the nature of certiorari declaring the action of the respondent in continuing to charge external development charges and interest, penal interest there upon from the petitioner without undertaking any development work in the concerned area. Further for the issuance of a writ in the nature of mandamus directing the respondent authorities to refund the amount charged as external development charges along with interest to the petitioner and further directing the respondents. to grant sanctions/renewals of zoning, building plans. renewal licenses and further not to stop any other work for want of EDC notwithstanding the payment of balance amount of EDC further for the issuance of a writ in the nature of mandamus directing the respondent authorities to discharge the bank guarantees of the petitioner,

6. The gravamen of the reliefs (supra) as claimed in the writ petition(s) became premised on the ground, that despite the hereinafter extracted payments becoming made by the petitioner(s), thus to the respondent-State, as expenses towards external developmental charges yet no developmental works becoming carried at the relevant sites.

Installment No.	Reducing balance in lacs	Principal amount in lac	Interest in lacs	Total installments	Due date
1.	2637.38	263.74	0.00	263.74	28.07.2012

2.	2373.64	263.74	142.03	405.77	28.12.2012
3.	2109.90	263.74	126.25	389.99	28.06.2013
4.	1846.17	263.74	111.07	374.81	28.12.2013
5.	1582.43	263.74	94.69	358.42	28.06.2014
6.	1318.69	263.74	79.34	343.08	28.12.2014
7.	1054.95	263.74	63.12	326.86	28.06.2015
8.	791.21	263.74	47.60	311.34	28.12.2015
9.	527.48	263.74	31.74	295.47	28.06.2016
10.	263.74	263.74	15.87	279.61	28.12.2016

However, amount of EDC/IDC was not deposited by the petitioner as per schedule.

The details of the payments made by the petitioner on account of EDC are as under:-

Date of payment	Paid amount (in lacs)
07.09.2012	270.00
05.10.2018	664.00

7. Therefore, this Court after making a common order, relevant paragraphs of the said order become extracted hereinafter, thus concluded, that the respondents failed to disclose any sufficient satisfactory reasons for not carrying out the developmental works, despite theirs receiving the expenses towards execution of the apposite external developmental works. Furthermore, this Court also concluded that the respondents have retained the monies tendered by the petitioner(s) towards external developmental charges, thus for a long spell of time. Therefore, this Court made direction(s) that the developmental works be carried out within a period of eight months from the making of the common order in the writ petition(s) (supra).

8. This Court further directed that the respondents would be at liberty to make an application before this Court as to whether some additional sums are required to be paid to the respondent-State by the petitioner(s) besides directed that the payments made by the petitioner(s) to the respondents would be subject to verification by the State after the completion of developmental works and parties were left

“Evidently, the petitioners have been struggling for the development work since 2017 when the first order in their matter was passed by this Court. The respondents have not offered any sufficient/satisfactory reasons for not carrying out the development work and while not denying the facts have consistently referred to the payments yet to be made by the petitioners. They have also said somewhat with stubborn persistence that the matter is under consideration.

After hearing the learned counsel for the parties, we are of the opinion that these are issues which ordinarily ought to have been settled by now, considering that these are being raised by the petitioners since 2017 and more than 180 crores has been invested, it is not essential for the State to wait till the time entire payments have been made to initiate the development work for those who do not fructify overnight creating infrastructures takes time often years. Once the external development charges are demanded and paid substantially the State has to show concrete results by carrying out development works which may correspond to the kind of payments they have received. It cannot be expected of any person to keep on investing money without there being any tangible result to encourage him to invest more in any project.

We also do not feel that these petitions should be kept alive any further and therefore deem it appropriate to direct the State to carry out the development works forthwith and till the time the works are not completed they are restrained from demanding any further amount from the petitioners. We make this observation solely for the reason that amount of Rs.180 crores have remained locked with the respondents since 2013/14 and 5 years is an extra ordinary long time for retention of the amount without corresponding results.

Let the development works be carried out within a

period of eight months from today.

Writ petitions are disposed of.

Once these directions are carried out, we give liberty to the respondents to make an application to this Court, if the petitioners are required to pay more amount but only after they have carried out sufficient development in the area. At this stage, the petitioners state that they have paid in excess of the required amount. Be that as it may, the payment made by the petitioners would be subject to verification by the State after the completion of development works and parties are at liberty to exchange the accounts with each other.

All pending applications are also disposed of.

9. Before proceeding to declare the review petition(s) to be maintainable, it is necessary to cull out the principles relating to the valid exercising of review jurisdiction by this Court.

10. The principles relating to the valid exercising of review jurisdiction by this Court are encapsulated in a judgment made by the Hon'ble Apex Court in case titled as '**Kamlesh Verma Vs. Mayawati and Others**' reported in **2013 (4) R.C.R. (Civil) 75**. The said principles are extracted hereinafter.

16) Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(A) When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

*(ii) **Mistake or error apparent on the face of the record;***

(iii) Any other sufficient reason.

The words "any other sufficient reason" has been interpreted in Chhajju Ram vs. Neki, AIR 1922 PC 112 and approved by this Court in Moran Mar Basselios

*Catholicos vs. Most Rev. Mar Poullose Athanasius & Ors., (1955) 1 SCR 520, to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in **Union of India vs. Sandur Manganese & Iron Ores Ltd. & Ors., 2013 (3) Recent Apex Judgments (R.A.J.) 436: JT 2013 (8) SC 275.***

(B) When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

11. The learned Additional Advocate General, Haryana submits that the common judgment(s) strived to be reviewed, ex facie suffer from material defect therein, are ridden with an error or mistakes apparent on the face of record, as such, he contends that the instant review petition(s) are maintainable before this Court.

12. The learned Additional Advocate General has alluded to references made by this Court in the common verdict (supra), thus to a table, table whereof has been extracted above, with purported echoings vis-à-vis the petitioner(s) makings payments to the respondent-State towards external developmental charges, whereas, it is contended that the said table as a matter of fact rather articulated the schedule of payments towards external developmental charges which were in fact to be paid by the respective petitioner(s).

13. The learned Additional Advocate General, Haryana has also further contended that this Court while making a reference, to an order made on 04.04.2019, wherein, it was observed that 99 per cent of the demanded amount has been paid, thus subsequently reached to a further untenable conclusion that the external developmental charges are demanded and paid substantially.

14. The learned Additional Advocate General, Haryana submits that the above observation(s) are factually incorrect as the respondent State, had made a specific pleading at page No. 149-151, in their written statement, that the petitioner had not even deposited the first installment, as per the schedule rather only a sum of Rs. 260 lacs was deposited and that too, after 40 days of the due date and no further installment was paid until 04.10.2018. It was only on 05.10.2018 Rs. 664 lacs was deposited. An amount of Rs. 3864.20 lacs yet was outstanding as on 07.01.2019.

15. He also contended that in the said pages of the written statement it was pointedly stated that the petitioner had only deposited Rs.110.55 crore and had failed to deposit the due amount towards EDC,

the fact/observation as to 99 % of the EDC have been paid is factually incorrect.

16. He also contended that the observation(s) made by this Court that an amount of Rs. 180 crores had remained locked, with respondents since 2013-14, and as such the prolonged retention of the said amounts and that too without any external developmental works being made, thus being inapt rather also is an observation which is not firmly rooted in the facts as pleaded in the written statement. Therefore, he contends that the said observation(s) was/were an error apparent on the face of the record in the verdict (supra), and, as such the review petition(s) are required to be allowed.

17. In making the above submission, he submits that in para No. 20/g no. 165 of the written statement, it was specifically pleaded that as on 31.03.2018 HSVP had incurred an expenditure of Rs.29133.79 crores, on execution of External Development Works, in Gurugram against the total receipt of Rs. 15108.30 crores. Therefore, excess amount of Rs. 14025.49 crores was spent than received under the Head of EDC.

18. The learned Additional Advocate General, Haryana further contends that the observation made by this Court, that till the development works are carried out, the respondent-State is restrained from raising any amount has been made, thus without referring to Section 3(3)(a)(ii) of 1975 Act, to Rule 11 of 1976 Rules besides to the terms of LC-IV Agreement executed by petitioner. Further the observations are contrary to the law settled in case titled as VPN Buildtech Pvt. Ltd v. State of Haryana and others bearing No. CWP No.

*“17. The error in this submission is on account of ignoring the words "are to be laid in Rule 11(1)(c) and reading in their place the words "are laid". Rule 11(1)(c) provides that the applicant shall undertake to pay the proportionate development charges if the works mentioned therein are to be laid out and constructed by the Government or any other local authority. These works are the main lines of roads, drainage, sewerage, water supply and electricity. The undertaking to be furnished by the applicant is to pay the proportionate development charges if the works mentioned therein "are to be laid out and constructed by the Government or any other local authority". The words "are to be" indicate the execution of the external development works in future. **They indicate not the actual carrying out of the works but the responsibility and obligation to do so. In other words, the undertaking to pay the proportionate development charges is in relation to the cases where the said works "are to be" laid out and constructed by the Government or any other local authority and not upon the same being laid out and constructed by the Government or any other local authority.** The undertaking therefore, is not to pay the proportionate development charges only if these works are actually carried out, but even if they are to be laid out and constructed by the Government.*

*18. Admittedly, in the case before us, these works are to be laid out and constructed by the Government. **The undertaking, therefore, applies irrespective of whether the works are carried out or not when the liability to pay the tentative EDC arises. The undertaking, admittedly, has not been complied with. Indeed, the petitioners, in effect, seek to be relieved of this undertaking. The non- completion of the other external development works, in any event, does not absolve the petitioners of their liability to pay the EDC...**”*

19. The learned Additional Advocate General, Haryana has also pointed out that an earlier writ petition bearing No. CWP-15096-2017 also became filed but the averments made in the said writ petition were contested by HUDA, through its making thereto a reply, on affidavit. The relevant para no. 5 of the said reply is extracted hereinafter.

"...5. That execution of External Development Works is a continuous process as town level infrastructure is created

as per requirement and not for any individual licensee. However, as far as external development works carried out by HUDA in the vicinity of the licensee area pertaining to the petitioner is concerned, the factual position is as under:-

a. Haryana Govt. has also granted licensee to the Petitioner for development of residential plotted/group housing colony in Sector 71, 106 and 109 at Gurugram. Status of external development works carried out by HUDA in the vicinity of these Sectors is as under:-

*(i) **Sector 71:** Southern Peripheral Road, abutting Sector 71 has already been constructed and gives approach to the licensee area of the petitioner. Land for construction of master road (Sector dividing road) between 71/72 has been acquired. The estimate for construction of road has been processed for Rs. 14.72 Crore for arranging administrative approval from the competent authority. The land under sector dividing road between sector 71/73 is under acquisition. Water supply line, sewer line and storm water drain on Southern Peripheral Road abutting this Sector has already been laid.*

*(ii) **Sector 106 and 109:** Northern Peripheral Road in the vicinity of the licensee area/these sectors has already been constructed. Also the master roads dividing sector 106 & 109, 106 and 108, 108 and 109 have been constructed and in motorable condition. Also master road dividing Sector 106 and 103 stands constructed except in a small stretch of 250 m. which is help up due to non acquisition of land. Master water supply lines, sewer lines and storm water drains along Northern Peripheral Road in the vicinity of these Sectors/licenced area have already been laid. The work of laying of master water supply lines, master sewer lines and master storm water drains on dividing road of Sector 106 & 109, 106 & 108, 108 & 109 is in progress. The work of sewerage lines is likely to be completed by*

31.3.2018 while that of water supply lines and storm water lines is likely to be completed by 31.3.2019.

Moreover, HUDA has already provided town level facilities like Water Treatment Plants, Sewage Treatment Plants, Gurgaon Water supply Chanel, NCR Channel, master water supply lines, master sewerage lines, master storm water lines, Town Park, Gymkhana Clubs, Stadium, colleges, fire station, library, hospital etc. and residents of Urban Estate, Gurugram are already availing the same.

(b) Haryana Govt. has granted licences to the petitioner for development of resident plotted/group housing colony in Sector 45, Karnal. This licenced area is isolated from the land acquired for other HUDA Sectors. However, an approach road to facilitate this licenced area has already been planned. Land has been acquired and HUDA has recently started the work of construction of 45m/30m wide roads in the vicinity of this licenced area. The work is likely to be completed by 30.6.2018. Moreover, HUDA has already provided town level facilities like Gymkhana Club, City Park, Atal Park, Children's Traffic Park and these are open for usage to the residents of Urban Estate Karnal."

20. Furthermore, the learned Additional Advocate General Haryana also submits that additional affidavit also became instituted, on 09.05.2018, in the said writ petition, thus by the Additional Chief Engineer, with a stark contention therein, that the external developmental works already stand completed in Gurugram Urban Estate and Karnal. After having submitted the detailed replies, the petitioner(s) in CWP-15096-2017 filed a miscellaneous application requesting to allow them to withdraw the writ petition with liberty to file the same with better particulars, thus leading to the withdrawal of the said writ petition.

21. Resultantly the Additional Advocate General Haryana submits that the observation(s) as made by this Court, that there was no progress in the execution of external developmental works at the instance of the executing agency, yet the respondent concerned, retaining the deposited sums of external developmental charges, thus also is a mis-made or an error apparent on the face of the record.

22. Since, the above projected errors by the learned Additional Advocate General, Haryana are necessarily *ex facie* manifesting themselves, on the face of the record besides when the said errors are but errors apparent on the face of the records, in the common verdict (*supra*), made by this Court. Resultantly this Court is of the firm view that the verdict (*supra*) made by this Court has been made in gross departure of the projections as made in the replies, on affidavit, furnished to the earlier, and, to the instant writ petition(s), thus by the respondent-State.

23. Moreover, the common judgment (*supra*) as made by this Court is rooted on premises which are completely in conflict with the un-controverted facts, as projected in the replies, on affidavit, furnished to the writ petition(s) by the respondent-State.

24. The said replies, on affidavit, when as such remain un-controverted, thereby they *prima facie*, acquired an aura of truth. Resultantly adherence was required to be meted thereto by the learned Co-ordinate Bench of this Court, which made the common verdict (*supra*) on the writ petition(s) (*supra*). Contrarily, this Court mis-fashioned its verdict on mis-projections becoming made before this Court by the petitioner(s).

25. Be that as it may, despite the replies, on affidavit, becoming furnished by the respondent-State in writ petition No. CWP-29545-2018 with clear and candid projections therein, that substantial portions of the external developmental works rather have been completed, at the sites concerned, besides when alike projections are made in the additional affidavit, appended with writ petition No. CWP-15096-2017, as such, prima facie, there was no occasion for this Court to conclude that there was no substantial progress in the execution of the external developmental works nor prima facie, this Court was required to be making any observation that despite the petitioner(s) purportedly paying the external developmental charges, yet the said amounts remaining un-spent by the executing agency, thus for its executing the external developmental works.

FINAL ORDER OF THIS COURT.

26. In aftermath, this Court finds merit in the review petition(s) (supra) and, with the above observation(s), the same are allowed. The common verdict made by this Court on 07.05.2019 upon the writ petition(s) (supra) is recalled. The writ petition(s) (supra) are restored to their respective original numbers and the same be listed for hearing, as per roster.

27. Since the main review application(s) itself have been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

28. The observation(s) made are only for disposal/allowing of the review application(s) but shall not affect the merits of the decision

to be arrived on the restored writ petition(s).

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

18.04.2024

kavneet singh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No