



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-15899-2018
Reserved on: 12.07.2024
Pronounced on: 14.08.2024**

Shalinder Tokus and AnotherPetitioners

Versus

State of Haryana and OthersRespondents

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

Present: Mr. Sandeep Sharma, Advocate for the petitioners.

Mr. Deepak Bhardwaj, DAG, Haryana.

Mr. Deepak Sabherwal, Advocate for respondent-HSVP.

VIKRAM AGGARWAL, J.

1. Challenge in the instant writ petition is to the order dated 19.01.2017 (Annexure P-9) vide which the request made by the petitioners for waiving off the extension money levied on account of non-construction was rejected as also to the order dated 11.05.2018 (Annexure P-16) vide which a speaking order in this regard taking the same view was passed.

2. The petitioners purchased plot No.994 measuring 293.75 square meters in Sector-40, Urban Estate, Gurugram (hereinafter referred to as the 'plot in question'). Re-allotment letter dated 26.03.2010 is on record as Annexure P-1. The building plan submitted by the petitioners was approved on 06.05.2013 (Annexure P-2). The case of the petitioners is that after the approval of the building plan, when the petitioners visited the plot in question along with the Architect and Contractor, it came to their knowledge that a sewer line was passing through their plot and the manhole was coming under the area where the boundary wall was to be constructed.

**CWP-15899-2018****-2-**

3. Immediately, vide communication dated 23.07.2013 (Annexure P-3), a request was made to the respondents to shift the sewer line and the manhole so that they could raise construction. A number of representations were submitted (Annexures P-4 and P-5) but, as per the petitioners, no attention was paid by the respondents and the sewer line and manhole were not shifted. Photographs (Annexure P-12) have also been attached to show the position of the manhole.

4. Finally, after considerable efforts, the sewer line and manhole were ordered to be shifted vide communication dated 08.03.2016 (Annexure P-6) and vide communication dated 28.09.2016 (Annexure P-7), it was informed that the same had been shifted.

5. In the meantime, the petitioners kept on paying the extension fee on account of non-construction from 2013-2016 and finally they raised construction but the request of the petitioners to waive off the extension fee from 2013 to 2016 was declined vide communication dated 10.01.2017 (Annexure P-9). A sum of Rs.9,46,593/- was paid by the petitioners as extension money on account of the illegal rejection of their genuine demand. After having paid the extension fee under protest, fresh site plan was got approved in 2017. Since no decision was being taken by the respondents, the petitioners preferred **CWP-4977-2018** which was disposed of with a direction to respondents to decide the representation of the petitioners. However, the same was also rejected vide order dated 11.05.2018 conveyed vide communication dated 16.05.2018 (Annexure P-16).

6. The writ petition has been opposed by the respondents. In the written statement, it has been averred that the writ petition is not maintainable in view of the existence of an alternate remedy of appeal and revision under the provisions of the Haryana Shehri Vikas Pradhikaran Act, 1977. It has also been averred that there are disputed questions of fact as a result of which the petition would not be

**CWP-15899-2018****-3-**

maintainable. The re-allotment of the plot in question, approval of building plans, existence of a manhole, shifting of the same etc. has been admitted. It has, however, been submitted that the previous owners never raised any objection with regard to any sewer line and that even the petitioners had only submitted that the manhole was coming under the boundary wall. He, however, subsequently took a contrary stand as an afterthought that a sewer line was also passing through his plot. The stand taken by the respondents is that the same was not a hindrance in raising construction as a result of which the request of the petitioners for change in the date of offer of possession was not found to be justifiable and was, therefore, rightly rejected. It has been averred that the petitioners have already raised construction over the plot in question and have obtained the occupation certificate vide communication dated 17.05.2017 (Annexure R-7) and after the same, the filing of the writ petition is an abuse of the process of law.

7. Learned counsel for the parties were heard.

8. It was submitted by learned counsel representing the petitioners that the charging of extension money is illegal and arbitrary because in any case, the petitioners could not have raised construction on account of the existence of the sewer line and manhole. Reference was made to various documents annexed with the writ petition as also the photographs and it was strenuously urged that the amount deposited on account of extension fee deserves to be refunded.

9. On the other hand, learned counsel for the respondents opposed the submissions made by learned counsel for the petitioners submitting that the existence of the manhole did not cause any hindrance in the construction and the issue has only been raked up by the petitioners with a view to avoid payment of extension money.

**CWP-15899-2018****-4-**

10. Having considered the submissions made by learned counsel for the parties, we find the same to be devoid of merit. The plot in question, as is evident from the written statement, was originally allotted to one Arun Kumar Madan on 07.03.1995. He was offered possession on 30.10.1998 (Annexure R-1) in pursuance of which, possession was taken on 25.02.2002 (Annexure R-2). After changing few hands, the plot was ultimately purchased by the present petitioners vide registered sale deed dated 09.02.2010 (Annexure R-3). It duly mentions that the vendor was the absolute owner in possession of a plot in question. It also mentions that the plot in question was free from all encumbrances and that physical vacant possession of the said plot had been delivered to the vendee at the spot.

11. It is a conceded position that starting from Arun Kumar Madan, the original allottee, who was allotted the plot in the year 1995 till the year 2013, when an objection was raised for the first time by the petitioners as regards the existence of a manhole, no such objection was ever raised. Even after purchase of the plot in question in the year 2010, the petitioners raised the issue in 2013 and that too, after sanction of their building plans. It may be a possibility that when the petitioners thought of raising construction, they realized that the manhole was coming under the boundary wall. This, however, did not prevent the petitioners from raising construction. They could very well have raised construction over the plot and simultaneously could have pressed for shifting of the manhole which was coming only under the boundary wall and the sewer line was not running through the plot. This is a specific stand which has been taken by the respondents in the written statement as well and the same has not been controverted by the petitioners. In any case, such disputed questions of facts cannot be gone into in a writ petition. From the documents, it is evident that the manhole, at best, was

**CWP-15899-2018****-5-**

coming under the boundary wall which, as observed earlier, was not a hindrance in raising construction over the plot in question.

12. The manhole was ultimately shifted and the consequential shift in the sewer line was also completed on 25.02.2016 after which, the petitioners have raised construction also over the plot in question and have obtained the occupation certificate. In our considered opinion, the petitioners have not been able to make out a case that they were not liable to pay extension money on account of non-construction from 2013-2016 on account of there being a hindrance on account of which they could not raise construction. It is reiterated that the manhole, at best, was coming under the boundary wall and was, therefore, not a hindrance in raising a construction. The authorities, therefore, rightly rejected the claim of the petitioners. We do not find any illegality in the view taken by the authorities.

In view of the aforementioned facts and circumstances, we do not find any merit in the present writ petition and the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 12.07.2024

Pronounced on: 14.08.2024

Prince Chawla

*Whether speaking/reasoned :
Whether reportable :*

*Yes/No.
Yes/No.*