



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

CWP-458-2015

Reserved on: 19.09.2024

Pronounced on: 19.12.2024

Rajeev Rana and Another

....Petitioners

Versus

Chandigarh Administration and Others

....Respondents

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

Present: Mr. Amit Jain, Senior Advocate with
Mr. Chetan Salathia, Advocate
for the petitioners.

Mr. Suman Jain, Advocate
for the respondent-U.T., Chandigarh.

VIKRAM AGGARWAL, J.

1. The petitioners (Rajeev Rana and Sunil Kumar Rana) pray for the issuance of a writ of certiorari/mandamus declaring the action of the respondent-authorities in charging extension fee as a condition precedent for sanctioning the building plans with respect to residential site No.1436, Sector 40-B, Chandigarh as illegal and arbitrary and for quashing the impugned letter/order dated 16.01.2014 (Annexure P-11) vide which the request for sanction of building plans was rejected.

2. The case set out by the petitioners is that the petitioners and respondent No.4 (Deepak Kumar) purchased residential site No.1436, Sector 40-B, Chandigarh (hereinafter referred to as 'the disputed site') in an open auction held on 23.10.2008 for a consideration of Rs.1,98,00,000/-. On acceptance of the

highest bid, a sum of Rs.49,50,000/- was deposited towards 25% of the total

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premium/price. An agreement was also executed wherein it was agreed that the balance 75% of the premium would be deposited within 90 days. Accordingly, the balance premium of Rs.1,48,50,000/- was also deposited. In view thereof, letter of allotment dated 23.01.2009 (Annexure P-2) was issued.

3. As per condition No.10 of the allotment letter, a conveyance deed had to be executed within 30 days from the issuance thereof. Further, as per condition No.11, possession of the disputed site was to be handed over within a period of 15 days from the date of execution and registration of the conveyance deed. As per Clause 14, the construction of the building had to be completed within 03 years from the date of delivery of possession, failing which, an allottee would have 05 more years to complete the construction on payment of extension fee as specified in the allotment letter.

4. Conveyance deed was executed on 27.02.2009 (Annexure P-3) and was registered on 05.03.2009. As per condition No.4 of the conveyance deed, the liability to pay any kind of dues was joint and several of the allottees.

5. Despite the execution of the conveyance deed, possession was not handed over to the allottees. Some disputes also arose between the petitioners and respondent No.4. It has been averred that since the correspondence address in the records of the official respondents was that of respondent No.4, he stopped cooperating with the petitioners. Accordingly, an application dated 14.03.2012 (Annexure P-4) was submitted by the petitioners under the Right to Information Act, 2005 in reply to which, the petitioners were told that possession letter dated 16.04.2009 (Annexure P-5) had been issued at the address of respondent No.4 i.e. Ward No.7, Nalagarh, District Solan, Himachal Pradesh.

6. The petitioners then represented to respondents No.2 and 3 seeking possession of the disputed site but were told that the same would be handed over

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jointly to all allottees i.e. the petitioners and respondent No.4. A detailed representation (Annexure P-6) was submitted apprising the respondents about the dispute between the petitioners and respondent No.4. An application (Annexure P-7) was also submitted for grant of permission to erect a building over the disputed site. The same was, however, returned vide memo dated 21.03.2012 (Annexure P-8) on the ground that the building plans had to be signed by all owners. However, on account of the dispute between the petitioners and respondent No.4, the said condition could not be complied with.

7. Under the circumstances, ***CWP No.21649 of 2012*** was filed by the petitioners which was disposed of on 26.07.2013 (Annexure P-1) with a direction to the official respondents that joint possession of the disputed site be given to the petitioners by specifically mentioned that the same would be considered joint possession of all three co-sharers and that before handing over the joint possession to the petitioners, it would be open for the official respondents to give notice to respondent No.4 as well.

8. Pursuant to the aforesaid directions, a communication dated 25.09.2013 (Annexure P-9) was issued by the official respondents to respondent No.4 requiring him to apply for physical possession of the disputed site clearly stating that in the event of his not doing so, joint possession of the disputed site would be delivered to the petitioners. After this, vide communication dated 16.01.2014 (Annexure P-10), the building plans submitted by the petitioners were rejected on the ground that all the co-owners had not signed the papers, forms and the drawings and also that the period in which construction was to be raised had expired.

9. A communication dated 02.09.2014 (Annexure P-11) was again addressed by the petitioners but on 19.11.2014, the official respondents reiterated

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their view that the petitioners were liable to pay extension fee w.e.f. 15.04.2012. It has also been averred that the possession was in any case handed over on 16.12.2013 (Annexure P-12).

10. The writ petition has been opposed by the respondents. In the written statement submitted by the official respondents i.e. respondents No.1 to 3, it has been averred that the petitioners had the remedy of appeal/revision against the impugned order dated 19.11.2014. On merits, the basic stand that has been taken is that there was requirement of signatures of all three co-owners on the relevant documents. It has been averred that physical possession of the disputed site was offered on 16.04.2009 but the same was not taken by them on account of their *inter se* dispute. It has further been averred that pursuant to the directions issued by the High Court on 26.07.2013, possession was obtained by the allottees on 16.12.2013 and that since possession was offered on 16.04.2009 and the building was to be constructed within 03 years, extension fee was chargeable w.e.f. 16.04.2012.

11. Respondent No.4 filed a separate written statement stating that he is one of the co-owners to the extent of 30% share in the disputed site. It has been averred that he was never consulted while preparing the building plans and while engaging the Architect, nor his requirement was taken into consideration while preparing the plans. He maintains that he is the owner of the first floor of the disputed site and that the petitioners had filed false affidavits before the official respondents that they were the absolute owners of the said site. It has further been averred that since possession had been handed over on 16.12.2013, no extension fee was chargeable.

12. Learned counsel for the parties were heard.



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13. It was submitted by Sh. Amit Jain, learned Senior counsel representing the petitioners that since possession was handed over on 16.12.2013 pursuant to the directions issued by a Co-ordinate Bench in **CWP No.21649 of 2012**, no extension fee was chargeable w.e.f. 15.04.2012. It was further submitted by learned Senior counsel that it was not the fault of the petitioners that possession could not be obtained prior to 16.12.2013. In fact, the petitioners had to invoke the jurisdiction of this Court by filing **CWP No.21649 of 2012** and it was only pursuant to directions given by the Court that possession was handed over to the petitioners on 16.12.2013. Learned Senior counsel referred to the documents on record i.e. the allotment letter dated 23.01.2009 (Annexure P-2), the conveyance deed executed between the parties, the relevant clauses of the allotment letter viz Clause 11 and Clause 14 and it was submitted that the period of 03 years for constructing the building over the site in dispute would start from the date, the possession was actually handed over to the petitioners i.e. from 16.12.2013. Learned Senior counsel strenuously urged that the action of the respondents in charging extension money is illegal and arbitrary and, therefore, deserves to be set aside.

14. Per contra, Mr. Suman Jain, learned counsel representing the respondents submitted that there is no illegality in the charging of extension money from the petitioners. Learned counsel referred to Clause 14 of the allotment letter as per which construction was to be completed within 03 years from the date of possession. It was submitted that the offer of possession was given on 16.04.2009 and, therefore, the 03 years period expired on 15.04.2012. Learned counsel submitted that the order of the High Court directing the possession of the site in dispute to be handed over to the petitioners would not extend the timelines given in the allotment letter and the petitioners would be



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bound by the Clauses and the provisions of the allotment letter. Learned counsel further submitted that once the offer of possession had been made on 16.04.2009, the non-acceptance of the same on account of a dispute between the co-owners would not under any circumstances, extend the time period provided for construction i.e. 03 years and after the expiry of the said period, the department would be well within its right to charge extension money.

15. We have considered the submissions made by learned counsel for the parties.

16. The facts are not in dispute. The site in dispute was allotted vide allotment letter dated 23.01.2009, the petitioners being the highest bidders in an open auction. The total sale consideration for the site in dispute which is plot No.1436, Sector 40-B, Chandigarh measuring 338 square yards was Rs.1,98,00,000/-. The entire sale consideration was duly deposited. Clause 11 of the allotment letter says that the possession of the site would be handed over to the allottee within 15 days from the date of execution of the deed of conveyance. Clause 12 states that the building of the site would be constructed in accordance with the building plans. Clause 13 lays down that no fragmentation of the site or amalgamation would be permitted. Clause 14 states that the erection of the building on the site would be completed within 03 years from the date of delivery of possession as per Clause 11. It also provides that an allottee who fails to complete the building within the aforesaid time limit would be given another opportunity to complete the building within the next 05 years on payment of penalty specified in the Clause;

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“11. The possession of the site auctioned will be handed over to the allottee within 15 days from the date of execution/ registration of Deed of Conveyance with the stipulated period mentioned in clause 10 above.



12. The building on the site shall be constructed in accordance with the building plans, which must conform to the Capital of Punjab (Development and Regulation) Building Rules 1952, and the provisions of frame control and Architectural Control and the Zoning Plan (where ever applicable).

13. No fragmentation of the site or amalgamation of the site shall be permitted.

14. The erection of the building on the Site in accordance with the Capital of Punjab (Development and Regulation) Building Rules 1952 shall have to be completed within three years from the date of delivery of possession as per Clause 11. The date of completion will be the date of receipt of application for permission to occupy the building in Form-D and E (Annexure to Capital of Punjab (Development and Regulation) Building Rules 1952) accompanied by completion certificate from the Registered / Qualified Architect who supervised the construction of the building, provided the building is also certified to have been completed according to sanctioned plan by the Chief Administrator in accordance with the Capital of Punjab (Development and Regulation) Building Rules 1952. The allottee who fails to complete the building within the aforesaid time limit shall be given another opportunity to complete the building within next five years on the payment of penalty as under :-

(i) 1st year (beyond the said period of three years) @ 10% of total consideration money of the site.

(ii) 2nd year (beyond the said period of three years) @ 15% of total consideration money of the site.

(iii) 3rd year (beyond the said period of three years) @ 20% of total consideration money of the site.

(iv) 4th year (beyond the said period of three years) @ 25% of total consideration money of the site.

(vi) 5th year (beyond the said period of three years)
30% of total consideration money of the site.

No further time whatsoever shall be granted for the purpose and in the aforesaid period, the Estate Officer initiate proceedings under Section 8-A of the Act and the allottee shall have no claim to any damages.

17. The deed of conveyance was executed on 05.03.2009 (Annexure P-3). Admittedly, the offer of possession was made on 16.04.2009. The possession was not taken on account of an *inter se* dispute between the allottees.

This, in the considered opinion of this Court, would not extend the period within

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which construction was to be raised. The period of 03 years, therefore, ended on 15.04.2012. No doubt, actual possession was handed over on 16.12.2013 pursuant to directions issued by a Co-ordinate Bench of this Court while deciding ***CWP No.21649 of 2012***. However, in so far as the respondents are concerned, merely because possession was handed over on 16.12.2013 under the directions of the Court, the period laid down within which construction was to be completed would not get extended. Rule 6 and Rule 8 of the Chandigarh Estate Rules, 2007 (hereinafter referred to as the '2007 Rules') were clarified vide communication dated 05.08.2014 (Annexure R-1) and it was stated that encumbrance free possession would be handed over to the allottee within 07 working days of the execution of the conveyance deed and it would be incumbent on the allottee to take physical possession of the site within 07 days of the said offer and that if possession was not taken within these 07 days, the delay would be attributable to the allottee and not to the respondents. Learned counsel for the respondents has placed reliance upon the said communication and rightly so.

18. There is another aspect of the matter. During the pendency of the present writ petition before this Court, an order was passed on 24.01.2017 that the respondents would apprise the Court about the total amount of extension fee stated to be payable by the petitioners;

“List for further arguments on 25.04.2017.

The respondents shall apprise the Court about the total amount of extension fee stated to be payable by the petitioners.”

19. Thereafter, on 25.04.2017, a calculation sheet was handed over by learned counsel representing the respondents as per which the extension fee payable by the petitioners was Rs.32,88,896/-. Learned counsel representing the petitioners, therefore, sought time to seek instructions;



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“Counsel for the UT Administration has handed over a calculation sheet alongwith new set of Rules, according to which the Extension fee payable by the petitioner is Rs.32,88,896/-

Learned counsel for the petitioner seeks time to have instructions.

Adjourned to 26.10.2017.”

20. Thereafter, on 12.02.2018 also, learned Senior counsel representing the petitioners prayed for more time to seek instructions;

“Learned Senior counsel for the petitioners prays for more time to seek instructions as to whether the petitioner is prepared to make the payment of Extension fee of `32,88,896/- or not in terms of order dated 25.04.2017.

Adjourned to 07.03.2018”

21. Thereafter, the matter could not be taken up for hearing. A conjoint reading of the terms and conditions of the allotment letter, the conveyance deed, the instructions dated 05.08.2014 (Annexure R-1) and the orders passed in the present writ petition from time to time would show that there is no illegality in the action of the respondents in charging extension fees beyond the period from 15.04.2012 on account of expiry of 03 years after 16.04.2009 when the first offer of possession was made. We do not, therefore, find any reason to interfere in the said decision of the respondents.

The writ petition is, therefore, found to be devoid of merit and is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

19.12.2024

Prince Chawla

Whether speaking/reasoned :

Yes/No.

Whether reportable :

Yes/No.