

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16079-2018
Decided on : 08.02.2024

Sidharth Co-operative House Building Society Ltd.

..... Petitioner

Versus

State of Haryana and others

..... Respondents

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

Present : Mr. S.P.Khatri, Advocate
for the petitioner.

Mr. Ankur Mittal Additional Advocate General, Haryana
and Ms. Kushaldeep Kaur, Advocate
for the respondent-State of Haryana.

Mr. Arvind Seth, Advocate
for respondent No.2.

VIKRAM AGGARWAL, J

1. The petitioner is a registered Cooperative House Building Society (hereinafter referred to as 'the petitioner-Society'). By way of the instant writ petition, preferred under Article 226 of the Constitution of India, the petitioner-Society has la id challenge to the order dated 02.09.2013 (Annexure P-9) vide which the representations dated 30.05.2013 (Annexure P-8) and 10.06.2013 (copy not annexed with the writ petition) requesting for transfer of remaining land measuring 15049 square yards out of 31555 (mentioned as 31317 in the representation) square yards of land in exchange,

were rejected as also to the order dated 16.05.2017 (Annexure P-11) vide which the revision petition preferred against the aforesaid order was dismissed.

2(i). Vide notification issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the LA Act') on 19.10.2001, land in five villages in District Sonapat was sought to be acquired for a public purpose namely development of residential-commercial Sector-2, Sonapat. Declaration under Section 6 of the LA Act was issued on 18.10.2002 and award was passed on 14.10.2004.

2(ii) The petitioner-Society was owner in possession of 25 acres of land in Village Sultanpur which was one of the villages whose land had been acquired. Though the land of the petitioner-Society was initially acquired but the same is stated to have been subsequently released. However, 31555 square yards of land was utilized by the respondents for construction of roads and development of green belts etc. without acquisition.

2(iii) The petitioner-Society sought exchange of land measuring 31555 square yards. The case of the petitioner-Society is that though, initially the respondents had acceded to the request of the petitioner-Society, they ultimately agreed to exchange 22988 square yards of land in lieu of 31555 square yards of land of the petitioner-Society which was utilized without acquisition. However, subsequently, an agreement dated 24.09.2012 (Annexure P-6) was got executed from the petitioner-Society with the respondents under duress as per which, the petitioner-Society agreed to exchange 16268 square yards of land in lieu of the land measuring 31555

square yards which had been utilized by the respondents.

2(iv). The petitioner-Society had initially approached this Court also by way of a writ petition i.e. CWP No.22730 of 2013. However, the same was withdrawn on 11.10.2013 (Annexure P-10) with liberty to pursue its case with the respondents or to avail its remedy before the Civil Court. Prior to the filing of the said writ petition, representations dated 30.05.2013 and 10.06.2013 submitted by the petitioner-Society for transfer of remaining land measuring 15049 square yards out of 31555 square yards had been rejected vide order dated 02.09.2013 (Annexure P-9). After the withdrawal of the writ petition, the petitioner-Society preferred a revision petition before the Principal Secretary to Govt., Haryana, Town & Country Planning Department, Chandigarh which was also dismissed by way of order dated 16.05.2017, leading to the filing of the present writ petition.

2(v). The petitioner-Society has also pleaded in the writ petition about the discriminatory action of the respondents in giving equivalent amount of land in exchange to other societies including one Panchvati Cooperative House Building Society, Rohtak.

2(vi). Reliance has also been placed in the writ petition upon the provisions of Article 300-A of the Constitution of India and Section 28 of the Indian Contract Act, 1872.

3. The writ petition has been opposed by the respondents. In the written statement, reliance has principally been placed upon the agreement dated 24.09.2012 vide which the petitioner-Society had agreed for exchange of land measuring 16268 square yards.

4. We have heard learned counsel for the parties and have perused the paper book.

5. Sh. S.P.Khatri, learned counsel representing the petitioner-Society made strenuous efforts to convince the Court that the action of the respondents in transferring only 16268 square yards of land in lieu of 31555 square yards of land utilized by it, is unsustainable. Learned counsel submitted that the agreement dated 24.09.2012 was executed by the petitioner-Society under duress and, therefore, no reliance can be placed upon the same.

6(i). Per contra, learned counsel representing the respondents have submitted that after the execution of the agreement dated 24.09.2012, the petitioner-Society cannot be permitted to go back and contend that the agreement had been executed under duress.

6(ii). Learned counsel have also contended that the earlier writ petition i.e. CWP No.22730 of 2013 was withdrawn by the petitioner-Society with liberty to pursue its case with the respondents or to avail its remedy before the Civil Court vide order dated 02.09.2013. However, the petitioner-Society preferred a revision petition against the said order dated 02.09.2013 and has again approached this Court by way of the instant writ petition after dismissal of the same.

7. We have given our thoughtful consideration to the issue in hand.

8. The facts are admitted in so far as the utilization of 31555 square yards of land of the petitioner-Society is concerned. It is also admitted that the said land had been utilized without acquisition and for the purpose of

construction of roads and green belts. The issue which then arose was of the exchange of equivalent land.

9(i). Before advertng to the merits of the controversy, it would be apposite to examine the Policy dated 17.07.2018 (Annexure P-14) which is with regard to purchase and exchange of HSVP land with the land developers/land owners. The conditions under which purchase of land by HSVP and exchange of HSVP land would be considered are laid down in Clause A of the said Policy which states as under:-

“A. Conditions under which purchase of land by HSVP and exchange of HSVP land shall be considered:-

i) Where HSVP land is irregular in shape and exchange of land with the developer land owner will help in regularization of boundaries of HSVP land. In such cases, exchange of land shall be executed on the principles of ‘give equal and take equal’ except in situation as mentioned in Clause (ii) hereinbelow. However, in case of exchange of land with unlicensed land or land owners where the land of the owner gets re-located as a compact chunk or plot, residential plots of HSVP having area equivalent to 25% of the land taken in exchange shall be given to the applicant because in lieu of undeveloped land, developed land of HSVP is given.

ii) Where no approach is available to the land of developer and an approach is to be provided through HSVP land, in such cases 1.5 times of the developer land out of the same land for which approach is being given shall be taken by HSVP in lieu of its land required for providing approach.

iii) Where HSVP has utilized un-acquired land of land owner without paying compensation/land in exchange, in such cases, land owner can opt for one of the following benefits:-

a. HSVP shall pay the updated cost of land based on the

award announced for the land abutting/adjoining to the land of land owner with no future encumbrance/liability on price of the land .

or

b. The land owner will have an option to have residential plot of area equivalent to 40% of his utilized un-acquired land by HSVP. This plot will be given to the land owner in the same sector in which his land has been utilized. If plot is not available in the same sector then plot will be given in the adjoining sector of the same Revenue Estate. If plot is not available in the same sector or adjoining sector then only monetary benefits as given in (a) above shall be paid to the land owner.

(iv) Where HSVP intends to purchase un-acquired/released land of developers/land owners for infrastructure projects or otherwise, in such cases HSVP shall pay the updated cost of land based on the award announced for the land abutting/adjoining to the land of developers/land owners. However, this will be the 'offer' and the 'acceptance' of the same by such land owners shall be a sale of this land with no future encumbrance/liability on price of the land."

9(ii). A perusal of the aforesaid clause shows that normally the principle of '*give equal and take equal*' would be followed except in the situations mentioned in the clause itself i.e. where no approach was available or where HSVP had utilized unacquired land without paying compensation. In these circumstances, there were further two conditions where the respondents would pay the updated cost of land based on the award announced or the land owner would have an option to have a residential plot of area equivalent to 40% of his utilized unacquired land.

10(i). Reverting to the facts of the present case, initially, vide communication dated 06.09.2011 (Annexure P-2), the proposal to exchange the land was declined as it was stated by the respondents that the exchange proposal was not beneficial to them as non-saleable area of the petitioner-Society utilized by the respondents was proposed to be exchanged in lieu of the saleable area of the respondents. This communication also reveals that the land of the petitioner-Society had been released on 15.02.2007 after initially having been acquired and thereafter, the petitioner-Society itself mooted the exchange proposal by offering its land for being utilized for roads and green belts. This communication deserves reference:

“From

**The Chief Administrator,
HUDA (Town Planning Wing),
Panchkula**

To

**The Administrator,
HUDA, Rohtak**

**Memo no.CTP/STP (N)/AC/9872 Dated
06.09.2011**

**Subject: Exchange proposal of land under give and
take policy of HUDA-Sidharth Co-operative
House Building Society Ltd., Sector-2, Sonapat.**

Reference: Your office memo No.6238 dated 30.05.2011

**The matter pointed as subject, it has been
observed that a number of HUDA acquired land pockets will
become land lock by the proposed exchange and the same**

can not be gainfully utilized by HUDA. Also, as per the conditions of released order dated 15.02.2007, the society has to abide by the rules and regulations of Town & Country Planning Department Haryana. This means the society has to be obtain licence of release land. It is standard condition of licence that the developer has to transfer land falling under sector dividing road to HUDA free of cost. Therefore, the exchange proposal is not at all beneficial to HUDA as non-salable area in the form of land falling under roads and green belts is proposed to be given by the society in lieu of salable area of HUDA. In fact, the land falling under roads will come to HUDA free of cost as and when the applicant society will obtain licence from DGTCP, Haryana. Hence, the exchange proposal has not be approved by the Hon'ble C.M., Haryana-cum-Chairman, HUDA please.

Sd/-

(B.B.L.Kaushik)

Chief Town Planner,

For Chief Administrator, HUDA

Endst. No.CTP/STP (N)/AC/9873-76 Dated: 06.09.2011"

10(ii). On 16.07.2012, the petitioner-Society executed an affidavit (Annexure P-4) stating that it was willing to exchange unequal land and would not seek any compensation in lieu of the extra land given by the petitioner-Society in exchange. It, therefore, expressed its willingness to accept 22988 square yards of land.

10(iii). However, it appears that subsequently, both sides agreed that land measuring 16268 square yards would be transferred to the petitioner-Society in lieu of the land utilized by the respondents. An agreement dated

24.09.2012 (Annexure P-6) was executed in this regard.

10(iv). After the execution to this agreement, the petitioner-Society appears to have submitted representations dated 30.05.2013 (Annexure P-8) and 10.06.2013. By way of these representations, the petitioner-Society requested that the remaining land measuring 15049 square yards be also allotted to it. This request was rejected vide order dated on 02.09.2013 (Annexure P-9).

10(v). The petitioner-Society then approached this Court by way of CWP No.22730 of 2013 wherein the following order was passed on 11.10.2013:-

“Learned counsel, on instructions from the petitioner Society, states that the petitioner Society may be permitted to withdraw this petition with liberty to pursue its case with the respondents or avail its remedy before the civil court.

Dismissed as withdrawn with the aforesaid liberty.”

10(vi). Instead of availing its remedy before the Civil Court to prove that the agreement dated 24.09.2012 had been executed under duress, the petitioner-Society preferred a revision petition against the order dated 02.09.2013 which was also dismissed vide order dated 16.05.2017 (Annexure P-11) and the request of the petitioner-Society was again rejected.

10(vii). The argument that the agreement dated 24.09.2012 had been executed by the petitioner-Society under duress cannot be raised in writ jurisdiction as the same would have to be proved by leading evidence. Even otherwise, there is no reason for this Court to even *prima facie* accept the contention that the agreement had been executed under duress. It has not

been explained at all as to why the petitioner-Society executed the agreement and why it did not put its foot down at the relevant time.

11. This Court is of the considered opinion that the petitioner-Society is bound by the agreement executed by it and would not be in a position to wriggle out of the same. There is, therefore, no illegality in the impugned orders.

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

08.02.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No