

(2017) 05 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : CWP Nos. 13168 and 13200 of 2014 (O&M)

Aarti Kataria

APPELLANT

Vs

Haryana Urban Development Authority

RESPONDENT

Date of Decision : 15-05-2017

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 17

Citation : (2017) 3 RCRCivil 414

Hon'ble Judges : Surya Kant and Sudip Ahluwalia, JJ.

Bench : Division Bench

Advocate : Ashok Verma, Advocate, for the Petitioners; Ashish Yadav, Advocate, for the HUDA in CWP No. 13168 of 2014; R.S. Longia, Advocate, for the HUDA in CWP No. 13200 of 2013; B.S. Icheewal, Advocate, for the HUDA in CWP No. 14853 of 2014

Final Decision : Allowed

Judgement

Surya Kant, J.—This order shall dispose of the above-captioned writ petitions as the point in issue which arises for consideration in these cases is similar in nature.

2. In CWP No. 13168 of 2014, the petitioner is re-allottee of Booth No.139, Sector 15, Faridabad, measuring 24.75 sq. yards. The said booth has been resumed by HUDA in exercise of its powers under Section 17 of the Haryana Urban Development Authority Act, 1977 (for brevity, "the 1977 Act") on account of various building violations committed by the petitioner.

3. In CWP No. 13200 of 2014 also, the petitioner is re-allottee of Booth No.140, Sector 15, Faridabad, measuring 24.75 sq. yards. The said booth has been resumed by HUDA in exercise of its powers under Section 17 of the 1977 Act on account of various building violations committed by the petitioner.

4. In CWP No. 14853 of 2014, petitioner is the allottee of shop-cum-flat No.43, Sector 3, Urban Estate, Faridabad, measuring 121 sq.meters. The above-stated

shop has also been resumed by HUDA in exercise of its powers under Section 17 of the 1977 Act due to various building violations committed by the petitioner.

5. In the first two cases the petitioner filed statutory appeals which were allowed and some time was granted to her to remove the violations. However, those orders were successfully challenged by HUDA before the Revisional Authority. In the third case, the appeal and the revision petition filed by the allottee were dismissed.

6. Since the petitioners took a categorical stand before this Court that they are ready and willing to remove the non-compoundable violations, the following order was passed in the lead case on February 06, 2017:

"The petitioner is said to have raised following unauthorised construction in Booth Nos.139 and 140, Sector-15, Faridabad:

- "i) Two numbers of steps constructed in public corridor;
- ii) Stair constructed in Booth No.139, Sector-15, Faridabad for roof;
- iii) The allottee has constructed approximately 2 feet wide slab in the public corridor at ground floor; and
- iv) Both the booths have been clubbed by allottee at site."

The petitioner is directed to seek regularisation of the violations, wherever permissible. The petitioner shall apply with requisite charges and the Estate Officer shall take an appropriate decision within 15 days from the date of submission of the application. However, if there is any violation which cannot be compounded, the petitioner shall remove the same and file a compliance affidavit on the next date of hearing.

Adjourned to 15.05.2017.

Let a photocopy of this order be placed on the file of another connected case."

7. In deference thereto, learned counsel for HUDA, on the basis of written instructions states that the petitioner has removed violations from Booth Nos.139 and 140, Sector 15, Faridabad. The petitioner has also filed an affidavit to this effect which is taken on record. As regard to petitioner in CWP No.14853 of 2014 (Dr.Sandeep Kumar Jain) is concerned, the Estate Officer, HUDA, has filed affidavit dated 14.05.2017, paras 2 and 3 whereof read as follows:-

"2. That this Hon"ble Court vide order dated 06.02.2017 issued following directions:

"The petitioner is said to have removed the single violations, namely, bathroom constructed by him.

The Estate Officer is directed to visit the site and submit a report."

3. That in compliance with the above directions the site was visited on

02.05.2017 with Junior Engineer and SDE(S) and found that the bathroom constructed by the petitioner has been removed at site, but there is zoning violation in shape of partition in basement, which is against the building by laws."

[emphasis applied]

8. The petitioner in the third case, i.e. CWP No.14853-2014 has also thus removed the major violation and only partition in the basement is required to be in shape as per zoning.

9. We have heard learned counsel for the parties at a considerable length. In the light of principles laid down by Full Bench of this Court in Dheera Singh v. U.T.Chandigarh Admn.and others, 2012 (4) RCR (Civil) 970, namely, that resumption of site will be the last resort and such power shall be invoked only in a case where occupier is habitual to building violations, we are satisfied that in the instant case orders of resumption need not to sustain in the light of subsequent events, namely, removal of all the violations by the petitioners.

10. Consequently, writ petitions are allowed; impugned orders are set aside and the sites are ordered to be restored in favour of the petitioners. However, in CWP No.14853-2014 the petitioner is directed to re-shape the partition in the basement strictly as per the zoning plan. Needful shall be done within a period of four months from the date of receipt of a certified copy of this order. HUDA authorities shall be at liberty to inspect the premises and thereafter to take further action if any violation is found.