**(2014) 09 P&H CK 0093**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 10812 of 2011

Ashok Bansal APPELLANT

Vs

The State of Haryana and Others RESPONDENT

**Date of Decision :** 03-09-2014

**Acts Referred:**

**Citation :** (2015) 177 PLR 415

**Hon'ble Judges :** K. Kannan, J

**Bench :** Single Bench

**Advocate :** Ashish Aggarwal, Senior Advocate and Ritu Pathak, Advocates for the Appellant; Charanjit Singh Bakhshi, Additional Advocate General, Advocates for the Respondent

## Judgement

K. Kannan, J.—Reply by way of rejoinder filed in court on behalf of the respondent-State is taken on record. The writ petition is a challenge to an order of the cancellation of permission granted to the petitioner to construct a Shopping Mall. The respondents dictated a particular procedure, namely, of securing permission and entering into an agreement for complying with certain conditions that included submission of building plan, payment of conversion fee and other types of fees and complete the construction after securing the necessary approval for the plans submitted. The petitioner was granted permission on 30.08.2006 and there was a specific condition requiring the completion of construction within a period of 3 years. The agreement was to be written on non-judicial stamp papers and it was admittedly executed pursuant to the permission. The petitioner had deposited Rs. 6,70,250/- on account of conversion charges and he was required to pay external development charges (EDC) calculated @ Rs. 348/- per square meter. The total amount determined at over Rs. 38 lakhs required to be paid, the first installment of which being 25% had been paid within 30 days. The balance of amount had not been paid, but the petitioner had submitted the building plan on 25.03.2008 and the licence fee was also paid by the petitioner.

2. The petitioner''s grievance is that the building plan not being sanctioned at all and, therefore, it was not possible to put up construction and the State authorities have allowed for their own laches to be the cause for non-completion but has penalized the petitioner by withdrawing the permission. Although there is a prayer for quashing the order of withdrawal of permission, the petitioner''s plea now would be only to secure the refund of the amounts which had been paid since the petitioner was not interested in putting up construction on the basis of permission already obtained. The petitioner would content that since the project has become unviable and the licence fee has gone several times fold, it may not be possible to put up construction with the charges which are now sought to be levied.

3. The answer in reply is that the petitioner had been guilty of commission of breach of conditions, predominant among which is that he did not pay the installments of development charges as assessed at Rs. 38,87,442/-, except the first installment. The building plans submitted were incomplete and sketchy and they were not fit for approval. Even the requisite fees had not been deposited.

4. The impugned order has to be supported on what it contains. The order of cancellation of approval was on the ground that the building was not completed within a period of 3 years as per the condition laid down. The issue is whether the building could have been constructed and completed without the building plans even being approved. Admittedly, the plans had not been approved. Even the contentions now raised that the requisite fees had not been deposited was not cited as a ground for return of application for approval of the building plan. Again if the plans were found incomplete and sketchy, it was not taken as a ground for rejection of the building plans or returned to the petitioner for resubmission of plans by pointing out to the mistakes and the deficiencies that the plans contained. With no action on the part of the State authorities returning the plans or seeking for correction, it was impermissible on their part to complain that the construction had not been made within 3 years and hence, the permission was liable for rejection. If the construction itself could not have commenced without approval of the building plan, I will not find fault with the petitioner in any way for his inability to start the construction.

5. If he is seeking for return of the money, the nature of amounts which are submitted will have to be seen to assess whether the monies are refundable or not. The payment which had been made, namely, of the conversion charges or the licence fee or EDC have all to do with consideration for the actions on the part of the authorities. A fee is unlike a tax, quid pro quo to a service rendered. If the whole project did not start and it was on account of inaction on the part of the State to approve building plans which if done, could have enabled the petitioner to carry on with the construction, the whole amount of what was received by the respondent could not be retained. It is a case where the cancellation of permission has resulted by the State''s own inertia and the petitioner is, therefore, entitled to the refund of the amount.

 

6. The prayer for quashing the order of cancellation has become infructuous since the petitioner is not interested in obtaining the benefit of permission for construction. The remedy shall be to secure the refund of the amounts which have been paid with interest at 9% per annum from the respective dates of deposit of various amounts till the date of payment. The payment shall be calculated and released to the petitioner within a period of 4 weeks. The writ petition is allowed to the above extent.

 