

(2019) 11 P&H CK 0082

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 28807 Of 2018

Bhupinder Pal Singh And Another

APPELLANT

Vs

State Of Punjab And Others

RESPONDENT

Date of Decision : 19-11-2019

Acts Referred:

Punjab Regional And Town Planning And Development Act, 1995 — Section 45(7), 45(8)

Citation : (2019) 11 P&H CK 0082

Hon'ble Judges : Daya Chaudhary, J;Sudhir Mittal, J

Bench : Division Bench

Advocate : Sunil K. Mukhi

Final Decision : Dismissed

Judgement

Sudhir Mittal, J

1. The question in issue in the present writ petition is whether the petitioners are liable to pay extension fee in respect of plot No. 323, Urban Estate Phagwara measuring 500 sq. yards.

2. The aforementioned plot was allotted to one Sh. Kuldeesh Kumar by way of open auction held in accordance with the provisions of the Punjab Urban Estates (Development and Regulation) Act, 1964 and Rules framed thereunder. Allotment letter dated 11.10.1981 was issued in his favour. An incomplete copy of the allotment letter has been placed on record as Annexure P-1. Said Sh. Kuldeesh Kumar sold the plot to one Sardar Tara Singh Ghog and his wife Swarn Kaur on 18.12.2002. After death of Sardar Tara Singh Ghog, his share was inherited by his two sons, who executed a General Power of Attorney dated 16.12.2005 in favour of Harbhajan Singh Hayer son of Ralla Singh @ Naranjan Singh. The petitioners entered into an agreement to sell dated 22.09.2006 with the owners of the plot through their General Power of Attorney Harbhajan Singh Hayer. However, sale deed was not executed in accordance with the terms of the

agreement to sell which necessitated filing of a suit for specific performance by the petitioners. The suit was decreed vide judgment and decree dated 05.09.2011 and pursuant thereto sale deed dated 12.07.2013 was executed in favour of the petitioners through the Court. Soon thereafter, the petitioners submitted application dated 06.08.2013 for change of ownership whereupon a notice dated 19.08.2013 was served upon them directing them to show cause why the property be not resumed as the sale deed had been executed without taking prior permission from the concerned authorities. The petitioners submitted their reply that prior permission was not necessary to be taken as the sale deed was executed through the Court on the basis of a decree for specific performance and that the concerned authorities, being parties to the suit, were aware of the relief being sought by the petitioners which was never objected to during the pendency of the suit. Vide letter dated 28.10.2013 issued by the Estate Officer, Jalandhar Development Authority, transfer in favour of the petitioners was approved and extension fee was waived. On 23.04.2015, the petitioners applied for No Objection Certificate from the competent authority to enable them to sell the plot. On receipt of the application, the record of the plot was examined and it was realized that extension fee on account of non-construction was due and that the same had been illegally waived vide order dated 28.10.2013. Thus, the matter was referred to the Chief Administrator, Jalandhar Development Authority for revising the order dated 28.10.2013 in exercise of suo moto powers. The petitioners were issued notices and reply dated 15.07.2015 was filed on their behalf. After hearing the petitioners as well as the Estate Officer, the Chief Administrator set aside order dated 28.10.2013 vide his order dated 20.10.2015. Consequently, vide letter dated 20.11.2015, demand of Rs. 17,47,943/- was raised against the petitioners on account of extension fee upto 31.10.2015. The petitioners challenged order dated 20.10.2015 before the State Government through a petition under Section 45(8) of the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred to as 'the Act'). The revision petition was dismissed vide order dated 27.10.2016 and vide letter dated 10.05.2017 demand of Rs. 22,83,558/- was raised on account of extension fee upto 30.06.2017. It appears that a review petition seeking review of order dated 27.10.2016 was filed but its outcome is not clear from the record. A consumer complaint was filed on 26.09.2018 which was dismissed as withdrawn vide order dated 01.10.2018 with liberty to avail the alternative remedy in accordance with law. Thus, the present writ petition was preferred.

3. Through a miscellaneous application, the petitioners have placed on record the Punjab State Litigation Policy, 2010 as well as the Punjab Dispute Resolution and Litigation Policy, 2018. The powers and duties of various officers of the Jalandhar Development Authority have also been annexed alongwith the said policies.

4. Learned counsel for the petitioners has submitted that the Chief Administrator could not have exercised his powers under Section 45(7) of the Act after expiry of six months from the date of the order and, thus, order dated 20.10.2015 is without jurisdiction. It is also argued that order dated 28.10.2013 passed by the

then Estate Officer was based on sound reason and was legal and valid and was not liable to be set aside.

5. For deciding the issues raised by learned counsel for the petitioners it is necessary to reproduce order dated 28.10.2013 passed by the then Estate Officer as well as Section 45(7) of the Act. Order dated 28.10.2013 is as follows:-

Jalandhar Vikas Authority, Jalandhar Continued Last Page :-

According to description given on N.P. 48, there is court case running in between the seller and buyer of this case and JDA was also made the performa party into it. From the court side, in favour of the buyers under specific performance, the decree has been executed in the favour of the buyers and from their side along with the copy of court orders, the application for change of ownership was filed. The Verification done by the office is that according to the orders of the Court, the registry has been done in the names of buyers and they are now natural owners of this plot in partnership. Then also as per policy and as per enquiry formalities, this is mandatory for the office to publicize the same into newspaper dully highlighting the court decree orders. Along with this, also this is advised to collect the due non construction fees as per new policy of PUDA and from the date of filing court case upto the final orders of the court, the non-construction fees should not be charged just because if the non construction fees is charged for this period also, then there are chances of occurring more litigations with the owners. Accordingly, as per above verification to transfer the ownership of this plot on the names of Sh. Bhupinder Pal Singh and Sh. Naresh Bawa Kohli S/o Ashwani Kumar through drafted publication has been accepted by this office.

6. Section 45(7) of the Act is as follows:-

(1) xx xx xx xx

(2) xx xx xx

(3) xx xx xx xx

(4) xx xx xx

(5) xx xx xx xx

(6) xx xx xx

(7) The Chief Administrator may either on his own motion or on an application received in this behalf at any time within a period of six months from the date of the order, call for the record of any proceedings in which the Estate Officer has passed an order for the purpose of satisfying himself as to the legality or propriety of such order any may pass such order in relation thereto as he thinks fit:

Provided that the Chief Administrator shall not pass an order under this Section prejudicial to any person without giving him a reasonable opportunity of being heard.

(8) xx xx xx xx

7. A perusal of order dated 28.10.2013 reveals that no valid reason whatsoever has been given regarding waiver of non-construction fees. The Estate Officer waived the same on the specious ground that it would result in more litigation with the owners. If the law prescribes imposition of extension fee for non-construction, the Estate Officer concerned had no jurisdiction to waive the same for avoiding litigation with the owners. The litigation policy of the year 2010 as well as of the year 2018 pressed into service by learned counsel for the petitioners do not help him in any manner. The policy of the year 2018 would not be applicable as the order of the Estate Officer is dated 28.10.2013. The policy of the year 2010 only enumerates measures to be adopted by the Government for reducing the litigation and the same does not empower a statutory functionary to exercise powers where none exists. Learned counsel for the petitioners has not brought to our notice any other statutory provision entitling the then Estate Officer to waive extension fees payable.

8. Thus, it has to be held that the order dated 28.10.2013 passed by the then Estate Officer was without authority of law. It deprived a public authority of its legal dues.

9. This brings us to the next argument of learned counsel for the petitioners that powers under Section 45(7) of the Act could not have been invoked as the same was barred by limitation. According to learned counsel for the petitioners, limitation of six months is prescribed under the statute and thereafter, the revisional power could not have been exercised.

10. Revisional power under Section 45(7) of the Act has been provided to the Chief Administrator for examining the legality or propriety of any order passed by the Estate Officer after granting an opportunity of hearing to the person likely to be affected by his order. The expression "at any time within a period of six months" occurs in the sub Section. If the expression "within a period of six months" is considered in isolation, learned counsel for the petitioners would be justified in raising the argument of limitation. However, the expression "at any time" finds place before the earlier expression and the same can not be ignored. One of the principles of interpretation of statutes is that the legislature does not use surplus words. It has to be presumed that every word has been used with a purpose and it should be given full effect. If the entire expression is read as a whole, the only sense it conveys is that the Chief Administrator may exercise his power at any point of time within six months period. Such a reading would render the words "at any time" redundant because the expression "within a period of six months", it self conveys the same meaning. To give complete effect to the words "at any time" the said phrase has to be read with the earlier phrase i.e. "on his own motion". Thus interpreted, the Chief Administrator would be entitled to exercise his revisional power at any time on his own motion but if the said power were to be exercised on an application moved by a party the period of limitation of six months would apply. Another manner of interpretation could be

to read the phrase "either on his own motion" disjunctively with the phrase "on an application received in this behalf at any time within a period of six months from the date of the order". Such an interpretation would also be in keeping with the object of the provision which is to ensure that any illegality committed by a subordinate official is not permitted to be perpetuated. An illegality had been committed by the then Estate Officer by waiving extension fee vide his order dated 28.10.2013 and the same was required to be corrected.

11. Learned counsel for the petitioners next contends that the manner of exercise of power by the Chief Administrator while passing the order dated 20.10.2015, can not be said to be suo moto exercise of power as the matter was brought to his notice on a reference made by his subordinate staff. The argument deserves to be rejected as no official can be expected to receive sudden enlightenment without relevant information being brought to his notice. The relevant information can only be brought to the notice of a higher official by his subordinate staff and powers exercised on information so received, would be well within the suo moto exercise of powers. If any illegality were to be brought to the notice of the Chief Administrator by an application moved by third party i.e. some body outside the department/office, then it would amount to exercise of powers on application.

12. It goes without saying that the exercise of suo moto powers has to be within a reasonable time and should not be excessively belated. The reason for this is that a party, in whose favour an order has been passed, should be able to feel that the order has attained finality after passage of sufficient period of time. However, whether the power has been exercised within a reasonable time or not, would depend upon individual cases. In the present case, the power has been exercised within two years short by one week and said period can not be said to be unreasonable. The petitioners filed application for permission to sell within 1 ½ years of the passing of order waiving extension fee and within six months thereafter order impugned in the writ petition was passed.

13. Learned counsel for the petitioners has also placed reliance upon Harbhajan Singh vs. Karam Singh and others, AIR 1966 SC 641, Dr. Smt. Kuntesh Gupta vs. management of Hindu Kanya, 1987 AIR 2186 and judgment dated 0.4.07.2003 passed by Andhra Pradesh High Court in Lambadi Pedda Bhadru and others vs. Mohd. Ali Hussain and others to argue that learned Chief Administrator had no jurisdiction to pass the impugned order. However, said judgments are not applicable as the proposition settled therein is not attracted in this case. The aforementioned judgments lay down that a quasi judicial authority can not exercise powers of review unless the concerned statute specifically provides for review jurisdiction. This is not the question in issue in the present case.

14. Accordingly, we do not find any merit in this writ petition, which is dismissed. The petitioners shall, however, be at liberty to recover the extension fee payable by them from their vendors if the same is permissible in law.