
(2013) 10 P&H CK 0397
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 16442 of 2012

B.M. Gupta Estates Pvt. Ltd.

APPELLANT

Vs

The State of Haryana and Another

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Citation : (2014) 174 PLR 311

Hon'ble Judges : Satish Kumar Mittal, J; Mahavir Singh Chauhan, J

Bench : Division Bench

Judgement

Mahavir Singh Chauhan, J.—Petitioner, applied for and, was granted permission for construction of a shopping mall/multiplex at Circular Road, Re-wart over an area measuring 6012.50 Sq. Meters vide memorandum dated 10.08.2007 (Annexure P-1) subject to deposit of Rs. 8,66,690/- as licence fee, Rs. 10,52,200/- as conversion charges, Rs. 7,82,310/- as external development charges (to the extent of 25%). Balance of 75% of the external development charges amounting to Rs. 23,46,935/- was payable in four half yearly installments. Petitioner deposited the requisite amount whereupon the zoning plan was sanctioned and supplied to the petitioner vide memorandum dated 06.09.2007 (Annexure P-2). After building plan was sanctioned, petitioner commenced the construction but could not complete it within the given time and was, on request, allowed extension of time for two years on payment of extension fee amounting to Rs. 9,21,515/- vide memorandum dated 26.04.2011 (Annexure P5). On completion of construction, petitioner applied for grant of completion certificate. Respondents got the building inspected and found certain building violations therein. In the inspection report dated 13.06.2011 (Annexure P-6), it was stated that the violations were compoundable and grant of completion certificate could be considered after completion of all civil works and after charging compounding fee amounting to Rs. 17,80,335/-, as provided by Haryana Municipal (Charging of Composition Fee for Regularization of Unauthorised Construction) Rules, 2003 (for short "the 2003 Rules"). However, vide memorandum dated 11.08.2011 (Annexure P-7) respondent No. 2 conveyed

to the petitioner that its request for grant of completion certificate could be considered only provided "(i) Bank Draft of Rs. 52,21,115/- as Composition Fee/ Charges in favour of Chief Administrator, Haryana Urban Infrastructural Development Board, Chandigarh; (ii) An undertaking in the form of an affidavit to the effect that you shall abide by the decision of the Government regarding the rates of composition fees; if it is decided to charge the same on the pattern of Town & Country Planning Department." Is submitted by it with the office of respondent No. 2.

2. Request made by the petitioner before respondent No. 2 that composition fee be charged as per 2003 Rules, having failed to evoke any response, it, however, deposited the demanded amount vide its letter dated 11.08.2011 (Annexure P-8) while reserving its right to recover the amount found to be in excess of what was payable by it under the provisions of the Haryana Municipal Act, 1973 (for short "the 1973 Act") and served upon respondent No. 2 a legal notice dated 06.03.2012 (Annexure P-9) demanding refund of the excess amount charged from it as per rates fixed by Department of Town and Country Planning. But the demand so raised by the petitioner was rejected by the 2nd respondent vide memorandum dated 11.04.2012 (Annexure P-10) by saying:

It is intimated that it was earlier decided by the Government that all fee/charges being levied by Town and Country Planning Department for the same projects for which permissions are being granted by Urban Local Bodies Department shall be charged by this Department also. In compliance of this decision a demand of Rs. 52,21,115/- in lieu of composition fee was issued to the applicant. The applicant not only deposited the said amount but also submitted an affidavit that he shall abide by the decision of the Government in this regard. The completion certificate was issued to the applicant only after the receipt of the said amount of composition fee and the affidavit, hence there is no question to refund the amount paid by the applicant.

It is also pertinent to mention that the extension of two year period for the completion of the project was also allowed after obtaining extension fee at the rate approved by Town and Country Planning Department. The applicant neither raised any objection at the time of grant of extension nor at the time of completion of the building.

3. To seek quashing of memorandum dated 11.04.2012 (Annexure P-10) and for issuance of a writ of mandamus directing the respondents to charge composition fee in accordance with 2003 Rules and to refund to it the fee charged, in excess, the petitioner has invoked the extra-ordinary jurisdiction of this Court by way of the instant Civil Writ Petition under Articles 226 and 227 of the Constitution of India.

4. Respondents have filed a written statement stating that permission to the petitioner for extension of time was granted in terms of policy dated 16.09.2005; since the Department of Town and Country Planning is granting such permission

under the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 (for short "the 1975 Act") a conscious decision dated 19.03.2010 was taken by the Government to charge composition fee at par with the fee charged by the aforesaid department and that as the petitioner has already deposited the demanded composition fee, is not entitled to raise the plea of refund of excess fee in view of affidavit dated 11.08.2011 (Annexure R-2) submitted by it, undertaking to abide by the rates of composition fee as may be fixed by the Government and that completion certificate was issued in favour of the petitioner only after it deposited the demanded composition fee and also agreed to pay the rates conveyed to him.

5. During the pendency of the writ petition the respondents have also placed on record affidavit dated 29.07.2013 of Shri Jagtar Singh Sandhu, Joint Secretary, Department of Urban Local Bodies, Haryana, wherein the stand taken in the written statement has been reiterated and along therewith the affidavit photocopy of an office note dated 19.03.2010 has been appended as Annexure R-1, which, according to the respondents is the "conscious decision" of the Government to charge composition fee at par with the fee being charged by Department of Town and Country Planning while dealing with the cases of extension of time.

6. We have heard learned counsel for the parties and have also perused the record.

7. Controversy involved in the matter revolves around the office note dated 19.03.2010 (Annexure R-1) which, according to the learned counsel for the respondents, is a conscious decision of the Government to charge composition fee at par with such a fee charged by the Department of Town and Country Planning, but according to the learned counsel for the petitioner it is only a proposal and, as such, action of the respondents cannot be based thereupon unless the 2003 Rules are amended, as per procedure known to law.

8. Undisputedly, the premises under reference is situated within the municipal limits of Rewari and is amenable to the provisions of 1973 Act and rules framed thereunder. Even permission to raise construction was granted to the petitioner subject to the provisions of the 1973 Act (Annexure R-1 so refers). It is the case pleaded, on behalf of the respondents, is that the "unauthorized deviations, additions, and alterations were compounded by Director, Urban Local Bodies, Haryana in pursuance of provision u/s 208 of the Haryana Municipal Act, 1973". But, surprisingly, the composition fee has been calculated as per rates approved by Department of Town and Country Planning. The action is sought to be justified by the respondents by referring to office note dated 19.03.2010 (copy at Annexure R.C.1) which, according to the respondents, is a conscious decision of the Government to charge composition fee at par with the rates approved by the aforesaid department. The contention, in our considered opinion, is without merit and, thus, deserves outright rejection. The office note dated 19.03.2010 (Annexure R.1) reads as under: -

Subject: Charging of licence fee and infrastructure development charges at the rates notified by the Town & Country Planning Department.

Hon'ble Chief Minister has seen. It was never the intention that the rates mentioned under other Acts are to be charged. It was desired that a review of the existing rates/fees structure is to be done by the Department so that there is parity in the rates/fees between the Town & Country Planning Department and the Urban Local Bodies Department and the same fee/rates is charged for the same service. Accordingly the file be processed and put up.

Sd/- (Dr. K.K. Khandelwal) A.P.S.C.M.

19.03.2010

9. A cursory glance across the office note dated 19.03.2010 reveals that it only talks of a desire of the Chief Minister that existing structure of rates/fees be reviewed so as to bring parity in the rates/fees between the Departments of Town & Country Planning and the Urban Local Bodies. It further states that the file be processed and put up. The proposal, however, is not shown to have materialized subsequently into a final decision having taken at any level. Thus, it could not be used by the respondents as basis to charge composition fee from the petitioner at the rates approved by the Department of Town and Country Planning and stand taken by the respondents in the written statement and the affidavit dated 29.07.2013 is palpably incorrect.

10. Even if the office note dated 19.03.2010 (Annexure R-1) is taken to be a decision (which it is otherwise not) still action of the respondents cannot be sustained. As afore-stated, the construction raised by the petitioner is governed by the provisions of 1973 Act and rules framed thereunder. Section 208 of the 1973 Act deals with demolition and stoppage of building and works in certain cases. Proviso added to Sub-section (3) of Section 208 of the 1973 Act is relevant as far as the controversy involved in this Civil Writ Petition is concerned, which reads as under:--

Provided further that the committee may, instead of requiring the alteration or demolition of any such building constructed in contravention of the provisions made u/s 203C to 203E of this Act, accept by way of composition fee as prescribed but such acceptance shall not be without the prior approval of the Director.

11. Section 257 of the 1973 Act empowers the State Government to frame rules to carry out the purposes of that Act. The State Government, in fact, has framed the 2003 Rules in exercise of the powers conferred upon it by Sections 257 read with Section 208(3) of the 1973 Act vide notification dated 02.05.2003, a copy whereof is available on record as Annexure P-11. Rule (3) of the 2003 Rules permits a person by making an application to get unauthorised construction compounded. It reads as under:--

3. Any person intending to get unauthorised construction compounded, shall make an application in writing to the Executive Officer/Secretary of Municipal Council/Committee, as the case may be, in Form BC-I, along with the following documents in duplicate, namely:--

(a) a site plan and a building plan as per requirements of the Haryana Municipal Building Bye-Laws, 1982;

(b) deviations from the sanctioned plan, if any, or details of each contravention the Haryana Municipal Building Bye-Laws, 1982 shown in blue colour.

12. Rule (5) of the 2003 Rules empowers the Executive Officer or Secretary to accept composition fee as per schedule appended to the 2003 Rules. It reads as under:--

5. The Executive Officer or Secretary, as the case may be, may accept from any person, who applied for the compounding of unauthorised construction, a composition fee, as specified in the schedule.

13. The 2003 Rules and/or the schedule appended thereto, admittedly, have not yet been amended so as to alter the rates of composition fee prescribed thereby so as to bring these rates at par with the rates of composition fee charged by Department of Town and Country Planning. Until these rules are suitably amended, the respondents cannot be allowed to charge composition fee contrary to, or in excess of, the rates of such composition fee as prescribed in the schedule appended to the 2003 Rules. In the situation, action of the respondents in demanding composition fee at the rates prevalent in the Department of Town and Country Planning by way of memorandum dated 11.08.2011 (Annexure P-7) and rejection of petitioner's legal notice vide memorandum dated 11.04.2012 (Annexure P-10) cannot be sustained.

14. Contention of the respondents that the petitioner had submitted an undertaking in the form of affidavit dated 11.08.2011 (Annexure R-2) and as has already deposited the composition fee, therefore, it renders itself incapable of challenging the imposition of composition fee vide memorandum dated 11.08.2011 (Annexure P-7), is wholly misconceived and misplaced, for, it is well settled position of law that no estoppel can operate against statute and, as afore-stated, the undertaking, if any, submitted by the petitioner contrary to the provisions of the 1973 Act and rules framed thereunder, cannot work against the rights and liabilities accruing to the petitioner under the 1973 Act and the 2003 Rules.

15. Even otherwise, the undertaking given by the petitioner is that "it will have no objection in abiding by the rates of composition fee as may be fixed by the Government...." and it has already been found as a fact in the earlier part of this judgment that the Government has not so far taken a decision to fix the rates of composition fee as are in vogue in the Department of Town and Country Planning, as regards the buildings amenable to the 1973 Act and to the 2003

Rules. For this reason also, the undertaking (Annexure R-2) cannot be read to empower the respondents to charge composition fee at the rates contrary to the rates as prescribed in the schedule appended to the 2003 Rules. In the consequence, we allow the writ petition, set aside the memorandum dated 11.08.2011 (Annexure P-7) and the order dated 11.04.2012 (Annexure P-10) and direct the 2nd respondent to calculate the composition fee strictly in accordance with the rates prescribed in the schedule appended to the 2003 Rules, and to refund the amount received in excess on account of composition fee payable in terms of the 2003 Rules, within two months from today, failing which it shall carry simple interest @ 8% per annum.

No costs.