(2009) 01 P&H CK 0158

In the Punjab And Haryana At Chandigarh

Harpreet Singh APPELLANT

Vs

State of Punjab and Another RESPONDENT

Date of Decision : 08-01-2009

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2009) 153 PLR 430 : (2009) 2 RCR(Civil) 771 : (2010) 3 SLR 647

Hon'ble Judges : M.M. Kumar, J;Jora Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Kumar, J.—This order shall dispose of a bunch of ten petitions because common question of law has been raised therein, namely, whether demand raised for payment of extension fee from the petitioners is in accordance with the provisions of the Punjab Regional and Town Planning and Development Act, 1995 (for brevity, ''the 1995 Act'') and the Punjab Regional and Town Planning and Development (General) Rules, 1995 (for brevity, ''the 1995 Rules''). However, the facts are being referred from C.W.P. No. 19587 of 2006.

2. In this petition filed under Article 226 of the Constitution, the petitioner has challenged show cause notice, dated 12.12.2006 (P-7), u/s 45(3) of the 1995 Act, issued by the Estate Officer, Punjab Urban Planning and Development Authority, Patiala-respondent No. 3 in respect of Plot No. 621, Phase-II, Urban Estate, Patiala, raising the demand of extension fee for the period from 27.3.1998 to 31.12.2006 on account of non-construction of building. The petitioner has been directed to show cause within 30 days as to why order of resumption of plot and forfeiture of whole or any part of the money paid be not passed under the provisions of Section 5(4) [45(4)?] of the 1995 Act. A further prayer has been made for directing the respondents to correctly demand the non-construction fee as per the provisions of Rule 13 of the 1995 Rules.

3. Facts in brief are that Plot No. 621, Phase-II, Urban Estate, Patiala, measuring

256.67 square yards, was allotted to the petitioner, vide allotment letter dated 28.3.1995 (P-l). As per clause 9(ii) of the allotment letter the petitioner was required to construct the entire permissible area on the ground floor within a period of three years, first floor within a period of five years, second floor within a period of seven years and rest of the area, if any, within ten years from the date of allotment. Sub-clause (iii) of clause 9 further stipulated payment of extension fee by the allottee in the even of non-construction within the prescribed time limit, as per the schedule given, which reads thus:

EXTENSION FEE i) For first year Rs. 3/- per sq. yd. on total plot area ii) For second year Rs. 4/- - do - iii) For third year Rs. 5/- - do - iv) For fourth year Rs. 9/- - do - vi) For fifth year Rs. 11/- - do - vii) For seventh year Rs. 16/- - do -

4. The petitioner has claimed that the Urban Estate Patiala is a low lying area and it is not safe for human habitation, being subjected to fury of floods repeatedly. It has been alleged that no arrangements have been made by the respondents for preventing the threat to the life and property of the residents of Urban Estate, Patiala, on that count. It is only in the recent past that some efforts were made to protect the Urban Estate by laying down 4 ft. diameter pipeline connecting the Urban Estate, Patiala, with Patiala Nadi for lifting the water there. Besides this, a small bridge over Sirhind Bypass has also been constructed for allowing free flow of rainwater towards the Patiala Nadi. It has been further alleged that the Patiala is affected by floods almost every year due to the fact that this area falls at the bank of Badi Nadi and falls under the catchment area. To support this assertion, the petitioner has annexed a news item (P-2). The inhabitants of the area witnessed the worst floods in the years 1988 and 1989 in which may people lost their lives in the devastating floods and property worth crores of rupees was destroyed.

5. The petitioner could not complete the construction over the plot within the stipulated period. Accordingly, a notice dated 30.7.2006 was sent to him raising a demand of Rs. 1,02,775/- on account of non-construction fee up to 31.12.1995. In case of non-payment, the plot was to be forfeited under the provisions of the 1995 Act. Feeling aggrieved, the petitioner filed C.W.P. No. 10679 of 2006 in this Court, which was allowed on 18.7.2006. While quashing the demand notice this Court granted liberty to the respondent Estate Officer to raise a fresh demand in according with law and by following the principles of natural justice i.e. by serving a show cause notice at the first instance and considering reply thereof (P-3).

6. Again a show cause notice dated 19.9.2006 was issued to the petitioner raising a demand of Rs. 1,32,958/- on account of extension fee (non-construction fee) up to December 2006. The petitioner was required to give an undertaking on a stamp paper worth Rs. 15/- duly attested by the first Class Judicial Magistrate, failing which action for resumption of the plot u/s 45(3) of the 1995 Act was to be initiated (P-4). On 17.11.2006, the petitioner submitted a detailed reply to the show cause notice requesting the respondents to raise the

demand in accordance with the provisions of the 1995 Act and the 1995 Rules (P-5).

7. Against notice dated 19.9.2006, the petitioner filed the instant petition. On 11.12.2006, the extension fee claimed from the petitioner was stayed by this Court. Thereafter, the respondents withdraw notice dated 19.9.2006 and issued a fresh notice dated 12.12.2006 (P-7) u/s 45(3) of the 1995 Act claiming enhanced fee in terms of policy dated 15.1.1998 requiring the petitioner to show cause as to why the plot allotted to him be not resumed u/s 45(4) of the Act. The petitioner has filed a detailed reply dated 28.12.2006 (P-8) to the show cause notice dated 12.12.2006. In view of issuance of fresh show cause notice dated 12.12.2006, the petitioner has also amended the writ petition enabling him to challenge the same.

8. In the written statement filed by respondent Nos. 2 and 3 the stand taken is that the instant petitioner is wholly pre-mature because the reply dated 28.12.2006 (P-8) to the notice to show cause dated 12.12.2006 (P-7) is under consideration. It is appropriate to mention that the notice to show cause has been given u/s 45(4) of the 1995 Act, which envisages resumption of the plot allotted to the petitioner. The respondents have further pointed out that there is alternative remedy available as per clause 18 of the allotment letter. It has also been alleged that material facts have been concealed by pleading that the area in question is low laying and if the petitioner was not satisfied with the location of the Urban Estate, Patiala, then he could have refused to accept the allotment of plot in the year 1995 itself. The respondents have also placed reliance on Rule 13 of the 1995 Rules, which envisaged that after the expiry of period of three years given under the allotment letter further extension for construction could only be granted up to five years. It also provide for extension for construction only up to a period of five years. Further extension beyond eight years period is not permissible unless some extra ordinary reasons are cited, which is subject to undertaking concerning payment of compromise fee. The petitioner has not sought any extension in construction period from 28.3.1998 nor has deposited the amount of extension fee. Therefore, in the case of this plot the period expired on 28.3.2003 and under the 1995 Rules no extension for construction of building could be granted.

9. Learned Counsel for the petitioner(s) have argued that exorbitant rates are being charged for extension fee, which is against condition Nos. 9 and 14 of the letter of allotment. They have further submitted that vide Memo dated 29.1.1988, the rates of extension fee have been notified by the Government and the extension fee sought to be demanded from the petitioner is exorbitant. Learned Counsel also drawn our attention to Rule 13 of the 1995 Rules which again make provision for extension fee, which is far less than the rates quoted by the respondents. It has been submitted that the case of the petitioner is squarely covered by a Division Bench judgment of this Court rendered in the case of Tehal Singh v. State of Punjab and Ors. C.W.P. No. 13648 of 1998, decided on

4.5.1999, Annexure P-9.

10. Learned Counsel for the respondents have jointly argued that the petitioner is not entitled to invoke the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution without first exhausting the departmental remedy as per clause 18 of the allotment letter. According to the learned Counsel the petitioner must approach the Chief Administrator, PUDA. They have further argued that according to Rule 13 of the 1995 Rules the maximum period of extension has already expired and the petitioner cannot claim the same as a matter of right.

11. We have thoughtfully considered the submissions made by the learned Counsel for the parties and are of the view that the writ petition deserves to be allowed. It has come on record that the allotment of plot made to the petitioner was to be governed by the provisions of the Punjab Housing Development Board Act, 1972 (for brevity, ''the 1972 Act''). According to Section 58 of the 1972 Act, the Punjab Housing Development Board was empowered to retain lease, sell, exchange or otherwise dispose of any land, building or other property vested in it, which was subject to any rules made by the State Government. The State Government had issued policy guidelines from time to time for granting extension of time for raising construction on plots after charging extension fee. On 29.1.1988 such a policy was issued on which reliance has been placed by the learned Counsel for the petitioner. The policy was circulated, which contained the revised guidelines regarding extension of time limit for raising construction subject to payment of extension fee at the following rates:

1.(a) Residential Plot

In case of residential plots, the extension in the period of construction of the building on the plot, after expiry of three years from the date of allotment, shall be allowed on payment of a fee at the following rates:

1st year of extension Rs. 1.50 per sq. mtrs. 2nd year of extension Rs. 2.00 per sq. mt. 3rd year of extension Rs. 2.50 per sq. mt. 4th year of extension Rs. 4.50 per sq. mt. 5th year of extension Rs. 6.00 per sq. mt.

Extension beyond the period of three years shall not be ordinarily granted. Failure to obtain the extension on payment of prescribed fee or failure to raise construction in the prescribed or the extended period shall make the allotment liable for cancellation for violation of terms and conditions of allotment as provided in the Act and the Rules.

b) For commercial Plots:- The extension in the period for raising construction on commercial plots shall be permitted on the pattern/terms and conditions as applicable in case of residential plots but extension fee in these cases shall be as under:

(i) For single story building, 2 times the rates applicable in case of double storey or one storey residential plots. and one basement buildings. (ii) For more than two storey 3 times the rates applicable in case of buildings residential plots.

12. The State of Punjab enacted a comprehensive legislation in the year 1995 to regulate the regional and town planning and development of urban estates. The Division Bench judgment in Tehal Singh''s case (supra) examined Section 2(zc), 43, 148, 180 and 183 of the 1995 Act and noticed that the Punjab Urban Development Authority (PUDA) was established by the State of Punjab by issuing notification dated 30.6.1995 by abolishing the Punjab Housing Development Board. The analysis made by the Division Bench of the aforementioned section is evident from the following para:

An analysis of the provisions extracted above shows that the disposal of land acquired by the P.U.D.A. or transferred to it by the State Government is regulated by Section 43 of the 1995 Act. Sub-section (1) thereof empowers the P.U.D.A. to dispose of any land with or without undertaking or carrying out any development thereon. Sub-section (2) declares that the transfer of any land to any person under Sub-section (1) shall be subject to such further conditions as may be prescribed with regard to completion of buildings or part thereof with regard to extension of period for such completion and payment of fees for such extension. Sub-section (4) of Section 43 declares that subject to the provisions of Sub-sections (1) to (3), the P.U.D.A. may sell, lease or otherwise transfer whether by auction, allotment or otherwise any land or building belonging to it on such terms and conditions as it may determine from time to time. The word "prescribed" which is defined in Section 2(zc) means prescribed by rules made under the Act. Section 180 confers power upon the State Government to make rules for carrying out the purpose of the Act. Clause (i) of Sub-section (2) of Section 180 empowers the State Government to make rule regulating the conditions regarding period of completion of building, extension of such period and fee to be paid under Sub-section 92) of Section 43....

13. The State Government framed the 1995 Rules in pursuance of power vested in it by Section 180 of the 1995 Act. Rule 13 of the 1995 Rules specify the time within which the building is to be completed and also provides for grant of extension for the time limit subject to payment of fee. Rule 13 has been noticed by the Division Bench in detail alongwith various other Sections of the 1995 Act. The analysis of the Division Bench is evident from the following para:

A conjoint reading of the various provisions of the 1995 Act and the 1995 Rules shows that the transfer of land under Sub-section (1) of Section 43 is not only subject to the directions which may be given by the State Government under the 1995 Act but also the conditions which may be prescribed with regard to completion of building or part thereof and with regard to extension of period for such completion and payment of fee for such extension. A perusal of Rule 13 of the 1995 rules along with Section 180(2)(i) and Section 2(zc) of the 1995 Act shows that the time within which the building is to be completed and other related matters are governed by the 1995 Rules. Therefore, with the coming into force of these rules, the rates of extension fee prescribed by the Board stood superseded and in terms of sub rule (2) of Rule 13 of the 1995 rules, the petitioners became eligible to seek extension of the specific time limit subject to payment of the fee prescribed under Sub-rule (3) of Rule 13.

14. The Division Bench accepted the argument similar to the one raised by the petitioner. The Division Bench held that the extension fee has to be charged in accordance with the provisions of Rule 13 of the 1995 Rules enacted by the State Government u/s 180(2)(i) of the 1995 Act and with the enactment of the 1995 Act and the 1995 Rules, the PUDA and its functionaries cannot demand enhanced extension fee from the petitioner. It went on to hold that the notices issued to the petitioners for payment of extension fee were ultra vires of the provisions of the 1995 Act and the 1995 Rules. It would be apposite to read Rule 13 of the 1995 Rules, which is as under:

13. Time within which building is to be completed [Sections 45(2) and 180(2)(i)]

(1) The transferee shall complete the building within three years from the date of issue of allotment order or the date of auction, as the case may be, in accordance with these rules.

(2) The time limit specified in Sub-rule (1) may be extended by the Estate Officer in the manner and on payment of fee specified hereinafter if he is satisfied that the failure to complete the building within the said period was due to a cause beyond the control of the transferee.

(3) Extension in time limit in terms of the provisions of Sub-rule (2) may be granted by the Estate Officer for a period not exceeding five years on the payment of fee at the following rates, namely"

(a) In the case of residential plots as under:

Period of extension Rate of fee per square meter. (i) First year Rs. 1.50 (ii) Second year Rs. 2.00 (iii) Third year Rs. 2.50 (iv) Fourth year Rs. 4.50 (v) Fifth year Rs. 6.00

(b) In the case of commercial plots as under:

Period of extension Rate of fee (i) First year One percent of the sale price (ii) Second year One and half per cent of the sale price (iii) Third year Two per cent of the sale price (iv) Fourth year Two and a half per cent of the sale price (v) Fifth year Three per cent of the sale price

(4) For the purpose of Sub-rule (5) extension in time shall be given for a calendar year that is for the period commencing from the 1st January and ending with the 31st December:

Provided that if the period of three years following the date of allotment of auction expires.

(i) after the 30th June of a given year or if the period of extension commences from any date after the 30th June, the period of three years shall automatically stand extended upto the 31st December of that year and no fee for the period will be chargeable: and

(ii) during the period following between the 1st January and 30th June of a given year fee at half the rate specified in Sub-rule (3) shall be payable for that year.

(5) For removal of doubts it is hereby declared that fee prescribed under the rule shall be payable irrespective of the fact whether the plot holder applies or does not apply for extension under this rule.

15. When the facts of the present case are examined in the light of the principle laid down by the Division Bench judgment in Tehal Singh''s case (supra) we are left with no doubt that the show cause notices issued to the petitioner on 19.9.2006 (P-4) and 12.12.2006 (P-7) requiring him to pay extension fee of Rs. 1,32,958/- was violative of the provisions of the 1995, Act and Rule 13 of the 1995 Rules, as has already been noticed in the preceding paras. The controversy, in fact, stand settled by the Division Bench judgment in Tehal Singh''s case (supra) and the issue does not deserve to be reopened. The respondents have failed to consider the reply filed by the petitioner wherein judgment rendered by the Division Bench in Tehal Singh''s case (supra) has been cited and the charging of extension fee at exorbitant rate has been duly answered.

16. In view of above, the writ petition succeed. The impugned notice dated 12.12.2006 (P-7) is hereby quashed. The respondents are directed to calculate the extension fee as per Rule 13 of the 1995 Rules. The needful shall be done within a period of two months from the date of receipt of a certified copy of this order. The petitioner shall pay the extension fee within a period of two months from the date of receipt of the calculation given in the fresh notice to be issued by the respondents. The petitioner shall further be entitled to consequential benefit to get the site plans approved. The petitioner is also held entitled to his costs.

17. The other connected writ petitions are also disposed of in the above terms. It is, however, clarified that in cases such as C.W.P. Nos. 8864 and 13765 of 2007, where the petitioners have already paid the extension fee as per the rates demanded by the respondents, which are exorbitant and against the Division Bench judgment of this Court in Tehal Singh''s case, the respondents are directed to re-calculate the amount of extension fee as per the provisions of Rule 13 of the Rules and refund the over-payment alongwith interest @ 10% per annum. The needful shall be done within a period of two months from the date of receipt of a certified copy of the order.

