
(2018) 07 P&H CK 0152

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 19504 Of 2017 (O&M)

Kuldeep Kumar

APPELLANT

Vs

Town And Country Planning Department & Ors.

RESPONDENT

Date of Decision : 18-07-2018

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 16(1)(ii), 16(1), 17(1), 17(5), 17(6), 17(8), 30(2)

Citation : (2018) 07 P&H CK 0152

Hon'ble Judges : Surya Kant, J;Sudip Ahluwalia, J

Bench : Division Bench

Advocate : RI Sharma, Sandeep Moudgil, Rajesh Sheoran

Final Decision : Allowed

Judgement

Surya Kant, J

(1) The petitioner is 2nd allottee of plot No.254-P, Sector 12-A, Panchkula. He got possession of the plot on 08.11.1987 and the conveyance deed was executed in his favour on 08.02.1988. There arose some dispute regarding sale of the above-stated plot between petitioner and the original allottee which led to initiation of criminal as well as civil proceedings. The petitioner meanwhile is said to have entered into an agreement to sell with Smt. Arti Sharma, who filed a suit for specific performance against the petitioner. Those proceedings culminated into Regular Second Appeal No.5111 of 2003 which was decided by this Court on 07.03.2011. Thereafter, the petitioner allegedly wanted to raise construction and applied for renewal of the building plans. He was asked to deposit extension fee of Rs.8,38,500/- which he deposited under protest and then only the building plans were renewed.

(2) Be that as it may, the petitioner has in the instant writ petition challenged the legality of the orders passed by Appellate and Revisional authorities before whom he had challenged the order levying extension fee of Rs.8,38,500/-. It may be

mentioned here that earlier the petitioner challenged the levy of extension fee in this Court through CWP No.13951 of 2015 which was disposed of on 15.07.2015 with a direction to the Estate Officer, HUDA, Panchkula to pass a reasoned order.

(3) The Estate Officer vide order dated 01.12.2015 (P20) justified the levy of extension fee, namely, non-construction charges and declined the petitioner's claim for refund. The aggrieved petitioner filed appeal under Section 17(5) of HUDA Act, 1977 which was dismissed by the Administrator, HUDA, Panchkula vide a self-speaking order dated 29.07.2016 but primarily on the ground that it was barred by limitation and that the appeal was not maintainable. Still aggrieved, the petitioner filed revision petition under Section 17(8) read with Section 30(2) of HUDA Act which has been dismissed by the Principal Secretary, Town and Country Planning Department, Haryana vide order dated 09.05.2017, on the ground that when no 'appeal' was maintainable under the Act, the revision petition too could not be entertained.

(4) The question which thus falls for determination is whether or not appeal or revision petition filed by the petitioner against the levy of non-construction charges/extension fee were maintainable under the provisions of HUDA Act, 1977?

(5) We have heard learned counsel for the parties and gone through the record.

(6) It is well settled that there is no legally vested right to file an appeal or revision unless the Statute provides such recourse expressly or by implication. However, where the Statute confers right to appeal or revision, as the case may be, the provision to that effect ought to be construed liberally and with a pragmatic approach so that the Legislative object of not leaving an aggrieved person remediless, is effectively achieved.

(7) Section 16(1) of HUDA Act, 1977 reads as follows:-

"16. Imposition of penalty and mode of recovery of arrears. - (1) Where any person makes default in the payment of -

(i) any rent due in respect of any lease of any land or building or both, as the case may be, under section 15; or

(ii) any fee or contribution payable under this Act in respect of any land or building or both, the Estate Officer may direct that in addition to the amount of arrears, a sum not exceeding that amount shall be recovered from the person by way of penalty:

Provided that no such direction shall be made unless the person affected thereby has been given a reasonable opportunity of being heard in the matter."

(8) Similarly, Section 17(1) of the Act says that where any transferee makes default in payment of consideration money or any instalment on account of the sale of any building or land or both, such site can be resumed by following the prescribed procedure.

(9) Sub-Sections (1),(5),(6)&(8) of Section 17 of the Act have a direct bearing on the controversy in hand and the same read as follows:-

"17.(1) Where any transferee makes default in the payment of any consideration money, or any instalment, on account of the sale of any land or building, or both, under Section 15, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty which shall be equal to ten percent of the amount due from the transferee, be not imposed upon him.

(2) xxxx xxxx xxxx

(3) xxxx xxxx xxxx

(4) xxxx xxxx xxxx

(5) Any person aggrieved by an order of the Estate Officer under section 16 or under this section may, within a period of thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed:

Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(6) The Chief Administrator may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit.

(7) xxxx xxxx xxxx

(8) Any person aggrieved by an order of Chief Administrator under sub-section (6) may within a period of ninety days of the date of the communication to him of such order, prefer a revision petition to the Secretary to Government, Haryana, Town and Country Planning Department, in such form and manner as may be prescribed:

Provided that the Secretary to Government, Haryana, Town and Country Planning Department, may entertain the revision petition after the expiry of the said period of ninety days, if he is satisfied that the petitioner was prevented by sufficient cause from filing the revision petition in time."

(emphasis by us)

(10) A combined reading of these provisions leaves no room to doubt that when "any fee" or "charges" are levied on an allottee within the ambit of Section 16(1) (ii) or when the site is resumed under Section 17(1), such orders are appealable under sub-Section (5) of Section 17 of the Act. The appeal(s) are required to be decided by the Chief Administrator, HUDA, in accordance with the powers exercisable under sub-Section (6) of Section 17 of the Act. Similarly, the order passed by the appellate authority can be assailed through a revision petition before the Principal Secretary, Town and Country Planning-cum-State

Government as provided under sub-Section (8) of Section 17 of the Act.

(11) The "extension-fee" levied on the petitioner for non-construction of the plot certainly falls within the expression "any fee" contained in Section 16(1)(ii) of the 1977 Act as no other provision in the Statute has been pointed out whereunder the Estate Officer can levy 'extension-fee'. The order imposing 'any fee' under Section 16(1)(ii) is undisputably appealable under Section 17(5)&(6) of the Act and the appellate order can be further questioned before the Revisional Authority.

(12) The appeal or revision petition filed by the petitioner thus ought not to have been dismissed being not maintainable. We are, therefore, of the considered view that the Revisional Authority erred in law in dismissing the petitioner's revision petition on the sole ground of its non-maintainability.

(13) For the reasons stated above, the writ petition is allowed in part; the impugned revisional order dated 20.07.2017 (P23) is set aside without expressing any views on merits. The revisional authority is directed to decide the petitioner's revision petition afresh and in accordance with law within four months from the date of receipt of certified copy of this order.

(14) Ordered accordingly.