

(2019) 12 P&H CK 0143

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 7418 Of 2018 (O&M)

M. L. Sharma

APPELLANT

Vs

Estate Officer-I, Sector14, Huda, Gurugram And Others

RESPONDENT

Date of Decision : 12-12-2019

Acts Referred:

Citation : (2019) 12 P&H CK 0143

Hon'ble Judges : Daya Chaudhary, J;Meenakshi I. Mehta, J

Bench : Division Bench

Advocate : M. L. Sharma, Deepak Sabherwal

Final Decision : Disposed Of

Judgement

Daya Chaudhary, J

The prayer in the present petition is for issuance of a writ in the nature of certiorari quashing impugned order dated 19.08.2011, memos dated 04.09.2012 and 10.11.2016 (Annexures P-29, P-31 and P-46, respectively). A further prayer has also been made for issuance of directions to the respondent to implement order dated 26.10.1998 (Annexure P-14) passed by the State Consumer Disputes Redressal Commission, Haryana (for short "State Commission"). A further prayer has also been made for issuance of directions to the concerned Estate Officer, Haryana Urban Development Authority, now known as Haryana Shehri Vikas Pradhikaran (for short - "HSVP"), to sanction the revised building plan submitted by the petitioner as per instructions dated 10.03.2004 and 19.01.2015 (Annexures P-17 and P-38, respectively) and to provide facilities/amenities of water, sewerage and electricity connection and also to pay compensation for harassment and mental agony by asking to deposit non-construction fee of Rs.43,45,554/-.

Briefly, the facts of the case as made out in the present petition are that the petitioner was allotted plot No.512 in Sector 22-B, measuring 171 square metre in Gurgaon (now Gurugram) at the rate of Rs.238.38 per square metre total

amounting to Rs.40,771.55 vide allotment letter dated 12.12.1994 (Annexure P-1). Thereafter, a demand notice for additional costs at the rate of Rs.287.28 per square yards was made, which came to be Rs.58,753.35. As per the terms and conditions of the allotment letter, petitioner paid Rs.6144.90 on 30.12.1994. Total 25% cost of the plot was deposited. He also submitted proposed building plan for construction. Possession certificate (Annexure P-4) of the plot was issued on 31.03.1995, but building plan was not approved for want of 'No Dues Certificate'. As per case of the petitioner, he deposited total Rs.30,578.65, which was balance of the amount to be paid by him. Subsequently, notices were issued to him to pay enhanced amount and extension fee. Petitioner also paid interest @ 15% per annum as per the calculation made by the respondent on delayed payment of instalments from 12.12.1994 to 09.04.1997. Petitioner filed complaint before the State Commission and vide order dated 26.10.1998 (Annexure P-14), the demand notices were quashed as an amount of Rs.30,000/- had already been deposited by him by way of bank draft in compliance of the direction issued by the Commission. Petitioner paid stamp duty and submitted necessary documents for execution of conveyance deed in his favour, but on account of interest, enhancement and extension fee, the conveyance deed was not executed. However, a direction was issued by the Chief Administrator, HUDA on 10.03.2004 to implement order dated 26.10.1998 of the State Commission and to recover the amount as mentioned in letter dated 09.02.2004 from personal pocket of the erring official. Again a notice was issued to deposit the amount of instalment, enhancement, extension fee vide letter dated 08.11.2004 (Annexure P-19), in violation of order of the State Commission. Subsequently, also notices were issued to the petitioner to deposit the amount of instalment, extension fee, but building plan was not approved. Ultimately, the building plan was approved on 28.07.2008 but still 'No Dues Certificate' was not released because of the outstanding dues. He filed an application to execute order dated 26.10.1998 passed by the State Commission and not to cancel the plot. The application filed by the petitioner was dismissed by the State Commission. Thereafter, review application filed by the petitioner was also dismissed. Aggrieved by said order passed by the State Commission, he approached the National Consumer Disputes Redressal Commission, New Delhi (for short - "National Commission"). The respondent undertook to hand over the sanctioned building plan before the National Commission and interim order was also passed by the National Commission directing the respondents not to resume the disputed plot. Ultimately, the appeal was also dismissed by the National Commission and order of the State Commission was confirmed. Thereafter, the petitioner filed review application but the same was also dismissed. However, the petitioner deposited an amount of Rs.1,59,794/- under protest. A show cause notice (Annexure P-41) was issued by the respondent for imposition of penalty on 16.04.2015, which was replied by the petitioner. Petitioner also filed CWP No.10080 of 2015 before this Court, which was disposed of with the direction to consider his representation and in case any order is passed against him, the liberty was given to challenge that order. The representation of the petitioner was

rejected on 02.03.2016. However, it was mentioned in the order that the building plan had already been approved in the years 1995, 1997 and 2008, but the one, submitted on 23.12.2008, could not be approved as extension fee and other dues were outstanding towards the petitioner.

Petitioner while appearing in person submits that 25% of the total price of the plot was deposited as per the terms and conditions of the allotment letter but the building plan was not approved. Even possession certificate was issued but 'No Dues Certificate' was not issued. Petitioner also submits that the entire price of the plot including additional amount of cost and interest were deposited but still building plan was not approved. The demand notices were quashed by learned State Commission. Petitioner also submits that the order passed by the State Commission was confirmed by the National Commission and fraud has been played with him as he has paid extension fee by way of draft, which was deposited under protest but said amount was refunded as bank draft dated 19.11.2010 amounting to Rs.1,59,794/- was refunded on the grounds that validity had expired on 31.12.2009. A promise was made to hand over the sanctioned plan but still the same was not approved. At the end, the petitioner submits that the building plan had already been approved on 28.07.2008 but the same was not handed over to him only on the ground that there were dues against him.

Learned counsel for the respondents-HSVP has opposed the submissions made by the petitioner and submits that the petitioner has lost his case upto the National Commission and in spite of issuing notices on various occasions, still dues were not deposited. There is inordinate delay in challenging the order passed by the State Commission dated 19.08.2011. Petitioner also filed SLP before Hon'ble the Supreme Court to challenge the order passed by the State Commission as well as National Commission, which was dismissed as withdrawn. Thereafter, again civil miscellaneous application was filed before the State Commission, which was also dismissed vide order dated 19.12.2014 on the ground that the order passed by the State Commission has been upheld by the National Commission. Learned counsel also submits that possession of the plot was offered on 12.12.1994 and construction was to be completed within a period of 2 years from the date of offer of possession after getting the plans of the proposed building sanctioned by the competent authority. As per the policy of the HSVP, extension of time for construction is allowed. At the end, learned counsel for the respondents-HSVP submits that the building plan was sanctioned on 23.12.1997 and in case the submissions made by the petitioner is presumed to be correct, then in view of provision envisaged under Regulation 8 of the Haryana Urban Development Authority (Erection of Buildings) Regulations, 1979, there would be a deemed sanction of the building plan. In spite of sanctioning of the building plan, still construction has not been raised on the plot. Still the petitioner is having the opportunity to raise construction, in case the amount is paid for non-construction of building.

Heard arguments of the petitioner as well as learned counsel for the respondents. We have also perused the documents on the file.

It appears that a number of communications have been made between the petitioner and the respondents-HSVP. It also appears that the petitioner has deposited some amount but has not paid extension fee and other dues. Building plan has also been approved but the same has not been handed over to him in absence of "No Dues Certificate".

Accordingly, by considering the submissions of both the parties, the present petition is disposed of with a direction to the respondent-authority to consider the claim of the petitioner afresh and finally calculate the amount, which is to be paid by the petitioner and the petitioner be also associated before taking any final decision. The amount, which is found to be due towards the petitioner, be conveyed to him within a period of four weeks from the date of receipt of certified copy of the order passed by this Court. Thereafter, the petitioner is also directed to deposit said amount within a period of two months. In case said amount is deposited, the sanction plan be issued, so that construction can be raised by the petitioner within the period, as directed. However, it is also made clear that while considering the case of the petitioner, the observations made in various orders before different authorities, be not taken into consideration.

Since the writ petition has been disposed of, the other pending miscellaneous applications, if any, are also disposed of accordingly.