

(2001) 11 P&H CK 0037

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 8354 of 2001 (O and M)

Paramjit Saini and Others

APPELLANT

Vs

Haryana Urban Development Authority and Another

RESPONDENT

Date of Decision : 05-11-2001

Acts Referred:

Haryana Development and Regulation of Urban Areas Act, 1975 — Section 24
Haryana Development and Regulation of Urban Areas Rules, 1976 — Rule 10, 11, 3, 8, 9
Haryana Urban Development Authority (Erection of Buildings) Regulations, 1979 — Regulation 3, 8
Haryana Urban Development Authority Act, 1977 — Section 54

Citation : AIR 2002 P&H 261 : (2002) 4 RCR(Civil) 25

Hon'ble Judges : N.K. Sodhi, J; Jasbir Singh, J

Bench : Division Bench

Advocate : Chetan Mittal, for the Appellant; Raminder Godhoke, A.K. Tewari and Manisha Gandhi, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—The Indian Railways Welfare Organisation - Respondent No. 3 is a registered society with its headquarters at New Delhi. It has been set up to provide houses for serving and retired railway-men at all India level purely as a social welfare measure on "no profit no loss" basis. This respondent floated in the year 1994 a scheme for constructing four storeyed flats in Mansa Devi Urban Complex, Panchkula (Haryana) for serving and retired railways employees on "no profit no loss" basis. The scheme did not have sufficient response so as to make the dwelling units economically viable in terms of costs which had to be paid and borne by the allottees. The housing scheme was truncated and only 188 dwelling units out of the originally planned 476 dwelling units were constructed as Phase-I of the scheme. Since the scheme was not fully subscribed by the railway personnel, it was thrown open to employees of other Government departments and Public Sector Undertakings. Subsequently, when the demand picked up the

balance dwelling units were taken up for construction as Phase-II which is presently being executed. It is not in dispute that the petitioners were allotted the dwelling units in Phase-I and they are in occupation of their respective units. Phase-I of the construction after its completion was handed over to the Rail Vihar Welfare Association which is a registered association of the allottees looking after the maintenance of the complex.

2. The primary grievance of the petitioners is that for undertaking the construction of Phase-II respondent No. 3 has got the plans revised from Haryana Urban Development Authority (for short HUDA) whereby the parking area and the land reserved for parks have been considerably reduced/diminished which has violated the rights of the allottees of the dwelling units in Phase-I. It is urged that as per the original sanctioned plan, respondent No. 3 has failed to provide adequate car/scooter parking in Phase-I of the housing project and thereby it has committed breach of building bye-laws of HUDA. It is also contended that in the revised sanctioned plan, respondent no. 3 has reduced the covered parking which is also contrary to the building bye-laws. Reference in this regard is made to the guidelines issued by HUDA whereby the norms have been laid down for open parks and parking spaces. It was strenuously contended by Shri Mittal on behalf of the petitioners that these norms and standards have indeed been thrown to the winds. Learned counsel also referred to the provisions of the Haryana Apartment Ownership Rules, 1987 to contend that the petitioners who are owners of individual dwelling units are entitled to the common areas and facilities as were sanctioned in the original plan and the respondents have no right to diminish those areas and facilities.

3. In response to the notice of motion, the respondents have filed their reply. The Estate Officer, HUDA, Panchkula has filed the reply on behalf of respondents No. 1 and 2. These respondents have raised a preliminary objection that the writ petition is not maintainable because the revised plans were approved/sanctioned as per HUDA norms and that if at all there is any deviation/change/recroachment by respondent No. 3, it would be checked at the time of issuance of final completion certificate. It is, therefore, contended that the writ petition is premature. On merits, it has been averred that the original plan as submitted by respondent No. 3 for the entire complex had been approved as per HUDA norms and that the respondents constructed a part of the complex as per the approved plan and obtained occupation certificate for the same. It is also stated that respondent No. 3 had submitted that revised building plans with a changed concept of the buildings for remaining portion of the site which have also been approved as per the norms. Respondent No. 3 has filed a separate reply emphatically denying the averments made by the petitioners.

4. We have heard counsel for the parties and are of the view that the writ petition deserves to be dismissed. It is not in dispute that respondent No. 3 had got the original plan sanctioned from HUDA and completed a part of the housing scheme which it termed as Phase-I. As noticed earlier, 188 dwelling units were

constructed according to the sanctioned Plan and thereafter final completion certificate was obtained from HUDA thereafter the units were handed over to the allottees including the petitioners.

5. As regards the plea that the parking area and the land reserved for parks have been reduced, we may mention that the counsel appearing for the petitioners was unable to point out anything from the record which could show that these areas had in any way been reduced. The learned counsel appearing for respondent No. 3 made a categorical statement before us during the course of arguments that the norms as laid down by HUDA would be strictly complied with and that the area reserved for open parks and the parking spaces will be as per the norms. A reference to the guidelines laid down by HUDA in this regard would show that adequate parking on the basis of occupancy has to be provided for cycles, scooters and cars within residential blocks and the area of such parking should not be less than 5 per cent of the covered area of each dwelling unit. The norms also provide that for dwelling units of the size of 120-150 square meters space for one car parking has to be provided for each such unit. Respondent No. 3 in its reply has categorically stated that such parking spaces have been provided for. Apart from this, the learned counsel for this respondent stated that when final building is complete the covered areas and the parking spaces will not be less than what the norms require. It is true that under the Haryana Apartment Ownership Rules, 1987, owners of individual dwelling units are entitled to common areas and facilities but the petitioners have not been able to demonstrate as to how those facilities have been reduced or diminished as alleged. The being so, we have no hesitation in rejecting the contention of Shri Mittal.

6. It was then contended by the counsel for the petitioners that there is no provision in the Haryana Development and Regulations of Urban Areas Act, 1975 (for short the 1975 Act) and the rules framed thereunder for a colonizer to submit revised plans and, therefore, the action of HUDA in sanctioning the revised plans submitted by respondent No. 3 is illegal. Reference in this regard was made to Rules 3(e)(v), 8 to 10 and 11(a) of the Haryana Development and Regulation of Urban Areas Rules, 1976 (hereinafter referred to as the 1976 Rules). This argument is being noticed only to be rejected. The 1976 Rules have been framed u/s 24 of the 1975 Act. Rule 3 provides that an owner of land desirous of setting up a colony, has to make an application in writing to the Director in the prescribed form for the grant of a licence and furnish therewith amongst other a layout plan of the colony showing the existing and proposed means of access to the colony, the width of streets, sizes and types of plots, sites reserved for open spaces, community building and schools with area under each and proposed building lines on the front and sites of plots. Rule 8 requires that on receipt on such an application, the Director is to enquire into the matters mentioned therein and if the application does not conform to the requirements of the Rules the same shall be rejected. Rules 10 and 11 require the applicant to fulfill certain conditions before the grant of a licence which is eventually granted

under Rule 12 provided the applicant fulfills all the conditions laid down in Rule 11. It is not in dispute before us that respondent No. 3 had been granted a licence and since that is not under challenge it has to be presumed that all the conditions prescribed by the 1976 Rules had been complied with. There is no provision in the 1976 Rules which could even remotely suggest that having once submitted the plans the colonizer cannot submit revised plans for its sanction or that the plans once sanctioned cannot be revised. Learned counsel for the respondents, on the other hand, referred to the provisions of Regulations 3 and 8 of the Haryana Urban Development Authority (Erection of Buildings) Regulations, 1979 (hereinafter called the Regulations) to contend that HUDA has the power to sanction revised plans. We find merit in this contention. The Regulations have been framed u/s 54(d) of the Haryana Urban Development Authority Act, 1977. Regulation 3 clearly stipulates that any person intending to erect or re-erect any building, shall make an application in writing to the Estate Officer in the prescribed, form accompanied by a site plan, a building plan and details of specifications of the work to be executed. If the application conforms to the requirements of the regulations, the Estate Officer grants the necessary permission to erect or re-erect the building. A reading of these Regulations leaves no room for doubt that the buildings are not only erected but can also be re-erected which could obviously imply that original plans once submitted can be got revised and if the revised plans conform to the norms laid down by HUDA there is absolutely no illegality committed in sanctioning those plans. Even otherwise, it is axiomatic that the power to sanction building plans would include the power to sanction revised plans also. We, therefore, hold that HUDA has the power to revise sanctioned plans and if they are sanctioned the builder or the coloniser has the right to carry out the construction in accordance with the revised plans.

7. No other point was raised at the time of arguments.

8. In the result, there is no merit in the writ petition and the same stands dismissed with costs.

Sd/- Jasbir Singh, J.