

(2009) 09 P&H CK 0056
In the Punjab And Haryana At Chandigarh

Phoenix Properties Pvt. Ltd.	Vs	APPELLANT
Haryana Urban Development Authority (HUDA) and Others		RESPONDENT

Date of Decision : 23-09-2009

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 17(1)

Citation : (2009) 156 PLR 673

Hon'ble Judges : Jasbir Singh, J

Bench : Single Bench

Judgement

Jasbir Singh, J.—This writ petition has been filed to quash order dated August 9, 2007 (P-36), passed by respondent No. 2. Further prayer is to set aside order March 27, 2008 (P-39), passed by respondent No. 1 dismissing appeal, filed by the petitioner, against the above said order (P-36). Record reveals that the petitioner was allotted a plot by the respondents in the year 1987. On deposit of 15% of the sale price, possession was delivered to the petitioner on March 18, 1987. It is contention of the petitioner that on the plot allotted, electric and telephone poles and wires were fixed. Petitioner wrote many letters to remove those poles, however, he failed to get any positive reply. Ultimately, telephone poles and wires were removed on March 15, 1991. However, electric poles and wires were not removed. In the meantime, as per case of the respondents, the petitioner committed a default in making the payment towards price of the plot. Notice was sent to it u/s 17(1) and (2) of the Haryana Urban Development Authority Act, 1997 (in short the Act). Petitioner replied to the same and it also moved an application before the competent Court for appointment of an Arbitrator. Prayer of the petitioner to appoint an Arbitrator was allowed by the Addl. Senior Sub Judge, Gurgaon on December 7, 1994. During the intervening period, the respondents continued to send show cause notices to the petitioner as to why penalty be not imposed against it, for non-payment of the amount due towards price of the plot. Petitioner also paid some amount in response to those notices. On January 31, 2002, Arbitrator passed an award rejecting arbitration application of the petitioner and issued directions to the Estate Officer, Haryana

Urban Development Authority, Gurgaon, to take action against the petitioner as per law. The petitioner thereafter filed objections against the award, mentioned above, before the competent Court. In the meantime, respondent -Estate Officer, after issuance of show cause notice, imposed a penalty of Rs. 10,40,285/- by invoking the provisions of Section 17(2) of the Act, The petitioner was directed to deposit the above said amount and also an amount of Rs. 1,04,02,852/-, which was due towards price of the plot. Petitioner went in appeal, which was dismissed on July 28, 2003. Petitioner came to this Court by filing Civil Writ Petition No. 18602 of 2003. Vide an interim order dated December 1, 2003, petitioner was directed to deposit an amount of Rs. 25,00,000/- with the respondents, subject to which interim stay was granted. Above said writ petition was disposed of by this Court vide order dated April 17, 2006. Before this Court, it was contention of the counsel for the petitioner that the orders passed on March 19, 2002 and July 28, 2003, were non-speaking ones. No justification / reasons were given to claim the huge amount from the petitioner, as mentioned above. By noting above said argument, this Court observed as under:

After perusal of the orders Annexures P-21 and P-28, we find force in the contention of the learned senior counsel that the orders Annexures P-21 and P-28 do not contain any reasons. These are absolutely non-speaking and sketchy order, whereas, pleas raised by the Petitioner before the authorities have not been taken into consideration. Consequently, we quash the orders Annexure P-21 and P-28 and the show cause notice Annexure P-29. The respondents shall be at liberty to issue a fresh show cause notice to the Petitioner if there is any outstanding amount due against him. On receipt of the aforesaid reply, a speaking order shall be passed by the Estate Officer, HUDA, Gurgaon after affording opportunity of hearing to the representative of the petitioner. It is further clarified that till the matter of determination of the outstanding amount is finally decided by the Estate Officer, no proceedings for resumption of the property shall be initiated against the petitioner.

Again show cause notice was issued to the petitioner on May 18, 2007, to make payment of the amount due. Petitioner filed reply to the same and thereafter, respondent No. 2 vide order dated August 9, 2007, directed the petitioner to deposit an amount of Rs. 52,90,684/- which was due towards price of the plot, and an amount of Rs. 5,29,068/- towards penalty. The order passed reads thus:

In view of the representation made by you at the time of hearing on 30.7.2007, accountant statement has been again reconciled and found that the interest charged/calculated on the outstanding amount is in order i.e. Compound interest upto 3.4.2000 and simple interest w.e.f. 4.4.2007 as per HUDA policy. Therefore, you are requested to make the payment of outstanding amount i.e. Rs. 52,90,684/- within 10 days from the issue of this letter failing which penalty amounting to Rs. 5,29,068/- shall be imposed upon you under the HUDA Act.

Petitioner went in appeal, which was dismissed on March 27, 2008. Relevant portion of the order reads thus:

Heard the learned Counsel for the appellant and DDA on behalf of HUDA. The Counsel for the appellant has claimed that simple interest may be charged on the basis of many judgments passed by the Hon'ble Court in various judgement. A perusal of the file reveals that interest has been charged as per HUDA policy. Hence, I do not find any merit in the appeal and the same is hereby dismissed.

2. Hence this writ petition.

3. On notice, reply has been filed, wherein it is stated that because the petitioner has not availed remedy of revision, as such this writ petition be not entertained. Allegations of the petitioner regarding non-removal of electric and telephone poles/wires from the plot in question were also negatived, It was stated that the petitioner had raised the construction and running a hotel for the last more than three decades and at no point of time, the poles etc. had caused any hindrance in the free running of business by the petitioner. It was further said that the amount towards price and penalty has rightly been claimed from the petitioner. It was also stated that the petitioner's attempt is only to delay the payment due to the respondents.

4. After hearing counsel for the parties, this Court is of the view that it is not necessary to look into merits of the controversy as the writ petition can be disposed of only on the sole ground agitated by the petitioner that despite directions issued by this Court vide order dated April 17, 2006, in Civil Writ Petition No. 18602 of 2003, respondents No. 2 and 1 have passed the impugned orders without application of mind. No detail as to how the amount is being claimed from the petitioner was mentioned in their orders. After noting the arguments, no finding was given thereon and entire controversy was disposed of by passing the non-speaking orders.

5. Counsel for the respondents have tried to justify the orders by making reference to some policy of the respondents to claim penalty and compound interest.

6. Nothing has been said by both the parties as to what happened to the objections filed by the petitioner against the award, passed by the Arbitrator.

7. It is apparent from the records that when an amount of Rs. 1,04,02,852/- was claimed from the petitioner by the respondents, petitioner came to this Court by filing Civil Writ Petition No. 18602 of 2003, which was disposed of by this Court on April 17, 2006, on the ground that the orders claiming the above said amount do not contain any reasoning to support the claim. Orders were found non-speaking and sketchy, wherein pleas raised by the petitioner were not considered. Those orders were set aside and after observing as above, opportunity was granted to the respondents to issue a fresh show cause notice and it was further directed that on receipt of reply, a speaking order shall be passed by the Estate Officer, after affording an opportunity of hearing to representative of the petitioner. Subsequent thereto, show cause notice was issued and respondent No. 2 passed order dated August 9, 2007 (P-36) claiming

an amount of Rs. 52,90,684/- towards price of the plot and an amount of Rs. 5,29,068/- towards penalty. Perusal of the order, mentioned above, indicates that the objection of the petitioner that the respondents cannot claim compound interest was not dealt with. No finding was given as to since when amount is due, how many instalments have not been paid by the petitioner, how the interest has been calculated and under what provision penalty has been imposed? No reference was made as to what happened to the award, passed by the Arbitrator? It was nowhere stated as to when electric and telephone poles/wires were removed from the plot in question? It was also not mentioned as to whether those poles etc. were causing any hindrance in running of the business by the petitioner on the plot in dispute? It was also not mentioned as to when building was completed and hotel business was started by the petitioner and whether any completion certificate was obtained from the department or not?

8. Petitioner went in appeal, which was also dismissed by passing a non-speaking order. None of the arguments, raised before the appellate authority, were discussed and in a very cursory manner simply by stating that the petitioner has failed to make out any case for charging of simple interest, appeal was dismissed. The judgments, referred by the petitioner to show that respondents can claim only simple interest were not even discussed. This Court feels that the orders passed by the officers below run contrary to the directions issued by this Court on April 17, 2006. It was expected from respondent No. 3 that he/she will refer to the detailed history of the litigation. The reasons for claiming interest, what was the default committed by the petitioner and many other facts, which have been mentioned in preceding paragraphs of this order, were not explained. However, respondent No. 2 chose to dispose of claim of the petitioner by passing a half page order, which was not in consonance with the order, passed by this Court. The quasi judicial authorities are supposed to discuss facts of the case and state reasons for raising any claim against the allottee. Further reasons as to under what provision of law and how and from which date the default has been committed by an allottee needs to be discussed.

9. It is apparent from the records that the Arbitrator has given a specific finding against the petitioner. If that was so, it was expected from the Estate Officer to make mention of that litigation and also its effect on merits of the case.

10. In view of facts, mentioned above, this writ petition is allowed, impugned orders dated August 9, 2007 and March 27, 2008, (Annexures P-36 and P-39) are set aside. Matter is remitted to the Estate Officer, Haryana Urban Development Authority, Gurgaon, to decide it afresh. Petitioner/its representative is directed to put in appear before the above said Officer on October 30, 2009. The officer concerned shall then fix a date for hearing the arguments. After hearing the petitioner and the department, a speaking order, as has been indicated above, be passed. The demand raised, if any, be kept in abeyance for 15 days so that the petitioner can avail remedy, if so advised, as per law. No adjournment shall be granted to the petitioner on any ground whatsoever.