
(2016) 05 P&H CK 0294
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 14593 of 2015

Rita Jindal

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 12-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 LawHerald 2199 : (2016) 2 PLJ 541

Hon'ble Judges : Mr. S.J. Vazifdar, Acting C.J. and Mr. Arun Palli, J.

Bench : Division Bench

Advocate : Mr. SK Sharma, Advocate, for the Appellant; Mr. Rahul Dev Singh, DAG, Haryana, Mr. Pankaj Jain, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Arun Palli, J.—A writ in the nature of certiorari is prayed for to quash the orders, dated 28.03.2000 (Annexure P4), vide which the Estate Officer, Faridabad (respondent No.4) had required the petitioner to furnish proof of compliance of condition No.9 of the Letter of Intent, within a specified time, failing which it would be deemed to have been withdrawn; dated 05.02.2013 (Annexure P10), whereby the appeal preferred by the petitioner was dismissed by the appellate authority (respondent No.3); and dated 09.10.2014/27.10.2014 (Annexure P11), vide which the revisional authority dismissed even her revision. And a writ of mandamus, directing the authorities to restore the allotment of an industrial site that was allotted to the petitioner.

2. Facts that are required to be noticed are limited.

3. The Estate Officer, HUDA, Faridabad (respondent No.4) had issued a Letter of Intent (LOI) in respect of an industrial plot bearing No.77, Sector 58, Faridabad (measuring 1/16 acre) to the petitioner on 15.04.1999, at a tentative price of Rs.4,93,350/-. The terms of the LOI required the petitioner to comply with the following formalities within six months:

I. To submit the drawings of the unit after getting the same prepared from the registered Architect.

II. To arrange loan from the financial institution.

III. To get the unit registered with the General Manager of the District Industries Centre concerned.

4. In terms of clause 4 of the LOI, 10% of the price was to be furnished along with the application itself, and 15% within 30 days from the date of issuance of LOI. Balance amount (75%) was to be deposited within a period of 9 months, from the date of issuance of LOI, in three equated instalments. Petitioner deposited Rs.74002.50 i.e. 15% within the stipulated time, and also furnished two instalments of Rs.1,23,338/- each, on 23.12.1999 & 18.01.2000, respectively. But, she failed to deposit the balance price. Vide letter dated 28.03.2000 (Annexure P4), she was required to furnish the proof of compliance of condition No.9 of LOI, within 7 days. Failing which, it was observed, the Letter of Intent shall be deemed to have been withdrawn. For, the petitioner never deposited the requisite amount, the consequences followed. After over a year and a half, she filed a complaint under Section 12 of the Consumer Protection Act, 1986, and accused the authorities of deficiency in service, for it had failed to deliver possession of the allotted site. For, the District Consumer Forum found that the petitioner had failed to comply with the conditions of the LOI, the authorities could not be held liable for deficiency in service. And, vide order dated 03.07.2008 (Annexure P21), directed the authorities to refund the amount deposited by the petitioner after deducting 5% of the price of the plot, in terms of the conditions of the LOI. Appeal preferred by the petitioner against the said order was dismissed by the State Consumer Disputes Redressal Commission, vide order dated 14.11.2011 (Annexure P6), for the petitioner was not held to be a consumer. Consequently, the order rendered by the District Consumer Forum was set aside and the complaint preferred by the petitioner was also dismissed. Faced with this, the petitioner then filed an appeal before the Administrator, Faridabad, (exercising the powers of the Chief Administrator, HUDA), which was dismissed vide order dated 05.02.2013 (Annexure P10). Likewise, even the revision against the said order failed and was dismissed by the revisional authority vide its order dated 09.10.2014 (Annexure P11). That is how, as indicated above, the petitioner is before this court.

5. Learned counsel for the petitioner submits that the total cost of the allotted site was Rs. 4,93,350/- and the petitioner had paid Rs.3,70,013/- i.e. 75% of the total price, till 18.01.2000. He submits, for the authorities had failed to carry out the development works and offer actual physical possession of the site, the petitioner was not under any obligation to furnish the balance amount. That being so, he asserts that it was wholly unjustified for the authorities to still withdraw the Letter of Intent. Reliance is placed upon a decision rendered by the Division Bench of this court in *Ram Piari v. Haryana Urban Development Authority*, 1998(3) PLR 241. Even otherwise, he submits that the LOI was

withdrawn without affording any notice or opportunity of hearing to the petitioner. And in any event, for the petitioner was willing to clear all the outstanding dues, respondents be directed to restore the allotment.

6. As opposed to this, learned counsel for respondents No.2 to 4 contends that, for the petitioner had failed to comply with the terms and conditions, upon which, the LOI was issued, the authorities were choice-less but to withdraw the same. Further, he submits that offer of possession of the proposed site had no correlation with the obligation of the petitioner to fulfil the terms set out in the Letter of Intent. In fact, he asserts, that the petitioner was not even willing to pursue her claim for allotment, for she had even prayed for refund before the District Consumer Forum.

7. We have heard learned counsel for the parties and perused the paper book.

8. In context of the issue that arises for our consideration, it would be expedient to set out the relevant clauses of the LOI, which read thus:

"4. You will be required to deposit the balance 75% of the price of plot/shed within a period of 9 months from the date of receipt of 15% (i.e. within 30 days of the issue of LOI) in three equated instalments. Interest @ 18% would be charged on the amount due in case of delay in payment. Further, interest @ 18% would also be chargeable on the balance amount from the date of offer of possession. A penal interest of 21% would be levied on delayed payments after the offer of possession. This period will be applicable to both self financing and institution-financed cases.

xxx xxx xxx xxx

xxx xxx xxx xxx

9. You will have to submit the proof of the completion of above formalities within a period of six months from the date of issue of LOI. In case you fail to complete the above formalities with the above mentioned period, the letter of intent will be deemed to have been withdrawn in the event of non completion of formalities. The amount deposited by you will be refunded after deduction 5% of price of plot."

9. Ex facie, in terms of clause 4 of the LOI, the petitioner was required to furnish the balance 75% of the price of the site within a period of 9 months from the date of issuance of LOI, in three equated instalments. Petitioner deposited Rs.1,23,338/- on 23.12.1999 and an equal amount on 18.01.2000. Concededly, petitioner failed to deposit the balance price of the site. In nutshell, petitioner had deposited Rs.3,70,013/- till 18.01.2000 as against Rs.4,93,350/- that were required to be deposited by 15.01.2000. Even vide letter dated 28.03.2000 (Annexure P4), she was requested:

"As per the terms and conditions of L.O.I., you were required to complete the formalities within six months from the date of issue of LOI. You are requested to

submit the proof of compliance of the condition No. 9 of L.O.I. within seven days, failing which the letter of intent will be deemed to have been withdrawn. Treat it most urgent.

Sd/-

Estate Officer,

HUDA, Faridabad."

10. Instead, vide letter dated 31.03.2000, she conveyed the authorities:

"I am requesting to please issue regular letter of allotment as all formalities required for the same is already completed. Since no development is happening at site, you are not in position to offer possession, balance payment will be done with interest if applicable as per terms of LOI at the time of offer of possession.

Thanking You,

Sd/-

Rital Jindal 31.3.2000"

11. For, there was an apparent breach of clause 4 of the LOI, by operation of clause 9, the same stood withdrawn automatically. Not just that, after over a year and a half, on 06.09.2001, petitioner filed a complaint before the District Consumer Forum, wherein she referred to another scheme floated by the authorities, vide which industrial sites in the same sector were offered, with a convenient payment mode and rebate equivalent to 20% of the price of the land. Resultantly, she prayed:

"(A) To direct the respondent to deliver the possession of the plot without any further delay and to treat the complainant at par with the prospective allottees under the new scheme and whatever benefits/rebate are being offered to them be also made available to the complainant or in the alternative to refund the amount deposited by the complainant with interest @ 24% per annum from the date of deposit of respective instalments till the date of realisation of the amount.

(B) Further to compensate the complainant for the mental agony, physical harassment, financial and business loss to the tune of Rs. 100,000/-."

12. Significantly, the petitioner was not willing to furnish the balance price even at that stage. And, rather insisted that either the proposed site be allotted to her upon the terms at which the plots, under the new Scheme, were being offered or the amount deposited by her be refunded. Clearly she was not willing to pursue her claim for allotment under the Letter of Intent, dated 15.04.1999 (Annexure P1).

13. We are reminded to point out, at this juncture, that no binding contract was entered into between the parties, and it was only a Letter of Intent that was issued to the petitioner. Once there was a brazen and wilful breach of the terms

of LOI, the authorities could always decline to enter into any binding relationship with the petitioner. The observations recorded by the Hon^{ble} Supreme Court in *Rajasthan Cooperative Dairy Federation Ltd. v. Maha Laxmi Mingrate Marketing Service Pvt. Ltd. and others*, 1996(10) SCC 405, fortify this position:

"7. The High Court was also not right in importing the doctrine of *audi alteram partem* in these circumstances. If the conduct of Respondent 1 was such that it did not inspire any confidence in the appellant, the appellant was entitled to decline entering into any legal relationship with Respondent 1 as its selling agent. The Letter of Intent merely expressed an intention to enter into a contract. If the conditions stipulated in the Letter of Intent were not fulfilled by Respondent 1, and if the conduct of Respondent 1 was otherwise not such as would generate confidence, the appellant was entitled to withdraw the Letter of Intent. There was no binding legal relationship between the appellant and Respondent 1 at this stage and the appellant was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with Respondent 1 or not."

14. The argument; for the authorities had failed to carry out the development works and offer possession, the petitioner was not obliged to pay the balance price, lacks conviction. Vide letters dated 23.12.1999 and 26.03.2000, petitioner was informed by the authorities that till the time she deposits the total price, she could not be delivered possession of the proposed site. Be that as it may, none of the clauses of the Letter of Intent even remotely suggests that the petitioner could withhold payment of any of the instalments on any such ground. There was no co-relation between furnishing the price of the proposed site and offer of possession. Reliance placed by learned counsel for the petitioner upon a decision rendered by the Division Bench of this court in *Ram Piari's* case (*supra*) also does not advance her cause, for the petitioners therein had purchased a plot in an open auction and a letter of allotment was issued in their favour in respect thereof. Apparently, the site was resumed by the authorities following the procedure set out in Section 17 of the Haryana Urban Development Act, 1977, on account of non-payment of interest. Such is not the position in the matter in hand. The submission; that the petitioner is willing to clear all outstanding dues and thus the proposed site must be restored in her favour, lacks both i.e. merit as also the bonafides. Significantly, a period of 16 years has gone by since the issuance of Letter of Intent on 15.04.1999, and in the interregnum, the value of the real estate has escalated manifold. And, therefore, the attempt is merely speculative and an afterthought.

15. That being so, we are dissuaded to interfere with the discretion exercised by the authorities under Article 226 of the Constitution of India. Petition being devoid of merit is accordingly dismissed.