
(2013) 04 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 4896 of 2009

S. Harmohan Singh Sethi

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 04 P&H CK 0010

Hon'ble Judges : Surya Kant, J;R.P. Nagrath, J

Bench : Division Bench

Advocate : H.S. Sethi, for the Appellant; Munisha Gandhi, A.G. Punjab and Ashish Graver, Advocate for the Respondent Nos. 2 and 3, for the Respondent

Judgement

Surya Kant, J.—Notwithstanding the chequered history of litigation, the only issue that survives for consideration pertains to the petitioner's liability to pay non-construction charges-cum-ex-tension fee for the period spanning from 1988 to 2000 and again from the year 2001 to 2008. The facts may be noticed briefly. Plot No. 105, Phase-2, Urban Estate, SAS Nagar Mohali was allotted to the petitioner vide allotment letter dated 2.7.1971 (Annexure P-1), clause 6 whereof on translation reads as follows:--

6. After getting the site plan sanctioned from the competent authority, the construction shall be completed within 3 years from the date of issuance of the sanctioned plan.

2. According to the respondents, the petitioner was not interested in constructing the house, therefore, he did not submit or got the building plan sanctioned and failed to raise construction within three years from the date of allotment. The case of the petitioner on the other hand was that the possession of the plot was not handed over to him for a period of 7 long years after the allotment though he had deposited the entire sale consideration. No construction indeed can be raised unless possession of the plot is handed over to the allottee.

3. Since the respondent-Authority started levying non-construction charges/

extension fee from January, 1988 onwards due to non-construction of the house to which the petitioner objected to inter alia, on the grounds that (a) no such condition was stipulated in the allotment letter dated 2.7.1971 (Annexure P-1); (b) the policy instructions for the levy of non-construction charges were issued subsequently and would not apply to the allotments already made; (c) the Punjab Regional and Town Planning and Development (General) Rules, 1995 etc. also came into force prospectively much after the subject allotment; and that (d) the non-construction charges were not leviable also in view of the two decisions of this Court in CWP No. 13648 of 1998, Tehal Singh v. State of Punjab and others and CWP No. 18986 of 2001, Sant Kaur Jabbi and others v. State of Punjab.

4. It was in this backdrop that on 9.12.2010, this Court directed the Additional Chief Administrator, GMADA to re-consider the petitioner's liability towards non-construction charges/extension fee, especially in the light of the above cited decisions as also keeping in view the terms and conditions of allotment.

5. Pursuant to those directions GMADA has passed an order dated 14.5.2012 (Annexure P-23) which is also impugned before us by amending the writ petition. However, before we advert to the legality of order dated 14.5.2012 (Annexure P-23), some more facts relevant to resolve the controversy may also be noticed.

6. The petitioner had submitted the building plan on 3.5.2000 but no formal communication regarding the sanctioning or rejecting that building plan was ever sent or received by him. It was on 9.4.2008 that the petitioner was asked to deposit Rs. 1,88,260/- as non-construction fee to enable the Authority to sanction the building plan. The petitioner deposited the said amount under protest and it appears that the authorities subsequently modified the said order holding that "the petitioner was liable to pay the non-construction fee to the tune of Rs. 7,63,581/- up to 31.12.2007."

7. Thus, in the light of the order passed by this Court on 9.12.2010, directing the GMADA to reconsider the levy of extension fee, the Authorities were required to determine:--

(i) Whether the petitioner was liable to pay non-construction fee for the period from 1988 to 2000?

(ii) Whether the petitioner was liable to pay extension fee for the additional period from 2001 to 31.12.2007?

(iii) Whether the petitioner was entitled to be exempted from payment of the said fee in the light of the decisions of this Court in Tehal Singh and Sant Kaur Jabbi's cases (supra) and as per the terms and conditions of allotment?

8. The respondents have vide order dated 14.5.2012 (Annexure P-23) reiterated that the petitioner is liable to pay extension fee for both the durations as according to them, he was fully aware of Rule 12 of the Punjab Urban Planning and Development Authority (Building) Rules, 1996, (for short "the 1996 Rules")

according to which the building plans shall be deemed to have been sanctioned after the expiry of a period of 90 days if the Authority fails to point out any deficiency in such building plans. Consequently, the petitioner has been held liable to pay the extension fee of Rs. 1,74,480.70 for the period from 1988 to 2000 and another sum of Rs. 7,63,581/- for the period from 2001 to 2008. It may also be noticed at this stage that after receipt of the sanctioned building plan, the petitioner raised the construction and occupation certificate has already been issued to him on 27.12.2008.

9. We have heard learned counsel for the parties at some length and gone through the record.

10. There is no quarrel that the petitioner submitted the building plan in the year 2000 and no communication whatsoever was received by him raising any objection against the building plans or its sanctioning thereof. Rule 12 of the 1996 Rules, relied upon by the respondents reads as follows:--

Rule 12, If the competent authority neglects or omits within 60 days of receipts from any person of valid application, complete in all respect to erect to re-erect a building, to pass orders sanctioning or refusing to sanction such erection or re-erection, the plans shall without prejudice to the provisions of these rules and the restrictions specified for erection or re-erection of buildings be deemed to have been sanctioned and the applicant may proceed with the erection or re-erection of building or carry out any development work as described in the application or in any accompanying documents but not so as to contravene any of the provisions of the Act these rules made there under and the restrictions specified for erection or re-erection of buildings.

11. In our considered view, the presumption of deemed sanction of the building plans can be pressed into aid only if the allottee has got informed knowledge that the application along with the building plan submitted by him is "valid" and "complete in all respects". In other words, mere submission of building plan with the respondent-Authority like posting a letter in the post office, does not entitle an allottee to claim deemed sanctioning of the building plan. Illustratively, will it be permissible for an allottee to say that if a building plan for commercial construction over a residential plot has been submitted and due to some omission, negligence, collusion or connivance etc., the Authority fails to communicate the order of rejection that the allottee would be entitled to claim that his building plans are deemed to be sanctioned. Similarly, if the building plan submitted by him is in total violation of the Building Bye-laws, we have no reason to doubt that the deeming fiction cannot be invoked by the allottee or by GMADA. It is only if the building plans are valid and complete in all respects and no objection has been raised during their scrutinization by the concerned quarters and if no decision thereupon is conveyed by the Competent Authority that the allottee can presume deemed sanctioning to enable him to commence with the construction work. Any other interpretation of Rule 12, in our considered view, will have serious repercussions entailing repeated violation of the Building

Bye-laws.

12. Applying Rule 12 to the facts of the instant case, we find that the petitioner was admittedly not conveyed any decision in respect of the building plans till he was asked to deposit non-construction fee of Rs. 1,74,480.70 on 9.4.2008 as a condition precedent for the sanctioning of the building plans. In the absence of any communication to the petitioner that the building plan submitted by him was complete and in accordance with the Building Bye-laws, no occasion could arise for him to infer that the building plan submitted by him is deemed to have been sanctioned and he was entitled to raise construction. The inaction and delay, deliberate or unintentional, is thus attributable to the Authority for which the petitioner cannot be held responsible. As a result of the above discussion, we hold that the petitioner cannot be held liable to pay any extension fee/non-construction charges for the period spanning from 2001 to 31.12.2007 and/or till a communication of sanctioning of the building plan was sent to him, for soon after he completed the construction and obtained the occupation certificate on 27.12.2008. Reverting back to the petitioner's liability qua non-construction fee for the years 1988 to 2000, we are of the view that the matter requires re-determination by the Competent Authority. We say so for the reasons that (1) from the impugned order dated 14.5.2012 (Annexure P-23) or from the other communications on record, it is not discernible as to under which provision of law the non-construction fee was leviable during the period 1988 to 2000. The Punjab Housing Development Board Act, 1972, under which such a fee could be levied was repealed by the Punjab Regional and Town Planning and Development Act, 1995. The question whether a penal provision like that of the imposing of non-construction fee/extension fee can be applied to regulate the old allotments made before such provision came into force, has been adequately dealt with by this Court in Tehal Singh and Sant Kaur Jabbi's cases (*supra*). No logical reason has been assigned as to why these decisions are inapplicable in the case of the petitioner. Consequently, while setting aside the levy of non-construction fee/extension fee for the period spanning the year from 1988 to 2000, liberty is granted to the Competent Authority to pass a afresh speaking order for the said period after giving an opportunity of being heard to the petitioner. The demand raised against him for the non-construction for the period from the year 2001 to 2008, is, however, quashed and the amount deposited by the petitioner is directed to be refunded to him within a period of two months from the date of receipt of certified copy of this order, failing which he shall be entitled to an interest at the rate of 7% per annum. 15. Dasti.