

(1999) 12 P&H CK 0142

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1978 of 1999

Bhupender Chaudhary

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Dec. 23, 1999

Acts Referred:

- Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 - Regulation 3, 4, 6
- Haryana Urban Development Authority Act, 1977 - Section 15, 42(1)

Citation: (2001) 3 RCR(Civil) 626

Hon'ble Judges: Mehtab Singh Gill, J; G.S. Singhvi, J

Bench: Division Bench

Advocate: Mr. I.S. Balhara, for the Appellant; Ms. Vandana Malhotra, for the Respondent

Final Decision: Partly Allowed

Judgement

G.S. Singhvi, J.

The petitioner is a Non-Resident Indian. He applied for allotment of an industrial plot. Vide letter Annexure P-1 dated 3.5.1996 issued by the Estate Officer (HUDA-NRI), he was offered plot No. 644 measuring 450 square meters in Industrial Estate Pace City-11, Sector 37, Gurgaon. He deposited tentative price of the plot (Rs. 4,72,500) within the time stipulated in the said letter. After about 2 years of the offer of allotment, the Chief Administrator, HUDA, Panchkula issued memo Annexure P.8 dated 30.4.1998 to the petitioner and called upon him to deposit revised tentative cost of the plot. He paid the revised tentative price on 11.9.1998. At the same time, he requested the concerned authority of HUDA that possession of the plot be given to him. Instead of entertaining his request, the Estate Officer HUDA asked the petitioner to pay interest at the rate of 18% per annum in lieu of the alleged delay in the payment of the tentative enhanced price as a condition precedent to the issuance of regular allotment letter. This has compelled the petitioner to file the present petition in which he has not only prayed for quashing of the demand of

interest but has also prayed that the decision of the respondents to charge enhanced tentative cost be declared illegal and unconstitutional.

2. The respondents have defended their action by contending that after having accepted the terms and conditions stipulated in the provisional allotment letter, the petitioner cannot challenge the charging of enhanced tentative cost and interest. They have relied on the Haryana Industrial Infrastructure Development Policy, 1997 to support their stand that the petitioner is liable to pay the enhanced tentative cost along with interest on the delayed payment. According to them, the demand notice dated 30.4.1998 was sent at the address given by the petitioner and, therefore, he cannot escape from the liability of paying interest on the delayed payment of the enhanced cost. They have also relied on the letter Annexure R.6 allegedly sent under the certificate of posting at the address given by the petitioner and have pleaded that he is bound to fulfil the condition of paying interest at the rate of 18% before regular allotment letter can be issued in his favour.

3. We had heard the arguments on 16.11.1999 and reserved the order. While doing so, we have given liberty to the counsel for respondents No. 2 and 3 to produce evidence before the court to show that the demand notice dated 30.4.1998 was sent to the petitioner by registered post. However, till today no such evidence has been produced before the Court.

4. The first contention of Shri I.S. Balhara is that the demand notice dated 30.4.1998 issued by the Chief Administrator, HUDA, Panchkula should be declared as void because one year and six months before the issuance of the said notice the petitioner had deposited the total cost of the land. Learned counsel argued that the condition of charging enhanced cost could have been enforced against the petitioner only if such demand had been created prior to the deposit of price stipulated in the letter of allotment and not thereafter. The second contention of Shri Balhara is that the levy of interest should be declared as void because the petitioner did not delay the deposit of enhanced tentative cost. He took us through the averments made in the writ petition to show that the petitioner had deposited the enhanced cost immediately after having acquired knowledge about the demand created vide notice dated 30.4.1998.

5. Ms. Vandana Malhotra laid considerable emphasis on the phrase "tentative price" used in the provisional letter of allotment (Annexure P.1) and argued that after having voluntarily accepted the terms and conditions stipulated in the said letter, the petitioner, cannot challenge the authority of the respondents to charge the enhanced tentative cost. She further argued that the letter sent to the petitioner at his local address under the certificate of posting should be deemed to have been delivered to him and, therefore, he is liable to pay interest in lieu of the delayed payment of the enhanced cost.

6. We have thoughtfully considered the respective submissions. In our opinion, the petitioner's challenge to the demand of enhanced/additional tentative cost deserves to be negated. In the letter Annexure P-I vide which the plot was offered to the petitioner, it was stipulated that he has to pay the tentative price amounting to Rs. 4,72,500/-. This is clearly borne out from the following extract of the said letter:

"It has been decided to offer you an industrial plot No. 644 measuring 450 sq. metr. in Industrial Estate Pace City-11, Sector 37, Gurgaon for the manufacture of Readymade Garments subject to completion of required formalities. The tentative price of plot is Rs. 4,72,500 i.e. @ 1050 per sq. metrs. A sum of Rs. 47,250/- has already been received from you along with application as earnest money. An amount of Rs. 70,875/- is payable by you within a period of 70 days in foreign exchange in order to complete 25% of the tentative cost of plot in shape of demand draft in favour of the Chief Co-ordinator, IAG, drawn on any scheduled bank payable at Chandigarh."

7. The petitioner had accepted the terms and conditions contained in the letter Annexure P. 1 and deposited the tentative price indicated therein without any protest. This shows that he did not have any grievance against the use of the expression "tentative price" in the letter Annexure P.1. This conduct of the petitioner is sufficient to draw an inference that he had unreservedly accepted the terms and conditions subject to which offer of allotment was made to him and, therefore, he is estopped from challenging the decision of respondents No. 2 and 3 to charge enhanced cost of the land.

8. The issue deserves to be examined from another angle. Section 15 of the Haryana Urban Development Authority Act, 1977 (hereinafter referred to as the Act) empowers the HUDA to dispose of the land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon or after, undertaking or carrying out such development as it thinks fit. This is subject to any direction which may be given by the State Government u/s 30 of the Act. Regulations 3, 4 and 6 of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 (hereinafter referred to as the Regulations) contain the procedure for disposal of land. Of these, Regulation 4 specifically provides for fixation of the tentative price/premium for disposal of land or building by the HUDA. Therefore, it must be held that the offer given to the petitioner for allotment of plot at the tentative price stipulated in Annexure P.1 was consisted with the provisions of the Act and the regulations and the petitioner is bound to pay the enhanced price determined by the competent authority. Still further, we are of the view that after having paid the enhanced/additional price, the petitioner cannot turn around and challenge the authority of respondents No. 2 and 3 to demand additional price/enhanced cost of the plot allotted to him.

9. However, we find merit in the argument of Shri Balhara that the respondents cannot compel the petitioner to pay interest at the rate of 18% on the ground of alleged delay in the payment of enhanced/additional cost. In our opinion, the learned Counsel for the petitioner is right in submitting that the demand notice dated 30.4.1998 which was sent to the petitioner at his local address cannot be deemed to have been served upon him because it was neither tendered to him personally nor it was sent to him by registered post.

10. Section 42(1) of the Act which prescribes the mode of service of notice etc. reads as under:

"42. Service of notice etc, -(1) All notices, all orders and other documents required by this Act or any rule or regulation made thereunder to be served upon any person shall, save as otherwise provided in the Act or such rule or regulation, be deemed to be duly served :

(a) where the person to be served in a company, if the document is addressed to the Secretary of the said company, at its registered office or at its principal office or place of business and is either -

(i) sent by registered post;

(ii) delivered at the registered office or at the principal office or place or business of the said company.

(b) where the person to be served is a partnership firm, if the document is addressed to the said partnership firm, at its principal place of business, identifying it by the name or style under which its business is carried on and is either -

(i) sent by registered post; or

(ii) delivered at the said place of business.

(c) where the person to be served is a public body, or a corporation or society or other body, if the document is addressed to the Secretary, Treasurer or other head of office of the Body, Corporation or Society, at its principal office and is either -

(i) sent by registered post; or

(ii) delivered at the said office.

(d) in any other case, if the document is addressed to the person to be served and -

(i) is given or tendered to him; or

(ii) is sent by registered post to the person; or

(iii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business, if within an urban area or is given or tendered to some adult member of his family or is affixed on some conspicuous part of the

land or building to which it relates."

11. A bare reading of the provisions quoted above shows that when the person to whom any notice, order or other document is sent by the HUDA authorities is not a company or partnership firm or a public body or a Corporation or Society or other body, the document etc. has to be given or tendered to him or sent by registered post. If such person cannot be found, then the notice is required to be affixed on some conspicuous part of his last known place of residence or business or tendered to some adult member of his family. The inference of deemed service of notice upon the addressee can be drawn only if the aforesaid mode is adopted by the concerned authority and not otherwise.

12. What has happened in the present case is that the demand notice Annexure P.8 which was required to be sent by registered post (as indicated on the top of the notice itself) was in fact, sent under certificate of posting. Why this was done, has not been explained by respondents No. 2 and 3. In any case, the notice sent under certificate of posting cannot be deemed to have been delivered to the petitioner so as to make him liable to pay interest on the allegation of delay in (he de posit of additional/enhanced cost of the plot in accordance with the said notice. The categorical statement made by the petitioner about the non-delivery of the notice coupled with the fact that he deposited the tentative price stipulated in the letter Annexure P.1 and the additional price immediately after having come to know of the demand notice is, in our opinion, sufficient to discard the charge levelled against him of having delayed the payment of additional/enhanced cost.

13. In the result, the writ petition is partly allowed. The demand of interest created by respondents No. 2 and 3 is declared illegal and quashed with a direction that regular allotment letter be issued in favour of the petitioner within a period of 15 days from the date of submission of certified copy of this order.

14. Petition partly allowed.