

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

207

CWP No. 4819 of 2017

Date of Decision: November 29, 2019

Imaging Solutions Pvt. Ltd.

..... Petitioner.

Versus

State of Haryana & Ors.

..... Respondents.

**CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Imran Baig, Petitioner in person.

Mr. Ankur Mittal, Addl. A.G., Haryana.

Mr. Lokesh Sinhal, Advocate
for respondents No. 2 to 4.

Mr. Dharmesh Misra, Advocate,
Mr. Aashish Chopra, Advocate and
Ms. Rupa Pathania, Advocate
for respondent No.5.

SUDHIR MITTAL, J.

The petitioner is the allottee-owner of plot No.1 Sector 18, Electronic City, Gurugram admeasuring 1200 Sq meters. Possession of the same was handed over in two stages; 1000 Sq meters was conveyed earlier followed by 200 Sq meters. Building plan dated 22.07.1999 was sanctioned with FAR 75. On 23.03.2001, a registered Lease Deed was executed between the petitioner and respondent No.5 according to which the said respondent was required to raise construction in accordance with the sanctioned plan. The said Lease Deed was for a period of 11 years commencing from 01.06.2000. Occupation certificate dated 01.09.2003 was

issued in favour of the petitioner for basement, ground floor, first and second floor and part 3rd floor. While the execution of the lease deed was being negotiated, the petitioner wrote communication dated 17.03.1999 to respondent No.5 representing that construction upto 28000 Sq.ft. (more than 2500 Sq meters) could be made on the plot despite a building plan having been sanctioned for lesser area and the construction could be effected without modification of the sanctioned plan subject to payment of compounding charges. This was followed by communication dated 14.09.1999 to the same effect. Communication dated 14.09.1999 contained an additional representation that respondent No.5 would have the occasion to purchase the plot at a later date. This representation further finds mention as a term of the registered lease deed. Consequently, in 2002-03 building was constructed over 1000 Sq meters of the plot having a covered area of 2300 Sq meters. The construction was raised by respondent No.5 and it is stated that the said construction was within FAR 250 in accordance with Regulation 13(ii-a) of the Haryana Urban Development Authority (Erection of Buildings Regulations) Regulations 1979 (hereinafter referred to be '1979 Regulations') which was inserted w.e.f. 26.07.2001. Thereafter, compounding fee and external development charges for increased FAR were deposited with Haryana Urban Development Authority (hereinafter referred to as 'HUDA') and this amount was shared by the petitioner and respondent No.5. The petitioner continued to receive rent till July 2006 without any grievance regarding the construction raised by respondent No.5. On 27.07.2006, respondent No. 5 exercised its option to purchase the property but the petitioner refused to sell. The matter of specific performance of agreement to sell, allegedly contained in the registered Lease Deed dated

23.03.2001 was referred to Arbitration in the year 2008 and is still pending. Disputes, thus arose between the petitioner and respondent No.5 and the petitioner complained to HUDA in June 2009 regarding alleged unauthorized construction raised by respondent No.5. This led to issuance of communication dated 13.07.2009 vide which occupation certificate of the plot and building was revoked and 25 days were granted for removal of the unauthorized construction. This communication was addressed to the petitioner alone. Respondent No.5 accordingly challenged the said communication through CWP No. 11065 of 2009. This was decided on 10.11.2010 and the matter was remitted to the Estate Officer, HUDA for decision afresh after compliance with statutory provisions and principles of natural justice. Pursuant to this order, a Show Cause notice dated 08.08.2011 was issued to the petitioner under Section 17(3) of the Haryana Urban Development Authority Act 1977 (hereinafter referred to as 'the Act') for resumption of the building on account of alleged building violations. The petitioner did not appear pursuant to the said Show Cause notice and therefore, order dated 25.10.2011 was passed directing removal of the alleged unauthorized constructions within thirty days. Respondent No.5 was thus forced to approach this Court once again through CWP No. 21307 of 2011 which was disposed of vide order dated 17.11.2011 with liberty to the writ petitioner to file a statutory appeal. Demolition was stayed till the decision of the appeal. The appeal was dismissed vide order dated 12.01.2012 necessitating the invocation of revisional jurisdiction of the State Government. Vide order dated 17.04.2012, the revisional authority set aside the order passed in appeal as well as order dated 25.10.2011 and remanded the matter for a fresh decision to the Estate Officer. Hence,

another Show Cause notice dated 28.07.2012 was issued to the petitioner under Section 17(3) of the Act. This time, the said notice was also addressed to respondent No.5.

After hearing the parties concerned, order dated 26.11.2012 was passed by the Estate Officer directing removal of the alleged building violation within a period of thirty days. Respondent No.5 challenged this order through CWP No. 24050 of 2012. After issuance of notice, the writ petition was disposed of vide order dated 10.12.2012 with liberty to the writ petitioner to file a statutory appeal. The statutory appeal of respondent No.5 was allowed vide order dated 01.10.2014 and the matter was once again remanded to the Estate Officer with a direction to get the structural stability of the building assessed through the Public Works Department. On the same date, the Commissioner, Municipal Corporation, Gurgaon passed an order refusing to issue 'No Objection Certificate' to respondent No.5 regarding fire safety.

After remand of the matter by the Chief Administrator, HUDA vide order dated 01.10.2014, no action was taken by the Estate Officer concerned till the filing of the writ petition. It appears that on account of this inaction, the petitioner made a representation dated 24.04.2015 under Regulation 11-C of the Haryana Urban Development Authority, (Erection of Buildings) Regulations, 1979, to the Chief Administrator HUDA to demolish the violations made by respondent No.5. Meanwhile, the petitioner filed a writ petition viz CWP No. 6661 of 2015 after filing of the representation dated 24.04.2015 under Regulation 11-C of the Haryana Urban Development Authority, (Erection of Buildings) Regulations, 1979 Regulations which was however, disposed of vide order dated 28.04.2015

directing the Chief Administrator, HUDA to consider the pending representation and pass an order within 4 months.

Respondent No.5 challenged the order of refusal of No Objection Certificate by the Commissioner, Municipal Corporation, Gurgaon through CWP No. 5883 of 2013. This writ petition was disposed of vide judgment dated 27.05.2016 directing the Estate Officer, HUDA to pass an order on the notice issued under Section 17(3) of the Act as directed by the Appellate Authority vide order dated 01.10.2014. The Chief Administrator, HUDA was also directed to pass an order on the representation dated 24.04.2015 of the petitioner as directed by this Court vide order dated 28.04.2015. Interim orders were directed to continue meanwhile. Pursuant to this judgment, the Chief Administration HUDA passed order dated 27.02.2017 rejecting the representation of the petitioner on the ground that the effective remedy was under Section 17 of the Act as provided in condition No.10 of the allotment letter. Aggrieved by this order, the present writ petition has been filed.

During the pendency of this writ petition the Estate Officer has passed order dated 05.09.2018 *inter alia* finding therein that a completion certificate in respect of 2300 Sq. Metre stood issued and the covered area of the building of respondent No.5 was 2103.622 Sq meters, which was within the permissible limit. The construction beyond the 750 Sq meters permissible under the sanctioned building plan already stood compounded. The building was also assessed to be structurally stable and no violation of any law was found. Show cause notice under Section 17(3) of the Act thus stood withdrawn by implication.

From the aforementioned narration it is evident that the

petitioner and respondent No.5 have been embroiled in a long standing dispute ever since respondent No.5 invoked its alleged right to purchase the plot of the petitioner. A Public Authority i.e. HUDA is being made a tool in this dispute.

The petitioner is represented through its director in person and his submission is simple and precise i.e. respondent No.5 has made no compoundable violations while raising construction rendering the building unsafe. Thus, the same deserves to be demolished.

Learned counsel representing respondent No.5 counters the arguments of the petitioner by stating that a private dispute is being given colour of a dispute against public authority and the same is not permissible. It is further submitted that respondent No.5 has in fact covered more area than permissible under the sanctioned building plan but the excess construction stands regularized on payment of compounding charges as well as external development charges in accordance with the HUDA Rules and Regulations. Presently, the building is completely safe and within the parameters prescribed by the Regulations and thus there is no error in the impugned order dated 27.02.2017. Moreover, the Estate Officer has passed an order dated 05.09.2018 in the proceedings initiated under Section 17 of the Act and the said order is not under challenge in the writ petition. The petitioner would be at liberty to challenge the said order in accordance with law.

Learned counsel for the HUDA (now known as Haryana Shehri Vikas Pradhikaran-HSVP) placed reliance upon order dated 05.09.2018 to submit that there is no illegality in the building constructed by respondent No.5.

From the narration of facts as well as the submissions of learned counsel for the parties it is apparent that there exists a valid occupation certificate in respect of the building in dispute. The submissions of respondent No.5 that the excess construction raised now stands regularized on payment of compounding charges and external development charges finds support in the order dated 05.09.2018 passed by the Estate Officer. If this is in fact correct, the building of respondent No.5 is in accordance with law, the Regulations and Building Bye laws. However, the petitioner has a statutory right to challenge the order dated 05.09.2018 subject to law of limitation. Accordingly, he would be at liberty to assail the said order through a statutory appeal.

Under these circumstances, we do not find any illegality in the order dated 27.01.2017 passed by the Chief Administrator, HUDA. He was justified in holding that Regulation 11-C of the Haryana Urban Development Authority, (Erection of Buildings) Regulations, 1979 Regulations could not be invoked while proceedings under Section 17 of the Act were pending.

The writ petition is accordingly disposed of.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

November 29, 2019
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No