

For -
IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Receipt No. 21031R
Date 15/1/09
BY POSTER

हरियाणा उच्च न्यायालय
चण्डीगढ़
13 JAN 2009
परिचालन शाखा नं० 3782

To

1. The State of Haryana through Secretary, Urban Development, Haryana, Chandigarh.
2. Chief Administrator, HUDA, Haryana Panchkula
3. Estate Officer, HUDA, Jind

Supreme Court judgement at 'X' be noted.

DDA

15-1-09
ACTCP

DDA (AKB)

Give me
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of register

Subject :

CIVIL WRIT PETITION No. 7632 of 2007

Randhir Singh

Petitioner

Versus

State of Haryana/Punjab /UT Chandigarh Admn.
HUDA/PUDA/ECI and others. respondents

Sir,

In continuation of this Court's orders dt. _____, I am directed to forward herewith a copy each of orders dated 18/1/08 passed by this court in the

above noted case for immediate strict compliance.

Given under my hand and the seal of the Court this 28 of November, 2008.

Superintendent (Writs)
for ASSISTANT REGISTRAR (WRITS)

[Signature]

RNF

16/1

ACTCP

572-31
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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

FILED TODAY
No. 57057
18 MAY 2007
Dealing Assistant

C.W.P. NO. 7639 2007

Randhir Singh s/o Banwari Lal r/o H.No. 1829, Urban
Estate Jind.

..Petitioner

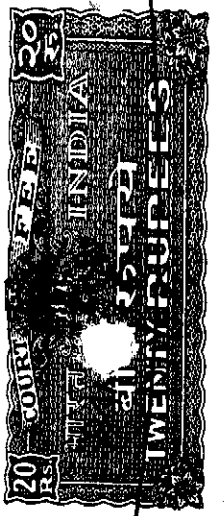
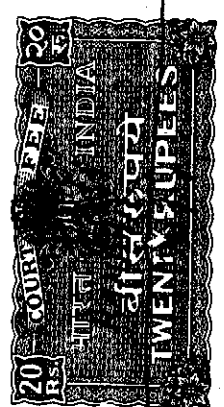
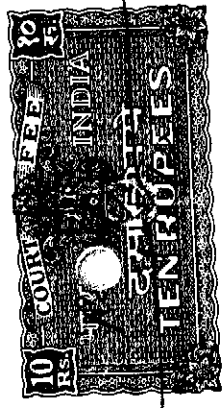
Versus

1. The State of Haryana through Secretary, Urban Development, Haryana, Chandigarh.
2. Chief Administrator, HUDA, Haryana Panchkula
3. Estate Officer, HUDA, Jind
4. Niranjn Lal Gupta s/o Radha Krishan c/o Delhi Hospital, SCO 14-15, Distt. Shopping Centre, Urban Estate Jind.

Dr. Paul

Dr. Paulveer Gupta No H.No 1151, Urban Estate Jind c/o Delhi Hospital Urban Estate Jind (impled vide order dt 9/08)
...Respondents

Petition Under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of mandamus directing the respondents no. 1 to 3 to take action in order to stop misuse of the site auctioned by them in the city centers in Urban Estates of Haryana.



Further directing the respondents no.1 to 3 to supply the Zoning Plan of the site in question so that construction on the site can be completed by the petitioner without any delay.

OR

Further issue any other writ, order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the petitioner and against the respondents.

Respectfully Showeth:-

1. That the petitioner is a permanent resident of Distt. Jind in the State of Haryana and thus being the citizen of India is entitled to invoke the extra ordinary writ jurisdiction of this Hon'ble Court by way of filing the present writ petition.
2. That the petitioner has purchased plot no.1 Distt. Shopping Centre, Jind for a total price of Rs.11,01,000/- vide allotment memo no. 65 dated 5.1.2001. the above site is reserved for running a Nursing Home and apart from this plot there is no plot earmarked for running a Nursing Home. Meaning thereby petitioner has purchased the above mentioned plot within objective of opening a Nursing Home as he is a qualified doctor and in order to generate income out of the said plot and on the basis of site of the plot

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P. No. 7632 of 2007

DATE OF DECISION: November 18, 2008

Randhir Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE JORA SINGH

Present: Mr. Surender Dhull, Advocate,
for the petitioner.

Mr. Arun Walia, Advocate,
for respondent Nos. 2 and 3.

Mr. R.K. Gupta, Advocate,
for respondent No. 4.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

M.M. KUMAR, J.

1. The petitioner has approached this Court with a prayer for issuance of directions to respondent Nos. 1 to 3 to pass an order for stopping misuse of the site auctioned by them in the City Centers in the Urban Estates of Haryana. A further direction to respondent Nos. 1 to 3 has also been sought directing them to supply the zoning plan of the site i.e. Plot No. 1, District Shopping Centre, Jind, for

PUNJAB & HARYANA HIGH COURT

construction of the hospital by the petitioner. The emphasis in the prayer is directed against respondent No. 4, who was allotted S.C.O. No. 14 & 15, District Shopping Centre, Jind, who is alleged to be misusing the building for hospital/nursing home.

2. Brief facts of the case are that on 5.1.2001, the petitioner purchased Plot No. 1, District Shopping Centre, Jind, for a total price of Rs. 11,01,000/-. As per allotment letter bearing No. 65, dated 5.1.2001, the aforementioned site has been reserved for running a Nursing Home. It is claimed that no other plot has been earmarked for running of Nursing Home. The petitioner has paid the full price and possession of the site was handed over to him on 8.7.2003. The petitioner has alleged that respondent Nos. 1 to 3 have failed to provide facilities at the site like roads, sewerage and other basic amenities. It is claimed that the petitioner had applied for supplying the zoning plan in order to construct the Nursing Home, which the respondents are deliberately avoiding to supply. He has further alleged that on the one hand no zoning plan is supplied to him whereas on the other hand respondent No. 4 has been permitted to operate the Nursing Home in Show Room No. 14 & 15, District Shopping Centre, Jind, which was allotted to be used for any commercial purpose. The petitioner has placed reliance on the information received under the Right to Information Act, 2005 to urge that building of SCO No. 14 & 15 is being misused for running hospital, which was completed by respondent No. 4 in the year 1998. The official respondents have also issued a notice to him under Section 17(3) of the Haryana Urban Development Authority Act, 1977 (for brevity, 'the 1977 Act') asking respondent No. 4 to stop

misuse of the building for hospital purpose. However, no action has been taken.

3. In reply to the notice to show cause, respondent Nos. 2 and 3 have asserted that they have ordered resumption of SCO No. 14 & 15, District Shopping Centre, Jind, vide order dated 23.11.2007 (R/1 & R/2). They have further averred that zoning plan for the Nursing Home site of the petitioner has already been supplied to him on 4.5.2004 by Registered A.D. post (R/3 & R/4). It has further been pointed out that an amount of Rs. 2,23,264/- is still outstanding against the petitioner. In para 3 of the reply on merit it has been categorically asserted that all the necessary facilities ^{like Road, Sewerage, water supply etc.} have been provided in the year 1994-95 and they are continuously taking care of it.

4. In the separate written statement filed on behalf of respondent No. 4 it is claimed that SCO No. 14 & 15, District Shopping Centre, Jind, was allotted for commercial purpose and is being used for that purpose only. He has not violated any of the terms and conditions of the allotment letter nor misused the aforementioned allotment. It is claimed that only in the year 1998, hospital was partly shifted in SCO No. 14 & 15, which include a Consultation Room, Lab, X-Ray Room, Ultra Sound Room and an office and therefore, no condition of the allotment letter is violated nor the above said activity can be termed as obnoxious within the meaning of Section 2(c) of the Haryana Urban Development (Disposal of Land and Building) Regulations, 1998. He has also claimed that the resumption order, which was passed by the Estate Officer on 23.11.2007 has been set aside in appeal filed by respondent No. 4 under Section 17(5) of the

1977 Act and the matter has been remanded back vide order dated 27.2.2008 (R-4/1) with the remarks that it may be decided afresh after hearing the legal heirs of the allottee.

5. We have heard learned counsel for the parties at a considerable length and are of the view that this petition deserves to be dismissed. The petitioner has purchased a plot on 5.1.2001. He has paid all the dues but failed to raise construction despite the fact that zoning plans have been supplied on 4.5.2004 by registered post. There are adequate facilities provided by respondent Nos. 1 to 3 which include roads, water, sewerage, electricity etc. and the same are available to the petitioner since 1994-95. No case is made out for coming to the conclusion that the basic amenities have not been provided so as to give birth to a lawful excuse of non-payment of charges/extension fee on account of non-construction. In that regard reliance may be placed on the judgment of Hon'ble the Supreme Court in the case of Municipal Corporation Chandigarh v. M/s. Shantikunj Investment Pvt. Ltd., (2006) 4 SCC 109, wherein it has been observed that as long as basic amenities like kutchha road, drainage, drinking water, sewerage, street lighting have been made available then the allottee cannot make a complaint of lack of amenities and such a complaint would not constitute a valid excuse either to defer payment or to non-levy of charges like extension fee. Therefore we are of the view that the writ petition lacs merit and the same is liable to be dismissed.

6. The other argument that misuse by respondent No. 4 is continuing does not require detailed consideration in view of the fact that firstly action against respondent No. 4 has already been initiated

COURT

'X'

by passing resumption order dated 23.11.2007 by the Estate Officer. The resumption order has been set aside by the Appellate Authority vide order dated 27.2.2008 (R-4/1) and the matter has been remanded back to the Estate Officer for taking a decision afresh in accordance with law. Needless to say that the aforementioned process would be taken to its logical end.

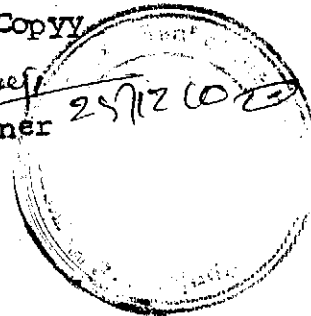
7. For the aforementioned reasons, this petition fails and the same is dismissed.

Sd/- M. M. Kumar
Judge

Sd/- Jora Singh
Judge

True Copy

Examiner



November 18, 2008
/Pkapoor

PUNJAB & HARYANA HIGH COURT

30 07231, 5925
DIP Adalal
May be true

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29/11/08