

Before Uma Nath Singh & Daya Chaudhary, JJ.

VIKRAM CHIB,—Petitioner

versus

**HARYANA URBAN DEVELOPMENT AUTHORITY
AND OTHERS,—Respondents**

C.W.P. No. 12013 of 2007

1st October, 2008

Constitution of India, 1950—Art. 226—Haryana Urban Development Act, 1977—S.42—Letter of offer of possession not dispatched according to requirements of S.42—Letter dispatched to address of plot physical possession of which was not given—Petitioner failing to submit building plans within stipulated period—Period of limitation—3 years from date the possession of plot was given to petitioner—Petition allowed directing authorities to sanction building plan.

Held, that the letter in dispute dated 29th December, 2004 alleged to be a letter of offer of possession was not dispatched according to requirements of the Section. This is a claim of petitioner that no such letter was dispatched nor ever came to his notice, thus, the provisions of Section 42 have been violated by authorities concerned in his case. As admitted, the possession of plot in question was delivered on 25 September, 2006, hence the period of limitation was to start only from that date. Moreover, this is mentioned in the terms and conditions No. 24 of allotment letter that a rebate equivalent of 20% of land cost, shall be given if an industrial unit starts commercial production within three years of offer of possession of the industrial plot.

(Para 5)

Further held, that condition No. 24 which is the last one stipulates that the incentive of rebate equivalent to 20% of the land cost would be given if the production starts within three years. This condition

being last one would thus be construed to rein in all other such conditions of the allotment letter which may be read to the disadvantage of an allottee in calculating the limitations. In this background, we are inclined to hold that the period of three years limitation would commence with effect from 25th September, 2006 and continue till 25th September, 2009. As we have noticed earlier that the letter of offer of possession was not dispatched by adopting a proper mode as prescribed under the Act, it is deemed that the said letter was never dispatched. Also from perusal of original record and dispatch register, we do not find a clear answer to this question as to whether the letter of offer of possession was ever dispatched. Referene details given in the letter are also not mentioned in the dispatch register. That apart the said letter is shown to have been dispatched to the address of the plot in question, knowing well that the physical possession of the plot was yet to be given.

(Para 7)

D.S. Patwalia, Advocate, *for the petitioner.*

Dinesh Nagar, Advocate, *for the respondents.*

UMA NATH SINGH, J. (ORAL)

(1) Heard learned counsel for parties and perused the record.

(2) This judgment shall also dispose of connected C.W.P. No. 15836 of 2007. These writ petitions impugn a common question of law and for the purpose of their disposal only the facts of C.W.P. No. 12013 of 2007 are being mentioned.

(3) Admittedly, plot in question (No, 115, Sector 37-1, Gurgaon) measuring 450 square mtrs., was allotted to petitioner *vide* letter No. 2771 dated 19th December, 2003. As per para 11 of counter affidavit, this is also admitted that the possession of plot was given to petitioner on 25th September, 2006. However, as petitioner failed to submit building plans within stipulated period of three years after taking possession; building plans submitted after expiry of limitation on 17th August, 2007 were rejected. On earlier date, after hearing learned

counsel for parties, we passed a detailed order on 12th September, 2008 as under :—

“Learned counsel for petitioner submitted that Annexures R-1 and R-2, issued by Estate Officer, HUDA, Gurgaon, contain different addresses and even descriptions about different properties. Learned counsel for petitioner also submitted that he was not given possession of the land in question by HUDA till he himself went to its office to enquire about therefore, limitation period of three years for raising construction was to commence from the date when the petitioner had visited the office of HUDA and had been handed over the possession.

Learned counsel for the petitioner went to the extent of submitting that if HUDA is able to establish that Annexure R-1 had been dispatched and received by the petitioner, he would not press this writ petition.

On being asked, learned counsel for HUDA submitted that he is not in a position to show the mode of dispatch of this letter and the original file of this case has not been made available to him. HUDA is directed to supply complete record of this case to learned counsel for final hearing, with some responsible official to assist the counsel.

The matter is adjourned to 1st October, 2008, for producing record and arguemnts.”

(4) In the light of said order, we examined the register. During the course of further hearing, it also came to our notice that there is a specific provision as per Section 42 of Haryana Urban Development Act, 1977 (for short ‘the Act’) for service of notice and letters etc. This section on reproduction 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 this Act or such rule or regulation, be deemed to be duly served—

- (a) where the person to be served is 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 of 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 of 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 that 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 tendred to some adult member*

of his family or is affixed on some conspicuous part of the land or building to which it relates.

- (2) *Any document which is required or authorized to be served on the owner or occupier of any land or building may be addressed "the owner or the occupier", as the case may be, of that land or building (naming that land or building) without further name or description, and shall be deemed to be duly served—*
- (a) *if the document so addressed is sent to be delivered in accordance with clause (b) of sub-Section (1); or*
- (b) *if the document so addressed, or a copy thereof so addressed, is delivered to any person on the land or building or where there is no person on the land or building to whom it can be delivered is affixed to some conspicuous part of the land or building.*
- (3) *where a document is served on a partnership firm in accordance with this section, the document shall be deemed to be served on each partner.*
- (4) *For the purpose of enabling any document to be served on the owner of any property, the Secretary may, by notice in writing, require the occupier, if any, of the property to state the name and address of the owner thereof.*
- (5) *Where the person on whom a document is to be served is a minor, the service upon his guardian or any adult member of his family shall be deemed to be service upon the minor."*

(5) On examination of register, it is noticed that the letter in dispute (Annexure R-2) dated 29th December, 2005 alleged to be a letter of offer of possession was not dispatched according to requirements of the Section. This is a claim of petitioner that no such letter was dispatched nor ever came to his notice, thus, the provisions of Section 42 have been violated by authorities concerned in his case. As admitted, the possession of plot in question was delivered on 25th September, 2006, hence, the period of limitation was to start only from that date.

Moreover, this is mentioned in the terms and conditions No. 24 of allotment letter (Annexure P-6) that a rebate, equivalent to 20% of land cost, shall be given if an industrial unit starts commercial production within three years of offer of possession of the industrial plot. On reproduction this condition reads as :—

“Rebate equivalent to 20% of the land cost shall be given if the industrial unit starts commercial production within three years of offer of possession of the industrial plot.”

(6) Another condition that is relevant for the purpose of this case is condition No. 17 whereunder an allottee is to start civil works within a period of one year as per approved building plan from the date of issuance of letter of allotment/offer of possession. On reproduction this condition reads as :—

“You will have to start the civil works within a period of one year as per approved building plan from the issue of the final letter of allotment/offer of possession.

- (ii) *The unit must go into production after constructing minimum 25% of permissible covered area of plot within a period of three years. The permissible covered area shall be determined as per the provision of the HUDA Act and Rules.*

In case you fail to do so this plot is liable to be resumed and the whole or part of money paid if any, in respect of it will be forfeited in accordance with the rule and regulation.”

(7) Condition No. 24 which is the last one stipulates that the incentive of rebate equivalent to 20% of the land cost would be given if the production starts within three years. This condition being the last one would thus be construed to rein in all other such conditions of the allotment letter which may be read to the disadvantage of an allottee in calculating the limitations as discussed above. In this background, we are inclined to hold that in the instant case the period of three years limitation would commence with effect from 25th September, 2006 and continue till 25th September, 2009. As we have noticed earlier that the letter of offer of possession (Annexure R-2) was not dispatched by

adopting a proper mode as prescribed under the Act, it is deemed that the said letter was never dispatched. Also from perusal of original record and dispatch register, we do not find a clear answer to this question as to whether the letter of offer of possession was ever dispatched. Reference details given in the letter are also not mentioned in the dispatch register. That apart, the said letter is shown to have been dispatched to the address of the plot in question, knowing well that the physical possession of the plot was yet to be given.

(8) In view of the aforesaid, we allow this writ petition to the extent of issuing directions to authorities to sanction the building plan within a period of 30 days from the date of its submission and the limitation period as discussed herein above would be counted only with effect from 25th September, 2006.

R.N.R.

Before M.M. Kumar & Jora Singh, JJ.

BHAGWANT LAL AND OTHERS,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 13988 of 2007

17th November, 2008

Constitution of India, 1950—Art. 226—Punjab Housing Development Board Act, 1972—Allotment of a built up house—Allottee failing to deposit monthly installments—Cancellation of house—Death of original allottee—L.Rs depositing balance amount of installments— Issuance of eviction notice—Appeal dismissed—Petitioners already deposited entire dues and ready to deposit due amount—Petitioners also ready to remove unauthorized construction—Eviction order set aside, house restored back on undertaking to demolish any unauthorized construction as also to deposit outstanding amount.

Held, that the petitioners have already deposited the entire dues with the respondents. Petitioners are ready and willing to deposit the