

**BEFORE THE HARYANA REAL ESTATE APPELLATE
TRIBUNAL**

**Appeal No.503 & 535 of 2022
Date of Decision: 14.10.2022**

Appeal No.503 of 2022

Ferrous Township Private Limited, Seth Farms, Khasra No.41,42,44,45, Mehrauli Gurgaon Road, Ghitroni, New Delhi-110030.

Appellant

Versus

1. Real Estate Regulatory Authority, Haryana through Chairperson. (Respondent no.1 deleted from the array of the respondents vide order dated 25.07.2022)
2. M/s DD Sales Corporation through its Authorised Signatory Mr. Ashok Kumar Yadav
3. M/s Chandra Auto Engineers Private Limited, through its Authorised Signatory Mr. Ashok Kumar Yadav.

Respondents

Appeal No.535 of 2022

Ferrous Township Private Limited, Seth Farms, Khasra No.41,42,44,45, Mehrauli Gurgaon Road, Ghitroni, New Delhi-110030.

Appellant

Versus

1. Real Estate Regulatory Authority, Haryana through Chairperson. (Respondent no.1 deleted from the array of the respondents vide order dated 25.07.2022)
2. M/s DD Sales Corporation through its Authorised Signatory Mr. Ashok Kumar Yadav

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3. M/s Chandra Auto Engineers Private Limited, through its Authorised Signatory Mr. Ashok Kumar Yadav.

Respondents

CORAM:

Shri Inderjeet Mehta,
Shri Anil Kumar Gupta,

Member (Judicial)
Member (Technical)

Argued by: Shri Anand Chibbar, Learned Senior Advocate, with Shri Vaibhav Saini and Shri Amitabh Tiwari, Advocates, learned counsel for the appellant.

(Respondent no.1 deleted from the array of the respondents vide order dated 25.07.2022)

Shri Kunal Dawar, Advocate, learned counsel for the respondents no.2 and 3.

ORDER:**INDERJEET MEHTA, MEMBER (JUDICIAL):**

By virtue of the present order both the afore-captioned appeals shall be disposed of, as by and large, same questions of law and facts are involved in both the appeals.

2. Initially, feeling aggrieved by the order dated 17.05.2022 handed down by the learned Haryana Real Estate Regulatory Authority, Panchkula (hereinafter called 'the Authority'), the appellant had preferred the aforesaid appeal no.503 of 2022. However, during the hearing of the said appeal no.503 of 2022 and realizing that the appellant also needed to impugn the order dated 05.01.2022 handed down

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by the learned Authority, appeal no.535 of 2022 was also preferred.

3. Along with appeal no.535 of 2022, an application under Section 42 of the Real Estate (Regulation and Development) Act, 2016 (for short 'the Act'), for condonation of delay of 52 days was also filed. The said application is duly annexed with the affidavit of one Dharam Veer Jain, authorised signatory of the appellant. Though, notice of this application was given to the respondents no.2 and 3, but no reply to the same has been filed on their behalf.

4. For the reasons stated in the said application for condonation of delay, which have been duly supported by the affidavit of the authorised representative of the appellant, coupled with the fact that no reply to the said application has been filed by respondents no.2 and 3, the delay of 52 days in filing of the present appeal is hereby condoned.

5. For the proper adjudication of the controversy between the parties, first of all, let us have a look at the chequered history of litigation between the parties to the present lis, which has led to the present situation. To develop a residential plotted colony on land measuring 102.194 acres, Sector 70, Faridabad, a licence no.05 of 2012 dated 24.01.2012 was issued to the appellant. The project is

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comprised of 102.194 acres land out of which 45.63 acre of land is jointly held by the appellant with respondents no.2 and 3. The respondent no.2 M/s DD Sales Corporation, owns 18 Marlas of land whereas respondent no.3 M/s Chandra Auto Engineers Private Limited owns 16 Kanals 08 Marlas of land and in this way, both the respondents own little over two acres of land out of the total jointly held 45.63 acres of land.

6. Vide order dated 04.07.2011, Assistant Collector 1st Grade, Ballabgarh, District Faridabad, had partitioned the aforesaid common land belonging to the appellant and respondents no.2 and 3. After completion of partition proceedings, 'Sanad Takseem' was also issued in the year 2011 and mutation of land in favour of respective owners was sanctioned on 06.08.2011. In this way, the appellant and respondents no.2 and 3 became owners in possession of their respective shares of the land.

7. Not satisfied with the said partition, the respondents no.2 and 3 preferred appeal before the Collector, Commissioner and Financial Commissioner, but their appeals were dismissed and partition of land was upheld. As mentioned above, licence no.05 of 2012 dated 24.01.2012 was issued in favour of the appellant.

8. The respondent no.3 M/s Chandra Auto Engineers Private Limited, filed CWP No.25226 of 2013 (O&M) before the Hon'ble Punjab and Haryana High Court challenging therein the partition of the land carried out by the Assistant Collector 1st Grade as upheld by various appellate and revisional authorities. The Hon'ble Single Bench of the High Court in the said writ petition passed the order dated 01.07.2014 and relevant part of the same is as follows:-

"In these circumstances, this Court is prima facie satisfied that since mode of partition does not find mention in the zimni order dated 14.06.2011 and calling of naksh 'kha' and 'ga' is not in accordance with law, the order appears to have been passed in hot haste. Parties are directed to maintain status quo with regard to possession as on today.

Respondent-caveator will be at liberty to file reply on or before the date fixed with advance copy to the counsel for the petitioner. Other respondents be served in due course.

This Court taking notice of the orders passed by Assistant Collector Ist Grade, Ballabgarh, is prima facie of the view that notice be issued to respondent No.4 by name after getting information as to who was the officer at the relevant time, from the Collector, Faridabad and Assistant Collector Ist Grade, Ballabgarh (at the relevant time) is directed to file specific reply with regard to zimni orders passed from 02.05.2011 to 21.06.2011, which have been

placed in this paper-book as Annexure P-5 (collectively) and the mode of partition approved.

July 01, 2014

*(Paramjeet Singh)
Judge”*

9. Subsequently, said writ petition no.25226 of 2013 and four more CWPs No.20448 of 2016, 22145 of 2013, 22174 of 2013 and 24091 of 2013, were disposed of by the Hon'ble Punjab and Haryana High Court, vide order dated 09.05.2016 and the relevant part of the same is as follows:-

“In view of above, impugned orders are set aside, Case is remitted back to the Assistant Collector Ist Grade, Ballabgarh, with a direction to afford opportunity to the respondents in the partition application to file reply and thereafter proceed in accordance with law. If the Assistant Collector comes to the conclusion to proceed with the application, then he will call Naksha ‘Ka’ in accordance with law and thereafter shall frame a proposed mode of partition and give opportunity to the parties to file objections. Once the mode of partition becomes final, Naksha ‘Kha’ will be called and again opportunity shall be provided to the parties to file objections to the same and thereafter a speaking order will be passed on the objections filed to Naksha ‘Kha’ before approving or disapproving the same. Thereafter Assistant Collector Ist Grade shall proceed in accordance with law inviting Naksha ‘gha’ and sanad takseem in accordance with law. It is

made clear that nature and character of the land which is subject-matter of partition has to be taken as final as on the date of applications for partition and not on the date of decision. If any construction is raised on the land in question subsequently i.e., after the date of filing of applications for partition, same shall be ignored and land shall not be treated as gair mumkin due to construction. If it is permitted it would amount to depriving the shareholders of their valuable right of partition under the provisions of the Punjab Land Revenue Act. The Assistant Collector Ist Grade shall decide the matter with regard to proceed or not to proceed with application within a period of two months from the date of receipt of certified copy of this order. Parties, through their counsel, are directed to appear before the Assistant Collector Ist Grade, Ballabgarh, on 23.05.2016.

Disposed of.

May 09, 2016

*(Paramjeet Singh Dhaliwal)
Judge”*

10. Aggrieved by the same, the appellant preferred LPA No.2129 of 2016 and while issuing notice of motion in the said LPA, the Hon’ble Division Bench ordered that “in the mean time, passing of the final order shall remain stayed.” Thereafter, the said LPA No.2129 of 2016 and three connected LPAs No.2142, 2081 and 2131 of 2016 were disposed of by the Hon’ble Division Bench of the Punjab and Haryana High Court

vide order dated 08.04.2021 and relevant part of the same is as follows:-

“In the circumstances, we set aside the order dated 09.05.2016 passed by learned Single Judge and remand the case back to the learned Single Judge for a decision afresh.

Consequently, all the appeals stand disposed of. Since the main appeals are disposed of, the Civil Misc. Applications, if any, shall also stand disposed of.

08.04.2021

(AJAY TEWARI)
JUDGE

(RAJESH BHARDWAJ)
JUDGE”

11. Subsequently, respondent no.3 M/s Chandra Auto Engineers Private Limited preferred a Civil Miscellaneous Application No.12038 dated 19.08.2021 in CWP No.25226 of 2013 and made the following prayer:-

“It is, therefore, respectfully prayed that the present application may kindly be allowed, and the aforesaid writ petition may kindly be restored to its original position along with interim order dated 01.07.2014 i.e., at the stage existing prior to judgment dated 09.05.2016 and further CWP No.25226 of 2013 may kindly be listed for actual date of hearing in the interest of justice.”

12. The aforesaid application was dismissed by the Hon'ble Single Bench of Punjab and Haryana High Court, vide order dated 13.09.2021, which is as follows:-

"This application has been filed for listing of the case after restoration of the writ petition to its original number and for directions that interim order dated 01.07.2014 stands revived.

Vide judgment dated 09.05.2016, this writ petition and connected cases were decided. Letter Patent Appeal filed by the private respondent has succeeded. Order of the learned Single Judge has been set aside and the matter has been remanded for a fresh decision.

In view of the above, the writ petition already stands restored to its original number. As a corollary, all legal consequences on account of restoration of the writ petition shall flow. There is no need for passing a direction for restoration.

So far as listing of the matter is concerned, considering the fact that limited hearing is in progress, no orders can be passed. The applicant may apply for the same after physical hearing is restored completely.

The application has no merit and is dismissed.

September 13, 2021

(SUDHIR MITTAL)
JUDGE"

13. Since, the appellant was in the process to develop the plotted colony and the same was partly developed and

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partly sold and was an ongoing project and as the appellant had not filed any application for registration of the ongoing project, suo moto complaint no.1404/2018 was registered against the appellant by the learned Authority for taking penal action under Section 3 and Section 39 of the Act. During the hearing of the said suo moto complaint, vide order dated 25.10.2021, the learned Authority on an application preferred by respondents no.2 and 3 to implead them as necessary parties in the said proceedings ordered to implead them as necessary parties. Subsequently, the appellant filed an application for registration of the project vide Temp.ID 957 of 2021. In view of this application preferred by the appellant for registration of the project, the learned Authority decided to dispose of suo moto complaint no.1404 of 2018 and merged entire file of the complaint with the file of the appellant in which application had been preferred by the appellant for registration of the project.

14. Since, both the parties to the present lis had been interpreting the order dated 13.09.2021 handed down by the Hon'ble High Court, regarding the aforesaid status quo order dated 01.07.2014, in their respective favours, so vide impugned order dated 05.01.2022, the learned Authority ordered that it will be appropriate that such a clarification is

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sought from the Hon'ble High Court rather than asking the Authority to interpret the effect of the said order. After handing down of this order dated 05.01.2022, an application dated 11.02.2022 was filed by the appellant for correction of the date of the order of the Hon'ble High Court to be 13.09.2021 instead of 08.04.2021, which was mentioned due to inadvertence by the Authority as it was an error on the face of it regarding the date of the order. In the said application, the appellant had also prayed that the Authority could also proceed ahead with the registration of the project regardless to pending dispute between the parties. During the said proceedings before the learned Authority, the respondents no.2 and 3 also filed an application alleging that they cannot be forced by the appellant to give consent to illegal partition order given by the Assistant Collector 1st Grade which is not sustainable in the eyes of law. Since, the learned Authority felt that in fact it was an attempt on the part of the appellant to request the learned Authority to review its earlier order dated 05.01.2022, and the settlement offer made by the appellant to the respondents no.2 and 3, is not acceptable to them, so both the applications were disposed of by the learned Authority vide impugned order dated 17.05.2022.

15. With this background, the present lis between the parties is before this Tribunal for adjudication.

16. Learned counsel for the appellant has assailed the legality of the impugned order dated 05.01.2022 handed down by the learned Authority, by contending that the learned Authority has erroneously directed the parties to seek clarification regarding the order dated 13.09.2021 passed by the Hon'ble High Court because the law is well settled that the interim order cannot be revived on remand of the matter. Further, it has been contended that in view of the order dated 08.04.2021 handed down by the Division Bench of the Hon'ble Punjab and Haryana High Court, all earlier interim orders/final order passed by the Hon'ble Single Bench have been rendered infructuous and by no stretch of imagination, it can be construed that the status quo order dated 01.07.2014 was automatically revived after the matter had been remanded by the Division Bench of the Hon'ble High Court. Further, it has been submitted that the project launched by the appellant is mostly developed and out of the 900 plots in the said project/colony, 264 have already been allotted. So much so, conveyance deeds have also been executed in respect of 30 plots and 163 plots for development of EWS Housing have already been handed over to Haryana Housing Board.

Reliance has been placed upon citations **(2006) 8 Supreme Court Cases 72 titled State of Gujarat and Others Vs. Dilipbhai Shaligram Patil and 2015 SCC Online Chh 86 Arvind Gupta and others Vs. Bindra Prasad and others.**

17. Countering this vehemently, learned counsel for the respondents has submitted that the Division Bench of Hon'ble High Court vide order dated 08.04.2021 had set aside the order dated 09.05.2016 passed by the Hon'ble Single Judge and remanded the case back to the Hon'ble Single Judge for a decision afresh and in these circumstances, all the ancillary interlocutory orders including the order of status quo dated 01.07.2014, which had been passed prior to the dismissal of writ petition, would stand revived. Thus, the learned Authority has rightly observed and directed the parties to seek clarification in this regard from the Hon'ble High Court. Further, he has submitted that in view of the status quo order dated 01.07.2014 directing the parties to maintain status quo with regard to possession, the registration of the project by the learned Authority would allow the appellant to develop the project and sell the plots and would alter the current status of possession. Reliance has been placed upon citations **2004(2) RCR (Civil) 708 titled Vareed Jacob Vs. Sosamma Geevarghese and Ors..**

1979(1) RCR (Rent) 556 titled Amal Mal Sindhi Vs. Ram Prakash and 2017 SCC Online Calcutta 900 titled Falcon Tie-Up Pvt. Ltd. Vs. Rekha Patra @ Bapi Mondal and ors.

18. The only bone of contentions between the parties is that whether in view of the order dated 08.04.2021 handed down by the Division Bench of the Hon'ble Punjab and Haryana High Court, vide which the order dated 09.05.2016, passed by the Hon'ble Single Judge was set aside and the matter was remanded back to the Hon'ble Single Judge for a decision afresh, the status quo order dated 01.07.2014 with regard to possession as on that day stood revived or not and what are consequences of the same?

19. The ratio of the citations **Vareed Jacob's** case (Supra) handed down by three judges bench of the Hon'ble Supreme Court, **Amal Mal Sindhi's** case (Supra), handed down by the Division Bench of the Hon'ble Delhi High Court and **Falcon Tie-Up Pvt. Ltd.'s** case (Supra) can be condensed as follows:-

“All the ancillary interlocutory orders which have been passed before the dismissal would stand revived along with suit unless the court expressly or by the implications excludes the operation of the interlocutory order passed during the period between the dismissal of the suit and the restoration.

Normally, the remand order would not affect any interlocutory orders unless the remand order expressly says so. The result of the remand, therefore, is only to set aside the final order and remitting the case back to the trial court for a rehearing and decision on the record except in so far as the record becomes different by the remand order. If the remand order does not vary the record in respect of the interlocutory orders, then the interlocutory orders along with the main case which had come to an end by the dismissal are restored.”

20. As has been referred above, the CWP no. 25226 of 2013 was preferred by the respondent no. 2 & 3 before the Hon'ble Punjab and Haryana High Court challenging therein the partition of the land and the Hon'ble Single Judge of the High Court in the said writ petition, passed the order dated 01.07.2014 directing the parties to maintain status quo with regard to possession as on that day. Subsequently, the said writ petition along with other connected petitions were disposed of by the Hon'ble Punjab and Haryana High Court vide order dated 09.05.2016 and the impugned orders for partition were set aside and the case was remitted back to the Assistant Collector Ist Grade Ballabgarh with a direction to afford opportunity to the respondents in the partition application to file reply and thereafter proceed in accordance with law. The said order dated 09.05.2016 was assailed by the appellant by way of preferring the LPA No. 2129 of 2016 and

the said LPA along with three connected LPAs were disposed of by the Hon'ble Division Bench of the Punjab and Haryana High Court vide order dated 08.04.2021, by which the order dated 09.05.2016 passed by Hon'ble Single Judge was set aside and the matter was remanded back to the Hon'ble Single Judge for a decision afresh. Here this fact deserves special mention that in the remand order dated 08.04.2021 passed by the Division Bench of the Hon'ble Punjab and Haryana High Court, there is absolutely nothing to suggest even remotely that the interlocutory orders including the status quo order dated 01.07.2014, directing the parties to maintain status quo regarding possession, have been varied or altered.

21. While applying the aforesaid facts and circumstances of the present lis, on the touch of the principles as laid down above, the inevitable conclusion is that in view of the order dated 08.04.2021 handed down by the Division Bench of the Hon'ble High Court of Punjab and Haryana vide which the order dated 09.05.2016 passed by the Hon'ble Single Bench was set aside and the case was remanded back to the Hon'ble Single Judge for a decision afresh,, the status quo order dated 01.07.2014, directing the

parties to maintain the status quo with regard to possession stood revived.

22. There is no dispute to the proposition of law as laid down in Citation **State of Gujarat and others'** case (Supra), which is as follows:-

“5. It is well settled that an order of stay granted pending disposal of a writ petition/suit or other proceedings, comes to an end with the disposal of the substantive proceedings and that it is the duty of the court in such a case to put the parties in the same position, they would have been but for the interim orders of the court. Any other view would result in the act or order of the court prejudicing the party for no fault of his and would also mean rewarding the writ petitioner in spite of his failure. Any such unjust consequence cannot be countenanced by the courts.”

However, the above said citation is of no help to the case of the appellant and is distinguishable because as per the facts of that citation, the writ petition filed by the respondent questioning the order of discharge from service, was dismissed by the Hon'ble Gujarat High Court and it was clearly indicated in the said dismissal order that the interim relief stood vacated. Thereafter, the respondent filed Letter Patents Appeal and the same was allowed with the observation that having carefully perused the speaking order of admission and

interim order dated 11.01.1994 passed by the Hon'ble Single Judge, the petition was required to be allowed. In fact, by an interim order the Hon'ble Single Judge had particularly allowed the writ petition.

To assail the same, the appellant-State of Gujarat preferred Special Leave Petition before the Hon'ble Supreme Court and the aforesaid order passed in Letter Patents Appeal was set aside with the observations that since the Hon'ble Gujarat High Court had not dealt with the matter on merits and merely because an interim order had been passed pursuant to which reinstatement had been done, that cannot be a ground for allowing the relief, and the matter was remitted to the Hon'ble Gujarat High Court for fresh consideration on merits. Thus, the interim order dated 11.01.1994 which stood vacated at the time of dismissal of writ petition by Hon'ble Single Judge could not have revived in such circumstances. Moreover, the decision in **State of Gujarat and Others'** case (Supra) had been handed down by the Hon'ble Division Bench of the Apex Court, whereas the decision handed down in **Vareed Jacob's** case (Supra) had been handed down by three judges' bench of the Hon'ble Supreme Court.

The citation **Arvind Gupta and others'** case (Supra), is also of no help to the case of the appellant as the same had been handed down by the Hon'ble Chhattisgarh High Court while relying upon the citation of **State of Gujarat and Others'** case (Supra).

23. Faced with the situation, learned counsel for the appellant, while drawing the attention of this Tribunal towards the order dated 13.09.2021 passed by the Hon'ble Single Bench of the Hon'ble Punjab and Haryana High Court has submitted that since the application preferred by respondent no.3 for restoration of the interim order dated 01.07.2014 was dismissed, so, it cannot be said that the interim order dated 01.07.2014 stood revived.

24. After thoroughly going through the application preferred by respondent no.3, praying that Writ Petition No.25226 of 2013 be restored to its original position along with the interim order dated 01.07.2014, i.e. at the stage existing prior to the judgment dated 09.05.2016 and further Writ Petition No.25226 of 2013 may kindly be listed for the actual date of hearing in the interest of justice, and the order dated 13.09.2021 passed by the Hon'ble High Court, we are of the considered view that the arguments advanced by learned

counsel for the appellant is not only devoid of merit but is also misconceived.

25. A thorough perusal of the order dated 13.09.2021 passed by the Hon'ble High Court, which has been reproduced above, reveals that the Hon'ble High Court had specifically observed in the said order that the writ petition already stands restored to its original number and as a corollary, all legal consequences on account of restoration of the writ petition shall follow and there is no need for passing a direction for restoration. Since, the writ petition already stood restored to its original number and as a corollary, all legal consequences on account of restoration of the writ petition were ordered to follow, so, in this way status quo order dated 01.07.2014 stood revived. Merely, because in the said order dated 13.09.2021 towards the end, it has been mentioned that the application preferred by respondent no.3 has been dismissed, it cannot be construed that the prayer which was made by respondent no.3 for restoration of order dated 01.07.2014, was not accepted by the Hon'ble High Court, specifically when admittedly the said writ petition is pending before the Hon'ble High Court for final disposal. The prayer that the writ petition be listed for actual date of hearing in the interest of justice, was disposed of with the observations that so far as listing of

the matter is concerned, considering the fact that limited hearing is in progress, no orders can be passed. The applicant may apply for the same after physical hearing is restored completely.

26. The submission of learned counsel for the appellant that the order dated 31.08.2022 passed by the Principal Secretary to Government of Haryana, Town and Country Planning Department, Chandigarh observing that as a consequence of setting aside order dated 09.05.2016, all previous orders passed in these writ petitions, which were merged in the order dated 09.05.2016, the writ petitions are deemed to be put into a decision of fresh writ petitions having no order been passed, has persuasive value, cannot be attached any credence in view of the above said observations made by this Tribunal in the present order.

27. The learned Authority has rightly observed that registration of a project by the Authority permits a promoter to develop the project, to sell plots and to alter the current status. Registration is also a guarantee to investing public and future allottees that title of the project is totally clear and their interest will be adequately protected and they are not likely to be adversely affected in any manner.

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28. During the course of arguments nothing substantial has been argued by the learned counsel for the appellant to assail the impugned order dated 17.05.2022 handed down by the learned Authority.

29. Consequently, the impugned orders passed by the learned Authority do not suffer from any legal infirmity or illegality calling for any interference by this Tribunal. Resultantly, both the appeals being without any merit are hereby dismissed.

30. No orders as to costs.

31. The copy of this judgment be communicated to learned counsel for the parties/parties and the learned Authority.

32. The original judgment be attached with appeal no.535 of 2022 and the certified copy thereof be attached with appeal no.503 of 2022.

33. Files be consigned to the record.

Announced:
October 14, 2022

Inderjeet Mehta
Member (Judicial)
Haryana Real Estate Appellate Tribunal,
Chandigarh

Anil Kumar Gupta
Member (Technical)