

(2022-1)205 PLR 281

PUNJAB AND HARYANA HIGH COURT

Before: Mr. Justice Tejinder Singh Dhindsa and Mr. Justice Vivek Puri.

EMCIPI ELECTRONICS PVT LTD. – Petitioner,

versus

STATE OF HARYANA and others – Respondents.

CWP No.18657 of 2021 (O&M)

Haryana Development & Regulation of Urban Areas Act 1976, Rule 13 - Application for renewal of licence - Has to be submitted at least 30 days before the expiry of the licence - Such application seeking renewal has to be as per Form LC-VI and is to be accompanied by certain charges, an explanatory note indicating details of development/reasons for non-completion of development work etc. document - No document has been placed on record or referred to during the course of hearing before us that any application had been moved during the subsistence of the licence period seeking renewal of the same under Rule 13 of the 1976 Rules - For seeking grant of completion certificate, there has to be a clear declaration with regard to completion of works/development works whether in whole or in part as per terms and conditions of the licence and the layout plan in triplicate has to be enclosed - Petitioner herein cannot escape from the rigors and the statutory obligation cast upon it under Rules 13 and 16 of the 1976 Rules. [Para 20]

Mr. A.M. Dar, Senior Advocate with Ms. Anamika Mehra, for the petitioner.

Tejinder Singh Dhindsa J. - (22nd September, 2021) – Petitioner company had earlier approached this Court by filing CWP No.16246 of 2020 seeking issuance of directions to the official respondents to issue completion certificate for Block-B i.e. Delta Square, IFFCO Chowk, Gurugram, Haryana. Such writ petition was disposed of vide order dated 06.10.2020 with a direction to the Director General, Department of Town and Planning, Haryana, to consider and take a final decision on a representation dated 14.08.2020 (Appended as Annexure P-11 alongwith that petition) in accordance with law. Instant petition is directed against the order dated 30.07.2021 passed by the second respondent i.e. Director, Department of Town and Country Planning, Haryana, (Annexure P-14) declining the prayer for issuance of completion certificate.

2. Brief facts pleaded are that the petitioner-company is registered under the Companies Act 1956. It is the owner of a certain parcel of land falling in the Revenue Estate of Village Sukhrali, Tehsil and District Gurugram. A collaboration agreement had been entered into by

the petitioner in the year 2003 with M/s Uppal Infrastructure Projects Limited (now M/s Jassum Propcon Projects Private Limited). Licence No.116 of 2004 dated 06.08.2004 had been granted under the provisions of the Haryana Development & Regulation of Urban Areas Act 1975 for setting up of a commercial colony. Such licence was granted in the name of the petitioner-company and which was valid for a period of two years i.e. upto 5th of August 2006. The licence was thereafter renewed by the respondent department upto 05th of August 2009 vide letter dated 02.01.2009.

3. It has been submitted that the petitioner-company had also entered into collaboration with a developer namely Mr. Atul Bansal for raising construction of two commercial buildings classified into two blocks i.e. Delta Square Block -A which came to be known as ABW Tower. The second block was Delta Square Block-B. The instant petition pertains to Delta Square Block-B.

4. Petitioner-company gave a power of attorney executed on 18.10.2005 in favour of Mr. Atul Bansal who was to develop the project.

5. It has been asserted that since petitioner-company over a period of time was convinced that the developer is not fulfilling the requisite obligations, the General Power of Attorney issued in favour of Mr. Atul Bansal, was cancelled on 14.05.2018.

6. Learned Senior counsel representing the petitioner-company submits that two show cause notices from the Directorate of Town and Country Planning Department, Haryana, dated 29.01.2018 and 08.08.2019 (Annexures P-4 and P-5 respectively) under the provisions of the Haryana Development & Regulations of Urban Areas Rules 1976 (in short 1976 Rules) were received and to which a detailed reply dated 01.06.2018 at Annexure P-6 had been submitted. It has also been contended that prior thereto an application dated 10.02.2012 (Annexure P-10) had been filed for issuance of completion certificate but no decision thereupon had been taken.

7. It is under such circumstances that CWP No.16246 of 2020 had been preferred and which was disposed of vide order dated 06.10.2020 (Annexure P-13) directing the Director General, Department of Town and Country Planning, Haryana to take a final decision on the representation dated 14.08.2020 as regards issuance of a completion certificate for Block-B Delta Square. It is in purported compliance of the directions issued by this Court that the representation of the petitioner has been decided and the impugned order dated 30.07.2021 (Annexure P-14) has been passed declining the request for issuance of completion certificate pertaining to licence No.116 of 2004 dated 06.08.2012.

8. Learned Senior counsel has argued that the impugned order dated 30.7.2021 (Annexure P-14) declining completion certificate to the petitioner company has been passed in a slipshod manner. The grounds that have been urged by the petitioner in the representation and which had been directed by this Court to be decided while disposing of CWP No.16246 of 2020 have not even been dealt with and considered. Further urged that no reasons have been assigned in support of the rejection. It has also been argued that the impugned order has been passed in a mechanical fashion. A view has been taken by the second respondent

that the request letter dated 10.02.2012 for completion certificate was not available on the office record whereas in the same very impugned order it has been noticed that a photocopy of the same was however available. It is argued that the petitioner company cannot be made to suffer as it was an administrative lapse on the part of the respondents.

9. Learned Senior counsel further submits that at no point of time was any demand of fee raised by the department from the petitioner and in the absence of the quantum towards licence fee/augmentation charges etc. having not been indicated, the petitioner cannot be penalized.

10. Further urged that the petitioner even as of date is ready and willing to pay all charges that the respondents may levy in accordance with the rules.

11. Senior counsel has been candid in admitting that there has been a lapse inasmuch the developer company with whom a collaboration agreement had been entered into had not discharged its duty and obligation towards seeking extension of the licence and thereafter completion certificate but in so far as the licensee company i.e. the present petitioner is concerned, the necessary safeguards have been taken as regards issuance of a public notice cancelling the power of attorney that had been granted in favour of Mr. Atul Bansal. An attempt has been made to convince this Court that the petitioner company should not be made liable for the lapse(s) attributable to the developer company/Mr. Atul Bansal.

12. We have heard Senior counsel at length and have perused the pleadings on record.

13. Rule 13, 14, 16 as also format of Form LC-VIII as finds mentioned in Rule 16 of the Haryana Development and Regulation of Urban Areas Rules 1976 would be relevant to the issue at hand and are reproduced hereunder:-

13. *Application for renewal of license* [Section 3(4)].— In case a colonizer fails to complete the development works within the period specified in sub-rule (2) the rule 12 for the reasons beyond his control, he may apply to the Director for the renewal of licence in form LC VI at least thirty days before the expiry of the licence and the said application shall be accompanied by :- {(i) A demand draft drawn on a scheduled bank in favour of the Director against the licence renewal fee, for a sum calculated at the rate prescribed as follows:-

(a) Licence where completion [10% of the licence fee certificate for part of the : prescribed in rule 3 as licenced area has not been prevailing on the date of issued under rule 16 ; application for renewal;

(b) Licence where completion 2.5% of the fee prescribed certificate for part of the in rule 3 as per the prevailing licenced area has been rates at the time of grant of issued under rule 16 part completion certificate shall be levied on area for which the part completion certificate is granted, whereas for remaining area the prescribed fee as mentioned sub-clause (a) shall be levied.}]

(ii) [XXXX];

(iii) An explanatory note indicating the details of development works which have been completed or are in progress or are yet to be undertaken;

(iv) Reasons for non-completion of development works as required in terms of the licence granted to him; and

(v) [the licence for verification].

Provided that in case of licence granted for development of affordable group housing colony, the licence shall not be renewed beyond period of 4 years from the date of commencement of the project which shall be date of approval of building plans or grant of environmental clearance, whichever is later:

Provided further that in case of licence granted for development of affordable plotted residential colony under Deen Dayal Jan Awas Yojana-Affordable Plotted Housing Policy, 2016, integrated colony under new integrated licencing policy, the development works shall necessarily be completed within a period of 7 years (5 years initial validity + 2 years first renewal of licence) from the date of grant of licence and in case the further extension is sought, then the same shall be considered subject to the satisfaction of the Director and on payment of a renewal fee equal to 100 percent of the applicable licence fee.]

14. *Renewal of licence* [Section 3(4)].— (1) On receipt of an application under rule 13, the Director shall if satisfied after making such enquiries as he may consider necessary, that the delay in execution of development works was for reasons beyond the control of the colonizer, renew the licence for a period of one year.

(2) In case the Director is not so satisfied, he shall reject the application and in that case an intimation in this regard will be sent to the colonizer in form LC-VII:

Provided that before rejecting the application, the Director shall give the colonizer an opportunity of being heard.

16. [Completion certificate/Part Completion Certificate [Section 24].[(1) After the colony has been laid out according to approved layout plans and development works have been executed according to the approved designs and specifications, the coloniser shall make an application to the Director in Form LC-VIII alongwith a demand draft on account of Infrastructure Augmentation Charges as per the rates prescribed in the Schedule-B of these rules if not paid earlier in accordance with the provision of Section 3(7) of the Act.]

(2) After such [scrutiny], as may be necessary, the Director may issue a [completion certificate/part completion certificate] in form LC-IX or refuse to issue such certificate stating the reasons for such refusal:

Provided that the colonizer shall be afforded an opportunity of being heard before such refusal.

FORM LC-VIII

[See Rule 16(1)]

Registered

From

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.....

To

The Director,

Town and Country Planning, Haryana,

Chandigarh.

Sir,

Kindly refer to your memorandum No..... dated granting licence to the setting up of a colony atTehsiland District.....

2. I/We have to intimate that the said colony has been laid out and completed part of the colony as shown on the enclosed plan has been completed in all respects as per terms and conditions of the licence granted by you. I/We, therefore, request that a completion certificate in respect of the whole colony/ the said part of the colony may kindly be issued as required under rule 16.

3. As required I/We enclose the layout plan of the colony in triplicate showing the whole/part thereof over which the said works have been completed.

Date

Yours faithfully,

Place

(Name and address)"

2. Perusal of the afore-reproduced provisions would make it clear that an application for renewal of a licence has to be submitted at least 30 days before the expiry of the licence. Such application seeking renewal has to be as per Form LC-VI and is to be accompanied by certain charges, an explanatory note indicating details of development/reasons for non-completion of development work etc. Under Rule 14, the Director if upon making enquiries is satisfied that the delay in execution of development works was for reasons beyond the control of the colonizer, may renew the licence for a period of one year. Rule 16 governs grant of completion Certificate/Part Completion Certificate. In terms thereof, if the colony has been laid out as per approved layout plans and the development works have also been executed according to the approved designs and specifications, the colonizer has to make an application to the Director in Form LC-VIII alongwith a demand draft towards Infrastructure Augmentation charges as per rates prescribed in Schedule-B of the Rules.

15. As per form LC-VIII under Rule 16 (1) it has to be specifically intimated that the colony has been laid out and completed as per the plan which is to be enclosed. The lay out plan of the colony in triplicate reflecting the completion of the works whether in whole or in part as per terms and conditions of the licence has to be enclosed.

16. Adverting to the facts of the present case, the admitted position is that licence bearing No.116 of 2004 dated 06.08.2004 had been granted in the name of the licensee company i.e. the petitioner herein.

17. Such licence was valid upto 05.08.2006. Vide letter dated 02.01.2009 issued by the respondent-department the licence was renewed upto 05.08.2009. No document has been placed on record or referred to during the course of hearing before us that any application had been moved during the subsistence of the licence period seeking renewal of the same under Rule 13 of the 1976 Rules.

18. Learned senior counsel has placed heavy reliance upon an application dated 10.02.2012 at Annexure P-10 claiming that the same had been submitted for grant of completion certificate. Even though in the impugned order it has been observed that no such application is available as per record still assuming in favour of the petitioner company that such application had been submitted, we find that the same is not as per requirement under Rule 16 of the 1976 Rules. For seeking grant of completion certificate, there has to be a clear declaration with regard to completion of works/development works whether in whole or in part as per terms and conditions of the licence and the layout plan in triplicate has to be enclosed. Even though the application dated 10.02.2012 at Annexure P-10 does reproduce the language of Rule 16 but the supporting documents as per requirement of the rule have neither been placed on record nor have been shown to us in spite of a specific query having been raised during the course of hearing. That apart such application even if filed, for grant of completion certificate was not during the subsistence period of a valid licence. Herein the licence in favour of the petitioner company after renewal had expired on 05.08.2009. We have not been shown any application that had been preferred seeking further renewal of the licence or for that matter any order passed by the respondent-department renewing the licence beyond 05.08.2009.

19. The stand on behalf of the petitioner company as regards seeking completion certificate vide application dated 10.02.2012 at Annexure P-10 also does not inspire any confidence and it appears to us as an afterthought. It is the pleaded case of the petitioner company that notices dated 29.01.2018 and 08.08.2019 at Annexures P-4 and P-5 had been received under the provisions of 1976 Rules. A reply had been submitted to the same dated 01.06.2018 (Annexure P-6). Perusal of such reply submitted in the month of June 2018 does not even carry a whisper as regards the application dated 10.02.2012 (Annexure P-10) seeking completion certificate and upon which much emphasis was laid at the time of hearing before us. The entire focus in the reply was on the mis-doings of Mr. Atul Bansal, Director of the Developer Company and such Mr. Bansal, having failed to discharge the responsibility of taking statutory permissions etc. for construction of the building.

20. Even if the submissions advanced by Senior counsel are taken at their face value, that it

was the duty of Mr. Atul Bansal, to have applied for the completion certificate and to ensure that the licence was kept valid and renewed from time to time till such time the completion certificate was issued, the licensee company i.e. the petitioner herein cannot escape from the rigors and the statutory obligation cast upon it under Rules 13 and 16 of the 1976 Rules. In such regard the second respondent in the impugned order dated 30.07.2021 has rightfully observed that if Mr. Atul Bansal, Director of the Developer company has committed fraud with the licensee company, the same would amount to an internal dispute between the parties and as such needs no intervention of the department.

21. We find the submission raised by the Senior counsel as regards the impugned order being passed in a mechanical fashion and without any reasoning to be without merit. To the contrary we find that the request of the petitioner company for grant of completion certificate has been rejected vide impugned order dated 30.07.2021 (Annexure P-14) by assigning cogent and valid reasons. It has specifically been noticed that the completion certificate has to be applied and obtained within the validity period of the licence but in this case the licensee i.e. the petitioner or for that matter the developer company had not submitted any application for getting the licence renewed beyond 05.08.2019 as per requirement of Rules 13 and 14 of the 1976 Rules. It has further been recited in the impugned order that the application dated 10.02.2012 (Annexure P-10) alongwith the instant petition could not be considered to be a valid application as per Rule 16 of the 1976 Rules.

22. We may also take note that CWP No.16246 of 2020 that had been filed by the petitioner earlier in point of time had been disposed of vide order dated 06.10.2020 (Annexure P-13) by directing the respondents to consider and decide the representation dated 14.08.2020. Such representation has been placed on record and appended at Annexure P-11 alongwith the instant petition. Perusal of the same would reveal that in such representation the petitioner had only sought information as regards the amount of "construction licence fee" outstanding against licence No.116 of 2004. No other ground/contention had been raised in such representation. In spite thereof, the impugned order is a detailed reasoned order after grant of opportunity to the petitioner company/its authorized representative.

23. We do not find any infirmity in the decision making process while declining issuance of completion certificate. Even on merits the decision is well-founded and upon taking notice of relevant facts as also the applicable provisions under the 1976 Rules.

24. No basis for interference is warranted.

Petition dismissed in limine.

Sd/- Vivek Puri, J.

R.M.S.

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Petition dismissed.