

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of decision: 16.05.2023

CWP-25844-2018

RAMAVTAR SINGH Petitioner

VERSUS

PERMANENT LOK ADALAT FOR PUBLIC UTILITY SERVICES (PUS)
BHIWANI AND OTHERS
.....Respondents

(2) CWP-25922-2018

UMED DEVI Petitioner

VERSUS

PERMANENT LOK ADALAT FOR PUBLIC UTILITY SERVICES (PUS)
BHIWANI AND ANOTHER
.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Abhimanyu Singh, Advocate
for the petitioners.

VINOD S. BHARDWAJ, J. (Oral)

Both these writ petitions are being decided by a common
judgment as separate petitions have been filed by Husband & Wife against

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the award dated 26.07.2018 passed by the Permanent Lok Adalat (Public Utility Services), Bhiwani in relation to two different Booth numbers owned by the petitioners. While CWP-25844-2018 has been preferred against Booth No. 48 situated in City Centre, Bhiwani; CWP-25922-2018 relates to Booth No. 47. The grounds of challenge & reasons for dismissal remain the same.

2. For the facility of reference, facts have been extracted from CWP-25844-2018. Briefly, the case of the petitioner is that he was allotted Booth No. 48 at City Centre, Bhiwani by the respondent-HSVP vide allotment letter No.6062 dated 16.09.2008. The tentative price of the plot was Rs. 15,61,000/- and the petitioner deposited a sum of Rs. 1,56,100/- as bid money vide receipt No. 15222 dated 29.08.2008. Thereafter, the additional amount of Rs.2,34,150/- was also deposited by the petitioner vide receipt No. 16227 dated 03.11.2008 taking the total deposited amount to the extent of 25% of the tentative price of the Booth. The petitioner contends that an assurance was given to the petitioner at the time of allotment of the booth that the site would be developed very soon and offer of possession in respect of the booth/plot will be made immediately on completion of development work at the spot which had not been completed at the time of allotment and the basic amenities were not provided at the spot. Several representations/requests were sent by the petitioner to develop the sites and to provide the basic amenities, however, no heed was paid to such requests and the area in question was not developed. The possession was also not offered by the respondents. Resultantly, the petitioner stopped the remittance of the balance installments. It is further averred that a high tension electric wire was also passing through the area of the booth/plot in question and the

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respondent was requested to remove the high tension electric wire so that he could commence the construction work. Reference was made to various letters/communication dated 10.02.2012, 08.05.2012, 24.07.2012, 20.11.2012 and 24.06.2013 which have been sent to higher authorities as well. No action was taken on the same and the petitioner even approached the Chief Administrator, HUDA for seeking redressal of his grievance. The respondents, however, demanded an interest for delayed deposit of the money, after the possession of the plot was offered on 22.06.2015. The petitioner claims that he has requested the respondent-authorities to waive off the interest on the installments as there was deficiency in service on the part of the respondent-authorities by not providing the basic amenities on the spot and the respondent itself not being in a position to offer possession of the plot on account of the high tension wire having been erected over the plot in question. The authorities failed to offer the physical possession of the plot on the spot for a period of 07 years, the petitioner was restrained from raising construction on the said plot/booth or to smoothly run his business operations timely, resulting in huge financial losses. It was claimed that a sum of Rs. 11,70,750/- had been shown as outstanding amount of installment and a sum of Rs. 8,65,962/- was shown payable as interest on the defaulting amount. It is averred that the abovesaid demand was not justified and that the petitioner is aggrieved by the high handedness of the respondents and entitled to recover damages for financial losses caused to him as well as compensation for mental harassment and agony. An application was thus preferred before the Permanent Lok Adalat (Public Utility Services), Bhiwani under Section 22 (C) of the Legal Services Authorities Act, 1987 and notice was issued to respondents whereupon they

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filed their response taking various objections including the objection pertaining to locus standi, maintainability, jurisdiction, non-joinder and mis-joinder of necessary parties. Additionally it was also contended that the true and material facts claimed by the petitioner-applicant are incorrect. It was stated out that the plot in question had been allotted to the petitioner at a tentative price of Rs. 15,61,000/- being the highest bidder. Possession of booth was also offered. However, the said offer was received back undelivered. The same was sent again vide letter No. 6577 dated 06.10.2008 which was duly received by the petitioner-applicant and respondent No.2. The petitioner and the co-owner deposited an amount of Rs. 1,56,100/- as bid money being 10% of the total price of the plot vide receipt No. 15222 dated 29.08.2008 and deposited a sum of Rs. 2,34, 150/- to make 25% of the total price of the plot vide receipt dated 03.11.2008. An application was made by the petitioner on 10.02.2012, requesting for removal of the electric wire passing over the booth and to charge interest on the remaining amount with effect from the date of removal of the electrical wire. The said request was forwarded to the Executive Engineer, HUDA, Electrical Division, Hisar vide letter bearing endorsement No. 1185 dated 09.03.2012. Vide Memo No. 2083 dated 07.04.2015, the Executive Engineer, HUDA, Electrical Division, Hisar intimated that there was no wire passing over the concerned booth/plot as per the report of the Sub Divisional Engineer. Accordingly, the interest on the balance price of the plot was to accrue w.e.f. 06.10.2008. However, the petitioner and the respondent No.2 i.e. the owners did not deposit the balance 75% amount of the tentative price. It was also stated that the respondent No.1 wrongly and inadvertently issued an offer of possession of booth No. 48 vide Memo No.E.O. (B)/1477 dated 22.06.2015 which was

withdrawn vide letter No. 25323 dated 15.07.2016. A further averment was made that offer of possession of the plot having been made on 06.10.2008 with all basic amenities being complete, the petitioner was liable to pay the interest for delayed payment of the balance installments. As the conciliation proceedings in terms of Section 22-C (4) to (7) of the Legal Service Authorities Act, 1987 failed to crystallize into a resolution, the adjudication of the dispute was initiated by the Permanent Lok Adalat (Public Utility Services), Bhiwani under Section 22-C (8) of the Legal Services Authorities Act, 1987.

3. Upon consideration of the respective contentions and evidence adduced on record, the application preferred by the petitioner was dismissed. Aggrieved thereof, the present petition has been filed.

4. Notice of the instant writ petition had been issued to the respondents who were duly served. However, despite service they chose not to appear. Consequently, the respondents were ordered to be proceeded against ex-parte vide order dated 28.08.2019. The matter was thereafter adjourned on various occasions to await appearance, if any, and has finally been heard on merits.

5. Learned counsel appearing on behalf of the petitioner reiterates the submission noticed above and contends that the basic amenities at the spot had not been provided for and that a high tension electric wire was passing through the plot in question and as a result whereof the booth in question could not be constructed and utilization of the said property not be done. He contends that the information received on 22.06.2015 establishes that the offer of possession should be held from the said date only and that

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any possession interest claimed/charged by the respondents for any period prior thereto is liable to be set aside.

6. I have heard learned counsel for the petitioners and gone through the documents available on record.

7. The petitioner was directed to refer to any material available on record on the basis whereof it may be ascertained that the basic amenities as are required to provided for at the spot before issuance of offer of possession had not been made available till 22.06.2015. He has failed to refer to any such material and has also not appended any other document on the basis whereof it can be held that the basic amenities i.e. water supply, electric supply, sewerage and roads were not available at the spot when the offer of possession was initially made. Further, the petitioner has not been able to dispute the fact that the offer of possession was sent by the respondents vide letter No. 6577 dated 06.10.2008 or to establish that no such offer of possession was ever received by him. The Permanent Lok Adalat (Public Utility Services), Bhiwani had, after consideration of the evidence adduced before it, recorded as under:

“11. The petitioner in the present petition claimed that after allotment of the booth, 25% total amount against tentative price of the booth/plot was deposited but site was not developed and amenities were not provided and high tension electricity wire passing over the booth no. 48 and were not removed despite successive request and then after it was claimed that after removal of the electricity wire possession was offered on 22.06.2015 and department was not justified either in demanding the instalment or interest until the possession is offered.

When written reply was filed it was claimed that on 10.02.2012 respondent No.1 moved the application to remove the electricity wire passing over booth no.48 and charging the interest after the date of removal of electricity wires. It was claimed that the matter was forward to Executive Engineer, HUDA Elect. Division, Hisar and it was intimated that there is no stay wire in booth no. 48 and no electricity wire is passing over the plot no. 48.

12. For deciding the controversy in proper manner it is to be seen as to whether electricity supply line was passing over the booth no. 48 and in case if any line was there when it was removed. According to letter Ex. RS sent to Estate Officer, HUDA, Bhiwani by Executive Engineer, HUDA Elec. Division. Hisar, no stay wire or electricity wire was passing over the booth no. 48 and as such it is establish on record that no electricity supply line was passing over the booth no.48 and no stay wire was there and as such Ex. R5 is the decisive correspondence on this behalf.

Another controversy is that when the possession was offered and according to allotment letter Ex. RI/P1 the possession was offered vide para no 25 of allotment letter Ex.P1 dated 06.10.2008 and as such the contention of the petitioner that possession was offered only in the year 2015 is not tenable because according to respondent offer of possession was made with the letter of allotment Ex. PI/R1 and in the given scenario the another letter Ex.P11 dated 22.06.2015 regarding offer of possession is provided to have been erroneously issued because according to Ex.R8 letter dated 15.07.2016 HUDA intimated the petitioner that the letter dated 22.06.2015 was inadvertently issued as the offer of possession was made with allotment letter dated 06.10.2008 itself.

Now in the totality of circumstances it is establish on record that no electricity line was passing over booth no.48 and

no stay wire was there and possession was offered at the time of issuance of allotment letter dated 06.10.2008 itself and as such if the petitioner did not visit the HUDA office for delivery of possession and demarcation of the area the fault lies with the petitioner and HUDA authority cannot be blamed because no electricity line was passing over the booth no.48. The claim of the petitioner that possession was only offered vide Ex. R6/P11 on 22.06.2015 after removal of the electricity wire is again not tenable because no electricity line was passing over the booth no. 48 and letter dt. 22.06.2015 i.e. Ex.R6/P11 was withdrawn vide Ex. R8 while claiming that possession was offered with the allotment letter dated 06.10.2008 itself and letter dated 22.06.2015 was inadvertently issued. Now in view of letter Ex. R8 it is established on record that letter dated 22.06.2015 Ex. R6 stands withdrawn because the possession had already been issued when the allotment letter Ex. PI/RI was sent on 06.10.2008 itself.

When petitioner did not take any step in furtherance of Ex.PI/RJ for getting the actual physical possession no fault can be attributed to the respondent after offer of possession the responsibility was that of the petitioner allottee.

13. Petitioner has placed on record various documents Ex.P1 to P12 but surprisingly no correspondence after receipt of Ex.P1 allotment letter dated 06.10.2008 till application Ex.P2 dated 10.02.2012 is there at the instance of the petitioner and as such petitioner kept over sleeping as petitioner has not sent any letter from the year 2008 to 2012 for existence of alleged electricity line passing over the booth no. 48 and now it is established on record that no electricity line ever passed over booth no. 48 and as such the excuse being taken by the petitioner that neither offer of possession was made prior to 22.06.2015 nor electricity line was removed is proved to be a false stand taken just to avoid the payment of interest on account of non- payment of instalment.”

8. It is evident from a perusal of the above said award and the finding recorded that the Permanent Lok Adalat (Public Utility Services), Bhiwani specifically returned a finding that no electric wire was passing over the booth in question and that even at the stage when the first letter was submitted by the petitioner, it was not his case that the basic amenities at the spot were not available. The only grouse espoused was that an electric wire passed through the plot & ought to be removed. It cannot thus be construed that the basic amenities had not been provided for by the respondent-HSVP, at the stage. If the contention of the petitioner about absence of basic amenities would be correct, there was no reason why such shortcoming would not find mention in the contemporaneous correspondence. More so, when letter intended to highlight the deficiency itself.

9. Further, there is no evidence on record also to suggest that any electric transmission line was passing over and above the plot and that the petitioners were ever prohibited from raising a construction on the plot of which possession had already been offered by the respondent-HSVP.

10. Reliance has been placed by the petitioner solely on the letter dated 22.06.2015, however, it was the specific stand of the respondents that the said letter had been inadvertently issued and the same stood withdrawn. No benefit of any such inadvertence can be extended to an allottee especially when the letter of withdrawal dated 15.07.2016 had never been assailed or challenged. Consequently, there is no evidence brought before the Court, on the basis whereof it may be held that the finding recorded by the Permanent Lok Adalat (Public Utility Services), Bhiwani suffers from any illegality, perversity, impropriety or non-appreciation of the evidence adduced on record.

11. It has been reiterated by a Division Bench of this Court in the matter of ***“Sweta Estates Pvt. Ltd. versus Director, Town & Country Planning, Haryana and another”*** bearing ***Civil Writ Petition No. 6636 of 2002*** dated 18.07.2003 that an allottee cannot refrain from payment of the installments merely on the allegations regarding amenities have not provided at the spot. The present case fails to reflect that the basic amenities had not been provided at the spot when the possession was offered. Resultantly, the petitioner had no justification of non-payment of the installment and/or had a valid basis to contend and claim that he is not liable to pay interest on the delayed payment. The relevant extract of the judgment of the Division Bench is reproduced hereinafter below:

“24. In view of the above discussion, we do not consider it necessary to deal with various decisions relied upon by the learned counsel for the parties. However, it is apposite to mention that the judgment of the Division Bench in M/s Shanti Kunj Investment (P) Ltd. v. U.T. Administration (supra) was considered and distinguished in C.W.P. No. 13695 of 2001 M/s D.L.G. Builders Pvt. Ltd. v. Adviser to the Administrator, Chandigarh Administration and others, decided on 13.2.2002 and 2002(3) RCR (Civil) 101 (P&H) C.W.P. No. 4936 of 2001 Haryana Builders Ltd.. Gurgaon v. Haryana Urban Development Authority and others decided on 8.3.2002. In M/s. D.L.G. Builders Pvt. Ltd. v. Adviser to the Administrator, Chandigarh Administration and others (supra), the Court examined the scheme of the Capital of Punjab (Development and Regulation) Act, 1974 and after making reference to the various decisions including the judgments of M/s Shanti Kunj Investment (P) Ltd. v. U.T. Administration (supra) held as under:

"In our opinion, the judgment in M/s Shanti Kunj Investment (P) Ltd.'s case (supra) has to be read in the light of the peculiar facts brought before the Court and the same cannot be read as lying down the proposition that the allottee is not required to pay the instalments of premium with interest and ground rent in accordance with the terms and conditions of allotment and Rule 12 of the Rules till each and every amenity enumerated in Section 2(a) is made available at the site. The obligation of the Administration to provide approach road, water supply, electricity, sewerage, storm water drainage can be read as implicit in the scheme of the Act and the Rules, but it cannot be said that the allottee is entitled to withhold the payment of Instalments on the ground of lack of particular amenity at the site. If the basic amenities, like water, electricity and approach road are not available at the site and on that account, it is not possible to construct the building, the allottee can represent to the Administration that he may not be burdened with the liability of ground rent and may not be penalised for non-construction within the specified time. After completion of building, he can represent for waiver of ground rent in case facility of sewerage has not been provided. However, after taking possession of the site and constructing the building, he cannot avoid his obligation to pay the balance of the premium along with interest and ground rent in accordance with the conditions of allotment and the provisions of Rule 12 of the Rules on the pretext that land-scaping has not been done or pavement has not been tiled (as averred in the present case) or the particular public utility service has not been provided. In our considered view, the allottee is bound to pay the balance premium and other charges in accordance with the conditions of allotment. If the

judgment of M/s Shanti Kunj Investment Pvt. Ltd. (supra) is read as laying down a proposition that the allottee is not obliged to pay the balance of premium even after raising construction of the building and occupying it on the pretext that beautification of the site has not been done or land-scaping has not been provided or pavement of the tiles has not been done, extremely anomalous consequences would follow in- as-much as, the allottee would construct building and utilise the same by renting out or otherwise and thereby reap huge benefits, but would not pay a single penny towards balance of premium and ground rent etc. Therefore, while examining the complaint of the allottee about the lack of amenities, what the court is required to consider is whether the basic amenities, like water, electricity, approach road, sewerage and drainage have been provided in the area so as to facilitate construction of the building within the specified time. If such amenities have been provided, the Court will not interdict in the matter and facilitate withholding of the balance of premium, ground rent etc. Rather, it would insist that all the dues of public money are paid by the allottee in accordance with the relevant rules/regulations and conditions of allotment."

12. In the absence of any evidence to substantiate & establish the claim of the petitioner about lack of basic amenities & the authoritative pronouncement of the Division Bench in the case of Sweta Estate (Supra) mandating payment of balance installment, I fail to find any error in the award.

13. Finding no illegality, perversity or impropriety in the award so passed and absence of any material to show that there is a mis-appreciation of evidence adduced before the Court, the award dated 26.07.2018 passed by

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the Permanent Lok Adalat (Public Utility Services), Bhiwani can not be interfered with and the same is accordingly upheld.

The present writ petitions are accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 16, 2023
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No