

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.13310 of 2000(O&M)

Date of decision:2.2.2015

**The Priyadarshni PNB Employees Coop. House Building Society
Ltd.Petitioner**

VERSUS

Chandigarh Administration and othersRespondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE HARI PAL VERMA

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?

Present: Mr.Ashish Aggarwal, Senior Advocate with
Mr. Gaurav Rana, Advocate for the petitioner.

Mr. Vishal Sodhi, Advocate for respondents No.1 to 3
and 5.

Mr. Indresh Goyal, Advocate for respondents No.4 and 5.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to the communication dated 03.05.2000 (Annexure P-22) whereby an application submitted by the petitioner for allotment of plots for the members of the Society was declined for the reason that the petitioner has not deposited the requisite earnest money.

The facts in brief are that with an object of promoting private housing and optimum utilization of land by constructing multi-storeyed structures, Chandigarh Administration came out with a scheme for allotment of land to the Cooperative House Building

Societies in the year 1979. The scheme was amended in the year 1991 when the Chandigarh Housing Board was appointed as agency for allotment of sites to the Cooperative House Building Societies. A communication was sent to the petitioner on 24.10.1991 (Annexure P-2) to apply along with tentative earnest money equal to 25% of the premium to be calculated at the rate of Rs.750/- per square yard with a view to assess the requirement of land under the said scheme. It was also contemplated that the members can be of three categories i.e. Category 'A' would be of members having monthly income of Rs.5001 and above; Category 'B' would be of members having monthly income of Rs.2001 to 5000 and Category 'C' would be of members having monthly income up to Rs.2000/-. The relevant extract from the communication dated 24.10.1991 reads as under:-

"Applications are, therefore, required from the societies alongwith the applications of their eligible members only with tentative earnest money equal to 25% of the premium to be calculated at the rate of Rs. 750/- per sq. Yds. with a view to assess the requirement of land for the allotment under the said scheme. You are accordingly requested to apply on the prescribed form available from this office alongwith the earnest money and applications of only eligible members for the allotment of land. Incomplete applications will, however, not be considered. This letter does not confer any right on the society/members for the allotment of land. The earnest money of the unaccommodated societies shall be refunded. The correctness of particulars of applicants/eligible members shall be the responsibility of Co-op. Societies and the President of the Society shall have to file an affidavit to this effect.

A list of members of your Co-operative Societies as found eligible by the Screening Committee constituted by the Chandigarh Administration for the purpose on the basis of documents/affidavits submitted by you, is enclosed. However, the members/applicants still found ineligible according to the terms and conditions of the above referred scheme shall be debarred.

The list of applicants category-wise alongwith applications and earnest money be sent to this Board within 30 days from the issue of this letter.

The categories are specified as below:-

1. Category 'A' Members having monthly income of Rs. 5001 to above.
2. Category 'B' Members having monthly income of Rs. 2001 to 5000.
3. Category 'C' Members having monthly income upto Rs. 2000/-."

On 24.12.1991, Annexure P-3, another communication was sent to the petitioner contemplating that the Society is required to deposit earnest money at the rate of 25% of the premium calculated at the rate of Rs.750/- per square yard on the basis of dwelling units to be constructed per acre as per revised density, category wise. It was conveyed that in one acre, 30 dwelling units would be of Category 'A'; 40 dwelling units of Category 'B' and 50 dwelling units of Category 'C'. A public notice (Annexure P-4) was also issued which also mentioned that 5% rebate against the amount of earnest money shall be given to those societies who deposit the earnest money by 31.01.1992.

The petitioner submitted an application (Annexure P-5) on 31.01.1992 on behalf of 122 members and deposited a sum of Rs.13,36,175.18paise towards earnest money. Though, the application is silent about the categories of the applicants but a perusal of communication dated 14.08.1992 (Annexure P-7) shows that 98 members were of Category 'A' and 24 members of Category 'B'. The communication (Annexure P-7) is on behalf of the Chandigarh Housing Board to the petitioner pointing out that the total premium as

per 122 members comes out to be Rs.1,40,35,755/- at the rate of Rs.750/- per square yard. The Board has also sought certain other information from the Society with a view to finalize the matter relating to the allotment of land. The relevant extract from the communication dated 14.08.1992 (Annexure P-7) reads as under:-

- "7. The total premium of this land works out to Rs. 1,40,35,755-00 @ Rs. 750/- per sq. yd.
8. With a view to finalize the matter relating to the allotment of land, the following information may kindly be furnished within 30 days:-
- i) List of eligible members i.e. of the members duly approved by Registrar Cooperative Society/Screening Committee.
 - ii) List of each member giving details of deposits made on his behalf (as on 1.6.92) category wise.

Further, you are requested to deposit the balance 15% of the amount in respect of all those eligible members on behalf of whom only 10% has been deposited by 1.6.92 within 60 days from the date of issue of this letter."

It may be noticed that at this stage, a writ petition was filed before this Court including one by the petitioner bearing CWP No.6476 of 1992, wherein the following order was passed by this Court on 27.05.1992:-

"Admitted D.B.

To be heard with CWP No. 1574 of 1991.

Learned counsel for the petitioners contends that the rules provide for deposit of only 10% of the amount of the tentative price and the remaining 15% is to be deposited if plots/flats are allotted. In view of this, learned counsel for the State-Union Territory, Chandigarh does not oppose the prayer of the petitioners for stay to the extent of deposit of 15% of the tentative price. The petitioners shall deposit 10% of the tentative price within the time extended by this court vide order dated 31.3.1992. The petitioners undertake that if the writ petition is dismissed, they shall deposit the remaining amount with interest @ 18% per annum

if they accept allotment of flats under the scheme. The Chandigarh Administration shall also refund the amount deposited by the petitioners with interest at the same rate to those petitioners who are not interested in the allotment of flats."

The said bunch of writ petitions i.e. CWP No.1454 of 1992 titled The Chandigarh Vayu Barti Coop House Building Society v. Union of India and others, including the writ petition filed by the petitioner were dismissed on 18.12.1996, inter alia, rejecting the claim of the petitioner for fixation of price for allotment of land at the price prevailing in the year 1981. It was found that it would be nothing else but an undue enrichment of the petitioners at the cost of State Exchequer or at the cost of other tax payer. After holding so, the Court observed as under:-

"Before parting, we may observe that in view of the interim order passed by this Court wherein the petitioners were allowed to deposit 10% of the sale consideration while applying for the allotment of plots. The Societies who had deposited 10% of the sale consideration and found eligible for allotment or have been allocated the sites, would be liable to pay the balance 15% of the amount so as to make it 25% as per terms and conditions of the allotment as agreed upon by them, with a further interest at the rate of 18% per annum."

After the said order was passed by this Court, the petitioner remitted a sum of Rs.47,64,518/- vide communication dated 09.05.1997 (Annexure P-11) inclusive of interest at the rate of 18% per annum calculated up to 15.05.1997. The said amount was not accepted vide communication dated 06.06.1997 (Annexure P-12) but ultimately vide communication dated 15.12.1997 (Annexure P-15) it was communicated that the petitioner may pay balance payment of

15% to complete the 25% of the earnest money within two months. It is thereafter, the petitioner re-deposited the amount on 26.12.1997 (Annexure P-15/A).

It appears that the petitioner sought refund of the amount in respect of 10 members vide communications dated 15.12.1997 and 05.02.1998. Accepting the request of the petitioner, the Chandigarh Housing Board communicated on 12.05.1998 (Annexure P-17) that earnest money deposited by 10 members total amounting to Rs.2,61,500.82 paise would be refunded after forfeiting 10% of the amount deposited. Such amount was ordered to be adjusted towards the overall dues payable by the Society to the Board as well. However, on 14.12.1998 (Annexure P-18), the petitioner was informed that an amount of Rs.67,425/- was less towards 10% of the earnest money in January, 1992 and that no reasons have been given not to deposit the said amount.

Subsequently, the petitioner served a notice for directing the respondents to entertain their request for allotment of land. It is said request, which stands finally declined on 03.05.2000 (Annexure P-22), the communication impugned in the present writ petition. The relevant extract from the order reads as under:-

"Please refer to the Board's Endst. No. 1914 dated 21.01.2000 on the subject noted above.

2. The case of your society was referred to the Finance Secretary, U.T, Chandigarh, who is the Chief Administrator of the Scheme called "Chandigarh Allotment of land to Coop. H.B. Societies Scheme, 1991" for conveying the decision on the issue of deposit of short payment of Rs. 67,425/- on a/c of 5% rebate deducted by your society from the 10% E.M. Itself. The Finance Secretary, U.T., Chandigarh has advised the

Board to take action in the light of the recommendations of 2 members committees which was constituted to consider and examine various pending issues of the Societies.

The said Committee has observed as under:-

"As per policy decision, an incentive was given to all such societies in the form of rebate of 5% of the 25% Earnest Money in case the societies deposited 25% earnest money in full by 31.3.92. In this particular case, the Society deposited only 10% earnest money in respect of 122 members in the year 1992 and that too after deducting rebate amount of 5% of 25% earnest money on its own. This rebate was applicable only to those societies who had deposited 25% earnest money on or before 31.3.92. This society failed to do so and moreover deposited only 10% earnest money less 5% of 25% earnest money. There is no justification for considering the case of the society as neither did they deposit 25% earnest money by 31.3.92 to become eligible for 5% rebate nor did they comply with interim court orders dated 11.5.92(depositing 10% earnest money in actual). Therefore, the committee is of the view that the case should be rejected and merits no consideration."

In view of the above position the amount deposited by your society lying with the Board amounting is Rs. 60,35,353/- including the forfeited amount is returned herewith vide cheque No. 231854 dated 1.5.2000 as per details give below:"

Learned counsel for the petitioner has challenged the communication (Annexure P-22) on the ground that such order was passed in violation of the principles of natural justice as no opportunity of hearing was granted to the petitioner before rejecting the claim of the petitioner for allotment of land. It is further argued that the petitioner has made up the deficiency in the amount of earnest money when it tendered the amount on 26.12.1997 after the orders were passed by this Court. It is also contended that at that time there were only 111 members, 11 members having withdrawn subsequently. Thus the earnest money deposited on 31.01.1992 has to be treated as the earnest money on behalf of 111 members and cannot be said to be

deficient in any manner, consequently, the petitioner would be entitled to allotment of land for its 111 members in response to an application submitted by the petitioner on 31.01.1992. It is also contended that the entire amount claimed by the respondents was tentative. Since the amount was tentative, a small variation in the amount could very well be ignored to entertain the application of the petitioner for allotment of plots. It is also argued that the petitioner has been called upon to complete 25% of the earnest money vide communication dated 15.12.1997 (Annexure P-15), therefore, having paid the requisite earnest money in pursuance of such communication, the respondents are estopped to treat the application of the petitioner as not accompanied with requisite amount of earnest money. It is also pointed out that vide communication dated 21.01.2000 (Annexure P-20), Chandigarh Housing Board has sought adjustment of the short payment from the payments made on 05.02.1998.

On the other hand, Mr. Sodhi, learned counsel for the respondents, has pointed out that 10% of the premium amount is the requirement of the statutory rules i.e. Chandigarh Lease Hold of Sites and Building Rules, 1973 (for short 'the Rules'). Rule 8 (2) of the Rules contemplates that no application for allotment of a site shall be valid unless it is accompanied by 10% of the premium as the earnest money in the prescribed mode of payment. Since the petitioner has not deposited 10% of the premium as per the norms made known by the respondents before the application was submitted by the petitioner, therefore, the application of the petitioner could not be entertained for allotment of the plots. The relevant Rule reads as under:-

“8. *Lease by allotment-Procedure for-* (1) In case of allotment of site or building the intending lessee shall make an application to the Estate Officer in Form “A”.

(2) No application under sub-rule(1) shall be valid unless it is accompanied by 10 per cent of the premium as earnest money in the prescribed mode of payment.

(3) When 10 per cent of the premium has been so tendered the Estate Officer shall, subject to such directions as may be issued by the Chief Administrator in this behalf, allot a site of the size applied for or a building of which particulars are given in the application and shall intimate, by registered post the number, sector, approximate area, premium and the rent of the site or building allotted to the applicant.

xx xx xx xx xx”

We have heard learned counsel for the parties at length and find no merit in the present writ petition. It is not disputed that the members of the Society were 98 of Category 'A' and 24 of Category 'B' while making application on 31.01.1992 (Annexure P-5). The earnest money required to be deposited in respect of such category was Rs.1,40,35,755/-. It is the said amount which was communicated to the petitioner on 14.08.1992 (Annexure P-7) itself. While communicating the earnest money required, the petitioner was also called upon to deposit 15% of the amount in respect of eligible members by 01.06.1992. The petitioner never made up the deficiency in making up the earnest money of 10%. The petitioner also did not deposit 15% of the amount but invoked the writ jurisdiction of this Court.

In the earlier writ petition, the interim order was passed but subsequently, the writ petition stands dismissed. Still, even after

dismissal of the writ petition, the petitioner waited for almost five months to send the remaining 15% of the amount but again did not make up the deficiency of the 10% of the earnest money soon after the decision of the writ Court. In the absence of the requisite earnest money required in terms of the Rules, the petitioner cannot claim that their application was required to be considered for allotment of plots to the members of the Society.

The subsequent event of withdrawal of 11 members, 10 at one stage and another one at the later stage, is a fact which cannot make the application valid of the petitioner. There was a cut-off date before which the applications were required to be submitted along with earnest money i.e. 31.01.1992. The Administration had extended the period of deposit of balance 15% up to 01.06.1992 but the petitioner did not deposit even 10% of the amount within the time fixed or upto 1.6.1992. The petitioner, therefore, could not claim benefit of subsequent withdrawal of certain members to raise an argument that their application should be treated as a valid application.

The argument that the Administration itself has called upon the petitioner to deposit 25% of the earnest money and therefore they are estopped to dispute the validity of the application is again not tenable. Not only there was a categorical communication earlier in respect of deficient deposit of 10% vide communication dated 14.08.1992 (Annexure P-7) but even in communication dated 15.12.1997 (Annexure P-15), the petitioner was called upon to pay

balance payment of 15% within two months. It was based on the assumption that 10% of the amount stands already paid. Since the petitioner has not deposited the amount in terms of the statutory Rules, the application submitted by the petitioner could not have been entertained and has rightly not been entertained.

The argument that opportunity of hearing was not granted to the petitioner is again not tenable. Communication dated 03.05.2000 (Annexure P-22) was issued consequent to the representation submitted by the petitioner. The opportunity of hearing is required only if the petitioner has any vested right or any such right to be affected. The failure to deposit 10% of the earnest money in terms of the statutory Rules does not create any right in the petitioner to claim an opportunity of hearing. In fact, even submitting an application along with the earnest money does not create any right. Reference may be made to Full Bench judgment of this Court in Surjit Singh and others v. State of Punjab and others, AIR 1980 Punjab 65; judgment of Hon'ble Supreme Court in Chaman Lal Singhal v. Haryana Urban Development Authority & Others, 2009(4) SCC 369 and Greater Mohali Area Development Authority and others v. Manju Jain and others, (2010) 9 SCC 157.

In respect of the communication (Annexure P-20), suffice is to mention here that it is the recommendation by the Chandigarh Housing Board to the Finance Secretary. The decision of the Finance Secretary has been produced on record as Annexure P-21. The decision is that rebate at the rate of 5% is to be allowed to the

societies by the Administration and cannot be availed by the societies themselves. The relevant extract from the communication reads as under:-

"V) The rebate @ 5% on land premium for early payment as allowed to the societies by the Administration is not to be effected by the societies themselves. They are supposed to make the full payment and rebate is to be given by the Administration/Chandigarh Housing Board on receipt of the full payment from the Societies and adjusted against the next instalment. The societies who have applied the rebate at their own level by making the payments, should be asked to pay up remaining portion of the instalment of premium immediately."

Therefore, in the absence of any decision by the Competent Authority, the recommendation of the Chandigarh Housing Board will not confer any right in favour of the petitioner as such communication is part of the decision-making process, the decision being that the societies were required to make full payment and rebate is to be given by the Administration.

Since the petitioner has not deposited the amount of earnest money itself in terms of the statutory Rules, the application submitted by the petitioner has rightly been rejected.

Consequently, we do not find any merit in the present writ petition. The same is, thus, dismissed.

(HEMANT GUPTA)
JUDGE

FEBRUARY 2, 2015
D. Gulati'

(HARI PAL VERMA)
JUDGE