

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6795 of 2002
Date of Decision: 26.02.2015

Ujjal Singh Sahni

....Petitioner

Versus

Chandigarh Housing Board and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. R.L. Batta, Senior Advocate with
Mr.Harsimran, Advocate for the petitioner.

HARI PAL VERMA, J.(ORAL)

Through the instant writ petition filed under Articles 226/227 of the Constitution of India, petitioner has challenged the order dated 30.06.2000(Annexure P-50) passed by Development Officer-respondent No.4 on behalf of respondent No.3, whereby registration and allotment of dwelling unit No. 5501, category-II, Mani Majra, Phase-I in the name of the petitioner, was cancelled and the entire amount deposited by the petitioner was forfeited in the light of Clause 20 of the allotment letter. Challenge has also been raised to the order dated 20.12.2000(Annexure P-54) passed by respondent No.2, whereby the appeal against the order of cancellation dated 30.06.2000 was dismissed.

Briefly stated the petitioner a senior citizen and a practicing Advocate at Punjab and Haryana High Court, Chandigarh as well as Hon'ble Supreme Court of India, applied for a flat under a Self Financing Scheme, 1989 floated by the respondents for construction of Category-I and Category-II flats in Mani Majra, called as Modern Residential Complex, Mani Majra, Phase-I. The eligibility conditions under the said scheme read as under:-

a) That the applicant or his wife/husband or any of the dependent relations including unmarried children do not own on free-hold or lease hold or hire-purchase basis a residential plot or house in the Union Territory of Chandigarh or in any of the Urban Estates of Mohali or Panchkula.

b) That the applicant has not acquired a house/residential site anywhere in India through Government/Semi Govt./Municipal Committee/Corporation/Improvement Trust at concessional rates i.e. at reserved/fixed price in his name or in the name of any dependent member of his family. Besides, the applicant was required to fulfil the condition of domicile of having been a bona fide resident of Chandigarh for the last three years prior to the making of the application.

Considering himself to be eligible for allotment of a flat under the 1989 Scheme, petitioner submitted his application form to the respondent-Board for a category-II flat on 08.07.1989. While submitting his application, the petitioner had submitted that neither he nor his wife or any of his dependent relations including unmarried children owned any free hold/lease hold or on hire-purchase basis, a residential plot or house in the Union Territory of Chandigarh or in any of the Urban Estates of Mohali or Panchkula, nor they had acquired any residential plot or house anywhere in India through Govt./Semi Govt./Municipal Committee/Corporation/Improvement Trust/Notified Area Committee at concessional rate i.e. at reserve/fixed price in his name or in the name of any dependent member of his family.

On the basis of information so furnished, the respondent-Board found the petitioner eligible. Accordingly, his name was included in the draw of lots which was held on 01.12.1989. As a result of such draw of lots, the petitioner was found successful and was allocated ground floor flat in the above mentioned scheme.

In September 1984, the petitioner was introduced by his elder brother, late Brig. T.N. Singh to his friend Major Gurdev Singh (later Lt. Col. Gurdev Singh), who was posted in the field Area and who had been allotted plot No. 638, Sector-12, Panchkula by Haryana Urban Development Authority (for short 'HUDA'), vide allotment letter dated 06.11.1979 subject to the terms and conditions of said allotment letter that the plot remains with HUDA untill all the installments were paid and the conveyance deed was executed. On 26.09.1984, said Major Gurdev Singh had executed a General Power of Attorney in favour of the petitioner appointing him as his General Attorney to pay instalments on his behalf and to deal with HUDA in respect of plot No. 638, Sector-12, Panchkula. By that time Major Gurdev Singh (now Lt. Col. Gurdev Singh) had not decided to transfer his plot to the petitioner or his wife and it is after the draw of lots, as conducted by the respondent-Board, Plot No. 638, Sector-12, Panchkula was re-allotted in the joint name of the petitioner and his wife, vide allotment letter dated 16.01.1990, subject to the condition that HUDA will remain the owner, as all the instalments have not yet been paid nor conveyance deed had been executed in favour of the original allottee. It was in the month of February, 1990 that Lt. Col. Gurdev Singh came from his posting in field area and conveyed to the petitioner that he had finally made up his mind to part with Plot No. 638, Sector-12, Panchkula, and that conveyance deed could be got executed in favour of the petitioner and his wife. Accordingly, Estate Officer, HUDA executed the conveyance deed in favour of the petitioner and his wife on 17/21.2.1990, in respect of plot no.638, Sector-12, Panchkula, after all the instalments had been paid by the original allottee.

On 08.10.1990, petitioner received a letter from the respondent-Board, asking him to furnish the details on a non-judicial

stamp paper duly attested by an Executive Magistrate requiring the petitioner to state that he or his spouse or any member of his family, dependent, neither owned nor had acquired a dwelling unit from the Chandigarh Housing Board or any other source in the U.T. of Chandigarh. The petitioner was further required to give details of the dwelling unit/residential plot acquired by him, his spouse, dependent members of his family anywhere in India through public auction or at reserve price from the Board, Corporation, Development Authority, Improvement Trust, Municipal Committee, Municipal Corporation, Notified Area Committee etc. In response to this letter, petitioner furnished the requisite information on non-judicial stamp paper enclosing the affidavit duly attested by the Executive Magistrate, Chandigarh on 22.10.1990. On the basis of information so furnished, respondent-Board accepted the claim of the petitioner for allotment of the flat and issued him the acceptance-cum-demand letter dated 07.12.1990, intimating that he has been allocated Ground Floor of category-II flat under the 1989 Self Financing Housing Scheme on the basis of draw of lots held on 01.12.1989. The petitioner was directed to deposit instalments, as per the schedule of payment prescribed therein.

On 19.11.1991, in order to complete the record and to examine his eligibility, the respondent-Board asked the petitioner for certain documents/information. One of the documents asked for, was the domicile certificate, to prove that the petitioner was a bonafide resident of Union Territory of Chandigarh for at least 3 years on the date of submitting the application. The respondent-Board also required other documents i.e. an affidavit from the spouse that he or she does not own any free-hold or lease-hold or on hire-purchase basis, any residential plot or house in Union Territory of Chandigarh or in any of the Urban Estates of Mohali or

Panchkula. Accordingly, vide his letter dated 19.12.1991, petitioner submitted an affidavit of his wife and also the documents in support of his being a bonafide resident of Union Territory of Chandigarh for at least 3 years prior to the submission of the application on the basis of above exercise, the petitioner had taken formal possession of the Flat No. 5501, Mani Majra, Phase-I, from the respondent-Board on 15.12.1994 and had set-up his office. However, in second week of September, 1996, a false and motivated complaint was made against him by one Mr. P.N. Kaul, making all sorts of false and defamatory allegations with a view to pressurize the petitioner to vacate first floor portion of H. No. 513, Sector-11-B, Chandigarh, which the petitioner had been occupying as a tenant for the last many years. Vide letter dated 05.12.1996, the petitioner asked the Development Officer as well as the Account Officer of the respondent-Board requesting them to intimate the balance amount to be paid. However, in response to the letter dated 05.12.1996, the petitioner was informed that the balance amount of the price could not be accepted from the petitioner because of the complaint filed by Mr. Kaul. Further, the petitioner was issued a show cause notice dated 14.01.1997 from the respondent-Board calling upon him as to why the registration and also the allotment of the dwelling unit No. 5501, Category-II, Mani Majra, Phase-I, be not cancelled and the amount deposited so far be forfeited. The only ground of cancellation of the registration was that the petitioner owned House No.638, Sector-12, Panchkula, jointly with his wife without mentioning the date as to when the said house came to the ownership of the petitioner and his wife. Thereafter, the petitioner was issued another show cause notice dated 22.04.1997 from the respondent-Board and the petitioner submitted his reply on 07.02.1997. Petitioner received the order dated 30.06.2000

(Annexure P-50) by registered post, whereby the respondent-Board had cancelled the registration and allotment of dwelling unit No. 5501, Category-II, Manimajra, Phase-I, from the petitioner's name and the entire amount deposited by the petitioner till date was forfeited. The order dated 30.06.2000(Annexure P-50) cancelling the registration and allotment of dwelling unit in question was made subject matter of appeal and the appeal was dismissed on 20.12.2000 (Annexure P-54). Against the order dated 20.12.2000 (Annexure P-54), petitioner filed a further appeal on 11.04.2001 (Annexure P-55) before the Board of Chandigarh Housing Board, Chandigarh, under Section 72-A of the Haryana Housing Board Act, 1971, as extended to UT, Chandigarh and the said appeal was also dismissed by respondent No.1 on 08.01.2002 (Annexure P-64).

It is in the aforesaid circumstances the petitioner has filed the present writ petition challenging the order of cancellation dated 30.06.2000(Annexure P-50) passed by Development Officer-respondent No.4 on behalf of respondent No.3. Challenge has also been raised to the order dated 20.12.2000(Annexure P-54) and order dated 11.04.2001(Annexure P-55), whereby the appeals against the order of cancellation, have been dismissed.

On notice of motion having been issued, the respondents have filed their respective replies, wherein it has been submitted that power of attorney grants power to the petitioner to sell or transfer the plot in question, as such, it amounts to a sale. Thus, the contention of the petitioner that there was no decision to transfer the plot to the petitioner appears to be incorrect. The plot in question i.e. plot No. 638, Sector-12, Panchkula, was re-allotted in favour of the wife of the petitioner on 18.11.1987. The contention of the petitioner that the said plot continued to belong to HUDA, even if assumed to be correct, it does not affect the terms and conditions

stated in Regulation 6 of the Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979 (for short "Regulation of 1979), inasmuch as even property that is purchased on hire-purchase, where title does not pass until the payment is made, is covered for the purpose of ineligibility. Since the wife of the petitioner has already acquired a residential site in Panchkula on a date prior to making of the application for allotment by the petitioner, the petitioner is ineligible to get the flat in question. It is non-disclosure of this crucial fact, which led to the filing of subsequent false affidavit, and ultimately resulted into cancellation of allotment made by the respondents in favour of the petitioner. It is not absolute/unqualified ownership on the basis alone which calls for disqualification in terms of Regulation 6. The terms include within their ambit allotments/re-allotments where payment is made on installments. As such, the petitioner was clearly disqualified from making an application and had the petitioner disclosed in his application that his wife had already been allotted a plot in Panchkula on the basis of friendly transfer, the application of the petitioner would have been rejected outrightly. It is because of this reason the petitioner did not disclose the correct facts in his application which were subsequently supported by affidavit that the respondents laboring under an erroneous assumption of facts, made the allotment in favour of the petitioner. The wife of the petitioner on 18.11.1987 had already been re-allotted plot No. 638, Sector-12, Panchkula and the very fact that she had this allotment in her favour, disentitled the petitioner to apply for allotment of a flat by the respondents in terms of the brochure, application form as well as regulation 6. It has been further stated that the plea that the petitioner did not deliberately conceal this material fact from the respondents, is totally false. The name of the petitioner was

included in the draw of lots in which the petitioner was declared successful and was ultimately allotted a ground floor flat in the said scheme. It has also been stated that the name of the petitioner was wrongly included in the draw and had the petitioner correctly disclosed the true facts, his application would have been rejected at the initial stage outrightly.

We have heard learned counsel for the parties and perused the record.

The Chandigarh Housing Board floated a Self Financing Scheme, 1989 for General Public (Category-I and II) for the allotment of dwelling units at Manimajra, Chandigarh and the allotment was to be governed by the provisions of Haryana Housing Board Act, 1971. In the said scheme, only those applicants were eligible for consideration who or his wife/her husband or any of his/her dependent relations including unmarried children did not own any free-hold or lease hold or on hire purchase basis, a residential plot/house in the Union Territory of Chandigarh or in either of the Urban Estates of Mohali or Panchkula. Similarly persons who had acquired a house/residential site anywhere in India through Govt./Semi Govt./Municipal Committee/Corporation/Improvement Trust/Notified Area Committee at concessional rate i.e. allotment at reserved/fixed price, in their names or in the name of their spouse or any minor children, would not be eligible to apply to the Board for allotment of a dwelling unit or flat.

It is necessary to mention here that the petitioner had applied for allotment of plot in question vide his application dated 06.07.1989, declaring thereunder that his wife or any of his dependent relation including unmarried children did not own, any free-hold, or on hire-purchase basis, a residential plot or house in the Union Territory of Chandigarh or in either of the Urban Estates

of Mohali or Panchkula and further that he had not acquired a residential plot or house anywhere in India through Govt./Semi Govt./Municipal Committee/Corporation/Improvement Trust/Notified Area Committee on concessional rate i.e. at fixed/reserved price in his own name or in the name of any dependent members of his family.

In furtherance of the application for registration and allotment, the petitioner filed an affidavit dated 22.10.1990 and on the basis of the said affidavit, the Board had issued an acceptance-cum-demand letter dated 07.12.1990 stipulating therein that registration of the applicant will be regulated strictly as per the terms and conditions contained in the brochure and will further be subject to the above noted Regulation of 1979. It was also made clear that acceptance of deposits was subject to the eligibility conditions and it would not vest any legal right in the allotment for getting a house, in case the petitioner was found ineligible at any time on account of his furnishing false information or otherwise.

The Board has further called upon the petitioner to furnish, among others, an affidavit of his spouse stating that she does not own on free-hold or lease-hold or on hire-purchase basis any residential plot or house in the U.T. of Chandigarh or in any of the Urban Estates of Mohali or Panchkula. In response thereof, the petitioner has submitted the affidavit of his wife, wherein she has stated that she does not own on free-hold or lease-hold or on hire-purchase basis any residential plot or house in the U.T. of Chandigarh or in any of the Urban Estates of Mohali or Panchkula. It is on the basis of letter dated 18.09.1996 received from the Sub Inspector, Economic Offences to Chandigarh Police that a complaint against the petitioner was pending inquiry. It had been alleged by the complainant that the petitioner had filed a false affidavit with the

Board. It is in these circumstances the fact of false affidavit came to the notice of the respondent-Board. After receiving of such complaint, the matter was taken up with the HUDA, whereupon, Estate Officer, HUDA, vide his letter dated 13.12.1996, informed that the said plot at Panchkula had been transferred in the name of wife of the petitioner on 18.11.1987 and, thereafter, in pursuance of an application dated 13.10.1989 of the wife of the petitioner, the said plot was transferred in the joint names of the petitioner and his wife.

On receipt of such information, show cause notice was given to the petitioner for cancellation of registration of allotment of dwelling unit No. 5501 of Category-II, Manimajra, followed by order of cancellation dated 30.06.2000(Annexure P-50) passed by Development Officer-respondent No.4.

Thus, in view of the information dated 13.12.1996, it is clear that wife of the petitioner had acquired plot No. 638, Sector-12, Panchkula, the allotment of which was transferred in her name, vide letter dated 18.11.1987 and which was subsequently transferred in the name of the petitioner and his wife jointly, vide letter dated 16.01.1990. Thus, that there is no element of doubt that on the date of filing of his application with Chandigarh Housing Board on 06.07.1989 for allotment of the dwelling unit in question, the petitioner falsely represented that his wife did not own on free-hold or lease-hold or on hire-purchase basis any residential plot or house in the U.T. of Chandigarh or in any of the Urban Estates of Mohali or Panchkula. Thus, the petitioner was not eligible for the dwelling unit in question as his spouse already owned a plot, transferred in her name on 18.11.1987.

However, we have considered the action of the respondents, whereby vide order dated 30.06.2000(Annexure P-

50), respondent No.3 while considering the allotment of dwelling unit No. 5501, category-II, Mani Majra, Phase-I in the name of the petitioner has forfeited the entire amount deposited by the petitioner. We find that forfeiture of the entire amount, in case of the petitioner, a senior citizen should be set aside in its peculiar facts. Accordingly, we partly allow the present writ petition to the extent of forfeiture of amount.

Resultantly, the respondents are directed to refund the amount of forfeiture along with simple interest @ 6% per annum. We have further been informed that during the pendency of the present writ petition, the petitioner has died leaving behind his widow, namely, Smt. Sudershan Sahni presently residing at House No. 638, Sector-12, Panchkula (Haryana). Accordingly, respondents are directed to calculate the forfeiture amount along with the interest @ 6% per annum and to remit the amount at her given address within a period of three months.

With above observations, the present writ petition is disposed of.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

February 26, 2015
Anjal