

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.10566 of 2014

DATE OF DECISION: SEPTEMBER 15, 2015

Yashodhra Verma w/o Shri S.K.VermaPetitioner

Versus

Haryana Urban Development Authority and others
.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA

Present: Mr.Puneet Bali, Senior Advocate with
Ms.Monika Thakur, Advocate for the petitioner.

Ms.Aakanksha Sawhney, Advocate
for HUDA-respondents.

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TEJINDER SINGH DHINDSA, J.

The Haryana Urban Development Authority (for short 'HUDA') allotted a residential plot measuring 956.80 Sq. Yards bearing No.44-P, Sector 44-47, Faridabad in favour of the petitioner vide allotment letter dated 8.1.2002. Cost of the plot was fixed as ₹30,56,405/-. Since it was a “preferential category plot”, the petitioner paid an additional price of 10% over and above the initial cost that had been fixed. Possession, however, could not be delivered to the petitioner as the plot allotted fell under forest area. Vide order dated 17.8.2011, the Estate Officer, HUDA, Faridabad made allotment of an alternative plot in favour of the petitioner bearing No.19-A, Sector 21-C, Faridabad.

2. The instant writ petition has been filed seeking the issuance of a writ of certiorari for quashing order dated 17.8.2011, Annexure P4, passed by respondent No.3 whereby the alternative plot stands allotted to the petitioner. Mandamus has also been sought for directing the respondents to allot an alternative plot of preferential category.

3. The solitary contention raised by learned Senior counsel appearing for the petitioner is that since additional price had been deposited for a preferential plot, as such, even the allotment of an alternative plot has to be under such preferential category. In support of such contention, reference has been made to a policy dated 18.2.2013, Annexure P9, issued by the Chief Administrator, HUDA on the subject of exchange/allotment of alternative plots. Clause 3 of the policy lays down that in the eventuality of an alternative plot being offered, it shall be on the same terms and conditions on which the original plot was allotted. Clause 4 stipulates that in the case of allotment of an alternate plot, the plot size and category of the plot will not be changed.

4. The reliance placed upon Clause 3 of the Policy dated 18.2.2013 in our view is wholly mis-placed. The expression "terms and conditions" referred to in the policy would relate to the mode and manner of payment, condition with regard to taking possession of the plot, undertaking construction thereupon within a stipulated time-frame etc. and would not cover allotment of a preferential category plot. The allotment of the alternate plot in favour of the petitioner in the light of order dated 17.8.2011, Annexure P4, specifically recites that the terms and conditions

would be the same as contained in the original allotment letter dated 8.1.2002.

5. Even though Clause 4 of the policy dated 18.2.2013, Annexure P9, as regards the category of the plot to be not changed in the case of allotment of an alternative plot would support the case of the petitioner, yet we are unable to accept the prayer made in the instant petition.

6. Ms.Aakanksha Sawhney, learned counsel appearing for HUDA, has brought to our notice that in pursuance to the alternate plot bearing No.19-A, Sector 21-C, Faridabad having been allotted on 17.8.2011, physical possession of the same has been accepted by the petitioner without any protest or demur on 9.5.2012. Even a conveyance deed in favour of the petitioner pertaining to the alternate plot stands executed on 28.6.2012. Such factual position carries no rebuttal at the hands of the petitioner.

7. It would also be apposite to notice that after allotment of the alternate plot on 17.8.2011, the possession thereof was being delayed and, accordingly, the petitioner had preferred Civil Writ Petition No.5250 of 2012 in this Court and in which the specific prayer was for the issuance of a mandamus for handing over physical possession of alternate plot bearing No.19-A, Sector 21-C, Faridabad in lieu of the original plot bearing No.44-P, Sector 44-47, Faridabad. No prayer was raised with regard to allotment of the alternate plot of a preferential category. Afore-noticed writ petition was disposed of by a Division Bench on 21.3.2012 in the following terms:

“The petitioner has invoked the writ jurisdiction of this Court for directing the respondents to hand over the physical possession of Plot No.19-A, Sector 21-C, Faridabad.

The petitioner was earlier allotted Plot No. 44-P, Sector 44-47, Faridabad, but the said plot falls in the forest area. Subsequently, an alternative plot i.e. Plot No. 19-A, Sector 21-C, Faridabad, was allotted to the petitioner. The grievance of the petitioner is that the possession of the alternative plot has not been handed over to the petitioner.

In view of the averments made in the writ petition, we direct the respondents to deliver the physical possession of a plot of equivalent size to the petitioner within a period of two months from the date of receipt of this order. If the possession of the said plot cannot be delivered to the petitioner, the respondents shall pass a speaking order within the said period.”

8. It is important to note three things. Firstly by the writ petition, the petitioner specifically sought the allotment and possession of Plot No.19-A, Sector 21-C. Secondly, the order in the writ petition granted the petitioner relief in respect of that very plot. Thirdly, pursuant thereto the respondents on 9.5.2012 placed the petitioner in possession of this plot as demanded by her and as ordered by this Court. The petitioner has, therefore, been in use and occupation of the plot since then. It was only a

year and a half later that the petitioner as an afterthought decided that she would prefer another plot. This cannot be permitted on principle. It would also be contrary to the order of the Division Bench dated 21.3.2012.

9. On a specific query having been put by us, learned Senior counsel would admit that the alternate plot is of an equivalent size to the original plot. It has also been conceded that there was no representation filed by the petitioner staking a claim for a preferential category plot between 17.8.2011 i.e. the date alternate plot was allotted and till 9.5.2012 i.e. the date physical possession of the alternate plot was taken by the petitioner.

10. We hold the claim and prayer raised in the instant petition for allotment of the preferential category plot to be highly belated and an afterthought. No case for interference in exercise of jurisdiction under Article 226 of the Constitution of India is made out.

11. Petitioner is, however, held entitled to refund of the 10% additional price that had been deposited for a preferential category plot along with interest @ 9% per annum.

12. Petition disposed of.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

SEPTEMBER 15, 2015
SRM

Note: *Whether referred to Reporter? (Yes/No)*