

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-11092-2014

Date of decision : 20.05.2015

Satish Kumar

... Petitioner

Versus

Haryana Urban Development Authority and others

... Respondents

***CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL***

Present: Mr. S.K.Garg Narwana, Senior Advocate
with Mr. Naveen Gupta, Advocate
for the petitioner.

REKHA MITTAL, J.

The present writ petition filed under Articles 226/227 of the Constitution of India lays challenge to order dated 05.11.2013 (Annexure P12) passed by the Principal Secretary to Government of Haryana, Town and Country Planning and Urban Estates Department while setting aside the order dated 07.12.2011 (Annexure P11) passed by the Administrator, Haryana Urban Development Authority (in short 'HUDA') at Rohtak setting aside the order dated 15.12.2010 (Annexure P10) passed by the Estate Officer, HUDA, Panipat.

The respondent-HUDA invited applications for allotment of residential plots in Sector 25, P-II, HUDA, Panipat from the industrial workers. The petitioner applied for allotment of plot by way of two applications and became successful in draw of lots and was allotted two plots bearing No.1406 and 576 on free hold basis. The petitioner paid installments as per the terms and conditions of the allotment letters.

A writ petition was filed before this Court i.e. CWP-253-2008, P.P.Kapoor Vs. State of Haryana and others, challenging allotment of plots to industrial workers on the premise that allotment had been made to ineligible persons. This Court vide order dated 16.09.2009 directed the Vigilance Department to conduct probe into the matter. The Vigilance, in its report, found that many allotments have been made to ineligible applicants. It was also found that plot No.576 (6 marla) was allotted to Sh.Satish Kumar son of Suraj Ram and plot No.1406 (6 marla) was allotted to Sh. Satish Kumr son of Surat Ram of house No.1703, New Housing Board Colony, Panipat and said Satish Kumar is one and the same person. The owner of Satish Textiles, Panipat, Sh. Raj Kumar son of Surat Ram is the real brother of Satish son of Surat Ram allottee. Sh. Raj Kumar had fraudulently shown his brother as Satish Kumar son of Suraj Ram and Satish Kumar son of Surat Ram working as an accountant and supervisor. Satish Kumar and Raj Kumar residents of House No.1703, New Housing Board Colony had prepared forged documents, affidavits and experience certificate with a malafide intention to get the plots allotted. However, during pendency of the writ petition preferred by Sh.P.P. Kapoor, the petitioner submitted an application on 10.09.2008 to surrender one of the plots bearing No.576. The petitioner was served with a show cause notice dated 10.04.2009 (Annexure P4) as to why allotment of plot No.1406, Panipat be not cancelled. On receipt of response from the petitioner, the Estate Officer passed order dated 15.12.2010 (Annexure P10) in regard to cancellation of the plot in dispute. The petitioner preferred an appeal impugning order Annexure P10 and the appeal was allowed by the Administrator, HUDA, vide order dated 07.12.2011. The revision petition preferred by the respondents against the order passed by the appellate authority was allowed vide order dated

05.11.2013 passed by respondent No.4. Feeling aggrieved against the order passed by the revisional authority, the instant writ petition has been preferred.

Counsel for the petitioner, Mr. S.K. Garg Narwana, Senior Advocate has urged that though the petitioner was allotted two plots under the same scheme, no sooner he came to know that he was eligible for allotment of only one plot, he voluntarily approached the authorities and surrendered plot bearing No.576. The petitioner was working as an industrial worker in the factory run by his brother under the name and style of M/s Satish Textiles, Panipat and drawing a meager salary of ₹ 2000/- per month. The appellate authority on a detailed consideration of the matter and after advertng to the issues involved therein had rightly recorded a finding in favour of the petitioner and set aside the order dated 15.12.2010 passed by the Estate Officer in regard to cancellation of allotment of Plot No.1406, Panipat. It is vehemently argued that the appellate authority has rightly appreciated the definition of a workman as defined in the Industrial Disputes Act 1947 to hold that the petitioner who was working in M/s Satish Textiles is covered under the definition of Industrial Worker and thus entitled to allotment of a plot in the category of Industrial Worker. It is further argued that the revisional authority, on one hand, has held that the appeal against order dated 15.12.2010 passed in pursuance of the directions issued by this Court while disposing of CWP-13448-2009 titled Satish Kumar Vs. State of Haryana and others was not maintainable but on the contrary had proceeded to decide the revision petition on its merits. It is argued that order passed by the revisional authority is liable to be set aside and the allotment of plot No.1406, Panipat in favour of the petitioner is liable to be affirmed more particularly in the circumstances that the petitioner has raised construction of a house on the plot after obtaining loan

from the bank.

We have heard learned counsel for the petitioner and perused the records.

The HUDA floated a scheme published in the newspaper on 23.01.2001 for allotment of residential plots measuring 4, 6 & 8 marlas for Housing Industrial Workers in Sector 25, P-II, Panipat. The petitioner submitted two applications by describing himself as Satish Kumar son of Suraj Ram in one of the applications and Satish Kumar son of Surat Ram in the other application. He came out to be successful in the draw of lots in respect of both applications and as a consequence, two plots bearing No.576 and 1406 were allotted to the petitioner. To misfortune of the petitioner, one Mr. P.P. Kapoor filed a petition in public interest (CWP No.253 of 2008) to highlight the illegalities committed in allotment of plots to industrial workers. During pendency of the said petition and probably after receipt of notice in the said petition in which the petitioner was arrayed as respondent No.10, he hurriedly submitted an application on 10.09.2008 to surrender one of the plots allotted to him and his request for surrender of plot No.576 was acceded to by the authorities. The fact that the petitioner submitted two applications by changing the name of his father shows his malafide intention to seek dual benefit of the scheme floated by the State of Haryana. He retained both the plots till the year 2008 and offered to surrender plot No.576 knowing fully well that fraud committed by him has come to light in view of the writ petition filed by Mr. P.P. Kapoor.

The Hon'ble Supreme Court of India in *Meghmala & Ors. Vs.*

G.Narasimha Reddy & Ors. (2010) 8 SCC 383 has held, quoted thus:-

“It is a settled legal proposition that where a person gets

an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eyes of the law as fraud unravels everything. "Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law". It is a trite that "Fraud and justice never dwell together" (fraus et jus nunquam cohabitant). Fraud is an act of deliberate deception with a design to secure something, which is otherwise not due. Fraud and deception are synonymous. "Fraud is an anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine". An act of fraud on court is always viewed seriously."

In ***Lazarus Estates Ltd. Vs. Beasley, 1956(1) QB 702***, Lord Denning, LJ. said "No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything." In the same case, Lord Parker, C.J. said "Fraud" vitiates all transactions known to the law of however high a degree of solemnity." The aforesaid English decisions have been cited with approval by the Hon'ble Supreme Court of India in ***S. Partap Singh Vs. State of Punjab, 1964(4) SCR 733***.

In ***Ram Chandra Singh Vs. Saviri Devi and others, 2003(8) SCC 319***, the Hon'ble Supreme Court has held thus:-

"Fraud as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by word or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent

misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata."

When the facts and circumstances of the present case are analyzed in the light of observations made in the above referred judgments, in our considered opinion, the allotment of plot No.1406 in favour of the petitioner is the result of fraud and cannot be allowed to sustain.

Another important aspect of the matter is in regard to eligibility of the petitioner to seek allotment as an industrial worker. The advertisement or the brochure do not define who shall be 'an industrial worker' for the purpose of eligibility. The purpose of the scheme is to provide facility of housing to the industrial workers at their work place. Thus, the expression 'industrial worker' has to be given a meaning ordinarily understood by a layman. Such industrial workers, in our considered opinion, can be the workers who are engaged in any manufacturing activity at the lowest level. An Accountant-cum-Supervisor such as the petitioner cannot be deemed to be an industrial worker. It is an admitted position of the case that brother of the petitioner is the owner of industrial unit in which the petitioner is stated to be working as an

Accountant-cum-Supervisor at a salary of ₹ 2000/- per month. The name of the said manufacturing unit, M/s Satish Textiles appears to be in the name of the petitioner as brother of the petitioner is namely Raj Kumar. This apart, it is difficult to believe that if the petitioner was working at a meager salary of ₹2000/- per month, he could afford to pay sale consideration /allotment money in respect of two plots allotted in his name. Taking into consideration cumulative effect of the facts and circumstances of the present case, it becomes seriously doubtful if the petitioner was working as an Accountant-cum-Supervisor in M/s Satish Textiles owned by his brother. The petitioner has not placed on record any document attested, verified or audited by a Government Department wherein the petitioner has been recorded to be working as an Accountant-cum-Supervisor with M/s Satish Textiles Limited. Under these circumstances, the finding recorded by the Vigilance Department that the petitioner in connivance with his brother Raj Kumar forged the documents to create eligibility for allotment of plot as an Industrial Worker appears to be well founded. That being so, we do not find any error much less illegality in the order passed by the Estate Officer cancelling the plot allotted to the petitioner as an industrial worker.

To be fair to the petitioner, the plea raised by the petitioner that the revisional authority should not have decided the revision on merits in view of its findings that the appeal against the order passed by the Estate Officer was not tenable, is misconceived and merits rejection. Once the appellate authority has proceeded to decide the appeal on its merits, no fault can be found in the order passed by the revisional authority in deciding the revision on its merits. Even otherwise, technicality cannot be allowed to stand in the way of substantial justice. The appellate authority committed a grave error in setting

aside order passed by the Estate Officer but the same has been correctly rectified by the revisional authority.

In this view of the matter, we do not find any factual or jurisdictional error in the order dated 05.11.2013 passed by the Principal Secretary to Government of Haryana, Town and Country Planning and Urban Estates Department as would call for intervention.

For the reasons aforesaid, finding no merit, the petition is dismissed in limine. No order as to costs.

(AJAY KUMAR MITTAL)
JUDGE

(REKHA MITTAL)
JUDGE

May 20, 2015.

Davinder Kumar