

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.18484 of 2015

DATE OF DECISION: SEPTEMBER 02, 2015

Charanjit Kaur wd/o Late Nanak SinghPetitioner

Versus

Chandigarh Housing Board, Sector 9, UT, Chandigarh
and othersRespondents

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

Present: Mr.Arun Takhi, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

Challenge in the instant petition is to the order dated 28.8.2007 passed by the Chief Executive Officer, Chandigarh Housing Board, Chandigarh in terms of which the allotment of a dwelling unit in favour of the petitioner has been cancelled and the amount deposited by her stands forfeited.

2. Husband of the petitioner, who was serving as Constable in the Punjab Police, was gunned down by militants on 27.11.1986. Petitioner was granted appointment in the Industries Department, Punjab on compassionate basis.

3. In the year 2005, Chandigarh Housing Board floated a "Special Category Housing Scheme" for allotment of built up

dwelling units out of the discretionary quota of the Administrator, Union Territory, Chandigarh. Petitioner applied for allotment of a dwelling unit in the category of war widows and widows of defence services Personnel/Paramilitary/Police personnel killed in counter insurgency operations and border incidents. She was allotted category-II dwelling unit No.24 in Sector 51-A, Chandigarh on free hold basis vide letter dated 26.12.2005.

4. A show cause notice dated 19.7.2007 was served upon the petitioner contemplating cancellation of allotment of dwelling unit on the premise that she had already been allotted a dwelling unit in Sector 38, Chandigarh and physical possession of which had also been handed over in the year 2000. An opportunity of personal hearing was also granted to the petitioner on 10.8.2007 and thereafter vide impugned order dated 28.8.2007 at Annexure P4, respondent No.3 has cancelled the allotment of the dwelling unit and has directed forfeiture of the entire amount that the petitioner had paid in lieu of such dwelling unit.

5. Regulation 6 of the Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979 (for short '1979 Regulations') lays down the eligibility for allotment of the dwelling unit by the Chandigarh Housing Board and the same reads as under:

"ELIGIBILITY OF ALLOTMENT: (1) A dwelling unit or flat in the housing Estate of the Board shall be allotted only to such person who or his wife/her husband or any or his/her minor children does not own on free hold or 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. Similarly, persons who have acquired a house/residential site anywhere in India through Govt./Semi Govt./Municipal Committee/Corporation/Improvement Trust at concessional rates, i.e. allotment at reserved/fixed price, in their name or in the name of their spouse or nay minor children will not be eligible to apply to the Board for allotment of a dwelling unit or flat.

(2) The applicant shall furnish an affidavit in the prescribed form with regard to his eligibility along with the application. In the event of the affidavit being found false at any stage, the Board shall be entitled to cancel the registration or the allotment of dwelling unit or flat, as the case may be, and to forfeit the deposit received with the application and all the payments made to the Board thereafter.”

6. Even the eligibility condition under the Special Category Housing Scheme for allotment of built up dwelling units under the discretionary quota of the Urban Estate, Union Territory, Chandigarh and under which the petitioner had applied, was in the following terms:

“ELIGIBILITY

A person will be eligible for allotment of a dwelling unit only in the event that he/she or his wife/her husband or any of his/her minor children do not own on free hold or lease hold or on hire

purchase basis a residential plot/house or Union Territory, Chandigarh or in either of the Urban Estate of Mohali an Panchkula, similarly, in case he/she has acquired a house/a residential site anywhere in India through Govt./Semi Govt. /Municipal Committee / Corporation /Improvement Trust, at concessional rates. i.e. at a reserved/fixed price, in his/her name or in the name of his/her spouse or nay minor children, he/she will not be eligible for allotment of a dwelling unit."

7. Clearly, in terms of the 1979 Regulations as also the eligibility condition under the Special Category Housing Scheme, a person would be eligible for allotment of a dwelling unit only in the event of not owning on free hold or lease hold or on hire purchase basis a residential plot/house in Union Territory, Chandigarh or in either of the Urban Estates of Mohali and Panchkula.

8. Under the Special Category Housing Scheme relating to discretionary quota, there was a specific stipulation with regard to mis-representation or suppression of facts. Applicants had been put to caution that if the information furnished in the application form or furnished later at any stage is found to be incorrect/false, the Housing Board shall cancel the registration and allotment of the dwelling unit and shall have the right to forfeit the entire amount paid.

9. Perusal of the impugned order dated 28.8.2007 would reveal that the petitioner at the stage of submitting her

application for allotment of a dwelling unit under the discretionary quota in the year 2005 had furnished the following declaration:

"I or my wife/husband or any of my minor children do not own free hold or lease hold or on hire purchase basis a residential plot/house in the Union Territory, Chandigarh or in either of the Urban Estates of Mohali & Panchkula."

10. Learned counsel for the petitioner having been confronted with such factual aspect of a dwelling unit bearing No.5149-B in Sector 38 (West), Chandigarh having already been allotted to the petitioner and physical possession also having been handed over on 15.12.2000 and she having furnished a false declaration while applying for a dwelling unit under the discretionary quota in the year 2005, the response has been rather evasive. Allotment of the dwelling unit in Sector 38, Chandigarh in the year 2000 is not denied. However, it is submitted that the petitioner had come in touch with one Bhagwan Singh who was posted as Clerk with the Chandigarh Housing Board and upon his asking, petitioner had applied for a dwelling unit under the Special Category Housing Scheme in the year 2000. It has further been contended that it was Bhagwan Singh who had taken all the papers and money of the petitioner on the pretext of helping her to have a dwelling unit allotted and thereafter the entire amount was returned stating that her name had not figured in the list of allottees. A stand has been taken that it was Bhagwan Singh who has tricked the petitioner and as such, she cannot be held responsible as regards the declaration

having been made at the stage of submitting an application for dwelling unit in the year 2005. Learned counsel has further argued that even against the impugned order of cancellation, an appeal had been filed which had not yet been decided and inspite thereof possession of the dwelling unit had been forcibly taken on 29.8.2014.

11. Having heard learned counsel for the petitioner at length, we are of the considered view that there is no infirmity in the action of respondent No.3 as regards cancellation of the dwelling unit in Sector 51, Chandigarh is concerned. A dwelling unit having already been allotted to her in Sector 38 (West), Chandigarh in the year 2000, the petitioner was clearly not eligible for allotment of yet another dwelling unit in the year 2005 in the light of the eligibility conditions contained under the 1979 Regulations as also the eligibility conditions envisaged under the Special Category Housing Scheme floated in the year 2005. Allotment under the discretionary quota on the basis of a false declaration cannot sustain. It is the petitioner's case herself that she has been mis-led by one Bhagwan Singh. Even if that be so, it would always be open for the petitioner to take out appropriate proceedings against Bhagwan Singh strictly in accordance with law. The order dated 28.8.2007, Annexure P4, cancelling the allotment of the dwelling unit under the discretionary quota would not call for any intervention.

12. At this stage, learned counsel for the petitioner would make a submission that he is confining the scope of the present petition only as regards refund of the amount that the petitioner

had paid in lieu of the dwelling unit, the allotment of which has been cancelled. In support of such contention, learned counsel would submit that the petitioner is a widow and has three children to support. With regard to such submission having been raised by the petitioner as a measure of last resort, we dispose of the petition and grant liberty that if the assertion of the petitioner as regards appeal against the order of cancellation still pending adjudication is factually correct, then it would be open to the petitioner to even raise such limited prayer before the Appellate Authority. We are confident that if the petitioner establishes that she was cheated by the said Bhagwan Singh, the Appellate Authority will consider her appeal to the extent of her application for refund of the amount paid by her sympathetically.

13. We are unable to consider this aspect ourselves as the issue may require further facts. The petitioner is at liberty to adduce further evidence in this regard before the Appellate Authority.

14. The petition is disposed of in the above terms. Considering the facts of the case, we would request the Appellate Authority to decide the appeal as expeditiously as possible.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

SEPTEMBER 02, 2015
SRM

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