

In the High Court for the States of Punjab and Haryana, at
Chandigarh

...

Civil Writ Petition No. 18573 of 2015

Date of decision: September 3, 2015

S.K.Sharma

..Petitioner

Versus

State of Haryana and others

..Respondents

Coram: **Hon'ble Mr. Justice Satish Kumar Mittal**
Hon'ble Mr. Justice Mahavir S. Chauhan

Present: Mr. H.C.Arora, Advocate
for the petitioner.

- 1.Whether to be referred to Reporter? Yes/No
- 2.Whether the judgment should be reported in the
digest ? Yes/No

Mahavir S.Chauhan, J.

Challenge in the instant Civil Writ Petition, brought as a public interest litigation, is to the notification dated August 11, 2015 (Annexure P5) which provides that the bonafide purchasers who have got the plots re-allotted in their names after due permission from Haryana Urban Development Authority (for short,"the HUDA") cannot be penalized.

We have heard learned counsel for the petitioner.

On behalf of the petitioner, it has been vehemently

argued that at least 2279 plots have been got allotted by various allottees by furnishing false affidavits to the effect that they do not hold any other plot in their names. According to the learned counsel subsequent purchasers in such cases cannot be said to be bonafide purchasers and the impugned policy, in fact, has been brought in only to save the original allottees and the officials/officers of the HUDA who are responsible for the fraudulent allotment of plots.

Reference on behalf of the petitioner has also been made to order dated July 31,2012 whereby CWP No. 13201 of 2012 brought by the petitioner therein to challenge cancellation of re-allotment in his favour, has been dismissed on the ground that he had purchased the plot from the original allottee by whom it was got allotted by playing a fraud upon the HUDA.

Nothing more has been urged.

The impugned notification reads as under:-

*“The scrutiny of the allottees regarding double/multiple allotment under reserve category is being done in view of directions of Hon'ble High Court in CRM No. 26292 of 2013 titled as **Dharam Singh Yadav Vs. State of Haryana**. There are number of such cases where original allottees who have obtained double/multiple allotment by submitting false affidavit have alienated the plots after receiving consideration. The subsequent buyer who have purchased such plots after obtaining transfer permission from HUDA itself are now being affected by action of HUDA regarding*

cancellation of plots and some of the aggrieved allottees knocked the door of Hon'ble Court by way of filing CWP No. 16222 of 2014 (and connected cases). The matter has been considered and examined and it has been decided that cancellation of subsequent allotments have huge impact on the interest of public at large. After deliberation, following decisions have been taken:-

1. The bonafide/subsequent purchasers who have got the plots re-allotted in their name(s) after due permission from HUDA should not be punished as they had taken due precaution by way of obtaining transfer permission from HUDA regarding the genuineness of the allotment before getting the allotment in their name. They had followed the procedure laid by HUDA. These bonafide subsequent purchasers cannot be penalized as they were not at fault at any point of time.

2. The action taken against the subsequent by HUDA is to be withdrawn and henceforth no affidavit is required to be taken from the buyers and sellers of such plots as conveyed by this office vide memo. No. A-6-UB-2014/2145-67 dated 21.01.2014.

3. If the original allottee has transferred second/subsequent allotments within the family, the above decision shall not be applicable in such

cases.”

A perusal of the aforesaid notification reveals that only bonafide purchasers who have got the plots re-allotted in their favour after due permission from the HUDA have been excluded from penal action. The notification is conspicuously silent as regards exclusion from penal action, the original allottees and anyone else involved in fraudulent allotment of plots.

Transfer of immovable property in favour of a purchaser is not voidable under Section 41 of the Transfer of Property Act, 1882 on the ground that the transferrer was not authorised to make the transfer provided the transferee after taking reasonable care to ascertain that the transferrer had power to make the transfer, has acted in good faith. A glance across the impugned notification would reveal that only those bonafide purchasers have been excluded from the penal action who have got the plots re-allotted in their favour after due permission from the HUDA. It is needless to state that the HUDA permits transfer of a plot in favour of a subsequent purchaser only after it is satisfied that re-allotment in favour of the purchase is genuine and bonafide. In any case, the subsequent purchaser cannot be imputed the knowledge that the original allottee had got the plot allotted by filing false affidavit. A perusal of the notification under challenge would also reveal that subsequent transfer in favour of members of family of the original allottee has been specifically excluded from the purview of the notification. Reason for such exclusion is evident because members of family of the original allottee cannot plead absence of knowledge as regards the circumstances attending on allotment of

plot in favour of the original allottee.

As regards the judgment dated 31.7.2012 (Annexure P9) suffice it to say that when this judgment was passed, the notification dated 11.8.2015 was not in existence, therefore, no benefit can be derived by the petitioner from this judgment.

Another aspect that needs to be high-lighted is that the impugned notification was challenged earlier in CWP No. 16222 of 2014- *Parminder Singh and another versus The Haryana Urban Development Authority and another*. During the course of hearing of the aforesaid writ petition, it was clarified that the policy notified thereby would apply only in respect of the bonafide/subsequent purchasers. In view of such a clarification, the petitioners therein, who were bonafide purchasers, did not press the writ petition.

Interestingly, an application for intervention was made (CM No.9046 of 2015) and illegal allotments were sought to be thereby exposed. During the course of hearing, learned counsel for the petitioner has admitted that the said application was made by the present petitioner. For reasons best known to the petitioner, the matter was not taken by him any further.

It, thus, indicates that even the petitioner was satisfied with the clarification given on behalf of the HUDA.

Though, as aforesaid, the impugned notification does not intend to protect the allottees, who have secured allotment of plots by fraudulent means as also their conspirators, if any, yet, we hereby clarify that the notification is intended to be used only to protect bonafide/ subsequent purchasers who have got the plots re-allotted after due permission by the HUDA and it is not used to

protect any person responsible for allotment of a plot by fraudulent means or any one else who is found responsible for aiding in the act of such allotment.

With the aforesaid clarification, the writ petition stands disposed of.

(SATISH KUMAR MITTAL)

JUDGE

September 3,2015

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(MAHAVIR S.CHAUHAN)

JUDGE