

**HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.19692 of 2015 (O&M)

Date of Decision: 14.12.2015

Suneeta Sharma

... Petitioner

VS.

GMADA & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE P.B. BAJANTHRI

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Present: Mr. Harneet Singh Oberoi, Advocate for the petitioner

Mr. Naresh Prabhakar, Advocate for the respondents

SURYA KANT, J. (Oral)

(1) The petitioner seeks quashing of the orders dated 17.06.2009 passed by the Estate Officer, GMADA vide which allotment of house No.4571-C MIG(S), Sector 70, Mohali was cancelled and which has been further upheld by the appellate and revisional authorities vide orders dated 24.09.2009 and 01.06.2010.

(2) Respondent No.2 (Ashok Kumar Garg) is the original allottee of the house in question. He is present in Court and has filed affidavit to the effect that he was the owner/allottee of the subject flat which he sold to Anuresh Sharma s/o late Sukhdev Sharma by way of an agreement to sell dated 27.10.1999. He has further averred that he also gave original power of attorney dated 28.10.1999 on the basis of agreement to sell in favour of Rakesh

Sharma and Sunita Sharma, son and daughter, respectively of late Sukhdev Sharma and that he has no objection if the flat is transferred in the name of the above-stated persons and/or if they further sell the same. In view of the fair stand taken by respondent No.2, he may not be hitherto impleaded in the proceedings arising out of the subject-flat.

(3) Having heard learned counsel for the parties and the stand taken by GMADA through its counsel Mr. Naresh Prabhakar, it appears that some unauthorized construction raised in the subject flat is not compoundable and the authorities are inclined to restore and transfer the same in favour of petitioner or other transferee provided that non-compoundable unauthorized constructions are removed and further subject to fulfillment of other prescribed conditions.

(4) The petitioner has explained some genuine difficulties like perennial seepage in the roof top of the flat for which she had to install make-shift stair-cases for carrying out the repairs. Some of the alterations made by her are essentially to keep the dwelling unit worth habitable, hence we direct the GMADA authorities to carry out a fresh inspection of the subject flat as well as all other flats in the same building/vicinity and thereafter take a holistic view as to what type of additions/alterations can be included amongst the compoundable and can be regularized for better living conditions of the occupants. Similarly, the inspecting team

shall re-visit the site to find out as to how much unauthorized constructions can be regularized on deposit of compounding fee. The additions/alterations permitted to be retained/carried out would obviously be keeping in view the element of inconvenience likely to be caused to the occupants of ground floor or first floor of the building as well as the overall safety of the buildings.

(5) After such fresh inspections, if it is found that any part of the unauthorized construction cannot be made compoundable, in any circumstances, the petitioner shall have to remove that part of the unauthorized construction and (i) on removal of such unauthorized construction; (ii) on deposit of the requisite fee for transfer of the flat; (iii) on deposit of the compounding fee in respect of the constructions which are found compoundable; or (iv) on submission of other requisite documents as required by the authorities, the GMADA is directed to restore and transfer the flat in favour of the petitioner.

(6) The inspection team shall comprise (i) the Senior Architect of PUDA; (ii) the Assistant Town Planner from the Town and Country Planning Department; and (iii) the Sub Divisional Engineer, who shall carry out the inspection within one month. The petitioner shall be required to comply with the inspection report to the extent of removal of non-compoundable constructions within two months and after doing so, she may submit the documents/fee etc. as directed above within one month thereafter.

The authorities shall then pass an appropriate order for restoration/transfer of flat within two months.

(7) If the inspecting team is of the view that stair-cases cannot be permitted to be retained, in that event, it shall be the sole responsibility of GMADA/PUDA to carry out necessary repairs on the roof top and ensure that there is no seepage into the top floor flats. The authorities shall also ensure and will issue appropriate directions to the residents to upkeep the roof top/water tanks and/other amenities.

(8) Disposed of.

(Surya Kant)
Judge

14.12.2015
vishal shonkar

(P.B. Bajanthri)
Judge