

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 2328 of 2014

Date of Decision: 10.3.2015

Gurdeep Singh and others

....Petitioners.

Versus

State of Punjab and others

...Respondents.

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

PRESENT: Mr. Vishal Gupta, Advocate for the petitioners.

Ms. Munisha Gandhi, Additional Advocate General, Punjab.

Mr. Balwinder Singh, Advocate for respondents No.2 and 3.

AJAY KUMAR MITTAL, J.

1. The petitioners have approached this Court by way of instant petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the action of the respondents in charging the enhanced price from them qua plot No. 855, Sector 77, SAS Nagar, Mohali, measuring 100 square yards allotted vide Letter of Intent (LOI) dated 18.4.2013 (Annexure P-13). Further, a writ of mandamus has been sought directing the respondents to hand over possession of the plot in question in the oustee category to the petitioners and to charge the price of the said plot as per the date of initial allotment, i.e. 15.7.1993 fixed by the respondents and deposited by the petitioners as the allotment was wrongly made by the respondents in favour of Desa Singh.

2. Briefly stated, the facts relevant for adjudication of the present writ petition as narrated therein are that the petitioners filed a suit for declaration to the effect that the allotment of plot No. 927, Phase-10, SAS Nagar, Mohali to Garibu by the respondents against registration No. 10331 was illegal, null and void. They also sought mandatory injunction that the respondents be directed to allot the same to the petitioners or to allot some other plot in lieu thereof. The land of the petitioners situated at village Mataur and Madanpura was acquired by the State of Punjab for development of Urban Estate, SAS Nagar and as per the oustee scheme of the State Government, the petitioners were required to be allotted plot in lieu of the land acquired. The petitioners moved an application along with demand draft dated 5.9.1980 for ₹ 1525/- as 10% of the cost of plot against registration No. 10331 for a 10 marla plot which was duly received in the office of respondent No.3 vide diary No. 3338-MB dated 5.9.1980. In the meanwhile, the State of Punjab changed the policy and as per the revised policy, the petitioners were held entitled to a plot of 200 square yards instead of 250 square yards. The petitioners thereafter deposited an amount of ₹ 2725/- vide bank draft dated 2.6.1981. Respondent No.3 vide letter dated 5.11.1981 offered a 4 marla plot to the petitioners and asked them to deposit ₹ 7450/- to make an amount as 25% along with an affidavit. The petitioners deposited the said amount vide demand draft dated 20.2.1993 and also submitted the certificate regarding the acquisition of land. However, instead of allotting the plot to the petitioners, the respondents allotted the plot to one Garibu who was the co-sharer of the petitioners on the basis of false affidavit submitted by him. The petitioners challenged the said action of the respondents by way of civil

suit. The said civil suit was decreed by the trial court vide judgment and decree dated 22.2.2007 (Annexure P-1) and the respondents were directed to allot the plot in favour of the petitioners. The said judgment and decree was challenged by the petitioners as well as the respondents by way of appeals before the lower appellate court who vide judgment and decree dated 10.5.2008 (Annexure P-2) dismissed the appeals filed by both the parties. The respondents were directed to make the allotment of the plot as per Government policy within a period of three months from the date of passing of the judgment and decree. Feeling aggrieved, respondent No.3 filed RSA No. 870 of 2009 before this Court which was also dismissed in limini by this Court vide judgment dated 25.2.2009 (Annexure P-3). Thereafter, respondent No.3 took the matter before the Supreme Court by filing SLP No. 15179 of 2009. The Supreme Court dismissed the said SLP vide judgment dated 23.7.2009 (Annexure P-4). The petitioners vide letter dated 17.6.2008 (Annexure P-5) informed the respondents regarding the judgment and decree dated 10.5.2008 (Annexure P-2) passed by the Additional District Judge, SAS Nagar, Mohali to allot the plot to them within a period of three months from the said date, i.e. 10.5.2008. The respondents did not respond to the said letter. Thereafter, the petitioners filed an application dated 26.12.2008 (Annexure P-6) under the Right to Information Act, 2005 to know the status of the allotment of the said plot and the steps being taken by the respondents and also to provide the status as to whether the allotment of the plot in question had been cancelled or not. The said application was replied by respondent No.3 on 20.2.2009 (Annexure P-7) informing that they had challenged the judgment and decree dated 10.5.2008 before this Court. After the dismissal of the appeal filed by

respondent No.3, the petitioners again sought information vide application (Annexure P-8) regarding the action taken on the basis of judgment and decree dated 10.5.2008 (Annexure P-2). The petitioners vide letter dated 19.8.2009 (Annexure P-9) informed respondent No.3 about the reference of the judgment and decree dated 10.5.2008 passed by the lower appellate court, SAS Nagar, dismissal of the appeal by this Court and even the SLP preferred by respondent No.2 had got dismissed by the Supreme Court. Thereafter, respondent No.2 vide letter dated 19.1.2010 (Annexure P-10) directed the petitioners to complete the formalities for the allotment of the plot in question. Respondent No.3 asked the petitioners to submit various documents including demand draft of 25% of the cost of the plot. The petitioners completed all the formalities as required by respondent No.3 vide letter dated 19.7.2010 (Annexure P-11). However, vide letter dated 18.1.2011 (Annexure P-12), respondent No.3 informed the petitioners that there is a ban on the allotment of plots in the oustee category and as and when the policy with regard to the allotment would be finalized, they would be allotted the plot. Respondent No.3 thereafter issued a letter of intent for allotment of residential plot No. 855, Sector 77, measuring 100 square yards in Urban Estate, SAS Nagar, Mohali in the oustee category in the draw of lots held on 31.8.2012 vide letter dated 18.4.2013 (Annexure P-13). The tentative price of the said plot was fixed at ₹ 30 lacs @ ₹ 30,000/- per square yard and the petitioners were directed to pay 25% of the amount, i.e. ₹ 7,50,000/- of the above price excluding the amount already deposited within 60 days of the issue of the letter. In response thereto, the petitioners vide letter dated 17.6.2013 (Annexure P-14) deposited a sum of ₹ 6,62,500/- vide demand draft dated 31.5.2013 after

adjusting the amount of ₹ 87,500/- already deposited by them on 19.7.2010 so as to make the total payment of ₹ 7,50,000/- being 25% of the amount as per letter of intent dated 18.4.2013. Thereafter, the petitioners moved a representation dated 1.8.2013 (Annexure P-15) to respondents No.2 and 3 stating therein that they were entitled for the allotment of the plot @ ₹ 3.5 lacs as they had deposited 25% of the amount, i.e. ₹ 87,500/- with respondent No.3 way back on 19.7.2010, i.e., the cost of plot prevailing at that time. Respondent No.3 vide letter dated 3.9.2013 (Annexure P-16) rejected the representation of the petitioners. Hence, the present writ petition.

3. Upon notice, respondents No.2 and 3 filed a joint written statement controverting the averments made in the writ petition. It was pleaded that Desa and Garibu sons of Munshi were two brothers and their land in joint khata measuring 16 kanal 12 marlas was acquired. They submitted an application dated 5.9.1980 for allotment of a residential plot under the oustee category which was registered at No. 10331. Both of them were jointly entitled to the allotment of only one plot of 100 square yards. Desa had filed an affidavit dated 9.7.1993 forgoing his claim in favour of his brother Garibu and as such plot No. 927, Phase-X, Mohali was allotted in favour of Garibu. Thereafter, the legal heirs of Desu filed a civil suit for declaration to the effect that allotment of plot No. 927, Phase X, Mohali in favour of Garibu was illegal and sought mandatory injunction for allotment of the said plot to them. The said civil suit was decreed by the trial court which was upheld upto the Supreme Court. After dismissal of the Regular Second Appeal by this Court and the Special Leave Petition by the Apex Court, respondent No.2 vide letter dated 19.1.2010 asked the petitioners to complete the formalities

regarding allotment of plot and also pay 25% cost of the plot. The names of the petitioners had been included in the draw of lots held on 31.8.2012 and consequently, the letter of intent dated 18.4.2013 was issued for allotment of residential plot No. 855, Sector-77, Mohali, measuring 100 square yards in favour of the petitioners. The delay in issuance of letter of intent occurred due to the mutual dispute between the legal heirs of Desa and Garibu and not due to the inaction or negligence on the part of respondents No.2 and 3. The other averments made in the writ petition were denied and a prayer for dismissal of the same was made.

4. Learned counsel for the petitioners submitted that the civil suit for declaration filed by the petitioners was decreed by the trial court vide judgment and decree dated 22.2.2007 which was affirmed by the Apex Court on 23.7.2009. It was further submitted that the letter of allotment was issued to the petitioners, in compliance thereto, the formalities were fulfilled on 19.7.2010. Learned counsel contended that the petitioners were prepared to pay the allotment rate as was prevalent in the year 2010. The claim made by the respondents vide letter dated 18.4.2013 (Annexure P-13) seeking payment @ ₹ 30,000/- per square yard was unwarranted. Support was gathered from the judgment of Division Bench of this Court in **CWP No. 3711 of 2012** titled as **Chand Rani Seth v. Chief Administrator, GMADA** decided on 20.11.2012 (Annexure P-17).

6. On the other hand, learned counsel for respondents No.2 and 3 submitted that the petitioners were liable to pay the cost of the plot which was prevalent at the time of allotment i.e. 18.4.2013 (Annexure P-13). It was further submitted that the delay in issuance of letter of intent

was due to the mutual dispute between the legal heirs of Desa and Garibu. According to the learned counsel, there was no inaction or negligence on the part of respondents No.2 and 3.

7. After hearing learned counsel for the parties and perusing the record, we find merit in the contentions of learned counsel for the petitioners.

8. The question that arises for consideration is the rate of allotment of 100 square yard plot to the petitioners in the oustee quota.

9. The petitioners acquired eligibility to seek allotment after the decision of civil suit in their favour in the year 2007. The petitioners wrote a letter dated 19.8.2009 (Annexure P-9) to respondent No.3 informing about the events of the case with reference to the judgment and decree dated 10.5.2008 passed by the Additional District Judge, Mohali and dismissal of the appeal by this Court. It was also intimated that the Apex Court had affirmed the judgment of this Court while dismissing the SLP preferred by respondent No.2. It was thereafter that respondent No.2 issued a letter dated 19.1.2010 (Annexure P-10) asking the petitioners to complete the formalities with regard to the allotment of the plot. Respondent No.3 directed the petitioners to submit various documents including draft of 25% of the cost of the plot which were duly deposited by the petitioners vide letter dated 19.7.2010 (Annexure P-11). Thereafter, respondent No.3 vide letter dated 18.1.2011 (Annexure P-12) informed the petitioners that there was a ban on the allotment of plots in the oustee category and as and when such policy with regard to the allotment would be finalized, they would be allotted the plot. Ultimately, respondent No.3 issued LOI for allotment of the plot in question vide letter dated 18.4.2013 (Annexure P-13) in the

oustee category in the draw of lots held on 31.8.2012.

10. In view of the above, the petitioners acquired eligibility to seek allotment under oustee category and completed all the formalities on 19.7.2010. Delay cannot be attributed to the petitioners which was beyond their control. In such circumstances, in our considered opinion, it would be just, fair and equitable to direct the respondents to allot the plot in question to the petitioners at the rate which was prevalent on the date when the petitioners had completed all the formalities, i.e. 19.7.2010. Learned counsel for the petitioners is agreed that the petitioners are prepared to pay the allotment rate as was prevalent in 2010. Consequently, the letter dated 18.4.2013 (Annexure P-13) is quashed to the extent of charging the enhanced price @ ₹ 30,000/- per square yard. However, the respondents shall be entitled to recover the allotment price as was prevalent on 19.7.2010 in case not already paid by the petitioners.

10. The writ petition stands disposed of accordingly.

(AJAY KUMAR MITTAL)
JUDGE

March 10, 2015
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(REKHA MITTAL)
JUDGE