

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-7802-2015

Date of decision : 15.07.2015

Jit Ram Bains

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Mr. Sandeep Arora, Advocate
for the petitioner.

REKHA MITTAL, J.

The present petition filed under Articles 226/227 of the Constitution of India lays challenge to order dated 04.09.2014 Annexure P9 passed by respondent No.2 whereby the revision petition preferred by the petitioner against cancellation of allotment of residential plot No.A-107 (measuring 1000 Sq.Yards), PDA Omaxe City, Sirhind Road, Patiala has been dismissed.

The facts relevant for disposal of present petition are that the Patiala Urban Planning & Development Authority (in short 'PDA') entered into a joint development agreement dated 16.11.2006 with M/s Omaxe Ltd. for development of residential township known as PDA Omaxe City Patiala. In pursuance to the advertisement issued by the said authority for allotment of plots of different sizes, the petitioner applied for plot measuring 1000 square yards vide application No.0297871 dated 17.09.2007 and measuring 350 Square yards vide application No.037919 dated 18.09.2007 in the same

category (scheduled castes). The petitioner came out to be successful and was allotted plot No.B-90 measuring 350 square yards and plot No.A-107 measuring 1000 square yards. The allotment letters were issued in February 2008. As per terms and conditions of allotment in respect of Plot No.A-107 vide allotment letter No.1706 dated 05.02.2008, the petitioner was required to deposit 15% amount within 15 days of issuance of allotment letter as he had already deposited an amount of Rs.5.50 lacs as 10% of tentative price of Rs.55 lacs. The petitioner failed to deposit 15% amount for completing 25% of the price within stipulated period of 15 days and even till cancellation of plot. As a result, allotment of plot No.A-107 (1000 square yards) was cancelled vide letter No.8379 dated 28.07.2008 and earnest money deposited by the petitioner was ordered to be forfeited. The appeal and revision preferred by the petitioner were also dismissed.

The petitioner filled Civil Writ Petition No.6960 of 2012 to challenge cancellation of allotment as well as order dated 04.03.2009 passed in appeal and order dated 09.06.2011 passed by the revisional authority. The petition was partly allowed on 12.05.2014 (Annexure P8) and the revisional authority was directed to decide the revision afresh in the following terms:-

“For the reasons afore-stated, we allow this writ petition in part to the extent that the revisional order dated 09.06.2011 (Annexure P7) is set aside and the matter is remitted to the revisional authority for afresh decision in accordance with law. The petitioner shall submit his written submission along with supporting documents with reference to the abovementioned additional ground of cancellation of allotment within a period of two weeks. The revision petition shall be decided expeditiously and preferably within a period of four

months from the date of receipt of a certified copy of this order. The revisional authority shall also be required to decide the revision petition on the ground of non-deposit of 15% of the allotment price.”

In pursuance of the directions issued by this Court and after providing an opportunity of hearing to the petitioner and the respondent, the impugned order dated 04.09.2014 was passed by the revisional authority and cancellation of allotment was affirmed.

Counsel for the petitioner contends that due to financial difficulty, the petitioner was unable to deposit remaining 15% of tentative price of the plot within 15 days of issuance of allotment letter dated 05.02.2008. The petitioner vide letter dated 18.02.2008 (Annexure P2) made a request to the respondent to grant one month more to deposit 15% of the cost. He sent a reminder to the Estate Officer, PDA, Patiala on 12.03.2008 requesting for time to complete 25% price as the petitioner wanted to raise loan from the State Bank of Patiala. It is argued that the petitioner did not receive any response from the respondent in regard to his request for extension of time. The respondent cancelled the allotment vide letter dated 28.07.2008 and also forfeited the earnest money without providing an opportunity of hearing to the petitioner. The order of cancellation of allotment affirmed in appeal and revision, is liable to be set aside having been passed in violation of principles of natural justice. It is argued with vehemence that allotment of 2 plots under the reserved category in the same scheme cannot be made basis for cancellation of allotment as there was no such provision in the brochure containing terms and conditions of allotment that the same person cannot be allowed more than one plot in the same

category particularly in the circumstances that the applicant could apply for any number of plots of any size as prescribed in the note appended beneath the column, 'how to apply'. It is further argued that the respondent permitted various other allottees to deposit 15% of the amount after expiry of stipulated period of 15 days from the date of issuance of allotment letter, therefore, the petitioner has been treated discriminatorily without any justification.

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

The applications were invited for allotment of plots of various sizes of 200 square yards to 1350 square yards from general and reserved categories including scheduled castes and scheduled tribes. The applicant could apply for any number of plots of any size. The petitioner submitted two applications i.e. one for allotment of plot measuring 350 square yards and the other for plot measuring 1000 square yards and he submitted both the applications under reserved category of scheduled caste. An applicant under reserved category was not eligible to submit an application under general category. The petitioner was successful in draw of lots in respect of plots measuring 350 square yards and 1000 square yards and accordingly allotments were made. As per terms and conditions of allotment in respect of plot No.A-107 measuring 1000 square yards, the petitioner was required to deposit 15% of the tentative price (Rs.55 lacs) within a period of 15 days from the date of allotment i.e. 05.02.2008. The petitioner, admittedly, did not deposit 15% of the amount either within the stipulated period or even till cancellation of the allotment vide letter dated 28.07.2008. The

revisional authority in the impugned order has noticed /observed that the petitioner did not submit any request for extension of time for deposit of 15% of the amount. As per plea of the petitioner, he submitted his request for extension of one month time to deposit the amount vide letter dated 18.02.2008 which was diarised at diary No.1629 dated 18.02.2008. The reminder dated 12.03.2008 is stated to be sent through UPC dated 12.03.2008. The petitioner has placed on record photo copy of letter dated 18.02.2008 purported to be bearing the aforesaid diary number. The said letter does not bear signatures or initial of any official / officer of PDA, Patiala. It is not sure as to who has written this diary number with date. There is no other document made available on record to substantiate plea of the petitioner that any such request was made by the petitioner seeking extension of time. Similarly, the petitioner has placed on record photo copy of letter dated 12.03.2008 Annexure P3 but no UPC receipt has been appended along with. In the letter Annexure P2, there is request for extension of time for a period of one month whereas in letter Annexure P3, there is reference to the letter dated 18.02.2008 but request for extension of time in the said letter is stated to be for a period of 2 months. There is no material on record to counter the findings of the revisional authority that the petitioner did not submit any request for extension of time. It appears to the Court that these documents have been created by the petitioner to substantiate his claim against cancellation of allotment when as a matter of fact no such request was made by the petitioner for extension of time. This apart, there is nothing on record suggestive of the fact that the petitioner ever submitted an application to State Bank of Patiala for advancement of

loan to discharge his liability to pay 15% of price of the plot amounting to more than ₹8 lacs.

Clause No.23 of the allotment letter required allottee to deposit a demand draft of Rs.8.25 lacs (being 15% price of the plot) within 15 days of issue of allotment letter in case the terms and conditions of the allotment letter were acceptable. The allottee was even given the option of refusal to accept the allotment offer within 15 days from the date of issue of allotment letter failing which the entire earnest money being liable to be forfeited. As has been noticed hereinbefore, the petitioner has failed to substantiate his plea that he sent any communication to the respondent with regard to acceptance of allotment offer by way of request for extension of time. He admittedly did not send in writing his refusal to accept the allotment offer within 15 days from the date of issue of allotment letter. Under these circumstances, neither any contract came into existence between the parties nor any fault can be found in the order of cancellation and forfeiture of earnest money, passed by the authorities in consonance with the provisions of clause 23 of the allotment letter and that too after waiting for more than 5 months from the date of issue of allotment letter. The extension of time of few days or even more in other cases, in the circumstances of the present case, does not entitle the petitioner to lay a valid claim for restoration of allotment.

The revisional authority has adverted to another issue i.e. allotment of more than one plot under reserved category. No doubt, in the brochure containing terms and conditions for submitting an application, the applicant could apply any number of plot of any size but it does not state

that applicant under reserved category shall be entitled to allotment of more than one plot of same size or different size. On the contrary, as per terms and conditions contained in brochure / notice inviting applications, condition No.1 reads thus:-

“1. The allotment is subject to the provisions of Punjab Regional & Town Planning and Development Act, 1995 and the rules/policies framed thereunder (as amended from time to time).”

The Punjab Urban Development Authority issued the reservation policy dated 15.07.2005. The Finance and Accounts Committee in its 48th meeting held on 14.06.2005 took a decision, conveyed to the authorities vide letter No.2560-72 dated 15.07.2005 and a relevant extract therefrom noticed by the revisional authority in impugned order says:-

“The beneficiary will not be entitled for allotment of plot / house in any other scheme / station once he has already availed the benefit for allotment under the reserved category.”

The revisional authority has further noticed that in other 20 cases where double allotment was made, plots were already cancelled by the authority. Keeping in view the policy decision in regard to allotment under reserved category, the petitioner was not entitled to allotment of more than one plot under the reserved category.

Another important aspect which invites attention of the Court is that the petitioner was successful in draw of lots in both the applications submitted by him. The allotted plot measuring 350 square yards was sold by him to one Sh. Sushil Walia and it was reallocated by the authorities in the name of transferee on 15.03.2010. The Court cannot ignore that allotments

on reserve price by the State or its agencies more particularly to the reserved categories, are made with an object to provide housing / commercial sites etc. to the weaker sections / affected people, as such, such allotments are not made for giving largesse or for undue benefits. Though it is not clear on record as to when the petitioner sold plot measuring 350 square yards but it appears that it was sold within a short span of time from the date of the allotment.

The petitioner was working as a teacher in a school and presumably did not have the means to pay the allotment money for the two plots. However, to earn profit/premium, he accepted both the allotments. He immediately sold the smaller plot measuring 350 square yards but did not find a customer to sell bigger plot measuring 1000 square yards. For this reason, he did not pay 15% of the amount either within the stipulated period or till cancellation of allotment. Keeping in view conduct of the petitioner, in our considered opinion, he is not entitled to any relief on equitable consideration by invoking the provisions of article 226 of the Constitution of India. Taken from any angle, we do not find any error much less illegality in the impugned order as would call for intervention.

Dismissed in limine.

(REKHA MITTAL)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

July 15, 2015.
Davinder Kumar