IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10393 of 1999
Date of decision: 29.01.2016

Dharam Pal and others

... Petitioners

Versus

Estate Officer, Union Territory, Chandigarh and another

... Respondents

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Surinder Gandhi, Advocate for the petitioners.
Mr. Jaivir S Chandail, Advocate for respondent No.1.
Mr. Deepak Sharma, Advocate for respondent No.2.

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1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not? YES
3. Whether the judgment should be reported in the digest?

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ARUN PALLI J.

What has been assailed is an order, dated 08.01.1999 (Annexure P17), rendered by the Estate Officer, UT, Chandigarh (respondent No.1), vide which claims of the petitioners for allotment of tenements under the Licensing of Tenements and Sites and Services in Chandigarh Scheme, 1979 (for short, '1979 Scheme'), has been declined. A writ of mandamus is also prayed for to direct the respondents to allot dwelling units, at village Mauli Jagran, UT, Chandigarh, to the petitioners.

In brief, the case set out by the petitioners is that they had migrated from the State of Tamil Nadu and had set up their

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Jhuggies (Huts) in Sector 34, on a land that belonged to UT Chandigarh. The area was inhabited by many, who were similarly placed, and was known as Madrasi Labour Colony. Chandigarh Administration initiated a programme for housing and rehabilitation of economically weaker sections of society living in slum conditions in the labour colonies. And to provide them a low cost tenements, a Scheme; "***Licensing of Tenements and Sites and Services in Chandigarh Scheme, 1979***" (for short, '1979 Scheme') was formulated. The Scheme envisaged development of alternative residential sites or tenements, which were to be built by the Chandigarh Housing Board. With a purpose to identify the jhuggi dwellers of the colony, a survey was conducted by the Chandigarh Administration. For the petitioners were inhabiting in the colony, they were issued the provisional identity cards on 20.10.1991 (Annexures P1 to P4). Petitioners, in terms of the 1979 Scheme, applied for allotment of tenements on hire-purchase basis and deposited a sum of Rs.500/- each along with their applications on 24.10.1991. The demand raised by the board to deposit a further sum of Rs.1500/- each on 18.03.1993, was also met with by the petitioners. In the meantime, the Chandigarh Administration with a view to cause an amendment in the 1979 Scheme, framed another Scheme; "***The Licensing of Tenements and Sites and Services in Chandigarh (Amendment) Scheme, 1992***" which came into force w.e.f. 09.10.1992. As claims of the petitioners were not processed, they had approached this court even in the past on a few occasions. A writ petition, bearing CWP No.4440 of 1997,

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preferred by the petitioners, was disposed of by this court on 05.11.1997, with a direction to the respondents to consider the claims of the petitioners, in accordance with law, within a specified time. And eventually, the Estate Officer (respondent No.1), vide order being assailed dated 08.01.1999 (Annexure P17), rejected the claims of the petitioners. The conclusion arrived at by respondent No.1, in support of its order, reads as thus:

> **"A perusal of the relevant record reveals that the petitioners were living in the Madrasi Colony, Sector 34 Chandigarh in the year 1991. At the time of shifting of the Madrasi Colony, a surprise survey was got conducted in the year 1993 and the record of this survey reveals that the petitioners namely S/Shri Pandu, Shanker, Dharam Pal and Manikam were not found residing in the colony. Even during their personal hearing on 3-11-1998, the petitioners could not provide any evidence which could prove that they were living in the Madrasi Colony in the year 1993 on the basis of which the alternative tenements were given in Mauli Jagran by the Chandigarh Housing Board. The case of the petitioners was also referred to the Finance Secretary, U.T., Chandigarh for allotting them tenements by relaxing clause 30(i) of the Scheme, but the same was rejected. The identity cards were issued to the petitioners based upon the survey of 1991, but no evidence has been put forth by the petitioners which can substantiated that they were living in the colony in the year 1993 on the basis of which tenements were allotted by the Chandigarh Housing Board. Since the petitioners have not been found to be a bonafide resident of the Madrasi Colony which is one of the essential condition for eligibility for the allotment of tenement under the "Licensing of Tenements, Sites and Services Scheme in Chandigarh, 1979", the request of the petitioners for the**

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allotment of tenements is hereby rejected. This order should be communicated to the petitioners."

Learned counsel for the petitioners submits that the only reason assigned by respondent No.1 to reject the claims of the petitioners is that they were not found residing in the colony at the time of survey/spot inspection in the year 1993, whereas concededly the petitioners were issued the identity cards, being inhabitants of Madrasi Colony, on the basis of a survey conducted in the year 1991. So much so, their names also find mentioned in the voter's list for the Lok Sabha election in the year 1993 (Annexure P8). Thus, the reason that has been assigned to decline their claims is palpably erroneous.

Per contra, learned counsel for the respondents contends that no doubt the petitioners were issued the provisional identity cards, pursuant to a survey conducted in the year 1991, and their names even exist in the voter's list for the year 1993, but as they were not found residing in the colony during spot inspection in the year 1993, which was/is one of the essential conditions for allotment under the scheme, their claims were rightly rejected. In support of his contention, he even referred to an inspection report dated 19.02.1993 which is taken on record as Mark A.

We have heard learned counsel for the parties and perused the records.

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Before we proceed further, it would be expedient to refer to clause 7(1) and sub-clause (iv) of the 1979 Scheme, which read as thus:

> **"7(1) With respect to every block of a labour colony selected for clearance, allotment of a tenement or site as the case may be, shall be made as under: -**
> **(i) to (iii) xxx xxx**
> **(iv) All persons bonafide residing in Labour Colonies since prior to Ist January, 1978 other then those falling in category (ii) above, shall be allotted a site.**

Ex facie, the petitioners were not eligible to be considered under the 1979 Scheme, for in terms of clause 7(1)(iv) only those persons would have been eligible for allotment who were bona fide residents of the labour colonies prior to 01.01.1978. Whereas, the petitioners inhabited the colony much thereafter. Therefore, claims of the petitioners could only be considered in terms of the amended scheme dated 09.10.1992. Resultantly, it would be imperative to advert to clause 4 of the amended scheme, vide which sub-clause (iv) of clause 7 of the 1979 Scheme was substituted with the following:

> **"All persons who are bona fide residents of labour colonies and whose names are included in the voter's list of 1991 including the Supplement with Ist January, 1991 as date of eligibility for enrolment as a voter under the relevant provisions of Representation of People's Act 1950 and Registration of Electoral Rules, 1960 shall be eligible for allotment of tenements under the said Scheme."**

A bare analysis of afore-referred clause that has been brought in by virtue of an amendment on 09.10.1992, reveals:

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(a) that a person shall be eligible for allotment, provided he/she is a bona fide resident of a labour colony; and **(b)** whose name is included in the voter's list for the year 1991. Quite clearly, those who migrated or set up their Jhuggies or structure post 1991, would not have been eligible for consideration under the Scheme. And those, whose names exist in the voter's list for the year 1991, could at best claim to be inhabiting in the colony during that time. Whereas, the expression "**all persons who are bona fide residents of labour colonies**" requires an applicant to be a bona fide resident of the colony even at the time of allotment of an alternative residence/accommodation. Meaning thereby, not only the name of the applicant must exists in the voter's list for the year 1991, but he must also continue to be a bona fide resident of the colony till his claim for allotment fructifies. Both the conditions co-exist. And for an applicant to be eligible for allotment, he must meet both. What if a person is indeed an inhabitant of the colony in the year 1991, but thereafter, he ceases to be a resident of the colony or shifts or moves away to explore better options, then certainly his claim for allotment would not be acceded to. That is how, even the application form that has to be submitted in Form "A" appended with the scheme for allotment postulates:

> ***"8. I shall vacate the labour colony during the time and on the date specified in this behalf by the Competent Authority.***
>
> ***xxxx***
>
> ***11. I have removed/shall remove a building/ structure at my own expense before the date fixed by the Competent authority."***

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Clearly, the applicant must retain possession of the accommodation he occupies in the colony till it transforms into an allotment of an alternative accommodation.

Vide order dated 18.11.2014, this court required the petitioners to place on record the proof of their residence in Chandigarh till date. But nothing has been placed on record by the petitioners. The position stands further crystallized and strengthened from a bare reading of clause 9(a) of the 1979 Scheme as well, which reads thus:

> **"9. Notwithstanding anything contained in this scheme, no person shall be eligible for allotment of a tenement/site unless he fulfils the following conditions: -**
>
> **(a) The applicant must himself be residing in the colony. Mere ownership, unless accompanied by actual physical possession of a building, hut, structure or covered site shall not be sufficient to make a person eligible for alternative allotment."**

Ex facie, the afore-referred clause is clear, concise and incapable of any misconstruction. In terms of clause 9, a person himself must be residing in the colony and is required to be in actual physical possession of a hut or structure that he claims to have set up, notwithstanding a mere ownership. Likewise, in the absence of any cogent or credible material to show that the petitioners indeed were in actual physical possession of the huts (Jhuggies), they purport to have set up in the colony, during spot inspection in February 1993 and thereafter, the fact that their names figure in the voter's list for the year 1991, is of no

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consequence. Spot inspection report dated 19.02.1993 (Mark A), reveals that no hut or structure, which the petitioners could claim to be owned and possessed by them was found in existence by the concerned staff. This position, remains uncontroverted in the writ petition. So much so, the categorical stand set-forth in the written statement in this regard, has not been rebutted including by filing any counter-affidavit. In a nutshell, petitioners ceased to be the bona fide residents of the colony. Apparently, the purpose sought to be achieved vide the scheme in question was/is to provide housing to slum dwellers. But if a person ceased to dwell in the colony, how could his claim be still accepted. Any other construction or interpretation, to our minds, of the afore-referred clauses, would rather defeat the very purpose of the scheme.

In the wake of the above, no interference is warranted in exercise of extraordinary writ jurisdiction under Article 226 of the Constitution of India. Petition being devoid of merit is accordingly dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(ARUN PALLI)
JUDGE

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