

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

CWP No.12540 of 2013
Date of decision: 16.03.2016

Ram Avtar

... Petitioner

Versus

Union Territory Chandigarh and others

... Respondents

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

Present: Mr. Girish Agnihotri, Senior Advocate with
Mr. Vijay Pal, Advocate for the petitioner.
Mr. Deepak Sharma, Advocate and
Ms. Komal Bir Gill, Advocate for the respondents.

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?

ARUN PALLI J.

A writ of certiorari is prayed for to quash the order dated 20.09.2006 (Annexure P18), rendered by the Estate Officer (respondent No.3), vide which the petitioner was held ineligible for allotment of a residential plot; orders dated 26.05.2010 (Annexure P21) and 07.05.2012 (Annexure P23) whereby the appeal as also the revision petition preferred by the petitioner against the order (Annexure P18), declining his claim, were also dismissed. Further, a direction is prayed to the respondents to issue a letter of allotment qua the site in question to the petitioner.

A brief narration of facts that have led the parties to the current stage would be expedient. A model housing scheme for allotment of residential sites was floated by the Chandigarh

Administration in the year 1971-72, for people who belonged to lower income group. Accordingly, the petitioner submitted an application for allotment of a residential site, admeasuring 5 marlas, on 12.01.1972 (Annexure P2). However, he remained unsuccessful in the draw of lots on two successive occasions i.e. in the year 1972 and thereafter in 1975. The scheme was disbanded in the year 1976-77. For, the Administration revived the scheme in the year 1979, the petitioner was informed to convey his acceptance, if he was still willing for an allotment, but at a current price i.e. @ ₹ 110/- per sq. yard, which he did by furnishing an affidavit dated 10.12.1979. Later, the Estate Officer vide letter dated 28.08.1981, asked the petitioner to submit an affidavit in the prescribed format and deposit a sum of ₹ 1,395/- by way of demand draft. However, the said letter was received by Rama Devi, who too was residing in the same house and was closely related to the petitioner. Petitioner and Rama Devi's husband was also named Ram Avtar who was suffering from a mental disorder and undergoing medical treatment. Rama Devi, under an impression that her husband might have applied for allotment in the year 1972, when he was still normal, in response to the letter dated 28.08.1981, appeared before the authorities. She apprised the respondents of the mental state of her husband, and was permitted to deposit the requisite amount for inclusion of her husband's name in the draw that was held on 15.10.1981. For, he was found successful, a plot measuring 5 marlas, bearing No.3028 in Sector 40D, Chandigarh was allotted in his name. Subsequently,

Rama Devi appeared before respondent No.3 on 30.04.1982, and as required by the authorities, submitted an affidavit of her husband, wherein he was stated to be son of Onkar Mal. And, the said affidavit was found to be at variance with original application submitted by the petitioner, wherein he was purported to be son of Mam Raj. Authorities, being suspicious of the claim and credentials of Rama Devi, vide order dated 20.07.1988, and 16.08.1989, rejected the claim of Ram Avtar for allotment. The order of cancellation of allotment was assailed by the petitioner and vide order dated 31.01.1995 (Annexure P4), the appellate authority allowed the appeal and set aside the said order. The matter was remitted to the Estate Officer. However, again the petitioner was held to be ineligible for allotment under the scheme and his claim was rejected by the Estate Officer vide order dated 16.08.1995 (Annexure P5). And, once again, the appellate authority vide its order dated 20.03.1998 (Annexure P6), set aside the said order and the matter was remanded to the Estate Officer. The Estate Officer summoned the necessary parties. Rama Devi furnished an affidavit dated 21.07.1999 (Annexure P7) and gave up her claim for allotment in favour of the petitioner. Resultantly, the Estate Officer, vide order dated 27.10.1999 (Annexure P8) accepted his claim. However, for a new Officer joined as Assistant Estate Officer, he vide order dated 21.06.2002 (Annexure P10), again rejected the claim of the petitioner, and ordered refund of the amount that was lying with the Administration to Rama Devi. Once again, in an appeal filed by the petitioner, the said order was set aside by the

appellate authority, vide order dated 26.12.2002 (Annexure P11). It was observed that once, vide order dated 27.10.1999, the claim of the petitioner was accepted and the said order was still in existence, it was not open to the Estate Officer to pass yet another order. Therefore, it was concluded that the order dated 27.10.1999 still stands. But, despite that being so, petitioner was not issued the letter of allotment. Rather, respondents now raked up a dispute qua his identity and he was asked to furnish various documents. In compliance, petitioner furnished his Voter ID card, ration card and driving licence etc. So much so, he also furnished an affidavit dated 12.04.2006 (Annexure P17), executed by his Advocate, vide which he identified the petitioner as Ram Avtar son of Mam Raj and affirmed that he knew him since 1982. As if this was not enough, respondent No.3 again, despite orders dated 27.10.1999 (Annexure P8) and 26.12.2002 (Annexure P11), rendered by the appellate authority, once again rejected the claim of the petitioner vide order dated 20.09.2006 (Annexure P18). Being aggrieved, the petitioner moved an application before the District Consumer Forum-I, Chandigarh, which was dismissed on 19.03.2008. The appeal preferred against the said order was dismissed as withdrawn, vide order dated 01.05.2008 (Annexure P19), with liberty to the petitioner to pursue the remedy admissible in law. Faced with the situation, the petitioner assailed the order dated 20.09.2006 (Annexure P18) vide an appeal before the appellate authority, which was dismissed on 26.05.2010 (Annexure P21). The revision petition preferred against the said order was also dismissed by the Adviser

to the Administrator (respondent No.2), vide order dated 07.05.2012 (Annexure P23). That is how, as indicated above, the petitioner is before this court.

Learned senior counsel for the petitioner submits that vide order dated 27.10.1999 (Annexure P8), claim of the petitioner was accepted, for he was found entitled to an allotment, and once the said order had become final, it was not open to the authorities to re-determine the eligibility of the petitioner and pass a fresh order. He submits that subsequent orders were clearly vitiated by the principle of res judicata. Further, he contends that name of the petitioner was included in the two successive draws, which is why his consent was sought to include his name in the subsequent draw held on 15.10.1981, which show that his eligibility was never an issue. In fact, he submits, that the authorities having found the petitioner eligible included his name in the draw, therefore, it was no longer open to the respondents to question his entitlement, once he had succeeded in the draw, for allotment of a site under the scheme. In so far as the identity of the petitioner, he contends that Voter ID card, ration card and driving licence conclusively proved that he happened to be the original applicant i.e. Ram Avtar son of Mam Raj.

Per contra, learned counsel for the respondents submits that the petitioner was neither eligible nor entitled for allotment of a site under the scheme. In essence, he reiterates the reasons that have been assigned by the authorities in support of the orders that are being assailed. In reference to an order, passed by the District

Consumer Forum, dated 19.03.2008, he submits that the matter was concluded against the petitioner on merits and the said order has since become final. For, an appeal against the said order was dismissed as withdrawn.

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

On a due and thoughtful consideration of the matter in issue, we are of the considered view that the petition is wholly devoid of merit and is, thus, liable to be dismissed for the reasons that are being recorded hereinafter.

Concededly, the petitioner i.e. Ram Avtar son of Mam Raj had applied for allotment of a residential site under the model housing scheme on 12.01.1972. He remained unsuccessful in two successive draws that were held in the year 1972 and thereafter in 1975. For, the scheme was revived in the year 1979, consent of the petitioner was sought, if he was still willing for allotment at a current price. And, the petitioner did convey his willingness in this regard. Subsequently, vide letter dated 28.08.1981, petitioner was asked to furnish an affidavit on a non-judicial stamp paper, on a prescribed format, duly attested by the Magistrate Ist Class, and to deposit a sum of ₹ 1,395/- by way of demand draft, so that his name could be included in the draw. Concededly, petitioner (Ram Avtar) neither responded to this letter nor complied with the conditions contained therein. Instead, Rama Devi, who happened to be the wife of Badri Parshad Gupta son of Onkar Mal and was closely related to the petitioner, approached the Administration and

proclaimed herself to be wife of Ram Avtar (petitioner). And represented to the authorities to dispense with the requirement of furnishing an affidavit by her husband, for he was suffering from mental disorder and was not in a position to sign and execute any document. She was asked to submit proof of his mental illness and documents showing that he was undergoing treatment at PGI, as propounded by Rama Devi. But, she failed to bring anything on record in this regard. However, she was still permitted to deposit the requisite amount on 22.09.1981, as a result name of her alleged husband (Ram Avtar) was *conditionally* included in the draw. Alleged “Ram Avtar” emerged successful in the draw. And now when her “alleged husband” was allotted a plot No.3028, Sector 40D, Chandigarh, to secure a formal letter of allotment, she even furnished an affidavit of her “alleged husband” (Ram Avtar), Annexure R1, as required by the authorities. Significantly, “alleged Ram Avtar” was described as son of Onkar Mal in the said affidavit. Whereas, in the original application, vide which the petitioner had applied for allotment in the year 1972, he was recorded to be son of Mam Raj. Alarmed by the situation, respondents asked Rama Devi to produce her alleged husband (Ram Avtar) on 12.07.1982. Faced with this, Rama Devi, who indeed was wife of Badri Parshad, as is evident from her Voters’ Identity card (Annexure R-IV), the entry made in Form D-IV register maintained by the Food and Supplies Department, as also a dwelling unit 544/40A, Chandigarh, in her occupation, which was allotted to Badri Parshad Gupta son of

Onkar Mal, on 28.03.1978, maintained that her husband i.e. alleged Ram Avtar, had since passed away.

Further, a stage had come when the original applicant i.e. Ram Avtar (petitioner) had to resurface, for Rama Devi could even be prosecuted by the Authorities. And, that is how, the petitioner appeared with Rama Devi before respondent No.3 on 12.07.1982. And it was at this stage, and understandably so, she gave yet another twist to her story to salvage the situation, for she claimed that even the name of her husband was Badri Parshad alias Ram Avtar and it was under that misconception, she pursued the process of allotment. Again, nothing was placed on record which could even remotely substantiate such a plea. And, expectedly, she formally gave up her claim by furnishing an affidavit (Annexure P7) in favour of the petitioner.

Apparently, there could only be one out of the two situations because of which the petitioner had to involve Rama Devi in the process of allotment; (i) vide letter dated 28.08.1981, when the authorities asked Ram Avtar to furnish an affidavit on a prescribed format duly attested by the Magistrate Ist Class along with a draft of ₹ 1,395/-, he was no longer a resident of Chandigarh or was settled elsewhere. (ii) He had already acquired a plot or a house in his or in the name of dependent family members in Chandigarh and was thus ineligible for allotment under the scheme. Meaning thereby, he was not in a position to furnish the required affidavit but he could not let go the opportunity to seek the allotment either. That is how, Rama Devi was brought in with a

story of her insane husband (Ram Avtar), who she had to, later, declare dead.

The submission that has been advanced by learned senior counsel for the petitioner, that as the order dated 27.10.1999 (Annexure P8), vide which the petitioner was held entitled for allotment, had become final, the orders being assailed were vitiated by the principle of res judicata, lacks conviction and cannot be countenanced. It would be apposite at this stage, to refer to the conclusion arrived at by respondent No.3, in support of its order dated 27.10.1999, which read thus:

“After hearing the arguments of learned counsel, Smt. Rama Devi and gone through the record of the case made available it comes out that earlier to the office has rejected the request of the applicant for the allotment of 5 marla plot and the applicant gone in appeal before C.A. and the case is remanded back by the C.A. each time. After going through the entire history of the case I am of the view that the claim of applicant has been rejected by the office due to the objections filed by Smt. Rama Devi but now Smt. Rama Devi has filed an affidavit that she has no claim for the allotment of plot which has been placed on record, therefore, the claim of the applicant for the allotment of residential site be considered subject to the availability of plot and fulfillment of other requisite terms and conditions applicable under the scheme for the allotment of plot under Model Scheme and the C.A./F.S. be intimated accordingly.”

Ex facie, the order, referred to above, rather required the claim of the petitioner to be considered subject to fulfillment of the requisite terms and conditions for allotment under the scheme.

For, his claim was earlier rejected by the authorities owing to the objections filed by Rama Devi, who later gave up her stake. It was not concluded, least conclusively, that the petitioner was eligible and entitled for allotment under the scheme. His rights, eligibility and entitlement were yet to be determined. And this is what precisely the authorities, vide their respective orders, had endeavoured to ascertain. Therefore, the orders that are being assailed are not in conflict with the orders dated 27.10.1999 (Annexure P8) and 26.12.2002 (Annexure P11), but in sequel thereto. Thus, the principle of res judicata would not attract itself to the lis.

In so far as the question of eligibility of the petitioner under the scheme, it would be crucial to refer to clause 14(d) of the scheme (Annexure P1), in terms whereof the petitioner had initially applied in the year 1972, which reads thus:

“14. The following categories of persons are to be considered for allotment of residential sites lease-hold basis:-

a-c xxx xxx

d Persons regarding in Chandigarh for the last three years ending on 1st December, 1971.”

Apparently, for petitioner to be entitled to stake his claim for allotment, he was required to be residing in Chandigarh for the last three years ending on 01.12.1971. Meaning thereby, a proof of residence of the petitioner w.e.f. 30.11.1968 to 30.11.1971 was a pre-requisite. Concededly, petitioner failed to place on record any cogent or credible material in this regard. Reliance upon

a certificate of residence (Annexure P2 - Page 43), is hardly of any consequence, for the same was appended with the original application in the year 1972 and, thereafter, the scheme was disbanded. Significantly, nothing is brought on record to show as to what formed basis of the said certificate. In any event, after the scheme was revived in 1979, petitioner was asked to re-apply for fresh consideration and, thus, his eligibility had to be determined afresh. Further, records show that the petitioner managed to get his name entered in the ration card that was issued in the name of his cousin, namely, Ghanshyam on 05.11.2001. Records show that the petitioner was married and had three major unmarried children, but their names were not included therein. The driving licence that he had produced before the authorities was issued by the Regional Transport Office, Bareilly (UP) on 20.07.1993, wherein he was recorded to be the resident of Bareilly.

Albeit, vide a comprehensive order dated 19.03.2008, rendered by District Consumer Forum-I, Chandigarh, claim of the petitioner was declined on merits but the said order, perhaps, would have no bearing as in appeal the appellate authority allowed the petitioner to withdraw the complaint itself with a liberty to avail the remedy as may be admissible in law.

Be that as it may, the petitioner just can't succeed and this petition must fail, as concededly he never responded to letter dated 28.08.1981 and complied with the requisite formalities envisaged therein. Rama Devi, who claimed herself to be the wife of

alleged Ram Avtar, represented to the authorities to include the name of her ailing husband in the draw and deposited the requisite amount. She never pursued the process of allotment on behalf of the petitioner or as his attorney. But for the misrepresentation, the name of her alleged husband (Ram Avtar) would never have been included in the draw. She indeed was married to Badri Parshad and her alleged husband (Ram Avtar), whose name was included in the draw, was a fictitious entity. Yes, alleged Ram Avtar succeeded in the draw and not the petitioner, for he never applied for allotment pursuant to letter dated 28.08.1981 and complied with the requisite formalities. Thus, he could never claim a letter of allotment qua a site that indeed was allotted to a fictitious entity.

In the wake of the position, as sketched out above, we are dissuaded to interfere with the discretion exercised by the authorities 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

16.03.2016

Rajan