

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

CWP No. 17859 of 2012 (O & M)

Date of decision: 11.07.2016

P.S. Sawhney

....Petitioner(s)

Versus

Central Information Commission and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. P.S. Sawhney, petitioner in person.

Mr. Pankaj Jain, Advocate,
for respondent no. 1.

Mr. Vishal Sodhi, Advocate,
for respondent no. 2.

G.S.SANDHAWALIA, J.

In the present petition, challenge is raised to order dated 31.05.2012 (Annexure P-13) whereby, respondent no. 1-Commission directed respondent no. 2-Chandigarh Housing Board to trace the requested documents and office notes and orders of the competent authority authorizing the counsel to appear in CWP No. 5075 of 1982. Information regarding quantum of fees paid to the counsel was also to be given. A caveat was put that in case the information could not be traced, the Board will provide affidavit along the lines to the Commission with copy to the petitioner one week thereafter.

Information which the petitioner sought vide his application dated 11.09.2010 reads thus:-

“1. From the record of the case :CWP No.5075 of 1982; Rajinder Ghai vs. Chandigarh Housing Board, which has been decided on 31 MAY 2000, the Chandigarh Housing Board was represented by Shri R N Raina, Advocate.

2. *Please oblige me with a copy of the official letter authorizing Shri R N Raina, Advocate i.e. his Power of Attorney along with, his official and residential address, including office notes and orders of the competent authority.*

3. *The quantum of fee paid to him i.e. copy of the voucher vide which he had been paid.*

4. *The initial fee of Rs.10/- is being paid along with. I shall certainly pay any additional fee that may be necessary, as per rules.*

Please supply he information, forth with and oblige.”

Initially, the petitioner was asked to appear before the respondent-Board and eventually, vide order dated 20.06.2011, the Appellate Authority of the Board disposed of the application while noticing that the petitioner had not put in appearance and directed the Senior Law Officer to take necessary steps regarding information.

The petitioner thereafter filed appeal before the respondent-Commission whereby, the above said directions were issued on 31.05.2012. (Annexure P-13). In pursuance to the said directions, it is not disputed that the Law Officer also furnished the affidavit as per the requirement deposing that despite special efforts, the requested documents had not been traced out from any branch of the office. Affidavit dated 12.07.2012 reads as under:-

“I Gurpreet Singh Maan, Law Officer, Chandigarh Housing Board, Chandigarh do hereby solemnly affirm and declare as under:-

1. *That in compliance to the order dated 31.5.2012 of Hon'ble Central Information Commission, New Delhi, a letter No. HB/LS/2012/DRL/446 dated 14.6.2012 was issued to the Accounts Officer(Admn.) requesting to instruct the staff who is dealing with the*

inquiry case of Sh. Rajinder Ghai to inspect the record and locate/trace the requested documents & circular No. HB(S)/LS/2012/DRL/447 dated 14.6.2012 has also been circulated to all the heads of branches to locate/trace the requested documents namely office noting portion and others of the Competent Authority to authorize Sh. R.N. Raina to appear in CWP No. 5075/1982 alongwith information relating to quantum of fee paid to him for his appearance.

2. *That despite of special efforts by issue of above said circular and letter to Accounts Officer (Admn.) the requested documents has not been traced out from any of the branch of this office.*

3. *That the information supplied to the Central Information Commission, New Delhi is correct as per official record.”*

The petitioner appearing in person has stressed on the ground that the information was sought in the case of Sh. Rajinder Ghai, who was serving as a Law Officer with the respondent-Board and was a beneficiary of an illegal allotment in which the information is sought. It is not disputed that this Court in CWP No. 5075 of 1982 decided on 31.05.2000 (Annexure P-86) had allowed the writ petition of the said employee and directed allotment of an independent built up HIG house (Upper). The petitioner was also an applicant before the Board and on account of the non-allotment was aggrieved by the allotment to the said employee.

A perusal of the records would go on to show that the petitioner had filed a complaint No. 33 of 1990 before the State Consumer Disputes Redressal Commission, Chandigarh (in short 'SCDRC') on the ground that he had applied for one MIG with the Housing Board. It was noticed that his wife namely Pritpal Kaur Sawhney had also applied and had been allotted

'A' category one flat bearing No. 30, Section 45-A, Chandigarh and possession had been delivered on 31.12.1990. He had contended that a list of 6 houses, out of which, H. No. 1232 (HIG), Sector 43-B, Chandigarh was vacant and could be allotted to him and the flat should be surrendered. The said complaint was not accepted vide order dated 12.05.1997. However, only direction was given that respondent shall refund the deposit made with the respondent-Board alongwith interest. The petitioner thereafter filed appeal before the National Commission bearing No. 255 of 1997, which was dismissed on 06.05.1999 and the SLP No. 5944 of 2000 of the petitioner was dismissed on 08.05.2000. It is pertinent to mention that even the direction for refund was set aside by the National Consumer Disputes Redressal Commission, New Delhi (in short 'NCDRC') on 23.03.2006 by holding that the present petitioner was engaged in a fictitious and avoidable litigation and forfeiture was justified and costs of ₹5,000/- were imposed. It was also noticed that on account of the interim order dated 17.12.1982 in the writ petition filed by the said officer, the house was lying unallotted and reserved in view of the litigation which was pending at that point of time.

Thereafter, the petitioner also filed another Complaint No. 64 of 2002 before the SCDRC and arrayed the said Law Officer as respondent no. 2 praying for allotment of H. No. 1232, Sector 43-B, Chandigarh at the original price. The said complaint was dismissed by noticing that the whole matter had already been dealt with uptill the Apex Court and the complaint was barred by the principle of res judicata. Costs of ₹500/- were also imposed upon the petitioner to be paid to the said Law Officer concerned vide order dated 24.07.2003. The relevant part of the order reads thus:-

“Coming to the next issue i.e. the Complaint

being barred by the Principle of Res Judicata, a close scrutiny of the evidence on record clearly indicates that basically the contents of the Appeal No.255/97 filed before the Hon'ble National commission by the Complaint and contents of this Complaint are materially and substantially the same. Both the cases pertain to the same Registration No.66151, dated 5th Jan, 1978 and same payment of Rs.3000/- as earnest money. Both speak of how the Complaint initially applied for an MIG(Upper) House and later on 21st Jan, 1979, due to change in eligibility consequent to an order of the Hon'ble Supreme Court, applied for a change to a HIG House. Both the cases have the same allegations against the C.H.B. i.e. Complainant's letter of 21st June, 1979 is missing from the Record of the C.H.B. and that the C.H.B. in connivance with OP No.2, who is an employer of the C.H.B., has allotted HIG House No.1232, Sector 43-B, Chandigarh to OP No.2 and denied its allotment to the Complainant. Materially and substantially therefore it is clear that both the Complaints i.e. Complaint Case No.33/90 and this Complaint No.64 of 2002 are the same. The only difference is that in this Complaint there is an additional mention of a meeting of the Complaint with Sh. G.K. Marwaha, Chairman, C.H.B., alongwith C.E.O., C.E., S.L.E. & S.L.O of Chandigarh HousingBoard and Sh. Mohinder Gupta, Member, C.H.B. Dated 17th Sept., 2001 in which the C.H.B. showed its willingness to refund the Complainant the amount of earnest money alongwith interest @ 18% per annum from the date of institution of the Complaint till payment; an offer of the Complainant declined. In addition the relief clause differs to the extent that whereas in Complaint Case No.33/90 basic relief sought was allotment of an MIG (Upper) House at the

committed price of Rs.46,200/-, basic relief sought in this Complaint No.64/2002 is for allotment No.1232, Sector 43-B, Chandigarh. Interestingly the relief sought in the Appeal no.255/1997 filed by the Complainant (Annexure P-1) before the Hon'ble National Consumer Disputes Redressal Commission in the Complaint Case No.33/990 is identical to the relief now sought in this Complaint Case No.64/2002. The foregoing discussion clearly brings out that the entire subject of this Complaint has already been dealt with and adjudicated upon at all levels from this State Commission to the Hon'ble Supreme Court and thus we are of the considered view that the Complaint is clearly barred by the Principle of Res Judicata. Accordingly, the Complaint is dismissed. We also find this complaint raises no consumer dispute against OP No.2 and no relief has been sought from him, then in our considered view this complaint is vexatious qua OP No.2. Consequently, we direct the Complainant to pay Rs.500/- as costs to Sh. Rajinder Ghai, OP No.2. We further direct that this amount be paid by the Complainant within 30 days of the receipt of this order.

Copy of this order be sent to the parties free of charges.”

The appeal against the said order was dismissed by the NCDRC on 14.11.2003 in First Appeal No. 712 of 2003 and the review was dismissed on 19.08.2004. The SLP No. 24372 of 2007 was dismissed on 18.07.2008 by the Apex Court.

A perusal of the original record of the said writ petition i.e. CWP No. 5075 of 1982 would go on to show that the petitioner had filed C.M. No. 7526 of 1991 in the said case for being impleaded. The application was dismissed on 31.10.1991 with liberty to file separate writ

petition, if so desired. The petitioner also filed CWP No. 16847 of 1991, which was dismissed as withdrawn praying for direction to allot him H. No. 1232, Sector 43-B, Chandigarh as per the price in January, 1978 and other compensation etc. and to stay the proceedings in complaint case No. 33 of 1990. The petition was dismissed as withdrawn with liberty to file a fresh petition on the same cause of action on 25.07.1993. Thereafter, he filed CWP No. 12441 of 1995 challenging the allotment in favour of the Law Officer that he was not a bona fide registered applicant and restraining the Board from allotting him the said house. The writ petition was dismissed on 25.08.1995.

C.M. No. 4579 of 1994 was filed by him in CWP No. 5075 of 1982 the said case to intervene. The said application was dismissed on 22.08.1995 by noticing that he had also filed CWP No. 16847 of 1991 but the same was got dismissed as withdrawn on 25.07.1993. Resultantly, the said application is also dismissed. Order dated 22.08.1995 reads thus:-

“Present: Applicant P S Sawhney in person.

Mr. Rajive Atma Ram, Advocate.

..

In this application, prayer has been made by the applicant PS Sawhney that he be permitted to intervene and pursue this matter. The application has been contested by the petitioner.

Having heard the applicant at length, I am of the view that the prayer made in the application cannot be allowed. Previous to this, applicant filed Civil Misc. No.7526 of 1991 in which he made a prayer that he be impleaded as a party to this petition. That application was dismissed on 31.10.1991. However, the applicant was permitted to file a separate writ petition, if so

advised. Applicant filed CWP No.16847 of 1991 (PS Sawhney v. Chandigarh Housing Board) but he got the same dismissed as withdrawn on 25.7.1993. The present application was filed on the day when he filed application for getting his writ petition dismissed as withdrawn. In view of order dated 31.10.1991 passed in C.M. No.7526 of 1991, prayer made in the instant application cannot be allowed. C.M. No.4579 of 1994 stands dismissed.”

He also filed an independent writ petition after 10 years bearing CWP No. 22637 of 2010 challenging the said order on the ground that it was by fraud. The writ petition was dismissed on 23.08.2011 (Annexure R-1) as not maintainable. LPA No. 1969 of 2011 was thereafter preferred which was also dismissed on 24.01.2014 (Annexure R-2) by imposing costs of ₹50,000/-. It is, however, submitted that by subsequent order, the costs portion was deleted vide order dated 29.08.2014. It is, however, not disputed that the petitioner thereafter also preferred Special Leave Petition No. 5749-50 of 2016 against the order of the Division Bench, which was also dismissed on 15.02.2016 (Annexure R-3) while noticing the fact that the claim had also been made to the same property by taking recourse to different proceedings.

The Division Bench, categorically on 24.01.2014, firstly held that the writ was not maintainable challenging an earlier order passed by the Single Judge. The issue of fraud was also gone into and it was held that the judgment delivered on 31.05.2000 was not the result of any fraud played on the Court. The factum of incorrect statement made before the Single Judge that the petitioner was not a person interested in the plot led to the imposition of ₹50,000/- as costs, which were, however, deleted vide the

order dated 29.08.2014, when the review application was filed. Relevant portion of the judgment of the Division Bench dated 24.01.2014 reads thus:-

“41. The correctness of the judgment or otherwise is, therefore, not something that we are going into. As regards the allegation that it was the result of a fraud played upon the Court, we feel that no such fraud was played, in view of what we have just stated herein above, that all the facts which are contended by the appellant in his writ petition and in his appeal before us, were already stated by the Housing Board in its amended written statement before that Court. As such, all the facts being before the Court that decided the matter, it cannot be said that the judgment was the result of any fraud played on the Court.

42. Yet another prayer made is with regard to staying the weeding out process of orders and record in CWP No.5075 of 1982. Such prayer would also not be maintainable in this appeal or the petition out of which it arises. If the appellant sought, or still seeks, either the stoppage of the weeding out process, or reconstruction of the file, he would obviously be at liberty to move an appropriate application in the said writ petition, which would be decided on its own merits.

43. In view of all that has been discussed herein above, we find no ground to entertain the appeal of the appellant, on any ground and, in view of the fact that the appellant has, firstly, been time and again litigating on the same issue after not having succeeded before the Hon'ble Supreme Court and has yet again chosen to file the present appeal, and further, as he made incorrect statement before the learned Single Judge, to the effect that he is not a person interested in the plot, which is subject matter of the petition filed before the learned Single Judge, we while dismissing the letters patent

appeal, impose costs of Rs.50,000/-.”

Keeping in view the above background of the case and the fact that the issue of the allotment whether it was right or wrong has already been decided in the earlier proceedings as noticed. The challenge after 10 years to the allotment which is alleged to be by fraud has been declined and the said order has been upheld till the Apex Court. In such circumstances, the argument raised by the petitioner who is appearing in person that a fraud had been committed and it was necessary to be exposed and the information not being provided was purposely being held back is without any substance. As noticed above, the petitioner is personally aggrieved by the non-allotment and thus, was seeking to raise the issue time and again.

A perusal of the record of the writ petition of the year 1982 would also go on to show that vide application dated 22.06.2011, the petitioner had sought the copy of the power of attorney or memo of appearance of the counsel, who had appeared for the Housing Board under the Right to Information Act, 2005. Further details were asked whether the documents have to be preserved for how long and the procedure of weeding out of the old record. The case was then processed by the Weeding Cell of this Court and it was noticed that the record had been weeded out but the same had not been scanned and it would be prepared in due course. Thereafter, another application was received from the petitioner on 26.08.2013 addressed to the Registrar alleging tampering of the record and praying for the ordering of a CBI inquiry. The case was accordingly processed and it was noticed that it was a weeded out case and part 'B' was not available which pertains to the power of attorney etc., which information the petitioner was seeking. Resultantly, the orders were passed

by noting that the petitioner was not a party and the case had been decided on judicial side and, therefore, the application be filed. The petitioner not satisfied, addressed another copy of the same application again to the Registrar which was received on 14.10.2015. The same was again processed and keeping in view the earlier decision, orders were passed for filing the same on 03.11.2015.

In such circumstances, it is apparent that the petitioner is a habitual litigant as such and unnecessarily trying to rake up the issues which are of no importance and is only consuming precious judicial time, which could be utilized to decide genuine disputes arising inter se the parties. For this reason also, it would be appropriate to draw the curtain down on a controversy which is sought to be created without any reasonable cause. The petitioner is not suffering any loss for the lack of supply of the documents which he is wanting which have now been admittedly weeded out on account of the case having finally been decided and, therefore, the affidavit which has been filed by the respondent-Board is also justified in the facts and circumstances. The facts and circumstances are such that ordinarily heavy costs would have been imposed, but since the petitioner is a senior citizen and appearing in person, this Court refrains from doing so.

The necessary affidavit, as per the directions of the respondent-Commission, has been filed expressing the difficulties and the reason and explaining that the record being old and pertaining to a writ of the year 1982 decided in the year 2000, could not have been traced. In such circumstances, the justification which has been given by the Board does not seem to be implausible which would warrant interference. Accordingly, this Court is of the opinion that no case is made out for interference in the

impugned order, which has been duly complied with by the respondent-Board.

Accordingly, the present writ petition is dismissed.

11.07.2016
shivani

(G.S. SANDHAWALIA)
JUDGE