

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.1528 of 2016
Date of decision: 25.01.2016

Mukul Jain

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr. Gaurav Bakshi, Advocate for the petitioner.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
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 19.10.2001 (Annexure P5), rendered by the Estate Officer, Haryana Urban Development Authority, Bhadurgarh (respondent No.4), vide which the residential plot allotted to the petitioner was cancelled; order dated 15.05.2013 (Annexure P6), passed by respondent No.3 as also the order dated 31.03.2015 (Annexure P7), whereby the revisional authority affirmed the order of cancellation and dismissed the revision preferred by the petitioner.

In brief, the case set out by the petitioner is that a residential plot bearing No.1453, Sector 9-9A, Bhadurgarh,

measuring 126 sq. meters, was allotted to the petitioner, at a tentative price of ₹ 2,61,164/-, on free-hold basis, vide allotment letter dated 25.07.2000 (Annexure P1). In terms of condition No.5 of the allotment letter, petitioner was required to deposit ₹ 39,174/- (15% of the total costs), within a period of 30 days from the date of allotment letter. However, petitioner failed to deposit the said amount owing to financial crisis he was faced with. But, vide letter dated 26.08.2001 (Annexure P2), issued by respondent No.4, petitioner was again informed to deposit the said amount. Resultantly, vide a demand draft bearing No.463760/09/2001, dated 10.10.2001 (Annexure P4), appended with a letter of an even date (Annexure P3), addressed to respondent No.4, petitioner deposited the requisite amount. But, despite that, petitioner was not responded to. And, it was only in the year 2012, on a visit to the office of respondent No.4, petitioner learnt that the residential site allotted to him had already been cancelled, on account of failure to deposit 15% amount, vide order dated 19.10.2001 (Annexure P5). And, the amount of earnest money (10% of the total cost) deposited by the petitioner, along with the application had also been forfeited. Appeal preferred by the petitioner against the order of cancellation was dismissed by the Administrator, HUDA, Rohtak (respondent No.3) for lack of jurisdiction, vide order dated 15.05.2013 (Annexure P6). Even the revision petition preferred by the petitioner was dismissed by the Additional Chief Secretary, Government of Haryana, Town & Country Planning & Urban Estate

Department (respondent No.1), vide order dated 03.03.2015 (Annexure P7) . And the conclusion arrived at reads as thus:

“... The petitioner never applied for condonation of delay in depositing 15% price as per HUDA policy. After cancellation allotment on 19.10.2001 for more than 12 years, the petitioner remained in slumber as if he did not have any interest in retaining the allotment and woke up only in the year 2013 when the prices of property escalated. As per HUDA policy dated 09.04.1999 regarding condonation of delay in depositing 15% price, delay upto 60 days can be condoned by the Chief Administrator, HUDA and delay beyond days is not condonable. Therefore, in view of the ibid policy also, the revision petition is liable to be dismissed. Neither the petitioner showed any interest in retaining the allotment for 12 long years nor any valid explanation given for this inordinate delay. In view of the above discussion, the present revision petition is hereby dismissed being devoid of any merit.”

That is how, as indicated above, the petitioner is before this court.

Learned counsel for the petitioner submits that the petitioner deposited ₹ 39,174/- (15% of the total cost) on 10.10.2001, though after a delay of 412 days, but in terms of HUDA policy dated 09.04.1999 (Annexure P8), delay beyond a period of 60 days could always be condoned by the Chairman, HUDA. Particularly, when in a similar situation, respondent No.2, vide order dated 14.02.2002 (Annexure P9), had condoned the delay as regards the other residential sites in the same Sector. He also refers to the policy dated 09.04.1999 (Annexure P8), affidavit (Annexure P10) and a decision of the Hon'ble Supreme Court, copy

whereof is appended with the petition as Annexure P11, in support of his submission.

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

On a due and thoughtful consideration of the matter, 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, vide allotment letter dated 25.07.2000 (Annexure P1), petitioner was allotted a residential site subject to the terms and conditions stipulated therein as also the provisions of the Haryana Urban Development Authority Act, 1977. Before we proceed further, it would be expedient to refer to clauses 4 and 5 of the letter of allotment:

“4. In Case you refuse to accept this allotment, You shall communicate your refusal by a registered letter within 30 days from the date of the allotment letter, failing which the allotment shall stand cancelled and the earnest money deposited by you shall be forfeited to the authority & you shall have no claim for damages.

5. In case you accept this allotment, please send your acceptance by registered post alongwith an amount of Rs 39174-00 within 30 days from the date of issue of this allotment letter, with together with an amount of Rs 26117 paid by you along with your application form as an earnest money will constitute 25% of the total tentative price.”

Ex facie, a bare analysis of the afore-referred clauses reveals that the petitioner had an option to decline the allotment within a period of 30 days from the date of the allotment letter, in

which case even 10% of the amount deposited by the petitioner, along with his application, could be refunded. But, in the event of non-deposit of 15% amount, within the stipulated period, and failing to convey the refusal in time, the inevitable fall out was cancellation of allotment and forfeiture of earnest money. However, in the event of acceptance of allotment, the same had to be conveyed by registered post along with the requisite amount (15% of the total costs) within the prescribed time. Concededly, neither did the petitioner decline the allotment within 30 days from the date of letter of allotment nor deposited ₹ 39,174/- (15% amount). That being so, the consequences, as indicated above, had to follow. Petitioner too was conscious of the ramification of his failure to deposit the requisite amount, and that is how he accepted the situation and remained quiet for over one year. The case set out by the petitioner in paragraph 4 of the petition; that vide letter dated 26.09.2001 (Annexure P2), respondent No.4 informed the petitioner to deposit the amount, is wholly false and misleading. All what the said letter recites is:

“... This office had issued allotment letter vide no.4108 dated 25.07.2001. You were required to deposit 15% amount within thirty days. But you failed to deposit a sum of Rs.3974/- within prescribed period as per record of this office. If you have deposited the 15% amount please submit the proof in the office within 10 days, otherwise it will presumed that you did not deposit the amount. The ten percent amount deposited by you along with application will be forfeited for which you have no claim.”

Apparently, vide letter referred to above, the petitioner was rather intimated that he had failed to deposit the requisite amount and if any such amount was indeed deposited, the proof thereof be furnished. Clearly, before passing a formal order of cancellation, the authorities just re-confirmed if the petitioner had actually made any such deposit. And nothing more. No fresh opportunity was afforded to the petitioner for compliance. In fact, petitioner, having failed to comply with the terms of allotment, suddenly saw an opportunity to revive his claim and that is how he sought to deposit ₹ 39,174/- (15% of the total costs) vide a demand draft dated 10.10.2001. But, to no avail, for respondent No.4 passed a formal order of cancellation of site, vide order dated 19.10.2001 (Annexure P5).

We are reminded to point out at this juncture that the petitioner pleads knowledge qua the order of cancellation only in the year 2012, which again is a mis-statement. For, a reference to the order of cancellation dated 19.10.2001 (Annexure P5) also reveals that even the bank draft that was sought to be submitted by the petitioner on 10.10.2001 was returned by the authorities. Which is why the petitioner is consciously quiet as regards the fate of his letter dated 10.10.2001 (Annexure P3), as also the draft appended therewith (Annexure P4). Significantly, this is not the grievance of the petitioner either that the draft dated 10.10.2001 (Annexure P4) submitted by him was never returned by the authorities. Thus, it is writ large that the petitioner accepted the cancellation as also its consequences, as he remained quiet for a

period of over 11 years thereafter. Institution of the appeal as also the revision, in the year 2012 or 2013, after such a gross, inadequate and unexplained delay was nothing but an afterthought, as in the interregnum the property prices had escalated many fold. The petition is merely speculative and thus also lacks bonafides. Further, the plea set out by the petitioner was that it was on account of unavoidable circumstances he could not deposit the requisite amount, but he failed to plead anything in this regard before the revisional authority. Position is not any different even before this court. Reference to the policy dated 09.04.1999 (Annexure P8), which provides for condonation of delay in the event of late deposit, is also of no consequence. As the petitioner never prayed for condonation of delay in depositing the 15% amount, either before cancellation or post cancellation of site for a period of over 11 years. Likewise, a reference to the affidavit submitted by the Chief Administrator, HUDA in CWP No.10424 of 2010 does not advance the case of the petitioner a bit. In so far as the decision rendered by the Hon'ble Supreme Court in **Sunita Sharma v. The Financial Commissioner & Sec. & Ors.**, Special Leave to Appeal (Civil) No(s).8198-8199/2013 (Annexure P11), apparently the site was cancelled on 26.05.2000, and the petitioner therein, without any loss of time, moved an application to the Estate Officer for condonation of delay, on 13.06.2000, in terms of the policy dated 09.04.1999. And, it was duly pleaded that the delay, in depositing the requisite amount, had occurred as the petitioner had gone to Chennai to see her ailing mother. Certainly, such is not the

position in the matter in hand. There was never any occasion to condone the delay as the petitioner accepted the cancellation of site allotted to him.

That being so, we are dissuaded to interfere in the discretion exercised by the authority. 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

25.01.2016
Rajan