

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-1860-2016(O&M)

Date of decision : 13.09.2017

Jaivir Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr.Ramesh Goyat, Advocate
for the petitioner.

Mr.Hitesh Pandit, Addl.A.G. Haryana.

Mr.Bhushan Bhatia, Advocate
for respondent no.4.

AMOL RATTAN SINGH, J.(ORAL)

CM-7881-CWP-2016

By this application, a replication to the written statement filed on behalf of respondents no.1 to 4 is sought to be placed on record.

Application is allowed. Replication is taken on record.

CWP-1860-2016

By this petition, the petitioner is seeking quashing of the order dated 19.01.2006 (Annexure P-8), passed by respondent no.3, i.e. the General Manager, Haryana Roadways, Hisar Depot, by which the house building advance of Rs.7,22,800/- sanctioned by the same authority, to the petitioner, on 10.07.2015, was ordered to be cancelled, with the first installment of the aforesaid amount that had been released to the petitioner, i.e. Rs.2,89,120/-, directed to be deposited back by the petitioner along with

The contention of the petitioner is that the loan had been duly sanctioned to him as was his due and he had in fact built up to the plinth level upto 20.08.2015, but the Accountant, i.e. respondent no.4 Raj Kumar Sheokand, for extraneous consideration (as alleged), made a report to the effect that he had visited the spot and found one 'pacca' room and toilet / bathroom already existing on the spot, with the petitioner making an extension of his house by demolishing some portion at the rear of the house.

Thereafter, on the aforesaid report having been made, six months later, on 26.05.2016, the Deputy Transport Controller (P&D) is shown to have visited the spot, who made a report on 27.05.2016, stating to the effect that “three rooms and one kitchen have been found constructed at ground floor and one room, one toilet of upper portion have also been constructed. In addition to this one old room called baithak also found in this building. Flooring of this building is not completed, doors and windows are not fitted”.

Thus it was stated in the said report that during the verification it was found that it was not a plain plot and that the old house had been demolished and a new house had been constructed.

Learned State counsel has produced in Court today from the record, the instructions of the Government of Haryana dated 01.09.1995, Clause 4 of which reads as follows:-

“(i) It has also been decided that in the case of a Katcha House, the Revenue Authority should verify that Katcha House actually needs demolition or has collapsed due to rain and there exists a plot which needs new construction. Where one / two Pacca Rooms have been constructed by the applicant and remaining portion of plot is to be constructed, the applicant will apply for

the extension of house not for the construction of house.”

Thus it is contended that the petitioner having applied for loan for construction of a new house whereas he was actually demolishing an old house and reconstructing thereafter, he was not entitled to the said loan.

Upon query as to what were the documents that the petitioner annexed along with his application, the respondents have produced a photo copy (despite the fact the original was asked for by the last order), pertaining to the loan application made and sanction given to the petitioner, wherein, though undoubtedly the petitioner has written that the loan being applied for is for construction of a house (and not reconstruction), and had also annexed an affidavit therewith to the effect that he is the owner of the plot on which he intends to construct, (the affidavit being in English), however, there is also annexed therewith an application made by the petitioner (in Hindi), to the Tehsildar, Barwala, stating that he wants to construct a new house on the plot after demolishing the old house which is in a dilapidated condition.

On the same application, an endorsement by the Tehsildar (or on his behalf), is seen to have been made, to the effect that the petitioner owns a “*Makaan*” within the Lal Dora of the village. The said documents have been produced from the record of the respondents and obviously therefore were annexed by the petitioner along with his application.

The contention of the respondents therefore, that the petitioner misled the department into issuing a loan for construction of a new house, is rejected, in view of the fact that the petitioner is only a Helper Mechanic, and with him having annexed the documents as they were available with

him, if as per the said documents he was not eligible to be granted a loan for construction of a new house, it was duty of the sanctioning authority, i.e. the General Manager and those who were concerned with the sanction, i.e. the Accounts Officer and others, to have pointed that out and therefore not have sanctioned a loan for new construction, but to have directed him to file an appropriate application seeking a loan for reconstruction, which would have obviously been dealt with as per norms/rules.

That not being so and the petitioner having actually been sanctioned a loan for new construction, the order directing him to reimburse the installment already released to him, i.e. for an amount of Rs.2,89,120/- is wholly uncalled for, especially as he has been directed to do so with interest and penal interest.

It is to be also noticed that no show cause notice was given to the petitioner, as to why such a refund be not obtained from him along with interest and penal interest; and even though there may not be any show cause notice required to be issued under specific rules to that effect, however, on the principles of natural justice alone, before imposing such a large penalty on the petitioner, he should have been issued a show cause notice.

Further, if a show cause notice was issued to him, for paying interest and penal interest, a similar notice should have also been issued to all others concerned who had sanctioned him the loan, including the Accounts Officer and the General Manager, for not having scrutinized the documents properly, as were annexed with the application.

That not having been done, the impugned order dated 19.01.2006 is hereby quashed, to the extent that it directs reimbursement to

the department (by the petitioner) of the installment already released to him of the sanctioned loan, along with interest and penal interest imposed thereupon.

However, the petitioner obviously has demolished his old house to construct a new one as can be seen upon a perusal of the report of the Tehsildar, to the effect that there was house standing on the spot. Further, the report of the Accounts Officer being to the effect that on the date in November 2015 that he visited the spot, there was one room and one bathroom constructed, and the report of May 2016 of the Deputy Transport Controller being that by that time a whole house stood constructed except for the flooring, very obviously other than one room and a toilet, the rest of the construction between November 2015 and May 2016 took place either by constructing a wholly new structure, or by demolishing a part of the old structure and rebuilding on the plot thereafter.

Consequently, whatever enquiry is required to be conducted by the respondents in order to sanction / refuse an appropriate loan to the petitioner, it shall be carried out by due procedure and further, since a loan was wrongly sanctioned, as per the respondents, to the petitioner, an enquiry is directed to be ordered by the Addl. Chief Secretary, Government of Haryana, Department of Transport, against the then General Manager of the Haryana Roadways Depot, Hisar, as also all other persons involved in the sanction of loan, including the Accounts Officer (respondent no.4), which will be taken to its logical conclusion and the enquiry report put up before this Court after six months.

However, as regards the impugned order, Annexure P-8, it is hereby quashed.

After determining the petitioners' claim for a loan, for reconstructing his house, as per rules / norms, if he is held to be not entitled to even Rs.2,89,120/- as a loan, the said sum having been released to him as a first installment in the loan already sanctioned for building a new house, the respondents would be at liberty in that case to seek a refund from the petitioner to the extent that the said amount of Rs.2,89,120/- is in excess of loan now found to be admissible to him. However, naturally, if the said amount of Rs.2,89,120/- is less than the amount now admissible to him as a loan for reconstructing his house, as per norms, the said amount already released as first installment, would be taken to be the amount released to him in terms of the loan to be now sanctioned to him, as per his entitlement.

No order as to costs.

(AMOL RATTAN SINGH)
JUDGE

September 13, 2017.
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No