

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

**CWP No.15621 of 2017(O&M)
Date of Decision: July 20, 2017**

Gurmeet Kaur

-----Petitioner

Versus

The Adviser and others

-----Respondents

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU, JUDGE**

Present: Mr. Neeraj Sharma, Advocate
for the petitioner.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the orders dated 28.04.2006 and 06.09.2006 passed by the Estate Officer, Union Territory Chandigarh, whereby, the claim of the petitioner for allotment of residential plot No.358, Sector 46-A was declined. She has also challenged orders dated 13.07.2015 and 22.11.2016 whereby her appeal and revision have been dismissed by respondents No.2 and 1, respectively.

The Chandigarh Administration had formulated a Model scheme in the year 1971 for allotment of residential plots at concessional rates to persons of Low Income Group. Those who could not be adjusted in the said scheme, were considered under the scheme in the year 1975. The applicants still left over were considered under the Low Income Group (Allotment of Sites) Scheme, 1979.

Balbir Singh (late husband of the petitioner), had applied for residential plot under the Model Scheme, 1971 on 31.1.1972. He had submitted bank draft of Rs.425/- along with the application.

At that time, Balbir Singh was posted at Trichirapalli (Madras). The respondent – Administration sent a letter dated 4.1.1980 informing him that it had been decided to allot residential plots in Sectors 40 and 46 at the rate of Rs.110/- per sq. yard by draw of lots. The allotment was to be on lease hold basis for 99 years under the Chandigarh Lease Hold of Sites and Building Rules, 1975. It was a condition of allotment that the allottee had not secured a residential site or house in any urban area, anywhere in India, including Chandigarh. He was asked to give his consent subject to his fulfilling the conditions. Thereafter, he would be considered for allotment. An affidavit was required to be submitted within 15 days from the date of issuance of the letter, failing which it would be presumed that he was not interested in allotment of the plot. Another letter dated 28.4.1981 was sent, whereby, it was intimated that it has been decided to allot residential plots in Sectors 40, 44 and 46 by draw of lots under the Low Income Group (Allotment of Sites Amendment) Scheme, 1981. He was asked to give his consent along with an affidavit by 8.5.1981, for him to be considered for draw of lots. Vide another letter dated 17.7.1981, he was required to furnish an affidavit and also deposit a sum of Rs.1687/- as difference of 10% within 15 days from the date of issue of the letter. Balbir Singh submitted the affidavit and a draft of Rs.1687/- on 30.7.1981. The affidavit was as under::

“That I or my wife/husband or any of my dependent children neither secured nor transferred by way of sale/gift/ exchange or otherwise a residential site or a house including dwelling unit in any Urban Area/Urban Estates/Colonies of the Improvement Trust/Project Area, anywhere in India, including Chandigarh since

coming into force of 1971 Model Scheme.”

Vide letter dated 3.2.1984, the respondent asked Balbir Singh to furnish another affidavit that he had not been granted any loan for the purchase of plot or for construction of house thereon from the Government or any other agency. In response, Balbir Singh submitted affidavit dated 17.02.1984 affirming that he had *“not been granted any loan so far for the purchase of plot (under above schemes) or for construction of house thereon by the Government or any other agency.”* It was also affirmed that neither he nor his wife or his dependent children had secured or transferred by way of sale/gift/exchange or otherwise a residential site or house including dwelling unit in any urban area/ urban estate/ colonies of the Improvement Trust/ Project Area anywhere in India, including Chandigarh.

Balbir Singh died on 18.5.1985.

It is the case of the petitioner that she had no knowledge that he had applied for a residential plot, as in the years 1984-85 he was posted at Madras and the record pertaining to the plot had got burnt in the riots that took place that year. The petitioner came to know about the fact of the allotment of plot No.358, Sector-46A, Chandigarh from Chhabra Property Dealer and Mr.Tejinder Singh, a resident of Mohali, also a property dealer, when they approached her for purchase of the said plot or alternatively asked the petitioner to pay Rs.60,000/-, if she wanted to get the plot transferred in her name. Thereafter, petitioner repeatedly visited the office of UT Chandigarh for information about the plot and also submitted an application dated 25.01.1994 for transfer of the plot in her name and in the name of her daughter Birpal Kaur. She mentioned, therein, that the allotment letter of the said plot had been sent at their old address i.e. Punjab and Sind Bank, 37-A, Nandikoil Street, Trichirapalli-2, which was not received by

them, because they had shifted from that place. The Estate Officer, UT, Chandigarh vide letter dated 9.6.1995 informed the petitioner that the lease of Plot No.358, Sector-46A, Chandigarh had been cancelled as the lessee had failed to deposit 25% of the premium within the stipulated time. It was further mentioned that as the original file was not available, a copy of the said order could not be supplied. The petitioner filed an appeal before the Chief Administrator, UT Chandigarh, who vide his order dated 5.12.2005 dismissed the appeal for the same reason. Thereafter, the petitioner preferred a Revision Petition before the Advisor to the Administrator, UT Chandigarh, which was accepted vide order dated 22.1.1997. The order of the Chief Administrator was set aside and the matter was remanded to the Estate Officer, UT, Chandigarh for fresh decision. The Advisor held that it was the bounden duty of the Estate Officer to have gone through the facts minutely. If the file had been misplaced, then he should have made an enquiry and moved for reconstruction of the file. If the file was not available, then the factum of deposit of 15% balance earnest money, could easily be got ascertained from the Receipt Book, ledger book and cash book maintained by the Estate Office. The Estate Officer was asked to re-decide the matter after making efforts to trace the relevant files and if they could not be traced, then after getting the same re-constructed. The parties through their counsel were directed to appear before the Estate Officer on 18.2.1997.

The matter remained pending with the Estate Officer who took almost nine years to decide it, though the petitioner submitted number of representations. On 28.4.2006 the Estate Officer decided the matter rejecting the claim of the petitioner. It was recorded in the order that the missing file had been located, which revealed that no allotment was ever made in the name of Balbir Singh. His

the loan obtained by him from the Punjab and Sind Bank. There was no other document, which showed that the allotment was ever made in the name of Balbir Singh. Accordingly, the claim of the petitioner (his Legal Representatives) could not be considered and was rejected.

It is the case of the petitioner that this order was never despatched to her and that she had not been given an opportunity of hearing by the Estate Officer. It was only subsequently on inspection of the file through counsel that she came to know that the letter dated 6.9.2006 was issued to the petitioner through her Advocate, but this letter was not received by the petitioner, nor was she informed about it by her counsel. In this letter dated 6.9.2006 issued to the petitioner through her Counsel, it was mentioned that the original file which had been missing since long had been located. It was also mentioned that the petitioner had been informed on 29.09.2005 that the application of Balbir Singh for allotment had been rejected as he already had a plot in his own name for which he had also raised a house building loan from his employer i.e., Punjab and Sindh Bank (Morinda) Punjab and that the decision regarding rejection of the application had been conveyed to him vide office memo dated 30.01.1985 under proper service which had also been shown to the petitioner on 29.9.1995. Thereafter, the case had been fixed on 02.11.2005 and the representation had been rejected on 28.04.2006. The petitioner filed an appeal against the order before the Chief Administrator, UT Chandigarh which was dismissed on 13.7.2015. It was held that from the record available on the file, it was clear, that Sh.Balbir Singh already had a plot in his name, for which he raised house building loan from his employer i.e. Punjab and Sind Bank and he had also constructed a house. Apparently, there was a misstatement by him by concealing the material facts to cheat the Chandigarh Administration. Moreover, the 25% of the premium was not

deposited within the stipulated period. The petitioner preferred an appeal to the Advisor against the aforesaid order, which was dismissed for the same reasons. It was also noted that the allottee had never been issued any allotment letter by the Estate Officer, nor was he in physical possession of the plot. Therefore, he had no title or interest over the property in dispute.

Ld. Counsel for the petitioner argued that both the reasons for rejection of the claim are not tenable.

Regarding the ground of Balbir Singh owning a plot and obtaining a loan from the Bank for construction of a house, he argued that the scheme of 1979 only debarred persons who had acquired a residential site in an urban area/ urban Estate/ Colony of the Improvement Trust anywhere in India including Chandigarh. He argued that Balbir Singh had constructed a house in village Morinda, Tehsil and Distt. Ropar. The plot was purchased on 14.11.1980 and loan raised for its construction. At that time Morinda was a village. It was much later on 14.8.1992 that Morinda was carved out as a Tehsil. Hence, this reason was wholly erroneous.

Regarding non deposit of 25% of the premium, he argued that the husband of the petitioner had deposited Rs.425/- on 22.1.1972, Rs.1687/- on 8.5.1981 and Rs.3019/- on 8.5.1985. The allotment letter, though prepared, was never issued to him. He argued that the balance amount to make up 25% of the premium had to be deposited only after the issuance of the allotment letter. Hence, rejecting the claim for non deposit of 25% of the premium is also wrong. Ld. Counsel consequently argued that the impugned orders be quashed and the respondents be directed to allot the plot to the petitioner.

We regret our inability to agree with the Ld. Counsel for the

petitioner.

Balbir Singh had applied for the plot on 30.1.1972. On 4.1.1980 and 28.4.1981 he was informed by the respondents of the decision to allot residential plots through draw of lots. He was to give his consent and submit affidavit. On 03.02.1984 he was asked to give another affidavit regarding his not having obtained a loan for construction. He submitted the requisite affidavits. It is the case of the respondents that he was informed about the rejection of his request vide letter dated 30.01.1985. Though, he died soon thereafter on 18.5.1985, but there is nothing on record that he took any step to challenge the rejection of his claim. After his death, the petitioner also, took no steps to pursue the case with the respondents. In fact, the petitioner has candidly admitted in the petition that she had no knowledge about the allotment of the plot as the record pertaining to the plot got burnt in the riots in the year 1984-85. The petitioner came to know about the allotment of plot No.358, Sector 46-A from Mr. Chhabra and Mr. Tejinder property dealers, who offered to purchase the plot or asked for Rs.60,000/- to get the plot transferred in her name.

It is clear that the allotment letter was never issued to Balbir Singh during his life time nor was he put in possession of the plot. During the limited time between the intimation of the rejection of his claim vide Memo No.2039 dated 30.1.1985 and his death on 18.5.1985, Balbir Singh did not contest the rejection. Nor did the petitioners for close to ten years thereafter, contest the rejection or pursue for allotment of the plot. It was only on 25.1.1994 that the petitioner requested for transfer of the plot in her name and in the name of her daughter. Claims in such matters cannot be kept alive indefinitely, and, if not pursued within a reasonable time, have to be treated to be abandoned. Thus, the claim after its rejection on 30.1.1985 could not be revived on the basis of an

application submitted by the petitioner on 25.1.1994.

For this reason, we need not go into the other grounds of rejection.

Thus, this petition is dismissed.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

July 20, 2017

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Whether speaking/ reasoned:	Yes/No
Whether Reportable:	Yes/No