

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2704 of 2016 (O&M)

Date of Decision: 30.05.2017

Balbir Singh Yadav

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE HARI PAL VERMA**

Present: Mr. Harkesh Manuja, Advocate for the petitioner

Mr. Deepak Balyan, Addl. AG Haryana

Mr. Deepak Sabharwal, Advocate for HUDA

SURYA KANT, J. (Oral)

(1) The petitioner was allotted residential plot No.144, Sector 21, Gurugram in the year 1986. It appears that the possession of the plot could not be delivered as there was litigation in respect of the land where such plots were carved out. The petitioner was eventually allotted an alternative plot bearing No.905, Sector 21, Gurugram on 10.04.1996 but he did not accept the said offer.

(2) After a long correspondence between the parties, HUDA authorities finally allotted plot No.320-L, Sector 21-A, Gurugram to the petitioner. The allotment letter was sent by registered post at the petitioner's given address.

(3) As per the terms and conditions of allotment, the petitioner was required to deposit 15% of the allotment price in response to the said offer.

(4) The above-stated amount was admittedly not deposited by the petitioner as according to him, he did not receive the allotment letter.

(5) The HUDA authorities, on the other hand have taken a plea that

since it was sent by Registered post, the petitioner cannot be heard to say that he was not aware of the same.

(6) The factual controversy on this issue has been decided against the petitioner by the Revisional Authority in following terms:-

“I have heard the arguments of both the parties and have gone through the relevant record available on the file. It is evident from the record that the allotment of the plot in question was cancelled due to the nonpayment of 15% amount which was mandatory to be deposited, as per condition No.5 of the allotment letter, within 30 days from the date of issuance of allotment letter. As per Indian Contract Act, 1872, a contract comes into existence when there is a valid offer and acceptance duly communicated. In the present case, the petitioner failed to communicate his acceptance by depositing 15% amount in response to the offer given by HUDA in terms of the allotment letter. The plea of the counsel for petitioner that the allotment letter was not received by the petitioner as he was having his treatment from Amrita Institute of Medical Sciences and Research Centre, Kochi, Kerala from 01.03.2006 to 13.08.2007, is not tenable as it was not for HUDA to trace the petitioner as to where he was residing when the allotment letter was issued to him at the address provided by him. Moreover, he was in constant touch with HUDA as is clear from the number of letters communicated between him and HUDA. He was in knowledge of the fact that his case was being processed by the respondent for allotment of alternative plot. Vide letter dated 14.01.2005, he himself requested for allotment of plotNo.320-L, sector 21, Gurgaon. If he wanted to go for the treatment, he could have given some alternative address for correspondence to the respondent. The plea of the counsel for petitioner that

HUDA took around 20 years in making allotment of alternative plot, cannot be accepted especially in view of the facts as brought to my notice by the counsel for respondent that vide memo no.8672 dated 19.05.1986, only an intimation was given to the petitioner that he had been declared successful in the draw but the allotment letter was not issued as the land on which the plot was carved out was in litigation. He was given an option that if he did not want to wait for the finalization of litigation, he may get his earnest money adjusted in the new/future schemes of floatation. The non communication of refusal was an implied acceptance on his part to the conditions of letter dated 19.05.1986. Even vide letter dated 30.03.2001, he showed his inclination to retain the plot no.144 till such time a suitable alternative plot is allotted to him.”

(7) We have heard learned counsel for the parties and gone through the record.

(8) The fact whether the allotment letter sent by Registered post was received by the petitioner or not is essentially a question of fact. Keeping in view the categoric stand taken by HUDA authorities and the presumption that the Registered letter must have reached the addressee unless received back unserved, we are satisfied that the petitioner's explanation that he was away to Kerala at the relevant time or that he could not receive the allotment letter for such reason, cannot be accepted. In any case, such like disputed question of facts cannot be resolved in these proceedings.

(9) Dismissed.

(Surya Kant)
Judge

30.05.2017
vishal shonkar

(Hari Pal Verma)
Judge