

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

CWP No.4006 of 2015(O&M)
Date of decision: July 31, 2017

Mehar Kaur and others

---Petitioners

Versus

State of Punjab and others

---Respondents

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

Present: Mr.Joginder Pal Ratra, Advocate
for the petitioners.

Mr.Daldeep Singh Sukarchakia, DAG, Punjab.

Mr.Rupinder Khosla, Sr.Advocate with
Ms.Ishrat Phulka, Advocate for respondent Nos.2, 4 and 5.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for directions to quash the order dated 8.11.2005 of the Estate Officer by which the allocation of 200 sq. yards plot to the petitioners was cancelled and the amount of Rs.12833/- deposited by Gian Singh (late husband of petitioner No.1 and father of petitioners No.2 to 4) was forfeited. The petitioners have also challenged the orders dated 6.09.2013 and 11.12.2014, whereby, their appeal and revision petition respectively, were dismissed.

Gian Singh, applied to the Director, Urban Development Punjab on 12.10.1971 for purchase of residential plot measuring 500 sq. yards. The application was accompanied by earnest money of Rs.1250/- being 1/10th of the

total price of the plot i.e. Rs.12500/-. On 25.09.1978, he was informed by the Estate Officer, Urban Estates, Punjab that the price of land in Phase I and Phase II had been fixed at Rs.50/- per sq. yard and was requested to remit the balance amount of Rs.23,750/- through bank draft by 17.10.1978. Through this letter, an option was also given to apply for a smaller size plot, either on cash or instalment basis, regarding which intimation was to be given within 15 days of the issue of the letter. Gian Singh exercising the option applied on 17.10.1978 for allotment of plot measuring 250 sq. yards in Phase-II, Urban Estate, Patiala. He also remitted an amount of Rs.11,250/- through demand draft dated 17.10.1978 being the total price of plot measuring 250 sq. yards. The said amount was accepted by the respondents. Allotment letter dated 26.09.1979 was issued to him for plot No.77-C, Phase-I, Urban Estate, Patiala measuring 250 sq. yards. However, as the plot allotted was in Phase-I, as against the request for allotment in Phase-II, Gian Singh immediately thereafter on 04.10.1979 requested the respondents to allot an alternate plot in Phase-II. Thereafter, plot No.212-C Phase II measuring 256.66 sq. yards (corner plot) was allotted vide allotment letter dated 25.02.1980. He was informed that as the plot was a preferential one, an additional price at the rate of 10% of the original price would be charged. The total price of the plot was Rs.14117/-. Later, the respondents informed him through their letter dated 06.05.1980, that plot No.206-C in Phase-II measuring 256.66 sq. yards was being allotted in place of plot No.212-C, Phase-II, at a price of Rs.12833/- . But as this plot was highly uneven and had many deep pits, on 21.05.1980 Gian Singh requested that allotment of this plot be cancelled and another plot in Phase II be allotted instead. When various letters and repeated reminders requesting for the

alternative plot elicited no response, Gian Singh sent a detailed letter dated 05.02.1981 to the respondents requesting for restoration of plot No.206-C, Phase-II, which had already been allotted to him.

Instead of restoring the plot No.206 in Phase-II, Gian Singh received a letter dated 02.04.1981 from the respondents intimating that the policy regarding disposal of residential sites in Urban Estates had been revised. The plots were now divided into two groups based on their size. Plots of 100 sq. yards, 150 sq. yards and 200 sq. yards were in Group II. Plots of sizes between 250 sq. yards to 500 sq. yards were placed in Group-I. The eligibility for allotment of plots in Group II was to be determined on the basis of an income criteria. Plots in Group-II were to be allotted at reserve price fixed by the Government and plots in Group-I were to be disposed of in open auction. The old applicants would have the option to apply for the allotment of plots of the eligible category on the basis of the income criteria. The option was to be exercised within 30 days.

Gian Singh responded to this as well and sent letter dated 07.04.1981 requesting that in case his earlier request for restoration of plot No.206 – Urban Estate Phase II, which was pending, was not accepted then he be allotted 200 sq. yards plot in Phase- II Urban Estate Patiala. Though, he continued to make repeated requests and representations, there was no response from the respondents. It was only on 15.09.1988 that he was informed that he could not be given possession of the plots earlier allotted to him as he had rejected those allotments. His name was considered in the draw of lots held on 8.5.1980, but remained unsuccessful. His application for allotment of 200 sq. yards was lying pending in

the office and the amount of Rs.12833/- was lying deposited, which he could

withdraw after completing the formalities.

Having thus been denied the allotment, Gian Singh filed a civil suit for mandatory injunction with the prayer to confirm the allotment and deliver possession of Plot No.206 measuring 256.66 situated in Phase-II, Urban Estate, Patiala or any other suitable plot of the same size on the basis of his application dated 12.10.71. During the pendency of the civil suit, an earlier representation given by Gian Singh was decided by the Administrator, Punjab Urban Planning and Development Authority at Patiala. In his order dated 18.12.1996 he upheld the claim of Gian Singh for allotment of one plot of 200 sq. yards. The Administrator acknowledged that injustice had been done to Gian Singh. He was held to be entitled for allotment of a plot measuring 200 sq. yards. As plot No.206-C, Phase II Urban Estate, Patiala, earlier allotted to him, had meanwhile been allotted to some third person and it was not deemed proper to cancel that allotment, the Administrator directed that a 200 sq. yard plot be allotted to him by holding a draw from all the 200 sq. yard plots lying vacant in Phase-II. The applicant was to be associated in the process of draw of lots. The willingness of Gian Singh to withdraw the civil suit before the actual draw of lot was recorded. The operative part of the order is reproduced below:-

“After hearing both the parties and going through record I find that injustice has been done to the applicant as the Estate Officer did not exchange the allotment of plot No.206, Phase-II, with another plot and in the later not giving the possession of the plot. Keeping in view of the circumstances of the case, it is amply clear that the petitioner was allotted the plot by Estate Officer, but in the process of exchange of number of plot, but he lost his plot ultimately. He was informed that he could not get a plot in the draw of lots. The Estate

Officer has received the full payment of the plot from the petitioner much time earlier but failed to hand over the possession of any plot. It is surprising to note that he was told to take the refund of the amount which he had deposited in response to different letters written by the Estate Officer Sh.Vijay Bhalla, Sen.Asstt. representative of Estate Officer, Patiala admitted the fact that whole amount of the applicant was very much lying with the Estate Officer.

In the course of arguments, it was transpired that the plot No.206 has already been allotted to some body else who has since taken the possession of it. It will not be in fitness of the things if the allotment of plot No.206 is cancelled in the name of the allottee and this plot is reallocated to the applicant. It will add the multiplicity of litigation between the parties. After the perusal of the record and hearing the arguments of the parties, I am convinced that the applicant is very much entitled for the allotment of plot measuring 200 sq. yards. It was also admitted by Sh. Vijay Bhalla representative of Estate Officer, PUDA that there are some vacant plots available for allotment in the category of 200 sq. yards in Urban Estate PUDA, Patiala. Now, the Estate Officer is required to allot one plot to the applicant from the category of plots of 200 sq. yards with the following procedure. That all the plots of size of 200 sq. yards lying vacant in Phase-II, shall be put in the lottery and shall allot one plot by draw of lot for the purpose of number of plot. If the applicant after the draw of lot fails to accept the offer within one month from the date of lottery, his claim shall be deemed to be forfeited. Estate Officer shall be at liberty to refund the entire amount of the applicant without any interest. Applicant shall be associated in the process of draw of lot. The applicant has volunteered that he will withdraw his case from the Judicial Court before the actual draw of lot.”

Gian Singh died on 11.05.1996. The Civil Suit was withdrawn by his

legal heirs (the petitioners) on 25.1.1997. However, no draw of lots was held by the respondents. After the death of Gian Singh, the petitioners started efforts to get the decision of the Administrator implemented. On 17.12.1999, they sent a representation, requesting that the draw of lots be held at the earliest, so that they may be allotted the plot. On 12.09.01, the respondents wrote back asking for certain documents namely the death certificate of deceased Gian Singh, certificate about the petitioners being his legal heirs etc. It was also intimated that the allotment would be made at the prevailing rate of Rs.1768/- per square yard. The formalities were required to be completed within 30 days. It is the case of the petitioners that the documents were supplied on 15.7.2004. The petitioners through their letter dated 19.10.2004 requested that as the full amount of the plot had already been deposited by Gian Singh during his life time, the plot be allotted to them against that amount and that the decision to charge the current rate be reviewed. The respondents through their letter dated 19.10.04, reiterated that the 200 sq. yard plot would be allotted @ Rs.3250/- per sq. yard. It was informed that the total price of the plot would be Rs.6,50,000/-, 10% whereof was Rs.65,000/-. After deducting the amount of Rs.12,833/- deposited by Gian Singh, the petitioners were required to deposit the remaining amount of Rs.52,167/- within 30 days. The respondents sent yet another letter dated 21.12.2004 informing that a decision had been taken that the 200 sq. yard plot could be allotted @ Rs.1765 per sq. yards or the rate of auction, whichever, is higher. The petitioners were given 15 days time to deposit 10% of the amount at the rate of Rs.3250/- per sq. yards, failing which it would be presumed that the petitioners did not want to deposit the amount. As the petitioners failed to deposit this amount within the

period specified, the Estate Officer, PUDA, Patiala vide his order dated 8.11.2005 cancelled the allocation of the plot of 200 sq. yards to the petitioner. The amount of Rs.12833/- deposited by Gian Singh was ordered to be forfeited.

The petitioners filed CWP No.3884 of 2006 impugning the aforesaid order. This writ was disposed of vide order dated 26.09.2006 relegating the petitioner to the remedy of appeal. It was directed that if the appeal is filed within four weeks from the date of receipt of certified copy of the order, the claim would be considered on merits and not dismissed on the ground of limitation.

It is the case of the petitioners that they were not informed of the decision of the Court by their Counsel but got to know of the decision from the office of Estate Officer on 22.09.2011. The same day they applied for its certified copy which also was received that very day, and soon thereafter, they filed the appeal u/s 45 (5) of the Punjab Regional and Town Planning and Development Act, 1995 (for short "1995 Act") before the Additional Chief Administrator PUDA. The appeal was dismissed on 18.09.2013 on the ground of limitation for not having been filed within the four weeks period specified in the order of the High Court. The petitioners preferred revision petition under Section 45(8) of the 1995 Act, which was dismissed vide order dated 11.12.2014 holding that the petitioners were not interested in keeping the plot as they did not deposit the balance amount which they were asked to deposit.

Hence, the present writ petition.

Ld. Counsel for the petitioners contends that the initial application for the plot was made by Gian Singh on 12.10.1971. On payment of full price, plot

No.212-C, Phase II, Urban Estate Patiala measuring 256.66 sq. yards was allotted to him, which however, was changed to plot No.206-C, Phase II, Urban Estate Patiala which was of the same size. As this plot was full of deep pits, he requested that another plot be given instead, which request he subsequently withdrew. It is argued that during his life time deceased Gian Singh diligently pursued the case of the allotment with the authorities, and after his death the petitioners have been pursuing the matter, but without success. Ld. Counsel argued that there was no justification in respondent's decision to charge the current allotment price from the petitioners when Gian Singh had already been allotted plot No.206-C Phase II and on 5.2.1981 he had withdrawn his request for allotment of alternative plot. He argued that, in any case, the Administrator in his order dated 18.12.1996 had upheld the claim for allotment of 200 sq. yards plot and directed that the number of the plot to be allotted be decided by draw of lots from among the vacant plots. It was on the assurance of the allotment that Gian Singh offered to withdraw the suit which was withdrawn on 25.1.1997. Regarding the delay in filing the appeal against the order of the Estate Officer, it was argued that the petitioners were not informed of the order of the High Court by their counsel. Ld. Counsel for the petitioners lastly stated that the petitioners would be willing to take the plot at the rate specified in the letter of the respondents dated 19.10.2004 (Annexure P-20) i.e., Rs. 3250/- per sq. yard or the current collector's rate whichever is higher.

Ld. Counsel for the respondents on the other hand argued that Gian Singh had been allotted a plot thrice over but each time he wanted an alternative

2006 vide order dated 26.09.2006 had given liberty to the petitioner to file an appeal within four weeks of receipt of certified copy of the order, but the petitioners filed the appeal after a delay of five years. Thus, the appeal and revision were rightly dismissed.

Heard Ld. Counsel for the parties and perused the record.

The facts disclose an over four and half decade long wait and struggle of a family to get a small plot of 200 -250 sq. yards in a developing Urban Estate.

Desiring to own a plot in Urban Estate, Patiala, Gian Singh applied on 12.10.1971. He deposited an amount of Rs.11,250/- on 17.10.1978, which together with the earnest money of Rs.1,250/- deposited with the application, was the total sale consideration for a 250 square yards plot. He was allotted plot No.77-C in Phase II, Urban Estate, Patiala on 26.09.1979. On his request for change of the plot, he was allotted plot No.212-C Phase II, Urban Estate, Patiala on 25.02.1980 which allotment was unilaterally changed by the respondents to Plot No.206 Phase II, Patiala on 06.05.1980. As this was a very uneven plot, Gian Singh on 21.05.1980 requested that he be allotted an alternative plot in the same Phase. However, having got no positive response to this request, he, on 05.02.1981, requested that allotment of plot No.206-C Phase II be restored. On being informed about the change in policy of allotment, Gian Singh on 07.04.1981 requested, that if plot No.206 Phase II, Urban Estate Patiala cannot be restored, then he be given a 200 sq. yard plot. As neither plot No.206-C was restored nor a 200 sq. yard plot was allotted, he filed a civil suit. Meanwhile, the representation of Gian Singh was decided by the Administrator on 18.12.1996, who opined that

injustice had been done to him. The Administrator noticed that the Estate Officer

had received the full payment of the plot from Gian Singh much earlier, but had failed to hand over the possession of any plot. The Administrator noted with surprise that Gian Singh was asked to take refund of the amount which he had deposited in response to different letters written by the Estate Officers. He was held entitled for allotment of a plot measuring 200 sq. yards. The Administrator directed that a 200 sq. yard plot be allotted to him by holding a draw from all the 200 square yard plots lying vacant in Phase-II. The statement of Gian Singh to withdraw the civil suit before the actual draw of lots was recorded. Meanwhile, Gian Singh died on 11.5.1996. After his death, the petitioners (being his legal heirs) withdrew the suit on 25.01.1997.

From the events till this stage, it is clear that right of the deceased Gian Singh to restoration of plot No.206-C, Phase II, Urban Estate, Patiala earlier allotted to him was recognized. It was only because plot No.206-C had, meanwhile, been allotted to some other person, that with a view to avoid litigation, it was directed that a 200 sq. yard plot be allotted to him from among the vacant plots by draw of lots. It was the duty of the respondents to have implemented this order and allotted a 200 sq. yard plot to the petitioners immediately thereafter. Not doing so, was a lapse on their part, the consequences whereof, cannot be permitted to be visited upon the petitioners. Thus, in our view there was no warrant for the respondents to have later insisted upon making the allotment at the prevailing rate.

The argument of the Ld. Counsel for the respondents that they were not informed about the withdrawal of the suit till the petitioners submitted representation dated 17.12.1999 leading to delay in the offer of allotment, may

also not justify the demand for payment at the rate prevalent at the time of allotment. However, we need not go into this question, as also the question of the legal validity of enforcement of an undertaking to withdraw the suit, as the Ld. Counsel for the petitioners has stated that the petitioner would be willing to pay the balance amount as demanded in the letter dated 19.10.2004 (Annexure P-20) i.e., @ Rs. 3250/- per sq. yards or the current collector's rate.

The argument of the Ld. Counsel for the respondents that the petitioners having filed the appeal about five years after the decision of the High Court on 26.09.2006, instead of within the four week period as permitted by that order, they had forfeited their right to challenge the order of the Estate Officer dated 8.11.2005, which had thereby attained finality, at first, appeared convincing. But in view of the totality of the facts and circumstances of this case, we are not persuaded to agree with him. Rather, we are inclined to accept the petitioners' case that they were not informed by their Advocate of the order of the High Court which resulted in their filing the appeal after five years. Thus far, it was the respondent's conduct that delayed the matter inordinately leaving Gian Singh to run from pillar to post. The petitioners prosecuted their rights duly and diligently to the point of exhaustion. There is no other reason for their not filing the appeal in time. There is nothing to indicate that the petitioners lost interest or abandoned their rights in respect of the plot.

It bears repetition that their right and entitlement to the plot stood affirmed by the order of the Administrator dated 18.12.1996. It is only because the order of the Administrator was not implemented and meanwhile Gian Singh died on 11.5.1996, that the case dragged on for number of years due to lack of

agreement on the price to be paid , the petitioners insisting that the full allotment price having already been paid they were not required to pay any additional amount, the respondents, on the other hand, insisting on making the allotment at the current prevailing rate. Over a decade had gone by between the death of Gian Singh on 11.5.1996 and the High Court order dated 26.9.2006. Before that, Gian Singh had been pursuing for allotment since 12.10.1971. This long period is enough to exhaust and dishearten even the most dogged. One or more lapses during this long period, should not be permitted to visit the petitioners with such fatal consequences of depriving them the fruit of over four and half decades of effort. What is significant is that at no stage did the petitioners abandon their claim.

It is well settled that in exercise of its jurisdiction under Article 226 of the Constitution, the High Court may, after taking cognizance of all the facts and circumstances of a case, pass appropriate orders to ensure complete and substantial justice to the parties.

As observed in ***K.D. Sharma v. SAIL, (2008) 12 SCC 481:***

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice.....”

Taking into consideration the totality of the facts and circumstances, we are of the view that this petition deserves to be and is allowed. The impugned orders dated 8.11.2005 (Annexure P-21), 18.09.2013 (Annexure P-24) and 11.12.2014 (Annexure P-26) are quashed.

The respondents are directed to allot a 200 sq. yard plot to the petitioners at the price indicated in the letter dated 19.10.2004 (Annexure P-20) or the current collector rate whichever is higher.

(S.J. VAZIFDAR)
CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

July 31, 2017

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