

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7834 of 2016 (O&M)

Date of Decision: 26.04.2017

Ajay Swami

... Petitioner

VS.

The Chairman, Chandigarh Housing Board & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

Present: Ms. Priyanka Sud, Advocate for the petitioner

Mr. Puneet Bassi, Advocate for respondent No.1

Mr. Deepak Sharma, Advocate for UT Chandigarh

SURYA KANT, J. (Oral)

(1) In this second round of litigation, the question which falls for consideration is whether or not the petitioner is liable to pay interest from September, 2006 onwards on the allotment price of one bed-room flat allotted under the Self-Financing Housing Scheme, 2006?

(2) The facts may be noticed briefly.

(3) The Chandigarh Housing Board (in short, 'the Board') floated the above-stated scheme for allotment of one bed-room flats. The petitioner and his wife made two separate applications. The petitioner was successful in the draw of lots held on 17.04.2006 and his name appeared at Sr.No.12 in the list of successful candidates. The petitioner, however, instead of receiving allotment letter got a show cause notice dated 13.06.2006 calling upon him as to why the allotment be not cancelled. The objection taken was that only one application form could be submitted by the family whereas petitioner and his wife had submitted two separate applications. The application was eventually cancelled on 16.04.2007 (P5). The petitioner's appeal and revision petition were also

turned down.

(4) The petitioner approached this Court in CWP No.13794 of 2010. A Division Bench of this Court found on facts that the Board itself had taken a decision well before the draw of lots that wherever the husband and wife had submitted two applications, only one application was to be entertained for the purpose of draw of lots and applying that criteria alone that the petitioner's application was included in the draw of lots in which he was successful. The writ petition was thus allowed on 16.07.2013 with cost of ₹ 10000/-.

(5) In compliance to the above-cited judgment of this Court, the Board asked the petitioner vide memo dated 29.08.2014 (P1) to deposit the balance amount of ₹ 28,78,300/- by 30.09.2014 and submit the pay-in slip so that allotment letter could be issued. The petitioner protested against the demand raised by the Board and sought details as to how the demanded amount was calculated. He was then informed vide memo dated 30.10.2014 (P10) that besides the original allotment price of ₹ 15,90,000/-, he was liable to pay interest w.e.f. September, 2006 onwards @ 10% p.a. amounting to ₹ 12,85,250/- hence the demand.

(6) The aggrieved petitioner has approached this Court again questioning the liability of interest from September, 2006 onwards namely, during the period he was deprived of the enjoyment and benefit of one room premises.

(7) The matter was heard in part on 07.03.2017 and after observing that since the petitioner was deprived of the enjoyment of residential property for a long period of more than 7 years or so solely on account of the mistake/illegal action of the Board, the period under litigation could be treated as 'zero period'. One more opportunity was granted to the Housing Board to re-consider the matter and raise their revised demand.

(8) In deference thereto, learned counsel for the Board has produced a communication dated 25.04.2017 vide which the petitioner has been asked to pay interest @ 9% (instead of 10% as was originally levied) and consequently a revised demand of ₹ 29,57,400/- has been raised. It is in this backdrop that the question formulated at the outset arises for determination.

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

(10) The facts are not in dispute. It stands established on record that as per the intra-party judgment which has attained finality the petitioner was denied allotment of one bed-room flat without any fault on his part. It was the sheer negligence or deliberate action of the Board authorities that their own decision dated 29.03.2007 was ignored and the cancellation order was passed on 16.04.2007. Once the Board had taken a conscious decision that where both the spouses had submitted applications, only one application shall be entertained as per the Sr.No., it was imperative upon the Board to apply its such decision in the case of the petitioner as well and treat him eligible for the subject allotment.

(11) It is the Board who is single-handedly responsible for dragging the petitioner into unwanted litigation and denying him the fruits of the dwelling unit for a period of more than 7 years.

(12) The settled principle *Actus Curiae Neminem Gravabit*, namely, an act of the Court shall prejudice none, fully applies here. The petitioner filed the writ petition in the year 2010 which was decided after completion of pleadings on 16.07.2013. Prior thereto, the petitioner had spent three years before the appellate and revisional authorities. The entire blame firstly for canceling the allotment and then for not restoring the same lies on the Board authorities. We

are thus of the view that the petitioner cannot be penalized with the burden of interest for the period during which he was forced into litigation. The fact that the stand of the petitioner was vindicated in court of law is the conclusive proof that the respondent-Board acted illegally in denying allotment to him.

(13) For the reasons afore-stated, the writ petition is allowed; the communication dated 29.08.2014 and 23.03.2015 (P1 & P2) are quashed and it is held that the petitioner is not liable to pay interest from September, 2006 till such time the Board sends the revised demand. The respondent-Board is directed to allot one bed room flat to the petitioner on deposit of ₹ 15,90,000/- plus any other statutory charges (other than interest). The petitioner shall deposit the due amount within two weeks from the date of receipt of certified copy of this order. On doing so, the allotment letter is directed to be issued within one month.

(14) Ordered accordingly.

(Surya Kant)
Judge

26.04.2017
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
Yes