

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.4098 of 2017.

Date of Decision: March 01, 2017

Harbans Kaur and anotherPetitioners

versus

Chandigarh Administration and othersRespondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDIP AHLUWALIA.

Present: Mr.Arun Jain, Senior Advocate with
Mr.Sunil Sharma, Advocate, for the petitioners.

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Surya Kant, J. (Oral)

The petitioners assail the orders dated 08.01.1992, 04.08.1998, 24.10.2006 and 30.11.2016 vide which allotment of Cheap House No.2408, Sector 24-C, Chandigarh was cancelled and the site was resumed on the ground of securing the allotment by way of filing a false affidavit. Consequential orders of eviction have also been passed by the Collector as well as the Appellate Authority ordering the eviction of the petitioners under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

[2] The facts are like this.

[3] Baldev Singh-predecessor-in-interest of the petitioners applied for allotment of a house under the Scheme known as 'Allotment of Cheap Houses Built at Chandigarh on Lease and Hire-purchase Scheme, 1985' (for short, 'the Scheme'). It is an admitted fact that one of the mandatory eligibility under the Scheme was that the applicant should not own any

residential plot or house in the tri-city, i.e., Chandigarh, Panchkula and

Mohali, in his own name or in the name of dependent family members.

[4] Baldev Singh gave a false affidavit dated 21.05.1985 to the effect that he did not own any free-hold or lease-hold residential plot or house/site in Chandigarh, Mohali or Panchkula. Whereas fact of the matter was that family of Baldev Singh owned residential plot No.1397, Sector-15, Panchkula which was in the name of his wife.

[5] Baldev Singh was successful in draw of lots and Cheap House No.2408, Sector 24-C was allotted to him. It is pertinent to mention that the allotment of Cheap house was made on concessional basis as the Scheme was meant to rehabilitate those who did not own any residential plot or house in the tri-city of Chandigarh, Panchkula and Mohali.

[6] When the respondent-authorities detected that allotment was secured by way of false affidavit, a show cause notice dated 07.09.1990 was issued.

[7] The predecessor-in-interest of the petitioners statedly took the plea that residential plot No.1397, Sector-15, Panchkula had in fact been transferred by his wife in the name of his son Satnam Singh before he gave the affidavit dated 21.05.1985. It is conceded before us that neither any sale deed was executed nor any other instrument of transfer in favour of the alleged transferee was executed. The so-called family arrangement was a devise to justify the affidavit dated 21.05.1985. The authorities consequently did not accept the explanation and cancelled the allotment vide order dated 08.01.1992/02.04.1992. Baldev Singh-allottee filed appeal No.55 of 1992 which was also dismissed by the Chief Administrator, U.T. Chandigarh vide order dated 04.08.1998.

[8] It may also be mentioned here that Chandigarh Administration

also got lodged an FIR No.121 dated 24.08.1998 against Baldev Singh under Sections 420/193 IPC, in which he was acquitted on 27.05.2003 for want of evidence of the complainant as well as of the hand-writing expert.

[9] After earning acquittal in the criminal case, Baldev Singh filed Civil Suit for mandatory injunction for restoration of allotment of the subject house in his favour. The said suit was dismissed by the Civil Court vide judgment dated 11.10.2007. He filed first appeal which was also dismissed by learned District Judge, Chandigarh vide judgment and decree dated 23.01.2010. The First Appellate Court unequivocally held as follows:-

“....19. Since it is not proved on the file that the wife of the plaintiff sold the plot allotted to her, the concerned authorities rightly cancelled the allotment of house which was allotted in favour of plaintiff vide allotment letter Ex.DIII and plaintiff is not entitled for the mandatory injunction prayed for and accordingly, findings of the learned lower court on Issue No.1 are affirmed.....”

[10] The judgment and decree passed by the Civil and First Appellate Courts have attained finality as no further appeal was filed by the allottee or his successors-in-interest.

[11] Baldev Singh meanwhile died. His successors-in-interest, namely, the present petitioners thereafter filed Revision Petition before the Advisor to the Administrator, UT, Chandigarh, against the order dated 04.08.1998 of the Chief Administrator, UT, Chandigarh. The Revisional Authority has vide the impugned order dated 24.10.2016 dismissed the revision petition on the ground of delay of over 11 years as well as on

merits. On merits, it has taken notice of the fact that the petitioners have already lost the civil suit on the same cause of action.

[12] We have heard learned counsel for the petitioners who reiterate that the plot in Panchkula had been transferred in favour of allottee's son Satnam Singh well before the affidavit was furnished. It is further urged that the house in dispute is a small dwelling unit and its allotment deserves to be restored for equitable consideration. It is also contended that since the plot in Panchkula was allotted by a different agency, namely, HUDA, the respondents have no concern whatsoever with such allotment.

[13] We, however, do not find any merit in the contentions. We say so for the reason that admittedly on the date when Baldev Singh gave his affidavit dated 21.05.1985, Plot No.1397, Sector-15, Panchkula was owned by his wife. The plea that the plot had been transferred in favour of one of the sons of allottee is neither here nor there. An immovable property valuing more than Rs.100/- could not have been transferred orally. No sale deed or other legal instrument was ever executed. The affidavit filed by Baldev Singh was therefore *ex-facie* false. Cancellation of allotment, which was secured through fraudulent means, is thus fully justified. That apart, Civil Court has also returned a finding of fact against the petitioners. The said finding has attained finality. The principles akin to res-judicata are directly attracted and the writ petition on the same cause of action cannot be entertained. Further, the Revisional Authority has examined the claim of petitioners on merits as well and found no merit therein. The petitioners have already enjoyed the property secured through dubious means, for more than 30 years.

[14] For the reasons afore-stated, we do not find any ground to interfere with the impugned orders.

[15] Dismissed.

[SURYA KANT]
JUDGE

March 01, 2017
mohinder

[SUDIP AHLUWALIA]
JUDGE

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