

RA-CW-506 of 2012 in
CWP No. 19154 of 2012

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

**RA-CW-506 of 2012 in
CWP No. 19154 of 2012
Date of Decision: 29.9.2017**

Jasbir Kaur

....Applicant/petitioner

Vs.

The Advisor to the Administrator, U.T. Chandigarh and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. S.S. Dinarpur, Advocate
for the applicant-petitioner.

Mr. Shekhar Verma, Advocate
for the respondents-Chandigarh Housing Board.

RAMESHWAR SINGH MALIK J.

Twin questions that fall for consideration of this Court are; i)
whether some material aspects of the matter escaped notice of this Court at
the time of passing the order dated 25.9.2012 under review; and ii) as a
consequence, whether any serious prejudice has been caused to the review-
applicant/petitioner.

A brief narration of facts would be necessary to appreciate the
controversy involved, so as to answer the questions posed hereinabove.

It is a matter of record that respondent No.2-Chandigarh
Housing Board invited applications for allotment of 600 HIG (independent)

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dwelling units at Manimajra Complex under the Housing Scheme of 1993. Applicant-petitioner submitted her application dated 14.6.1993 as per Form No. 2559 for allotment of dwelling unit, because as per her stand taken she was fulfilling the eligibility criteria of being bonafide resident of Chandigarh for three years on the date of application. However, applicant-petitioner was held ineligible by the Property Allotment Committee on the ground that she was not having three year stay in Chandigarh.

Feeling aggrieved, applicant filed her appeal before the Chandigarh Housing Board. Matter was put up before the Full Board comprising its Chairman, CEO, Secretary, Chief Engineers, and Chief Architect, UT. The Full Board allowed the appeal of the applicant in its meeting held on 3/4.12.1993. Accordingly, name of the applicant-petitioner was put in draw of lots and she was allotted House No. 5680 in Modern Housing Complex. Allotment letter dated 21.7.1995 was issued and thereafter, possession was given to the applicant on 5.9.1995. Applicant was permitted to raise construction which she raised up to second storey in the year 1996, spending an amount of more than `20 lacs, as claimed by the applicant.

After about five years, a pseudonymous complaint was made against the applicant-petitioner. She was asked to appear before the CEO of the Chandigarh Housing Board. She appeared on 5.11.2001 and again on 19.11.2001 but no statement of the applicant-petitioner was recorded, as stated on behalf of the applicant. On the basis of said pseudonymous complaint, a show cause notice dated 8.5.2002 was issued to the applicant-petitioner. Reply to the show cause notice was filed by the applicant.

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Ultimately, allotment of the applicant-petitioner was cancelled vide order dated 28.1.2005 passed by the CEO of respondent No.2-Chandigarh Housing Board, placing reliance on the alleged statement given by the applicant-petitioner on 19.11.2001.

Appeal and revision filed by the applicant also failed. Applicant approached the learned District Judge, Chandigarh, by way of an appeal. Although the appeal was not maintainable, yet the same was also dismissed by the learned Additional District Judge, vide order dated 21.8.2012, while placing reliance on the alleged statement made by the application-petitioner on 19.11.2001. Writ petition filed by the applicant-petitioner against all the abovesaid orders also came to be dismissed by a Division Bench of this Court, vide order dated 25.9.2012.

Applicant-petitioner approached the Hon'ble Supreme Court but withdrew her SLP on 29.1.2013 and thereafter, filed instant review application. That is how, the special Division Bench is seized of the matter.

Notice of the review application was issued by the same Division Bench which passed the order dated 25.9.2012. While issuing notice in the review application vide order dated 21.11.2012, further proceedings under the Public Premises Act were also stayed till further orders.

Record of the allotment and cancellation of house in question was directed to be made available to this Court, vide order dated 22.1.2016. Thereafter, photocopies extracted from the official record made available to the Court were taken on record vide order dated 29.7.2016. It was also directed that an affidavit of the competent authority of the respondent-

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Chandigarh Housing Board shall be filed to the effect that there was no other record available with the respondent-Board. In compliance of the abovesaid order dated 29.7.2016, an affidavit of Sh. Baldev Singh, Chief Accounts Officer, Chandigarh Housing Board filed on behalf of the respondents No. 1 to 3, was taken on record vide order dated 23.9.2016. Both the parties were directed to place on record their respective synopsis vide order dated 19.5.2017. Written synopsis were filed by the review applicant/petitioner in the Court on 21.7.2017 and the same were taken on record. Learned counsel for respondent-Chandigarh Housing Board filed his written synopsis today in the Court and the same are taken on record.

Having heard the learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that order dated 25.9.2012 passed by this Court deserves to be recalled, by allowing the instant review application, for more than one reasons given hereinunder.

Learned senior counsel for the applicant-petitioner was found justified in contending that more than one material aspects escaped notice of this Court at the time of passing the order dated 25.9.2012 and as a consequence thereof, a serious prejudice has been caused to the review applicant. He further submits that error in the order dated 25.9.2012 was apparent on record which needs to be rectified. In support of his abovesaid contentions, learned senior counsel for the applicant-petitioner submits that alleged statement dated 19.11.2001 of the applicant-petitioner which had been made the sole basis for passing the order of cancellation of allotment

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and subsequent orders, was, as a matter of fact, not existing and the same is also not available in the record of respondent No.2-Chandigarh Housing Board. He further submits that in fact no such statement of the applicant was ever recorded. He concluded by submitting that since this crucial aspect of the matter regarding non-existence of the alleged statement dated 19.11.2001 of the applicant-petitioner has neither been noticed nor dealt with by this Court at the time of passing the order dated 25.9.2012, this fact itself is sufficient to recall the order dated 25.9.2012.

When confronted with the abovesaid factual as well as legal aspect of the matter, learned counsel for the non-applicant/respondents had no answer and rightly so, it being a matter of record. In this view of the matter, this Court feels no hesitation to conclude that since the abovesaid material aspect of the matter was not properly highlighted at the hands of the applicant-petitioner and it also escaped notice of this Court at the time of passing the order dated 25.9.2012, the same deserves to be recalled.

During the course of hearing, when learned counsel for the non-applicant/respondents was asked to show a copy of the alleged statement given by the review applicant-petitioner on 19.11.2001, which had been made basis for passing the order of cancellation of allotment and later orders, he was unable to show any such statement for the reason that no such statement was actually existing. In this view of the undisputed fact situation obtaining on record of the case in hand, it can be safely concluded that a serious prejudice has been caused to the applicant-petitioner by passing of order dated 25.9.2012 and the same deserves to be recalled for this reason also.

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No other argument was raised.

Considering the peculiar facts and circumstance of the case noted hereinabove, coupled with the reasons aforementioned, this Court is of the considered view that both the questions posed at the very outset, deserve to be answered in the affirmative and accordingly the same are answered in favour of the review-applicant/petitioner. Consequently, instant review application is allowed and order dated 25.9.2012 is hereby recalled. Needless to say that anything observed hereinabove shall not be taken to be final expression of opinion on the merits of the controversy.

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List as per roster on 15.11.2017.

(RAMESHWAR SINGH MALIK)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

29.9.2017
AK Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No