

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

205

CWP-16788-2017

Date of Decision: 04.05.2018

DHUT NATH @ DUDH NATH AND ANR.Petitioner(s).

Versus

UNION TERRITORY, CHANDIGARH AND ORS.

....Respondent(s).

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. R.N. Maurya, Advocate
for the petitioners.

Ms. Shalini Verma, Advocate with
Mr. Vikas Chatrath, Advocate
for respondents-U.T., Chandigarh.

Mr. Arjun Sharma, Advocate
for respondents No.3 and 4.

ANUPINDER SINGH GREWAL, J.

The petitioners have impugned orders dated 03.06.2016 (Annexure P-16) and 25.04.2017 (Annexure P-18) whereby the claim of the petitioners for allotment of tenement under 'The Chandigarh Small Flat Scheme 2006' has been declined.

2. The petitioner No.2 is wife of petitioner No.1. They are stated to be residing at Jhuggi No.79 Gur Sagar Colony, Maloya, Chandigarh along with their children and petitioner No.1 had been issued voter identity cards on 06.12.1997 and 19.02.2008 by the Chandigarh Electoral Registration Officer.. The copies of the same are attached as Annexure P-1 and P-2 with the petition. Copies of the voter list for the

years 2005, 2008, 2009, 2011, 2013 and 2014 have also been attached as Annexures P-3 to P-8. It is also stated that in bio-metric survey conducted by the respondents in the year 2006, the petitioners are mentioned at serial No.26620. A copy of the same has been annexed as Annexure P-9. The Chandigarh Administration had framed a policy for allotment of plots for Jhuggi dwellers which is known as The Chandigarh Small Flat Scheme 2006. The eligibility criteria is set out therein. The relevant extract of the scheme is as under:-

“D. Eligibility and Mode of allotment:

‘6(a) With respect to every block of a Notified Colony selected for clearance, allotment of a flat shall be made as under:

- (i) All persons whose names appear in the Biometric survey and voter list as on 1.1.2006 shall be eligible for allotment of a flat on license basis. The name of the person should also appear in latest voter list of the year in which allotment is to be made.

[**Provided** that any person whose name appeared in bio-metric survey but does not appear in the voter list as on the 1st January, 2006, shall also be eligible for allotment of flat under the scheme if his name appears in the vote list as on 1st January, 2004, 1st January, 2005. 1st January 2007 and 1st January 2008.

- (ii) A person who owns more than one habitation in any of the Notified Colonies in his own name or in the name of any dependent member of his family shall be entitled to the allotment of only one flat under this scheme.

(iii) A family unit shall be entitled to one flat provided it fulfills all conditions under the scheme.

(b) All allotments of flats under this scheme will be on monthly license fee basis consisting of One Room Flat in a multi-story building.”

3. It is, thus, manifest that in order to be eligible for allotment of flat, the name of the person should be recorded in the bio-metric survey and the voter list as on 01.01.2006. Learned counsel for the petitioner has referred to the copy of the electoral rolls of U.T., Chandigarh for the year 2005 wherein the name of petitioner No.1 is duly recorded which has been annexed as Annexure P-3 with the petition.

4. Learned counsel for respondents No.3 and 4 contended that as petitioner No.1 could not substantiate his claim to be bona fide Jhuggi dweller, his case was rejected by respondent No.2-Estate Officer. The appeal of the petitioner had been rejected by the Appellate Authority-cum-Chief Executive Officer, Chandigarh Housing Board vide its order dated 03.06.2016 (Annexure P-16). The operative part of this order reads as under:-

“Vide their reply, Estate Office has stated that his name is not enrolled in the voter list for the years 2004 to 2007 as mandatory under the Chandigarh Small Flat Scheme 2006. The appellant was asked to produce the votes for the relevant years but has failed to produce the same, hence appeal stands dismissed.”

5. The petitioner, thereafter, sought review of the order dated 03.06.2016, which has been rejected by the Appellate Authority-cum-

Chief Executive Officer, Chandigarh Housing Board on 25.04.2017 (Annexure P-18) by recording that it has no power to review an order passed by the appellate authority under Clause 17 of the Chandigarh Small Flat Scheme, 2006.

6. It is patent from a bare look at the impugned order dated 03.06.2016 (Annexure P-16) that the documents submitted by the petitioner including the electoral rolls for the year 2005, which have been appended herewith as Annexure P-3, have not been taken into consideration by the appellate authority. The order passed by the appellate authority is clearly non-speaking and shows non-application of mind. It, thus, cannot be sustained.

7. Consequently, this petition is allowed and the orders dated 03.06.2016 (Annexure P-16) and 25.04.2017 (Annexure P-18) are set aside and the matter is remanded back to the Appellate Authority-cum-Chief Executive Officer, Chandigarh Housing Board to decide the case afresh after affording an opportunity of hearing to the petitioners within a period of three months from the date of receipt of certified copy of this order. Needless to say, anything observed hereinbefore shall not be taken to be expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

(ANUPINDER SINGH GREWAL)
JUDGE

04.05.2018

SwarnjitS

Whether speaking/reasoned : YES/NO
Whether reportable : YES/NO