

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

CWP No. 8649 of 2019

Date of decision : 10.07.2019

Yashpal

.....Petitioner

Versus

Estate Office, U. T., Chandigarh and another

...Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Argued by : Mr. Gautam Diwan, Advocate for the petitioner.

Ms. Aakansha Swahney, Advocate for
Ms. Shubreet Kaur, Advocate for respondent No.1.

Mr. A. S. Miglani, Advocate for respondent No.2.

* * *

DAYA CHAUDHARY, J.

Petitioner Yashpal has approached this Court by way of filing the present petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of impugned order dated 11.12.2018 (Annexure P-5) passed by the Appellate Authority-cum-Chief Executive Officer, Chandigarh Housing Board, Chandigarh (respondent No.2), whereby the claim of the petitioner has been rejected. A further prayer has also been made seeking direction to the respondents to allot a flat being eligible for the same.

Briefly, the facts of the case as made out in the present petition are that the petitioner applied for a flat under the Scheme For Rehabilitation

and Resettlement Of the Economically Weaker Section of the Society living in slums area or labour colonies Chandigarh Administration had floated the Chandigarh Small Flats Scheme, 2006, which was further amended in the year 2009 (hereinafter referred to as the 'Scheme') for the unauthorised inhabitants, who had encroached upon the public land. Such persons were allotted one room tenements on payment of licence fee. As per the Scheme, the Chandigarh Housing Board had to provide flats to the beneficiaries on licence fee basis and on depositing the same, they will acquire the ownership rights at the end of 20 years on payment of balance amount. The Administration after conducting a bio-metric survey in the month of March, 2006, identified 18 colonies, where unplanned habitations had encroached upon public land. Only those persons included in the bio-metric survey become eligible for licence fee based accommodation under this scheme. Two proposals for construction of 25728 (6368 Phase-I and 19360 Phase-II) small flats were approved by the Ministry of Housing and Urban Poverty Alleviation, Government of India for 23841 slum families scattered over 18 colonies in Chandigarh. As per the Scheme, only one member of the family was entitled for allotment. Meaning thereby, the allotment of flat was to be made provided that the family fulfils certain conditions as required under the Scheme. Subsequently, the Chandigarh Administration issued notification in the year 2009 *i.e.* on 09.11.2009, wherein it was provided that a person whose name appeared in bio-metric survey but did not appear in the voter list as on 01.01.2006, was held eligible for allotment of flat under the said Scheme, in case his name was in the voter list as on 01.01.2004, 01.01.2005, 01.01.2007 and 01.01.2008. The petitioner finding

himself eligible as he was having voter card in the year 2002 of the *Jhuggi*, where he was residing since 2002 till moving the application and his name was there in the voter lists of the years 2002, 2004, 2005, 2007, 2008, 2009, 2010, 2011, 2013, 2014, 2016 and 2017. Name of the petitioner was also there in the bio-metric survey conducted by the Administration in the year 2006. At that time when the application was moved, he was unmarried and was residing separately from his father in a separate *Jhuggi*. His father was residing in separate *Jhuggi*. The claim of the petitioner was not considered and it was declined by the Screening Committee. He was declared ineligible on 20.08.2015. Thereafter he approached the Appellate Authority-cum-Chief Executive Officer, Chandigarh Housing Board, Chandigarh (respondent No.2). His appeal was also dismissed vide order dated 11.12.2018, which is under challenge in the present writ petition.

Learned counsel for the petitioner submits that the very purpose and object of the Scheme was to provide living space and the claim of the petitioner has wrongly been rejected without taking into consideration the fact that he was major, earning hand and residing separately and also that his father has already been allotted a flat; being unmarried major earning son residing separately; the petitioner did not come in the definition of 'Family'. Learned counsel also submits that not only he was major and earning son but his name was there in the voter list of different years which shows that he was residing separately and his identity was different. Subsequently, he got married in the year 2010. Learned counsel submits that claim of the petitioner has been rejected only on the ground that only married and earning son, living separately is eligible

for separate allotment. At the end, learned counsel submits that the impugned order being illegal, unlawful and contrary to the provisions of the Scheme, is liable to be set aside.

Short reply on behalf of respondent No.2 - Chandigarh Housing Board has been filed in the Court, which is taken on record.

Learned counsel appearing for respondent No.2 submits that the respondent - Board is only the Nodal Agency and the allotment is to be made by respondent No.1. He further submits that as per Clause 3 (c) of the Scheme, the petitioner being unmarried could not have been considered as a separate family than that of his father, who has already been declared eligible. A family, which is single unit, is eligible for only one flat and by considering this fact, the petitioner has rightly been declared ineligible.

Ms. Aakansha Swahney, learned counsel appearing for respondent No.1 submits that a detailed speaking order with reasons has been passed by the Appellate Authority and it cannot be said to be non-speaking. Learned counsel also submits that as per the Scheme, only married and earning sons, living separately, could be considered for separate allotment. Petitioner was unmarried and his father had already been allotted flat and as such he was not entitled for allotment of flat.

Heard arguments of learned counsel for the parties. We have also perused the impugned order and other documents available on the file.

The eligibility criteria, mode of allotment as well as terms and conditions of allotment as per the Scheme of 2006 as well as the amendment made in the year 2009 for getting a flat, are reproduced 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 bio-metric survey and voter list as on 1st January, 2006 shall be eligible for allotment of a flat on license basis. The name of the person should also be appear in the 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 voter 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 the conditions under this scheme.

iv) Persons who had applied for allotment of plinth sites under the Licensing of Tenements and Sites and Services in Chandigarh Scheme, 1979 and were found eligible but allotments could not be made due to misplacement of files in the Estate Office shall also be eligible for allotment under this Scheme. They can apply within a period of 30 days of the publication of the notice which shall be published in such manner as the competent authority may prescribe.

(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.

7. Notwithstanding anything contained in the Scheme, no person shall be eligible for allotment of a flat unless he fulfills the following conditions : -

(a) The applicant must himself be residing in the Notified Colony. Mere ownership, unless accompanied by actual physical habitation of a building or structure or covered site shall not be sufficient to make a person eligible for allotment under this scheme.

(b) The person does not own or have ever been allotted whether on freehold or leasehold basis, a residential site in the Union Territory, Chandigarh, Panchkula or Mohali by the respective Government/

Administration or its Agency either in his own name or in the name of any member of his family dependent on him.

E. Terms and Conditions of Allotment :

8. The allotment of the flats under this scheme shall be on the following terms and conditions : -

- (a) The house will be allotted on monthly license fee basis with the monthly license fee to be decided by the Nodal Agency and deposited in manner prescribed by Nodal Agency.
- (b) The flats will be allotted in the joint names of the couple. However, if the allottee is single, the allotment will be made in the name of single person.
- (c) Licensee shall submit to the Nodal Agency & Deed of License as prescribed by Nodal Agency.
- (d) Licensee would be provided a Smart Card to be issued by the Nodal Agency which will have database containing a group-photograph of the licensee and all other members of the family, indicating their name, age, occupation and relationship with the licensee and details of all payments made by allottee in respect of the flat.
- (e) Any change in composition of the family shall be intimated to the Competent Authority in such format as prescribed by the Competent Authority as soon as possible and in any case within thirty days of the occurrence of such a change. If a licensee fails to intimate any change in the family unit within the prescribed period, it will be presumed that such additional member is not a member of the family of the licensee for the purpose of these rules.”

As per the amended Scheme issued vide notification in the year 2009, it was provided that a person whose name appeared in bio-metric survey but did not figure in the voter list as on 01.01.2006, was also eligible for allotment of flat under the Scheme.

In Scheme, 2006, word 'Family' has been defined as under :-

“**Family**” means a family consisting of a person, his or her spouse, children and parents residing with him and it includes earning sons

and daughters. Married and earning son above the age of eighteen, shall be considered as a separate family unit provided that such a person was living in a separate habitation as identified during the bio-metric survey.”

On perusal of said definition of 'Family', it is apparent that a family consisting of a person, his or her spouse, children and parents residing with him including earning sons and daughters. Married and earning son above the age of eighteen, has been considered as a separate family unit provided that such a person has been living in a separate habitation as identified during the bio-metric survey. It is also apparent that requirement for the purpose of allotment is that the major son who is married and residing separately can be considered for allotment of flat under the scheme.

The definition Clause is to be read in the context of the subject matter and the scheme of the Act and consistently with the objects and other provisions of the Act, where the language of the Act is clear and explicit, it is to be given effect. In interpreting a statutory provision, it becomes necessary to have regard to the subject-matter of the statute and the object which it is intended to achieve. While deciding the true scope and effect of the relevant words in any statutory provision, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute assume relevance. The Scheme was floated and flat was allotted to a family consisting of husband, wife, minor and unmarried sons and daughters.

In the present case, the petitioner was major unmarried son but

was earning and residing separately and the claim of his father was considered for allotment of flat. In the survey, he was reflected as unmarried son of Parkash, who applied separately. His father was found eligible but as the married and earning sons residing separately could only be considered for separate allotment, petitioner was declared ineligible.

The Scheme has been enacted with primary object of satisfying need of housing accommodation. The purpose of such Scheme is to give shelter which is the basic requirement. The purpose is also that there should be equitable distribution of accommodations. Allotment can be made to all such applicants and all the family members cannot be considered if they do not fulfil the requirements of the Scheme. As per the Scheme, the husband and the wife are single unit and they are not entitled for separate allotments.

The minor unmarried children are also part of family. The petitioner is claiming his right for allotment only on the ground that he was major and was residing separately. As per the Scheme and definition of Family, only the major and married sons/daughters who are residing separately are entitled for separate flats. The petitioner fulfils only two requirements that he was major, residing separately and not the third as he was unmarried. The facility of house is to be provided to the persons who do not own any house or flat or plot. In the present case, father of the petitioner has already been considered for allotment. The claim of the petitioner has been rejected on the ground that his father has been allotted flat and he was unmarried at that time. Though, subsequently he got married but at the time of consideration of his application, he was unmarried. The respondent-Board was justified in rejecting the claim of the

petitioner on the ground that it cannot be considered to be separate family and the petitioner did not fulfil the criteria of the Scheme as well as definition of 'Family'. The Appellate Authority has also passed a detailed reasoned order, which cannot be said to be non-speaking.

By considering the facts and circumstances of the case and the reasons recorded above, we are of the view that no interference is required in the order of rejecting the claim of the petitioner and dismissal of the appeal filed by him.

Accordingly, the present petition being devoid of any merit, is hereby dismissed.

**(DAYA CHAUDHARY)
JUDGE**

Dated : 10.07.2019

sunil yadav

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No