

CWP no.11011 of 2016 (O&M) 1

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

CWP no.11011 of 2016 (O&M)

Date of Decision : 27.03.2019

Sushil Kumar Agarwal

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE LALIT BATRA**

Present : Mr.R.S.Pandher, Advocate for the petitioner(s)

Mr. Suveer Sheokand, Addl. AG, Punjab

Mr. Rajbir Wasu, Advocate for respondents no. 2 and 3

MAHESH GROVER, J.(ORAL)

The petitioner was allotted one HIG flat on 12.12.1989 for a total price of Rs.3.37 lacs. The payment schedule was flexible spread out over a period of time and the instalments would commence w.e.f January, 1990. The petitioner made the payments but defaulted subsequently in making the payments. However, the petitioner paid the entire sum with last instalment paid in the year 2012 when he applied for no objection certificate which was refused to him on the ground that the allotment of the flat stood cancelled on 6.1.1994.

The petitioner has stated that he was never informed about the cancellation and no notice was ever issued to him.

The respondents refuted this fact and said that notice was

indeed issued to the petitioner.

To satisfy ourselves we have summoned the records and permitted the petitioner to have access to it.

The petitioner has asserted from the records that the notice was issued to him on the address of the allotted flat even though he was employed in Ropar and serving as such this was the address given to the respondents.

The respondents do not deny this, neither do they deny the receipt of payments upto the year 2012 but justify their action by stating that the petitioner has questioned the cancellation belatedly.

After hearing learned counsel for the parties, we are of the opinion that the stand of the respondents is arbitrary for more than one reason. Concededly the petitioner was never served any notice on the address where he was employed and residing, which indeed was with the respondents who chose to issue notice etc on the address of the allotted flat. Whether they were justified or not, is not an issue. The question is that the petitioner was deprived of an opportunity of meeting the demand and was not apprised of the consequences of the notice. That apart the respondents continued to accept the instalments despite cancellation in the year 1994. The last instalment was paid by the petitioner in the year 2012. There is no justification with the respondents to accept any amount if the allotment stood cancelled in the year 1994. Indeed if there was a default, the respondents would have been justified in either resorting to a demand of penalty, interest or even cancellation but only after following the due procedure of law which evidently would envisage a notice to ensure principles of natural justice. The fact that notice was never served upon the

petitioner at the address where he resided in Ropar is indicative of a failure of principles of natural justice. In the peculiar set of circumstances we set aside the order of cancellation, particularly, when the amount stands deposited and the respondents have continued to accept the amount despite cancellation upto the year 2012. However, if the respondents are entitled to any interest or penalty on account of defaults of the petitioner or on account of delayed payments, they would be at liberty to initiate such a process against the petitioner.

Petition stands allowed in above terms.

(Mahesh Grover)
Judge

27.03.2019
rekha

(Lalit Batra)
Judge

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