

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

**CWP No. 23114 of 2019
Date of decision : 29.08.2019**

Bhuvnesh Sawhney and others

.....Petitioners

Versus

The Estate Officer, Union Territory of Chandigarh and another

...Respondents

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

Present : Mr. Baldev Singh Badhran, Advocate for the petitioners.

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DAYA CHAUDHARY, J.

Petitioners have 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 orders dated 04.08.1992 (Annexure P-12), dated 19.05.1993 (Annexure P-13) and also to set aside order of resumption passed by respondent No.1 *i.e.* Estate Officer, Chandigarh.

Briefly, the facts of the case as made out in the present petition are that one late Brij Mohan Sawhaney was the original allottee of plot in dispute and after his death, his LR's *i.e.* the petitioners filed the present petition. Petitioners No.1 and 3 are his sons and petitioner No.2 is his widow. Plot was allotted to Brij Mohan Sawhaney on lease hold basis under the Model Housing Scheme for Lower Income Group while working in the Union Territory as Junior Draftsman. As per the communication sent to him, the Chandigarh Administration had decided to allot a plot in Sectors 40, 44

and 46 and his consent was sought along with an affidavit. He filed his affidavit dated 05.05.1981 by stating that he had not secured/transferred by way of sale/gift/change or otherwise any residential site or a house including dwelling units in any urban estate anywhere in India. A plot of 192 square yards No.268 in Sector 40-A was allotted to him for a premium of ₹ 21,120/-, which was to be paid in three yearly instalments. The possession of said plot was handed over to him on 04.06.1982. The lease for 99 years was executed between deceased Brij Mohan Sawhney and Union of India on 06.09.1982. He applied for permission to mortgage the plot, which was allowed subject to provision of Act No.33 of 1976. The instalments were deposited by him and extension of time limit for completion of building was also granted by the Estate Officer, Chandigarh on 28.11.1987. FIR No.2 dated 15.06.1990 was registered under Section 420 of the Indian Penal Code against him as he furnished two affidavits stating that he had no other plot in any urban estate, whereas in the inquiry it was found that he was having one plot No.1136 in Sector 15, Panchkula, which was transferred in the year 1983. In said FIR, he was acquitted of the charge by the trial Court and said order was upheld in the appeal as well as revision. A request was made by him to the department vide letter dated 25.02.2005 for regularization/restoration of said plot No.268, Sector 40-A, Chandigarh, which was already resumed. Said Brij Mohan Sawhaney died on 31.12.2008 and after his death his two sons and wife being his legal heirs filed a complaint before the District Consumer Disputes Redressal Forum, Chandigarh which was dismissed on 07.12.2008. Thereafter, they filed an appeal before the State Consumer Disputes Redressal Commission, Chandigarh, which was also dismissed on

11.02.2019.

Learned counsel for the petitioners submits that the petitioners are entitled for regularization/restoration of plot as the original allottee deceased Brij Mohan Sawhaney was acquitted of the charge in the criminal case. The order of resumption is also liable to be set aside. Learned counsel also submits that action of respondents in resuming the plot is illegal, arbitrary, unjust and *mala fide* as the original allottee had already deposited all the dues and he was not having any house. The petitioners deserve to be allotted plot on the ground of equity.

Heard arguments of learned counsel for the petitioners. We have also perused all the documents available on the file.

Admittedly, there is an unexplained delay in filing this petition as deceased Brij Mohan Sawhaney applied for allotment of residential site in the year 1972, which was allotted in April, 1981. The plot was resumed by the Authority on the ground of filing false affidavit on 04.08.1992. Thereafter, the appeal was also dismissed and the revision also met the same fate. The only ground which has been taken to set aside the order of resumption is that he was acquitted of the charge by the trial Court on 25.02.2005. Not only the original allottee but his LRs also remained silent for a long period as the complaint before the District Consumer Disputes Redressal Forum was filed on 28.08.2016, which was dismissed. No explanation with regard to delay has come forward during course of arguments raised by learned counsel for the petitioners. Not only unexplained delay is there in approaching this Court but two affidavits filed by the original allottee were found to be false in the detailed inquiry and the plot

was cancelled. Meaning thereby, the original allottee got the allotment on the basis of forged and fabricated documents and therefore, the allotment was cancelled. The original allottee was already having a plot and by misrepresenting and playing fraud, false affidavits were filed stating that he was not allotted/having any plot and as such he procured the allotment of the plot in question.

The issue for consideration in this case is as to whether the respondents were justified in cancellation/resumption of allotment of plot and forfeiture of amount deposited at the time of allotment of plot in case of fraud and misrepresentation.

For considering the claim of the original allottee it was to be seen as to whether he was entitled for allotment of plot. It was found in the inquiry that earlier he was allotted a plot which was sold and wrong affidavits were filed by suppressing the factum of allotment of plot. The original allottee was having a plot and he was not eligible for allotment of other residential plot. Such plots were allotted on concessional rates to the allottees by the public authority and the relevant regularization must, therefore, be interpreted in such a manner to save the real purpose. Not only material fact was concealed but false affidavits were also filed. It has been observed in various judgments that the courts of law are meant for imparting justice to the parties. One who comes to the Court, must come with clean hands. Sometime the process of Court is being abused and misused. A person, whose case is based on falsehood, has no right to approach the Court and is liable to be thrown out at the initial stage of the litigation. In case a person withholds a vital document or misleads the concerned authority or

misrepresent just to take benefit of a scheme, he/she is guilty of playing fraud with the Court as well as the public authority.

The present petition has been filed by the LR's of the deceased allottee with an unexplained delay on the ground that the original allottee was acquitted of the charge in criminal case. No convincing arguments have been raised to explain the delay and to show as to how the original allottee or his LR's were entitled for allotment or regularization of the plot on the basis of forged/false affidavits. The affidavits filed by the original allottee were found false in the inquiry. He was allotted plot on the basis wrong information and false affidavits.

In view of the facts and circumstances as discussed above, the petitioners are not entitled for regularization of plot or to set aside the order of resumption. Accordingly, there is no force in the contentions raised by learned counsel for the petitioners and the petition being devoid of any merit is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

Dated : 29.08.2019

sunil yadav

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No