

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.W.P. No. 28804 of 2017

Date of Decision : January 17th, 2020

Karan Singh Petitioner

vs.

The State of Haryana and others Respondents

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

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Present : Mr.Gaurav Bakshi, Advocate
for the petitioner.
Mr.Ankur Mittal, Additional Advocate General, Haryana.
Mr.Deepak Sabherwal, Advocate, for respondent-HUDA.

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MEENAKSHI I. MEHTA, J. :

1. By way of this petition, the petitioner has sought the indulgence of this Court for issuance of a writ in the nature of certiorari quashing the order dated 20.09.2017 passed by respondent no.1 in the revision petition as preferred by him whereby the order dated 24.10.2016 as passed by respondent no.3 was confirmed and he has further prayed for issuance of a writ in the nature of mandamus directing the respondents to restore the plot bearing No.893, Sector 56/56-A, Faridabad, to him.

2. Shorn and short of unnecessary details, the factual matrix as canvassed by the petitioner in this petition, is that he applied for one

residential plot in Sector 56, 56-A, Faridabad under EWS Scheme while depositing the earnest money to the tune of Rs.2691/- on 11.12.2006 and was allotted the above-said plot vide the allotment letter issued on the same day. As per condition no.5 of the allotment letter, he, being the allottee, was required to deposit Rs.243/- as first instalment of the tentative price of the said plot, within a period of 30 days from the date of issuance of this letter but due to some unavoidable circumstances arising out of his financial constraints, he failed to deposit the said instalment within the stipulated time. As per condition no.6 of the allotment letter, the balance price/amount of Rs.24,219/- qua the said plot could be paid in lump-sum without interest, within 60 days from the date of issuance of the said letter or in 100 equated monthly instalments along with interest at the rate of 9% per annum. He deposited the entire amount of the balance price of the said plot vide demand drafts worth Rs.20,000/- dated 10.02.2015, Rs.18,000/- dated 09.10.2015 and Rs.1200/- dated 16.02.2016. However, thereafter, on 11.03.2016, respondent no.4 refunded an amount of Rs.20,000/- to him despite the fact that he had never made any request for such refund.

3. The petitioner has, further, averred that vide letter dated 17.07.2015, he requested respondent no.4 for issuing the document for 'no dues' qua the said plot and then, vide letter dated 24.05.2016, respondent no.4 intimated him about the cancellation of the allotment of the aforementioned plot. The said allotment had been cancelled without giving any prior notice to him. Hence, he filed an appeal before the Administrator,

HUDA, Faridabad, i.e. respondent no.3, against the order of cancellation but the same was dismissed vide order dated 24.10.2016. Then, he preferred a revision petition to challenge the said order of the Appellate Authority but respondent no.1 dismissed this petition vide impugned order dated 20.09.2017. These orders are liable to be quashed/set aside because the above-said cancellation order had been passed after accepting the amount of Rs.39,200/- from him. He is also ready and willing to pay the balance amount of the plot, if any, along with interest and penalty as per the policy of the respondents or its price at the current market rate. The respondents have condoned the delay in the cases of several similarly placed persons.

4. Respondents no.2 to 4, in their joint written statement, have contested the claim of the petitioner, inter-alia, on the grounds of default on his part in depositing the first instalment of the balance price/amount and non-completion of the contract between the parties. On merits, they have asserted that the petitioner himself failed to deposit the amount of first instalment and to communicate his acceptance to the offer of allotment of the plot to him, within the prescribed period of 30 days and thus, no enforceable contract came into existence and hence, no right, title or interest, in respect of the afore-said plot, accrued in his favour and no notice was required to be given to him in these circumstances. He deposited the above-mentioned amount during the period from 13.11.2015 to 18.02.2016, i.e., after a period of nine years and as per the policy dated 03.08.2007, the delay of more than one year cannot be condoned in any case. There is no

illegality in the orders as passed by the respondents and this petition deserves dismissal.

5. In his replication to the written statement of respondents no. 2 to 4, the petitioner has reiterated his earlier stand as taken in this petition besides controverting the assertions as set forth by these respondents in their written statement.

6. We have heard learned counsel for both the parties in the petition in hand and have also perused the record thoroughly.

7. Learned counsel for the petitioner has contended that due to some unavoidable circumstances, the petitioner could not deposit the first instalment of the balance tentative price of the plot allotted to him, within the stipulated period of 30 days from the date of issuance of the allotment letter and later on, he has deposited the entire balance amount of Rs.39,200/- with the respondents which includes the interest on the delayed payment also but respondent no.4 has illegally cancelled the allotment of the said plot and the appeal as preferred by him against this cancellation order has also been wrongly dismissed by respondent no.3 and then, respondent no.2 has also arbitrarily dismissed the revision petition filed by the petitioner against the order of the Appellate Authority and therefore, these orders are liable to be set aside.

8. He has further contended that the petitioner is ready and willing to deposit the balance amount, if any, due from him or to pay the current market price of the said plot and moreover, the respondents have condoned

the delay of long periods in the cases of similarly placed allottees but they have cancelled the allotment of the plot after the deposit of the balance amount by the petitioner. In support of his contentions, he has placed reliance upon Annexure P-10, i.e. the copy of the order dated 05.10.2018, as passed by respondent no.1 in the case titled as **Chander Mohan vs. The Chief Administrator, HSVP and another**; the judgments as rendered by the Division Bench of this Court in **CWP No.5227 of 2012 Haryana Urban Development Authority vs. Nikhlesh Yadav and others** on 18.12.2012 and **HUDA, Panchkula vs. Financial Commissioner and another 2013(4) PLR 531** and also the judgments handed down by Hon'ble Supreme Court in **SLP(Civil) Nos.8198-8199/2013** titled as **Sunita Sharma vs. The Financial Commissioner & Sec. & Ors.** and in **SLP (Civil) Nos.5140/2009** titled as **Haryana Urban Development Authority vs. Irish Print Services Pvt. Ltd.** and also in **MD, HSIDC and others vs. M/s Hari Om Enterprises and another 2009 (16) SCC 208.**

9. However, learned Additional Advocate General on behalf of respondent no. 1 and learned counsel for respondents no. 2 to 4 have referred to Annexure R-1, i.e. the copy of the allotment letter issued to the petitioner in respect of the said plot and have pointed out that as per condition no. 5 therein, the petitioner was required to send his acceptance by registered post along with the first instalment of the tentative price of the plot, within 30 days from the date of issuance of this letter and it has also been provided therein that in case of his failure to do so, the allotment

would be cancelled and 10% earnest money would be forfeited and they have argued that the petitioner failed to deposit the amount of first instalment and also to communicate his acceptance for the said allotment within the prescribed period and thus, the offer of the allotment of the plot had not been accepted by him and hence, the contract between the parties never came into existence and therefore, the same is not enforceable despite deposit of the above said amount of Rs.39,200/- by him and that too, after a long period of nine years and it being so, it is clear that the cancellation order and the order as passed by the Appellate Authority qua the dismissal of the appeal against the cancellation order as well as the impugned order as passed by the Revisional Authority for dismissal of the revision petition as filed against the order of the Appellate Authority, are perfectly legal. To buttress their arguments, they have also referred to **Chaman Lal Singhal vs. Haryana Urban Development Authority and others 2009 (4) SCC 369.**

10. Undisputedly, the petitioner had failed to communicate his acceptance qua the terms and conditions as laid down in allotment letter Annexure R-1 (also placed on the file as Annexure P-1) and to pay the amount of the first instalment of the balance tentative price of the plot allotted to him, within the stipulated period of 30 days from the date of issuance of this letter, i.e. 11.12.2006. As mentioned in Annexure P-6, i.e. the order passed by the Appellate Authority on 24.10.2016, the petitioner, as appellant, had submitted that he had deposited the amounts of Rs.20,000/-,

Rs.18,000/- and Rs.1,200/- on 01.03.2016, 09.11.2015 and 16.02.2016 respectively. This fact shows that he deposited these amounts after waking up from a deep slumber of almost nine years.

11. Further, though the petitioner has averred in this petition that he could not deposit the first instalment of the balance tentative price of the plot within the stipulated period of 30 days due to some unavoidable circumstances as he was having financial constraints but however, he has failed to justify the delay of almost nine years in depositing the afore-said amount of Rs.39,200/- on this count and hence, this plea does not seem to be cogent and plausible one. To add to it, he was also required to convey his acceptance qua allotment of the said plot, to the respondents within the above mentioned stipulated period but he has nowhere pleaded in the instant petition that he had ever conveyed the same. To cap it all, he has also not come forward with any plea that he had ever moved any application or representation to the respondents for seeking extension of time to fulfil the obligation as cast upon him under condition no. 5 of the allotment letter or for the condonation of delay in payment of the first instalment of the balance tentative price. It has been held by the Hon'ble Apex Court in **Chaman Lal Singhal (supra)** that -

“if the allottee did not deposit the initial amount of 25% within the stipulated period of 30 days nor conveyed his acceptance of allotment in his favour, the cancellation of the allotment was automatic in terms of the forfeiture

clause in the letter of allotment as the consequence of non-compliance or violation of the condition of the allotment and the order of cancellation was valid”.

These observations are fully applicable to the present case because condition no. 5 of the allotment letter Annexure R-1 also provides that in case of failure of the petitioner to deposit the amount of first instalment, the allotment would be cancelled and the deposit of 10% as earnest money would be forfeited.

12. Moreover, it has also been held by Hon'ble Supreme Court in Civil Appeal No. 6791 of 2010 Greater Mohali Area Development Authority and another vs. Manju Jain and others that -

“22. Mere draw of lots/allocation letter does not confer any right to allotment. The system of draw of lots is being resorted to with a view to identify the prospective allottee. It is only a mode, a method, a process to identify the allottee i.e. the process of selection. It is not an allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment.

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24. *Clause 4 of the allotment letter reads as under :-*

“In case you accept this allotment, you should send your acceptance by registered post along with amount of balance of twenty five percent of price

within sixty days from the date of receipt of allotment letter.” (Emphasis added)

In the instant case, an acceptance letter had not been sent by respondent no. 1. Thus, the allotment in her favour remained of no significance.”

In view of the above-discussed observations, it is quite explicit that mere issuance of the allotment letter to the petitioner, in the eventuality of the lapse on his part to convey his acceptance for the allotment to the respondents along with the amount of first instalment of the balance tentative price, cannot be said to have conferred any right in his favour so as to seek the restoration of the plot.

13. The observations as made by the Division Bench of this Court on 18.12.2012 in **Nikhlesh Yadav (supra)** do not come to the rescue of the petitioner in view of the above discussed observations as made by Hon'ble Apex Court in **Chaman Lal (supra)** and also the subsequent observations as made by the Division Bench of this Court in **CWP No. 11434 of 2014 Barkha Ram vs. Haryana Urban Development Authority, Panchkula and others** (decided on 28.08.2014) to the effect that -

“Having failed to send the acceptance within 30 days; to pay the amount and to seek extension of time for payment of 15% of the amount, no concluded contract came into existence. We do not find any error in the orders passed by the Authorities.”

The order dated 05.10.2018 as passed by the Revisional

Authority in case of **Chander Mohan (supra)**, i.e. Annexure P-10, is also of no avail to the petitioner in view of the observations as made in **Barkha Ram (supra)**.

14. Further, the observations as made by Hon'ble Supreme Court in **Sunita Sharma (supra)**, **Irish Print Services Pvt. Ltd. (supra)** and **MD, HSIDC and others (supra)** and by the Division Bench of this Court in **HUDA, Panchkula (supra)** do not help the petitioner at all in substantiating his claim in this petition because in **Sunita Sharma (supra)**, the petitioner had moved an application seeking condonation of delay in accordance with the policy framed by Haryana Urban Development Authority and the Hon'ble Apex Court had remanded the matter to the Chairman, Haryana Urban Development Authority for considering her representation/application whereas in the present case, the petitioner has nowhere pleaded that he had ever moved any application/representation with such prayer.

15. Again, in **Irish Print Services Pvt. Ltd. (supra)** also, the matter pertained to the allotment of an alternative plot to the respondent and the counsel for the petitioner, i.e. Haryana Urban Development Authority, had made a statement for regularisation of the allotment of the plot in favour of the respondent on his depositing the price thereof at a specific rate whereas in the present case, the dispute pertains to non-payment of the first instalment of the balance tentative price of the allotted plot by the petitioner and also the failure on his part to communicate his acceptance to the respondent qua the said allotment.

16. As regards the verdict as handed down by the Hon'ble Apex Court in **MD, HSIDC (supra)** on 16.05.2008, it is pertinent to mention here that in para no. 77 therein pertaining to **Civil Appeal No. 19916 of 2006 HSIDC and another vs. Mr. Ved Govil and another**, it has been categorically observed that *“where the respondent-allottee was required to deposit 15% of the total price of the allotted plot by 22.07.2004 which was extendable by another 30 days with interest @11% per annum but he had failed to do so and had deposited this amount on 21.09.2004, it was a clear case where the respondent had failed to abide by any of the terms of the contract and therefore, the appeal filed by the Haryana Urban Development Authority should be allowed.”* Though the allottees were directed to be re-allotted the plots on payment of the price at the current rate but it had been so done in view of a general offer made by the Additional Solicitor General to that effect whereas it is not so in the present case.

17. So far as the observations as made by the Division Bench of this Court in **HUDA, Panchkula vs Financial Commissioner and another (supra)** are concerned, the allottee in that case had failed to deposit 15% amount but he was required to deposit the balance 75% of the price of the allotted plot in six yearly instalments and the last instalment was payable on 03.11.2012 and he had deposited the first, second and third instalments on 05.11.2007, 10.11.2008 and 11.05.2009 respectively, i.e. during the period of the payment schedule, which had been accepted by Haryana Urban Development Authority before the cancellation of the allotment whereas in

the case in hand, the allottee-petitioner slept over his liability to pay the instalments of the balance tentative price of the plot allotted in his favour and then, he has deposited the amount of Rs.39,200/- after a long period of about nine years.

18. As a sequel to the foregoing discussion, it follows that the petitioner cannot be held to be entitled to the relief as claimed by him in this petition and resultantly, this petition, being sans any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

January 17th, 2020

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Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.