

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

CWP No. 4274 of 2017 (O&M)

Date of decision : 20.09.2019

Hem Raj Gupta

.....Petitioner

Versus

The State of Punjab and others

...Respondents

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

Present : Mr. Gaurav Sharma, Advocate for the petitioner.

Mr. S. K. Yadav, Advocate for respondent No.3.

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DAYA CHAUDHARY, J.

CM No.13260 of 2019

This application is for placing on record affidavit of respondent No.3.

Application is allowed and affidavit of respondent No.3, annexed with the application, is taken on record.

CWP No.4274 of 2017

The prayer in the present petition is for quashing of impugned order dated 12.02.2014 (Annexure P-17), whereby claim of the petitioner for an alternative plot has been rejected. A further prayer has also been made for issuance of direction to the respondents either to exempt the house possessed by the petitioner in Inder Nagar Colony, Patiala from the scheme known as Shaheed Sewa Singh Thikriwala Nagar Scheme or to allot an

alternative plot in the said scheme and pay the compensation for the structure in view of judgment passed in CWP No.175 of 1991 titled as Rajinder Kumar Sharma and others Vs. State of Punjab and others decided on 01.02.1995.

Briefly, the facts of the case as made out in the present petition are that the petitioner purchased one plot No. 49 measuring 400 square yards in Sunder Nagar Colony vide registered sale deed dated 29.06.1970 and got the mutation entered/sanctioned in his favour. He also raised construction over said plot. Said plot was acquired by the Improvement Trust under Shaheed Sewa Singh Thikriwala Nagar Scheme. Petitioner made request for exemption from the scheme for which the plot was acquired or to allot an alternative plot to him. He also requested for payment of compensation but his request was not accepted. The State of Punjab in exercise of powers conferred by Sub-section (1) of Section 41 of the Punjab Town Improvement Act, 1922 sanctioned the development scheme prepared by the Patiala Improvement Trust vide notification dated 30.12.1973. Said scheme was silent regarding adjustment of plots/houses. Petitioner approached this Court by way of filing CWP No.4244 of 2011, which was disposed of on 19.03.2011 with the direction to the Chairman of Improvement Trust, Patiala to treat the writ petition as representation of the petitioner and to consider it in accordance with law within a period of three months from the date of receipt of certified copy of the order. In pursuance of the said direction, the claim of the petitioner was considered but it was filed. The petitioner was also informed to take compensation, due to him in respect of his plot, from the Land Acquisition Collector, Improvement

Trust, Patiala on the basis of order passed in CWP No.4244 of 2011. Thereafter, the petitioner again filed CWP No.936 of 2012 for quashing of communication dated 17.08.2011, whereby his claim for exemption of his plot from acquisition or to allot an alternative plot in lieu thereof was turned down. The petitioner also relied upon decision dated 15.01.2010 passed in ***CWP No.15852 of 2009 titled as Balbir Singh Vs. State of Punjab and others***. While disposing of said petition, a direction was issued to determine/consider the claim of the petitioner for adjustment of his plot as per the scheme or to allot an alternative plot. Order dated 17.08.2011 impugned in that petition was also set aside with the direction to the Chairman of the respondent-Trust to reconsider the claim of the petitioner for allotment of alternative plot. The claim was declined vide order dated 12.02.2014 on the ground that applications were invited under Local Displaced Persons Scheme but no such application was submitted by the petitioner. The claim of the petitioner did not fall in said scheme as the petitioner did not fulfil the terms and conditions of the scheme and he was not found entitled for said scheme. However, while declining the claim of the petitioner, it was mentioned that the Trust has filed an appeal before the Apex Court and further action shall be taken as per decision given therein. Petitioner had to file the present petition being aggrieved by the decision of the Improvement Trust.

Learned counsel for the petitioner submits that the claim of the petitioner has wrongly been rejected whereas an undertaking was given before the Court that the houses already constructed shall not be demolished. Even similar undertaking was given before the Apex Court. It

was submitted that houses were already constructed in Sunder Nagar Colony. In spite of the undertaking given and floating the scheme, claim of the petitioner was not considered. Learned counsel for the petitioner also submits that case of the petitioner is at par with Balbir Singh, who was also resident of Sunder Nagar Colony. His writ petition No.15852 of 2009 was allowed by this Court on 15.01.2010 and he was asked to deposit the amount. Learned counsel also submits that there are a number of similarly situated persons like the petitioner who have been allotted alternate plots but only the petitioner has been discriminated.

Learned counsel for the respondent-Improvement Trust has opposed the submissions made by learned counsel for the petitioner. He submits that the case of the petitioner cannot be equated with other persons who have been allotted alternative plots. The size of the plot of the petitioner is 400 square yards and it was acquired as per development scheme known as Shaheed Sewa Singh Tikriwala Nagar Scheme. The possession was also taken by respondent Trust on 11.03.1992 after granting adequate compensation and award money was deposited before the authority at that time. Learned counsel also submits that the case of the petitioner does not fulfil the terms and conditions of the Local Displaced Persons Scheme as petitioner did not submit any application under that scheme. The petitioner was not held entitled for allotment of plot as per provisions of Section 26 and 27 of the Punjab Town Improvement Act, 1922. Learned counsel further submits that the plots have been allotted only to those persons who had constructed houses on the land which came in the way of proposed road to be made under the Scheme of Trust and size of

plots of those persons was of 500 square yards. The case of the petitioner is totally different and not covered by the scheme.

Heard arguments of learned counsel for the parties. We have also perused the impugned orders as well as other documents available on the file including the orders passed in the writ petitions filed by the petitioner.

The petitioner is claiming parity with Balbir Singh who filed CWP No.15852 of 2009. No doubt the claim of the petitioner was considered in view of the direction issued vide order dated 09.03.2011 in CWP No.4244 of 2011 and, thereafter, order dated 18.02.2013 passed in CWP No.936 of 2012 filed by the petitioner, but his request was not accepted. While disposing of CWP No.936 of 2012, a specific direction was issued to take decision by considering the claim of the petitioner for adjustment of his plot by allotting alternative plot. A direction was also given to reconsider the claim of adjustment within the Scheme floated by respondent-Trust. Order dated 12.02.2014 was passed by holding that petitioner was not entitled for allotment of plot as the case of the petitioner was not covered under the scheme known as Local Displaced Persons Scheme as he did not submit any application. However, at the end it was mentioned that the Trust has filed the appeal before the Hon'ble Apex Court and further action shall be taken as per the decision in this regard. The contempt petition filed by petitioner was also dismissed by giving liberty to challenge order dated 12.02.2014, which is subject matter of challenge in the present petition. The claim of the petitioner has not been considered on the ground that the plots have been allotted only to those candidates who

were having plots measuring 500 square yards and have constructed the houses on the land and have come on the way of proposed road to be made under the Scheme of Trust. The applications were also invited only from plot owners of Sunder Nagar Colony after taking possession of plots. The applications were required to be submitted within a period of three months after getting possession of the houses. The plots were allotted only under Local Displaced Persons Scheme known as LDP Scheme. The case of the petitioner was not covered in that scheme. The only requirement of allotment was that the size of the plot should have been 500 square yards and have come in the way of making the road. The case of the petitioner does not fulfil the criteria of allotment of the LDP Scheme.

In view of the facts as mentioned, we find no merit in the contentions raised by learned counsel for the petitioner. Hence the present petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

Dated : 20.09.2019

sunil yadav

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No