HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

(Through Video Conferencing)

Reserved On: 18.11.2020.
Pronounced On: 17.12.2020.

OWP No. 647/2016
IA No. 01/2016

Satya Gupta

…..Petitioner(s)

Through: -
Mr. Anil Mahajan, Advocate.

V/s

State of J&K and Others

…..Respondent(s)

Through: -
Mr. N. A. Choudhary, Advocate

CORAM:

Hon'ble Mr. Justice Javed Iqbal Wani, Judge.

JUDGEMENT

1. In this petition, petitioner beseeches and seeks the following reliefs: -

   (a) Writ of certiorari, quashing Order No. HB/558-59 dated 23.04.2016 passed by respondent No. 2 J&K Housing Board through respondent No. 3 Secretary, whereby allotment of Plot No. 139, Sector-1, Housing Colony, Channi Himmat, Jammu, has been cancelled and premium forfeited;

   (b) Writ of mandamus, directing and commanding the respondents to effect necessary change in the record to that of petitioner Smt. Satya Gupta in place of her husband Late Sh. Kuldeep Kumar Gupta with regard to Plot No. 139, Sector-1, Housing Colony, Channi Himmat, Jammu and to confer ownership rights after demanding fee/ charges; or

   (c) Any other writ, order or direction which the Hon'ble Court may deem fit and proper.

2. The facts under the shade and cover of which the petitioner claims aforesaid reliefs in the petition are that the respondent No. 2 J&K

Housing Board (for brevity the Board) creation of a statute namely the Jammu and Kashmir Housing Board Act, 1976 (for brevity the Act) issued an advertisement in the year 1980 for allotment of residential plots at Housing Colony Channi Himmat, Jammu on 20 years lease basis.

3. According to the petitioner condition No. 2 (a) & (b) of the advertisement supra provided for following eligibility: -

    a) The applicant must be permanent resident of Jammu and Kashmir.
    b) Person belong to Jammu city, but having no residential house or residential plot in their names or in the name of any member of their family.

4. According to the petitioner, in response to aforesaid advertisement, in October 1980, her husband late Shri Kuldeep Kumar Gupta while working in the Cooperative Department of the J&K Government as gazetted officer submitted an application for allotment of a plot along with the requisite affidavit swearing as follows: -

> "I am permanent resident of J&K State and am serving in J&K Cooperative Department, my monthly income from all sources is Rs. 1271.60 per month. I or any member of my family does no have any residential house or residential plot in Jammu city or any other place of J&K State or outside it."

5. According to the petitioner the Board accepted the aforesaid application and affidavit of petitioner's husband and vide letter No. CH/11/903 dated 18.07.1983 allotted a plot of land measuring 30'x55' which however, came to be substituted by a plot measuring 40'x80' being plot bearing No. 139 vide letter No. CH/11/903 dated

26.06.1987 in Sector-1 Channi Himmat Jammu, upon a request made by the petitioner's husband through an application for bigger size of plot.

6. According to the petitioner, total cost of the plot had been paid by her husband to the Board and accordingly, a lease deed in respect of the said plot measuring 40'x80' also came to be executed on 04.10.1989 by the late husband of the petitioner with respondent No. 2 duly registered in the court of law.

7. According to the petitioner her husband expired at Jammu on 02.02.1994, where after the petitioner approached the respondent No. 2 for change of name in the records of respondents qua the plot as lessee in place of her late husband.

8. It is stated by the petitioner that the respondent No. 3, instead issued JKHB order No. 179 of 2006 dated 11.12.2006 cancelling the allotment of the plot in question and forfeited the premium. The said order according to the petitioner came to be challenged by her before this court in OWP no. 953/2006 which came to be decided and allowed on 14.10.2015 quashing the order of cancellation dated 11.12.2006.

9. According to the petitioner, the order of this court dated 14.10.2015 supra came to be challenged by the respondents in LPA No. D-3/2016 which came to be decided on 01.02.2016 and while maintaining the judgement of the single judge, qua the order of cancellation, the LPA Bench gave a liberty to the Board to issue notice to the petitioner calling for objections and pass fresh orders.

10. According to the petitioner respondent No. 3 alleged Secretary issued a show cause notice to the petitioner bearing No. HB/9217-18 dated 28.03.2016 stating therein as to why the allotment of plot be not cancelled and premium forfeited. The petitioner states to have filed detailed reply to the show cause notice refuting the allegations contained in the show cause notice.

11. According to the petitioner respondent No. 3 alleged secretary not being satisfied with the reply supra of the petitioner issued order No. HB/558-59 dated 23.04.2016 stating therein that after considering the reply of the show cause notice as well as record on the file, the competent authority is of the opinion that allotment sought by late Kuldeep Kumar (husband of the petitioner) is based on false affidavit filed in the year 1991 and that he had obtained the possession of the plot by misrepresentation/suppression of facts and by fraud thereby cancelling the allotment of plot No. 139 Sector-1 Housing Colony Channi Himmat.

12. According to the petitioner the basis for cancellation of the allotment of plot is allegedly made the affidavit filed by the petitioner's husband in the year 1991 while taking possession of the plot in question which affidavit is stated to have been filed by the respondents with the reply in OWP No. 953/2016 supra and reads as under: -

> "I Kuldep Kumar Gupta S/o Madan Lal R/o 57 Dhoundhali Bazar Jammu solemnly declare as under:
>
> 1. That neither I nor any member of my family has applied in Roop Nagar Housing Colony being developed by JDA.

2. That no member of my family has applied in Chennai Housing Colony except myself.
3. That neither I nor any member of my family has owned a residential house/ plot inherited from ancestors or otherwise.

13. According to the petitioner after submitting an application along with the affidavit in the year 1980 before respondents for allotment of a plot of land in question, petitioner's husband had applied to JDA in 1983 for allotment of plot of land at Trikota Nagar Housing Colony Jammu, which came to be allotted thereafter, a lease deed executed on 29.11.1983 and the said plot stands transferred in the name of son of the petitioner.

14. According to the petitioner in the reply submitted to show cause notice supra it was specifically stated that Trikota Nagar and Chennai Himmat Colonies were not part of Jammu city when allotment was sought in the year 1980 by her husband and that Trikota Nagar and Channai Himmat were included within the Municipal areas of Municipal Corporation Jammu vide notification/SRO No. 291 dated 05.09.2003 issued by Housing and Urban Development Department of J&K.

15. According to the petitioner her husband was having neither any residential house nor any residential plot in his name or in the name of any member of his family when he applied to the respondents for the plot in question in the year 1980 and similarly in July 1991 also while submitting the affidavit in question during taking of the possession of plot in question wherein it was sworn by her husband that no member

of his family has applied in Channi Himmat Housing Colony, except himself and neither he nor any member of his family has applied in Roop Nagar Housing Colony being developed by JDA and that neither he nor any member of his family has owned any residential house/plot inherited from ancestors.

16. According to the petitioner following facts become manifest: -

1. That her husband in response to the advertisement notice of 1980 for plot of land at Housing Colony Channi Himmat applied in 1980 along with an affidavit certifying that he belonged to Jammu city but having neither residential house nor residential plot in his name or in the name of any member of his family in the Jammu city.
2. That Housing Board allotted plot No. HB/II/903/2377 dated 18.07.1983 on request and upon depositing of balance amount vide letter No. HB/CH/II/903/3984 dated 29.10.1984 changed size of the plot being plot No. 139 Sector-1.
3. Affidavit of 31.10.1980 and July 1991 confirm that he did not own any residential house/ plot by inheritance from ancestors.
4. Channi Himat and Trikota Nagar Housing Colonies became part of Jammu city (Municipal area) on 05.09.2003 by State of J&K.
5. Trikota Nagar Housing Colony Jammu, plot No. 38 Sector-6 was applied and allotted much after applying

for plot at Channi Himmat Jammu. The said plot at Trikota Nagar stands transferred in the name of the son of the petitioner for the last more than a decade.

6. There is no condition in the advertisement of 1980, letter of allotment or lease deed dated 04.10.1989, that after applying for allotment of plot on lease at Housing Colony Channi Himmat Jammu, the applicant lessee or any member of his family cannot apply for or own property at any other place.

Grounds of challenge:

17. The order dated 23.04.2016 supra impugned in this petition is being challenged by the petitioner *inter-alia* amongst others on the grounds that the order is arbitrary in nature and has been passed to deprive the petitioner of her legitimate right to the plot and that at the time of submitting of application requisite affidavit had been submitted by the late husband of the petitioner and there was no misrepresentation or suppression of facts or fraud committed by the late husband of the petitioner and that the respondents without being there any basis have drawn wrong conclusions.

18. It is being urged in the grounds that the petitioner is entitled to the change in records before the respondents as a lessee and that the petitioner has been discriminated viz-a-viz other similarly situated plot holders in whose favour the lease has been transferred inasmuch as the ownership conferred after accepting fee/charges.

19. It is being urged in the grounds that the respondents No. 3 Secretary had no power to issue the impugned order inasmuch as while issuing order of cancellation the procedure adopted is unreasonable, irrational and not in conformity with the conditions which had been provided while issuing the advertisement.

20. It is being further urged in the grounds that the act of respondents is arbitrary, discriminatory, unfair and biased as well as gross abuse of power and violation of principle of natural justice as also Article 14 of the Constitution.

21. It is being further urged that the respondent No. 3 is not competent authority to pass order impugned on behalf of the Jammu and Kashmir Housing Board, as it is only the Board duly constituted which could pass the order impugned and on the date of issuance of show cause notice dated 28.03.2016 there was no Board as also on the date of cancellation of order dated 23.04.2016, no Managing Director was functioning, as the incumbent Managing Director Shri Shafeeq Ahmad Raina had been transferred in the Cabinet meeting dated 11.04.2016 and posted as Secretary to the Government CAPD Department, and in his place Shri Hilal Ahmad Parray, Commissioner Commercial Tax, had been transferred and posted as Managing Director and that Shri Shafeeq Ahmad Raina, had got immediately relieved on the date of passing of impugned order dated 23.04.2016 and that Shri Hilal Ahmad Parray, had not joined as Managing Director, on that date.

22. It is being also urged in the grounds that the impugned order dated 23.04.2016 falsely gives reference of competent authority when there

was no Board nor any meeting of the Board had taken place during that time.

23. It is being next urged in the grounds that after submitting application along with the affidavit in response to advertisement notice in the year 1980 by late husband of the petitioner for allotment of plot at Housing Colony Channi Himmat, late husband of the petitioner had applied to Jammu Development Authority for allotment of a plot at Trikota Nagar Housing Colony as well and it had been allotted thereafter and lease deed executed on 29.11.1983 which plot according to the petitioner has been since transferred in the name of legal heirs of the late husband of the petitioner.

24. **Per Contra,** respondents have filed objections in opposition to the writ petition wherein the contentions raised and grounds urged in the writ petition are being resisted and controverted on the premise that the writ petition is misconceived against the facts and law and that the husband of the petitioner obtained allotment of two plots in Jammu city by misrepresentation of facts and by filing a false affidavit on 29.07.1991 to the effect that neither the applicant nor any of his family member own any residential house or plot inherited from ancestors, whereas, the petitioner's husband had obtained a plot being plot No. 38 Sector-6, Trikota Nagar Housing Colony Jammu, established by Jammu Development Authority.

25. According to the respondents the allotment made in favour of the husband of the petitioner by the Board had been cancelled under law and that the State Land Grants Act also does not provide for allotment of more than one plot to a family.

26. According to the respondents they had no knowledge about the plot of land obtained by the late petitioner's husband in JDA Colony Trikota Nagar and same surfaced only after petitioner applied for transfer of leasehold rights and submitted court decree indicating that the husband of the petitioner has also been allotted plot No. 38 in JDA Colony supra.

27. According to the respondents the reply submitted by the petitioner in response to the show cause notice was considered by the competent authority and a speaking order in the shape of the order under challenge came to be issued on all aspects of the matter in terms of prevailing Rules.

28. According to the respondents the husband of the petitioner while filing affidavit in the year 1991 concealed the fact that he had already obtained a plot No. 38 supra at JDA Housing Colony Trikota Nagar.

29. To sum up, the respondents in their objections have justified the issuance of the impugned order in the facts and circumstances of the case on the ground that the husband of the petitioner filed a false affidavit while obtaining a plot from the Board and that order under challenge has been issued with the approval of Managing Director and conveyed the same to the petitioner. Respondents thus, seek dismissal of the writ petition.

30. **Heard learned counsel for the parties and perused the original record produced by learned counsel for the respondents.**

31. Counsel for the partiers while making their respective submissions reiterated the contentions raised and grounds urged qua their respective pleadings.

32. Before dealing with the rival contentions of the parties, it would be imperative to scan the original record produced by learned counsel for the respondents in order to ascertain the actual and factual position in the matter.

33. Perusal of the original application form issued by respondent Board for seeking allotment of a plot and filled up by the late husband of the petitioner would reveal that Clause 8 of it required submission of an affidavit duly authenticated by the 1st Class Magistrate/ Oath Commissioner in support of the fact that;

a) The applicant is belonging to Jammu city but has no residential house or residential plot in his name or in the name of his family in the urban area of Jammu city or;
b) The applicant belongs to a place other than Jammu city but living in Jammu city for the last more than 7 years but has no residential house or residential plot in his name or in the name of any member of his family in the urban area or Jammu city or;
c) The applicant is living in Jammu city but has inadequate accommodation.

34. Further perusal of the original application form supra would reveal that for allotment of plot of land same had been submitted by the petitioner's husband and acknowledged by the respondents Board on 24.12.1980 along with the affidavit duly attested and notarized on 31.12.1980 vide No. 6189 dated 31.12.1980 stating therein as under: -

> I Kuldeep Gupta S/o S. Madan lal R/o 57, Dhounthali Bazar, Jammu, city do solemnly hereby and affirm as under:

> "That I am permanent resident of J&K and am serving in J&K Cooperative Department, my monthly income from all sources at present is Rs. 1271.60 per month. I or any member of my family does no have any residential house or residential plot in Jammu city or any other place of the J&K State or outside it."

35. Further perusal of record reveals that in terms of order No. HB/2377 dated 18.07.1983 issued by respondent Managing Director, Housing Board, petitioner's husband is allotted plot measuring 30'x55' under code No. HB/CH-II/903 at Housing Colony Channi Himmat Jammu, and substituted by a plot measuring 40'x80' vide order dated 29.10.1984, issued with a hand written condition at the bottom as follows: -

> "**Subject to production of affidavit regarding Roop Nagar, Chennai Himmat, ancestors property"**

36. Further perusal of the original record reveals that a lease deed qua the plot in question came to be executed on 29.11.1989 by the petitioner's husband duly registered before competent court (Munsiff Sub Registrar Jammu).

37. Perusal of the record further reveals that another affidavit had been filed by the husband of the petitioner duly attested by an Oath Commissioner on 29.07.1991 after issuance of handing over of possession letter No. HB-II/903 dated 03.07.1991 issued by Secretary Housing Board qua plot No. 139/ I.

38. Perusal of the aforesaid affidavit manifestly suggest that same has been filed in compliance to the hand written condition contained in order dated 29.10.1984 supra and reproduced herein at Para 35.

39. Further perusal of the record reveals that a communication bearing No. JDA/DN/886 dated 08.10.2005 has been addressed by Secretary GAD, Jammu, to the Managing Director, J&K Housing Colony J&K, Jammu, in response to a letter No. HB/CS/290-91 dated 30.06.2005 stating therein that as per the records available in this office Shri Kuldeep Kumar Gupta (petitioner's husband) was allotted a plot vide No. 38 Sector-6 measuring 30'x60' at JDA Housing Colony Trikota Nagar, vide allotment letter No. JDA/Pas/30'x60'/1426 dated 24.11.1983 who had applied for plot in September, 1976 and passed away on February 2nd 1994 and that his son Sunil Kumar Gupta applied for transfer of plot in his favour on the basis of legal heir order of the court.

40. Admittedly on the basis of aforesaid information impugned order dated 23.04.2016, has been issued while invoking conditions 2 (b) read with condition 15 of the terms and conditions for allotment of plot in Housing Colony at Channi Himmat which are reproduced here under respectively: -

> "Persons belonging to Jammu city but having no residential house or residential plot in their names or in the names of any members of their families."
>
> "In case of violation of any of the terms and conditions, the allotment of plot shall be liable for rejection."

41. Indisputably what emerges from above is that the petitioner's husband while submitting his application with respondents for allotment of plot in 1980 filed the requisite affidavit on 31.10.1980 in tune with the

conditions of the application and that time he had no plot of land in Jammu city either in his name or in the name of his family members consequent to which the respondents allotted plot of land initially measuring 30'x55' and subsequently measuring 40'x80' vide order dated 18.07.1983 read with 26.06.1987 and that the petitioner's husband filed the another affidavit thereto on 29.07.1991 stating therein not to have applied in Roop Nagar Colony developed by JDA and except him no other family member applied in Channi Himmat Housing Colony, and also neither him nor any of his family member own any residential house/plot from ancestors.

42. The aforesaid affidavits prima-facie do not suggest that any misrepresentation has been made by the petitioner's husband or any fact concealed or else fraud played upon the respondents. The terms and conditions set out in the basic application form of 1980 seemingly have been adhered to by the petitioner's husband. The plot of land allotted by JDA on 24.11.1983 admittedly has been allotted after the submission of application form along with the affidavit by the petitioner's husband before the respondents on 31.10.1980 duly acknowledged by the respondents on 24.12.1980. The impugned cancellation order manifestly is thus, misconceived having been issued on wrong premise while taking recourse to condition No. 15 of the terms and conditions supra.

43. Even otherwise also filing of affidavit required by the respondents in the year 1991 at the time of delivery of possession of plot in question, by the petitioner's husband could not have been asked for, in that, no

such condition existed in the basic application form of 1980 issued by the respondents.

44. The respondents have even failed to respond to the contention of the petitioner that the Trikota Nagar and Channi Himmat Housing Colonies became part of Jammu city upon issuance of SRO 291 dated 05.09.2003. The contents of Para 24 of the petition is extracted in extenso here under: -

> "24. That the respondents without due application of mind has passed an order on presumption and assumption which is not valid and legal. The order is liable to be quashed. The Trikuta Nagar, Jammu upto 2003 was out of Municipality Jammu upto 2003 was out of Municipality Jammu and not part of Jammu city."

45. Perusal of the objections filed by the respondents would manifestly demonstrate that no reply worth the name has been averred in response to the Para 24 supra and after replying Para 23 in the objections, the respondents have straightaway replied Para 29 without in between replying Para 24 to Para 28. An adverse influence, as such, in view of above is drawn against the respondents and the contention urged by the petitioner in Para 24 supra is deemed to have been admitted and not denied by the respondents supporting the contention of the petitioner that her husband did neither misrepresented nor concealed any fact.

46. In view of aforesaid analysis, the other contentions and issues raised by the petitioner in the writ petition may not require consideration and the same pails into insignificance.

47. Viewed thus, the writ petition merits acceptance and is accordingly, **allowed** and impugned order No. HB/558-59 dated 23.04.2016 is **quashed**. The respondents as a corollary to above are commanded to accord consideration to the case of the petitioner for change/substitution of her name in place of her husband and/or confer ownership rights qua the plot No. 39 Sector-1 Housing Colony Channi Himmat Jammu, in her favour in accordance with law, rules and regulations occupying the field, within two months from the date of passing of this order.

48. Registry to hand over the original record back to Mr. N. A. Choudhary learned counsel for the respondents.

Javed Iqbal Wani
Judge

Jammu
17/12/2020
"Ishaq"

Whether the Order is speaking? *Yes/No.*
Whether the Order is reportable? *Yes/ No.*

ISAQ HAMEED BHAT
2020.12.17 13:01
I attest to the accuracy and
integrity of this document