

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.18676 of 2019
Date of Decision: 10.07.2020

Harjit SinghPetitioner

Versus

Punjab Urban Planning and Development Authority and another
.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present: Mr. Vikram Singh Chahal, Advocate,
for the petitioner.

Mr. Aman Sharma, Advocate,
for the respondents.

KARAMJIT SINGH, J.

This writ petition in the nature of mandamus has been filed by the petitioner directing the respondents to allot him some other plot out of unallotted plots, in place of Plot No.601, and in the alternate, the respondents be directed to refund the amount deposited by the petitioner against the said plot along with interest at the rate of 12% per annum.

The case of the petitioner is that respondent No.2 invited applications for allotment of residential plots in Gateway City, Sector 118-119, S.A.S Nagar, on 03.12.2014 and the scheme was closed on 15.01.2015. The petitioner applied for allotment of plot in the said scheme. In the draw of lots, petitioner succeeded and he was allotted Plot No.601, vide allotment letter dated 07.09.2016. The area of plot was 256.66 Square yards and its cost was Rs.53,89,860/-. 25% of the total cost was to be paid before the allotment and

the remaining 75% was to be paid in six half yearly installments along with interest at the rate of 12% per annum. The petitioner has been regularly paying the installments. The petitioner visited the said plot and came to know that it was situated at a distance of just 10 feet (approximately) from the boundary wall of Sewage Treatment Plant (S.T.P) and, thus, is not fit for human habitation. As per the policy of the State Government, the Sewage Treatment Plant should be located away from any potential population growth. The allotted plot could not be used for residential purpose as the foul smell emitted by S.T.P is continuous source of nuisance and is also health hazard. So, the petitioner was entitled to get some other plot out of the unallotted plots in place of Plot No.601. Otherwise, he was entitled to refund of the amount deposited by him along with interest at the rate of 12% per annum along with compensation for unnecessary litigation and delay.

On notice of motion, the writ petition was contested by the respondents.

We have heard learned counsel for the parties and also gone through the record of the case, carefully.

The plea of respondents is that the plot in question was allotted to the petitioner on “as is where is basis” and the petitioner was fully aware about the location of the said plot, when he applied for the allotment of residential plot in Gateway City, Sector 118-119, S.A.S Nagar. It is also contended by the respondents that the S.T.P is not causing any nuisance. The S.T.P was constructed by using latest technology and involves odourless process. The S.T.P has got approval of Punjab Pollution Control Board. It is further contended that buffer zone of 10 feet green belt of thick plantation with

fragrance has been left adjacent to S.T.P. It is further argued that there is no nuisance or odour in the area due to presence of S.T.P. So, no alternative plot is required to be allotted to the petitioner in place of Plot No.601. In case, petitioner intends to refund of the amount deposited by him, then, the same will be subject to 10% deduction, as per the statutory provisions.

The plea of the petitioner is that Plot No.601 is non-feasible due to presence of S.T.P, which continuously emits foul smell in the atmosphere, which is harmful for the human health. Learned counsel for the petitioner contended that 10 feet wide buffer zone of fragrant plants will not be of any use. So, request is made that some alternative plot be allotted in place of Plot No.601 or otherwise, the amount deposited by the petitioner be refunded along with interest and damages.

We have considered the submissions made by the learned counsel for the parties.

It is not disputed that Plot No.601 was allotted to the petitioner. Even the fact regarding regular payment of installments has not been disputed by the respondents. It is also admitted fact that plot in question is situated at a distance of 10 feet (approximately) from the boundary wall of S.T.P.

As per the respondents, the S.T.P was constructed using latest Sequencing Batch Reactors (SBR) technology and the project was approved by the Punjab Pollution Control Board.

As per the approval given by the Punjab Pollution Control Board, it was a large scale industry. The fact that a buffer zone of green belt (dense populated trees with pleasant fragrance), is to be provided around the S.T.P, clearly shows that the process of sewage treatment in the aforesaid S.T.P is not

odourless. The foul smell emitted by the S.T.P is health hazard. The stench must be pervasive and cause of permanent nuisance in the area. A healthy environment is the need of the hour. The residential plots situated at a distance of about 10 feet from S.T.P may not be fit for human habitation due to continuous emission of foul smell and gases from it. The petitioner is not responsible for the said pollution. It is not possible for the petitioner to reduce the pollution/nuisance caused by the S.T.P. In these circumstances, the defence taken by the respondents that the allotment of disputed plot cannot be cancelled as the same was allotted to the petitioner on "as is where is basis" is not tenable.

It is not disputed that earlier the respondents declared another 23 allotted plots in the Gateway, Sector 118-119, S.A.S. Nagar, as non-feasible. However, we are of the view that, at this stage, it is not possible for the respondents to allot some alternate plot to the petitioner in place of the plot in dispute. The respondents are ready to refund the amount already paid by the petitioner, after making 10% deduction, as per the provisions of Section 45 of the Punjab Regional and Town Planning and Development Act, 1995. The said statutory provision also provides that in genuine cases of hardship, the authority may by general or specific order, reduce the amount of forfeiture for the reasons to be recorded in writing.

In the present case, the circumstances are totally unusual. The plot allotted to the petitioner is not fit for residential purpose. Having regard to the peculiar facts and circumstances of the case, to meet the ends of justice, we feel it appropriate to direct the respondents to refund the entire amount already deposited by the petitioner.

Accordingly, the direction is hereby given to the respondents to refund the entire amount already deposited by the petitioner, without any deduction and resultantly, the allotment of plot in question in the name of the petitioner would stands cancelled.

The writ petition stands disposed of, accordingly.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

10.07.2020

adhikari

Whether speaking/non-speaking	:	Yes/No
Whether reportable	:	Yes/No