

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

201

**CWP No.25566 of 2014
Date of decision: 06.02.2020**

Rajbir Singh

...Petitioner

Vs.

**The Blood Donors Coop. House
Building First Society Ltd. and Others**

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. Karan Singla, Advocate
for the petitioner.

Mr. Nitish K. Vasudeva, Advocate
for respondent No.1.

Ms. Geeta Sharma, Advocate
for respondent No.2.

Mr. Sanjeev Sharma, Senior Advocate with
Ms. Deepali Puri, Advocate
for respondent No.3.

G.S. SANDHAWALIA, J.(ORAL)

Challenge in the present writ petition filed under Article 226 of the Constitution of India, is primarily to the order dated 17.09.2008 which was passed by the Assistant Registrar, Cooperative Societies, Chandigarh (Annexure P-12) whereby the petitioner's right for allotment of category 'B' flat with the Blood Donors Cooperative House Building First Society-respondent No.1, was rejected on the ground that he had not deposited 25% of ₹5,35,000/- towards land costs which was worked out to ₹1,33,750/-. The finding recorded was that the petitioner had only deposited ₹1,07,100/- with respondent No.1-Society and, therefore, it was not constituting 25% of

the total price of the land to be deposited with the Chandigarh Housing Board-respondent No.3 for allotment of land by the requisite cut off date who in turn was to deposit the same with the Board for allotment of flat. The petitioner's name not being in the list of the allottee members of the Society thus his claim was rejected.

The petitioner had also preferred an appeal against the said order before the Secretary, Cooperation, U.T. Chandigarh which was dismissed in default on 30.11.2009 (Annexure P-15) which order was up-held on 08.11.2010 (Annexure P-16) by dismissing the recalling application. The said orders have also been challenged as such. Thereafter, the petitioner kept running from pillar to post and filed CWP No.4779 of 2011, challenging the said orders on an earlier occasions wherein it was held that since the Chandigarh Housing Board had not been impleaded as party, liberty had been given to withdraw the petition and file a fresh petition by impleading the Chandigarh Housing Board as party on 03.09.2012 (Annexure P-23). Thereafter, petitioner had filed CWP No.7301 of 2013 which was disposed of on 05.04.2013 (Annexure P-24) to approach the competent authority by filing appropriate representation.

The representation was filed on 10.09.2013 (Annexure P-25) and on having not been decided the petitioner was constrained to file CWP No. 17035 of 2014 in which directions were issued on 22.08.2014 (Annexure P-26) to decide the said representation. Eventually, vide order dated 28.10.2014 (Annexure P-27) the order was passed by the Chandigarh Housing Board (in short "CHB") that vide letter dated 02.05.2001, the President of the Society had intimated that 20 members of the category 'B' and 14 members of category 'A' were not interested to continue with the

Society and requested for refund of the deposit, as per the detailed list supplied by the President of the Society. Resultantly, ₹9100/- which had been initially deposited was allowed as refund to the petitioner through the President of Society vide letter dated 03.07.2001 (Annexure P-22). Reference was also made to the earlier decisions dated 17.09.2008 (Annexure P-12) where the petition had been dismissed and that the appeal had been dismissed on 30.11.2009 (Annexure P-15) and the recalling application dated 08.11.2010 (Annexure P-16). Resultantly, the petitioner is back in this Court seeking the relief of allotment.

The reasons which prevailed with the Assistant Registrar in the impugned order dated 17.09.2008 are not supported on a factual matrix as demonstrated by counsel for the petitioner to the extent of the non-deposit of 25% of the amount. Vide information asked under the Right to Information Act, 2005 (Annexure P-19) details of the amounts which had constituted 25% for the category 'B' flats has been demonstrated to show that for 10%, amount would be ₹ 9100/- and which was as per the cost of the land at @ ₹ 760/- per sq yard at that point of time. On the enhancement to the rate of ₹2500/- the amount would be @ ₹2500/- per sq. yard and 25% would come to ₹60,502/-. In view of the interest @ 18% on the difference the amount would have come ₹1,00,302/- as the balance 15% on account of the enhanced amount of ₹2500. As noticed a finding has been recorded by the Assistant Registrar that the petitioner had admittedly paid ₹1,07,110/- which would constitute more than 25%.

Even otherwise, it has also come on record that vide (Annexure P-7) dated 20.04.2000, the petitioner had been asked to deposit a sum of ₹ 61,500/- by 22.05.2000 which would fulfill the 25% along with interest.

The bank draft dated 22.05.2000 (Annexure P-8) in favour of respondent No.1-Society had been attached. In view of the directions issued by this Court, respondent No.1-Society has also placed on record the information dated 20.08.2019 (Annexure R-1/4, Colly.) from the bank that the said draft No.189694 of ₹61,500/- was encashed on 29.05.2000 (wrongly mentioned as 20.05.2000). The same was cleared on 31.05.2000 according to the available records as per the certificate of Chandigarh State Cooperative Bank Limited. It is thus apparent that the petitioner had paid the amount of ₹61,500/- as demanded and, thereafter, the Society had encashed it. It was wrongly held out before the Assistant Registrar that he had not deposited the amount.

Even in para 15 of the writ petition it has been submitted that a wrong stand had been taken to show that 25% @ ₹1,33,750/- would be regarding a further fee in cost of the land for free hold purpose made after 2-3 years of the allotment and which was not 25% as on 20.04.2000 as demanded by respondent No.1-Society (Annexure P-7).

Thus the reasoning given to dismiss the case which has prevailed with the Assistant Registrar as such is not sustainable regarding non-deposit of 25%.

Counsel for the petitioner has also pointed out that a similarly situated member Mr. Ashwani Kumar Munjal whose name also figured in the list of the defaulters (Annexure P-21) along with the petitioner. He had also been ordered refund of ₹9100 by the Housing Board which had refunded amount of ₹6,18,596 vide the sanction granted on 15/25.06.2001 (Annexure P-21) and in pursuance of the communication dated 02.05.2001 (Annexure P-20) and 03.07.2001 (Annexure P-22) had been granted

allotment of an alternative plot vide order dated 12.02.2008 (Annexure P-18) of the Assistant Registrar. It is thus accordingly argued that the petitioner is also similarly placed and, therefore, he would also be entitled for the same relief in the facts and circumstances.

A perusal of order dated 12.02.2008 would go on to show that at that point of time, it was observed that the Society had withdrawn the earnest money from the CHB at its own without the knowledge of the petitioner and in such circumstances Mr. Ashwani Kumar Munjal had been deemed to be originally allottee member of the Society and, therefore, right of allotment of flat as per his entitlement had been given to him and the relevant part of the same reads as under:-

“The petitioner is a original member of the society nor he had withdrawn his membership from the society at any time. The petitioner deposited the earnest money with the society as demanded from him. The society withdrew his earnest money from the Chandigarh Housing Board at its own level without the request as well as knowledge of the petitioner. As such, he is deemed to be an original allottee member of the society. Some flats are also lying vacant in the society and the petitioner has a first right for allotment of a flat as per his entitlement.

In the light of above facts, the petition is allowed and the respondent society is directed to allot a 'B' category flat to the petitioner as per his entitlement. The society is entitled to demand the remaining cost of land and/construction cost of the flat from the petitioner and the same will be deposited by the petitioner within one month of the receipt of the allotment letter of flat from the Society.”

The said order was also passed prior in point of time to the order passed by the Assistant Registrar in the present case which is 17.09.2008 (Annexure P-12). It has also been pointed out by the counsel for the

Housing Board, that respondent-bank has no flat available as such which can be allotted to the petitioner at this point of time, 12 years later.

A perusal of the communication dated 02.05.2001 which has been called for and has now been taken on record, would also go on to show that the then President as such had asked for the refund of the members as per list submitted. The name of the petitioner as such had also been figured in the said list. It is thus apparent that the petitioner had been short-changed on account of the conduct of the then President and then deprived of the valuable right as allotment of flat. The reasoning thus which has been given that on account of the non deposit of 25% is not borne out from the record rather the perusal of the record would go on to show that the then President was responsible for the withdrawal of the names which had also been done in the case of Mr. Ashwani Kumar Munjal who though succeeded in getting the benefit of alternative flat.

Resultantly, keeping in view that the petitioner had valid claimed of allotment and had wrongly denied as such being a member of the Society but the said benefit now cannot be granted as much water has flowed over the years. Accordingly, the relief has to be modified in the facts and circumstances to protect the interest of the petitioner.

Accordingly, the amount paid by the petitioner which is being lying with the Society since 2000 alongwith the last instalment which was deposited on 22.05.2000 totalling to the tune of ₹1,07,000/- is liable to be refunded to the petitioner. The said amount would necessarily carry interest @ 12% p.a. Apart from the said amount the petitioner has also granted compensation by way of the exemplary costs for the financial loss which as such has occurred to him on account of the conduct of the

President of the Society who had withdrawn his name from the valid list in spite of the fact that he had deposited the amount as per demand made on 20.04.2000 and never requested to withdraw his membership. Resultantly, the respondent-Society is burdened with the exemplary costs of ₹5 lacs to compensate the petitioner.

The above said amounts be paid to the petitioner within a period of two months from the receipt of the certified copy of this order.

February 06, 2020
Poonam Sharma/pvd

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No