

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
107 (PROCEEDINGS THROUGH V.C.)

CWP-19944-2020

Date of decision: 25.11.2020

BALBIR SINGH

...PETITIONER

V/S

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

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

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 26.04.2018 (Annexure P-17) passed by the Special Secretary to Govt. of Punjab, Housing and Urban Development, Chandigarh-respondent No. 1, whereby the revision petition preferred under Section 48 of the Punjab Regional and Town Planning and Ludhiana Development Act, 1995 (hereinafter referred to as '1995 Act') by the petitioner stands dismissed wherein the petitioner challenged the order dated 15.12.2016 (Annexure P-15) passed by the Additional Chief Administrator, Greater Ludhiana Area Development Authority (hereinafter referred to as 'GLADA') exercising the powers of Housing Commissioner, whereby the application dated 03.01.2013 preferred by the petitioner, which has been treated as an appeal under the 1995 Act, stands dismissed on the ground of the same being delayed by about 21 years and being devoid of merits for having violated the primary conditions of allotment letter.

2. Briefly, the facts are that the petitioner applied for allotment of

a flat. He was successful in the draw of lots and vide letters dated 06.02.1987 and 10.03.1987, he was called upon to deposit certain amounts. Vide letter dated 14.12.1987 (Annexure P-4), petitioner was allotted House No. 2522 under the Partial Self Financial Scheme under the provisions of the Punjab Housing Development Board Act, 1972 (hereinafter referred to as '1972 Act'). As per the factual position in the impugned orders, petitioner, instead of taking possession of the house, raised issue of inferior quality of construction. Petitioner stopped making payment of the instalments as per the Hire Purchase Agreement as laid down in the allotment letter. Because of the non-taking of the possession of the house and non-payment of the instalments, allotment of House No. 2522, H.I.G. Category at Ludhiana was cancelled vide letter dated 04.11.1992 (Annexure P-5).

3. This action of the respondents cancelling the allotment of the flat was challenged by the petitioner by filing CWP No. 783 of 1993. The said writ petition was dismissed by this Court vide order dated 05.08.2014 (Annexure P-10) holding therein that vide communication dated 14.12.1987, the amount, which was required to be deposited by the petitioner, was clearly mentioned prior to the delivery of possession which the petitioner admittedly did not deposit nor had the petitioner offered to deposit the amount so as to find out the balance amount payable from the respondents. This Court, in the light of the conduct of the petitioner, found the order of cancellation of the flat dated 04.11.1992 (Annexure P-5) to be in accordance with law.

4. It is during the pendency of the writ petition that the petitioner moved an application dated 28.01.2013 (Annexure P-6) which is after a

period of almost 21 years for restoration of the allotment of the cancelled flat wherein the petitioner offered to deposit the remaining outstanding amount. The said application is now asserted to have been filed under Clause 7 of the terms and conditions of allotment of Partial Self Financial Scheme but there is no mention thereof in the said request. It would not be out of way to mention here that the Punjab Housing Development Board, which had issued the Partial Self Financial Scheme under the provisions of the Punjab Housing Development Board Act, 1972, stood abolished and so was the Punjab Housing Development Board Act, 1972 with the coming into force of the Punjab Regional and Town Planning and Ludhiana Development Act, 1995 w.e.f. 26.05.1995. With the abolition of the Punjab Housing Development Board Act, 1972 and the coming into force of the Punjab Regional and Town Planning and Ludhiana Development Act, 1995, the provisions under the 1995 Act and the Rules framed thereunder became applicable.

5. On the date of filing of the application by the petitioner i.e. on 28.01.2013 (Annexure P-6), the provisions, under which the said application is alleged to have been filed, could not be entertained and it is under these circumstances, keeping in view the provisions of Section 48 of the 1995 Act, the said application was treated as an appeal by the Additional Chief Administrator, GLADA. The appeal, which has been preferred by the petitioner, being much beyond the period i.e. 30 days prescribed under Section 48 of the 1995 Act was dismissed being barred by limitation apart from the fact that it did not carry any merit as the petitioner had not taken possession of the flat by raising the issue of inferior quality of construction nor did he deposit the instalments as per the agreement.

Petitioner, thereafter, has proceeded to file a revision petition before the Special Secretary to Govt. of Punjab, Housing and Urban Development, Chandigarh under the 1995 Act, which has been dismissed by the Revisional Authority vide order dated 26.04.2018 (Annexure P-17) on the ground of delay of 21 years in filing the appeal without any explanation. These orders have been challenged by the petitioner in the present writ petition.

6. Learned counsel for the petitioner has asserted that the impugned orders are unsustainable as respondents No. 1 and 3, while passing the impugned orders, have failed to appreciate that the petitioner had invoked the provisions of Clause 7 of the terms and conditions of allotment of Partial Self Financial Scheme (Annexure P-1) wherein the power had been conferred upon the Housing Commissioner to revive the allotment and hire purchase on such terms and conditions as may be considered appropriate by imposing an additional penalty of 10% of the amount due for the delay of each span of three months. He, thus, contends that when the petitioner was ready and willing to deposit the amount due towards him, the respondents could not have proceeded to reject the application of the petitioner on the ground of delay in approaching the authorities nor for the reason of petitioner having objected the quality of construction. He asserts that as a matter of fact, the petitioner had availed of his remedy of approaching the High Court by way of writ petition challenging the order of cancellation of allotment dated 04.11.1992 (Annexure P-5), which writ petition was filed in the year 1993 and decided by the Court on 05.08.2014 (Annexure P-10). It is during the pendency of this writ petition that the petitioner had filed an application before the

competent authority dated 28.01.2013 (Annexure P-6). He, therefore, contends that there has been no delay on the part of the petitioner as he was exhausting his legal remedies. His further assertion is that the claim of the petitioner has been rejected only on the ground that he had not taken the possession of flat and had raised the issue of inferior quality of construction. He asserts that the same cannot be a ground for denying the benefits which were conferred under the terms and conditions of allotment. The said provisions are binding between the parties and, therefore, the parties were required to comply with the same. Referring to Clause 7 of the terms and conditions of allotment, his contention is that there is a provision for additional penalty for revival of allotment and hire purchase and the said terms and conditions could not have been ignored by the respondents when an application was submitted by the petitioner. He, thus, contends that the impugned orders cannot sustain and deserve to be set aside. Prayer has also been made for allowing the request of the petitioner for restoration of the flat which has been cancelled by the respondents vide order dated 04.11.1992 (Annexure P-5).

7. We have considered the submissions made by the learned counsel for the petitioner and with his assistance, have gone through the records of the case.

8. The facts, as narrated above, make it amply clear that the petitioner, on allotment of Flat No. 2522, H.I.G. Category at Ludhiana, was required to take possession of the said flat but prior thereto, he was required to deposit certain amount which the petitioner intentionally did not deposit for the reason that he was not satisfied with the quality of construction work carried out by the Punjab Housing Development Board. The fact remains

that because of non-complying with the terms and conditions of allotment, the allotment of the flat in favour of the petitioner stood cancelled on 04.11.1992.

9. It would not be out of way to mention here that a regular letter of allotment was issued to the petitioner on 14.12.1987 conveying him the total tentative price of the dwelling unit as ₹2,28,224/-. The amount, which was required to be paid prior to taking over the possession, was ₹1,14,112/-. It was also conveyed in the said letter that another sum of ₹54,112/- was required to be deposited. Petitioner made various requests for extension of time i.e. on 24.10.1988, 03.02.1990, 28.01.1991 and 25.04.1991 and it is thereafter that the allotment was cancelled on 04.11.1992. In the writ petition challenging this order dated 04.11.1992 i.e. CWP No. 783 of 1993 titled as Balbir Singh vs. Punjab Housing Development Board and others, the plea, which has been taken by the petitioner, was that the respondents have not communicated the amount due which was required to be deposited by him before handing over the possession of the flat. The said plea of the petitioner was rejected by this Court in the light of the various communications which have been sent to him as also the requests of the petitioner for extension of time for deposit of the amount. The order of cancellation was upheld by this Court vide order dated 05.08.2014 (Annexure P-10).

10. It appears that the petitioner had, during the pendency of the writ petition, filed an application dated 28.01.2013 (Annexure P-6) before Additional Chief Administrator, Greater Ludhiana Area Development Authority-respondent No. 3 for restoration of the allotment of the flat. The said application was not maintainable in the light of the fact that the

provisions, under which the allotment had been made to the petitioner i.e. Punjab Housing Development Board Act, 1972 as well as Punjab Housing Development Board, which had allotted the flat, stood abolished and no more in existence with the coming into force of the Punjab Regional and Town Planning and Ludhiana Development Act, 1995 and, therefore, the provisions of the 1995 Act would hold the field.

11. It is admitted by the counsel for the petitioner that under the 1972 Act, there was no provision for appeal or revision and the appeal and revision is provided under the 1995 Act. It is in these circumstances that the respondent authorities have proceeded to consider the application of the petitioner as an appeal being successor in office. No prejudice has been caused to the petitioner in any manner by considering the application of the petitioner dated 28.01.2013 (Annexure P-6) as an appeal under the 1995 Act. The factum of the application being delayed could not be disputed by the counsel for the petitioner except for pointing out that the writ petition was pending before this Court which he had filed within a period of one year from the date of cancellation of the allotment.

12. The said plea cannot be accepted as it is asserted by the counsel for the petitioner that he was only intending to take the benefit of Clause 7 of the terms and conditions of allotment. The factum of the appeal and the revision being barred by limitation, thus, is not a subject of any dispute especially when the counsel for the petitioner contends that the application of the petitioner was not to be treated as an appeal. However, it would not be out of way to mention here that he had himself preferred a revision petition for restoration of the allotment of flat as is apparent from Annexure P-16. The petitioner, therefore, accepted the factum of

consideration of the application of the petitioner as an appeal and had, therefore, filed the revision petition. Be that as it may, the orders, as had been passed by the authorities, are based upon proper appreciation of the facts which cannot be, therefore, faulted with.

13. Another reason as to why this Court is not inclined to accept the plea of the petitioner is that once the petitioner has not accepted the factum of cancellation of allotment but had challenged the same before this Court which challenge has been found to be without any basis upholding the order of cancellation, it would not be open to the petitioner to approach the authorities for a relief under the provisions of the scheme. Had the petitioner accepted the scheme itself, the same should have been adhered to. Clause 7 of the terms and conditions of allotment, on which reliance has been placed by the petitioner, reads as follows:-

“7. The allottee shall pay regularly the monthly instalments without receipt of any notice to this effect by the 10th day of each month. If any instalment is not paid by the stipulated date without prejudice to any other right or remedy available to the Board, the allottee shall be liable to pay liquidated damages at the rate of 10% of the amount due for a period of delay up to 3 months. In case of default in payment for more than three consecutive months in respect of any instalment, the higher purchase may stand terminated and the allottee shall be liable to be evicted from the dwelling unit by following the procedure under the Punjab Housing Development Board Act, 1972 and Punjab Public Premises Lands (Eviction & Rent Recovery) Act, 1973. However, the Housing Commissioner

may revive the allotment and hire purchase on such terms and conditions as may be considered to be appropriate by imposing an additional penalty @10% of the amount due for delay of each span of 3 months.”

14. A perusal of the above would show that the provisions of this clause were primarily meant for the persons who were unable to pay the instalments within the time schedule. Present is a case where the petitioner had intentionally not paid the instalments as he was not satisfied with the quality of construction and, therefore, did not come forward to take possession of the flat. When he had himself not paid the instalments nor had he shown any intent to do so, as is apparent from the order dated 05.08.2014 (Annexure P-10) passed by this Court in the writ petition which has been preferred by the petitioner challenging the order of cancellation of allotment, Clause 7 of the terms and conditions of allotment would not be applicable to the case of the petitioner nor can he get any benefit thereof. The benefit of Clause 7 is for the persons who are unable to pay the monthly instalments regularly and not for persons like the petitioner who take frivolous pleas for non-payment of the amount. The order dated 05.08.2014 passed by this Court in the writ petition makes it amply clear that the petitioner had taken a frivolous ground for non-deposit of the amount due as he was given all the details including the amount payable which he failed to do so as he did not intend to deposit the same. The prayer in the writ petition, therefore, as made by the petitioner cannot be accepted.

15. Petitioner has approached this Court invoking the equitable jurisdiction of this Court and it is a settled law that a person, who does not

come to the Court with clean hands, does not deserve relief from the Court. Petitioner, as is apparent from the order dated 05.08.2014 (Annexure P-10), had come to the Court with unclean hands. After the cancellation has been found to be in accordance with law by this Court, the authorities, in any case, could not have revived the allotment of the flat which was allotted to the petitioner. Had the actions of the petitioner been bona-fide when he had moved an application on 28.01.2013 for restoration of allotment of the flat which was allotted to him, he could have brought it to the notice of the Court when CWP No. 783 of 1993 came up for hearing before this Court on 05.08.2014. Petitioner having taken a chance with regard to setting aside of the cancellation order cannot now be permitted to get the restoration of the said cancelled flat having failed in this Court.

16. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

November 25, 2020

pj

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No