

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26349-2021(O&M)
Date of Decision:22.12.2021

Hazari Lal

..... Petitioner

versus

Union Territory, Chandigarh and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Ms. Shifali Goyal, Advocate for the petitioner.

TEJINDER SINGH DHINDSA, J. (ORAL)

This case has been taken up through Video Conferencing via Webex facility in the light of Pandemic Covid-19 situation and as per instructions.

Instant writ petition has been filed assailing the orders dated 26.03.2018 (Annexure P-20) and 29.08.2019 (Annexure P-22) passed by the Assistant Estate Officer and Estate Officer, U.T., Chandigarh respectively declining the claim of the petitioner to be made a co-allottee in the tenement site No. 451, Sector 29-B, Chandigarh. A writ in the nature of mandamus is sought to direct the respondents to consider the claim of the petitioner for allotment of a flat under the Chandigarh Small Flats Scheme 2006.

Counsel submits that the petitioner was earlier in point of time living in Jhuggi No. 58, Colony No. 3, Sector 30, Chandigarh and where he had accommodated his relative namely Mohan Lal (since deceased).

However, at the stage of demolishing/removing of the Jhuggi, a mistake had occurred whereby name of the petitioner was not included in the list of oustees. However, an application that had been submitted by Mohan Lal for allotment in lieu of Jhuggi No 58, name of the petitioner was mentioned as a friend living with Mohan Lal. In spite of representations having been submitted to the concerned authorities, house/tenement No. 451, Sector 29-B, Chandigarh had been allotted in the name of Mohan Lal and the petitioner as such was not accommodated.

Counsel has placed heavy reliance upon a report/noting dated 18/23.08.1993 at Annexure P-7 which is stated to have been received under the provisions of the Right to Information Act to contend that if such report was to be accepted, there is a clear admission that name of the petitioner had been omitted in spite of being owner of Jhuggi in question and as such was entitled to allotment and for which he had been visiting the Estate Office over a number of years. Further more, as per such noting the petitioner is entitled to alternate accommodation in lieu of his Jhuggi.

We have heard counsel at length and have perused the pleadings on record.

As would be discernible from the pleadings on record, petitioner had instituted a suit for declaration and permanent injunction in the year 1993 to the effect that he is the only allottee of tenement No. 451, Sector 29-B, Chandigarh. Permanent injunction was sought restraining Mohan Lal/legal heirs (private respondent No.4 herein) from interfering in the peaceful possession of the plaintiff (petitioner herein) over the front room of the said tenement as also back courtyard etc. Such suit was

dismissed by the learned Sub Judge 1st Class, Chandigarh vide order dated 05.08.1997 (Annexure P-9) and the relevant findings are reproduced hereunder:-

“ The case of the plaintiff in the plaint as well as in his testimony is that he along with the defendants were living in H.No.58. Colony no.3, Sector 30, Chandigarh and because of policy of the Chandigarh Administration, the house in question bearing no.3, Chandigarh. The plaintiff claims himself to be a co-allottee. There is letter dated 16.12.1977 Ex.D-1 written by the Estate Officer, U.T. Chandigarh to the defendants mentioning that the defendants were allotted house no. 451, Sector 29, Chandigarh. It is order from his letter Ex.D-1 that it were only the defendants who were allotted the house in question and whosoever had been allotted the house is to be considered as true owner. However, the plaintiff got a letter dated 2.9.93 Ex.P-5 written by the Estate Officer to him that he was made a co-allottee in the house in question bearing no. 451. Precisely on the basis of this letter Ex.P-5, the plaintiff is seeking possession of a portion of H.No.451. Now, we shall see the circumstances leading to the issuance of Ex.P-5 whereby the plaintiff was made co-allottee and it would be decided whether the inclusion of the name of plaintiff in the name of allottees was genuine or not.

It is not disputed that the house in question was allotted in lieu of H.No. 45, Sector 30, Chandigarh in which the plaintiff and the defendants were residing. The plaintiff alleges that since he was also residing in the said house bearing no. 58, therefore, he was also entitled to be made as co-allottee in the house in question bearing no. 451. The plaintiff has placed on record copy of ration card Ex.P-1, copy of the site plan Ex.P-2, copy of voter's list Ex.P-6 and P-7 to show that he was residing with the defendants in the house in question. It may be mentioned that he has never been denied by the defendants that

the plaintiff was not residing with them, but the contention of the defendant is that the plaintiff was residing in H.No. 58 in the capacity of a friend. The plaintiff had relied upon copy of letter Ex.PA written to the Estate Officer by Mohan Lal defendant no.1 wherein he has stated that Hazari Lal was residing with them. A careful perusal of this letter would show that Hazari Lal has been shown a friend. Therefore, it cannot be said that the plaintiff Hazari Lal was residing in H.No. 58 in his own right as owner or that he was entitled for allotment of house when house no. 58 was demolished by the Administration. The plaintiff had been making representation to the Administration for making him co-allottee in the house in question after the same was allotted to the defendants vide letter Ex.P-5. On record, there is recommendation of Harmohan Dhawan, the then Member of Parliament to the Estate Officer, which is Ex.D-4 on the representation of the Parliament. After this representation was received by the Estate Officer, Naib Tehsildar in his report Ex.D-5 clearly held that Hazari Lal was only a friend of the defendant and was not entitled for allotment and he had no locus-standi for allotment of tenements. Again, there is a report dated 30.04.1986 wherein Naib Tehsildar has again held that Hazari Lal had no locus-standi so far as the allotment of tenement in dispute is concerned, but Deputy Commissioner may consider his case for allotment of a separate tenement. It is highly astonishing how the plaintiff was made a co-allottee vide letter Ex. P-5 when the authority of the administration had nowhere recommended the making of the plaintiff as co-allottee in the house in question. Moreover, there is nothing on record to show that the defendants were heard prior to making the plaintiff as co-allottees in the house in question which is certainly denial of right of hearing to the defendants. It is not understandable as to how the plaintiff was made a co-allottee without hearing the defendants, who were the allottees of house in question vide

letter Ex.D-1. The conduct of the Estate Officer is highly depreciable because when the case was pending in the Civil Court, then the Estate Officer should have rescued itself from making any inroad into this controversy of this allotment and that too without any basis. In these circumstances, letter Ex.P-5, whereby the plaintiff has been made a co-allottee, can be easily ignored considering that the same is nonest in the eyes of law. For the reasons recorded above, it is held that the defendants are owners/allottees of the house in question by way of Ex.D-1 and the letter Ex.P-5 whereby the plaintiff was made co-allottee is nonest, illegal and void having been issued during the pendency of the present suit. The defendants are admittedly in possession of the house in question. Since the plaintiff has got no legal right over the house in question, therefore, no injunction or declaration can be granted in favour of the plaintiff and against the true owners, the defendants.”

Appeal having been preferred by the petitioner, the same was dismissed vide order dated 27.07.1999 by the learned Additional District Judge, Chandigarh (Annexure P-11).

Petitioner thereafter launched a second round of litigation in terms of filing a suit for mandatory injunction directing the concerned authorities under the U.T. Administration to give effect to an office order bearing No 251/1993 dated 02.09.1993 and to enter the name of the plaintiff (petitioner herein) as co-allottee in respect of tenement No. 451, Sector 29-B, Chandigarh. Even such suit was dismissed in terms of order dated 04.12.2010 passed by the learned Civil Judge (Senior Division), Chandigarh at Annexure P-12. Appeal preferred by the petitioner under Section 96 C.P.C. against the afore-noticed order was also dismissed by the learned Additional District Judge, Chandigarh vide order dated 11.02.2014

(Annexure P-13). Petitioner then filed Regular Second Appeal No. 3655 of 2014 before this Court and which has been dismissed vide judgment dated 30.11.2015 by the learned Single Judge at Annexure P-14. Relevant observations made by this Court would read as under:-

“4. House No.451, Sector 29-B, Chandigarh, was allotted in the name of Babu Ram, Mohan Lal and Sohan Lal. In the earlier suit filed by the plaintiff, the allotment was under challenge. The first Appellate Court has made reference of earlier suit in paras 24 and 25 of the judgment and observed as follows:-

“24. After appreciating all these facts; the court of Sh.Sanjeev Kumar, the then learned SJIC, Chandigarh held that “ it is highly astonishing how the plaintiff was made co-allottee vide letter Ex.P5 when the authority of Administration has no where recommended the making of the plaintiff as co-allottee in the house in question and further held that moreover, there is nothing on the record to show that the defendants were heard prior to making the plaintiff as co-allottee in the house in question which is certainly denial of right of hearing to the defendants. It is not understandable as to how the plaintiff was made a coallottee without hearing the defendants, who were the allottees of house in question vide letter Ex.D.1. The conduct of the Estate Officer is highly depreciable because when the case was pending in the Civil Court, then the Estate Officer should have rescued itself from making any inroad into this controversy of this allotment and that too without any basis. In these circumstances, letter Ex.P5, whereby the plaintiff has been made a co-allottee, can be easily ignored considering that the same is nonest in the eyes of law.” This view was affirmed by the Court of Shri R.C. Godara, Additional District Judge, Chandigarh while dismissing the appeal against the

same.

25. *In the present suit also; the plaintiff has again sought the relief on the basis of letter dt. 2.9.1993 that according to this letter; he is a co-allottee in tenement No.451 Sector 29-B, Chandigarh in lieu of Jhuggi No.58 and a direction be given to the Estate Officer, Chandigarh to give effect to this letter.*

5. *It is apparent from the above observations that the Court has come heavily on the functioning of Estate Office, Chandigarh and has denounced the inclusion of name of plaintiff as co-allottee. The relief claimed by the appellant-plaintiff in the instant suit is also similar, as such, was rightly declined by the Courts below.*

6. *On the perusal, I find no legal or factual infirmity in the judgment under appeal, calling for any interference.*

7. *No substantial question of law requiring determination arises in this appeal, which has no merits.*

8. *Dismissed.”*

We have no hesitation in holding that the claim of the petitioner with regard to being made a co-allottee in tenement No. 451, Sector 29-B, Chandigarh on the basis of inhabiting a particular Jhuggi and as such staking a claim as an oustee already stands dealt with and declined in two previous rounds of litigation. Such factual premise has been specifically noticed in the impugned orders dated 26.03.2018 (Annexure P-20) and 29.08.2019 (Annexure P-22) passed by the Assistant Estate Officer and Estate Officer respectively.

The reliance placed by the petitioner upon the report/noting dated 18/23.08.1993 (Annexure P-7) is wholly misplaced. Even in the previous round of litigation and in the suit for declaration petitioner herein had based his claim upon a letter dated 02.09.1993 (Ex.P-5) written by the

Estate Officer as regards being made a co-allottee in the house/tenement No. 451, Sector 29-B, Chandigarh. Such issue already stands dealt with and decided against the petitioner. Concurrent findings in this regard have already been returned by the Courts below.

Even otherwise it is well settled that no rights would come to vest or for that matter can be denied only on the basis of certain office notings/reports. Petitioner cannot be permitted to rake up the entire issue again based upon the reports/notings dated 18/23.08.1993 at Annexure P-7.

The present writ petition can only be seen as an attempt by the petitioner to take a chance all over again staking his claim as an allottee/co-allottee of tenement No. 451, Sector 29-B, Chandigarh.

We do not find any merit in the instant writ petition.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

22.12.2021
sunita

Whether Reasoned/Speaking : Yes/No

Whether Reportable : Yes/No