IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP-22124-2012
Reserved on 11.07.2022
Pronounced on: **05.08.2022**

Vijay Bansal .... Petitioner

Versus

Additional Secretary Cooperation Punjab, Sector 9, Chandigarh, and others.
.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Ajay Mahajan, Advocate,
for the petitioner.

Mr. Pawan Sharda, Senior DAG, Punjab,
for respondents No.1 to 4.

Mr. P.K. Kataria, Advocate,
for respondent No.6.

None for respondents No.5 and 7 to 10.

JAISHREE THAKUR.J

1. The petitioner is aggrieved against the orders as passed by respondent No.1 whereby the order passed by the authorities concerned have upheld the cancellation of the plot of the petitioner in a Society.

2. In brief the facts as stated are that the petitioner became a member of respondent No.5, a Society which is a Co-operative House Building Society and was allotted plot No.374-D measuring 256 square yards by allotment letter dated 15.10.1994. The entire price of the plot was paid by the petitioner to the Society. Thereafter possession was handed over and the petitioner got a boundary wall constructed and got a gate erected in the said

plot. On 01.08.2008, the husband of the petitioner visited the said plot and was informed by the society that the plot allotted to the petitioner was cancelled. The petitioner then filed a petition under Section 55/56 of the Punjab Co-operative Societies Act 1961 (for short, 'the Act of 1961') before respondent No.4, namely, Assistant Registrar, Co-operative Societies Ludhiana. Respondent No.4 came to the conclusion that the plot was cancelled due to non-payment of development charges. Respondent No.4 also concluded that the society had treated the petitioner arbitrarily and no opportunity was given by the society to the member to pay the development charges, as demanded. The cancellation of the plot was also not informed to the petitioner and it was noticed that within two months of the cancellation it stood allotted to another person. As per the award of the Arbitrator, the society was directed to accept the amounts due from the petitioner along with 12% interest and upheld the allotment of the plot and the same stand deposited. The award was challenged by the Satluj Co-operative House Building Society under Section 68 of the Act of 1961 before the Deputy Registrar Co-operative Societies, Ludhiana. The appeal was dismissed by order dated 29.09.2009, which order was then challenged by the Society in revision petition No.7/2010 under Section 69 of the Act of 1961 before the Joint Registrar Co-operative Societies Punjab. In fact, the revision petition was filed by Sh. Pawan Jindal, Ex-President of the Society, Tilak Raj Saini, DK Gupta, Punit Bansal, Ex-Committee members and the Society was arrayed a petitioner No.5. During the course of the proceedings before Respondent No.2, the Society withdrew from the petition. This revision petition was accepted vide order dated 03.05.2010 on the ground that adequate public notice had been issued in 2 newspapers wherein full particulars had been given of all those persons who were defaulters and had not complied with clause 8 of the terms and conditions of the allotment letter which clearly specified that the development charges of the land was to be paid as and when asked for the society, otherwise the allotment of the plot shall stand cancelled. The name of the petitioner was duly reflected in the public notice. The petitioner challenged this order before the Additional Secretary Cooperation Punjab, Chandigarh, who affirmed the order dated 03.05.2010. Aggrieved against the orders whereby the plot of the petitioner stands cancelled, the instant petition has been filed.

3. Mr. Ajay Mahajan, learned counsel appearing on behalf of the petitioner herein would argue that the action of the society in cancelling the plot is totally unjustified as no adequate notice was given. It is submitted that the petitioner herein was never served with any notice regarding demand of additional sum on account of development charges, notice to start construction of the house within 6 months nor any demand notice to deposit the difference in share money or face expulsion from the membership under bye-laws No.11 (a) a clause (ii) of the society. In this regard, he relies upon the documents annexed with the written statement itself as Annexures R-5/1, R- 5/5 and R-5/6 which reflect that the complete address was not written therein. It is argued that in case the society had to make recovery of any dues from the petitioner, it should have resorted to filing a petition under section 55 of the Act of 1961 before the Registrar instead of cancelling the plot in question. It is also submitted that since the Society itself withdrew from the proceedings before the Revisional Authority, no orders could have been

passed on a petition filed at the behest of the Ex-Committee members who were not parties before the Appellate Authority.

4. *Per contra*, learned counsel appearing on behalf of respondents No.1 to 4 argues that the petitioner was not a member of the society as she had not paid the additional sum of ₹400/- towards the share certificate as demanded by the society. It is also submitted that adequate notices had been issued to the petitioner to deposit the development charges, to start the construction on the plot and these notices had been sent by registered post and under postal certificate and, therefore, petitioner could not turn around and submit that notices had not been served upon her to pay the development charges or pay a sum of ₹400/- towards the additional demand towards the share certificate. Counsel would also point out to Annexure R-5/4 annexed with the written statement, which will reflect that the petitioner had addressed a letter to the society seeking waiver of payment of development charges. It is argued that in view of the said letter, it can safely be assumed that the petitioner had full knowledge about the demand of development charges. It is also submitted that the public notices, dated 02/03.06.2006, were also issued in 2 newspapers which would be sufficient to prove that adequate notices were issued asking the defaulters to deposit development charges and despite the said notices the petitioner did not step forward to do so. It is submitted that the allotment letter itself specified that in case development charges are not paid, the plot shall be cancelled, and, therefore, the plot was rightly cancelled.

5. Reply has been filed and arguments have been addressed by counsel appearing on behalf of respondent No.6 Sh. Ashok Kumar, who is

the subsequent allottee of the plot in question. Learned counsel appearing on behalf of said respondent would submit that he is in possession of the said plot after having purchased it from Sh. Tilak Ratra, who had been allotted the plot on 24.09.2006, after the same was cancelled. It is submitted that he has an electric connection and is regularly paying the electricity charges, establishing his possession of the plot. It is submitted that he is bona fide purchaser who is now in possession. It is also argued that the petitioner filed a petition under Section 55 of the Act of 1961 without impleading him as a party despite being aware that the plot was cancelled and stood allotted to him.

6. I have heard the counsel for the parties and have pursued the pleadings.

7. The plot allotted to the petitioner by the society stands cancelled on the ground that the development charges of ₹5,120/- were not deposited by the petitioner despite several notices being issued.

8. The plea of the petitioner that the Managing Committee could not have cancelled the plot without due notice, cannot be accepted in the light of the documents available on the record. Annexure P-15 is the Public notice issued in two newspapers, namely, Ludhiana Kesari, dated 02.06.2006 and Ludhiana Tribune, dated 03.06.2006, which newspapers have a wide circulation in Punjab, and these publications are sufficient to establish that the petitioner had been put on notice to deposit the development charges to avoid cancellation of plot. Moreover, Annexure R-5/2 is a demand notice sent under UPC dated 10.07.1995 asking for the enhanced charges of ₹5,120/- to be deposited, failing which, the plot will stand cancelled. Similar

notice was sent on 11.09.1995 which is available as Annexure R-5/3. Letter dated 11.09.1995 has been duly replied to, as would be evident from correspondence addressed by the petitioner herself which is dated 23.11.1995. Vide this letter, she has asked for waiver of the development charges as the same would not be applicable to her. Moreover, the Joint Registrar has specifically stated that the photocopy of the envelop sending letter by registered post has been perused showing the full address of the petitioner.

9. Apart from the above notices, there is also a demand for payment of the balance of enhanced share price from ₹100/- to ₹500/-. This was sent by registered letter and the presumption would be that the same was delivered. The society has taken a specific plea that the petitioner has ceased to be a member of the society as she did not possess a share certificate, as the value of the certificate had been enhanced by the Assistant Registrar Cooperative Societies and the byelaws stood amended. In such a situation, the petitioner would not be a member of the Society and, therefore, the question of the Society invoking Section 55 of the Act of 1961 would not arise. The plea that the Managing Committee was not competent to cancel the plot would pale into insignificance when the petitioner herself choose not to come forth within a reasonable time after being aware of the public notice and the previous notices asking her to deposit the development charge.

10. The award of the Arbitrator has been passed without impleading the subsequent purchaser and the same would not be binding upon him. The subsequent purchaser is in possession of the said plot. The revisional authority has come to the conclusion that public notices were issued

regarding deposit of development charges and therefore the plea that the petitioner was not informed was not accepted. Moreover, it has been noticed that the allotment letter contained terms and conditions that the development charges of the land and furthers amounts, if any, will be paid by the buyer as and when required, otherwise the allotment shall stand cancelled. While noticing the fact that the petitioner had not constructed on the plot for over twelve years nor had bothered to contact the society, the revisional authority had upheld the order of cancellation. Third party rights have now come into effect and upsetting possession of the subsequent allottee would not be justified.

11. Finding no infirmity in the orders so passed this writ petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

05.08.2022
sanjeev

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No