

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

Civil Writ Petition No.2255 of 2017(O&M)

Date of Decision: November 04,2022

Suman

...Petitioner

Versus

The Chandigarh Administration and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU
HON'BLE MR. JUSTICE LALIT BATRA**

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Present: - Mr.Kanwaljit Singh, Senior Advocate assisted by
Mr.Varun Sharma, Advocate for the petitioner.

Mr.Anil Mehta, Mr.Sumeet Jain and
Mr.Varun Dutta, Advocate for the respondents.

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HARINDER SINGH SIDHU, J.

This petition has been filed seeking quashing of the order dated 17.04.2013 (Annexure P-3) passed by respondent No.3 – Estate Officer, UT, Chandigarh, whereby, lease of residential Plot No.1274, Sector-44-B, Chandigarh was cancelled. Also assailed are the orders dated 18.05.2015 and 14.10.2016, whereby, petitioner's appeal and revision were dismissed by the Chief Administrator and Adviser to the Administrator, respectively.

Petitioner was enrolled as a member of the Progressive Cooperative House Building Society Ltd. Chandigarh (for short “the Society”) on 31.3.1980. At that time, the petitioner did not own any plot or dwelling unit or residential site either in his own name or in the name of her family member at Chandigarh, Mani Majra, Panchkula, SAS Nagar or

in any Municipal area in the States of Punjab and Haryana. She submitted an affidavit dated 28.7.1983 to that effect. Not owning a plot or dwelling unit as above was a condition for allotment.

The petitioner was subsequently allotted a dwelling Unit No.2512 (MIG-II), Sector 40-C, Chandigarh by the Chandigarh Housing Board, vide letter dated 25.10.1983.

The Society was allotted plots vide letter dated 22.3.1985 by the Chandigarh Administration. The Society further allotted flats to its members. The petitioner was allotted residential Plot No. 1274, Sector 44-B, Chandigarh measuring 250 sq. yards, vide allotment letter dated 28.3.1985 on lease hold basis for 99 years.

On 27.10.2005, a Show Cause Notice was issued to the petitioner under Rule 20 of the Chandigarh Leasehold of Sites and Building Rules, 1973. It was stated therein that as per Clause IV of Condition 5 of the Notification dated 28.9.1979 issued by the Finance Secretary, Chandigarh, a Society would not be eligible for allotment of a site if any of its members already owned a dwelling unit or a residential site either at Chandigarh, Mani Majra, Panchkula, SAS Nagar Mohali or in the Union Territory of Delhi. The Show Cause Notice further stated that as per inquiry report of the Enquiry Officer, Vigilance Cell, Chandigarh, it has been reported that the petitioner had secured allotment of Plot No. 1274 Sector 44-B, Chandigarh by supplying wrong information. In fact, the petitioner had already been allotted Plot No. 2512, Sector 40-C (MIG-II), Chandigarh by the Chandigarh Housing Board vide allotment letter dated 25.10.1983. Thus, the petitioner had concealed real facts and

secured allotment of Plot No.1274 Sector 44-B Chandigarh by furnishing wrong information. The Show Cause Notice further stated that the petitioner has also violated Condition No. 16 of the allotment letter of the Society as per which the allottee was not to sell or otherwise transfer his/her rights in the site or part thereof for a period of 15 years from the date of completion of the building. As per the Show Cause Notice, from documents submitted to the office, it had been established that the petitioner had nominated and constituted one Mrs. Anjali Aggarwal as her attorney, as per registered deed dated 2.9.2004 attested by Notary Public, State of New York, USA. Certain other papers/documents had been executed by the petitioner in favour of Mrs. Anjali Aggarwal which constituted indirect under hand transfer of lease rights in the site in question.

Thereafter, the Estate Officer, vide order dated 17.04.2013 cancelled the lease of residential Plot No.1274, Sector 44-B, Chandigarh with immediate effect under Rule 8-A of the Capital of Punjab (Development and Regulation) Act, 1952 on the grounds mentioned in the show cause notice. The appeal and revision preferred by the petitioner were also dismissed vide the impugned orders.

Mr. Kanwaljit Singh, Ld. Senior Counsel for the petitioner states that the petitioner was residing in USA. She could not appear before the Estate Officer to contest the case. The case was contested on her behalf by her attorney Mrs. Anjali Aggarwal. The appeal and revision were preferred by the petitioner through her attorney. Before the appellate and revisional authority it was contended on behalf of the petitioner that at

the time when the petitioner became a member of the Society on 31.03.1980 and when she had submitted her affidavit, she did not own or possess any dwelling unit or residential site either in her name or in the name of her family members. The information provided by petitioner in her affidavit was correct. It was only subsequently that the dwelling Unit No.2512 (MIG-II), Sector 40-C Chandigarh was allotted to her by the Chandigarh Housing Board, Chandigarh vide letter dated 25.10.1983. It was also denied that the petitioner had sold the site to Smt. Anjali Aggarwal (her attorney). In fact, the petitioner was settled in USA and therefore, she had executed a power of attorney in favour of Mrs. Anjali Aggarwal, who is a close friend of petitioner, for the proper management of the site. He argued that the submissions of the petitioner were not accepted and the appeal and revision were wrongly dismissed.

Mr. Kanwaljit Singh has relied on a decision of Division Bench of this Court in CWP-12070-2009 titled as *“Jai Bhagwan Sharma Versus Chandigarh Administration and others”* wherein relying on a decision of the Hon'ble Supreme Court in *“Chandigarh Housing Board Versus Devinder Singh and another”* 2007 (2) RCR (Civil) 640 the Court had quashed the the orders of cancellation of dwelling unit of the petitioner therein. It was held that the eligibility of an allottee is to be seen on the date of declaration. A future acquisition is not prohibited. He argued that the case of the petitioner is identical to that of Jai Bhagwan Sharma (supra.). He has also referred to another decision of a Division Bench of this Court in CWP-3744-2002 titled as *“Prof. M.M. Puri Versus The Chandigarh Housing Board and others”* where also the cancellation

orders were quashed on the same grounds.

Learned counsel appearing for respondents while not denying the aforesaid decisions has argued that before the allotment of the unit to the petitioner by the Society on 28.03.1985, the petitioner had already been allotted a dwelling unit by the Chandigarh Housing Board on 25.10.1983. She had concealed this fact while accepting the allotment from the Society.

Having heard Ld. Counsel for the parties in our view the petition deserves to be allowed as the case is squarely covered by the decision in the case of Jai Bhawan Sharma.(supra.)

The relevant extract from the decision are reproduced below which indicate that the case of the petitioner is identical to that case.

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Petitioner is a member of the Progressive Cooperative House Building (III) Society Ltd., Chandigarh. The land was allotted to the Society for construction of the residential houses by its members. As per the requirements, petitioner was found eligible and a plot was allotted to him by the Society on March 28, 1985. The petitioner paid the entire price for the said plot and also raised construction of a residential house thereon after getting necessary permission from the competent authority. Occupation certificate was also issued to the petitioner on December 6, 1991.

On March 12, 1999, after 14 years of the date of allotment of a plot, a show cause notice, issued by respondent No. 2, was received by the petitioner calling upon him to show as to why allotment of the plot be not cancelled. The said notice is stated to have been issued on the basis of an enquiry, which was conducted at the back of the petitioner. It was an allegation against him that he had filed a false affidavit on 8-6-1983, stating therein that neither he nor any of his family members own a house/ plot in U.T. Chandigarh, Mohali or Panchkula. It was noticed by the authorities that a house was allotted to his wife at a reserve price on September 26, 1983.

Petitioner appeared before the competent officer and stated that

the eligibility has to be seen on the date when the applications were invited and an affidavit was filed. Any subsequent event cannot be taken into consideration to declare the petitioner ineligible, to get a plot. However, respondent No. 2 did not agree with the petitioner and cancelled his allotment vide order dated October 15, 2001. Petitioner went in appeal, which was partly accepted vide order dated April 10, 2003 and the matter was remitted back to respondent No.2 to decide it afresh. The matter was again taken up by respondent No.2 and vide an order dated January 12, 2005, claim of the petitioner was rejected. The petitioner again went in appeal, which was dismissed on September 26, 2007. His revision and review application were also dismissed on August 27, 2008 and November 5, 2008, respectively. Hence this writ petition.

When notice of motion was issued, following contention of counsel for the petitioner was noticed by this Court on August 11, 2009:

“Vide order dated January 12, 2005 (P-8), plot allotted to the petitioner was cancelled on the ground that before allotment in the year 1985, his wife had acquired a property in Chandigarh on September 26, 1983. It is contention of counsel for the petitioner that eligibility for allotment of plot was to be seen on March 31, 1980 or at the maximum when affidavit was filed by the petitioner on June 8, 1983. To support his contention, reliance has been placed upon a judgment of the Supreme Court in Chandigarh Housing Board v. Davender Singh, 2007(2) R.C.R. (Civil) 640.

Notice of motion for October 27, 2009. Dispossession of the petitioner shall remain stayed till further orders.”

In response to notice issued by this Court, reply has been filed. Para No. 3 of the reply, filed at the instance of respondents No. 1 to 3, reads thus:

“That contents of para No. 3 of the writ petition are admitted. However, at this stage, it is submitted that the petitioner had submitted an affidavit through his Society on 8.6.1983 to the effect that he or his dependent family member did not own or possess any other residential allotment of a house in Chandigarh, Mohali or Panchkula. As a matter of fact, wife of the petitioner had been allotted a house at reserve price on 15.9.1983.”

Besides, as above, there is no other allegation against the petitioner. A similar matter came up for consideration before the Supreme Court in the case of Chandigarh Housing Board v. Devinder Singh and another, (2007(2) RCR (Civil) 640), after noting the relevant provisions, it was opined that the eligibility is to be seen at the relevant date. A portion of the judgment reads thus:

“26. We will assume that the Scheme framed by the 'AWHO' was to obtain lands either through its own efforts or from the

Government or Semi-Government organisations so as to enable it to construct houses for the retired army personnel. The declaration, however, which is required to be given by a Member of the Society must be held to have application which the Scheme seeks to achieve. It applies only when the conditions to allotment are required to be complied with. It does not prohibit any future acquisition. If any declaration is made, which may subsequently be found to be false, the Society may or may not proceed against the allottee. If it does, it again must be confined only to a situation arising within the four corners of the said Scheme.”

In the judgment, it is stated that eligibility of an individual to get a plot has nothing to do so far as future acquisitions are concerned.

In view of above, we allow these writ petitions and quash the impugned orders cancelling allotment of a plot to the petitioners.”

Thus, the fact that the petitioner had been allotted a dwelling unit after her declaration to the Society about not owning any plot or dwelling unit, is not a valid ground to cancel her allotment.

The other ground of cancellation that the petitioner had in fact transferred the lease hold rights in the property to her attorney before the expiry of 15 years in violation of the condition no. 15 of the allotment letter also does not appear to be correct. The petitioner has clearly denied that she has transferred her rights to her attorney. She has asserted that she was settled in USA and therefore, she had executed a power of attorney in favour of Mrs. Anjali Aggarwal who is a close friend of petitioner for the proper management of the site/unit. There is no registered assignment of lease hold rights in favour of her attorney on record which would evidence that the lease hold rights in the site/ unit have been sold/transferred by the petitioner to her Attorney. In the absence thereof it is difficult to come to a conclusion about the factum of transfer. Moreover, the cancellation order was passed on 17.04.2013 i.e. more than twenty eight years after the

allotment on 28.03.1985. The cancellation on this ground would not be justified.

Accordingly, the petition is allowed. The impugned orders are quashed.

As the petition has been allowed accepting the assertion of the petitioner that there is no transfer in favour of her Attorney Smt. Anjali Aggarwal it is made clear that it would not be open to the petitioner or her attorney Smt. Anjali Aggarwal, on the basis of any document executed before today i.e., 04.11.2022, to assert in any proceeding before any Court or authority that the site has already been sold/ transferred by the petitioner to her attorney Smt. Anjali Aggarwal.

If the petitioner at any subsequent stage seeks to transfer her lease-hold rights to her attorney Smt. Anjali Aggarwal or any other person she would be required to comply with condition No.15 of the allotment letter or any other condition regulating the manner of transfer of lease-hold rights as may be applicable at the relevant time.

(HARINDER SINGH SIDHU)
JUDGE

(LALIT BATRA)
JUDGE

November 04, 2022

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No