

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

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CWP-23884-2022
Date of Decision: 17.10.2022.

Estate Officer, Haryana Sehari Vikas Pradikaran Jind

... Petitioner

Versus

Yogesh Kumar Gupta and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Vishal Garg, Advocate,
for the petitioner.

Mr. Munish Kumar Garg, Advocate and
Mr. Vikas Mehra, Advocate
for respondent

VINOD S. BHARDWAJ, J. (ORAL)

The present petition raises a challenge to the award dated 11.03.2022 passed by the Permanent Lok Adalat (Public Utility Services), Kaithal (Camp Court at Jind), whereby the application filed by the respondent No.1 under Section 22-C of the Legal Services Authorities Act 1987 has been accepted and the petitioner-Haryana Sehari Vikas Pradhikaran (hereinafter referred to as HSVP) has been directed to make an offer of actual physical possession of plot No. 44-P Section-7, Jind and to pay simple interest at the rate of 9% per annum with effect from 21.10.2013 on the total amount deposited by the respondent No.1-applicant till the actual possession is delivered as per Clause 7 of the original letter of allotment along with litigation expenses and compensation of Rs.10,000/-.

Briefly summarized, the facts leading to the filing of the instant petition are that Plot No. 44-P situated in Sector-7, Urban Estate was allotted to respondent No.1-applicant by the petitioner vide memo No. 31870 dated 21.10.2010 and the transfer-re-allotment in favour of the respondent No.1 was permitted vide letter No. 4263 dated 17.09.2012, upon completion of all formalities. The respondent No.1-applicant had duly deposited the installments as detailed out in the application with the office of petitioner/HSVP and no dues were outstanding. It was alleged that the possession of the aforesaid Plot No.44-P situated in Sector-7 Urban Estate, Jind was not offered either orally or through any written communication despite numerous attempts made by respondent No.1-applicant. The respondent No.1-applicant was however, informed that an amount of Rs.6,00,000/- has been imposed as penalty under the pretext of deemed possession offered in April, 2013 and non-construction.

An enquiry into the said aspect was claimed to have been carried out by the respondent No.1-applicant through RTI, whereby it emerged that the Estate Officer, Jind had vide letter bearing No. 3813 dated 20.09.2016 addressed to the Administrator, Hisar had sought guideline for not offering possession of the plot in question. In response to the aforesaid communication, Administrator HUDA, Hisar conveyed vide letter bearing No. 9732 dated 17.10.2016 that deemed possession may be offered from April, 2013 and further action against the delinquent officials was proposed. Thereafter, the ante-dated letter of deemed possession was issued to avoid the liability of paying interest on the deposit of installments/dues against the plot without offering actual possession and also to justify demand of illegitimate dues.

Upon notice issued by the Permanent Lok Adalat (Public Utility Services), Kaithal (Camp Court at Jind), reply was filed by the petitioner-HSVP, wherein it was admitted that vide letter bearing No. 5146 dated 30.12.2016, the respondent No.1-applicant was informed about the development works in the sector having been completed and an offer of possession was deemed to have been made in the year 2013 i.e. when offer of possession of other plots was made. The communication with regards to dues and interest was sent to the petitioner vide letter bearing No. 184 dated 19.11.2017.

Upon considering the rival submissions and contentions of the parties, Permanent Lok Adalat (Public Utility Services), Kaithal (Camp Court at Jind) allowed the application and passed the award on 11.03.2022, directing as under:-

- i) *“Respondents are directed to make actual possession offer for Plot No.44-P Sector 7 Jind within 15 days from the Receipt of the copy of this Award.*
- ii) *Respondents are Directed to pay simple Interest @9% interest w.e.f. 21.10.2013 on total amount deposited onwards including all installments till actual possession is made. As per clause No. 7 in original allotment letter.*
- iii) *Respondents are directed to Pay Rs. 10,000/- only for litigation expenses.”*

The aforesaid award is now a subject matter of challenge in the present petition.

Learned counsel appearing on behalf of the petitioner vehemently contends that the communication with respect to the possession

is duly admitted to have been received by the respondent No.1 on 07.06.2017 whereupon that it was open to the respondent No.1-applicant to obtain physical possession of the plot in question. He further contends that the award of interest at the rate of 9% per annum is on the higher side and is not tenable.

Learned counsel appearing on behalf of the Caveator, however, contends that the aforesaid communication in fact does not amount to an offer of possession and is a communication about possession w.e.f. 2013. He contends that the respondents in their own communication and have acknowledged that the offer of possession was never made and it was a retrospective offer of possession. Subsequently, the Administrator (HQ) HSVP had advised that date of offer of possession be revised from the year 2016 instead of 2013 vide memo dated 11.11.2019. The Administrator (HQ) HSVP had acknowledged in the internal communication that delay in offer of possession was due to mistake of officials of H.S.V.P. Hence, actual offer of possession had not been made even till 2019 despite being aware of their mistake and the officials indulged in protection of the erring employees. The petitioner caused harassment and agony to the respondent No.1-applicant and an illegal, unjust and unsustainable demand was raised. He further contends that the award of interest has been granted by the Permanent Lok Adalat (Public Utility Services), Kaithal Camp Court at Jind, as per Clause 7 of the original letter of allotment and it is nowhere the case of the petitioner that the award of interest is not in accordance with the same. The petitioners have failed in offering the possession within the time bound manner i.e. within 3 years of the date of allotment and as per the terms and conditions of the letter of allotment, whereupon the allottee is

entitled to possession interest for the amount already deposited till such time that actual physical possession is delivered. He further contends that the interest awarded is already on the lower side since the petitioner-Haryana Sheri Vikas Pradhikaran claims interest at the rate of 15% per annum/simple interest on delayed payment of installments. He contends that much concession and indulgence has already been shown by the Permanent Lok Adalat (Public Utility Services), Kaithal (Camp Court at Jind) and that ordinarily the rate of interest charged by HUDA against the delayed payment ought to have been awarded also to the allottee.

I have heard learned counsel appearing on behalf of the parties and gone through the record appended with the present petition as well as the impugned award passed by the Permanent Lok Adalat (Public Utility Services), Kaithal (Camp Court at Jind).

It is evident from a perusal of the record that upon consideration of the rival submissions advanced by the parties and the entire evidence on record, the Permanent Lok Adalat (Public Utility Services), Kaithal (Camp Court at Jind) has observed as under:-

10. *“That the Administrator, HUDA, Hisar issued a letter to the respondent No. 1 vide Memo No. A-1/2016/9732 dated 17.10.2016 Ex. R-2 in which the offer of the possession of the disputed plot may be deemed in the year 2013 was mentioned i.e. with the date of offer of possession of the plot situated in this sector and further taking strict disciplinary action against delinquent officials reflects that Actual possession was not issued due to mistake of delinquent officials. As the matter of record and cannot be denied by respondents.*

11. *That Estate officer Jind issued a letter vide Memo No.512 dated 05.02.2018 i.e. Ex.A-27 to the Administrator, Hisar,*

seeking guidelines after applicant lodge complaint through CM window for actual possession instead deemed possession from 2013. This letter clearly reflects that respondent no. 1 had imposed interest dues on basis of deemed possession from 2013 & actual possession was not offered for plot no. 44P till that date. As the matter of record and cannot denied by respondents.

12. *That Administrator (HQ), HSVP, Panchkula issued a letter to The Administrator, HSVP, Hisar, vide Memo No. A-5-UB-2019/201220 i.e. Mark A dated 11.11.2019 to the effect that the offers of possession of plot No. 12P, 14 to 22, 42P to 47P, 147P, 148, 149, 151P, 156, 1821, 204P, 295, 333 and 445, Sector 7, Jind w.e.f the year 2016 i.e. from the date of intimation given by the Estate Officer, HSVP, Jind may be considered instead of 30.06.2013 as the delay was caused due to mistake occurred on part of HSVP and the allottees of said plots are not liable for the same reflects the fact that previous letter for deemed possession from 2013 could not be considered and dues and interest imposed on applicant was not justified which was demanded by respondent No.1 as the matter of record and cannot denied by respondents.*

13. *In this present Case for Plot No.44P actual possession offer was not issued by respondents to the applicant till Now. Respondent no. 2 issued deemed possession offer from 2013 in 2016 vide memo No. A-1/2016/9732 dated 17.10.2016 Ex. P16 and thereafter respondent no. 3 issued deemed possession offer from 2016 in 2019 vide Memo No. A-5-UB-2019/201220 dated 11.11.2019 i.e. Mark A and this fact is admitted that delay was caused due to mistake occurred on part of HSVP So letter number 5146 dated 30.12.2016 i.e. Ex. A-17 by respondent, no. 1 could not considered as actual possession offer. Applicant had already deposited entire amount demanded as per re-allotment letter even after applicant could not get possession as interest and dues demanded was imposed on bases of deemed possession offer. Hence it is clear mistake occurred on part of respondents for which applicant is not liable as reflected from Administrator (HQ), Memo No. A-5-UB-2019/201220 dated*

11.11.2019. As the matter of record and cannot denied by respondents.”

Learned counsel appearing on behalf of the petitioner, however, could not refer to any communication on the basis, whereof, it could be held that the physical possession of the plot in question was duly offered in term of the letter of allotment and applicable Estate Management Procedures. Reliance placed by him on the letter dated 30.12.2016, which was handed over to the applicant on 07.06.2017, was in fact impugned by the respondent-applicant in the proceedings instituted before the Permanent Lok Adalat (Public Utility Services), Kaithal Camp Court at Jind and was offering retrospective possession w.e.f. 2013. The said letter cannot thus be deemed to be read as an actual offer of possession to the respondent-applicant. It is also averred that the respondent-authorities were fully conscious of the lapses committed on their part and the Administrator HUDA, Hisar had also directed the Estate Officer to take appropriate action against the defaulting officials. In fact, the subsequent letter bearing memo dated 11.11.2019 contradicts the respondents. The Administrator (HQ) HSVP having himself admitted the lapse on the part of HSVP now directed possession to be deemed to have been offered w.e.f. 2016 instead of 2013 as ordered earlier. Surprisingly, instead of acknowledging and admitting their lapses and compensating the allottee for their mistake, the respondent authority adopted a whole new novel method of retrospective offer of possession thus causing agony, harassment and hardship to the applicant-allottee despite being fully conscious that the petitioner authorities were in default.

As agencies and instrumentality of State, the senior officials of the H.S.V.P., instead of doing what was right and remedying the wrong and to mitigate the hardship of an allottee, resorted to ways that compounded the agony. While the officials were scratching each other's back, the allottee reeled under the trauma of levy of penalties and charges for no fault and to also suffer the cost of escalation in the construction. The official hierarchy miserably crumbled to rise to the occasion and answer the call of their duty.

Learned counsel appearing on behalf of the petitioner is also not been able to refer to any provision of the letter of allotment and/or from the order that any error of fact or misappreciation of evidence or of law has been committed by Permanent Lok Adalat (Public Utility Services), Kaithal (Camp Court at Jind).

In the absence of any illegality, perversity, impropriety or failure in appreciation of the evidence-documents available on record, the judgment of the Permanent Lok Adalat (Public Utility Services), Kaithal Camp Court at Jind cannot be faulted with.

It is evident that the petitioner has chosen to file the instant petition in violation of the State Litigation Policy and despite being aware of their mistake solely to avoid taking a decision and oblivious of burdening the allottee still further. The same is clearly reflective of callous and mechanical approach of the authorities. Hence, before parting with the said order, it is deemed appropriate to impose the cost of Rs.10,000/- on the Estate Officer, Haryana Sheri Vikas Pradhikaran, Jind. The cost in question shall be deposited with the **“High Court Bar Association Environment Protection Fund”** within a period of one week from receipt of certified copy of this order. Recovery of the aforesaid cost shall be effected equally

from the officials responsible for such lapse and for directing for filing the present writ petition in a careless and a mechanical manner.

The present petition is accordingly dismissed with costs as above.

October 17, 2022.
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(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No