

2023:PHHC:048429-DB

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
118.**

CWP-6190-2023

Date of decision: March 24, 2023

SUSHIL MANGAL

.....PETITIONER

Versus

**HARYANA STATE INDUSTRIAL AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LTD.**

.....RESPONDENT

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANJIV BERRY**

Present: Mr. Shashank S. Mangal, Advocate,
and Mr. Pulkit Goyal, Advocate,
for the petitioner.

Mr. Ankur Mittal, Advocate,
with Ms. Kushaldeep Kaur, Advocate,
and Mr. Jugam Arora, Advocate,
and Mr. Shivam Garg, Advocate,
for the respondent.

AUGUSTINE GEORGE MASIH, J.

Petitioner asserts that he is a person who would fall in the category of 'oustees' whose land has been acquired at Village Kherli Kankar, District Nuh, Haryana. Award was pronounced on 21.05.2010 and would be, thus, covered under the Relief and Rehabilitation Policy dated 07.12.2007 notified by the Government of Haryana. Granting him the benefit of the said Policy, he was allotted residential Plot No. 17, Sector 21, Village Kherli-Kankar at IMT-Sohna vide Regular Letter of Appointment dated 20.01.2020 bearing reference no. 3390.

2. Smt. Bimla Devi Mangal, who was mother of the petitioner,

was allotted Plot No. 22, Sector 21, Village Kherli-Kankar at IMT-Sohna vide Regular Letter of Appointment dated 20.01.2020 bearing reference no. 3386. His mother's plot was subsequently transferred in the name of the petitioner vide letter no. 35 dated 02.08.2021 on she having expired on 11.02.2020. Petitioner had been depositing regularly the instalments, as have been fixed under the Regular Letter of Allotment. Out of the total eight instalments, petitioner had deposited six instalments and the 7th instalment will fall due for payment on 30.06.2023.

3. Petitioner came to know from the other beneficiaries of the Relief and Rehabilitation Policy that on 07.05.2022, the Board of Directors of Haryana State Industrial and Infrastructure Development Corporation Ltd.-respondent No. 1 has taken a decision, which reads as follows:-

“the eligible ex-landowners of IMT Sohna who were issued certificate of entitlements (CoE) under R & R Policy but had not deposited 10% payment of plot cost shall be charged at the rate of allotment for residential plots @ ₹6500/psm. Further, interest @12% p.a. shall be charged on above rate of allotment from the date of issuance of demand notice for 10% payment till the payment is made. The Board further resolved that such allottee(s) shall not transfer the plot till 5 years from date of issue of Regular Letter of Allotment (RLA). If such allottee(s) transfer the plot within 5 years from date of issuance of RLA, they shall pay the fee equivalent to differential of rate between ₹7800/-psm & ₹6500/-psm for such transfer.”

4. The petitioner, who had been allotted the above-referred to two plots, was being charged @₹7800/-per sq. mtr., whereas the other

beneficiaries of the Relief and Rehabilitation Policy, were being granted the benefit of lower rate of allotment i.e. ₹6500/-per sq. mtr. Petitioner asserts that he would be entitled to the same benefit as he is the beneficiary of the same Policy where the land has been allotted in pursuance to the same acquisition qua which the others have been granted the benefit denying the same benefit to the petitioner merely on the ground that the petitioner had been regularly paying the instalments and has even paid 10% of the plot cost at the initial stage as per the Letter of Allotment whereas premium is being given to the other oustees, who have even failed to deposit the initial amount of 10% of the plot cost. Petitioner, on this basis, asserts that when he had put forth his claim for the said benefit vide representation dated 13.12.2022, the same was rejected by the respondent vide communication dated 27.12.2022 (Annexure P-12), which has been challenged by the petitioner in the present writ petition.

5. Learned counsel for the petitioner submits that the denial of the petitioner the benefit of the decision of the Board of Directors dated 07.05.2022 would amount to violation of Article 14 of the Constitution as the petitioner falls in the same category of allottees being an oustee of the same acquisition as those who have been given the benefit of the said decision, referred to above, and, therefore, the petitioner cannot be denied the said benefit. His contention is that the similarly placed persons cannot be discriminated against and the rejection of the claim of the petitioner vide decision dated 27.12.2022 (Annexure P-12) would, thus, not be sustainable.

6. It is further contention of the counsel for the petitioner that a person, who has been regularly making the payment of his dues as per the letter of allotment, cannot be put to disadvantage and no premium can be

given to the defaulters which is being sought to be given by restricting the benefit to such defaulters by the decision of the Board of Directors of the respondent dated 07.05.2022. The cost of the plot cannot be different for the land which has been allotted and, therefore, the denial of the benefit of lesser cost of allotment i.e. ₹6500/-per sq. mtr. viz-a-viz the initially allotted amount of ₹7800/-per sq. mtr. could not be in accordance with law. Prayer has, thus, been made for quashing the decision dated 27.12.2022 (Annexure P-12) of the respondent denying the benefit of the decision dated 07.05.2022 of the Board of Directors.

7. On the other hand, learned counsel for the respondent has submitted that for being eligible for claim for entitlement under a decision taken by the Board of Directors dated 07.05.2022, the said person is required to fulfil the criteria laid down therein. It is asserted that the benefit, which has been granted, is limited to a category and class of defaulters and a person, who does not fall in the said category, would neither be entitled to the benefit of the scheme/decision nor would such person be entitled to claim similar benefit.

8. The intent of the decision was to give a one time opportunity to regularize the allotment of the plot, to which they are entitled being oustees. Petitioner is bound by the terms and conditions of Regular Letter of Allotment, which is a contract entered into between the parties, which conditions govern and bind the parties, violation of which would lead to adverse consequences. It is submitted that although the rate of the plot has been reduced from ₹7800/-per sq. mtr. to ₹6500/-per sq. mtr. but the beneficiaries of the decision of the Board of Directors have to pay interest @12% per annum from the date of demand notice for 10% payment of the

cost of the plot until the date of payment whereas the petitioner is not paying any interest as he is paying instalments on time. Reliance has also been placed upon the decision of the Hon'ble Supreme Court in **Bijnor Urban Co-operative Bank Limited, Bijnor and others vs. Meenal Aggarwal and others**, (2023) 2 SCC 805 by the counsel for the respondent in support of his submissions. Prayer has, thus, been made for dismissal of the writ petition.

9. We have heard the learned counsel for the parties and with their assistance, have gone through the pleadings.

The facts are not in dispute, as have been narrated above, and, therefore, need not be referred again for the sake of brevity.

10. For a person to be eligible for consideration under a decision, which has been taken for regularizing the payment to the allottees of the plots and that too, under the oustees quota, would be synonyms to the One Time Settlement Scheme of the bank or financial institutions. It is with an intent to regularize the allotment that such decisions are taken. This allotment of the plot to the petitioner and other oustees was with the issuance of the certificate of eligibility which gave them the right to apply for a plot. On such application having been submitted, the letter of intent was issued. It is on deposit of the initial amount of 10% of the cost that the Regular Letter of Allotment was issued to the petitioner and his mother. The beneficiaries of the decision dated 07.05.2022 of the Board of Directors would be the oustees who had been issued certificate of entitlement but had not deposited 10% of the payment of plot cost. It is to incentivise the benefit, which was conferred on them, that the rate of the cost for residential plot was fixed at ₹6500/- per sq. mtr. reducing it from ₹7800/- per sq. mtr.

This reduced rate was not the only thing which was payable by such oustees but they were required to pay interest @12% per annum at the rate of allotment from the date of issuance of demand notice for 10% payment till the payment is made. A condition was also incorporated in the decision that such allottees shall not transfer the plot till 5 years from the date of issue of Regular Letter of Allotment and in case of such default by transfer, they were mandated to pay the fee equivalent to differential rate between ₹7800/- per sq. mtr. and ₹6500/-per sq. mtr. for such transfer.

11. The allotment is governed by the terms and conditions of agreement entered into between the parties and it is respective obligation, which is attached thereto. A scheme, which has been framed and the benefit, which is being claimed or where such benefit is given, the same is restricted to a particular category/class of persons for determining their entitlement, the same would be restricted to those persons only. A person, who does not fall strictly under the said scheme, would not be entitled to the said benefit. The scheme is intended to grant one time opportunity to the defaulters to pay the outstanding amount. The intent is to recover the amount as a one time measure and, therefore, the benefit is extended to such persons who are fully eligible as per the criteria prescribed under the scheme. A person, who does not fall under the said criteria, as laid down in the scheme, cannot claim any benefit as a matter of right. The assertion of the counsel for the petitioner that defaulters have been given the benefit of the scheme, whereas a person, who has been regularly paying his dues, stands deprived of the said benefit, cannot, thus, be accepted.

12. Article 14 of the Constitution would not come into play as the benefit is limited to a distinct class i.e. defaulters, to which category the

petitioner does not fall in. This benefit is limited to the persons who were unable to make payment at the relevant time but now may be capable of making such payment, as has been detailed in the scheme. This principle stands settled by the Hon'ble Supreme Court in the case of Bijnor Urban Co-operative Bank Limited, Bijnor and others (supra).

A perusal of the said decision would make it clear that a person, who is entitled to the benefit of a scheme, must be fulfilling the eligibility criteria laid down thereunder and those, who would not fall within the said parameters, cannot claim consideration or entitlement as a matter of right nor can the Court direct or sit over the decision of the institutions with regard to such criteria being laid down when the said criteria is not under challenge.

13. It may be added here that the incapability of payment of the amount primarily is the reason for taking such a decision by the Board of Directors, which is not the position qua the petitioner as the said benefit is limited to the defaulters only. What is intended is to revive and give an opportunity to an allottee to regularize the allotment of a plot, which would otherwise lead to resumption thereof.

14. Another aspect, which would go against the petitioner, is that the benefit is limited to the persons who have been allotted certificate of entitlement but have not been able to deposit the initial 10% amount of the cost of the plot and obviously have, thus, not been issued the Regular Letter of Allotment. Once the Regular Letter of Allotment has been issued, the terms and conditions, as laid down therein, if accepted, are binding upon both the parties. Meaning thereby that the contractual terms, once having been accepted, have to be fulfilled unless those are void or otherwise

outcome of unconscionable bargain, which would not be the case in hand and thus, the allottees, who have paid due instalments, cannot claim the benefit of the said decision not only being ineligible but the claim of entitlement of refund of amount paid by them, for which waiver has been granted under one time decision of the Board of Directors, which is restricted to a class of defaulters, to which class the petitioner does not belong.

15. Another aspect, which need to be highlighted in this case, is that as per Clause 2 (ii) of the Regular Letter of Allotment, which stipulated that 75% of the tentative price shall be paid by allotment in eight equal half yearly instalments without interest till offer of possession is given by the respondent-Corporation. Since the Regular Letter of Allotment was without offer of possession even the schedule of payment was made without addition of 12% interest on the principal amount of instalment. Petitioner is, therefore, not paying any interest along with the instalment and is only paying the principal amount.

16. Clause 2 (iii) of the Regular Letter of Allotment clarifies with regard to the interest to be charged on delayed instalment deposit in case of default, as provided in the schedule. Vide circular dated 21.04.2018, it has been clarified by the respondent that interest on the instalments shall not be charged until basic infrastructure facilities are completed and offer of possession is made. Petitioner, therefore, has gained the benefit of non-payment of interest on the scheduled instalments because of deposit on time, whereas the beneficiaries of the decision of the Board of Directors dated 07.05.2022 are required to deposit interest @12% per annum on the now fixed rate of allotment of the plot from the date of issuance of demand

notice for 10% payment until such payment is made. The interest component, therefore, being charged from the beneficiaries of the scheme/decision and the benefit of non-recovery of interest till the time of offer of possession is made from the petitioner is a factor which balances the equities. For this reason also, the petitioner would not be entitled to the said benefit, as has been claimed in the present writ petition.

17. In the light of the above, the present writ petition stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

March 24, 2023
pj

(SANJIV BERRY)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>