

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.210 CWP-2275-2018 (O&M)

1.) Pawan Kumar Petitioner

VERSUS

The Deputy Commissioner, Sirsa and others Respondents

2.) CWP-2976-2018 (O&M)

Sandeep Kumar and another Petitioners

VERSUS

Deputy Commissioner, Sirsa and others Respondents

3.) CWP-3441-2018 (O&M)
Date of decision:- 21.08.2023

Ramesh Kumar and others Petitioners

VERSUS

Deputy Commissioner, Sirsa and others Respondents

**CORAM: HON’BLE MR. JUSTICE G.S. SANDHAWALIA
HON’BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Himanshu Arora, Advocate, for the petitioner(s).

Mr. Arun Beniwal, DAG, Haryana.

Mr. Vishal Garg, Advocate, for respondents No.2 and 3.

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1. This order shall dispose of CWP-2275-2018, CWP-2976-2018 and CWP-3441-2018 as common questions of law and facts are involved in these petitions.

2. For brevity, the facts are being extracted from CWP-2275-2018. The respondent No.3-Improvement Trust, Sirsa issued an advertisement (Annexure P-1) for inviting the applications for allotment of plots for construction of double storey and single storey booths under the “Development Scheme of No.32 of Mata Harki Devi Shopping Centre” in the year 2003. The petitioner being successful in the auction, purchased booth No.45, Mohta Market on 27.07.2003 and was issued the allotment letter dated 20.04.2005 (Annexure P-2). As per the allotment letter, the possession of the shop was to be delivered within a period of one year. As such, the petitioner deposited a sum of Rs.2,38,750/- with respondent No.3-Improvement Trust, Sirsa vide receipt (Annexure P-3). The respondents having neither delivered the possession of the plot in question nor refunding back the amount to the petitioner despite various representations and the fact that the payment was deposited in the year 2003 led to the legal notice dated 20.11.2017 (Annexure P-5) being served. The respondents then sent a reply (Annexure P-6) expressing their inability to deliver the possession on account of fact that respondent No.3 has not yet received the possession of the school building where the plots were to be carved out.

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3. Respondent No.3 filed a reply admitting that the scheme was published to establish a commercial market at the site of Government Senior Secondary School and as per the plan, total 97 commercial plots were to be allotted. However, it was submitted that school was to be shifted at Begu Road, Sirsa. As per the settlement, the building was to be constructed and then the Education Department was required to vacate the building of the school. In terms of the said arrangement, the building was constructed and the same was handed over to the Education Department, but the Education Department did not vacate the site where the market was to be raised. The Education Department did not vacate the site despite taking various extensions, which is the reason of failure of the scheme. It was further submitted that respondent No.3 has no assets and the same is not in a position to refund the amount.

4. Learned counsel for the petitioner submitted that despite receiving part-payment of the allotment price in the year 2003, the respondents have neither returned the money nor handed over the possession of the plot which was allotted to the petitioner. As such, the petitioner is entitled for the direction prayed for.

5. In view of the submissions made by respondent No.3 in the written reply, the receipt of the amount by Improvement Trust, Sirsa (respondent No.3) in the year 2003 has been admitted. The Improvement Trust, Sirsa-respondent No.3 has given the explanation that the possession of the site was not delivered by the Education Department, therefore, the plots

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could not be carved out and possession could not be handed over to the petitioner. So far as, the explanation given by respondent No.3 is concerned, it is a matter *inter se* between respondent No.3 and the Education Department. But the fact remains admitted by respondent No.3 that the payment was received from the petitioner in the year 2003 in pursuance to the allotment letter dated 20.04.2005 (Annexure P-2). The said allotment was done after inviting applications through advertisement (Annexure P-1) in proposed 'Development Scheme No.32.' As per the said advertisement, double storey shops, single storey booth and Kisok's were to be constructed. As per the allotment letter (Annexure P-2), allotment of shopping booth No.45 situated in the said complex to the petitioner was confirmed by the Improvement Trust in its resolution. There is an admission that 1/4th of the allotment price was also deposited by the petitioner and as per receipt dated 28.07.2003 (Annexure P-3), a sum of Rs.2,38,750/- was received by the Chairman, Improvement Trust, Sirsa.

6. The facts and circumstances of the case clearly indicate that the Improvement Trust, Sirsa-respondent No.3 has retained the amount paid by the petitioner since the year 2003 in pursuance to the allotment letter but the possession of the booth in question was not delivered to the petitioner. The respondents cannot enrich themselves by retaining the money which was deposited by the petitioner about 30 years prior to the filing of the present writ petition. It is also relevant to note that during this period the petitioner had been consistently making requests for the delivery of the possession by

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way of making various representations which are on record as Annexures P-4, P-5 and legal notice (Annexure P-6).

7. In view of the aforesaid reasons, we are of the considered view that the petitioner is entitled for refund of the amount deposited by him alongwith simple interest @ 8% per annum. Since respondent No.3 has shown inability to make the payment in the written reply, as such, it is further ordered that in case respondent No.3-Improvement Trust, Sirsa is not in a position to pay the amount, the Department of Local Bodies shall ensure the payment within 03 months from receiving a copy of this order and can recover the amount from the said respondent for its dues.

8. The aforesaid writ petitions are allowed, accordingly.

9. Pending miscellaneous application(s), if any, also stands disposed of.

(G. S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

21.08.2023
Ramandeep Singh

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