

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

Date of Decision:10.01.2023

1. CWP No.27617 of 2017 (O&M)

Kavita AdlakhaPetitioner
Vs.
State of Punjab and othersRespondents

2. CWP No.641 of 2018 (O&M)

Kailash DeviPetitioner
Vs.
State of Punjab and othersRespondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present:- Mr. Rakesh Gupta, Advocate for the petitioner.

Mr. V.G. Jauhar, Addl. AG, Punjab.

Mr. Neeraj Sharma, Advocate for respondents
No.2 and 3.

DEEPAK GUPTA, J.

This order shall dispose of two writ petitions bearing CWP No.27617 of 2017 (O&M) and CWP No.641 of 2018 (O&M), as facts involved in both the writ petitions are similar.

2. By way of this petition, prayer is made to quash the resolution dated 23.12.2015 (Annexure P.1) passed by respondent No.2, whereby site allotted to the petitioner has been resumed. Further prayer is made to restore the plot by withdrawing the impugned resumption order.

3. Plot bearing SCF No.31 measuring 121 square yards situated at Giani Zail Singh Nagar, Ropar was purchased by the petitioner in an open auction on 01.05.1994, which was confirmed by respondent No.2 – Trust on 04.07.1994. Agreement was subsequently executed on 24.12.1998. As per

CWP No.27617 of 2017 (O&M)

the allotment letter, the construction of the building was required to be raised within a period of three years from the date of sale.

4. Contention of the petitioner is that possession of the plot was offered only on 26.07.1999 vide letter Annexure P.7 and, therefore, the sanctioning of the plan vide letter dated 31.12.1998 was of no consequence. It is further contended that electricity lines were passing over the plot in question due to which raising of the construction as per the sanctioned site plan was not possible. Petitioner wrote letter dated 28.12.1998 (Annexure P.5) to respondent No.2 – Trust for removal of the said electricity wires but without removing the same, the plot was resumed vide letter dated 27.03.2000 (Annexure P.8). On the representation made by the petitioner, she was asked to appear in person vide letter dated 19.10.2005 but the illegal order of resumption was not withdrawn. Though petitioner appeared before respondent No.3 but no effective opportunity of hearing was provided. Subsequently, petitioner requested the respondent- authorities to execute sale deed in her favour vide letter dated 28.12.2009, since she had already deposited the entire amount of sale consideration. But instead of restoring the plot and executing the sale deed in favour of the petitioner, respondent No.2- Trust put the plot to auction vide public notice dated 28.11.2010 (Annexure P.12). Petitioner filed civil suit for injunction but the matter could not be decided by the Civil Court since there was an arbitration clause. However, liberty was given to the petitioner to approach respondent No.1 – arbitrator for redressal of her grievance vide order dated 15.12.2010 Annexure P-16. Pursuant thereto, petitioner filed a detailed claim before the arbitrator, who remanded the matter to respondent No.2- Trust to take fresh decision in accordance with law vide order Annexure P.18. However, respondent No.2, without taking into consideration the relevant rules

CWP No.27617 of 2017 (O&M)

and guidelines and without granting opportunity of hearing, passed resolution dated 10.05.2013, confirming the resumption order dated 27.03.2000. Petitioner again challenged the said order before the arbitrator, who referred back the matter to respondent No.3 to take decision in accordance with law. Respondent No.3 vide communication dated 01.10.2013 Annexure P-22 reiterated its stand by confirming the earlier resolution dated 10.05.2013 of the Trust. Petitioner then preferred Writ Petition No.22789 of 2013 before this Court. Vide order dated 9.9.2014 Annexure P-23, it was observed that letter dated 01.10.2013 (Annexure P.22) had been passed without affording opportunity of hearing to the petitioner and, therefore, the said order was set aside, although respondent No.2- Trust was granted liberty to consider and take appropriate action after complying with the principles of natural justice. Pursuant to the direction, petitioner appeared in person and made detailed representation Annexure P.24 but without considering the same and by means of impugned cryptic order Annexure P.1, respondent No.2 resumed the plot.

5. It is contended by Ld. Counsel for the petitioner that impugned order is illegal, as without ensuring the removal of the electricity lines over the plot in question, it was not possible for the petitioner to raise construction. It is further contended that though allotment letter prescribes a period of three years to complete the construction of the building of the plot from the date of taking possession but as per notification dated 28.07.2011 of the Government of Punjab, Department of Local Government, an extension of 12 years could be granted and this way, total period which could be allowed to the petitioner to raise construction was 15 years from the date of delivery of possession. Apart from this, as per the policy dated 26.10.2004 issued by the Government of Punjab, all

CWP No.27617 of 2017 (O&M)

the allottees who had failed to raise construction upto 30.04.2004, could raise the construction within a period of two years from the date of issuance of the said policy after paying the non-construction charges but this vital aspect has been overlooked by the respondent- Trust at the time of passing of the impugned order. With these submissions, prayer is made for setting aside the impugned order.

6. We have considered submissions of Ld. counsel for both the sides and find no merit in the petition for the reasons to follow.

7. Plot was sold to the petitioner in open auction on “as is where is” basis, as evident from letter dated 04.07.1994 (Annexure P.2), whereby auction in favour of the petitioner was confirmed. Petitioner accepted the terms and conditions of the allotment without any objection at that time. Neither any map of the plot in question nor any photographs have been annexed in the petition to show that electricity lines allegedly going over the plot are creating any obstacle in raising the construction. Assuming for the sake of arguments that any such electricity lines are going over the plot, there appears to be no effort on the part of the petitioner to write to the concerned electricity department for removal of those electricity lines. Still further, the plot was resumed vide letter dated 27.03.2000 but the petitioner remained silent till 2005.

8. No doubt that vide a policy decision taken by the Government of Punjab, Department of Local Government dated 26.10.2004 (Annexure P.26), the government decided to give one time relief upto 50% of the total payable non-construction charges, whereby all allottees were given one year time for completing the construction of their dwelling units/ SCOs/SCFs/flats upto 30.04.2004. However, this was subject to the condition that 50% of the total payable non-construction charges were to be deposited by 30.04.2003. In the

CWP No.27617 of 2017 (O&M)

present case, there is no pleading on the part of the petitioner that she ever offered to the respondent- Trust to deposit 50% of the payable non-construction charges or deposited the same upto 30.04.2003.

9. Further, as per Punjab Town Improvement (Utilisation of Land and Allotment of Plots) (First Amendment) Rules, 2011 issued by the Government of Punjab, Department of Local Government vide notification dated 27.07.2011 (Annexure P.25), a proviso was added to Condition No.7, as per which if the construction is not raised within the aforesaid period (i.e. three years), the Executive Officer of the Trust may extend the construction period upto period of 12 years beyond the initial period of three years, if the allottee deposits the prescribed non-construction fee with the Trust. Here again, there is neither any pleading nor any document on the part of the petitioner to show that she ever approached respondent- Trust within the prescribed period to deposit the non-construction charges with the respondent- Trust for seeking extension of time to raise the construction.

10. For all the reasons as stated above, we find no merit in this petition and as such, the same is dismissed.

(DEEPAK GUPTA) (AUGUSTINE GEORGE MASIH)
JUDGE JUDGE

January 10, 2023

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Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No