

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

CWP-27532-2018

Date of Decision : 21.02.2023

Ramesh Kumar

..... Petitioner

Versus

Chandigarh Administration and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present : Mr. S.M.Tripathi, Advocate
for the petitioner.

Mr. Rahul Dev Singh, Advocate
for respondents No.1 and 2.

Mr. J.S.Chandail, Advocate
for respondent No.3.

VIKRAM AGGARWAL, J.

1. The petitioner assails the order dated 08.05.2018 (Annexure P-5), passed by respondent No.2 vide which, in the appeal filed by the petitioner for allotment of a flat under the Chandigarh Small Flat Scheme 2006 (hereinafter referred to as 'the 2006 Scheme') in lieu of Jhuggi (hut) No.365/1, Nehru Colony, Kajheri, Union Territory, Chandigarh, a flat was ordered to be allotted to him jointly with his mother Smt. Nemo and brother Prem.

2. The case of the petitioner is that he is a resident of Chandigarh

for the last more than 30 years and has been residing alongwith his family members in a Jhuggi constructed by him in Nehru Colony, Kajheri, U.T., Chandigarh. He is a registered voter against his Jhuggi and had been issued Voter Identity Card on 21.10.1995 (Annexure P-1) by the competent authority. His vehicle had also been registered on this very address. Reliance has been placed upon the Registration Certificate (Annexure P-2). The Chandigarh Administration notified the 2006 Scheme for rehabilitating the jhuggi dwellers. In 2006, biometric survey of the petitioner was conducted. Since he was eligible for the allotment of flat under the 2006 Scheme, he had submitted an application on 07.04.2011 (Annexure P-3).

3. Since the flat was not being allotted to the petitioner, he filed an application before the Permanent Lok Adalat, Union Territory, Chandigarh seeking the allotment of the flat. By way of order dated 22.07.2015 (Annexure P-4), it was directed that the petitioner be allotted a flat jointly with his mother Smt. Nemo.

4. Aggrieved by the said order dated 22.07.2015 (Annexure P-4), the petitioner filed CWP No.22412-2015 titled as Ramesh Kumar vs. The Permanent Lok Adalat and others which was disposed of vide order dated 22.02.2017, giving liberty to the petitioner to file an appeal and directing that the same be disposed of within three months of the filing and that the order passed by the Permanent Lok Adalat would not prejudice the rights of the petitioner. The petitioner, therefore, filed an appeal before the Appellate Authority and the said Authority while passing the impugned order dated 08.05.2018 also held that the petitioner was entitled for a flat jointly with his mother Smt. Nemo and brother Prem.

5. It is also the case of the petitioner that vide letter dated 11.09.2018 (Annexure P-6), the petitioner was asked to attend the office of the Chandigarh Housing Board, Chandigarh with his spouse to complete the requisite formalities and release of allotment letter & possession slip but when he went, he was told that he should come with his mother and brother. He served a legal notice (Annexure P-7) to which reply (Annexure P-8) was received. The case of the petitioner is that he had been living separately in Jhuggi No.365/1 and, therefore, there was no occasion to allot a flat jointly with his mother and brother.

6. The respondents have opposed the writ petition. In the reply, they have taken a stand that the mother of the petitioner Smt.Nemo had been allotted a flat in Dhanas and that both her sons namely Ramesh Kumar (petitioner) and Prem had also applied for the allotment of flats by way of separate forms but in accordance with the 2006 Scheme, they were entitled for a joint flat only. The filing of a writ petition earlier by the petitioner has been admitted. The decision given by the Permanent Lok Adalat and the Appellate Authority has been justified. It has been averred that the petitioner was living with his mother and brother in Jhuggi No.365/2, Nehru Colony and, therefore, they were not entitled for separate flats.

7. We have heard learned counsel for the parties and have perused the record.

8. Learned counsel for the petitioner has submitted that his claim has erroneously been rejected. He has referred to his Voter Identity Card (Annexure P-1), registration certificate (Annexure P-2) and application form (Annexure P-3) to contend that the petitioner was living separately in Jhuggi

No.365/1. He has also referred to the provisions of the 2006 Scheme and specifically to the definition of 'Family' as contained in Rules 3(c) and 6(a)(iii) of the 2006 Scheme.

9. On the other hand, learned counsel for the respondents has also placed reliance upon the provisions of the 2006 Scheme and has contended that as per the provisions of Rule 6 (a) (i) of the 2006 Scheme, the name of an applicant should appear not only in the biometric survey but in the Voter list also as on 01.01.2006 for being eligible for the allotment of a flat. It has been submitted that in the voter list, the petitioner was shown to be living in Jhuggi No.365/2 and, therefore, he was jointly allotted a flat with his mother Smt. Nemo. Reliance has also been placed upon a judgment of Division Bench of this Court in **Dinesh Kumar and others versus Union Territory, Chandigarh 2015 (1) PLJ 36 : 2015 (4) R.C.R.(Civil) 54.**

10. We have considered the submissions made by learned counsel for the parties.

11. The 2006 Scheme was introduced for the purpose of providing a living space to the unauthorized habitants who had set up habitation on public lands which were unhygienic, were lacking in basic amenities and were also unsafe. Rule 3(c) of the 2006 Scheme defines 'family' which lays down as under:-

“(c) “Family” means a family consisting of a person, his or her spouse, children and person residing with him and it includes earning sons and daughters. Married and earning son above the age of eighteen shall be considered as a separate family unit provided that such a person was living in a separate habitation as identified during the Bio

Metric Survey.”

12. The definition shows that a married and earning son above the age of 18 years would be considered as a separate family unit provided that such a person was living in a separate habitat as identified during the biometric survey. Rule 6 of the 2006 Scheme deals with eligibility and lays down as under:-

“Rule 6(a) - With respect to every block of a Notified Colony selected for clearance, allotment of a flat shall be made as under:-

(i) All persons whose names appear in the biometric survey and voter list as on 1.1.2006 shall be eligible for allotment of a flat on license basis. The name of the person should also appear in the latest voter list of the year in which allotment is to be made.

(ii) A person who owns more than one habitation in any of the Notified Colonies in his own name or in the name of any dependent member of his family shall be entitled to the allotment of only one flat under this Scheme.

(iii) A family unit shall be entitled to one flat, provided it fulfils all the conditions under this scheme.

(b) All allotments of flats under this scheme will be on monthly license fee basis consisting of One Room Flat in a multi-storey building.

13. A perusal of the aforesaid Rule shows that a family unit is entitled to one flat. Further as per Rule 6 (i) of the 2006 Scheme, all persons whose names appear in the biometric survey and voter list as on 01.01.2006

would be eligible for allotment of a flat.

14. A conjoint reading of the aforesaid provisions shows that firstly the purpose of giving a joint unit was to prevent the misuse of the scheme so that people living in one jhuggi could not claim separate flats despite the fact that they were living in one jhuggi. However, at the same time, it has to be borne in mind that married sons having separate families and having separate addresses would be entitled to separate flats and this would not amount to misuse.

15. In so far as the petitioner is concerned, his address in his voter identity card (Annexure P-1) is 365/1, Block A, Nehru Colony, Village Kajheri, Chandigarh. Same is the case with the registration certificate (Annexure P-2). He mentioned his address in the application form (Annexure P-3) also as 365/1 and gave the details of his family members in Column No.5 as Raj Kumari, wife and Janki, daughter, apart from himself. It is also an admitted fact that his name was present in the biometric survey qua Jhuggi No.365/1. However, in the voter list, it is stated to be 365/2. This is clear from the table drawn in the impugned order also. A perusal of the table would show that in the biometric survey, the address of Smt. Nemo Devi was 365 Nehru Colony, that of Prem was also 365, Nehru Colony whereas the address of the present petitioner Ramesh Kumar was 365/1, Nehru Colony. In the application form, Smt. Nemo mentioned her address as 365/2, Prem mentioned the same as 365 and the petitioner mentioned it as 365/1. In the voter list, the jhuggi numbers for all three were mentioned as 365/2. Once the jhuggi number of the petitioner in the biometric survey was mentioned as 365/1, he would be covered by the definition of a married son in a family as

given in Rule 3 (c) of the 2006 Scheme and would be entitled to a separate flat as per the provisions of Rule 6 (a) (iii) of the 2006 Scheme.

16. The judgment in the case of *Dinesh Kumar's case* relied upon by learned counsel for the respondents would not help the respondents as it was not considering the case of a married son. No doubt the twin conditions of the address being found in the biometric survey as also in the voters' list was upheld but it is nobody's case that the twin condition would not apply in any case. The case of the petitioner is that he is a separate family unit being a married son and having a separate address duly verified in the biometric survey.

17. There is another aspect of the matter. The respondents have not pointed out as to who was living in Jhuggi 365/1 if the petitioner was not living there. The scheme seems to have been applied in a mechanical manner and the benefit of a separate flat, in the opinion of this Court, has been wrongfully denied to the petitioner.

18. In view of the aforementioned facts and circumstances, the present writ petition is allowed and the impugned order is set aside. A direction is issued to the respondents to allot an independent flat to the petitioner in accordance with the provisions of the 2006 Scheme within a period of eight weeks on completion of all formalities.

(AUGUSTINE GEORGE MASIH)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

21.02.2023
mamta

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