

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.214

CWP-28841-2018 (O&M)

Date of decision : 20.09.2023

Naseeb Singh

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

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

Present: None for the petitioner.

Mr. Arun Beniwal, DAG, Haryana.

Mr. Deepak Balyan, Advocate, for respondents No.2 and 3.

HARPREET KAUR JEEWAN, J.

1. The present civil writ petition has been filed under Article 226 of the Constitution of India for quashing of the letter dated 14.08.2018 (Annexure P-11) whereby the flat No.192-SF in Housing Board Colony, Sector-36 at Karnal, allotted to the petitioner was cancelled and 50% of the earnest money was also forfeited.

2. As per pleadings, in the year 2013 the Housing Board, Haryana invited applications for residential flats/houses for the persons below poverty line (BPL) and economically weaker sections (EWS) for District Karnal, Haryana. The petitioner being below poverty line applied for allotment of a flat and he was issued an acknowledgment of his application dated 22.01.2013 (Annexure P-1). The petitioner succeeded in draw of lots which was held on 10.07.2013 for allotment of a flat at District Karnal and registration No.834 was issued to the petitioner by respondent No.3.

2.1. Respondent No.2 issued a letter dated 04.10.2013 (Annexure P-2), demanding a payment of Rs.39,000/- to be made on or before 30.10.2013 and petitioner was also required to submit various documents. After the documents were submitted by the petitioner, the Sarva Haryana Gramin Bank, Jagadhari issued a letter dated 25.04.2014 (Annexure P-3) and in pursuance to that, the petitioner deposited a sum of Rs.42,000/- through a demand draft dated 20.05.2014 (Annexure P-4). The petitioner was issued a letter dated 17.08.2016/02.09.2016 (Annexure P-5) and provided final registration No.834 of BPL flat No.192-SF Sector-36, Housing Board Colony at Karnal and was required to further deposit the balance payment as per the schedule mentioned in the said letter. Moreover, he was required to deposit a part of the payment mentioned in Annexure P-6 within a period of 30 days and to take possession. The petitioner being a poor person could not arrange the said instalment as such on 03.10.2016, so he made a written request (Annexure P-6) to respondent No.3 for permission to deposit the initial payment within a period of 03 months in two instalments and further made a request for handing over the possession of the flat to him. Thereafter, the petitioner made various payments in the account of respondent No.3 by way of demand draft dated 29.04.2017 for a sum of Rs.20,000/- (Annexure P-8), demand draft dated 27.11.2017 for a sum of Rs.36,000/- (Annexure P-9) and demand draft dated 27.12.2017 for a sum of Rs.30,000/- (Annexure P-10). However, the flat was cancelled vide impugned letter dated 14.08.2018 (Annexure P-11) and 50% amount of

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earnest money was also forfeited and the said communication was received by the petitioner on 15.09.2018.

3. Respondents No.2 and 3 filed written statement submitting that an efficacious remedy is available to the petitioner under Section 72-A of the Haryana Housing Board Act, 1971 to file an appeal before the Chairman, Housing Board Haryana and the same has not been availed, as such, the present petition is liable to be dismissed. It was also submitted that after issuance of the provisional letter for allotment, the petitioner failed to deposit the requisite amount as per the terms and conditions of the allotment letter and he did not take the possession of the flat within 30 days. A deposit by the petitioner amounting to Rs.42,000/- (Rs.39,000/- principal amount and Rs.3,000/- as interest due to late payment) on 20.05.2014 was admitted, however, it was alleged that there was delay of more than 06 months in making the said payment. The representation filed by the petitioner for extension of time to make part payment in 02 installments was also admitted. It was alleged that show cause notices dated 21.10.2016 and 21.11.2016 were issued and an opportunity of personal hearing was granted but the petitioner did not deposit the requisite amount within stipulated period as such the cancellation letter was issued. Prayer for dismissal of the writ petition is made.

4. It has been averred that cancellation of the flat was not justified as the object to invite the applications was to provide social security to economically weaker sections and to the families who were below poverty line. The petitioner had deposited a sum of Rs.42,000/- apart from the initial

deposit and even thereafter, he has deposited the payment by way of 03 demand drafts. Despite that the flat was cancelled which is not justified.

5. On the other hand, learned counsel for the State submitted that payments were not made as per the terms and conditions of the allotment letter. Hence, cancellation order was rightly passed.

6. We have considered the aforesaid submissions. It is not disputed that the respondents have invited the application from poor persons belonging to the category of economically weaker sections. The petitioner was successful in draw of lots and was allotted a flat. The various payments made by the petitioner by way of demand drafts dated 20.05.2014 (Annexure P-4), demand draft dated 29.04.2017 (Annexure P-8), demand draft dated 27.11.2017 (Annexure P-9) and demand draft dated 27.12.2017 (Annexure P-10) are not disputed.

7. As per the communication dated 04.10.2013 (Annexure P-2), a sum of Rs.39,000/- was required to be paid on or before 30.10.2013. However, the petitioner was granted the concession by way of extension of time to deposit the said amount along with interest as per communication dated 25.04.2014 (Annexure P-3) issued to him. The said payment was made by the petitioner by way of demand draft dated 20.05.2014 (Annexure P-4) and thereafter, he was issued final registration No.834 (Annexure P-5).

8. As per the letter dated 17.08.2016/02.09.2016 (Annexure P-5), the flat in question with covered area 16 sq. meters in the Housing Board Colony at Sector 36, Karnal was allotted to the petitioner on hire-purchase basis. The total price of the flat was fixed as Rs.4,20,600/-. The payments

which were already made by the petitioner were reflected as Rs.39,000/- as registration deposit; Rs.39,000/- alongwith Rs.3,000/- having been deposited after draw of lots. The possession was offered by making a part payment of Rs.1,69,821/- within 30 days from the issuance of the letter out of the total price of the flat which is mentioned as Rs.4,20,600/- plus interest. The balance price was required to be paid in monthly instalments of Rs.2,331/- each over a period of 13 years.

9. Keeping in view the terms and conditions of the allotment letter (Annexure P-5), the total payment was required to be made within a period of 13 years with effect from the date of issuance of the said letter i.e. 17.08.2016/02.09.2016 and the said 13 years would be expiring in September, 2029. After receiving the said letter, the petitioner made a request (Annexure P-6) to respondent No.3 seeking some extension of time for depositing the requisite amount which was required to be paid for taking of the possession. His request was only for extension of 03 months and for making the payment in 02 installments. The said request should have been considered keeping in view the fact that the petitioner belongs to a family below poverty line and that he was only allowed 30 days time for making a huge payment of Rs.1,69,821/- in lump sum. The request made by the petitioner was genuine keeping in view his financial status.

10. We have also noticed that the petitioner made an endeavour to deposit a total amount of Rs.86,000/- by way of 03 demand drafts i.e. Annexures-P-8, P-9 & P-10 which depicts that he made sincere efforts to deposit the price of the flat.

11. Perusal of the cancellation order dated 14.08.2018 (Annexure P-11) indicate that it is non-speaking order. No notice was issued to the petitioner before passing the cancellation order which is a sketchy order and merely by mentioning that the petitioner had failed to take the possession within stipulated period, the allotment of the flat has been cancelled and 50% amount of the earnest money has been forfeited.

12. We have also observed that the principles of natural justice were not even adhered to before passing the impugned order of cancellation of the allotment and this fact has to be considered keeping in view the genuineness of the petitioner that he made a timely request for extension of time for making the payment and has also deposited some payments. We cannot ignore the objective of allotment of the flat was to provide social security to such people who are below poverty line and belong to an economically weaker section of the society. In such circumstances, by not affording a right of hearing before passing a harsh order of cancellation and that too without issuing a notice requiring the petitioner to deposit the balance amount is unjust.

13. We have considered the objections taken by the respondents regarding availability of remedy of appeal under Section 72-A of the Haryana Housing Board Act, 1971. Keeping in view the above noted peculiar facts and circumstances of the case, we are of the considered opinion that it is a fit case to invoke extra-ordinary writ jurisdiction. The Hon'ble Apex Court in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai, 1999 (1) RCR (Civil) 220 while making a reference of

decision by a Constitution Bench of Hon'ble Apex Court in A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani and another, AIR 1961 SC 1506 and another decision by a Constitution Bench of the Apex Court in Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies Distt.-I AIR 1961 SC 372 held that the High Court having regard to the facts of the case has a discretion to entertain a writ petition under Article 226 of the Constitution of India. The efficacious remedy would not operate as a bar in at least 03 contingencies which includes that where writ petition has been filed for the enforcement of any of the Fundamental Rights; where there has been a violation of the principles of natural justice and where the order of proceedings are wholly without jurisdiction or the vires of an Act is challenged. The relevant portion of the said decision reads as under:-

“13. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

“14. **Rashid Ahmad v. Municipal Board, Kairana, AIR 1950 Supreme Court 163**, laid down that existence of an adequate legal remedy was a factor to be taken into consideration in the matter of granting writs. This was followed by another Rashid case, namely, **K.S. Rashid and Son v. The Income Tax Investigation Commissioner, AIR 1954 Supreme Court 207**, which reiterated the above proposition and held that where alternative remedy existed, it would be a sound exercise of discretion to refuse to interfere in a petition under Article 226. This proposition was, however, qualified by the significant words, "unless there are good grounds therefor", which indicated that alternative remedy would not operate as an absolute bar and that writ petition under Article 226 could still be entertained in exceptional circumstances.”

15. Specific and clear rule was laid down in **State of U.P. Vs. Mohd. Nooh, 1958 SCR 595**, as under:

"But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a *writ of certiorari* has been issued in spite of the fact that the aggrieved party had other adequate legal remedies."

16. This proposition was considered by a Constitution Bench of this Court in **A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhwani and another, AIR 1961 Supreme Court 1506** and was affirmed and followed in the following words:

"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned Solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must

necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which be applied with rigidity in every case which comes up before the Court."

17. Another Constitution Bench decision in **Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies Distt. I, AIR 1961 Supreme Court 372** laid down:

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Court will issue appropriate orders or directions to prevent such consequences. *Writ of certiorari* and prohibition can issue against Income Tax Officer acting without jurisdiction under Section 34 I.T. Act."

14. In view of the ratio of the aforesaid decision and peculiar facts and circumstances of the present case, we are of the considered opinion that the impugned letter dated 14.08.2018 (Annexure P-11) is not sustainable in the eyes of law. The same having been issued without following the principles of natural justice and without considering the genuineness of the petitioner in making efforts to deposit payments from time to time. The present writ petition is accordingly, allowed. The impugned order/letter

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dated 14.08.2018 (Annexure P-11) is liable to be set aside. However, the petitioner would be liable to pay the arrears alongwith interest as per the policy of the Haryana Housing Board in lump sum within a period of 03 months from the date of receipt of copy of this order and continue to pay monthly installments as per Annexure P-5.

(G. S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

20.09.2023
Ramandeep Singh

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