

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

220

CWP-31033-2018

Date of Decision: 19.01.2023

P.K. JAIN

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Nipun Vashist, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana
for respondents No.1 and 3.

Mr. Anil Chawla, Advocate
for respondent No.2.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed under Articles 226/227 of the Constitution of India, 1950 for issuance of a writ in the nature of Certiorari for quashing the impugned notice dated 24.02.2016 (Annexure P-10) whereby the petitioner has been directed to appear before the Tehsildar-cum-Assistant Collector IInd Grade, Rewari, alongwith a sum of Rs.54,41,006/- being the amount ordered to be recovered by respondent No.2- Haryana Housing Board.

The undisputed facts of the present case are that the petitioner, an ex-employee of the Housing Board, Haryana, was dismissed from service on 11.08.2014 (Annexure P-1) for having made allotments of the corner houses in violation of instructions issued vide No.10797-800 dated 04.10.2006 and having also allotted the extra land adjoining to the houses mentioned in the said dismissal order. It was averred that as a result of huge difference in the rates of the allotted houses and the cost of extra land that was allotted by the petitioner alongwith the said houses, the respondent No.2-Haryana Housing

Board has sustained a loss to the tune of Rs.54.41 lacs approximately. The same was accordingly directed to be recovered from the dues of the petitioner. A recovery certificate was also issued thereafter. It is averred by the petitioner that respondent No.2-Haryana Housing Board has already recovered an amount of Rs.77,67,809/- from the house owners-allottees of the said house/adjacent land and as such, the recovery cannot be made again. A specific pleading in this regard was raised in paragraph No.3 of the writ petition, which is extracted as under:

“3. The following is the details of dates and payments made by owner of:-

a) H. No.2267:-

Sr. No.	Dates	Amount
1.	10.11.2006	3,47,321/-
2.	04.12.2017	4,50,000/-
3.	09.12.2014	2,00,000/-
4.	11.12.2014	4,50,000/-
5.	19.12.2014	5,00,000/-
6.	30.12.2014	1,50,000/-
7.	03.01.2015	1,25,000/-
8.	20.01.2015	1,20,000/-
9.	24.02.2015	5,53,000/-
10.	09.03.2015	2,35,000/-
	Total	31,30,321/-

b) H. No.2302

Sr. No.	Dates	Amount
1.	03.10.2013	8,00,000/-
2.	03.11.2015	2,85,000/-
3.	04.11.2015	2,00,000/-
4.	06.11.2015	7,00,000/-
5.	13.11.2015	1,50,000/-
6.	17.11.2015	3,00,000/-

7.	16.12.2015	1,00,000/-
	Total	24,35,000/-

c) H. No.2153

Sr. No.	Dates	Amount
1.	04.05.2015	5,00,000/-
2.	22.03.2016	20,49,809
	Total	25,49,809/-

d) H. No.2196

Sr. No.	Dates	Amount
1.	13.11.2006	3,18,947/-
	Total	3,18,947/- ”

The respondent No.2-Haryana Housing Board has already filed its reply to the above said pleadings and the aforesaid averment has not been denied therein and it is stated that irrespective of the recovery that has already been effected, the Haryana Housing Board is entitled to recover the same from the dues of the petitioner.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

A perusal of the dismissal order shows that the recovery in question has been ordered to be effected from the dues of the petitioner on account of the difference in the price of the corner plots as well as the adjacent land that had been allotted by the petitioner while serving as Estate Manager of the Housing Board, Haryana for which a charge sheet under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules 1987 had been served upon the petitioner and he was found guilty. The recovery of Rs.54.41 lacs was ordered to be effected on account of the heavy loss claimed to have been

sustained by the respondent No.2-Haryana Housing Board. Evidently, the recovery was ordered for recovering the loss sustained by the Haryana Housing Board and as the said loss is stated to have been made good by the allottees themselves, the entitlement of respondent No.2-Haryana Housing Board to recover an excess amount beyond the loss sustained by the Haryana Housing Board itself may not be legally sustainable. The counsel for the respondent No.2 has also not been able to refer to any provision as per which the recovery can be ordered even when the loss has already been made good. Since, the foundation of order qua recovery was the loss and the same having been recovered, the Department would have no concern with the source of money. The above object is also supported from the fact that the respondent No.2-Haryana Housing Board has already received the amount in its credit. There was no occasion for receipt of the same in case credit thereof was not to be given. The department cannot claim the cost of land twice. The petitioner would thus be entitled to claim set off/benefit of the amount that has already been deposited by the plot/house owners.

Accordingly, the present petition is disposed with a direction to the respondent authorities to recalculate the amount which is due against the petitioner, after taking into consideration the deposit made by the allottees of the plot/house for the adjacent land against the recovery of loss as per order dated 11.08.2014 (Annexure P-1) and thereafter to re-assess the recovery to be effected from the petitioner.

Petition stands disposed of accordingly.

19.01.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No