

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-28115-2022

Date of decision: 08.05.2023

HARYANA URBAN DEVELOPMENT AUTHORITY (NOW HSVP) AND
ANR.

.....Petitioners

VERSUS

VIJAY LAXMI AND ANOTHER

.....Respondents

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

Present:- Mr. Anil Chawla, Advocate
for the petitioner.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed for seeking quashing of the order dated 28.09.2021 (Annexure P-5) passed by the Permanent Lok Adalat (Public Utility Services), Rewari whereby the application filed by the respondent-applicant under Section 22 (C) of the Legal Services Authorities Act, 1987 has been allowed.

2. Briefly summarized, the facts as averred by the respondent-applicant are to the effect that plot No. 747 measuring 209 sq. meters was initially allotted by the respondent-Haryana Urban Development Authority then (now Haryana Shehri Vikas Pradhikaran) (for brevity 'HSVP') to Jagdish Kumar son of Narian Dass resident of House No. 6062, Mohalla Khasapura, Rewari vide allotment letter No. 909 dated 28.04.1987. The

same was transferred in the name of respondent-applicant Vijay Laxmi after obtaining all necessary No Objection Certificates vide re-allotment letter No. 641 dated 19.03.1996. The possession of plot in question was offered by reflecting its status as 747-P. The respondent-applicant submitted an application for approval of the construction plan which was sanctioned by the competent authority whereupon the house was constructed as per norms of the petitioner-HSVP and occupation certificate was also issued on 19.02.1999 in the same status itself. It is averred by the respondent-applicant that all the statutory dues qua the plot in question had been duly cleared by the original allottee and no encumbrance certificate had also been issued in favour of the allottee on 18.06.2010. Conveyance Deed vide registered Vasika No. 1158 dated 19.05.2010 was executed reflecting the status simplicitor as plot No. 747.

3. An application for revision of the site plan was submitted by the respondent-applicant on 22.04.2016 for construction of first floor on the plot in question and requisite fee of Rs. 35,660/- was deposited by her vide challan No. 30786. However, the petitioner-HSVP raised an illegal demand of Rs.2,00,000/- from the respondent-applicant for sanctioning the building plan on the ground that there were arrears qua the plot prior to issuance of the occupation certificate issued by the respondents on 19.02.1999 towards the differential of the price on account of the plot being preferential . It was also conveyed to the applicant that the demand recovered from him was by treating the aforesaid plot as non-preferential. Raising a challenge to the aforesaid demand, the respondent-applicant preferred the application under Section 22 (C) before the Permanent Lok Adalat (Public Utility Services), Rewari. Notice was issued to the petitioner-HSVP. Efforts were initiated to

resolve the dispute through an amicable resolution. However, the aforesaid efforts failed to yield any result. Consequently, the adjudication proceedings in terms of Section 22 (C)(8) of the Legal Services Authorities Act, 1987 was initiated by the Permanent Lok Adalat (Public Utility Services), Rewari.

4. The petitioner had entered appearance & taken various objection including maintainability as well as limitation. It has been stated that the plot had been originally allotted to Mahavir Singh on 28.04.1987 and then re-allotted to Smt. Geeta Aggarwal on 03.10.1991; Ashok Kumar on 29.01.1992; Jagdish Kumar on 29.06.1995 & lastly to Vijay Laxmi on 19.03.1996. Possession of the plot was given on 26.07.1996 & occupation on 16.07.1999. A revised building plan was submitted by the respondent-applicant on 24.05.2016 which was rejected for the reason that the plot was wrongly entered as general instead of preferential due to typographical mistake.

5. Upon consideration of the rival submissions advanced by the parties, the application was allowed by the Permanent Lok Adalat (Public Utility Services) , Rewari and the respondents were directed to sanction the revised site plan. The demand of Rs. 2,00,000/- as raised by the petitioner-HSVP was held to be bad. A further compensation of Rs. 50,000/- was awarded to the respondent-applicant. It was specifically observed by the Permanent Lok Adalat (Public Utility Services) , Rewari as under:

“10. In the present case there is no dispute regarding the allotment of the plot in question. It is correct that in some documents issued by the respondents the plot in dispute number has been shown as 747-P and in some documents the same has been shown as 747.

11. It also the admitted case of the respondents that originally the plot in question was allotted to one Sh. Mahavir

Singh S/o Sh. Manohar Lal and thereafter the plot in dispute was subsequently allotted to different persons and lastly the plot in dispute was re-allotted to the applicant. It is also the admitted case of the respondents that the possession of plot in dispute was handed over to the applicant and non-encumbrance certificate was also issued to the applicant. It is the admitted case of the respondents that a conveyance deed, in respect of plot in dispute, was got registered in favour of the applicant vide vasika No.1158 dated 19.05.2010.

12. Now the only dispute is with regard to the demand of arrears on account of preferential charges. As per the contentions of applicant, the applicant is not liable to pay any amount on account of preferential charges whereas as per the contentions of the respondents the plot in dispute was preferential plot and the applicant is liable to pay the preferential charges.

13. To substantiate their respective contentions both the parties produced their respective evidence.

14. The respondents did not produce any document alongwith the affidavit to substantiate the fact that the plot in dispute was preferential plot and the applicant is liable to pay the preferential charges. All the documents are in the custody of the respondents and why the respondents did not produce the relevant documents to prove the fact that the applicant is liable to pay preferential charges, is nowhere explained. Apart from the above no noflee was ever issued by the respondents to the original allottee to whom the plot in dispute was allotted on 28.04.1987 and thereafter to the subsequent allottees to raise the demand of preferential charges. This objection is raised by the respondents for the first time in the reply of the application. No legal action was ever taken by the respondents to raise the demand of alleged preferential charges. All this shows that neither the original allottee nor the subsequent allottees including the applicant are liable to pay the alleged preferential charges. The best evidence has been withheld by the

respondents, therefore, adverse inference should be drawn against them. In the absence of any document it shall be presumed that the plot in question was not a preferential plot and there was no liability of the original allottee and subsequent allottees to pay the alleged preferential charges. In these circumstances, we are of the considered opinion that the demand raised by the respondents on account of preferential charges is wrong and illegal.

15. The applicant had submitted the proposed site plan with the respondents in the year 2016 and had also deposited the requisite fees with the respondents as per the policy of HUDA, therefore, the respondents are legally bound to sanction the site plan as per law. The respondents have withheld the sanctioning of the site plan unnecessarily and without any reasonable cause, therefore, the applicant is also entitled for a sum of Rs.50,000/- from the respondents as compensation on account of harassment etc. With these observations the respondents are hereby directed to sanction the site plan, submitted by the applicant, within a period of 30 days as per law. The respondents are further directed to pay a sum of Rs.50,000/- (Fifty Thousand) to the applicant for compensation on account of harassment and delay.”

6. Aggrieved of the aforesaid award, the present writ petition has been filed. It has been averred in the present petition that the Permanent Lok Adalat (Public Utility Services), Rewari has failed to take into consideration the fact that the plot in question was a preferential plot and that the rate which was claimed from the petitioner was qua the non-preferential plot. The action of the petitioner-HSVP was thus claimed to be within the ambit of the jurisdiction and contractual liability between the parties. Counsel for the petitioner asserts that the Permanent Lok Adalat (Public Utility Services), Rewari failed to take into consideration the obligation of the

respondent-applicant to pay the statutory dues and the charges/consideration in lieu of the aforesaid plot as was applicable to them.

7. I have heard learned counsel appearing on behalf of the petitioner-HSVP and have also gone through the documents appended alongwith the present petition.

8. The Permanent Lok Adalat (Public Utility Services), Rewari has returned a finding that the petitioner-HSVP could not adduce any evidence to substantiate that the plot in question was a preferential plot and that any amount was outstanding against the aforesaid plot.

9. During the course of hearing, counsel for the petitioner was afforded opportunity to refer to any such evidence/documentary material to substantiate the aforesaid argument.

10. Upon re-examination of the entire record, learned counsel appearing on behalf of the petitioner has informed today that the plot was originally treated as a preferential plot and the amount/rate as applicable to a preferential plot had already been deposited by the original allottee before the transfer of the plot in favour of the respondent-applicant.

11. That being the situation as verified by the counsel and fairly informed to the Court, the act of respondent-authorities in unnecessary raising a demand of Rs. 2,00,000/- towards a differential price of preferential plot is clearly an act of deficiency on the part of-HSVP. Such illegal demand raised by the petitioner-HSVP without verifying its record has clearly led the respondent-applicant to undue and unnecessary harassment and having to approach the Court.

12. Having verified the above, I find that the finding recorded by the Permanent Lok Adalat (Public Utility Services), Rewari need not be

interfered with at this stage. The award is affirmed. At the same time, considering the fact that the Estate Officer of the HSVP chose to prefer petition mechanically and without verifying the findings recorded and/or even going through the file in question was clearly an act of breach of the litigation policy of the State. Accordingly, an additional cost of Rs. 25,000/- is imposed upon the HSVP, Panchkula through the Estate Officer, Rewari. The aforesaid additional cost of Rs. 25,000/- (over and above the cost of Rs. 50,000/- awarded as compensation) is ordered to be deposited within a period of 04 weeks with the High Court Legal Services Committee.

The present petition is accordingly dismissed.

(VINOD S. BHARDWAJ)
JUDGE

MAY 08, 2023

Vishal Sharma

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