IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1263-2024
Reserved on : 30.01.2024
Pronounced on : 26.02.2024

Hari Chand

...... Petitioner

Versus

Haryana State Industrial & Infrastruture Development Corporation Ltd. and another

...... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present : Mr. Harkaran Singh, Advocate
for the petitioner.

Mr. Ankur Mittal Advocate and
Ms. Kushaldeep Kaur, Advocate
for the respondents.

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VIKRAM AGGARWAL, J

1. By way of the instant writ petition preferred under Article 226 of the Constitution of India, the petitioner seeks refund of 10% extra premium paid as preferential location charges for a plot measuring 10 marlas in Sector 4-A, Industrial Estate, Bahadurgarh.

2(i). The mother of the petitioner namely Smt. Sushma was the owner of land measuring 7 kanal 6 marlas situated in Village Kassar, Tehsil Bahadurgarh, District Jhajjar. The same was sought to be acquired for a public purpose namely for setting up of an industrial Sector 4-B and for the said purpose, notification under Section 4 of the Land Acquisition Act, 1894 was issued on 25.07.2006. Ultimately, Award No.9 was announced on 14.02.2008. Being an oustee, Smt. Sushma was held entitled to the allotment of a residential plot measuring 10 marlas vide communication dated 03.07.2013 (Annexure P-3). A certificate of entitlement dated 20.09.2013 (Annexure P-4) was also issued in this regard.

2(ii). Pursuant to the issuance of certificate of entitlement dated 20.09.2013, vide communication dated 02.12.2013 (Annexure P-5) Smt. Sushma was called upon to remit a sum of ₹1,21,061/- towards 10% of the tentative price of the plot within a period of 30 days. Still further, letter of intent dated 21.02.2014 (Annexure P-6) was also issued giving the schedule of payment. It was also stated in the said letter of intent dated 21.02.2014 that letter of allotment would be issued after completion of infrastructural facilities.

2(iii). The cost of the plot included 10% extra charges apart from the rate of ₹4800/- per square meters on account of the same being a preferential location plot. It is not in dispute that the excess amount as demanded was duly paid.

2(iv). Smt. Sushma agitated the payment of 10% extra premium and sought information under the Right to Information Act, 2005, vide communication dated 26.05.2014 (Annexure P-10) in pursuance to which the information was provided to her vide letter dated 30.06.2014 (Annexure P-11). The communication between Smt. Sushma and the respondents continued and ultimately regular letter of allotment dated 04.07.2016 was issued wherein the rate per square meter was quoted as ₹5280/- which included 10% extra premium, the basic price being ₹4800/- per square meters.

2(v). The physical possession of the plot was also offered vide communication dated 22.02.2017 (Annexure P-15) and the possession was ultimately delivered to Smt. Sushma vide possession certificate dated 28.02.2017 (Annexure P-16). Conveyance Deed (Annexure P-17) was also executed on 25.04.2017.

2(vi). On 10.12.2018, the Board of Directors of the respondents took certain decisions which included a decision that 10% extra premium as charged for the corner residential plots be dispensed with since the allotment of R & R plots for the oustees was done on the basis of draw. An application was accordingly moved by Smt. Sushma for refund of the 10% amount vide communication dated 18.02.2019 (Annexure P-20).

2(vii). On account of the unfortunate demise of Smt. Sushma on 30.04.2019, the plot was in principle agreed to be transferred in the name of the petitioner vide communication dated 03.08.2021 (Annexure P-22), subject to fulfillment of certain conditions. The petitioner also agitated with regard to the refund of the 10% excess amount vide communications dated 27.09.2019 and 05.10.2023 (Annexures P-23 & Annexure P-24). To this, the respondents gave a reply dated 17.10.2013 (Annexure P-25) stating that the decision dated 10.12.2018 taken by the Board could not be implemented retrospectively.

2(viii). It is also the case of the petitioner that one Ashok Sharma who had also been allotted a plot in the same area under the same Policy. He had also made a similar request of refund of the 10% excess amount and his request had been accepted but in the case of the petitioner, the same was declined.

3. In response to the case set out by the petitioner in the writ petition**, a**n affidavit was filed by the Deputy General Manager (Estate), HSIIDC, Panchkula, Haryana on behalf of the respondents in which the basic stand taken is that the decision dated 10.12.2018 was to apply prospectively and at no point of time it was given retrospective effect. It has been further submitted that an advisory dated 05.09.2023 has also been issued to various offices informing that the decision dated 10.12.2018 of the Board of Directors is to be applied only prospectively. As regards the case of Sh. Ashok Sharma, it has been submitted that the same had been done erroneously and that vide communication dated 25.01.2024 (Annexure R-1), he has been called upon to remit 10% of the premium of the plot which amounted to ₹73,440/- within a period of two weeks, failing which the same would be recovered as per policy.

4. We have heard learned counsel for the parties.

5. Learned counsel for the petitioner has submitted that decision dated 10.12.2018 cannot be applied prospectively because it applies to all outstees and there would be no rationale in not extending the benefit to the allottees who had already been allotted the plots.

6. Per contra, learned counsel representing the respondents has submitted that the decision is prospective in nature as it would be virtually

impossible to apply the same retrospectively and in such a case, the State would suffer a huge financial loss as all allottees to date i.e. before decision dated 10.12.2018 was taken, would seek refund of preferential charges paid by them.

7. Having considered the submissions made by learned counsel for the parties, this Court finds the present writ petition to be devoid of merit. The decision taken by the Board of Directors of the respondents on 10.12.2018 (issued on 19.12.2018) (Annexure P-18) does not even remotely mention about past allotments. There is no reference or even an indication in the said decision that the intention was to apply the decision with retrospective effect. On the contrary, it was clearly laid down that since the allotment of R & R plots for the oustees is done on the basis of draw, 10% extra premium, as charged in the case of corner residential plots, be dispensed with. Had the intention been to give retrospective effect to the decision, there would have been a clear recital with regard to the same as also with regard to the refund of the amount already charged on account of preferential location charges. It cannot, in any manner, be suggested that any administrative decision taken at any stage would apply retrospectively and to the contrary, under normal circumstances it would apply prospectively unless and until it is specifically given effect with retrospective effect. It is well settled that any amendment in a substantive law would apply prospectively. In so far as administrative actions and policy decisions are concerned, the Hon'ble Supreme Court of India was dealing with an issue in the case of ***New Okhla Industrial Development Authority and another versus B.D.Singhal***

and others 2021 AIR SC 3457 wherein the Government of Uttar Pradesh had acceded to a proposal made by the appellants therein to enhance the age of superannuation from 58 to 60 years prospectively. The Allahabad High Court set aside the decision to give prospective effect and issued a direction that retrospective effect be given to the said Government order from 29.09.2002. This led to the concerned authority and the State of Uttar Pradesh questioning the correctness of the decision of the Allahabad High Court before the Hon'ble Apex Court. The Hon'ble Apex Court examined the issue including the reasons given by the High Court to apply the decision retrospectively and held that the decision to enhance the age of superannuation is a matter of policy and such a decision as to whether it would apply prospectively or not would fall within the realm of the policy. It was held that the High Court had trenched upon the realm of policy making and had assumed to itself, jurisdiction over a matter which lies in the domain of the executive. It was held that this decision was to be taken by the State Government and in drawing every cut off, some employee would stand on one side of the line while the others would be positioned otherwise and that this element of hardship would not be a ground to hold that the decision to apply the same prospectively was arbitrary. The Hon'ble Supreme Court of India, therefore, set aside the decision of the Allahabad High Court.

In the considered opinion of this Court, the issue raised in the present writ petition is squarely covered by the decision of the Hon'ble Apex Court and the decision dated 10.12.2018 cannot be interpreted to or held to be operative with retrospective effect.

8. As regards the case of Ashok Sharma, it has been clarified by the respondents that the refund of 10% amount charged on account of the preferential location charges was made erroneously and proceedings have been initiated to recover the same. The grievance, if any, on this account also, therefore, stands redressed.

In view of the aforemetnioned facts and circumstances, we do not find any merit in the present writ petition and the same is accordingly dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

26.02.2024
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Whether speaking/reasoned Yes/No
Whether Reportable Yes/No