2024:PHHC:124408

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-5697-2022 (O&M).
Date of Decision: 19.09.2024.

VEERAMATI

... Petitioner

Versus

PERMANENT LOK ADALAT (PUBLIC UTILITY SERVICES), SIRSA AND ANOTHER

... Respondents

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

Present: Mr. B.S. Mittal, Advocate, for the petitioner.

Mr. Arvind Seth, Advocate, for respondent No.2.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the award dated 10.11.2021 (Annexure P-8), passed by the Permanent Lok Adalat (Public Utility Services), Sirsa and a further prayer has been made for directing the respondent-Haryana Shahari Vikas Pradhikaran (Haryana Urban Development Authority as it was then) to refund the amount of Rs.12,00,500/- deposited by the petitioner along with interest.

2 Briefly summarized, the facts of the present case are that a commercial site bearing No.DSS-55 measuring 75.625 Square Meter, situated in F Block, Mandi Township, Sirsa, Tehsil and District Sirsa, was earlier allotted to one Sh. Subhash Mehta but the said site was resumed by the respondents-HSVP. Thereafter, in a fresh open auction, it was allotted in favour of petitioner for a sum of Rs.40,10,000/- vide Memo No. 5081 dated 01.04.2010. As per terms and conditions of the allotment letter, the sale consideration was to be deposited in eight installments along with interest thereon. A sum of Rs.4,01,000/- and an amount of Rs.6,01,500/- respectively was deposited by the petitioner on 15.03.2010 and on 30.04.2010 respectively being 10% and 15% of total cost of said site. It is averred that the petitioner approached the respondents repeatedly to rectify their record so that the name of the petitioner could be reflected as the new allottee of the site in compliance of the letter of allotment dated 01.04.2010 so that she could deal with the property in any manner as she liked, however, the respondents failed to update their record. When the petitioner went to the office of respondents-HSVP, to deposit the balance amount, the same was not accepted since the plot did not exist in her name. Even as on 26.11.2015, and as per the information received under the Right to Information Act, 2005, the respondents continued to reflect the ownership of the prior allottee Sh. Subhash Mehta to whom the allotment had been made on 25.01.2007 and had been resumed.

3 Specific attention is also drawn to the allottee account statement dated 23.12.2015 obtained from the respondent-HSVP which reflects the total price of the property as Rs.39,50,000.00/- with the date of allotment as 25.01.2007. Further, the said statement of account also reflects the outstanding delay interest and possession interest as Rs.28,49,299.00 and 4,71,007.00 making the total outstanding as Rs.62.82 lakhs approximately. It is contended that the respondents did not carry out correction in their record and reflected the name of the former allottee in their account statement and were charging delay interest without considering that the allotment in favour of the petitioner was made on 01.04.2010. The account statement reflected outstanding delay payment interest for the period of 2007, 2008 and 2009 as well. It is argued that the petitioner could neither further sell the property nor obtain loan for making payment for the same and also could not deposit the further payments due to records not being kept properly. The status of the petitioner as an allottee was thus continuously suspected. No heed was paid by the respondent-HSVP to the requests of the petitioner. Being harassed by the attitude of the respondents, the petitioner preferred an application under Section 22-C of the Legal Services Authorities Act, 1987 seeking refund of the deposited amount.

4 The respondent-HSVP entered appearance and raised objections including that the application in question was not maintainable

and that the petitioner only deposited one installment of Rs.1,98,000/- on 22.12.2014 and no further installment was deposited thereafter. An application for surrender of the plot was later moved by the petitioner on 27.09.2015 but an amount of Rs.52,49,481/- was due as on 24.02.2016 against her as per record of the respondent Department. The other factual assertions were not in dispute, however, it is submitted that the plot in question did not reflect the name of earlier allottee.

5 Efforts for an amicable resolution of the dispute as mandated under Section 22-C (4) to (7) of the Legal Services Authorities Act, 1987 had been undertaken by the Permanent Lok Adalat (Public Utility Services), Sirsa, however the same did not mature, hence, adjudication under Section 22 C (8) of the Legal Services Authorities Act, 1987 was undertaken.

6 Parties led their respective evidence and upon consideration thereof of the submissions advanced, the application under Section 22-C of the Legal Services Authorities Act, 1987, was dismissed by the Permanent Lok Adalat (Public Utility Services), Sirsa, vide award dated 10.11.2021 by observing as under:-

> *"10. After hearing both the parties, we are of considered view that the petitioner has failed to prove any deficiency in service on the part of the HUDA Department. The only plea of the petitioner is that she could not sell her plot/DSS in the market and also could not deposit the remaining amount of installment as the plot/DSS in question was not transferred in her name in the record of HUDA department but this plea of the petitioner*

is not tenable, as from the perusal of allotment letter dated 1.10.2010 and receipts of payment amount to Rs.4,01,000/- and 6,01,500/- dated 15.3.2010 and 30.4.2010, It is duly evident that plot/DSS in question had already been transferred in favour of the petitioner Smt. Veermati as her name is duly incorporated in these documents. When this huge amount has already been deposited by the petitioner against the Plot/DSS in question than the plea of the petitioner that she could not deposit the remaining amount of installments is also not tenable. However, as far as concerned to the charging of illegal interest and penalty is concerned, no cogent evidence has been placed on file by the petitioner. Petitioner failed to point out any ambiguity in the amount shown as due against the petitioner against the PLOT/DSS in question. As such in nut shel, we are considered view that there is no merit in the present petition filed by the petitioner. Hence, petitioner is not entitled to get any relief.

11. Resultantly, in the sequels discussion noted above, we are of the considered view that the petitioner has failed to prove any deficiency in service on the part of the respondent HUDA Department. Hence, there is no merit in the present petition and same is hereby dismissed with no order as to cost. Copy of this Awardbe supplied to the parties free of cost. File be consigned to the record room."

7 Aggrieved of the award passed by the Permanent Lok Adalat (Public Utility Services), Sirsa, the present writ petition has been filed.

8 Learned counsel appearing for the petitioner has argued that the reasoning given by the Permanent Lok Adalat (Public Utility Services), Sirsa is misplaced since the only reason for dismissal of the same was that the payment could not be made whereas the petitioner undisputedly had paid 25% of the total cost and had also deposited a sum of Rs.1,98,000/- and as such, it cannot be perceived that the amount was not deposited in the said account. It was also recorded that there was no evidence with respect to charging of interest and penalty from the petitioner. However, the aspect that there is no undue levy is required to be discharged by the respondent and no negative burden could have been put on the petitioner. He refers to the statement of account (Annexure P-6) appended with the present petition to submit that as per the record furnished by the respondents themselves in December 2015, there was a delayed payment interest pertaining to the year 2007, 2008 and 2009. The said account statement did not reflect the payments made by the petitioner from 2010 to 2014 which shows that the statement of account as maintained by the respondent is not correct. There was thus a prima facie discharge of burden by the petitioner to show his readiness to make the balance payment and thereafter onus shifted on the respondent to establish that the account statement reflected the correct amount that was due from the petitioner.

9 Counsel for the respondent-HSVP has reiterated his submissions as noticed above and argues that the plea of the system not accepting the payment from the petitioner is an afterthought. The petitioner

defaulted in payment of installments. Once the earlier installment of the amount i.e. 10% of the amount followed by 15% of the amount to be deposited within a period of 15 days of the acceptance of the bid had already been accepted followed by a payment of Rs.1,98,000/-, there was no occasion for the respondents about not receiving the balance consideration had the petitioner opted to deposit the same. He further submits that there was no error or lapse on the part of the respondent-HSVP and that the lapses were solely attributable to the petitioner. The revised statement of account dated 22.05.2024 has also been appended by the respondent along with the written statement as per which the petitioner was to pay the due amount.

10 No other argument has been raised.

11 I have heard learned counsel appearing for the respective parties and have also gone through the documents appended along with the present petition with their able assistance.

12 Having considered the contentions noticed above, I am of the opinion that the Permanent Lok Adalat (Public Utility Services), failed to appreciate the nature of the dispute brought before it. The petitioner had approached the respondent seeking refund of her money that had already been deposited. The reasons cited for seeking refund was however, on account of the respondents having failed to reflect the plot in the name of the petitioner on their portal as well as the system as a result whereof, the petitioner was restrained from selling the aforesaid plot. It was however not

in dispute that an application for seeking refund was submitted by the petitioner in October 2015 and even till that point in time, no action under Section 17 of the Haryana Urban Development Act, 1977 had been initiated by the respondent and no show cause notice for forfeiture or cancelation of the allotment was issued. It is also evident that the first notice under Section 17 (1) (d) of the Act was issued on 08.01.2020 i.e. much after the institution of the application before the Permanent Lok Adalat (Public Utility Services), in the year 2015. Even the said notice is not followed by any consequential action by the respondent. It seems that the above said notice had been issued only as an afterthought and to find a plausible defence for the inaction on the part of the respondent. Since there has been no cancellation of the allotment in favour of the petitioner or passing of any order of forfeiture, I fail to understand as to how the respondent-HSVP could have refused to entertain the application for surrender of the site moved by the petitioner in October 2015 and not to refund the sale consideration that had been deposited by her. Reference needs to be made to Clause 4 of the allotment letter which reads thus:-

> *"You are requested remit Rs.601500/- in order to make the 25% of the total of the said plot/building within 30 days from the date of issue of the allotment letter. The payment shall be made by a Bank Draft payable t the Estate Office, HUDA Sirsa and drawn on any scheduled bank at Sirsa, in case of failure to deposit the said amount within the above specified period the allotment shall be cancelled and the amount of 10%*

> *bid money deposited at the time of bid shall stand forfeited to the Authority, against which you shall have no claim for damages."*

13 Further, it is also evident from a perusal of the above letter that forfeiture of 10% of the bid money was permitted only in the event of the allottee failing to pay the installments to the tune of 25%. It is undisputed that prior to the submissions of the application for surrender of the plot and seeking refund of the money, 25% of the amount had already been deposited and an order of cancellation had been passed or order of forfeiture could be passed. The power to forfeit the sum of 10% deposited at the time of the bid follows an order of cancellation and not surrender. Since no order of cancellation against the petitioner had been passed, hence, the respondent would thus not be within their rights to even seek forfeiture of the amount to the extent of 10% of the bid money. Section 17 of the HUDA Act of 1977 (now HSVP Act, 1977) stipulates certain conditions when forfeiture may be ordered but no such exigency occurred in present case. The provisions for facility of reference is extracted below:-

> ***"17. Resumption and forfeiture for breach of conditions of transfer.***
>
> *(1) Where any transferee makes default in the payment of any consideration money, or any instalment, on account of the sale of any land or building, or both, under section 15, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why a*

penalty which shall not exceed ten percent of the amount due from the transferee, be not imposed upon him.

(2) After considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount of money due alongwith the penalty shall be paid by the transferee within such period as may be specified in the order,

(3) <u>If the transferee fails to pay the amount due together with the penalty in accordance with the order made under sub-section (2), or commits a breach of any other condition of sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the land or building, or both, should not be made</u>.

(4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub-section (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer, may for reasons to be recorded in writing, make an order resuming the land or building or both, as the case may be, and directing the forfeiture as provided in sub-section (3) of the whole or any part of the money paid in respect of such sale.

(5) Any person aggrieved by an order of the Estate Officer under section 16 or under this section may, within a period of

thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed :Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(6)The Chief Administrator may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit.

(7)The Chief Administrator may, either on his own motion or on an application received in this behalf, at any time within a period of six months from the date of the order, call for the record of any proceedings in which the Estate Officer has passed an order for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order in relation thereto as he thinks fit :Provided that the Chief Administrator shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.

(8) Any person aggrieved by an order of Chief Administrator under sub-section (6) may within a period of ninety days of the date of the communication to him of such order, prefer a revision petition to the Secretary to Government, Haryana, Town and Country Planning Department, in such form and manner as may be prescribed :Provided that the Secretary to Government, Haryana, Town and Country Planning Department, may entertain the revision petition after the expiry of the said period of ninety days, if he is satisfied that the petitioner was prevented by sufficient cause from filing the revision petition in time.

> *(9) The Secretary to Government, Haryana, Town and Country Planning Department, may, after hearing the revision, confirm, vary or reverse the order appealed from and may pass such order as he deems fit :Provided that the Secretary to Government, Haryana, Town and Country Planning Department, shall not pass an order under this section without hearing the parties."*

14 It is evident from a perusal of the above that the scheme of the Act of 1977 specifically provides that where any transferee makes default in the payment of any consideration money, or any instalment, on account of the sale of any land or building, or both, he may be called upon to show cause by the Estate Officer vide a notice in writing, within a period of thirty days, as to why a penalty which shall not exceed ten percent of the amount due from the transferee, be not imposed upon him and after affording a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount of money due along with the penalty shall be paid by the transferee within such period as may be specified in the order.

15 In the present case, the letter of allotment had already been issued, condition No.4 as incorporated in the letter of allotment which became binding between the parties mandated passing of an order of cancellation of the allotment along with an order directing forfeiture of the 10% amount of the bid money. No such order of cancellation or forfeiture

has been passed and the request for surrender of the plot along with refund of the money had already been submitted by the petitioner, before the initial notice under Section 17 (1) (which is although misconceived). No satisfactory explanation has been furnished by the respondents as to why the payment in question would not be refunded to the petitioner on a request being submitted and as to what prompted the respondents not to accept the said request. They were at liberty to prove their case of retaining the said amount and having not done so, an adverse inference ought to be drawn against them.

16 I find that the Permanent Lok Adalat (Public Utility Services), Sirsa, had fell in error in failing to understand the scope of the prayer made by the petitioner. It was not a case requiring determination of a lapse or negligence. The statutory provisions contained under Section 17 as well as the terms and conditions of the letter of allotment dealing with refund or forfeiture had not been taken into consideration by the Permanent Lok Adalat (Public Utility Services), and it has failed to advert to the right of an allottee to surrender the plot and seek refund thereof, which essentially arise in the present case.

17 Learned counsel for the respondent has also very fairly conceded the fact that the earlier allottee Mr. Subhash Mehta had been given the full refund. I find that there is no reason cited as to how the respondent could have distinguished the case of the petitioner from that of previous allottee Subhash Mehta. Once the respondents had given the full

refund to said Subhash Mehta, such parity ought to have also been extended to the petitioner. They were thus at all times aware of their obligation to refund the entire amount and that they could not have claimed forfeiture or retention of any money, yet, they compelled the allottee through an unnecessary litigation up to the High Court.

18 The Permanent Lok Adalat (Public Utility Services), failed to appreciate the pleaded case of the petitioner and even the statutory provisions and the conditions incorporated in the letter of allotment. The award thus suffers from mis-appreciation of evidence and is accordingly set aside. The respondents are held liable to refund the amount of Rs.12,00,500/- along with interest @ 10% per annum from the date of expiry of the period of 30 days from the date of submission of the application seeking refund till its actual disbursement. Let the above amount be released within a period of 03 months of receipt of a certified copy of this order failing which respondents shall be liable to pay interest @ 12% per annum. The incidence of the additional financial liability arising on account of failure of the competent authority i.e. respondent-HSVP in not taking any action as per law may be recovered from the erring official(s), in accordance with law.

19 The present petition stands allowed accordingly.

September 19, 2024 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

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