



IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-11160-2024(O&M)
Reserved on: 14.05.2024
Pronounced on: 01.07.2024

Ram Narayan

... Petitioner

Versus

The Adviser to the Administrator, U.T., Chandigarh and others ... Respondents

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

Present: Mr. Gagandeep Singh Sirphikhi, Advocate,
for the petitioner.

Mr. Kanav Goyal, Advocate, for
Mr. Gagandeep Singh Wasu, Advocate,
for the respondent(s)-Chandigarh Housing Board.

ARUN PALLI, J.

The petitioner has prayed for the following substantive relief:

“Civil Writ Petition under articles 226/227 of the Constitution of India, praying for issuance of a writ in the nature of CERTIORARI quashing the order dated July 25, 2017, Annexure P/14 passed by the respondent no.1 herein vide which the revision petition filed by the petitioner herein under Section 72-B of the Haryana Housing Board Act, 1971 (as extended to the Chandigarh) against the order dated Memo No.976/1-11-2006/CHB No. 5229/28-10-2016 passed by Board, Chandigarh Housing Board, UT, Chandigarh and the



order dated nil alleged to be intimated on 21.10.2010 passed by the Chairman and the order dated 12.02.2007 for the cancellation of the premises i.e, H.No. 3142, Palsora, UT, Chandigarh and further for setting aside the eviction notice dated 11.11.2014 and sealing the premises with a consequential relief to restore the site in the favour of the petitioner by de-sealing the same, had been dismissed.”

Learned counsel for the petitioner submits that vide letter of allotment dated January 23, 1995 (P-1), **dwelling unit No.3142, Sector 56, Palsora Colony, UT, Chandigarh** (demised premises) was allotted to **Ram Chander/Mangru** by the Chandigarh Housing Board. However, the allottee, vide GPA, Will, Affidavit and Agreement to Sell (P-2), executed on **October 27, 1997**, transferred his interest in favour of Ashok Kumar son of Sarwan Singh. And similarly, even Ashok Kumar, on **May 9, 2007**, transferred his rights in the demised premises to the petitioner (**Ram Narayan**). However, earlier thereto, for Ram Chander (original allottee) had caused certain building violations/deviations and violated the terms of allotment, he was served with a notice, dated May 9, 2002 (P-4), to show cause, as to why the allotment be not cancelled. But since, despite being afforded the opportunity, he failed to remove the alleged deviations/violations, vide order dated February 12, 2007 (P-5), the respondent-Board cancelled the allotment. And being aggrieved, **Ram Chander (original allottee)** assailed the order of cancellation of allotment by way of appeal (No.45/2007), which however was dismissed on October 21, 2010 (P-8). Whereafter, eviction proceedings were initiated and vide order dated January 15, 2015 (P-10), Ram Chander (original allottee) was ordered to be evicted from the demised premises.



It is submitted that faced with this situation, and since the petitioner (Ram Narayan) had acquired interest in the demised premises, he preferred an appeal under Section 72-A of the Haryana Housing Board Act, 1971 (for short, 'the 1971 Act'), assailing the orders of cancellation of allotment, as also October 21, 2010 (**ibid**), vide which the appeal preferred by the original allottee was dismissed. It is urged that no notice of hearing was ever issued by the Appellate Authority to the petitioner, and it was only when, a notice dated November 1, 2016, was affixed on the demised premises, the petitioner learned that appeal preferred by him had since been dismissed vide memo No.5229 dated 28.10.2016. Whereafter, it is submitted that even the revision filed by the petitioner under Section 72-B of the 1971 Act was dismissed by the revisional authority. Thus, this petition.

Learned counsel for the petitioner, with reference to the decisions rendered by the Division Bench as also the Full Bench of this Court in **M/s James Hotels Ltd. v. Union Territory, Chandigarh, 2009(3) RCR (Civil) 279**, and **Dheera Singh v. UT Chandigarh Admn., 2012(4) RCR (Civil) 970**, submits that resumption or cancellation of allotment on the ground of **building violations** should be the last resort. And, the allottee shall be granted every opportunity to remove the alleged violations/deviations. It is urged that petitioner is ready and willing to remove all such violations and, therefore, the order of cancellation of allotment and all subsequent orders be set aside, and the unit be restored to the petitioner.

We have heard learned counsel for the petitioner and perused the records.



Concededly, vide letter of allotment dated January 23, 1995 (P-1), dwelling unit No.3142, Sector 56, Palsora Colony, UT, Chandigarh was allotted to Ram Chander/Mangru. Per the terms of allotment, the premises could only be used for residential purpose. Further, the allottee could neither sublet the dwelling unit nor cause any additions or alterations without prior approval of the Board. It is not in dispute either, for Ram Chander (original allottee) caused large scale additions and alterations in the demised premises, he was served with a show cause notice dated November 25, 2005:

- “i) Stair case has been constructed on Govt/Public land and taken to 1st floor and from 1st floor taken to 2nd floor from**
- ii) Balcony has been provided at 1st floor above Govt./Public land.**
- iii) W.C./Bath, Room has been constructed at 2nd floor (extra Floor).**
- iv) W.C/Bath has been constructed above Govt./Public land at 2nd floor.**
- v) R.C.C roof projection has been provided above Govt./Public land.**
- vi) Green Joyti Model School is running in the D/Unit.”**

And, as indicated earlier, since despite repeated opportunities the allottee failed to remove those violations/deviations, the Board was constrained to cancel the allotment. Whereafter, **Ram Chander (original allottee)** filed an appeal (No.45/2007), which too was dismissed, vide order dated October 21, 2010. Significantly, post dismissal of the appeal, Ram Chander chose not to pursue the matter any further, and resultantly the order of cancellation has



since attained finality. And, for despite cancellation, Ram Chander (original allottee) failed to vacate the premises, he was served with an eviction notice under Section 51(2) of the 1971 Act. Whereafter, the order of eviction dated January 15, 2015, was passed and pursuant whereto the Board even obtained the actual physical possession of the premises.

However, having said that, the question which assumes significance is: as to what locus and right, title or interest does the petitioner have in the demised premises?

As indicated above, the case set out in the petition is that on **October 27, 1997**, Ram Chander (original allottee) transferred his interest in favour of Ashok Kumar. And similarly, vide GPA, Will, Affidavit and Agreement to Sell, dated **May 9, 2007**, Ashok Kumar purport to have transferred his rights/interest to the petitioner (**Ram Narayan**). However, nothing is placed on record that **conclusively** proves the execution and veracity of these documents. Significantly, neither Ram Chander nor Ashok Kumar is arrayed as party to these proceedings. Concededly, the petitioner had even filed an injunction suit restraining the defendants from taking forcible possession of the premises, which was subsequently withdrawn. But, for the reasons best known to the petitioner, neither the copy of the **plaint** nor the **order** vide which the said suit was permitted to be withdrawn, is appended with the petition. It is not clarified either if Ram Chander and Ashok Kumar were also arrayed as parties to the suit and the defence, if any, that was set out by them in their respective written statements. Further, even the circumstances that impelled the petitioner to withdraw the suit have not been explained either.

Significantly, nothing is stated in the petition if, faced with the order of



cancellation of allotment, Ashok Kumar availed any remedy. And if yes, what were the orders passed. Not just that, even if it is assumed that there was/is no issue as regards the execution and veracity of the documents (**ibid**), which formed basis of the claim of the petitioner, still we may observe that the petition is bereft of requisite pleadings as also the provisions of law whereunder any right, title or interest had vested in the petitioner.

This brings us to the most crucial aspect of the matter: the allotment in favour of Ram Chander (original allottee) was cancelled on **February 12, 2007**. Whereas the documents, pursuant where to the petitioner claims to have acquired rights/interest in the demised premises, were executed by Ashok Kumar (his predecessor-in-interest) on **May 9, 2007**. Thus, even if it is assumed that Ashok Kumar, had any right, title or interest in the premises, but post cancellation of allotment, he possessed no transferable title.

Albeit, from the reading of the impugned order, passed by the revisional authority, it is apparent that it did not advert to the terms of allotment, but while sifting through the different clauses of the letter of allotment, we find that clause 11, in the given circumstances, would also have a decisive bearing on the matter in issue:

“11. You shall not sell, alternate or transfer any of your right or interest in the said property or otherwise part with the possession of the whole or any part of the said property till you become owner or for a period of 10 years from the date of actual possession whichever is later subject to the under mentioned exceptions.

(a) Lease for a period not exceeding 5 years at a time.



(b) The right, title and interest can be mortgaged in favour of the Government, Life Insurance Corporation or any Scheduled Bank or any Corporate Bank in order to raise loan for the payment of price of built-up house to the Board.

Provided that the Board shall have first and paramount charge on the said property for the unpaid portion of purchase price and other dues outstanding against you, including penalty, if any.

Provided further that such lease or mortgage etc can only be created with the prior permission of the Board; and Board will be competent to impose any condition while granting such permission.

(i) *You shall not transfer the dwelling unit or your rights therein through the execution of Power of Attorney, Agreement to Sell, Will etc. till you become the owner or for a period of ten years from the date of actual possession, whichever is later.*

Again, we may point out that nothing is indicated in the petition, as to how, despite the allotment being subject to clause 11 (**ibid**), Ram Chander (original allottee) could alienate his rights/interest in the demised premises in favour of the predecessor-in-interest to the petitioner (Ashok Kumar).

In conspectus of the above, need we even say that the decisions rendered by this Court in *M/s James Hotels Ltd.* and *Dheera Singh (supra)* would have no bearing on the matter in issue.

It does not end there. The revision preferred by the petitioner was dismissed as back as on **July 25, 2017**, whereas the present petition has been filed nearly after 7 years on **April 30, 2024**. Thus, it suffers from gross, unexplained and inordinate delay. Therefore, in the wake of the position



sketched out above, the only and the inevitable conclusion that could be reached: the petition at hand is not only bereft of merits but also lacks bonafides.

Dismissed.

(Arun Palli)
Judge

01.07.2024
Rajan/AK Sharma

(Vikram Aggarwal)
Judge

Whether speaking / reasoned:
Whether Reportable:

YES/NO
YES/NO