IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Reserved on : 06.08.2024
Pronounced on: 29.10.2024

1) CWP No.14396 of 2024

Shamsher Singh ....Petitioner

V/s

State of Haryana and others ....Respondents

2) CWP No.15217 of 2024

Karan Nain ....Petitioner

V/s

State of Haryana and others ....Respondents

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

Present: Mr. Arpandeep Narula, Advocate,
for the petitioner(s).

Mr. Ankur Mittal, Addl. Advocate General, Haryana with
Mr. Karan Jindal, AAG, Haryana for respondents No.1 to 3.

Mr. Bawa Karanveer, Advocte for
Mr. Aman Bahri, Advocate for respondents No.4 and 5.

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VIKRAM AGGARWAL, J.

1. The petitioner(s) in the afore titled writ petitions are father and son. The petitioner Shamsher Singh who has preferred CWP-14396-2024 is the father of petitioner Karan Nain, who has preferred CWP-15217-2024. For, the issue involved is identical in both the writ petitions, they shall be disposed of by way of a common judgment. The facts are primarily being derived from CWP-14396-2024, titled ***Shamsher Singh vs. State of Haryana and others,*** though reference to the facts of CWP-15217-2024

shall also be made, wherever necessary.

2. The petitioner Shamsher Singh assails the order dated 21.02.2023 (Annexure P-4), vide which the allotment of Industrial Plot No.386, measuring 450 sq. mtr. situated in Sector-11, Phase-II, Industrial Estate, Barwala (hereinafter to be referred to as the "disputed plot") was cancelled and the order dated 14.12.2023 (Annexure P-9), vide which the appeal preferred against the said cancellation order was rejected.

3. Pursuant to an application moved by the petitioner, the disputed plot was allotted to the petitioner vide regular letter of allotment dated 14.09.2022 (Annexure P-1) (for short "the RLA"). The tentative price indicated in the regular letter of allotment was Rs.1,47,15000/-.

4. As per the petitioner, he had paid a sum of Rs.14,71,500/- as earnest money, being 10% of the tentative price. As per the terms and conditions of the RLA, a further sum of Rs.22,07,250/- was to be deposited by the petitioner, being 15% of the tentative price (to make a total of 25%), within a period of 30 days from the date of issuance of the RLA, extendable by another period of 30 days on payment of interest @ 15% per annum.

5. It is the case of the petitioner that he being 59 years old and a patient of cardiac disease had to be rushed to Ojas Hospital, Panchkula in the first week of October, 2022 i.e. on 04.10.2022 where he was managed and was advised bed rest for a period of two months (Annexure P-2). The petitioner resumed his routine around 15.11.2022, by which time he had missed the last date for submission of the acceptance letter and 15% of the tentative cost, the last date being 13.11.2022. Vide letter dated 21.12.2022 (Annexure P-3), a request was submitted to the respondents to open the online portal to enable the petitioner to make the payment. It is the case of

the petitioner that he had time up to 13.11.2022 to make the payment and the request was submitted on 21.11.2022 i.e. merely seven days after the last date of payment but the request did not evoke any response.

6. Instead of opening the link for payment, the allotment was cancelled vide order dated 21.02.2023 (Annexure P-4). Another representation dated 01.05.2023 (Annexure P-5) was submitted with the request to accept the payment, followed by yet another representation dated 26.05.2023 (Annexure P-6). In response to the same, vide communication dated 05.06.2023 (Annexure P-7), the petitioner was informed that his request had not been acceded to.

7. This led the petitioner to prefer an appeal (Annexure P-8) which too was rejected vide order dated 14.12.2023 (Annexure P-9) leading to the filing of the instant writ petition.

8. In CWP-15217-2024, the facts are identical. The regular letter of allotment was issued on 14.09.2022 for an Industrial Plot No.387, measuring 450 sq. mtr. situated in Sector-11, Phase-II, Industrial Estate, Barwala. Here, the tentative price was Rs.1,45,35,000/-. In this case also, on account of non-payment of 15%, the allotment was cancelled vide order dated 21.02.2023, which was followed by some representations and finally led to the filing of an appeal which was also dismissed vide order dated 24.08.2023.

9. Mr. Arpandeep Narula, learned counsel for the petitioner, Mr. Ankur Mittal, learned Addl. Advocate General, Haryana, who had caused appearance on advance copy having been served and Mr. Bawa Karanveer, Advocate, learned counsel representing respondents No.4 and 5, who had also caused appearance on advance copy having been served, were heard.

10. It was strenuously urged by learned counsel for the petitioner that the action of the respondents in cancelling the disputed plot and thereafter the appeal is illegal and arbitrary and accordingly deserves to be set aside. It was submitted that the non-payment of 15% of the tentative price was on account of unforeseen circumstances which the petitioner faced with on account of his ill health and after lapse of just about a week, a request was duly submitted to the respondents to permit the petitioner to make the payment but the respondents, in an illegal manner, did not accede to the request of the petitioner and cancelled the plot.

11. It was submitted that the impugned orders are violative of the provisions of the Estate Management Procedure 2015 (for short "EMP-2015") and Clause 6.2 of Chapter 6 thereof, as per which, on account of non-payment of dues, resumption of plots/sheds would be resorted to after following the due procedure. It was submitted that in the present case, no such procedure had been followed and the plots had been cancelled/resumed only on the ground of non-payment of dues without following the due procedure. It was submitted that under the circumstances, the action of the respondents is grossly violative of the principles of natural justice and accordingly deserves to be set aside. It was also submitted that as per Clause 6.3 (c) of EMP-2015, there were ample powers with the respondents to allow the appeal and give further time for payment which also was illegally declined.

12. It was further submitted that the findings given by respondent No.1 while dismissing the appeal that the petitioner had failed to approach the respondents within a period of 180 days from the date of issuance of the RLA for redressal of his grievances are false and contrary to the record

because the RLA was issued on 14.09.2022 and the first representation was filed on 21.11.2022 i.e. much before the lapse of 180 days. It was submitted that the cancellation had been done in a routine and mechanical manner and the impugned orders also do not give any reason much less a valid reason for the cancellation.

13. *Per contra*, it was submitted by learned counsel representing the respondents that there is no illegality in the impugned orders and that the action of cancellation of the disputed plot had been taken in accordance with the terms and conditions of the RLA. It was submitted that there was no requirement of issuing a notice to the petitioner and following the procedure envisaged in the EMP-2015, because the said procedure would be applicable in a case of resumption, whereas this was a case of cancellation on account of default in submission of letter of acceptance and payment of 15% of the tentative price.

14. Referring to the medical condition of the petitioner, it was submitted that the documents annexed with the writ petition do not show that the petitioner was in such a situation that the payment could not have been made. It was submitted that the son of the petitioner could have made the online payment and that on account of the payment not having been made, the allotment was rightly cancelled in terms of the provisions of the RLA.

15. Having considered the submissions made by learned counsel for the parties, we find no merit in the writ petitions. The RLA was issued on 14.09.2022. The tentative price was Rs.1,47,15000/- (one crore forty seven lakh fifteen thousand). As per Clause 2(i), a letter of acceptance was to be submitted by the petitioner in token of having accepted the allotment of the

disputed plot including the terms and conditions contained in the RLA and as stipulated in Appendix-A thereof. Clause 2(ii) laid down that along with the letter of acceptance, a sum of Rs.22,07,250 (twenty two lakh seven thousand two hundred fifty only) being 15% of the tentative price was to be deposited within a period of 30 days from the date of issuance of the RLA, which was further extendable by another 30 days with interest @ 15% per annum for the extended period. Upon deposit of this amount, 25% of the tentative price would be deposited (10% having been deposited as earnest money). For the further amount, provisions were made. As per Clause 2(iii), in the event of failure to submit the letter of acceptance along with the payment of 15% of the tentative price within the period provided for, the allotment was to lapse automatically and the case was thereafter to be dealt with as per the provisions of the EMP-2015.

Clauses 2(i), 2(ii) and 2(iii) of the RLA read as under:-

"2. AND WHEREAS the allotment, among other terms and conditions, contained in Appendix-A, is subject to following conditions precedent to the fulfilled by you within the stipulated period:

i. You are advised to carefully go through the contents of the RLA, as well as the terms & conditions stipulated in the Appendix-A. You shall be required to submit the Letter of Acceptance, in Appendix-B, duly signed (each and every page), in token of having accepted the allotment of above noted Industrial Plot, including the terms & conditions contained hereunder and as stipulated in Appendix-A;

ii. Alongwith the letter of acceptance, in Appendix-B, you shall also be required to remit a sum of Rs.2207250.00 (Rupees Twenty Two Lakh Seven Thousand Two Hundred Fifty only) to HSIIDC as per prescribed procedures towards 15% of the tentative price of the aforesaid Industrial Plot, so as to make it 25% thereof, thereof after including Rs.1,471,500.00/-(Rupees Fourteen Lakh Seventy One Thousand Five Hundred Only) towards 10% earnest money (excluding non-refundable progressing fee), already paid by

you at the time of submission of application. The amount towards 15% of the tentative price shall be payable by you within a period of 30 days from the date of issuance of RLA, further extendable by 30 days with interest thereon@ 15.00% p.a. for the extended period. Further additional 25% of the tentative price of the aforesaid Plot/Shed amounting to Rs.3,678,750.00 (Thirty Six Lakh Seventy Eight Thousand Seven Hundred Fifty) shall be payable by you within 60 days of date of issuance of RLA, without any interest. In case of delay in depositing the said 25% price of the plot beyond 60 days, delayed interest @ 15.00% p.a., as amended from time to time, for the period of delay beyond 60 days shall be payable by you which shall be compounded on the installment dates. The balance 50% of the tentative price of the plot shall be payable in four equal half yearly instalments within two years from the date of issuance of RLA due on 30th June and 31st December each year. Interest @12% pa (or as amended from time to time) on the balance amount shall be payable along with the instalment, from the date of offer of possession. In case of lumpsum payment of 75%/50% price of plot/shed, the following rebate structure shall be admissible:

a. In case of full payment of plot cost, without interest, within 45 days of issuance of RLA (dare of issuance of RLA to be excluded), the allottee shall be entitled for 10% rebate on plot cost. The allottee shall have to make payment of 15% price of the plot within 30 days without interest or within 45 days with interest, as per terms of allotment;

b. In case of full payment of plot cost, without interest, within 90 days of issuance of RLA (date of issuance of RLA to be excluded), the allottee shall be entitled for 5% rebate on piot cost. The allottee shall have to make payment of 15%/25% price of the plot within 30/60 days without interest or within 60/90 days with applicable interest, as per terms of allotment;

c. In case of full payment of plot cost within 120 days of issuance of RLA (date of issuance of RLA to be excluded), the allottee shall be entitled for 3% rebate on plot cost, but shall have to pay interest on balance 50% price of the plot from the date of issuance of RLA. The allottee shall have to make payment of 15%/25% price of the plot within 30/60 days without interest or within 60/120 days with applicable interest, as per terms of allotment;

d. In case of full payment of plot cost within 150 days of issuance of RLA (date of issuance of RLA to be excluded),

the allottee shall be entitled for 1.50% rebate on plot cost, but shall have to pay interest on balance 50% price of the plot from the date of issuance of RLA. The allottee shall have to make payment of 15%/25% price of the plot within 30/60 days without Interest or within 60/150 days with applicable interest, as per terms of allotment.

e. There will be no rebate upon lump sum payment after 150 days;

iii. In the event you fail to submit the Letter of Acceptance, together with payment towards 15% price to make up 25% of the tentative price of the aforesaid Industrial Plot, within 30 days from the date of issuance of RLA or with interest thereon @ 15.00% p.a. within further extendable period of 30 days, please note that in such eventuality, this allotment shall automatically lapse after the expiry of above stipulated period of 60 days; and the case shall be dealt as per the provisions of EMP-2015 as amended from time to time."

16. Clause (vi) dealt with default in payment of installments and provided that if the installments were not paid as per the terms and conditions, the plot would become liable for resumption:

"vi. Default in payment of installments shall, however, entail payment of delayed payment interest @ 15.00% p.a. for the defaulted period on the amount in default, compounded half yearly. In case you continue to be in default in making the payment beyond permitted period as per clause 2(v) above, the industrial plot shall become liable for resumption."

17. Admittedly, the 60 days period (after including additional 30 days which could have been availed for payment with interest @ 15%) expired on 13.11.2022. The first communication on record from the petitioner was on 21.11.2022 i.e. after the lapse of the said period. The said communication also makes an interesting reading. It nowhere mentioned about the ill health of the petitioner. It only says that since the petitioner was new to the HSIIDC payment and rules, he was not able to find the last date of 15% payment and, therefore, requested for opening of the link. It is,

therefore, clear that the ground of the petitioner having fallen ill is not a genuine ground but has been set up while filing the writ petition to gather sympathy. Coming to the medical record, it does show that the petitioner is a heart patient. However, the prescription (Annexure P-2) which is of 04.10.2022 does not mention any bed rest nor does it show any admission in the hospital. In fact, it mentioned that there was no angina when the petitioner consulted the doctor. The other record shows that the petitioner had undergone angioplasty in February 2021 and he remained admitted in hospital from 13.02.2021 to 16.02.2021. This, in itself, would not be sufficient to show that the petitioner was prevented at the relevant time from depositing the amount due.

18. The argument that no notice was issued prior to cancellation and that the procedure laid down for resumption was not followed is completely devoid of merit because the petitioner had not reached that stage. As has been noticed in the preceding paragraphs, the allotment was automatically cancelled once the letter of acceptance along with 15% of the tentative price was not deposited. The question of resumption would arise subsequently if the petitioner defaulted in payment of installments in terms of Clause 2(vi) of the RLA.

19. The argument that the observation in the appeal that the petitioner had not approached within 180 days is incorrect because the petitioner had approached in November 2022 is right on facts. However, this also would not come to the aid of the petitioner because as per terms and conditions of the RLA, as have been discussed in the preceding paragraphs, the petitioner had maximum 60 days for payment of the balance 15% and not 180 days and, therefore, any erroneous observation by the appellate

authority would not help the petitioner.

20. It is well settled that the terms and conditions of the letter of allotment are binding upon both sides, it being in the nature of a contract executed between the parties.

21. The cancellation of the disputed plot was in accordance with the provisions of the RLA. We do not find any illegality in the said action of the respondents and consequently find no merit in the writ petitions. Accordingly, the writ petitions are dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 06.08.2024
Pronounced on:29.10.2004
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No