



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

216

CWP-26403-2019 (O&M)

Date of decision: 23.09.2024

Rakesh Kumar

...Petitioner

VERSUS

Chandigarh Housing Board and others

...Respondents

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

Present :- Mr. Raj Kumar Bhatia, Advocate for the petitioner.

Mr. Gurpreet Singh Ahluwalia, Advocate for respondent No.1.

Ms. Sukhmani Patwalia, Advocate for respondent No.2.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the order dated 23.10.2018 passed by respondent No.1-Chandigarh Housing Board as well as the order dated 10.11.2016 passed by Permanent Lok Adalat (Public Utility Services), UT Chandigarh. The petitioner further prays for directing the respondents to issue an allotment in lieu of House No.1643-C, Nehru Colony, Kajheri, Sector-52, Chandigarh under Chandigarh Small Flats Scheme 2006 for Rehabilitating the jhuggi dwellers issued vide Notification No.6813 dated 06.11.2006 and as amended in 2009.

2. Briefly summarized, the facts of the case are that the petitioner claim that he was residing in House No.1643-C, Nehru Colony, Kajheri, Sector-52, Chandigarh and was having his Voter Card as well as Aadhar Card on the above said address along with the Bank Records for the same place. Copies of the same have also been attached by the petitioner along



with the present petition as Annexures P-2 to P-4. It is contended that the name of the petitioner figured in the Chandigarh Small Flat Scheme, 2006 and he was issued Form Sr. No.30529 in the Biometric Survey Record. The petitioner submitted his application dated 28.07.2016 for allotment of a small flat under the abovesaid scheme notified by the Chandigarh Administration-respondent No.1 and their form numbers are 76 and 77.

3. The petitioner approached the Permanent Lok Adalat (Public Utility Services) by way of an application No.1708 of 28.07.2016 but the same was disposed of with a direction to the petitioner to file an appeal before the Chief Executive Officer of Chandigarh Housing Board under Clause 17 of the said Scheme. Pursuant to the above said order, the petitioner approached the Appellate Authority, by way of appeal No.126 of 2017, but the same was rejected for want of eligibility conditions vide order dated 23.10.2018 which is now under challenge in the present writ petition for the reason that the petitioner could not produce the Voter Identity Card for the year 2004, 2005 or 2006 and as such, he did not fulfill the eligibility conditions prescribed thereunder.

4. Learned counsel for respondent No.1 has placed reliance on the reply filed wherein it has been submitted that respondent No.1 is the nodal agency to make the allotment of small flats only to those applicants who are declared eligible by the competent authority i.e. the Estate Officer-respondent No.2. It is further averred that the petitioner had filed the appeal No.126 of 2017 under Clause 17 of the Chandigarh Small Flats Scheme, 2006 before the Appellate Authority and the same was rejected vide order



dated 21.08.2018 for want of eligibility, on the basis of reply dated 05.04.2017 filed by respondent No.2-Estate Officer, UT Chandigarh. It is averred that as per the aforesaid reply, name of the petitioner did not figure in the Voter List for the years 2004 and 2007-and he submitted a certificate issued by the Head Master, Govt. School, Sector-52, Chandigarh stating that his son Aman was a student of class 8th and his date of birth was 23.09.2000 and his address was H. No.1643, Sector-52, Chandigarh as the proof. The said document was not admissible as a proof of residence under the said Scheme and as such the appeal was rightly declined.

5. Written statement had also been filed by respondent No.2-The Estate Officer, U.T. Chandigarh, through the Assistant Estate Officer, wherein they have referred to the essential terms and conditions of the Scheme and have reiterated that the petitioner did not fulfill the eligibility conditions prescribed under the Scheme and as mandated under the amendment dated 12.12.2019. No document establishing the residence of the petitioner had been furnished except for the certificate issued by the Head Master of the School which is not a document acceptable under the Scheme. Hence, the petitioner was rightly found ineligible for allotment of the flat under the said Scheme of 2006 and the appeal was rightly declined.

6. Learned counsel appearing on the behalf of the petitioner has reiterated his contentions noticed above and submitted that the findings recorded by the respondents in the impugned order are misplaced. He contends that the prescribed eligibility conditions as per the Scheme are as under:-



- (i) That the name of the person should appear in the Biometric Survey; and
- (ii) The name must appear in the Voter List as on 01.01.2006.

7. He contends that so far as the aspect of the name of the petitioner figuring in the Biometric Survey is concerned, the same is not a basis for rejection of the appeal of the petitioner. The petitioner has been rejected on second count even though the proviso to the second condition provides that if the name of the person does not appear in the Voter List of 01.01.2006, he would still be deemed eligible for allotment of flat under the said Scheme if his name appears in any of the Voter List as on 01.01.2004; or 01.01.2005; and 01.01.2007 or 01.01.2008. It is submitted that the name of the petitioner duly figured in the Voter List as on 01.01.2008 which is appended as Annexure p-2 along with the present petition and the same is not disputed or denied by the respondents. Hence, the stand of the respondents in declining the claim of the petitioner on the ground that he was not eligible for having failed to produce on record the Voter List or a valid proof residence for the year 2004, 2005 or 2006 is misplaced as they have ignored the proviso of the Scheme condition itself.

8. Learned counsel for respondent No.2 has reiterated the submissions and has referred to the Notification dated 08.01.2015 as amended vide Notification dated 12.12.2019 which is extracted as under:-

“All persons whose name appear in the bio-metric survey and voter list as on 1st January, 2006, or in the documents issued under any of the statute such as Motor



Vehicles Act, 1988 and the Passport Act, 1967 as a proof of residence between the 2004, shall be eligible for allotment of a flat on licence basis. The name of the person should also appear in the latest voter list or the year in which the allotment is to be made. However, if a person whose name was not found in the year 2013 (the year of demolition of the colony) voters list but had applied for vote and his name appeared in 2014 voter list, which is merely a reproduction of what is contained therein 2013 voter list and his name became available in 2014 voter list in the same colony, is eligible for allotment small flat:

Provided that any person whose name appeared in biometric survey but does not appear in the voter list as on 1st January, 2006, shall also be eligible for allotment of flat under the scheme if his name appears in the voter list as on 1st January, 2004 or 1st January, 2005 and 1st January, 2007 or 1st January, 2008 or in the documents issued under any of the statute such as Motor Vehicles Act, 1988 and the Passport Act, 1967 as a proof of residence between the 2004 to 2008."

9. She also refers to the relevant part of the impugned order and contends that the petitioner did not fulfill the eligibility conditions and as such his claim has been rightly declined as he could not furnish any proof of valid residence. She has also argued that the petitioner's name did not figure in the Biometric Survey as well.



216

CWP-26403-2019 (O&M)

10. Learned counsel for respondent No.1 reiterates the arguments advanced by the learned counsel appearing on behalf of respondent No.2.

11. No other argument has been raised.

12. I have heard the learned counsel for the respective parties and have gone through the documents appended with the present writ petition with their able assistance.

13. At the outset, it would be appropriate to refer to the impugned order passed by the respondent-authorities, which reads thus:-

“The appellant Sh. Rakesh Kumar S/o Sh. Shyam Lal through his counsel has filed this appeal for allotment of a small flat under the Chandigarh Small Flats Scheme 2006 in lieu of Jhuggi number 1643-C. Nehru Colony, Kajheri, Sector 52, Chandigarh.

Vide their reply, the Estate Office has stated that the eligibility criteria for allotment under the Scheme is as under:

i) All persons whose names appear in the biometric survey and voter list as on 01.01.2006 shall be liable for allotment of a flat on license basis. The name of the person should also appear in the latest voter list of the year in which allotment is to be made.

"Provided that any person whose name appeared in biometric survey but does not appear in the voter list as on 01.01.2006 shall be eligible for allotment under the



scheme if his name appears in the voter list as on 01.01.2004, 01.01.2005 and 01.01.2007 or 01.01.2008."

- ii) A family unit shall be entitled to one flat provided it fulfils all the conditions under this scheme.*
- iii) That the applicant must himself be residing in the notified colony. Mere ownership, unless accompanied by actual physical habitation of a building or structure or covered site shall not be sufficient to make a person eligible for allotment under the Scheme.*

It has been further stated in their reply that "the appellant had applied for allotment of alternate flat under the Scheme vide form No.30529 which has been examined by Screening Committee and it was observed by the Screening committee that the applicant does not have vote for the years 2004 to 2007-08 as per computer record. He was therefore declared ineligible".

The appellant has submitted the voter list from the years 2008 to 2010. Further, the appellant was given the opportunity to submit the voter lists for the relevant years admissible under the scheme or the proof of residence in lieu of the voter lists in terms of Chandigarh Administration Finance Department-1 Notification No. 11/6/106(P-V)-UTF(2)-2015/6685 dated 8th Jul 2015 wherein it has been clarified that that "In addition to the voter list, the documents



towards proof of residence issued under any of the Statute such as Motor Vehicles Act, 1988 and the Passport Act, 1967 as a proof of residence between 2004 to 2008 shall also be valid". The appellant has submitted a certificate issued by Head Master Govt High School, Sector 52, Chandigarh stating that Mr. Aman S/o Sh. Rakesh Kumar was a student of 8 Class and his date of birth is 23.09.2000 and address is # 1643, Sector-52, Chandigarh as per their documents. However, the same is not admissible as per the above clarification.

Further, the Estate Officials also confirmed that the co-applicant Smt. Simla Devi wife of the appellant Sh. Rakesh Kumar also does not fulfil the conditions for allotment of small flat in light of the orders of Hon'ble High Court of Punjab and Haryana in CWP No. 14507 of 2012 titled as Santosh Kumar and another vs Chandigarh Housing Board and others. As such, the appellant does not have voter list or the valid proof of residence for the years 2004 or 2005 or 2006 admissible under the scheme as well as the co-applicant Smt. Simla Devi does not fulfil the aforesaid eligibility criteria under the Chandigarh Small Flats Scheme 2006, therefore, the appeal is rejected for want of eligibility."

14. It is undisputed that the said Scheme prescribed the eligibility criteria requiring twin conditions as have already been set out in the



preceding paragraphs.

15. The application for seeking allotment of the flat was submitted by the petitioner on 28.07.2016. As per the eligibility conditions and the proviso prescribed thereunder, if the name of an applicant appears in the Biometric Survey and Voter List pertaining to 01.01.2004, 01.01.2005 and 01.01.2007 or 01.01.2008, he would be deemed to fulfill the eligibility conditions. Claim of the petitioner has been rejected since voter list as on 01.01.2006 did not show the name of the petitioner, however, as per the proviso to the eligibility criteria for allotment of flat under the Scheme, the petitioner was eligible since his name reflected in the voter list as on 01.01.2008.

16. The second plea of the respondents about the name of the petitioner not figuring in the Biometric Survey is falsified by their own pleading to the effect that number of the petitioner was reflected in the Biometric Survey i.e. 30529. So much so, the respondent No.1 has specifically submitted that the name of the petitioner was not recommended by the competent authority to the Chandigarh Administration for allotment of flat, hence, no such order for making an allotment was issued. Still further, the above argument about the name of the petitioner not existing in the Biometric Survey is defeated by the respondents themselves as they do not make any reference to the absence of name of the petitioner in the Biometric Survey in the impugned order or the written statement. The claim of the petitioner has been declined solely for his failure to produce eligibility certificate of his name being reflected in the Voter ID card for the year 2004,



2005 and 2006. There is no dispute with respect to submission of the proof by the petitioner in the form of the Voter Card as on 01.01.2008.

17. Responding to the argument of the respondents that only a school certificate as proof of residence, which is inadmissible as the evidence, I am of the opinion that the aforesaid requirement was never stipulated in the scheme itself. Twin conditions to ascertain the eligibility were prescribed thereunder which required the name of an applicant to be listed in the Biometric Survey and the requirement to provide the Voter ID Card for the years prior to 01.01.2006 or as on 01.01.2008. Once the requirement as prescribed by the respondents about the existence of the name of the petitioner in the Voter List as on 01.01.2008 was duly fulfilled along with his name actually figuring in the Biometric Survey, there was no occasion for the respondents to call for any other proof of residence. Prescribing any other condition or requirement, not stipulated in the Flat Allotment Scheme of 2006 itself, was an act beyond the scheme and could not have been claimed by the respondents. The same has rather subjected the petitioner to additional conditions of eligibility, though not required. It must also be kept in mind that the petitioner is a person who belongs to a marginalized section and is awaiting the welfare measures being taken by the respondents-authorities. The cardinal object of the scheme itself has been defeated by an irrational approach adopted by the respondents in requiring production of documents beyond that have been prescribed under the Scheme.

18. Further, in so far as the reference and much emphasis given on



the subsequent amendment carried out in the year 2019 by the respondents is concerned, a perusal of the same also shows that the said Scheme acknowledges the submission of the Voter List as on 01.01.2008 as a valid proof of residence and further expands the admissibility of certain other documents such as those issued under the Statutes of the Motor Vehicles Act, 1988 and the Passport Act, 1967 etc. as a proof of residence between 2004 to 2008. Hence, the object of the said amendment was to expand the documents admissible for establishing the residence proof. However, once the petitioner had himself satisfied the preliminary requirement of the Voter ID Card of 01.01.2008, no other document was required to be furnished. Production of any document other than those required, by making a misplaced reference to the amendment issued on 12.12.2019 needs to be disregarded since the application itself was submitted by the petitioner in the year 2016 and the requirements were introduced later.

19. Upon consideration of all the aforesaid facts and circumstances, I find that the stand adopted by the respondents is based upon misreading of the Scheme document itself and is without any justification. It also cannot be protected on a rational reading of the Scheme and the reasons cited by them for declining the appeal. The impugned order dated 23.10.2018 passed by respondent No.1-Chandigarh Housing Board is accordingly set aside. **The present writ petition is further disposed of** with a direction to the respondents to make an allotment of a flat to the petitioner, on the basis of his eligibility under Small Flats Scheme 2006 for Rehabilitating the jhuggi dwellers dated 06.11.2006. Since this Court is prima facie convinced that



the stand of the respondents was uncalled for and is based upon gross misreading of the Scheme document itself and prescribing eligibility conditions that were clearly in conflict with the requirement prescribed under the Scheme itself, hence, a cost of Rs.50,000/- is imposed upon respondent No.2 for foisting an unwanted litigation on a marginalized person of the society, to be paid within a period of 03 months of receipt of certified copy of the same, failing which the respondents shall be liable to pay an additional costs of Rs.10,000/- per month. The costs as imposed by this Court in the present order may be recovered by the Administration from the official(s) found guilty of dereliction, in accordance with law.

(VINOD S. BHARDWAJ)
JUDGE

23.09.2024

Mangal Singh

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