



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

CWP-24930-2021 (O&M)
Reserved on: 20.05.2024
Pronounced on: 14.08.2024

Satish Kumar Malik and Another

....Petitioners

Versus

State of Haryana and Others

....Respondents

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

Present: Mr. Chetan Mittal, Senior Advocate with
Mr. Sandeep Sharma, Advocate and
Mr. Mayank Aggarwal, Advocate
for the petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana,
Mr. Karan Jindal, Assistant Advocate General, Haryana and
Ms. Kushaldeep Kaur, Advocate.

Mr. P.S. Chauhan, Advocate
for the respondent-HSVP.

VIKRAM AGGARWAL, J.

1. The petitioners pray for the issuance of a mandamus directing the respondents to permit the petitioners to retain plot No.338, Sector-52, Urban Estate, Gurugram and to give physical possession of the same to the petitioners with a further direction not to charge any penal interest or penalties.

2. Plot No.338, Sector-52, Urban Estate, Gurugram (hereinafter referred to as 'the original plot') was initially allotted to one Shakuntla Sangwan vide allotment letter dated 26.06.2003 (Annexure P-1). She further sold this plot to one Rakesh Kumar and re-allotment letter dated 17.08.2004 (Annexure P-2) was issued. The petitioners purchased the original plot from the said Rakesh Kumar

and re-allotment letter was issued on 18.11.2005 (Annexure P-4). Possession of

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the original plot was offered to the petitioners on 27.12.2011 (Annexure P-6). Enhanced amount was demanded which was duly paid by the petitioners. Demand notices and various communications have been annexed as Annexures P-7 to P-11.

3. On 18.04.2012 (Annexure P-11), a request was made by the petitioners to the respondents to give physical possession of the original plot. However, the respondents allotted plot No.914, Sector-57, Urban Estate, Gurugram (hereinafter referred to as 'the alternate plot') *in lieu* of the original plot because as per them, the original plot was in litigation. Letter dated 04.07.2014 vide which the alternative plot was allotted has been annexed as Annexure P-12. However, ultimately the alternate plot was also found to be in litigation as a result of which vide communication dated 10.05.2018 (Annexure P-15), the petitioners requested that the original plot which had become free from litigation be given to them. Since the representation did not evoke any response, another representation dated 31.08.2020 (Annexure P-16) was submitted.

4. The respondent-authorities kept on sitting over the matter with *inter se* communications (Annexures P-17 and P-18), leading to filing of further representations dated 18.03.2021 and 25.06.2021 (Annexures P-19 and P-20).

5. Finally, vide communication dated 21.06.2021 (Annexure P-22), the Estate Officer, HSVP, Gurugram recommended the allotment of the original plot. In furtherance of the same, vide communication dated 29.06.2021 the Administrator, HSVP, Gurugram also made a recommendation on the same lines to the Chief Administrator, HSVP. Despite the same, the original plot was not given to the petitioners.

6. The writ petition has been opposed by the respondents. In the written statement submitted by respondents No.2 to 4, the factum of the original plot

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having been allotted and, thereafter, the alternate plot having been allotted have been admitted. It has been averred that the alternate plot had been exchanged *in lieu* of the original plot and, thereafter, revised offer of possession was given on 08.03.2016 (Annexure P-14). It has also been averred that the alternate pot was clear from any dispute at the time of exchange but the petitioners willfully did not apply for taking physical possession of the same through online PPM Portal. Subsequently, in 2018, the alternate plot became a subject matter of **CWP-22219-2018**. It has further been averred that in terms of the policy dated 15.11.2021 (Annexure R-2), the original plot cannot be given to the petitioners as the same can only be given to original allottees and not to subsequent purchasers. An objection has also been raised that the alternate plot was allotted in 2014 whereas the writ petition has been preferred in the year 2021 and the same is, therefore, barred by delay and laches.

7. Learned counsel for the parties were duly heard.

8. Learned Senior counsel representing the petitioners submitted that the action of the respondents in firstly unilaterally allotting the alternate plot and then not giving its possession and further declining to allot the original plot once it had become free from litigation is totally illegal and arbitrary. Reference was made to various documents on record including the re-allotment letters tracing the manner in which the original plot was re-allotted to the petitioners, the communications between the parties as regards the original plot and the alternate plot as also the recommendations by the authorities (Annexures P-21 to P-23) recommending that the original plot be given to the petitioners. Learned Senior counsel submitted that the petitioners had never applied for an alternate plot and on their own the respondents allotted an alternate plot which too was under litigation and now they are relying upon the policy (Annexure R-2) to say that the original plot cannot be

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allotted to the petitioners as they are subsequent purchasers. Learned Senior counsel submitted that despite having purchased the plot as far back as in 2005, the petitioners who are senior citizens have not been able to obtain possession of the original plot without there being any fault on their part. It was also submitted that the case of the petitioners is covered by a Division Bench judgment of this Court delivered on 02.06.2022 in ***CWP-26245-2021*** titled as '***Pawan Kumar Bhardwaj Vs. State of Haryana and Others***'.

9. Per contra, learned counsel for the respondents submitted that initially the petitioners did not obtain the possession of the original plot and subsequently they did not obtain the possession of the alternate plot despite the same having been offered. It was submitted that the alternate plot was allotted in 2014 whereas litigation with regard to the same started in 2018 and there was a four years period in which the petitioners could have taken possession. Learned counsel also submitted that the policies as regards allotment of alternate plots *in lieu* of plots under litigation are under review and the policy in question is also under review. Learned counsel submitted that there is no merit in the writ petition and the same accordingly deserves to be dismissed.

10. We have given our thoughtful consideration to the entire issue and find that the action of the respondents is highly unjustified and that the claim of the petitioners is *bona fide*.

11. Every human being has a desire to construct one's own house which is one of the three essentials of life i.e. food, clothes and shelter. In pursuance of that desire, the petitioners purchased the original plot on 18.11.2005 (though it had earlier been allotted to the original allottee on 26.06.2003). Admittedly, all enhanced compensations etc. were paid as demanded. An offer of possession was made by the respondents on 27.12.2011 and subsequently the petitioners also



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made a request seeking possession on 18.04.2012. The respondents, however, unilaterally allotted the alternate plot to the petitioners. It is again an admitted fact that there was no request made by the petitioners for the allotment of an alternate plot. The reason for allotment of the alternate plot was that the original plot was in litigation. The possession date was then treated to be 04.07.2014 i.e. the date of the allotment of the alternate plot. The possession of the alternate plot could also not be given because it came under litigation and in fact, is still in litigation. Subsequently, the original plot became free from litigation as a result of which the petitioners kept on pleading with the respondents to give them the original plot but all requests fell on deaf ears. This despite the fact that there was a recommendation by the own officers of the respondents on 21.06.2021 and 29.06.2021 that the petitioners deserved to be given the original plot.

12. The respondents then came out with a novel excuse that in terms of the policy dated 15.11.2021, only an original allottee could have been allotted the original plot once it had become free from litigation. The clause of the policy reads as thus:-

“An original allottee will only be considered for allotment of alternative plot in lieu of original plot. Original allottee for this purpose shall mean an allottee who has participated in the draw of lots conducted by HSVP and after being successful in draw of lots for a plot, accepted the allotment by depositing the 15% amount and said allotted plot is still in his name. Any such plot allotted in draw of lots will be considered as 'original plot',

Provided that where the original allottee has transferred the original plot in name of his family members, then said family member will be eligible to apply for allotment of alternative plot in lieu of Original plot. 'Family' for this purpose shall mean the family as defined in the HSVP policy for transfer of plots.

Provided further that whereas plot has been inherited and transferred on account of death of the original allottee, then a



person inheriting or transferring the plot in his name on account of said transfer will also be eligible to apply for allotment of alternative plot.”

13. In the considered opinion of this Court, these clauses are not intended for situations like the one in the present case. The respondents would have to remember that in the present case, even the alternate plot was not ultimately available because of litigation and for them to say that the petitioners would not be allotted the original plot also would be highly unjust and unfair. One such similar situation arose in the case of ***‘Pawan Kumar Bhardwaj Vs. State of Haryana and Others’***, ***CWP-26245-2021*** decided on 02.06.2022 wherein on account of the original plot having got embroiled in litigation, an alternate plot was allotted and the possession of the same was also not given. During that period, the original plot became free from litigation but the respondents refused to give the original plot. Under the circumstances, a Co-ordinate Bench issued a direction to give the original plot to the allottee. No doubt, in that case, the petitioners were original allottees whereas in the instant case, the petitioners are subsequent allottees but, in the considered opinion of this Court, this fact would also not make any difference and the respondents cannot be permitted to take support of the policy dated 15.11.2021.

14. Even otherwise, now policy dated 06.08.2024 has been floated which, though not a part of the record, was presented in another case and even otherwise has come to the notice of the Court and, therefore, judicial notice of the same can be taken as per which even a subsequent purchaser can be given an alternate plot. It provides that in case the original plot is not available, an alternate plot can be granted both to the original allottee as also to a subsequent allottee and in case even the alternate plot cannot be given on account of litigation etc., the original

the policy dated 06.08.2024 issued vide memo No.A-I-UB-2024/216155 read as thus:-

“Applicability of policy:-

(v) Only an allottee/ re-allottee will be considered for allotment of alternative plot in lieu of allotted plot. No GPA/ WILL/ SPA holder shall be considered for allotment of alternative plot under this policy.

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Conditions under which allotment of alternative plot shall be considered:-

a) - Where HSVP could not deliver the possession of plots due to litigation pending in the court by the original land owners/ plot falls on un-acquired land/ released land/ PLPA-forest area/ Omitted/ HT wire.

b) - Where the plot is not actually available on the ground as per layout plan.

c) - Where dimension of the plot are not uniform and it is not feasible to regularize the shape of the plot as of a regular sized plot provided that:

1) The dimension of front/rear/of the two sides of the plots differ atleast by 20%.

2) The actual area of the plot is increased or decreased more than 20% of the allotted area.

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Terms and Conditions of allotment of alternative plot:-

(1. to 9.) XXX XXX XXX XXX XXX

10. The case of allotment of alternate plot shall also be considered where the original plot was under litigation and alternate plot was allotted in lieu thereof. However, HSVP could not offer possession of alternate plot also, the said case can be considered for original plot in case the original plot has become free from all encumbrances. In case where original plot stands omitted and



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thereafter, alternative plot allotted to allottee/re-allottee shall become original plot and can be considered for restoration subject to other terms and conditions of this policy.

15. As regards the issue of delay and latches, the same would not affect the case of the petitioners for the petitioners were communicating with the respondents all through and it is not that the petitioners were not pursuing their remedies. It cannot, therefore, be said that the petition is barred by delay and latches.

16. In view of the aforementioned facts and circumstances, the writ petition is allowed. A direction is issued to the respondents to handover the vacant physical possession of the original plot i.e plot No.338, Sector-52, Urban Estate, Gurugram to the petitioners within a period of four weeks from today on its original terms and conditions

All pending application(s), if any, shall stand disposed of accordingly.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on: 20.05.2024

Pronounced on: 14.08.2024

Prince Chawla

*Whether speaking/reasoned :
Whether reportable :*

*Yes/No.
Yes/No.*