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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-34897-2019 (O&M)
Date of decision: 01.03.2024

Balwinder Singh

...Petitioner

Versus

Union Territory, Chandigarh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Jitender Dhanda, Advocate for the petitioner.

Mr. J.S. Chandail, Addl. Standing Counsel, UT Chandigarh and
Ms. Jyoti Kumari, Advocate for respondent Nos.1 and 2.

Mr. Amandeep Joshi, DAG, Haryana.

VIKAS BAHL, J. (ORAL)

1. This is a Civil Writ Petition filed under Article 226/227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the order dated 19.11.2019 (Annexure P-5). Further prayer has been made in the writ petition for directing respondent Nos.1 and 2 to hand over physical possession of House No.12/149, Sector-19, Chandigarh to the petitioner in view of allotment vide Office Order No.516 dated 04.06.2019 (Annexure P-2).
2. Learned counsel for the petitioner has submitted that the petitioner was working as a Head Constable in Haryana Police and was

posted at Police Headquarters Haryana, Panchkula and in pursuance of the petitioner having made an application, he was allotted House No.12/149, Sector-19, Chandigarh vide allotment letter dated 04.06.2019 under Rule 11 of the Government Residences (Chandigarh Administration General Pool), Allotment Rules, 1996. It is further submitted that the said house at the relevant time was not vacant and was occupied by the previous allottee namely Surinder Kumar, Superintendent (Revenue Department), Government of Haryana. It is also submitted that several efforts were made by the petitioner to get the possession of the said house but the same did not bear result and thus, the petitioner moved a representation dated 03.09.2019 to the Advisor to the Administrator, UT Chandigarh for handing over the possession of the said house. It is contended that when the possession was not given even thereafter, the petitioner filed a writ petition bearing No.CWP-28979-2019 which was decided by a Coordinate Bench of this Court vide order dated 04.10.2019 directing respondent No.1 to decide the representation dated 03.09.2019 by passing a speaking order within a period of one month. It is also contended that vide order dated 19.11.2019 (Annexure P-5), the representation of the petitioner was not acceded to and the primary reason given in the said order was that the house in question was not vacant even on the date the said order was passed and also that the allotments had been reviewed at the level of Administrator UT, Chandigarh in the month of July, 2019 and the allotments so made had been withdrawn/cancelled. It is further contended that neither any

opportunity of hearing was granted to the petitioner before cancelling the allotment nor any order was supplied to the petitioner with respect to the said cancellation. It is argued that the said order of the Administrator, on the basis of which, the impugned order had been passed has been annexed as Annexure R-1 along with the status report filed by way of an affidavit of Rupesh Kumar, IAS, Special Secretary, House Allotment Committee, UT Chandigarh and a perusal of the said Annexure R-1 would show that the Administrator had decided to cancel the allotments in cases where the houses had been allotted on vacation (in public interest) and had yet not been occupied and where the houses were, though approved in public interest, were yet not allotted. It is also argued that the case of the petitioner was not covered under either of the two grounds and thus, the rejection of the representation of the petitioner in the impugned order on the basis of the said decision taken by the Administrator is illegal and against law. It is further argued that after passing of the order dated 19.11.2019, the earlier allottee had vacated the premises on 16.12.2019 and since then the house in question is lying vacant and thus, the petitioner who has duly been allotted the house should be given the possession of the said house and in case the said possession is given, the petitioner is ready to pay monthly rent in accordance with law from the date of possession.

3. Learned counsel appearing on behalf of UT Administration, Chandigarh has opposed the present writ petition and has submitted that in the present case, the petitioner himself had stated that he wanted a

particular house i.e. House No.12/149, Sector 19A, Chandigarh and in his application, he had submitted that he was aware that the said house was going to be vacated soon and it was on the basis of the said application, the allotment of the house in question was made to the petitioner although, the said house was in occupation of the earlier allottee. Since, the earlier allottee did not vacate the house thus, the petitioner could not take the possession of the house and in the meantime, the order of allotment was reviewed by the Administrator in July, 2019 vide Annexure R-1 and as per the said review order, the persons who were allotted the house on vacation (in public interest) and were not able to occupy the same as well as the persons whose houses had been approved in public interest but were not allotted, were cancelled. It is submitted that it was not the fault of the authorities in not giving the possession to the petitioner. It is submitted that the rejection order dated 19.11.2019 is in accordance with law and deserves to be upheld.

4. This Court has heard learned counsel for the parties and has perused the paper book.

5. It is not in dispute that the petitioner after having been found eligible, was allotted House No.12/149, Sector 19, Chandigarh vide allotment letter dated 04.06.2019 (Annexure P-2) under the Government Residences (Chandigarh Administration General Pool) Allotment Rules, 1996. It is also not in dispute that at the time when the allotment was made and also till the time the order (Annexure R-1) in July/August 2019 was passed by the Administrator and also the impugned order/rejection

order dated 19.11.2019 was passed, the said house was in occupation of the earlier allottee namely Surinder Kumar and that he had vacated the said house on 16.12.2019 and since the last four years, the house had been lying vacant on account of the interim order of status quo passed by the Coordinate Bench of this Court on 02.12.2019. It is further not in dispute that the said house has not been allotted to any other person. Primarily, two reasons have been given in the impugned order dated 19.11.2019 for rejecting the representation of the petitioner seeking possession of the house after the allotment. First, being that the Administrator had in July, 2019, reviewed and cancelled the allotments. The said order of review has been annexed as Annexure R-1 (at page 44 of the paper book) by the counsel for UT Administration and the relevant portion of the said order is reproduced hereinbelow:-

“The Details are being provided below:-

Sr. No.			Quota for 2018- 19	Approval s for allotment taken	Allotted and occupied	Allotted on vacation and yet not occupied	Not yet allotted
1	UT Chandigarh	Public Interest	20	62	36	6	20
2		Medical Ground	21	21	20	0	1
3	Haryana	Public Interest	20	20	8	2	10
4		Medical Ground	21	21	19	0	2
5	Punjab	Public Interest	20	20	11	2	7
6		Medical Ground	21	21	14	1	6
7	High Court of	Public Interest	14	14	14	0	0

8	Punjab and Haryana	Medical Ground	15	15	15	0	0
Total			152	194	137	11	46

Now to adhere to the directions of the Hon'ble Supreme Court of India in the "Asha Sharma Vs. UT Chandigarh" case the in no case out of turn allotments not exceed 10% of the total allotments made, **the following are the viable options.**

1. **Houses Allotted on Vacation and yet not occupied in Public interest to all the constituents be allowed to be withdrawn and cancelled. These will be 6(UT)+ 2(Haryana) +2(Punjab) = 10 houses.**
- 2 **Similarly for the houses approved in Public interest but yet to be allotted may be cancelled. These will be 20 (UT)+ 10(Haryana) +7(Punjab) = 37 houses.**
3. *For the Houses approved on Medical Grounds for the column allotted on Vacation and Yet Not Occupied and Yet to be Allotted may be allowed for the further allotment of the houses. These will be 1(UT) +2(Haryana) +7(Punjab) = 10 houses”*

A perusal of the above order would show that with respect to Haryana in which State the petitioner is serving, out of quota for the year 2018-19, of 20 houses under public interest and 21 houses in medical ground, several houses had remained unallotted and the quota had not been filled up, much less was in excess. Even in case the total figures are taken into consideration, then also it would show that out of quota for the year 2018-19 of 152, 137 have been allotted and occupied and 10 had been saved on account of medical grounds thus, making the total

allotment of 147, which was less than 152. The order would show that even as per the Administrator UT Chandigarh, the two categories of persons whose allotments were required to be cancelled were the persons who were allotted houses on “**vacation**” and had yet not occupied (in public interest) and also the persons whose allotment had been approved in public interest but were yet to be allotted. It could not be disputed that the petitioner did not fall in any of the two categories inasmuch as the petitioner had already been allotted the house in question and thus, did not fall in the 2nd category which provided for cancellation on account of non-allotment and since admittedly, the house was in possession of the earlier allottee, as on the date of passing of the said order by the Administrator it could not be said that the house was ‘**vacant**’ and thus, the case of the petitioner would also not fall in the 1st category which provided for cancellation of the allotted house on the allottee not occupying in spite of the premises being vacant. Thus, reliance upon the order (Annexure R-1) to reject the representation of the petitioner and to cancel his allotment and to further not give possession to the petitioner was absolutely misplaced. The petitioner had done everything in his power to get possession of the property including giving representation dated 03.09.2019 and thereafter, filing writ petition bearing No.CWP-28979-2019 which was disposed of by the Coordinate Bench of this Court vide order dated 04.10.2019 directing the respondents to consider the said representation. Once the house in question was vacated by the earlier allottee on 16.12.2019, the petitioner should have been given the

possession of the same.

6. The second ground given in the order dated 19.11.2019 for rejecting the representation of the petitioner was that the house in question was in possession of the earlier allottee on the date when the order dated 19.11.2019 had been passed. Admittedly, subsequent to the passing of the said order, the earlier allottee had vacated the premises on 16.12.2019 and the premises has been lying vacant for the last four years and has not been allotted to any other person and thus, the case of the petitioner cannot be rejected on the said ground also.

7. Keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is allowed and the order dated 19.11.2019 is set aside and respondent Nos.1 and 2 are directed to restore the allotment of the petitioner and handover the vacant possession of the premises in question within a period of one month from today.

8. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

01.03.2024
Pawan

(VIKAS BAHL)
JUDGE

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