

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

**CWP-1313-2018
Reserved on: 28.01.2025
Pronounced on: 5.02.2025**

MOHAN LAL

.....Petitioner

Versus

UT OF CHANDIGARH AND ORS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Ms. Kushaldeep Kaur, Advocate
for the petitioner.

Mr. Anil Sharma, Advocate
for respondent Nos.1 to 3.

Mr. V.D. Anand, Advocate with
Ms. Priyanka Dalal, Advocate
for respondent No.4.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein, prays for the quashing of impugned order dated 19.09.2017, Annexure (P-15), whereby the appellate authority constituted under Clause 17 of the Chandigarh Small Flats Scheme, 2006, (hereinafter referred to as 'the Scheme') has rejected the appeal of the present petitioner. The present petitioner is also seeking the passing of a mandamus upon the official respondents to allot to him, thus the small flat under "the Scheme".

Factual Background

2. The Chandigarh Administration has introduced the Chandigarh Small Flats Scheme 2006, wherein, it was decided that persons residing in Jhuggis would be given a one room apartment by the Administration. The present petitioner had applied for the same.

3. The petitioner's application was not considered by the respondent concerned. Resultantly, the present petitioner became aggrieved and filed an application for settlement of the dispute, under, the Legal Services Authorities Act, before the Permanent Lok Adalat, Chandigarh. The Permanent Lok Adalat rejected the said application, by holding that the petitioner cannot be considered as "recognized resident" as required under the Scheme, therefore he is not eligible for allotment.

4. Aggrieved by the order of the Permanent Lok Adalat, the petitioner had filed writ petition bearing No.CWP-11542-2015, challenging the order passed by the Permanent Lok Adalat. The learned Single bench of this Court proceeded to set aside the order of Permanent Lok Adalat and also remanded the lis to the Lok Adalat for a fresh decision.

5. Thereafter, the Permanent Lok Adalat only observed that the applicant i.e present petitioner has to file an appeal before Chief Executive officer of CHB under clause 17 of the Scheme. In view of the said direction, the present petitioner filed an appeal before the Chief Executive officer. The appellate authority rejected the claim of the petitioner, by observing that in absence of any admissible proof of

residence rather for the requisite years, thus the appellant (present petitioner) is not eligible under scheme.

6. Hence, the instant writ petition becomes filed against the said order.

7. The entire nerve centre of this lis becomes centred upon the respective applicability or inapplicability vis-a-vis the petitioner's case qua the mandate as enclosed in sub clause (g) of Clause 3 of the Scheme, clause whereof becomes extracted hereinafter.

“Recognized Resident” means a resident of a Notified colony whose name is included both in the voter list of 2006 and whose name is also included in the Bio Metric Survey conducted by the Chandigarh Administration in the month of March 2006 and is continuously residing in the colony. Provided that in case of the demise of the Recognized Resident (RR) one member of his family, as defined above, who fulfills the conditions of the RR will be eligible for being a licensee”

8. Clause 6 of The Chandigarh Small Flats Scheme 2006, is also relevant, as such, the said clause also becomes extracted hereinafter.

“6. (a) With respect to every block of a Notified Colony selected for clearance, allotment of a flat shall be made as under:

(i) All persons whose names appear in the biometric survey and voter list as on 01.01.2006 shall be eligible 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.

(ii) A person who owns more than one habitation in any of the Notified Colonies in his own name or in the name of any dependent member of his family shall be entitled to the allotment of only one flat under this Scheme.

(iii) A family unit shall be entitled to one flat, provided it fulfills all the conditions under this Scheme.

(b) All allotments of flats under this Scheme will be on monthly license fee basis consisting of One Room Flat in a multi-story building.”

9. Though, the (supra) clauses have suffered amendments theretos. Furthermore, since therebys the hereinabove extracted clauses, rather are not relevant, for putting a quietus to the instant controversy, as the governing regimen relating to the entitlement of the present petitioner to secure a license from the competent authority, rather is the one which was in vogue or was in prevalence at the time of the making of the application. Since the apposite application was made by the present petitioner on 04.12.2009. Resultantly when on the date of the application, the hereinafter extracted amendment to the scheme, thus was in vogue or was in prevalence. As such, the entitlement of the present petitioner to secure a license is to be determined in terms thereof.

Sub-clause (g) of Clause 3 of the Scheme

“Recognized Resident” means a resident of a notified Colony whose name is included both in the voter list of 2006 as well as in the Bio Metric Survey conducted by the Chandigarh Administration in the year 2006 and is continuously residing in the colony and shall also include a resident of a notified colony whose name does not appear in the voter list as on 1st January, 2006 but appears in the voter list as on 1st January, 2004, 1st January, 2005, 1st January, 2007 and 1st January, 2008:

Provided that in case of the demise of the Recognized Resident, one member of his family, as defined

above, who fulfills the conditions of the Recognized Resident will be eligible for being a licensee.”

Sub-clause (i) of clause 6(a) of the scheme

“Provided that any person whose name appeared in bio-metric 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”

10. Reiteratedly since the hereinabove provisions carried in the Scheme were in prevalence, at the relevant time, as such the regimen embodied in the said Scheme, but would become the benchmark for testing the eligibility of the petitioner, thus to seek a license.

11. Undisputedly the present petitioner's name occurred in the biometric survey which was conducted by the Chandigarh Administration in the year 2006. Moreover, though there is no evidence on the record to suggest that post 2009 the present petitioner is not continuously residing in the colony. Furthermore, though along with the present petitioner being included in the biometric survey, as became conducted by the Chandigarh Administration, in the year 2006, was also required to be mentioned in the voter list of 2006. Moreover, since it is also further declared, in the definition imparted to “recognized resident”, that if a jhuggi dweller's name, thus appears in the voters list as on 01.01.2004, on 01.01.2005, on 01.01.2007 and on 01.01.2008, thereupon such a jhuggi dweller is deemed to qualify for being endowed the espoused license by the competent authority.

12. Now evidently the present petitioner, when become

included in the biometric survey, as became conducted by the

Chandigarh Administration in the year 2006 and though the present petitioner was not enlisted as a voter in the year 2006, yet when in terms of the (supra) definition as becomes imparted to the term “recognized resident”, thus with the present petitioner being included in the voter list as on 01.01.2004, on 01.01.2005, on 01.01.2010 and on 01.01.2011. However, yet since in conflict with the apposite ordainment, rather with the name of the present petitioner, thus not occurring in the voter list, as on 01.01.2006 nor it occurring in the voter list as on 01.01.2007, on 01.01.2008, and on 01.01.2009, thereupon but with the ordained condition remaining unaccomplished, thus the impugned order become passed.

13. Be that as it may, since the (supra) significations, as become spoken vis-a-vis “recognized resident”, do create an anomaly, to the extent that

a) Despite the applicant satisfying the criteria relating to his/her name becoming included in the biometric survey as became conducted in March 2006.

b) Despite in the years 01.01.2004, 01.01.2005, 01.01.2010 and 01.01.2011, the present petitioner becoming enlisted as a voter, yet on account of petitioners name not being enlisted as a voter in the years 01.01.2006, 01.01.2007, 01.01.2008 and 01.01.2009, rather the petitioners name being not declared to be “recognized resident”.

14. Now in case a rigid necessity becomes insisted upon the present petitioner, to disclose material suggestive, that he was also enlisted as a voter in the voters list for the year 01.01.2004, for the year 01.01.2005, for the year 01.01.2007 and for the year 01.01.2008,

therebys the petitioner becoming untenably insisted to satisfy an exacting condition, despite the fact, that the preparation of voter list, rather is made on the basis of the staff of the election commission concerned, making enumeration(s) of the jhuggi dwellers, through theirs physically visiting the sites concerned. Now, since at the time of apposite physical visitings vis-a-vis the jhuggi of the present petitioner, rather the present petitioner may not have been found inside the jhuggi, thereby it appears that his name did not occur in the voters list(s) concerned, but yet therebys it does not imply that he was not continuously residing in the jhuggi since the year 2006 upto 2008, especially when his name appeared in the voter list, drawn for the year 2010 and 2011.

15. More importantly, when the factum of the present petitioner continuously residing in the jhuggi rather since the year 2006 becomes supported from his name appearing in the biometric survey, besides when the said factum is also corroborated from the certificate issued by the Contractor concerned, who had installed an electricity connection in the jhuggi of the petitioner, thus with bespeakings therein, that the said installed electricity connection was so installed in the year 2003. Therefore, unless evidence to rebut the said became adduced by the respondents concerned, which however is not been done, therebys it appears that though assumingly there was no meter sanctioned vis-a-vis the jhuggi of the present petitioner, but irrespective of no meter becoming sanctioned by the department concerned, vis-a-vis the jhuggi of the petitioner, yet when the (supra) annexure with the

contents therein rather remains unbelied, thereupons, as stated above the petitioner in terms thereof rather was continuously residing in the jhuggi. The said fact also becomes corroborated from the Aadhar Card of the present petitioner, wherein thus speakings are made, that he was residing in the jhuggi continuously upto the year 2011.

16. Cumulatively therebys it appears that the non inclusion of the name of the present petitioner, in the voter list for the year 2006, was a sequel of the staff of the Election Commission, who then visited his jhuggi, thus finding the present petitioner to be not temporarily residing there. Since subsequently, the present petitioners name, thus occurs in the voters list for 2010 and for the year 2011, therebys the non inclusion of the name of the present petitioner, in the voter lists for the 2006, thus support the (supra) finding that the said non inclusion of the name of the present petitioner in the said voters list, but was a result of his not being found inside his jhuggi at the time when the staff of the Election Commission visited his jhuggi and/or also presumption becomes raised, that the apposite voters list became drawn without the staff visiting the area concerned.

17. Be that as it may, besides when prima facie rather evidence, to discredit the said finding, was also required to be permitted to be adduced at the instance of the present respondents, but before the competent officer. However, since neither evidence to prima facie discredit the said finding, was ever adduced in the proceedings drawn by the competent authority nor also when any finding on the said adduced evidence became recorded by the competent authority.

Resultantly therebys it has to be concluded that the non appearance of the name of the present petitioner in the voters list for the year 2006, but was a sequel of either the staff of the Election Commission never visiting the jhuggi concerned, or the said non inclusion being a sequel of the present petitioner, thus at the relevant time not being found inside his jhuggi, has may be then, he was earning wages through his being employed, as a daily wager under his employer.

18. Furthermore, since even to the present petitioner, no opportunity became assigned by the competent authority, to justify his non inclusion in the voters list for the year 2006. Moreover, when the said non inclusion may have been banked upon the (supra) premise. As such, therebys for want of assignings of an adequate opportunity to the petitioner for his justifying his apposite non inclusion, but on the said account, thus results in a conclusion that therebys the present petitioner has been arbitrarily disqualified from being construed to be a “recognized resident” in the jhuggi concerned.

19. The ouster of the present petitioner from the definition of “recognized resident”, thus appears to be made through an ill informed order which for reasons (supra), becomes not anvilled upon any cogent evidence.

20. In sequel, when the holistic purpose of the scheme, thus is to be endowed to the jhuggi dwellers, who are the ultra marginal section(s) of society, inasmuch as, thereby theirs becoming provided with a shelter, so that therebys the Constitutional provision relating to right to life rather also becomes fully activated. Resultantly, a more

detailed inquiry was required to be engaged into by the competent authority, thus through the (supra) opportunities becoming advanced to all concerned. However, since no detailed inquiry in respect of the present petitioner being construed to be a “recognized resident”, thus palpably has not been undertaken by the competent authority. Resultantly therebys the non takings of a thorough detailed proceeding(s), thus with opportunities to all concerned, to adduce the best evidence qua the respective satisfaction(s) or non satisfaction(s), being drawn by the concerned, vis-avis the term “recognized resident”, rather makes the impugned order to suffer from a gross procedural error, therebys it is required to be quashed, and, set aside.

21. In aftermath, there is merit in the instant writ petition, and, the same is allowed. Resultantly, the impugned order dated 19.09.2017 Annexure (P-15) is quashed and set aside, with a further mandamus upon the official respondents to, within 3 week from today allot the small flat under the Scheme to the present petitioner.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

5.02.2025

Ithlesh

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