

(2011) 06 P&H CK 0030

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 15710 of 2010

Raghubir Singh

APPELLANT

Vs

Haryana Urban Development
Authority and others

RESPONDENT

Date of Decision: June 1, 2011

Citation: (2011) 164 PLR 169

Hon'ble Judges: Ranjit Singh, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Ranjit Singh, J.

The land measuring 32 kanals out of total land of 38 kanals 12 malars owned by the petitioner situated in village Bohar, Tehsil and District Rohtak was acquired. Since the land acquired is more than 75% of the total holding, the petitioner was entitled to allotment of plot as per the policy formulated by the HUDA known as Oustees policy. The petitioner, however, was not allotted the plot. He filed the complaint before the Consumer Forum at Rohtak. The petitioner, however, did not pursue his complaint before the Consumer Forum and withdrew the same to pursue his claim before the Oustees Lok Adalat.

2. It may need a mention that Civil Writ Petition No. 15433 of 2006 titled Amar Singh v. HUDA, was filed before this Court where the Chief Administrator, HUDA appeared and made a statement that the department had constituted the Oustees Adalat for settlement of the claims of persons/owners of the land seeking allotment of plots under oustees category. The petitioner, therefore, withdrew his complaint pending before the Consumer Forum to approach the Oustees Lok Adalat. The Oustees Lok Adalat was held at Rohtak under the Chairmanship of then Administrator, HUDA.

3. The petitioner was also sent a notice to appear which he did on 14.02.2007. The case of the petitioner was discussed and it was decided that the petitioner is entitled

to 500 square yards plot as per the HUDA oustees policy. The order passed by the Oustees Adalat is annexed with the petition as Annexure P-1 and the operative part thereof reads as under:

After hearing the applicant and careful perusal of the record submitted before the Oustees Adalat, it is decided that the applicant is entitled to a plot as per HUDA oustees" policy, but as per list submitted by Dy. Supdt., there is no vacant plot of any size in Sector-2, Rohtak. Therefore, it is decided that the applicant be allotted a plot under Oustees policy in new forthcoming sector and the rate of the said sector be charged from the applicant as per his undertaking submitted already.

4. This order was passed on 14.02.2007, which was the date the petitioner was asked to appear as is noticed in the impugned order. The petitioner filed an application along-with demand draft of Rs.3,94,000/- in favour of Estate Officer, HUDA, Rohtak for allotment of 500 sq. yards plot in terms of the decision taken by the Oustees Adalat. The respondents still did not take any action for allotment of plot on the ground that the plots vide Annexure P-2 were only for the oustees category land owners whose land was acquired for Sectors 5 and 6, Rohtak. The petitioner has, thus, approached this Court pleading that the respondents have seriously erred in not considering the claim of the petitioner though it has been allowed by Oustees Adalat constituted by the respondents themselves.

5. The respondents have filed reply in response to notice issued to them. It is pointed in the reply that the respondents have filed an appeal against the order, Annexure P-1, before the apex appellate body consisting of Administrator, HUDA (HQ) and CTP, HUDA, Panchkula which is still pending. It is, accordingly, pleaded that the writ petition is premature and so should be dismissed. Without any justification, the allegation is made against the petitioner that he has not approached this Court with clean hands and has rather misstated facts. This averment is made without disclosing any reason as to what fact is misstated and on what ground the allegation of misstatement is alleged saying that the petitioner has not approached the Court with clean hands. It is pointed out that the petitioner had never applied for allotment of plot under oustees category at the time of floating of the sector. He had never submitted an application in the prescribed proforma alongwith supporting documents and the earnest money equivalent to 10% of the cost of the plot in Sector 2, Rohtak. Accordingly, the prayer is made to dismiss the writ petition as premature.

6. When the case came up for hearing, counsel for the petitioner pointed out that the appeal has been filed in the year 2010 only after notice of motion was issued by this court on 01.09.2010. Since the date of filing of the appeal was not disclosed in the reply, counsel for the respondents was given time to ascertain this fact. Counsel appearing for HUDA thereafter prayed for time to file an additional affidavit, which prayer is declined. Counsel for the petitioner then pointed out that he was served a notice for appearance on 14.12.2010 in the appeal. This was in pursuant to memo

dated 16.09.2010.

7. Obviously, the respondents have taken action to file appeal once notice issued by this Court. This, is to say least, appears to be actuated with malice on the part of the respondent/HUDA. Even the stand taken in the reply that the petitioner has not applied for allotment of plot in Sector 2, Rohtak is belied from the observations made by the Oustees Adalat in Annexure P-1. The applicant/petitioner had clearly stated before the Oustees Adalat that the land was acquired in Sector 2 but there was no 500 square yards plot carved out in Sector 2, Rohtak, which was as per the entitlement of the petitioner, in terms of the policy of HUDA. Accordingly the applicant was forced to apply in 8 marla size against his entitlement of one kanal plot. The petitioner has also submitted an undertaking by way of affidavit that in case there is no vacant plot in Sector 2, Rohtak then he would have no objection to accept the plot in other sector.

8. I find the action of the respondent/HUDA to be totally unfair, inequitable and unjust. Firstly, the conduct of respondent/HUDA in filing the appeal after lapse of 2 years that too once the Court is seized of the matter is required to be deprecated.

9. It is nothing sort of mala fide on their part to the respondents to act in this manner to defeat the claim of oustees. The submission that the petitioner had not applied for allotment of plot under the oustees quota at the time of floating of the sector is also wrongly stated in the reply. If any such stand was to be taken, it ought to have been taken while appearing before the Oustees Adalat. Before the said Forum, the petitioner had clearly given out his stand, which is not countered in any manner. Still the respondent/HUDA has chosen to make an averment in the reply, which is rather misstatement of facts. Irony is that the respondent/HUDA instead is making an allegation against the petitioner for approaching the Court with unclean hands or for misstatement of facts. It is other way round. It is the respondent/HUDA which has made an attempt to mislead the Court not only to deny relief to the petitioner but also to misuse the process of Court.

10. Even otherwise, the stand of respondent/HUDA to the effect that the petitioner did not apply at the time of floating of the sector alongwith the earnest money of 10% appears to be against the policy formulated by HUDA itself. The policy formulated by the HUDA is to the effect that the HUDA is required to satisfy the claim of all the oustees before floating the sector. The stand that the petitioner did not apply at the time of floating of the sector, therefore, is misconceived. It is not stated in the reply anywhere that the respondent/HUDA had ever invited claim for the allotment of plot as oustee. In any case, all these issues are academic. Once the Oustees Adalat constituted by HUDA itself had taken a decision and held the petitioner entitled to allotment of plot, there would be no justification on the part of the HUDA to deny his claim on the grounds as pleaded in the reply. This stand of the HUDA, therefore, is rejected. The necessary consequences is that the directions are required to be issued to respondent/HUDA to allot 500 square yards plot to the

petitioner within a period of two weeks either in Sector 2, Rohtak, or any other adjoining sector, in case, any plot is not available in terms of the policy. The petitioner may be asked to deposit 10% of the cost of the plot. The plot shall be allotted in terms of the policy and the petitioner is required to pay price of the plot in terms of policy only.

11. Directions further are issued to the Chief Administrator, HUDA to investigate the issue and take appropriate action against anyone responsible including the Estate Officer, who has tried to act in this manner to defeat the claim of the petitioner. This court is prima facie of the view that whosoever has done so has done apparently with the mala fide intention. If it is found to be so, appropriate disciplinary action would be taken against the responsible person. The Chief Administrator, HUDA would remain under the obligation to inform the Court about the outcome of the action so taken.

The writ petition is, accordingly, allowed.