

(2012) 07 P&H CK 0251

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 8801 of 2009

Raghubir Singh

APPELLANT

Vs

The Advisor to Administrator, UT,
Chandigarh and Others

RESPONDENT

Date of Decision: July 6, 2012

Acts Referred:

- Haryana Housing Board Act, 1971 - Section 72B

Citation: (2013) 1 RCR(Civil) 533

Hon'ble Judges: Rakesh Kumar Jain, J; Rajive Bhalla, J

Bench: Division Bench

Advocate: Geeta Sharma, Advocate for Respondents No. 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rakesh Kumar Jain, J.

The petitioner has prayed for issuance of a writ of certiorari for quashing orders dated 4.10.2004 (Annexure P-3), 12.6.2007 (Annexure P-6), 20.2.2008 (Annexure P-7), 12.11.2008 (Annexure P-8) and 18.3.2009 (Annexure P-9). In brief, the facts of the case are that the petitioner was allotted a dwelling unit No. 2229/3, Sector 45C, Chandigarh vide allotment letter No. 4054 dated 20.5.1996 and possession was delivered on 8.8.1996 by the Chandigarh Housing Board (for short "the Board").

2. The Chief Executive Officer of the Board, served a show-cause-notice upon the petitioner on 19.7.2004 for cancellation of allotment of Dwelling Unit No. 2229/3, Sector 45-C, Chandigarh (for short "unit"), on the ground that the Superintendent of Police, CBI, Chandigarh, vide his letter No. DPCHG/2004/0998/ RCCHG/2002/A/0036 dated 13.2.2004, has intimated that the petitioner owned residential Plot No. 2373, Sector 71, SAS Nagar, Mohali, on the date when he had applied for allotment of the above unit in Chandigarh. He was informed that he has filed false affidavits dated

13.02.1996, 18.4.1996 and 18.6.1996, and concealed material fact of having Plot No. 2373, Sector 71, SAS Nagar, Mohali, in order to fraudulently secure allotment of dwelling unit No. 2229/3, Sector 45-C, Chandigarh, because he had furnished the affidavits to the effect that neither he or his spouse nor any of his relations including unmarried children own freehold or lease-hold or on hire-purchase basis a residential plot or house in UT, Chandigarh or in either of the Urban Estates of Mohali or Panchkula and had further stated that he has not acquired a plot or house anywhere in India through Government/Semi Government/Municipal Committee/Corporation/Improvement Trust/Notified Area Committee, at concessional rate, i.e., reserved/fixed price in his name or in the name of any dependent member of his family.

3. The petitioner replied to the show-cause-notice by informing that residential Plot No. 2373, Sector 71, SAS Nagar, Mohali, was acquired by him on 21.8.1989 and was sold on 29.12.1995 byway of agreement to sell to Roop Lal s/o Sh. Ram Singh, resident of House No. 200, Phase 3B1, Mohali, and also handed over the possession. The Chief Executive Officer of the Board, vide his order dated 4.10.2004 (Annexure P-3), cancelled the allotment and ordered forfeiture of the amount deposited by the petitioner, who was further directed to hand over vacant possession of the dwelling unit to the Chief Engineer, Chandigarh Housing Board, within a period of 15 days. The petitioner filed an appeal against order dated 4.10.2004 (Annexure P-3), which was dismissed on 12.6.2007 (Annexure P-6), by the Chairman of the Board. The petitioner's appeal was further dismissed by the Board vide order dated 20.2.2008 (Annexure P-7) which he challenged by way of revision u/s 72-B of the Haryana Housing Board Act, 1971, as extended to the UT, Chandigarh, before the Advisor to the Administrator, UT, Chandigarh. The said revision was also dismissed on 12.11.2008 (Annexure P-8). The petitioner then filed an application for recalling of order dated 12.11.2008 (Annexure P-8), which was declined on 18.3.2009 (Annexure P-9).

4. The case of the petitioner as per his pleadings in the petition is that at the time when affidavits dated 13.02.1996, 18.4.1996 and 18.6.1996, were furnished, the petitioner was not the owner of the Plot No. 2373, Sector 71, SAS Nagar, Mohali, as he had already entered into an agreement to sell with Roop Lal on 29.12.1995 and handed over possession after receiving the sale consideration. It is contended that plot was already sold and he did not mislead or played any fraud, as alleged, by way of his affidavits dated 13.02.1996, 18.4.1996 and 18.6.1996, which were all subsequent to the agreement to sell dated 29.12.1995.

5. In reply, counsel for the respondents No. 2 and 3, has submitted that the petitioner has secured allotment of Dwelling Unit No. 2229/3, Sector 45-C, Chandigarh, in contravention of the statutory provision of Regulation 6 of the Chandigarh Housing Board (Allotment, Management and Sale of Tenements), Regulations, 1979 (for short "the Regulations") by furnishing false affidavits and

willfully concealing the material fact from the Board.

Regulation 6 of the Regulations reads as under:-

Eligibility of Allotment. - (1) A dwelling unit or flat in the Housing Estate of the Board shall be allotted only to such person who or his wife/her husband or any of his/her minor children does not own on free-hold or leasehold or on hire-purchase basis, a residential plot or house in the Union Territory of Chandigarh or in any of Urban Estates of Mohali or Panchkula. Further, persons who have been allotted a residential plot/dwelling unit in the Union Territory of Chandigarh or in any of Urban Estates of Mohali or Panchkula through Government/Semi-Government/Registered Society like A.W.H.O. or a Co-operative House Building Society, in their name or in the name of their spouse or any minor children, shall also not be eligible for allotment of a dwelling unit or flat. The applicant shall further continue to fulfill these eligibility conditions from the date of opening of the scheme up to the date of delivery of possession of the dwelling unit by the Chandigarh Housing Board.

6. It is also submitted that during a CBI raid conducted at the house of the petitioner in regard to some allegation of corruption, the material regarding the Plot No. 2373, Sector 71, SAS Nagar, Mohali, was discovered and supplied to the Board on the basis of which show CWP cause-notice dated 19.7.2004 (Annexure P-1) was issued. The petitioner applied for allotment of Dwelling Unit No. 2229/3, Sector 45- C, Chandigarh in the year 1980 and Plot No. 2373, Sector 71, SAS Nagar, Mohali, was allotted on 21.8.1989 by PUDA, which as per record of the PUDA, was sold on 10.7.1997 vide registered sale deed i.e. after the allotment of house at Chandigarh and the said fact was concealed in the affidavits dated 13.02.1996, 18.4.1996 and 18.6.1996. It was also alleged that the wife of the petitioner had also purchased House No. 3726, Sector 46, Chandigarh, through General Power of Attorney.

7. We have heard learned counsel for the parties and perused the record with their able assistance.

8. The dispute in this case is whether the Board was justified in cancellation of allotment of a dwelling unit and forfeiture of the amount deposited against it by the petitioner, on account of fraud and mis-representation?

9. The case of the petitioner is that he had already entered into agreement to sell with Roop Lal on 29.12.1995, much prior to submission of affidavits dated 13.02.1996, 18.4.1996 and 18.6.1996, in which he had deposed that he has no other residential plot/house in the Tricity of Chandigarh, Panchkula and Mohali, whereas, as per record of PUDA, Plot No. 2373, Sector 71, SAS Nagar, Mohali, was sold on 10.7.1997 vide registered sale deed, much after the filing of the aforesaid affidavits dated 13.02.1996, 18.4.1996 and 18.6.1996 and his wife had also purchased a property viz. House No. 3726, Sector 46, Chandigarh. It is now well settled that the transfer of proprietary rights in immoveable property can be effected only by way of registered sale deed. The sale deed came into existence on 10.7.1997. The petitioner

cannot take advantage of the agreement to sell dated 29.12.1995, which even otherwise was not disclosed by the petitioner in his affidavits dated 13.02.1996, 18.4.1996 and 18.6.1996. Looking from all angles, the petitioner has apparently misrepresented before the Board and has violated statutory rules and regulations. Hence, we do not find any error in the impugned orders dated 4.10.2004 (Annexure P-3), 12.6.2007 (Annexure P-6), 20.2.2008 (Annexure P-7), 12.11.2008 (Annexure P-8) and 18.3.2009 (Annexure P-9), and as such the writ petition is hereby dismissed being devoid of any merit. No costs.