

(2014) 08 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 16898 of 2014

Om Parkash Thareja

APPELLANT

Vs

State of Haryana and
Others

RESPONDENT

Date of Decision: Aug. 28, 2014

Citation: (2015) 178 PLR 799

Hon'ble Judges: Hemant Gupta, J ; Kuldip Singh, J

Bench: Division Bench

Advocate: Rajnish Gupta, Advocate for the Appellant;

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

1. Challenge in the present writ petition is to the order of cancellation of allotment dated 5.1.2012 (Annexure-P-8) and also an order dated 23.5.2014 (Annexure-P-11), passed by the Financial Commissioner and Principal Secretary to Government of Haryana, Town and Country Planning Department, exercising the powers of the State Government. The petitioner was allotted a 151.92 sq. mtr. residential plot, vide letter of allotment dated 13.9.2010 for a total tentative price of Rs. 10,78,632/-. The said allotment to the petitioner was after he has deposited 10% of the tentative price i.e. Rs. 1,15,100/-. However, another 15% of the sale price amounting to Rs. 1,54,558/- was required to be deposited within 30 days.

2. The petitioner was required to deposit 15% of the total price, so as to accept the offer of allotment of plot in question as per condition 5 of the allotment of letter. The letter of allotment further contemplates that in case of failure to deposit the amount within 30 days, the amount of bid money shall stand forfeited. The relevant condition in the letter of allotment reads as under:-

"5. In case you accept this allotment, please send your acceptance by registered post alongwith an amount of Rs. 154558.00 within 30 days from the date of issue of

this allotment letter, which together with an amount of Rs. 115100.00 paid by you alongwith your application form constitute 25% of the total tentative price."

3. Admittedly, the petitioner did not communicate any acceptance nor deposited the amount of Rs. 154558/- i.e. 15% within 30 days. It was on 13.9.2011 i.e. after almost 365 days from the date of allotment, the petitioner deposited Rs. 9,00,000/-. The said amount was refunded to the petitioner on 5.1.2012 and the offer of allotment of plot was cancelled for the reason, the petitioner has not conveyed acceptance within 30 days of the issuance of letter of allotment. The petitioner filed revision, which has remained unsuccessful.

4. Learned counsel for the petitioner refers to the Policy dated 9.4.1999, which prescribes the period of condonation of delay in deposit of the 15% amount, the officer who can condone the delay and surcharge rate leviable on 15% amount. The relevant clause from the Policy reads as under:-

"B Condonation of delay in respect of commercial/residential plots (allotted through auction).

S. No. Period of condonation Concerned Officer Rate of surcharge leviable on 15%

Besides surcharge the allottee shall have to pay penal interest @ 18% p.a. on the 15% amount for the delayed period."

5. It is thus argued that once it has been decided to extend the period of delay of deposit, therefore, an offer of allotment could not be cancelled within the period prescribed. Learned counsel for the petitioner also relies upon the Hon"ble Supreme Court Order passed in SLP (Civil) Nos. 8198-8199 of 2013 titled as Sunita Sharma v. The Financial Commissioner and Sec. and Ors. whereby an order passed by this Court, dismissing the writ petition of the similarly situated allottees, was set aside with a direction to the allottee to submit representation for condonation of delay and deposit of 15% of the amount.

6. In the light of the facts and the circular, we have heard learned counsel for the petitioner and find no merit in the present petition.

7. The letter of allotment stipulates that in case of failure to deposit the amount within 30 days, the 10% of the initial amount shall be forfeited. The petitioner was to communicate his acceptance along with an amount of Rs. 154558/-. The petitioner did not communicate his acceptance nor sent the amount within 30 days of the issuance of letter of allotment. An amount of Rs. 9,00,000 was sent almost after one year. Having failed to send the acceptance within 30 days, no concluded contract comes into existence in terms of [Chaman Lal Singhal Vs. Haryana Urban Development Authority and Others,](#) . Later in [Greater Mohali Area Development Authority and Another Vs. Manju Jain and Others,](#) , the court held as under:-

"21. Mere draw of lots/allocation letter does not confer any right to allotment. The system of draw of lots is being resorted to with a view to identify the prospective allottee. It is only a mode, a method, a process to identify the allottee i.e. the process of selection. It is not an allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment.

22. to 28. xxxxx xxxxx xxxxx

29. If the instant case is examined in the light of the aforesaid settled legal propositions, it becomes clear that Respondent 1 did not make any response whatsoever after applying for allotment. No explanation could be furnished by Respondent No. 1 for why she kept quiet for 4-1/2 years after receiving the allocation letter and why she did not make any attempt to find out what had happened to her application. Respondent 1 did not send her acceptance of the allotment; did not deposit the amount which became due in 1999 itself; and did not execute the required hire-purchase agreement with the appellant Authority. Thus, it is solely for her that no concluded contract came into existence between the parties. In such a fact situation, Respondent 1 could not be handed over the possession of the flat. The forfeiture of the earnest money is in terms of the statutory provisions."

8. In the present case, the letter of cancellation of allotment was issued on 13.9.2010. But, it was on 15.5.2013, the petitioner filed a revision before the State Government, which has been dismissed by an order impugned in the present writ petition. Though, the period of condonation of delay, the Authority who can condone the delay and also the amount of surcharge has also been specified in terms of the Policy framed but the petitioner cannot claim any right on the basis of such policy. The petitioner never communicated his acceptance nor sent the amount within 30 days of the issuance of letter of allotment. Having failed to send the acceptance within 30 days, no concluded contract comes into existence.

9. The Hon"ble Supreme Court in Sunita Sharma's case (supra) has passed an order for the reason that the concerned authorities were condoning the delay in large number of cases, which was of few days in some cases, whereas in some other cases, few years and in one case, more than 20 years. It was the said fact, which led the Hon"ble Supreme Court to pass the order referred to by the learned counsel for the petitioner. But, the issue to the extent of condonation of delay now stands crystallized with the Policy issued on 9.4.1999. Not only the period of condonation of delay, the Authority who can condone the delay and also the amount of surcharge has also been specified in terms of the Policy framed. The arbitrariness, which writ large in the matter before the Hon"ble Supreme Court, is no longer available. Therefore, reliance by petitioner on the said order does not help the petitioner in any manner. Having failed to send the acceptance within 30 days and to pay the amount and to seek extension of time for payment of 15% of the amount, no concluded contract has come into existence.

Consequently, the present writ petition stands dismissed.