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(2014) 04 P&H CK 0172

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1599 of 1994 (O and M)

Paramjit Singh and Others		APPELLANT
	Vs	
State of Punjab and Others		RESPONDENT

Date of Decision: April 24, 2014

Hon'ble Judges: Surya Kant, J; Lisa Gill, J

Bench: Division Bench

Advocate: Amit Sethi, Addl. A.G., Punjab and Mr. Harsimran Singh Sethi, Advocate for Respondents Nos. 2 and 3, Advocate for the Respondent

Final Decision: Allowed

Judgement

Surya Kant, J.
This writ petition was initially filed by two petitioners, namely, Paramjit Singh and Manmohan Singh, seeking quashing of the orders dated 29.10.1993 (Annexures P-9 and P-10) whereby allotment of shop-cum-flat sites No. 45 and 29 respectively, allotted to them on 14.07.1987 has been cancelled. Petitioner No. 2 (Manmohan Singh) unfortunately passed away during pendency of this writ petition and his legal representatives have been brought on record as petitioners No. 2 to 6.

2. Some of the undisputed facts are that both the petitioners were settled in Kanpur (Uttar Pradesh) but having been victimized in the 1984 riots, they had to shift from Kanpur to Punjab as their property and belongings were allegedly destroyed in the riots.

3. The Union and State Government of Punjab launched various schemes to rehabilitate the 1984 riots victims. It was pursuant to those schemes that the Deputy Commissioner, Jalandhar invited applications for allotment of shop-cum-flat sites from the riot victims. The petitioners applied and in the draw of lots conducted by the Urban Development Department, they were successful. Shop-cum-flat sites No. 29 and 45 in Phase I, Jalandhar were offered for allotment to the petitioners vide offer of letters dated

14.07.1987.

4. It is undeniable that as per the terms and conditions of allotment contained in the letters dated 14.07.1987, the petitioners were required to deposit a sum of Rs. 17,525/- towards 25% value of each flat within a period of 30 days from the date of receipt of the letters.

5. The petitioners'' case is that they were not in a position to deposit the said amount within 30 days, therefore, they through letters dated 10.08.1987 and 08.08.1987 (Annexures P-1 and P-2 respectively), sought extension of time to deposit the requisite amount. It is their pleaded case that "no intimation was received by the petitioners regarding the extension granted or rejection of their request".

6. The Estate Officer, Urban Estate Department at Jalandhar-respondent No. 3 vide letters dated 07.10.1991, which was dispatched vide registered post on 28.10.1991, asked the petitioners to deposit 25% of the amount within a period of 15 days from the date of receipt of those letters. The petitioners admittedly deposited the requisite amount vide demand drafts dated 11.11.1991 and 09.11.1991, respectively alongwith letters Annexures P-3 and P-4.

7. On the receipt of afore-stated payment the Estate Officer-respondent No. 3 vide memo dated 23.06.1992 and 25.06.1992 (Annexures P-7 and P-6 respectively) informed the petitioners as follows:-

In this connection, you are informed that regarding the subject you were allotted SCF No. 45 Phase-I, Jalandhar on 14.07.87. As per condition No. 4 of the allotment letter, you were required to deposit 25% value of the plot amounting to Rs. 17525/- within a period of 30 days which was not received. The amount demanded vide this office letter dated 7.10.91 has been received and the letter has been written to the government for acceptance of this amount and for according necessary approval. After the approval is received further action will be taken in the matter. This is for your information.

8. It appears that on receipt of the above reproduced letters of the Estate Officer stating that their case had been sent to the State Government for acceptance, the petitioners made a representation to the State Government as well (Annexure P-8) seeking approval of the allotments made in their favour.

9. The State Government, however, did not agree with the recommendations sent by the Estate Officer, who in turn, vide impugned orders dated 29.10.1993 (Annexures P-9 and P-10) cancelled the allotments on the ground that the petitioners were required to deposit 25% of the allotment price within 30 days from the date of receipt of the offer of allotment dated 14.07.1987. Since the cancellation orders are similarly worded, the relevant extract of one of that order is reproduced below:-

S.C.F. No. 45 situated in Urban Estate, Phase-I, Jalandhar was allotted on 14.7.87, the 25% amount of which came to be Rs. 17525/-. As per condition No. 5 of the allotment letter 25% amount was to be deposited within a period of thirty days from the issuance of the letter. When the said amount was not received on 10.11.87 a warning letter was issued. In this way the allottee has remained unable to deposit the amount within stipulated time. So the undersigned u/s 10 of the Urban Estate (Development & Regulation Act), 1964, hereby orders for cancelling the allotment of Shop-cum-Flat No. 45 Phase-I and the draft of the amount of 25% value being Rs. 17525/- is hereby returned. These orders have been passed on 29.10.93 under my seal and signatures.

10. The petitioners thereafter sent demand justice notices to the State Government which were, however, turned down vide communication dated 28.12.1993, prompting them to approach this Court.

11. It may be mentioned here that vide order dated 04.02.1994, this Court directed the respondents to keep reserve two plots for the petitioners, if available.

12. The respondents have filed their written statement broadly reiterating that the petitioners did not deposit 25% of the allotment price within 30 days from the issue of allotment letter, hence, the allotment was rightly cancelled. It is also claimed that the letter dated 07.10.1991 was issued "inadvertently" by the then Estate Officer. In this regard, para 5 of the written statement says as follows:-

In reply to this para, it is submitted that in reply to Annexure P/2 petitioner No. 2 was informed to deposit 25% amount vide letter dated 10.11.1987, even then the petitioner No. 2 did not deposit the 25% amount. It is further stated that as per provisions of the Punjab Urban Estates (Development & Regulation) Act, 1964 and as per condition No. 4 of the allotment letter the 25% amount of price of S.C.F. in question shall have to be deposited within 30 days from the issue of allotment letter otherwise the allotment of the site is liable to be cancelled. Letters dated 07.10.1991 were issued inadvertently by the then Estate Officer, after receiving clarification from the Head Office. The allotment was cancelled on 29.10.1993 and the amount deposited by the petitioners was sent back to them. Copy of the letter dated 26.10.1993 is annexed as Annexure R/1 with this reply.

13. It may also be useful at this stage to refer to D.O. letter dated 26.10.1993 (Annexure R-1) sent by the Additional Housing Commissioner of Punjab Housing Development Board to the then Estate Officer-respondent No. 3, asserting that since the request of the petitioners for extension of time stood rejected, no further opportunity to deposit 25% amount could be granted to them. It is also mentioned that the Government instructions issued in December, 1989 to grant 15 days more time to deposit the required amount was wrongly applied after two years. The relevant extracts of the D.O. letter is as follows:-

Applicants of SCF No. 29 & 45 of Urban Estate, Ph-I, Jalandhar had made a representation that your office is not giving any orders regarding the allotment of these

sites. On this the concerned files were scrutinized and it was found that the allotment letters in both cases were issued in 1987 under the Sikh migrant category. As per condition No. 5 of the allotment letter, the applicants were asked to deposit 25% amount i.e. 17525/- rupees in each case, within 30 days of issue of allotment letter. In case of failure the allotment shall be cancelled. Both the allottees did not deposit the 25% amount within stipulated period and their request for the extension of time was also rejected by your office. But later on in both the cases, your office, wrote a letter on 7.10.91 to deposit 25% amount within 15 days, while asking requisite amount, reference of Govt. Instructions was also given. But these instructions were issued on Dec. 1989, that applicants be given 15 days time to deposit the required amount. But action on the instructions of 1989, by your office was taken in 1991 i.e. two years later, which is in no way seems to be appropriate. As per condition No. 5 the allotment deemed to be automatically cancelled on the failure of deposit of 25% amount within 30 days. As allotment was made in 1987 your office had committed a mistake by writing the letter in 1991 to deposit the amount.

Whole case was examined carefully at this office level and it has been decided allotment of these SCF No. 29 & 45, Urban Estate, Phase-I, Jalandhar be cancelled and bank drafts deposited by the applicants be sent back. It has also been decided that disciplinary action be taken against those concerned employees/officer who issued notice/letters in 1991.

14. No one appears on behalf of the petitioners. We find from the record that the case has been earlier adjourned for more than one occasion. We, thus, deem it appropriate to decide the same on merits. Learned counsel for the respondents have been heard and record perused.

15. From the pleadings, the following undisputed facts clearly emerge out:-

(i) The petitioners are victims of 1984 anti-sikh riots;

(ii) They had to leave Kanpur their permanent place of abode as their property etc. were destroyed;

(iii) The fact that they are affected by 1984 riots has been accepted by the respondents as both were treated "eligible" for the allotment of sites at concessional rates reserved for such persons;

(iv) The petitioners were successful in draw of lots but could not deposit 25% of allotment price due to financial constraints;

(v) Ordinarily, the petitioners would have no right to seek allotment due to their failure in depositing 25% of the allotment price;

(vi) However, the State Government took a conscious policy decision in December 1989 to grant one more opportunity to the riot effected victims to deposit 25% of the allotment price within the period stipulated therein;

(vii)It is not the case of the respondents that any other opportunity was ever granted to the petitioners in furtherance of the Government policy dated December 1989 except the one vide letter dated 07.10.1991 dispatched on 28.10.1991.

(viii) The petitioners admittedly availed that opportunity and deposited the due amount within 15 days from the date of receipt of the aforesaid letter.

16. The above-stated facts would speak in volume that the petitioners cannot be blamed for dishonouring the terms and conditions of offer made to them. Once the State Government took a policy decision to grant another opportunity to the riot victims and the petitioners immediately availed such opportunity, they shall be taken to have complied with the terms and conditions of the allotment.

17. The other factor, which has to be kept in view is that the allotment was cancelled almost after two years of deposit of the requisite amount by the petitioners. Similarly, the reason assigned by the Additional Housing Commissioner in her D.O. dated 26.10.1993 (Annexure R-1) that the request of the petitioners for extension of time was rejected, has indeed no bearing on the issue. We say so for the reason that firstly the rejection of the requests made by the petitioners was never conveyed. Secondly, even if it was conveyed by the subordinate authorities, they were entitled to yet another opportunity in terms of the government policy decision taken in December, 1989. Thirdly, the petitioners were never given such additional opportunity after the Government policy issued in December 1989 nor they failed to avail the same.

18. For the reasons afore-stated, we allow this writ petition and quash the impugned orders dated 29.10.1993 (Annexures P-9 and P-10 respectively). Resultantly, the petitioners (including legal representatives of petitioner No. 2) shall be entitled to allotment of shop-cum-flat sites and if the original sites bearing No. 29 and 45 have been meanwhile allotted to someone else, in that event they shall be allotted the alternative sites. The petitioners shall be liable to deposit the allotment price as was prevailing in the year 1987, however, alongwith interest at the rate 10% per annum. The aforesaid order shall be subject to one more condition. If the petitioners (including the legal representatives of petitioner No. 2) have been meanwhile allotted any other commercial site at concessional rate in the reserve category of 1984-riots affected victims, in that event, they shall not be entitled to the benefit of this order. The respondents are directed to do the needful within a period of three months from the date of receipt of certified copy of this order.