Swaran Jyoti, EWS Cooperative Group Housing Society Vs State of Haryana and Others

Civil Writ Petition No. 26764 of 2014

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Feb. 24, 2016

Acts Referred:

Haryana Urban Development Authority Act, 1977 - Section 30

Hon'ble Judges: S.J. Vazifdar, Actg. C.J. and Arun Palli, J.

Bench: Division Bench

Advocate: S.D. Bansal, Advocate, for the Appellant; Lokesh Sinhal, Additional Advocate General, for the Respondent

Final Decision: Disposed off

Judgement

Arun Palli, J.

1. A writ in the nature of certiorari is prayed for, to quash the order dated 06.11.2013 (Annexure P19), rendered by

respondent No. 2, vide which Group Housing Plot No. 76, Sector 56, Gurgaon, allotted to the petitioner-Society, had since been cancelled and

the site has been ordered to be re-advertised for fresh allotment.

2. A brief narrative of the controversy that has led the parties to the current stage, would be imperative. Petitioner i.e. Swaran Jyoti, EWS Co-

operative Group Housing Society Ltd., applied to Haryana Urban Development Authority (HUDA), Panchkula, Haryana (respondent No. 3), for

allotment of land under the EWS (Economically Weaker Section) category. On a consideration of the claim of the petitioner, respondent No. 3

decided in principal to allot 4000 sq.mtrs. of land to the petitioner in Sector 54, 55 and 56 at Gurgaon. Accordingly, the Letter of Intent dated

26.03.1999 (Annexure P4) was issued and the petitioner-Society was required to complete the entire documentation and meet certain pecuniary

demands. On compliance, a formal agreement dated 19.05.1999 (Annexure P5) was executed between the petitioner- Society and respondent

No. 3. Accordingly, a formal letter of allotment dated 16.02.2000 (Annexure P6), whereby plot No. 76, Sector 56, Gurgaon, admeasuring 4852

sq.mts., was allotted to the petitioner-Society, on freehold basis, under Group Housing Scheme, 1998 (for short ''the 1998 Scheme'') was issued.

The actual physical possession of the plot was handed over to the petitioner-Society on 12.12.2000. Construction at site commenced in the year

2001 and was completed in the year 2004. Petitioner-Society applied for Occupation Certificate on 03.01.2005, which was granted on

23.03.2007 (Annexure P9). That being so, a formal Conveyance Deed was also executed by respondent No. 3, through its Estate Officer, in

favour of the petitioner-Society on 06.03.2007 (Annexure P8). A comprehensive policy dated 02.01.2009 (Annexure P10) was framed by

respondent No. 3, which provided for altering the number and sizes of dwelling units, transfer of membership, increase in FAR etc.

3. A news item appeared in the newspaper ""Hindustan"" on 18.01.2012 and reported regarding the cracks that had appeared in the balconies of

many of the flats in the Society. Resultantly, the Administrator, HUDA, Gurgaon, vide communication dated 25.01.2012 to the Estate Officer-II,

HUDA Gurgaon, sought a Structure Report, from the Management of the petitioner-Society for necessary action. Resultantly, the petitioner-

Society obtained a Report dated 27.04.2012 (Annexure P12) from ARCEE Associates, who opined that the building in question was unsafe and

recommended vacation of the premises with immediate effect. A general body meeting of the petitioner-Society was convened and all the members

reached a consensus to demolish the old building and raise a new structure of current design and parameters. Being conscious of the fact that

original 44 members of the Society would not be able to bear the burden of the current cost of construction, it was also resolved to enrol additional

members and request HUDA- respondent No. 3 to permit the petitioner-Society to build more flats. Accordingly, vide representation dated

15.05.2012, addressed to the Chief Administrator, HUDA, petitioner-Society sought permission; (a) to increase in the number of its original

members from 44 to 126, (b) to increase the size of dwelling units from 35 sq. mtrs. to 67.38 sq. mtrs. and (c) to increase FAR from 150% to

175%, in accordance with the settled norms and precedents.

4. The Chief Administrator, HUDA (Town Planning Wing), Panchkula, vide letter dated 05.11.2012 (Annexure P14), granted ""in principle

approval"", to the petitioner-Society, subject to the conditions that the society (i) paying required charges of Rs. 281.30 lacs for the proposed

changes (ii) submitting revised form ''L'' of 126 members duly attested and verified by ARCS, Gurgaon (iii) as per the eligibility condition

prescribed under Group Housing Scheme, 1998, inducting only EWS members, whose total income does not exceed Rs. 2500/- per month and

(iv) submitting the consent of all the members to the decision of the Management to demolish the existing structure and constructing a new building at site. Accordingly, a sum of Rs. 281.30 lacs was deposited by the petitioner-Society. Likewise, Assistant Registrar, Co-operative Societies,

Gurgaon, approved the "L" form of 44 replaced and 82 newly inducted EWS members on 30.11.2012. Resultantly, the final approval was

accorded by Chief Administrator, HUDA (Town Planning Wing), Panchkula, vide a communication dated 04.02.2013 (Annexure P17). And, vide

letter dated 05.09.2013 (Annexure P18), Estate Office-II, HUDA, Gurgaon, also wrote to the Administrator, HUDA, Gurgaon, to fix a meeting

for approving the building plan submitted by the petitioner-Society.

5. It was, at this stage, pursuant to a purported verbal complaint, the Principal Secretary, Department of Town and Country Planning (respondent

No. 2), in exercise of power under Section 30 of the HUDA Act, 1977 (for short "the Act"), requisitioned the necessary records from the Estate

Office-II, Gurgaon and Administrator, Gurgaon, vide letter dated 06.11.2013 (Annexure P19), to ascertain whether the approval accorded by the

Chief Administrator suffered from any illegality or impropriety. He further ordered that no fresh building plans be approved for construction of 126

dwelling units. In this regard, it appears that in response to a show cause notice issued by the authorities, the petitioner-Society submitted its

response, which along with the comments of Estate Office-II, HUDA, Gurgaon, were forwarded by the Chief Administrator, vide a

communication dated 16.05.2014 (Annexure P21), to respondent No. 2, and the same reads thus:

6. And, accordingly, the Chief Administrator, HUDA, proposed to respondent No. 2, that as the allegations made vide an alleged oral complaint,

were wholly false and seemed to have been made out of frustration, the proceedings be dropped. However, as indicated in the beginning, vide

order dated 10.10.2014, respondent No. 2 still cancelled the allotment of site allotted to the petitioner- Society. The conclusion that has been

arrived at by respondent No. 2 reads thus:

It seems that the allotment of this society was got done just with the ulterior motive of speculation so as to get the plot at the concessional rates,

vis-a-vis, rates of other societies as 40% subsidy was given to the society at the time of allotment. The Government took the initiative of allotting

the land to EWS Co-operative Group Housing Societies at the concessional rates, with the purpose of providing shelter to the Economically

Weaker Sections of the Society. This very purpose stands defeated in the present case as is clear from the discussion above because none of the

members could prove his status belonging to the Economically Weaker Section. It is strange that even the Registrar, Co-operative Societies, did

not investigate about the actual facts while authenticating the economic status of the members of the society and acted in a very casual manner.

In view of the discussion above, it is clear as per the record submitted by the society itself that the members of the society are not belonging to

Economically Weaker Section. The society violated the terms and conditions of brochure as well as the allotment letter for which it does not deserve any leniency. The schemes of the Government made especially for the upliftment of weaker section of the society cannot be allowed to be

misused like this. Therefore, the allotment of Group Housing Plot No. 76, Sector 56, Gurgaon, is hereby cancelled. The Estate Officer, Gurgaon is

hereby directed to take back the possession of the plot in question within 30 days from the date of this order after making refund as per policy. It

is further directed that the plot may be advertised again as per procedure within 3 months from today for making fresh allotment to a Society

comprising of Members belonging to Economically Weaker Sections of the Society as per criteria applicable today.

Sd/-

(T.C. Gupta, IAS)

Principal Secretary, Govt.,

Haryana, Town & Country

Planning & Urban Estates

Departments

Place: Chandigarh

Dated:10.10.2014

7. That is how the petitioner-Society is before this Court.

8. We have heard learned counsel for the parties and perused the paper book.

9. Learned counsel for the petitioner-Society submits that the approval was granted by the Chief Administrator, HUDA, vide order dated

31.10.2012, for increasing the number of members from 44 to 126, FAR from 150% to 175%, in terms of the settled norms and the policy dated

02.01.2009 (Annexure P10), and similar requests of other EWS societies i.e. Sunehra Apna Ghar Co- operative Group Housing Society Limited

was also acceded to. He further contends that the observation that forms basis of the order being assailed, that none of the 126 members of the

petitioner- Society belonged to economically weaker section, was wholly erroneous, for the newly inducted 82 members indeed belonged to the

EWS category. Further, he contends that as even the Bye Law 3(b) of the Model Bye Laws of Co-operative Group Housing Society, that spells

the eligibility for being a member of EWS Society has since been deleted vide an amendment in the Bye Laws, there was no embargo for any

individual to become a member of the petitioner- Society even though he did not belong to an economically weaker section. But of course, he was

required to fulfil the post amendment eligibility conditions. And, it is submitted that respondent No. 2 rendered the order dated 10.10.2014

(Annexure P1), purely on account of ulterior motives and due to inter departmental politics.

10. Per contra, Mr. Lokesh Sinhal, learned Additional Advocate General, Haryana, submits that originally the petitioner- Society was comprised

of 44 members who belonged to economically weaker section, and, which is why, the site in question was allotted under the 1998 Scheme, in the

EWS category. Once that was so, he contends, no right, title or interest could be transferred in favour of those who did not belong to the

economically weaker section. For, the very purpose of allotment stood frustrated, thus, the cancellation of allotment of site was completely

justified.

11. Ex facie, the only reason that has been assigned by respondent No. 2 in support of its order, is that none of the 126 members i.e. 82, who

were newly enrolled and 44 who replaced the original 44 members, belonged to economically weaker section. And, thus, the very purpose of

allotment that was made at concessional rate by affording 40% subsidies, stood defeated.

12. On a due and thoughtful consideration of the matter in issue, the questions that come to fore for consideration are:

1) Even if it is assumed that no right, title or interest could be transferred in favour of those who did not belong to the economically weaker section,

could the allotment of site to the petitioner-Society itself be cancelled.

2) Whether, post allotment and execution of the conveyance deed dated 06.03.2007, executed in favour of the petitioner-Society, its member

could not alienate their interest in favour of those who did not belong to EWS.

13. So, adverting to the first question, it needs to be noticed that the petitioner-Society could enrol new members, for Bye Law 66 of the Model

Bye Laws postulates that the society shall consist of at least 40 members. Meaning thereby, only the minimum number of members that a society

must consist of, is prescribed. Further, the petitioner-Society, in its response (Annexure P21), to a show cause notice asserted in no uncertain

terms that all the newly enrolled 82 members and 44 original members belonged to economically weaker section. No cogent or credible material

was referred to by respondent No. 2 either to conclusively conclude that the 82 newly enrolled members indeed did not belong to the EWS

category. So much so, a specific assertion set out in Para 10 (xx) of the writ petition; that Assistant Registrar, Co-operative Societies, Gurgaon,

approved the "L" form of 44 replaced and 82 newly inducted EWS members, has not been rebutted either. The Registrar, Cooperative Societies,

Haryana, is arrayed as respondent No. 5 and has even filed the written statement but has not chosen to controvert this position either. Even during

the course of hearing, learned counsel for the petitioner-Society emphatically asserted that only those members, who replaced the original 44

members of the petitioner-Society, did not belong to economically weaker section, whereas, the newly enrolled 82 members indeed belonged to

the said category. Significantly, the submission was not controverted by the learned State counsel. Once that is so, and even if it is assumed that the

original 44 members could not transfer their interest to those who did not belong to the economically weaker section, that at worst could entail that those 44 members were not entitled or eligible to be enrolled as member of the EWS society in terms of Bye Law 3(b) of the Bye Laws and

consequently would not acquire any title. But under no conceivable situation, it could be a cause to cancel the allotment, itself to the petitioner-

Society and that too, to the detriment of the rest 82 members, who indeed belonged to an economically weaker section.

14. The matter in issue could be examined from yet another perspective. The order that has been assailed, was rendered by respondent No. 2 in

purported exercise of power under Section 30 of the Act, which reads thus:

30. Control by State Government

(2) The State Government may, at any time either on its own motion or an application made to it in its behalf, call for the records of any case

disposed of, or order passed by the Authority for the purpose of satisfying itself as to the legality or propriety or correctness of any order passed

or direction issued and may pass such order or issue such direction in relation thereto as it thinks fit:

Provided that the State Government shall not pass an order adversely affecting any person without affording such person an opportunity of being

heard.

15. Apparently, respondent No. 2 took cognizance of the approval dated 04.02.2013 (Annexure P17), accorded by Chief Administrator, HUDA.

Thus, even if respondent No. 2 was of the view that no such approval could be granted it, at best could modify or set aside the said order, and/or

pass any appropriate order as regards the 44 members who did not belong to the economically weaker section. But in no situation could

respondent No. 2 cancel the allotment itself to the petitioner-Society. Moreover, such an order would adversely affect every eligible member for

no fault of theirs. And is thus unsustainable. In addition thereto, the members who are adversely affected by such an order have not even been

heard. The order is therefore contrary to the proviso to Section 30. Let us assume that the respondents can cancel the allotment of land on account

of any of the members of the society being ineligible to own a flat. Even then it would be inequitable to do so without giving the society an

opportunity to cancel the membership of such a member. A view to the contrary would be inequitable and unjust to all the eligible members. In

such an exercise, it would be necessary to give not merely the society but even the members concerned, an opportunity of being heard.

16. That being so, we may now advert to the second question that arises for our consideration.

17. Our attention was drawn by learned counsel for the petitioner to the amendment (Annexure P7) that was carried out vis- a-vis Model Bye

Law No. 3 (b) of the Model Bye Laws, which before and post amendment reads thus:

18. In reference to the afore-indicated position, learned counsel for the petitioner submits that before amendment, for an individual to be eligible for

admission as member of the EWS Society, his total family income had to be less than Rs. 2500/- per month. Whereas, as a consequence of the amendment, the said condition was done away with, with effect from 24.10.2005. And thereafter, it was open to seek enrolment as member of

any society, as envisaged under Bye Law 3, if he/she happened to be a citizen of India and has been an ordinary resident of India, during the last

two years, preceding the date of submission of his application for enrolment as a member of the society. Therefore, he submits that even those who

did not belong to the economically weaker section, could become members of the EWS society. Further, the approval in question was sought and

accorded by the Chief Administrator, HUDA, in sync with the policy dated 02.01.2009 (Annexure P10).

19. On the contrary, learned State counsel has placed reliance upon the proviso to the amendment that contemplates that the societies that apply

for allotment of land under any particular scheme floated by the Government of Haryana, HUDA or any other agency of the Haryana Government,

shall conform to the terms and conditions laid down in that particular scheme.

20. Bye Law No. 66 of the Model Bye Laws, reads thus:

66. The Society shall consist of at least 40 members and shall abide by the terms and conditions as are prescribed in the scheme under which the

land is allotted to the society by the HUDA.

21. Based on this bye law, he submits that the petitioner- Society has to abide by the terms and conditions as prescribed in the Scheme under

which the land was allotted to the society by HUDA. And, in further reference to Clause 2(ii) of the 1998 Scheme, which envisage that only those

EWS Societies could be eligible to apply which comprised of such members, whose total income did not exceed Rs. 2500/- per month, he submits

that the said condition would still be in force and those who did not belong to the Economically Weaker Section could never be enrolled.

22. We are reminded to point out at this juncture that this Court on 08.01.2015 had specifically sought the stand of the State on this issue and the

order reads as thus:

Prima facie, we do not find any merit in the argument raised by the petitioner that the plots/dwelling units allotted to the persons belonging to

Economically Weaker Section can be sold to the persons irrespective of their financial status.

To seek the stand of the State, we deem it appropriate to issue notice of motion for 22.01.2015.

23. But significantly, no written statement has been filed on behalf of respondents No. 1 and 2 to date, to support the order being assailed.

Therefore, in the situation, we would rather leave this question open to be examined in fresh or any other proceeding, if initiated by the

respondents. There are only general observations regarding the eligibility of all the members. The eligibility of each must be tested if it is proposed

to cancel the membership. Such person must be afforded a hearing. If the respondents propose cancelling the membership of any member or

propose calling upon the society to cancel such membership, they must afford the society and the member concerned an opportunity of being heard.

24. Accordingly, the order dated 06.11.2013 (Annexure P19) is set aside and the writ petition is disposed of in the above terms.