

Satinder Kaur Vs Chandigarh Administration and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 28, 2016

Citation: (2016) 1 LawHerald 491

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

Bench: Division Bench

Advocate: Amit Jain, Advocate, for the Appellant; Shekhar Verma, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

S.J. Vazifdar, Actg. C.J.

1. The petitioner seeks a writ of certiorari quashing the respondents' decision treating her ineligible for the allotment of a dwelling unit.

2. Respondent Nos. 1 to 4 are the Chandigarh Administration; Chandigarh Housing Board; the Registrar, Cooperative Societies, Union Territory,

Chandigarh and the Progressive Coop. House Building Society (hereinafter referred to as "the society") respectively.

3. The petitioner has been a member of the society since 01.07.1988.

4. The Administration, Union Territory, Chandigarh made a scheme, titled, ""The Chandigarh Allotment of Land to Cooperative House Building

Scheme, 1991"" (hereinafter referred to as "the 1991 Scheme"). The scheme was notified and came into force on 28.05.1991. Clauses 4 and 6, so

far as they are relevant, read as under:-

4. The Chandigarh Administration shall allot land on chunk basis to the Chandigarh Housing Board for its further allotment to the eligible Co-

operative House Building Societies from whom applications were invited under clause 3 above, having sufficient funds and resources to the

satisfaction of the Estate Officer, on Lease Hold Basis for 99 years for the construction of multistoried structures/dwelling units (hereinafter called

DU) and their allotment to its eligible members on the terms and conditions to be laid down in the allotment letter and lease deed. The administrator

may allot land to the societies within the limits of Union Territory, Chandigarh, subject to the fulfillment of provisions of the Scheme and the Capital

of Punjab (Development and Regulation) Act, 1952 as amended from time to time and the rules made thereunder including the Chandigarh Lease

Hold of Sites and Building Rules, 1973 (as amended from time to time).....

5. xx xx xx

6. Eligibility:- A society may be considered eligible for allotment of land if it is duly registered with the Registrar, Cooperative Societies, Union

Territory, Chandigarh functioning properly having sufficient funds/resources to pay the premium, to undertake the construction work, to complete it

in a stipulated period, and that each of its members fulfils the following conditions:-

(i) He is a bona fide resident of the Union Territory of Chandigarh and should be residing in Union Territory, Chandigarh at least for last two years

on the date of the allotment of land to the Society;

(ii) He is an employee of the Central Government/Corporation owned or controlled by Central Government stationed at Chandigarh on the date of

notification of Scheme or has served in the past at Chandigarh, or

(iii) He is an employee of Union Territory Administration or States of Punjab and Haryana or any Corporation owned or controlled by Union

Territory or State Governments referred to above and is either serving at Chandigarh on the date of notification of the Scheme or has served in the

past; or

(iv) He is a retired from the Government or Corporation referred to at (ii) and (iii) above and residing at Chandigarh.

[An applicant member may be eligible for allotment of dwelling unit in accordance with his monthly income i.e. one dwelling unit out of the dwelling

units constructed per acre, as per category given below:

(The density shall not in total exceed 40% of the covered area)

Provided that no society shall be eligible for allotment of a site under this scheme if any of its members, their spouses or dependent children already

owns, either on free-hold, lease-hold or hire purchase basis, a dwelling unit or a residential House/site/flat at Chandigarh, Manimajra, Panchkula

and S.A.S. Nagar (Mohali).

Provided further that more than one member of a family shall be a member of any such Society and not more than one dwelling unit shall be

allotted to one family.

Provided further that no individual/Society shall part with the possession of the land or dwelling unit before the expiry, of at least 5 years from the

date of allotment.

(emphasis supplied).

5. On 27.05.1992, the Society applied for the allotment of land. On the same day, the petitioner submitted an application addressed to the Chief

Executive Officer, Chandigarh Housing Board through the President of the Society for allotment of a dwelling unit to be constructed by the society

on the land to be allotted by the Chandigarh Housing Board on lease hold basis. Declaration-1 of the application reads as under:-

I do not own in my name or in the name of spouse or dependent children either on free hold/lease hold or hire-purchase basis a dwelling unit or a

residential house/site/flat at Chandigarh, Panchkula, SAS Nagar (Mohali) or at Manimajra (duly sold/allotted by the NAC Mani Majra or

Chandigarh Housing Board).

On 27.05.1992, the petitioner also filed an affidavit inter-alia to this effect.

The declaration and the affidavits were correct as admittedly on this date the petitioner did not own in her name or in the name of her spouse or

dependent children a dwelling unit or a residential house/site/flat in the tricity.

6. However, in 1998, the petitioner purchased a house. At this time the land had not been allotted to the society.

7. (A) On 11.04.2000, respondent No. 1 informed the Society that it had fixed a higher land rate and therefore, the society was liable to pay the

difference in respect of 25% of the cost of land which was paid initially prior to the allotment of land. The letter further reads as under:-

Further each eligible member, nominee in case of deceased member and President of your society will have to furnish affidavit regarding (i) his/her

eligibility under the scheme called "Chandigarh Allotment of Land to Cooperative House Building Societies Scheme, 1991, (ii) his/her entitlement

to the category for which he/she applied for (iii) that he/she does not have any house/plot dwelling unit in his/her name etc. in U.T. Chandigarh,

Mani Majra, Mohali or Panchkula etc. etc. as per specimen attached.

xx xx xx

The correctness of the particulars of the members shall be the responsibility of the society. This letter does not confer any right on the

society/members for the allotment of land.

(emphasis supplied).

(B) Pursuant thereto the petitioner filed an affidavit, paragraph-4 whereof reads as under:-

4. That at the time of becoming member of the Progressive Coop. House Building Society Ltd. in the year 1985 and while making application in

terms of Scheme of 1991, I had duly sworn an affidavit that the deponent had not acquired a dwelling unit or a residential house/site/flat either on

free holder, lease hold or hire purchase basis in Chandigarh, Panchkula, SAS Nagar (Mohali) and/or at Mani Majra (sold/allotted) by the NAC

Mani Majra, Municipal Corporation, Chandigarh or Chandigarh Housing Board in my own name or in the name of my wife/husband or any of my

family members including dependent child/children. The eligibility of the deponent thus is to be seen as on 27.05.1992 and any subsequent

acquisition of any dwelling unit/residential house cannot debar the deponent.

The petitioner, therefore, did not file an affidavit as required by respondent No. 1. The petitioner contended that her entitlement for the allotment of

a dwelling unit ought to be considered as on the date of her application i.e. 27.05.1992.

(C) By a letter dated 09.09.2000 addressed to the petitioner, the President of the Society stated that her affidavit was not in order as intimated by

the Chandigarh Housing Board and as such her name for the allotment of a flat was not being considered through the society. A copy of this letter

was forwarded to the Secretary of the Chandigarh Housing Board for information. By a further letter dated 15.09.2000 addressed to the

petitioner, the President of the Society i.e. respondent No. 4 stated that the Chandigarh Housing Board had also pointed out that paragraph-4 of

her affidavit was not in order and that a fresh affidavit may, therefore, be submitted within three days failing which her claim for allotment of land

would be forfeited.

8. It is in these circumstances that the petitioner filed this petition on 25.09.2000. The society thereafter returned the amounts paid by the petitioner

till then.

9. It is important to note that even upto this time the land had not been allotted in favour of the society by the other respondents. Therefore, all acts

done and steps taken by the petitioner and the society upto this time were prior to the allotment of the land in favour of the society.

10. The land was finally allotted in favour of the society by an allotment letter dated 24.01.2002 and on the terms and conditions stipulated in the

various clauses of paragraph-2 thereof. A copy thereof was tendered in Court. Clause 11 required the execution of a conveyance in respect of the

land allotted to it. Clauses 2, 21, 26 and 27 of the allotment letter in so far as they are relevant read as under:-

2. The allotment/sale shall be deemed to have commenced from the date of possession.....".

21. The society shall allot the dwelling units to its eligible members (category-wise) as per list enclosed. A copy of allotment letter issued to each

member (as mentioned in the list attached) shall be sent to the Chief Executive Officer, Chandigarh Housing Board and Registrar, Coop.

Societies.....

26. In the event of default, breach or non-compliance of any of the conditions of allotment, as contained herein, the site and the building erected

thereon shall be resumed/cancelled and the whole or part of the amount paid to the Chandigarh Housing Board or to Chandigarh Administration

towards the price of the site will be forfeited in accordance with the provisions of the Capital of Punjab (Development and Regulation) Act,

1952.....

27. The terms and conditions of the allotment letter shall be in addition to the provisions of the Capital of Punjab (Development & Regulation) Act,

1952, the Chandigarh (Sale of Sites and Building) Rules, 1960 and the provisions of Chandigarh allotment of land to Cooperative House Building

Societies Scheme, 1991 which shall be binding on the society. The society shall also abide by further decisions of the Chandigarh

Administration/Chandigarh Housing Board in all matters relating to the transfer/allotment of the aforesaid land.

11. The 1991 scheme deals with and refers to the eligibility of a society for allotment of land. The fact that one of the conditions that makes a

society eligible for allotment of land is that its members fulfill the conditions mentioned therein is a different matter.

12. When the official respondents allot the land to the society, they are not concerned with or bound by any arrangement or understanding

between the society and its members. As it is the official respondents that allot the land, the relevant point of time for consideration whether the

society is eligible to be allotted the land or not is when the society makes an application for the allotment right upto the date on which the allotment

is made. This would be the minimum requirement.

13. In this case we are not concerned with the question as to the effect of a member not fulfilling the requirements of the 1991 scheme and in

particular clause 6 thereof after the allotment of the land is complete in all respects and it vests in the society. We, therefore, refrain from making

any observation in regard thereto.

14. Clause 4 provides that the Chandigarh Administration shall allot land to the Chandigarh Housing Board for its ""further allotment to eligible co-

operative House Building Societies"". The plain language indicates that a society must be eligible at the time it is allotted the land. A society is eligible

only if it meets the criteria stipulated in clause 6. Under the proviso to clause 6 a society would not be ineligible inter-alia if any of its members

already owns a dwelling unit in the tricity. It follows, therefore, that at the time of allotment of land to the society none of its members, their spouses

or dependent children must own a dwelling unit or residential house/site/flat in the tricity. It follows, therefore, that the members must fulfill the

requirements stipulated in the scheme including clause-6 thereof when the application is made by the society for allotment of the land. A society

whose members do not fulfill the eligibility criteria would not be eligible to make an application for allotment for the condition precedent to its

eligibility does not exist.

15. A society must also fulfill all the conditions of eligibility stipulated in the scheme at the time of allotment. It can hardly be said that a society that

fulfills the eligibility criteria at the time of the application for allotment need not fulfill the same when the allotment is made. The opening words of

clause-6 ""a society may be considered eligible for allotment of land if each of its members fulfills the following conditions....."" make this clear.

If it is not eligible at the time when the application for allotment is being considered and when the decision in this regard is taken the allotments

cannot be made for these words imply that the eligibility must exist at these points of time.

16. This is also clear from clause 21 of the allotment letter which requires the society to allot the dwelling unit to its eligible members.

17. The official respondents are obviously not concerned with what transpired prior to the application made to them. The applications of the

members are to be forwarded to the official respondents. It is at that time that the official respondents will ascertain the eligibility of members in

order to and for the purpose of ascertaining the eligibility of the society.

In the present case, the petitioner had made an application to the society for membership on 01.07.1988. That date is irrelevant. So far as the

official respondents are concerned they have nothing to do with the formation of the society and the transactions between the society and its

members. The official respondents cannot prevent a society from inducting members who do not fulfill the eligibility criteria in clause-6 of the 1991

scheme. The official respondents come into the picture only when the application for allotment is made. Thus, the eligibility of the petitioner on

01.07.1988 is irrelevant so far as the official respondents are concerned.

18. The society made an application for allotment on 27.05.1992. At that time, the society fulfilled the eligibility criteria qua the petitioner.

However, thereafter in 1998, the petitioner acquired a house. That there is a dispute regarding the house is irrelevant. The petitioner claims to have

acquired it. It is not the petitioner's case that she has not acquired an interest therein. In 1998, the land had admittedly not been allotted to the

society. The land was allotted the society only on 24.01.2002. Had the society continued the petitioner's membership at this point of time, it could

not have been said to be eligible for allotment of the land in view of clause-6 of the 1991 scheme.

19. The impugned decision treating the petitioner ineligible for allotment of a dwelling unit is, therefore, upheld.

20. The reliance upon the judgment of this Court dated 06.09.2011 in *Jai Bhagwan Sharma v. Chandigarh Administration and others*, Civil Writ

Petition No. 12070 of 2009 is not well founded. The Court in that case proceeded on the basis that the petitioner was allotted a plot upon being

found to be eligible. The petitioner there acquired the membership on 31.03.1980 and filed the required affidavit on 08.06.1993. Subsequently, on

26.09.1983 the petitioner's wife acquired another flat. The plot was allotted to the petitioner by the society on 28.03.1985.

21. It is important to note that the judgment does not mention two dates, namely the date on which the society made an application to the

respondents for the allotment of land and the date on which the land was allotted. From the narration of facts it appears that the land was allotted

to the society prior to the date on which the petitioner was allotted the plot by the society, namely, 28.03.1985. This appears to be so as the

judgment first notes that the land was allotted to the society and then notes that the petitioner having been found eligible was allotted the plot on

28.03.1985. If that is so obviously the society's application for allotment of the land was also prior to the date on which the plot was allotted by

the society to the petitioner. The judgment, therefore, appears to have proceeded on the basis that even on the date on which the respondents

allotted the land to the society the petitioner was eligible. It is in these circumstances that it was held that the future acquisition of the flat on

26.09.1983 did not render the petitioner ineligible. It was held that any subsequent effect cannot be taken into consideration to declare the

petitioner ineligible to get a plot.

We must read the judgment as it stands. Even assuming that the facts were different, the aspect that we have dealt with was not considered by the

Division Bench in that case. The judgment, therefore, is clearly distinguishable.

22. Mr. Jain, learned counsel appearing on behalf of the petitioner relied upon paragraph-26 of the judgment of the Supreme Court in Chandigarh

Housing Board v. Devinder Singh and another , 2007(2) RCR (Civil) 641 which reads as under:-

26. We will assume that the Scheme framed by ""AWHO"" was to obtain lands either through its own efforts or from the government or semi-

government organisations so as to enable it to construct houses for the retired army personnel. The declaration, however, which is required to be

given by a member of the Society, must be held to have application which the Scheme seeks to achieve. It applies only when the conditions to

allotment are required to be complied with. It does not prohibit any future acquisition. If any declaration is made, which may subsequently be found

to be false, the Society may or may not proceed against the allottee. If it does, it again must be confined only to a situation arising within the four

corners of the said Scheme.

The above observations do not support the petitioner's case. In fact the Supreme Court held that the declaration required to be given by a

member applies only when the conditions of allotment are required to be complied with and that it does not prohibit any future acquisition. What

falls for our consideration is the date on which the condition regarding allotment is to be complied with. That issue was not decided. The Supreme

Court did observe that it does not prohibit any future acquisition. As we mentioned earlier the case before us does not require our having to

consider whether the acquisition of a flat/plot subsequent to the date of the allotment of land to the society would render the allottee ineligible. The

case before us pertains to the acquisition of a flat/plot between the date on which the society made an application for the allotment of land and the

allotment of the land in its favour by the respondents.

23. The writ petition is, therefore, dismissed.