

(2016) 02 P&H CK 0445
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 16134 of 2014

Ashish Yadav

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Citation : (2016) 2 LawHerald 1310

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

Bench : Division Bench

Advocate : Pankaj Bali, Advocate, for the Appellant; Rahul Dev Singh, DAG, for the Respondent

Final Decision : Allowed

Judgement

Arun Palli, J.—1. A writ of mandamus is prayed for directing the respondents No. 2 & 3 to issue the letter of allotment qua a residential site that was allotted to the petitioner under the oustees scheme. And, the petitioner be delivered the actual physical possession thereof.

2. A brief narration of facts that has led the parties to the current stage would be imperative. Land of the petitioner as also of the other landowners was acquired by the State of Haryana for development and utilization thereof as a residential and commercial area for Sector 9, Part II, Sector 32 and Sector 33, Urban Estates, Karnal. In terms of the policy of the State Government, the landowners whose land was acquired for the aforesaid purpose were entitled to an allotment of a plot. Petitioner applied for allotment of one kanal plot under the oustees scheme/quota and deposited a sum of Rs. 3,30,000/- along with his application dated 26.02.2007 (Annexure P1). In a draw held by respondent No. 3, on 10.09.2009, plot bearing No. 409-P, measuring 20 marlas (1 kanal), in Sector 32, was allotted to the petitioner. However, a formal letter of allotment was to follow in due course. But was never received by the petitioner. Petitioner represented to respondent No. 3, vide letter dated 10.04.2010 (Annexure P2) in this regard. Respondent No. 3, in response, vide letter dated 28.04.2010

(Annexure P3), informed the petitioner that in fact the letter of allotment had already been sent to the petitioner vide letter memo No. 3233, dated 09.03.2010. Petitioner visited the office of respondent No. 3 on numerous occasions thereafter and requested to issue a fresh allotment letter, but to no avail. Petitioner submitted yet another representation, dated 06.05.2010 (Annexure P4), to respondent No. 3 and reiterated his grievance. Copy of the said letter was also endorsed to the Chief Administrator, HUDA, Panchkula (respondent No. 2). That being so, respondent No. 3 wrote to respondent No. 4 i.e. Superintendent of Post Office, Head Post Office, Kunjpura Road, Karnal, to ascertain whether the letter of allotment, sent vide registered letter No.A- 1203 dated 09.03.2010, was indeed delivered to the petitioner. But, as no tangible result emerged, petitioner vide letter dated 17.07.2010 (Annexure P5) reminded respondent No. 3 to provide the necessary information. It was in the last week of July, 2010, petitioner received a letter bearing No. 7460 dated 21.06.2010 from the office of respondent No. 3, vide which he was informed that respondent No. 4 had confirmed that allotment letter was delivered to the petitioner on 10.03.2010. Again, petitioner appeared before respondent No. 3 and maintained that how could an allotment letter be delivered to the petitioner when he was no longer residing at the address at which it was sent. He requested for issuance of another copy so that he could meet the conditions or requirement of allotment. And, it was only when the petitioner raised this issue with the senior officers of the department, respondent No. 3 issued a letter dated 07.09.2010, which was stated to be accompanied by a photocopy of the letter that was sent by the postal department confirming the receipt of the allotment letter by the petitioner as also the letter of allotment itself. But surprisingly, the envelope only contained the letter dated 07.09.2010 (Annexure P6) and the two other letters, which were purportedly appended therewith, were neither sent nor found. However, vide memo No.ZO004/ EO016/UE026/DELET/000000-2024, dated 28.09.2010 (Annexure P7), issued by respondent No. 3, petitioner was asked to deposit a sum of Rs. 12,42,819/-, owing to the variation in the cost of the allotted site on account of enhancement in the land compensation award to the landowners. Petitioner could either deposit the entire amount within 30 days from the issuance of the said letter or pay the amount in five half yearly installments with 15% interest. Petitioner deposited a sum of Rs. 11,62,101/-, which was duly accepted by respondent No. 3. But, despite that being so, the authorities failed to issue a formal letter of allotment to the petitioner. Being aggrieved, he even filed a complaint under the Consumer Protection Act, which was subsequently withdrawn being not maintainable. It is maintained that on the one hand, respondent No. 3 had demanded and accepted the amount deposited by the petitioner, as indicated above, and on the other, neither any letter of allotment was issued nor petitioner was offered possession of the allotted site. This is how, the petitioner is before this court.

3. Respondents No. 2 & 3, in the written statement filed on their behalf, have reiterated their position and maintained that the letter of allotment was sent to

the petitioner at the address given in the application form through registered post vide RL No. 1203, dated 09.03.2010. And, respondent No. 4 confirmed that the said letter was delivered to the petitioner on 10.03.2010. For, in terms of condition No. 5 of the allotment letter, petitioner was required to deposit 15% of the tentative price of the plot within 30 days from the date of issuance of the said letter i.e. upto 08.04.2010 and convey his acceptance, petitioner having failed to respond and deposit the requisite amount entailed automatic cancellation of the allotted site.

4. In a separate written statement filed by respondent No. 4, it is stated that registered letter was delivered to the addressee and a photocopy of the receipt was appended as Annexure R-4/1.

5. Learned counsel for the petitioner submits that a bare analysis of the correspondence by the authorities with the petitioner reveals that letters dated 07.09.2010 (Annexure P6) and 28.09.2010 (Annexure P7) were sent at the current address of the petitioner i.e. H.No.537-R, Model Town, Karnal, whereas letter of allotment dated 09.03.2010 was purportedly sent at the old address i.e. H.No.371, Gandhi Chowk, Sadar Bazar, Karnal, which he never received. Further, respondent No. 3 demanded the petitioner to deposit additional cost of the allotted site, which was duly met with. Therefore, the authorities could not maintain that the allotment stood automatically cancelled, for petitioner did not respond within 30 days of the issuance of the allotment letter.

6. Per contra, learned counsel for respondents No. 2 & 3 simply seeks to reiterate the position that has been set out in the written statement filed on their behalf and relies upon a decision of the Division Bench of this Court in Smt. Sushma Bakshi @ Susham Bakshi v. Haryana Urban Development Authority & another, dated 16.07.2012 [CWP-13278-2011].

7. We have heard learned counsel for the parties and perused the records.

8. In a nutshell, the claim of the petitioner is being resisted by the authorities on the ground that the letter of allotment dated 09.03.2010, was duly delivered to the petitioner on 10.03.2010, vide which he was required to deposit 15% of the tentative price of the allotted site and convey his acceptance within 30 days. But, as he failed to respond, the allotment is deemed to have been cancelled.

9. Ex facie, petitioner had applied for allotment of a residential site in terms of the scheme/policy of the State Government under the oustee quota. Application submitted by the petitioner dated 26.02.2007 (Annexure P1) duly indicated his old as also his current address, which reads thus:

"Ashish Yadav son of Sh. Laxman Dass resident of 371, Gandhi Chowk, Sadar Bazar, Resident at 537-P Model Town Karnal."

10. Concededly, the letter of allotment dated 09.03.2010, appended with the written statement as Annexure R3/2, purports to have been delivered at the old address of the petitioner. The subsequent correspondence by the authorities with

the petitioner, i.e. letters dated 07.09.2010 (Annexure P6) and 28.09.2010 (Annexure P7), was made at his current address and was duly responded to. Be that as it may, for it would make no difference if the petitioner indeed received the allotment letter, be that at the old address. Significantly, in response to the letter dated 10.04.2010 (Annexure P2), written by the petitioner, respondent No. 3 vide letter dated 28.04.2010 (Annexure P3) conveyed that in fact the letter of allotment had already been sent to the petitioner on 09.03.2010. Meaning thereby, within a period of almost 30 days from the date of the allotment letter, that was purportedly delivered to the petitioner on 10.03.2010, he represented to the authorities as regards his grievance and requested to issue the allotment letter without any further delay. Something, that exhibits that the petitioner was awaiting formal allotment and was ready and willing to perform his part of the contract. Hardly any time had elapsed, respondents could always issue another copy of the allotment letter to the petitioner and require him to comply with the terms and conditions contained therein. If his claim was ingenuine or bogus he in any case would have failed. That being so, it seems incredible that the petitioner would deny the receipt of the allotment letter. Whether the postal agency indeed delivered the letter of allotment to the petitioner on 10.03.2010 or the concerned Postman actually obtained his signature on the delivery slip (Annexure R4/1), is something which cannot be conclusively determined, for lack of cogent evidence, in these proceedings. However, there does exist sufficient material on record that raises a fair presumption, as is being demonstrated hereinafter, that the petitioner never received the letter of allotment.

11. Petitioner happened to be the owner of half share in a land measuring 41 bighas 5 biswas comprised in khewat No. 579/1086, 4 bighas and 13 biswas comprised in khewat No. 600 min/1094 and 3 bighas 19 biswas comprised in khewat No. 3916, situated in Kasba Karnal, which was acquired to be utilized for development and utilization as residential and commercial area for Sector 9, Part II, Sector 32 and Sector 333, Urban Estates, Karnal. In terms of the scheme/policy of the State Government, petitioner was entitled for allotment of a residential site, on priority, being an oustee. Concededly, along with his application, he had deposited a sum of Rs. 3,30,000/- and furnished the copies of mutation, award and jamabandi. The screening committee found the petitioner eligible for allotment. He was successful in the draw of lots and was thus allotted the site in question. It defies logic that the petitioner, who was a displaced person and fully conscious of his entitlement under the policy/scheme of the Government, would pursue his claim indiligently. This was not a case either where an applicant choose to sleep over the matter and sought to revive an old/stale claim after an inordinate delay. Records show that the petitioner diligently pursued his interest all through the proceedings. The site in question was not exclusively allotted to the petitioner to satisfy his claim as an oustee but also to the other co-sharers jointly. This could also not be so that the petitioner or his co-sharers were not possessed of sufficient means to furnish the requisite amount, as they were also the landowners who were granted compensation on account of

acquisition of their land.

12. Rather, it appears that the respondents themselves were uncertain as regards the receipt of the letter of allotment by the petitioner. That is how, neither did they pass any formal order cancelling the allotted site nor in any of their correspondence even remotely suggested that the site stood resumed and, thus, the petitioner was engaged in a futile exercise. Instead, vide letter dated 28.09.2010 (Annexure P7), authorities required the petitioner to deposit a sum of Rs. 12,42,819/- owing to an enhancement in the land compensation to be awarded to the landowners. Concededly, the petitioner deposit a sum of Rs. 2,63,376/- vide a bank draft on 26.10.2010, Rs. 3,10,671/- vide a bank draft on 28.08.2011, Rs. 3,04,950/- vide a bank draft on 28.09.2011, Rs. 2,91,000/- vide a bank draft on 09.04.2012 and Rs. 2,67,398/- vide a bank draft on 28.09.2012. And, thus, duly satisfied the demand raised by respondent No. 3. That being so, the deemed cancellation of site pales into insignificance. Ex facie, respondents failed to rebut the presumption that the petitioner never received the allotment letter, therefore, there was never any occasion to comply with its terms. Thus, the clause that postulates deemed cancellation, on account of non-deposit of 15% of the price of the site within 30 days, could never operate or be activated. Accordingly, the judgment of the Division Bench of this court in Smt. Sushma Bakshi's case (supra), relied upon by the respondents, shall have no bearing on the matter in issue.

13. At the end of the day, as demonstrated above, petitioner is a displaced person whose claim had to be satisfied in terms of the scheme/policy of the State Government under the oustee quota. He had to be rehabilitated. That being so, we are of the considered view that there is hardly any justification, least plausible, to deprive him of the allotted site. The allotment letter (Annexure R3/2) indicates that the balance 75% of the tentative cost of the plot was required to be deposited by the allottee in 6 yearly installments and, therefore, the last installment would fall due in March, 2016. Learned counsel for the petitioner submits that the petitioner shall deposit all the outstanding dues along with interest, if any, within the time that is stipulated to deposit last installment. Statement of learned counsel for the petitioner is accepted and is so ordered.

14. Accordingly, the writ petition is allowed. Respondent No. 3 is directed to issue a formal letter of allotment to the petitioner forthwith and on receipt of the entire outstanding amount/dues, the respondents shall deliver the actual physical possession of the site to the petitioner.