
(1994) 05 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3634 of 1983

Capt. J.S. Gosal

APPELLANT

Vs

The Estate Officer, Urban Estates and Others

RESPONDENT

Date of Decision : 06-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Urban Estates (Sales of Sites) Rules, 1965 — Rule 3, 4, 5

Citation : (1994) 108 PLR 214

Hon'ble Judges : Jawahar Lal Gupta, J

Bench : Single Bench

Advocate : S.C. Nagpal, for the Appellant; P.S. Thiara, for the Respondent

Final Decision : Allowed

Judgement

Jawahar Lal Gupta, J.—On June 21, 1977, the Estate Officer, Urban Estates, Punjab informed the petitioner that it had been decided to allot you a one kanal plot in the Urban Estate at Jalandhar. "The petitioner was called upon to complete the application form, file an affidavit and submit a bank draft for an amount of Rs. 6750/- within the stipulated period of 15 days. The petitioner complied with all the requirements within the stipulated period. This was acknowledged by the authority vide its letter dated July 4, 1977; a copy of which has been produced as Annexure P-2. After repeated reminders and re requests for the issue of a letter of appointment, the petitioner was informed vide letter dated August 10, 1981 that "there is no one kanal plot available in Phase-I under the Discretionary Kota (quota). Therefore, your application under (on) this subject cannot be considered for allotment." A copy of this order has been produced as Annexure P-7 with the petition. Aggrieved by this action, the petitioner has approached the Court through the present writ petition.

2. Initially, the authorities of the Department of Urban Estates, Punjab had been impleaded as respondents. Subsequently, their functions were allocated to the Punjab Housing Development Board. The petitioner had filed a Civil Miscellaneous

Application for impleading the Punjab Housing Development Board through its Chairman as a respondent. This prayer was allowed vide order dated December 1, 1993. Shri. P.S. Thiara had put in appearance on behalf of the Board.

3. The written statement which had already been filed by the Estate Officer, Urban Estates, has been adopted by Shri Thiara on behalf of respondent No.5. In this written statement, it has been inter alia averred to availability of the plot and since subsequently no plot was available the allotment could not be made. "It has been further averred that vide letter dated May 9/13, 1974, the Government had taken a decision that a total of 12 plots measuring one kanal each were to be allotted; on the basis of the Serial Nos. shown in the list enclosed. The petitioner did not figure in the list as he had applied only in 1977. It is submitted that after 1974 all allotments have been made in accordance with the enclosed list. The last allotment was made on 27th August, 1980 and no allotment has been made in this phase after that date in discretionary quota. "On this basis, the respondent contests the claim of the petitioner.

4. I have heard Shri S.C. Nagpal for the petitioner and Shri P.S. Thiara for the respondent. Shri Nagpal submits that the decision to allot a one kanal plot in the Urban Estates at Jalandhar having been conveyed to the petitioner and the respondents, having accepted 25 percent of the total price of the plot, the action in not giving possession to the petitioner is wholly arbitrary and unfair. On behalf of the respondents, Shri Thiara has sought to justify the action of the respondents only on the ground that no allotment out of the Discretionary quota has been made after August 27, 1980.

5. The sale of plots etc. by the respondents is governed by the Rules, called the Punjab Urban Estates (Sales of Sites) Rules, 1965". Under Rule 3, the Sites" can be sold "by auction or allotment." Rule 4 relates to the fixation of price Rule 5 governs the "sale" by "allotment". A perusal of this rule shows that while making an application for the allotment of a plot, the intending purchaser has to tender an amount equal to 10 percent of the price in the form of a demand draft. After the tender of this price, the State Government has to consider and decide the matter. In case, it decides to allot the plot, the purchaser has to deposit 15 percent of the sale price within 30, days. Under Rule 7, it is inter-alia provided that "the possession of the site shall be delivered to the Transferee after the payment of twenty-five percent...." of the price.

6. In the present case, respondents had informed the petitioner that it had been decided to allot one kanal plot to him. On this basis he was called upon to pay an amount of Rs. 6750/-. It is conceded before me that he was equal to 25 percent of the plot. Consequently, all that remained to be done was to convey the number of the plot allotted to the petitioner over possession to him. Instead of doing that the respondents waited for a period of four years and then informed him that no plot was available the letter dated August 10, 1981, a copy of which has been produced as Annexure P-7 with the writ petition, is clearly belied by the facts established on the record.

7. The petitioner had moved C.M. Application No. 103 of 1994. in para 4 was averred that on enquiry, he has come to know that plot Nos. 605,609 and 651 in Phase I and plot Nos. 785 and 817 in Phase II were still available for allotment. Notice of the application was given to the counsel for the respondents. The facts in this application were not controverted by filing any reply. In fact, in this application on January 31, 1994, it was conceded by respondents that five plots, as mentioned in it, have not yet been allotted to any one and were available with the Board. Consequently, a direction to keep one of the five plots reserved for the petitioner was given. Shri Thiara has today submitted that these five plots are meant for the category of the M.Ps. and M.L.As. and not for any one else. Be that as it may, observation in the impugned order that "there is no one Kanak plot available in Phase-I under the Quota." is clearly belied by the facts as established on the record.

8. Faced with this situation. Shri Thiara submits that the respondents have categorically averred in the written statement that the last allotment was made only on August 27, 1980 and thereafter no plot has been allotted to any one. He refers to the averments in Paragraph 3 in this behalf. The said statement reads as under:

"The last allotment was made on 27th August, 1980 and no allotment have (been) made in this phase after that date is discretionary quota."

This is a very cautious statement. It may be that in Phase-I allotment was made out of the discretionary quota after August 27, 1980. Admittedly plots were available in Phase-II also. The above statement cannot be read to mean that no allotment was made out of the plots Phase-II.

9. It is well settled that the State and its instrumentalities cannot act arbitrarily. Their actions must be reasonable and fair. Once a decision had been taken to allot a plot to the petitioner and he had completed with all the formalities and paid the money, it was unfair for the respondents to deny him the plot. Their action was arbitrary and unfair. This is all the more so as, by now, a period of almost 17 years has elapsed since the petitioner had deposited the money. In this context, it deserves mention that Shri Nagpal had submitted that if the original file is produced it would be found that, in fact, a plot had been allotted to the petitioner. Later on according to the counsel the same plot was allotted to some other person in pursuance to this submission, I had directed the learned counsel for the respondents to produce the original file. Today, at the hearing of the case, an affidavit of Ms. Jaskaran Kaur, Estate Officer, has been filed. It has been averred in the affidavit that the relevant office file of the case is missing for the last about 5 years. It has been further averred that one plot has been reserved for the petitioner till the case. In the totality of circumstances, it appears appropriate to direct the respondents to allot one of the five available plots to the petitioner.

10. No other point has been urged.

11. Accordingly the writ petition is allowed. The impugned order dated August 10,1981, a copy of which is at Annexure P -7 with the writ petition, is set aside. The respondents are directed to allot and hand over the possession of one of the five available one Kanal plots, as mentioned above, to the petitioner. The needful shall be done within two month from the date of the receipt of a copy of this order. In the circumstances, there will be no order as to costs.