

(2014) 05 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Civil Misc. No. 4669 of 2008 in/and Civil Writ Petition No. 18246 of 2005(O&M)

Janak Arora

APPELLANT

Vs

Huda

RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:

Citation : (2014) 05 P&H CK 0112

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

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Surya Kant, J.

CM No. 4669 of 2008

1. This application seeks to recall the order dated 25.07.2006 whereby the applicant-petitioner's writ petition was dismissed observing as follows:-

... In view of the specific stand taken by the respondents that the possession of the plot had been offered by the Estate Officer to the petitioner in the month of August, 2000, we are satisfied that the grievances made by the petitioner are wholly unjustified.

However, before parting with this order, we must take note of the plea raised on behalf of the petitioner that offer of possession made by the Estate Officer was never received by the petitioner at any point of time. However, in view of the specific stand taken by the respondents, we are not inclined to believe the aforesaid plea raised on behalf of the petitioner...

2. The applicant has averred that the plea taken before this Court regarding delivery of possession to her was palpably false as the respondents vide their letter dated 16.11.2006 (Annexure A-3) have candidly acknowledged that possession of the plot could not be delivered to her as the area of the plot "falls

under the forest land".

3. Notice of this application was issued and in response thereto, the Estate Officer, HUDA, Faridabad, has filed his reply-affidavit. Though it is again averred that possession of the plot was offered to the petitioner vide memo dated 31.08.2000 and she did not come forward, the fact that the subject plot falls in the "forest area" where construction of the houses has been banned by the Hon"ble Supreme Court, has also been admitted. The correspondence between HUDA authorities and the Forest Department substantiating this plea has also been appended with the reply-affidavit.

4. Counsel for the parties are not present.

5. Since the application is pending for a considerable long period, we have considered the same on merits in the light of the admission made by the respondent-authorities that the plot in question falls in the "forest area" and its possession cannot be delivered and that no construction can be raised due to prohibited orders passed by the Hon"ble Supreme Court. It appears to us that the order dated 25.07.2006 whereby the petitioner's writ petition was dismissed on the basis of the statement made by the respondents, deserves to be recalled.

6. Ordered accordingly.

7. The writ petition is thus restored to its original number and taken on Board for fresh adjudication on merits. CWP No. 18246 of 2005.

8. The question that arises for consideration is whether the petitioner be given an alternative plot if possession of Plot No. 138, Sector 21-C-III, re-allotted to her cannot be delivered or she cannot be permitted to raise construction for the reasons mentioned in the earlier part of this order?

9. An identical issue where the residential plots in the urban estate of Faridabad, have been carved out in the notified forest area and HUDA authorities are unable to deliver possession thereof, came up for consideration before this Court in CWP No. 17769 of 2013 (Indu Sehgal and another versus HUDA and another) and vide order dated 29.01.2014, following the guidelines earlier laid down in CWP No. 2759 of 2013 (Mahender Pal Jain versus State of haryana and others, decided on 08.08.2013, the said writ petition was disposed of with the following directions:-

... We direct the respondents to hold a limited draw of lots for the plots mentioned in the preliminary submissions within a period of one month from the date of receipt of a certified copy of this order following the guidelines laid down by this Court in CWP No. 2759 of 2013, titled as Mahender Pal Jain versus State of Haryana and others, decided on 08.08.2013.

Since the plots are less than the applicants, to whom the alternative plots are required to be allotted, we further direct the respondents to make available additional plots within 2 months and ensure that every affected allottee like the

petitioner is given an alternative plot alongwith possession before 30.04.2014, failing which the petitioner or such other allottee shall be entitled to claim special damages from the respondent-authorities...

10. It may thus be seen that the affected allottees have been held entitled to the alternative plots and the allotments are to be made in a transparent manner by way of limited draw of lots. The petitioner being a similarly placed re-allottee, is also entitled to the benefit of the above-reproduced directions. The instant writ petition is thus disposed of in terms of the directions already issued in Indu Sehgal and another's case (Supra).

11. Ordered accordingly.

12. Dasti.