(2014) 09 P&H CK 0159

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 15392 of 2013

Mahipat Singh — APPELLANT

Vs

State of Haryana and Others — RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:
General Clauses Act, 1897 — Section 27

Citation : (2015) 177 PLR 581

Hon'ble Judges : Kuldip Singh, J;Hemant Gupta, J

Bench : Division Bench

Advocate : Joginder Singh Tokas, Advocates for the Appellant; Shubhra Singh, D.A.G, Advocates for the Respondent

Judgement

Hemant Gupta, J.—The petitioner has invoked the writ jurisdiction of this Court claiming a writ of mandamus for directing the respondent No. 2-Chief Administrator, Haryana Urban Development Authority (for short ''HUDA''), Panchkula to condone the delay in deposit of 15% of the consideration amount by the petitioner. The petitioner applied for allotment of a residential plot of land measuring 8 Maria in Sector-7, Urban Estate, Jind on 05.01.2010. The petitioner availed financial assistance of Rs. 1,16,000/- from ICICI Bank. The bank charged a sum of Rs. 5050/- as interest on the amount of Rs. 1,16,000/- deposited by the Bank to HUDA as registration money. The petitioner was communicated by ICICI Bank on 03.08.2010 that he was successful allottee in the draw of lots held by HUDA. The petitioner was requested to deposit a sum of Rs. 1,16,000/- in its bank account. The petitioner deposited the said amount on 31.08.2010.

2. The stand of the petitioner is that from the website of HUDA, he found his name is at Serial No. 43 of the list in General category in the draw of plots held on 23.06.2010. Plot No. 457 was earmarked against his name. But the allotment letter was not received by the petitioner either from the Bank or from the Estate Officer, HUDA. The allotment letter has now been produced with the writ petition as Annexure P-19. The relevant extract such as clauses 4 & 5 of such allotment

letter read as under:-

"4. In case you refuse to accept this allotment, you shall communicate your refusal by a registered letter within 30 days from the date of issue of this allotment letter; failing which this allotment shall stand cancelled and the earnest money deposited by you shall be forfeited to the authority and you shall have no claim for damages.

5. In case you accept this allotment, Please send your acceptance by registered post alongwith an amount of Rs. 173858.00 within 30 days from the date of issue of this allotment letter which together with an amount of Rs. 116000.00 Paid by you alongwith your application form as earnest money will constitute 25% of the Total tentative price."

3. The petitioner relies upon policy dated 03.08.2007 (Annexure P-15) which contemplates condonation of delay in depositing 15% of the amount. The relevant clause reads as under:-

"3. Power for condonation of delay

(A) xx xx xx xx

(B) For all remaining category of plots except commercial plots

* These power shall be exercised by a committee comprising of the secretary, Town and Country planning Deptt. as Chairman, C.A. HUDA and DTCP as members, who shall be competent authority to decide the case of condonation of delay beyond 180 days and up to one year. Beside surcharge, penal interest at the rates applicable at the time of allotment shall have to be paid for the delayed period to be reckoned from the date of allotment to the date of payment. In no case condonation of delay for more than one year shall be done.

4. Procedure to be followed

All applications for condonation of delay may be made in the office of concerned Estate Officer, HUDA if the period of delay is such that the powers of condonation of delay are either with Estate officer or Administrator. Such application may accompany with a bank draft of necessary 15% amount. The Estate officer shall deposit this amount into HUDA account only after the delay is condoned by the competent authority. If the delay is not condoned the draft may be returned as such. In case the period of delay is more than the period for which condonation can be done by Estate Officer/Administrator and falls within the powers of Authority/Chief Administrator in such genuine cases of hardship the allottee may make an application to the Chief Administrators with a photocopy of bank draft of requisite 15% amount. The case will be examined on receipt of application after obtaining facts of the case from concerned Estate Officer and put up to the competent authority for order. Thereafter in case the competent authority agrees to condone the delay keeping in mind the circumstance of the case then the Estate Officer will be advise to accept the payment."

4. The petitioner asserts that respondent-Bank has informed him that the Bank has not received any allotment letter. A certificate to this effect has been produced with the writ petition as Annexure P-13. The procedure in the policy also contemplates that the request for condonation of delay has to be submitted to the Estate Officer along with Bank Draft of the 15% of the amount. The petitioner has sent a draft of the said amount of 15%. The draft was required to be encashed only if the delay is to be condoned. The petitioner submitted an application for condonation of delay of the 15% of the amount (Rs. 173858/-) and for payment of surcharge and penal interest along with demand draft of Rs. 2,09,000/- dated 22.06.2011.

5. In reply, on behalf of respondents No. 2 and 3, the stand is that the letter of allotment dated 21.10.2010 was sent to ICICI Bank which was delivered on 25.10.2010. It is also pointed out that the petitioner failed to deposit 15% of the amount along with interest and surcharge i.e. along with No Objection Certificate of ICICI Bank. The Estate Officer has forwarded the case to the Chief Administrator for condonation of delay but since the delay was of more than 180 days, the Chief Administrator informed the Estate Officer on 27.06.2012 that delay is of 462 days i.e. from 21.10.2010 to 24.01.2012, therefore, the request of the petitioner is not covered under the policy for condoning delay. The draft of Rs. 2,09,000/- dated 22.06.2011 was returned.

6. In a separate reply filed by ICICI Bank, the stand is that no allotment letter in respect of the petitioner has been received by the Branch of ICICI Bank situated at SCO No. 18 and 19, HUDA Shopping Centre, Sector-14, Market Complex, Gurgaon. The Bank produced its inward mail register in support of contention that no such letter was received from HUDA.

7. A short affidavit has been filed by Estate Officer, HUDA, Jind dated 24.01.2014 to the effect that letter of allotment was sent to ICICI Bank, Gurgaon on 25.10.2010 as the Bank was having lien on such plot. The intimation regarding sending of allotment letter to ICICI Bank was also sent to the allottee on 25.10.2010 through registered post, on the address given in the application.

8. We have heard learned counsel for the parties and find that application form (Annexure P-1) has endorsement that earnest money is financed by ICICI Bank. Though, there is controversy in respect of the communication sent by HUDA authorities to the Bank and/or to the petitioner, but we find that the discrepancy in the written statement giving the receipt number of the registered letter sent to the petitioner but mentioned as sent to the Bank can be said to be an inadvertent mistake. It is not disputed that address mentioned in the application form of the petitioner is the correct description. The intimation letter was sent by HUDA on the address mentioned by the petitioner, therefore, the same carries presumption of receipt in terms of Section 27 of the General Clauses Act, 1897.

9. Even if such letter is not presumed to be delivered, we find that action of the Chief Administrator to decline condonation of delay is not tenable in law. The

allotment letter is purported to be sent on 21.10.2010. The amount of Rs. 1,73,858.50p was to be remitted within 30 days from the date of issue of the allotment letter, which along with earlier amount of Rs. 1,16,000/- would constitute 25% of the total consideration.

10. The petitioner sent the draft of Rs. 2,09,000/- on 22.06.2011 i.e. almost after 7 months but within one year. In terms of the policy permitting condonation of delay, the delay could be condoned up to 180 days by the Chief Administrator on payment of 10% of the surcharge, whereas beyond 180 days, the delay could be condoned by Authority. Such power to condone delay by the Authority could be exercised by a Committee comprising of the Secretary, Town and Country Planning Department as Chairman, Chief Administrator HUDA and Director, Town and Country Planning as members. The Chief Administrator has taken the delay as 462 days from 21.10.2010 to 24.01.2012. Such consideration is patently illegal. Firstly, the question of delay would arise only after the expiry of 30 days, therefore, the period for condonation of delay will not commence from the date of issuance of letter of allotment. Secondly, the period of delay cannot be counted after a request has been made by the petitioner for condonation of delay i.e. on 22.06.2011. Therefore, the period of 30 days i.e. from 21.10.2010 to 20.11.2010 and 65 days i.e. from 22.06.2011 till 24.01.2012 cannot be taken into consideration in respect of which petitioner has sought condonation of delay.

11. We find that, though, the Estate Officer has found that the period on surcharge and the interest is a sum of Rs. 2,08,749.50p but the consequences of delay in consideration of the question of condonation of delay by the Competent authority cannot fall upon the petitioner in terms of the procedure given in the policy. The question of condonation of delay has not been examined in a proper perspective. It shows complete non application of mind in respect of the period, for which, the petitioner is seeking condonation of delay. Therefore, we deem it appropriate to quash and set aside the communication dated 27.06.2012 and direct the Authority to consider the question of delay for the period from 22.11.2010 to 22.06.2011 in accordance with law expeditiously. In view of the above, the present writ petition is disposed of accordingly.