
(2016) 04 P&H CK 0138
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12058 of 1998

Manju S. Gupta

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 12-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 3 LAR 1 : (2016) 2 LawHerald 1278 : (2016) 2 PLJ 403 :
(2016) 2 RCRCivil 830

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

Bench : Division Bench

Advocate : Rakesh Gupta, Advocate, for the Appellant; Deepak Balyan, Addl. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Arun Palli, J.—1. A writ in the nature of certiorari is prayed for to quash an order dated 17.08.1992 (Annexure P4), rendered by the Estate Officer, HUDA, Gurgaon (respondent No. 4), vide which the residential site allotted to the petitioner was resumed and orders dated 12.12.1996 (Annexure P6) and 18.08.1997 (Annexure P11), whereby the appeal as also the revision preferred by the petitioner against the order of resumption were dismissed.

2. A brief narration of facts that have led the parties to the current stage would be expedient.

3. Haryana Urban Development Authority (HUDA), in the year 1984, invited applications for allotment of residential sites through draw of lots in Sector 22, Gurgaon. In terms of clause 11 of the brochure-cum-application form (Annexure P1), only those applicants were eligible to apply, who did not own a residential house/plot in Gurgaon Urban Estate in his/her name or in the name of any of their dependent family members. For, the petitioner as well as her husband were eligible to apply, they both sought allotment by moving two separate

applications. Both were declared successful in the draw of lots held by the authorities. Plot No. 491/22 was allotted to Madhukar Shyam Gupta, husband of the petitioner, and a formal letter of allotment was issued to him on 11.09.1984. Petitioner too was allotted plot No. 177/22, but she could not be issued the allotment letter, for the allotted site was a subject matter of litigation. However, post settlement of the said dispute, a formal allotment letter dated 27.01.1989 (Annexure P2), was issued even to the petitioner. And, in terms of clause 11 of the brochure-cum-application form, she furnished an affidavit dated 22.02.1989 (Annexure P3) stating that she did not own any residential house/plot in her name or in the name of any of her dependent family members. But, subsequently respondent No. 4, vide memo dated 30.04.1990, asked the petitioner as also her husband to appear and clarify as to how they both were entitled to retain two separate residential plots. In response, petitioner and her husband appeared before the authorities and clarified that in terms of the eligibility clause set out in the brochure-cum-application form, they were eligible to seek allotment in their respective names. For, none was financially dependent on the other, both were income tax assessee, and running their separate businesses. But still, they were told to surrender one of the plots, for allotment to both the husband as also the wife was purportedly against the terms of allotment. Further, one family (husband/wife and dependent family members) could only be allotted one plot in a particular Urban Estate. And, vide order dated 17.08.1992, site allotted to the petitioner was resumed. Appeal preferred against the order of resumption was dismissed by the appellate authority, for in reference to the policy that existed in the year 1996 it was concluded that the petitioner could not retain the allotted site once her husband had already been allotted a plot in the same Urban Estate:

"I have heard both the parties at length and examined the case carefully. Main plea of the appellant is that the affidavits furnished by the appellant and her husband are as per terms & conditions of application form/allotment letter. They are not dependent on each other because they are running their own business and both are regular Income Tax Assessee for the last 30 years, therefore, they are eligible to retain both the plots. Whereas the Deputy District Attorney on behalf of HUDA stated that the existing policy of HUDA does not allow a dependent family members and spouse to retain two plots. Having given a considered thought to the whole matter, I am of the opinion that though for the business purposes they (husband and wife) are separate income tax assessee but it is also fact that being a husband and wife they are member of one family and as per "Hindu Undivided Family Laws and as per HUDA policy a dependent family members and spouse can not retain two plots. Therefore, the resumption orders dated 17.8.92 passed by the E.O. HUDA Gurgaon are correct and as per policy of HUDA."

4. Likewise, even the revisional authority dismissed the revision and affirmed the order of resumption. The conclusion arrived at reads thus:

"I have heard both the parties and gone through the record of the case carefully. The most point here to be decided is whether husband and wife are dependent on each other when both are paying taxes separately and are financially solvent enough to function independently. Even if the husband and wife are independent financially, they are living together and part of the same family in the absence of anything contrary coming on record. The purpose of allotment of HUDA is to allot plot to a person as a unit which consists of husband, wife and minor children. This is the definition of family though for income tax purpose husband and wife could be independent unit if they pay tax on their own income separately. I feel we should not get too much involved into the legal complexity of the problem. The broad objective of HUDA should be kept in view while allotting plot to the deserving people.

In the instance case no argument has been put forward as to why two plots are needed in one family. This becomes significant as it transpired that the plot allotted to Mr. Madhukar S. Gupta has been transferred to Smt. Santosh Sachdeva on 15.1.1996. This shows that the additional plot coming to the family by sheer good luck, has been utilized for financial gain. This defeats the very purpose of allotment of plots by HUDA. Hence, I am not prepared to agree with the argument of the appellant. Accordingly, the appeal is dismissed."

5. That is how, as indicated above, the petitioner is before this court.

6. In the written statement, filed on behalf of the respondents, it is maintained inter alia that in terms of the policy of HUDA, husband and wife being dependent on each other and members of the same family, for the purpose of allotment in the Urban Estates developed by HUDA, were not entitled to retain individual plots. Further, husband, wife and dependent family members were considered as one unit and therefore entitled to one plot. Opportunity to surrender one of the plots was afforded to the petitioner as well as her husband, but they did not exercise their option. The main objective of development of an Urban Estate was to allot residential plots to homeless persons. Therefore, site allotted to the petitioner was rightly resumed.

7. Learned counsel for the petitioner submits that in terms of the eligibility clause, both the petitioner as well as her husband, were fully eligible to apply and seek allotment in their individual names, for they were financially independent and running their separate businesses. Neither of them owned a residential plot/house in Gurgaon nor any of their dependent family members owned a residential site in his /her name in the said Urban Estate. Further, husband of the petitioner, who happened to be a Postgraduate Engineer from the United States of America, after serving for years abroad, was successfully engaged in his independent business and, therefore, could never be said to be a dependent family member of the petitioner. Likewise, even the petitioner, who also holds a Postgraduate degree in Arts, had worked for several years in USA and after returning to India, she too had set up her independent business. He submits that expression "dependent family members" does not include a

financially independent spouse. He also submits that any subsequent alteration in the eligibility conditions or policy, vide which the applicant was required to furnish an affidavit that she does not own any residential plot in Urban Estate, Gurgaon either in her name/spouse or in the name of any of her dependent family members, would not affect the entitlement of the petitioner to seek allotment. For her eligibility was to be determined in terms of the brochure issued by the authorities in the year 1984. It is urged that if a dependent family member i.e. a son or a daughter, on ceasing to be financially dependent, can apply and is entitled for allotment, notwithstanding that his/her parents own a residential plot, then similarly a financially independent wife shall also be eligible to seek allotment. Thus, he submits the orders that are being assailed are wholly erroneous.

8. Per contra, learned counsel for the respondents merely reiterates the reasons that form basis of the orders being assailed and the stand that has been set out in the written statement.

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

10. Before we proceed to determine; whether the petitioner was/is indeed entitled for allotment or could retain the allotted site, once her husband too had been allotted a residential plot in the same Urban Estate i.e. Sector 22, Gurgaon, it would be apposite to refer to brochure-cum-application form to ascertain the true intent and purport that was sought to be achieved vide these allotments:

"RESIDENTIAL DEVELOPMENT

Gurgaon town has attracted both the entrepreneurs and the shelter seekers, being easily accessible and having clean and pleasant environments. A lot of employment potential is being created in and around the town. As a result, there is a huge demand for residential plots from the people living in a National Capital and from adjacent states. The Haryana Urban Development Authority has embarked upon an ambitious programme of developing an area of 4000 Hects in the shape of various residential, industrial and commercial sectors on most modern lines. Out of 4000 Hects, 3000 Hects have already been fully developed and sold out. About 600 Hects is likely to be acquired in the near future.

SECTOR 22

Sector 22 is located on Delhi Gurgaon road at a distance of 12 K.Ms from Palam Airport, opposite Maruti Udyog Ltd. And near Udyog Vihar Industrial Area. Keeping in view the huge demand for residential plots near this Industrial Complex, Sector 22 has been taken up for development and the plots of 6 Marla category to 14 Marla category have been carved out. The possession of the land has already been taken by the Authority and development works at the site will start soon. The provision of all the modern facilities/amenities such as water supply, storm water drainage, sewerage; electricity and the site for various public and religious buildings; parks; shopping centre , shool etc., has been made.

DETAILS OF PLOTS, RATE AND EARNEST MONEY REQUIRED (General category, reserve category of S.C., B.C., War widows and Ex-servicemen, Handicapped and defence personnel/Ex-servicemen)

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ELIGIBILITY FOR GENERAL CATEGORY

11. Only those applicants are eligible to apply who do not own a residential plot/house in Gurgaon, Urban Estate in his/her name or in the name of any dependent family members. An affidavit to this effect should have to be given at the time of issuance of allotment letter."

11. Ex facie, a reference to the relevant clauses of the brochure, as set out above, reveals that there has been a huge demand for residential plots from the people living in a National Capital and from adjacent States. Numerical details show the separate categories of plots i.e. from 6 to 14 marlas in the Sector, as also the number of sites available in each of those categories. Further, the number of plots that were reserved for SC, BC, War widows and Ex-servicemen categories to ensure fair and proportionate distribution of house sites to every segment of the Society. And, the eligibility criteria as set out in clause 11, referred to above, denotes that if an applicant already owns a residential plot/house in the same Urban Estate in his/her name, he/she shall not be eligible to apply, for the intended purpose of allotment was to mitigate the housing problem. Likewise, if dependent family members, who shall ordinarily be the children, and are financially/economically dependent upon their parents, own a residential plot/house, in the same Urban Estate, that too would render their parents ineligible to seek allotment. For, there is a natural presumption that they all would inhabit together in the same household. Once that is so, it defies logic as to how and why a spouse, be that a husband or a wife, who too is a part of the same family unit, can claim an independent house site. The eligibility clause is consciously designed to ensure that allotment of land in the name of providing home sites to the homeless does not become a source of profiteering by those who already have a house either in their name or in the name of their dependent family members. Farmers/landowners were deprived of their land holdings, pursuant to an acquisition, to create/develop these urban estates, not for private enrichment or profiteering but for a public purpose.

12. Undoubtedly, the expression "spouse" does not expressly form part of the eligibility clause. However, rule of contextual interpretation is well recognized and in the case where there is an ambiguity where the terms are amenable for two meanings; one is wider and one is narrower, then the Court must give effect to the words by resorting to the plain rule of construction and also see the context in which they are used. Position of law is settled that court must bear in mind the purpose of the enactment and every endeavour be made to give effect to the said purpose so as to remedy the mischief or a defect for which a law does not

provide.

13. Therefore, the question that arises before us is; whether the eligibility clause requires a strict interpretation at our hands, which indeed would result in multiplying the problem of housing and create further imbalance, or we are required to apply the contextual rule of interpretation to further the purport and intent of these allotments. And before we proceed further, we find this moment to be appropriate to refer to certain observations made by the Hon"ble Supreme Court in this context, in *RBI v. Peerless General Finance and Investment Co. Ltd.*, , 1987(1) SCC 424, which reads thus:

"Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when the object and purpose of its enactment is known. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute maker, provided by such context its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses the court must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place."

14. We are cognizant that next to food and clothing, housing is the basic necessity of mankind. In fact, faced with the enormous housing deficit, the concept of group housing is being promoted. Therefore, in the wake of an ever widening gulf between the rising population and the depleting housing infrastructure stocks, we are impelled to construe clause 11 contextually. And, therefore, the expression "applicant" shall also include and represent a "spouse", for they are intertwined for the purposes of allotment of house sites.

15. Concededly, husband of the petitioner was allotted a residential site in the same Urban Estate, which he subsequently sold on 15.01.1996. Therefore, in terms of clause 11, petitioner too was not entitled to retain a site that was allotted to her. Petitioner and her husband were given an option to surrender one out of the two sites, but they did not. Therefore, cancellation of the site allotted to the petitioner was the only inevitable option before the authorities.

16. And, in a somewhat/similar situation in *Chandigarh Housing Board and another v. Narinder Kaur Makol*, , 2000(3) RCR (Civil) 543 (SC), taking cognizance of the fact that there was a residential flat on second and third floors of a ground floor commercial plot, their lordships held that husband of the

respondent (wife) owned a residential house within the same territory and thus she was not eligible for allotment of another residential plot. And, therefore, the words "residential house" in Regulation 6(1) must be treated as including a flat constructed above the commercial flat. Paragraph 12 of the judgment reads thus:

"12. In our opinion, in view of the admitted fact that there is a residential flat in the second and third floors of the ground floor commercial plot, it must necessarily be held that the husband of the respondent owned a residential house within the territory in question and that therefore the respondent (wife of the first allottee) is not eligible for allotment of another residential plot from the said authority. It must be realized that these plots are allotted in concessional basis to the allottees by the public authority and the relevant regulations must therefore be interpreted in such a manner to save (sic serve) their real purpose so that the plots are available, as far as possible, to the largest number of persons, and for preventing the same family members, husband or wife or dependants, as the case may be, from getting more than one plot or house, for the same purpose. We are of the view that the words "residential house" in Regulation 6(1) must be treated as including a flat constructed above the commercial flat on the ground floor. This will be so even if originally the plot was allotted for commercial purposes, if incidentally construction of residential flat above the ground floor commercial plot is permitted as per the plans. In other words, even though the plot is allotted as a commercial plot, if it is permissible to build a residential flat above the commercial plot, and is so constructed, then such a residential flat will come within the prohibition in Regulation 6(1)."

17. The argument that has been advanced by learned counsel for the petitioner, that if a dependent family member, be that a son or a daughter, on ceasing to be financially dependent or a financially independent member of the family, is entitled to seek allotment, even though his/her parents already own a residential site, then how a spouse, who is also financially independent, would be ineligible, also lacks conviction. A dependent family member, on attaining the age of majority, financial independence and after he/she starts his/her life and career is assumed, in the natural course of events, to have his/her own family i.e. spouse and children. And, therefore may need/require a separate household, and would thus be eligible to seek allotment. Whereas, the applicant and his/her spouse are presumed to inhabit together in the same household. Husband wife live together unless estranged. Although, each of them may be financially independent, they are dependent on each other qua their dwelling unit, their matrimonial home. Considering the nature of the scheme, the dependency referred to therein is with respect to the need of one spouse to live in the dwelling unit owned by the other and not to the mere financial dependency of each of them.

18. No doubt, when the petitioner and her husband applied, vide two separate applications, both were eligible to seek allotment. The purpose was not that they required two independent sites, for they were to live separately, but simply to enhance their chance to succeed in a draw so that, at least one of them could get

a plot of land. But they both succeeded and thus this litigation.

19. And in so far as the submission; that the eligibility criteria for allotment continued to change from time to time as in the year 1984 an applicant could seek an allotment even if he/she already had a site in his/her name or in the name of dependent family member, in the year 2000, any individual could have more than one plot in the same Urban Estate would also not advance the case of the petitioner a bit.

20. For, what were the factors and the situation prevalent in a particular Urban Estate, town or a city at a given time, owing where to, an eligibility clause was formulated, are not before us. And in any case, we were only required to interpret clause 11 that formed part of the brochure-cum-application form, issued in the year 1984 for allotment of house sites in the Urban Estate, Sector 22 Gurgaon. And as we have concluded, on its true and purposive construction, the expression "applicant" would include and represent; his/her spouse. Notwithstanding whether he/she is financially independent or not.

21. In the wake of the position, as sketched out above, we are dissuaded to interfere with the discretion exercised by the authorities under Article 226 of the Constitution of India. The petition being devoid of merit is accordingly dismissed.