
(2015) 02 P&H CK 0150
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 1772 of 2015

Maya Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 02-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Haryana Municipal Act, 1973 — Section 253

Citation : (2015) 178 PLR 510

Hon'ble Judges : Hari Pal Verma, J.; Hemant Gupta, J.

Bench : Division Bench

Advocate : Rose Gupta, for the Appellant

Final Decision : Dismissed

Judgement

Hari Pal Verma, J.—Through the instant writ petition filed under Articles 226/227 of the Constitution of India, the petitioners have sought quashing of order dated 9.10.2014 (Annexure P11), whereby the claim of the petitioners for allotment of plots in Peepliwalla Johar Colony, Barwala (Hisar) has been rejected.

2. Briefly stated, the petitioners are employees or legal heirs of late employees of respondent no.2-Municipal Committee, Barwala (Hisar), who are/were Sweeper/Tax Clerk/Tubewell Drivers and have been working with the respondent no.2-Municipal Committee, Barwala for the last about 20-25 years or have retired from the Municipal Committee. The petitioners are praying for a direction to the respondents to grant ex-post facto sanction for allotment of plots, which were stated to have been allotted to them by respondent no.2 and pursuant thereto, the petitioners have deposited 100% amount of the plots in question, enabling the petitioners to raise construction over the same.

3. It is the case of the petitioners that during the general house meeting, the respondent no.2 i.e. Municipal Committee, Barwala had passed resolution no.7 dated 2.5.1991 and resolution no.6 dated 20.6.1991, vide which, the petitioners/

employees were allotted plots measuring 120 and 180 square yards (approx.) @ Rs.50/- per square yard on the land belonging to the Municipal Committee, Barwala situated at Peepliwalla Johar Colony, Barwala (Hisar). While issuing allotment letters, the respondent no.2 had also delivered the possession of each of the allotted plots to the petitioners and since then, the petitioners are enjoying the actual/physical possession of the plots allotted to them, as prospective vendees. Petitioners have deposited the sale consideration of the plots, but the respondents are sitting over the matter for the last 20-25 years without any justifiable reason and are not giving ex post facto approval of the sanction given by respondent no.2. The petitioners belong to Scheduled Caste category and are regular/confirmed employees of the respondent- Municipal Committee and the plots have been allotted to them as a welfare measure in the year 1991. The respondent no.2 has already received 100% price of each plot from the petitioners, but still, the approval of sale is not being given by the respondents. It has been further averred that the petitioners want to raise construction over the plots in question after payment of the remaining sale price and after getting the site plans sanctioned from respondent no.2. The petitioners served Justice Demand Notice dated 3.1.2011 followed by another Justice Demand Notice dated 4.1.2011 upon respondents (Annexure P2 and P3 respectively) for redressal of their grievances. However, respondent no.2 while submitting reply dated 25.1.2011 to the Justice Demand Notices refused to accept the claim of the petitioners on the ground that respondent no.2- Municipal Committee is not competent to pass any such resolution and the rates of allotment were very low.

4. When the petitioners were not granted any permission to raise construction, some of the petitioners filed CWP No. 3911 of 2011 titled as Maya Singh and others v. State of Haryana and others, wherein the respondents while submitting reply dated 29.5.2011 have admitted that respondent no.2 has passed the resolution for allotment of plots to its employees, but further stated that the resolution dated 2.5.1991 was cancelled by Deputy Commissioner vide order dated 10.6.1991 on the ground that it is a sheer wastage of municipal property. It has been submitted that the aforesaid order dated 10.6.1991 was never communicated to the petitioners and they were kept in dark about the suspension of resolution dated 2.5.1991. The order dated 10.6.1991 came to the knowledge of the petitioners only in the year 2011 when the respondents filed their reply during the pendency of the writ petition. The said writ petition, came up for hearing before this Court on 9.9.2014 and the same was disposed of with a direction to the respondents to pass a speaking order within one month from the date of disposal of the said writ petition with liberty to the petitioners to challenge the said speaking order at an appropriate stage.

5. Pursuant to order dated 9.9.2014 passed by this Court, the respondents have considered the claim of the petitioners and vide order dated 9.10.2014 (Annexure P- 11), the claim of the petitioners for allotment of plots has been rejected on the ground that the resolutions dated 2.5.1991 and 20.6.1991 were illegally passed by the Municipal Committee, Barwala.

6. It is in the aforesaid circumstances the petitioners have filed the present writ petition, challenging the order dated 9.10.2014 (Annexure P11), declining the claim of the petitioners for allotment of plots on the basis of resolutions dated 2.5.1991 and 20.6.1991, as the same were never approved by the Deputy Commissioner.

7. We have heard learned counsel for the petitioners.

8. Learned counsel for the petitioners has argued that vide resolution dated 2.5.1991, respondent no.2 has allotted plots to the petitioners on the land belonging to the Municipal Committee, Barwala and at the time of issuance of allotment letters, respondent no.2 has also delivered possession of each of the allotted plots to the petitioners. The petitioners are in actual/physical possession of the plots allotted to them, as prospective vendees and therefore, the plots having been validly allotted to them, approval should be granted by the Deputy Commissioner, especially in view of the fact that the petitioners have already paid the total consideration of the plots. But the respondents are sitting tight over the matter for the last 20-25 years without any justifiable reason. It has been further contended that the petitioners belong to Scheduled Caste category and are regular/confirmed employees of the Municipal Committee. Despite having accepted 100% price of each of the plots, the approval needs to be granted, for which, the petitioners cannot wait for an indefinite period. Learned counsel for the petitioners has further contended that the petitioners intend to raise construction over the plots in question after payment of remaining sale price and after getting the site plan sanctioned from respondent no.2.

9. After hearing the arguments of learned counsel for the petitioners and perusing the record, we are of the opinion that the writ petition is without any substance.

10. As per Haryana Municipalities, Management of Municipal Properties and State Properties Rules, 1976 (for short, "the Rules"), an immovable property of the Municipal Committee cannot be transferred without the sanction of the Deputy Commissioner. Rule 2 of the Rules provide the procedure for alienation, which is reproduced hereunder:-

"2. Procedure of alienation.-(1) A municipal committee proposing to alienate permanently or for a term exceeding ten years any land or other immovable property of which it is the owner shall apply to the Deputy Commissioner for sanction.

(2) An application under sub-rule(1) shall be accompanied by a plan of the proposed property to be alienated together with a statement in Form A appended to these rules.

(3) The Deputy Commissioner shall record an order on the application,-

(i) sanctioning it (subject to such conditions, if any, as he thinks fit);

(ii) refusing to sanction it, provided that no sale by auction shall be valid, until it has been confirmed by the Deputy Commissioner.

(4) When the Deputy Commissioner has accorded sanction to a sale by auction, the Form A aforesaid shall in due course be re-submitted to him with the details regarding the auction shown in Form B. Deputy Commissioner shall thereon either confirm the sale or refuse to confirm it. If the Deputy Commissioner refuses to confirm the sale, the same shall be void.

(5) Any orders passed by the Deputy Commissioner under sub-rules (3) and (4) shall, subject to the provisions of Section 253 of the Haryana Municipal Act, 1973, be final."

11. Admittedly, the resolution dated 2.5.1991 was never sanctioned by the Deputy Commissioner and was rather cancelled on 10.6.1991. The Municipal Committee has passed another resolution dated 20.6.1991, which was never sent for sanction of the Deputy Commissioner and thus, the allotment letter dated 16.8.1991 issued by the President of the Municipal Committee, Barwala is in strict violation of the Rules. Since there is no sanction of the Deputy Commissioner, Hisar for transferring the property in question, mere issuance of letter dated 16.8.1991 and passing of another resolution dated 20.6.1991 does not create any right with the petitioners being contrary to statutory rules. As such, the transfer letters/resolutions carry no legal sanctity.

12. The order dated 10.6.1991, whereby the earlier resolution dated 2.5.1991 was cancelled, is binding upon the rights of the petitioners. There is also no such challenge to the order dated 10.6.1991, whereby the resolution dated 2.5.1991 was cancelled by respondent no.3 i.e. Deputy Commissioner, Hisar. Thus, when neither the State Government nor the Deputy Commissioner have granted any sanction for sale of the plots by the Municipal Committee to its employees, the petitioners are not entitled for allotment of plots and thus, resolutions dated 2.5.1991 and 20.6.1991 are meaningless. Moreover, the resolution dated 2.5.1991 was already cancelled by the Deputy Commissioner, whereas the resolution dated 20.6.1991 was never submitted to the Deputy Commissioner for sanction, as required under the Rules. Further, the land in question is neither in the possession of the petitioners nor possession of the same was ever handed over to them, as being claimed. Thus, the factum of possession has strongly been disputed. Merely on the ground that an allotment letter was issued by the then President in an illegal manner without getting any sanction from the Deputy Commissioner, the petitioners cannot be held entitled for allotment of plots. Accordingly, when no proper sanction, as required under the Rules has been granted, the Municipal Committee cannot sell the plots to its employees without adopting the legal course including approval from the Deputy Commissioner. It would be wholly unjust and perversity if the Municipal Committee can be permitted to sell its property to its employees rather than to general public. The sale of the plots was without any public notice to general public contemplating some plots for the employees, if permissible under Rules. But the resolution

allotting plots to its employees does not meet the basic requirement of sale of public property. Therefore, petitioners are not entitled for plots without undergoing the required procedure.

13. Thus, we do not find any substance in this writ petition. There is no illegality in the order dated 9.10.2014 (Annexure P11) passed by respondent no.1.

14. Accordingly, the writ petition is dismissed.