
(2007) 05 P&H CK 0056
In the Punjab And Haryana At Chandigarh

Mrs. Rup Judge

APPELLANT

Vs

Chandigarh Housing Board and Another

RESPONDENT

Date of Decision : 09-05-2007

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2007) 4 PLR 286 : (2007) 3 RCR(Civil) 721

Hon'ble Judges : H.S. Bhalla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.S. Bhalla, J.—Through the instant writ petition, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the action of the Administrator, Union Territory, Chandigarh (respondent No. 2) in rejecting her application seeking allotment of a house under the 1996 Oustees" Scheme. The petitioner has further prayed for issuance of a writ in the nature of mandamus directing Chandigarh Housing Board through its Chairman (respondent No. 1) to allot a house under the said scheme of the HIG category to which she is entitled. She has further prayed for allotment of a HIG category house in Section 38 (West), Chandigarh, where some houses were lying vacant.

2. It has been averred in the petition that the land belonging to the petitioner was acquired by the Union Territory Chandigarh for the purpose of forestation vide notifications dated 27.11.1991 and 12.6.1992 respectively issued under Sections 4 and 6 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act"). The possession of the farm house and its surrounding areas remained with the petitioner and without taking any compensation for the acquired property, the acquisition proceedings were challenged by the petitioner before this Court by filing a Civil Writ Petition No. 9491 of 1992, which was dismissed vide a common judgment dated 2.5.1997 passed in 16 other connected petitions by a Single Bench of this Court and against the judgment passed, Letters Patent Appeal were also preferred, but the same were also dismissed. The husband of

the petitioner then filed a SLP before the Apex Court, which was disposed of vide order dated September 19, 1997, the relevant portion of which runs as under:

Learned Counsel for the petitioners submit that at this stage, the petitioners confine their grievance only to the limited extent that they may be permitted to continue to occupy the houses in which they are living in case those houses are not to be demolished after acquisition. In our opinion, this cannot be the ground for interference with the acquisition proceedings. However, it is open to the petitioners to approach the concerned authorities for consideration of their request to this extent. In that event, it would be for the concerned authorities to decide in the manner they consider fit. The Special Leave Petitions are dismissed.

3. After passing this order, the petitioners continued in possession of the house and land and a representation was filed before the Administration on the basis of which a direction was passed vide Memo PA/FS/98/6 dated 21.1.1998 allowing the applicant Ranjeet Judge to continue to reside in the Farm House subject to payment of rent @ Rs. 9,220/- per month for the house and 4-1/2 Kanals of land. Later on, the petitioner moved an application before the Administration wherein it was stated that the petitioners had no source of income apart from a meager pension and if the compensation amount towards acquisition of land is to be used for the purpose of making a fixed deposit to earn interest which in turn is required to pay monthly rent which will result in an extremely harsh financial burden. The petitioner prayed that her case be reconsidered sympathetically and a small area comprising the house along with the proportionate land and means of ingress be released from acquisition. Plea for release was taken on the basis of the fact that actual physical possession of the land had not been taken. On 27.10.1999 the house of the petitioner was sealed in her absence and the letter dated 26.10.1999 was left at the door asking the petitioner to vacate the land which was allegedly under illegal occupation. The petitioner has asserted that the letter failed to take note of the earlier order dated 21.1.1998. After sealing of this house, the petitioner and her family were suddenly without a house and infact, no notice giving the petitioner any reasonable time for filing a representation was served upon her. The petitioner had no other option but to file a writ petition on 18.11.1999 for quashing of the order and at that point of time, it came to light that no award had been passed. It is further pointed out that the petitioner was all along led to believe that the land and house stood acquired vide award Nos. 469 and 477 dated 9.11.1992 and 23.3.1993 respectively. It only later came to light that Award No. 469 was for land and Award 477 was not connected with the land of the petitioner. This petition was allowed by this Court on the ground that the order dated 21.1.1998 could not have been reviewed without notice to the petitioner. A direction was given to the petitioner to appear before the Advisor, who would decide the matter within two weeks. The petitioner appeared before the Advisor and explained her position. This order was challenged by way of petition, which was dismissed as a SLP filed against the same was also dismissed on the ground that the acquisition had become final. In the meantime, the petitioner had been dispossessed only from

the house and later on purchased a house from the open market at Panchkula, awaiting allotment of a dwelling unit at Chandigarh where she and her family have always resided and wish to reside. It is further pointed out that the Administrator, Union Territory, Chandigarh was pleased to make a scheme for allotment of dwelling units in Chandigarh to Oustees of Chandigarh, namely, "Chandigarh Allotment of Dwelling Units to the Oustees of Chandigarh, Scheme 1996." The said scheme has been duly notified in the Gazette on 12.1.1996. Under this Scheme, allotment is to be made by respondent No. 1 and the allotment is subject to the provisions of the Haryana Housing Board Act, 1971 as extended to the Union Territory of Chandigarh. Eligibility for allotment under this scheme has been defined in the 1996 Scheme. Land of the person should have been acquired for development of Chandigarh and the entitlement would depend upon the area that has been acquired. An oustee is eligible for allotment if he or his dependent family members do not own a residential site/dwelling unit in Chandigarh, Mohali or Panchkula or if he has not acquired a house/residential site anywhere in India through Government/semi Government/Municipal Committee/Corporation/Improvement Trust at concessional rates. The petitioner fulfilled the eligibility conditions of the Oustees Scheme and on 25.5.2001 submitted an application for issuance of an Oustees certificate which was issued granting her the status of an Oustee. Thereafter, the petitioner approached respondent No. 1 for allotment of a house but was informed that she would have to wait until a housing scheme was floated and that there was no scheme as yet. Respondent No. 1 failed to inform her that a number of HIG Houses remained unallotted and that she could have been allotted such a house and her suffering could have been alleviated. Instead she was expected to stay under the stars until a scheme was floated. On 7.6.2001 respondent No. 1 advertised for allotment of houses in Sector 51-A Chandigarh. It has been specifically mentioned in the advertisement with regard to offering of the houses to Oustees under the 1996 Scheme. Seventeen units were kept reserved for oustees. According to the residential eligibility, which in the respectful submission of the petitioner, applies only to the General Category it was required that the applicant be a bonafide resident of Chandigarh for a period of at least three years immediately preceding the date of opening of the scheme. An exemption was granted to the retired employees of Government of India, Punjab Government-etc. such as the house of the petitioner. For oustees, land should have been acquired after 1.11.1966. The oustees certificate is also to be produced. An initial deposit of Rs. 74,000/- was to be made and after registering the applicants, a draw of lots is to be held on the basis of which allotment is to be made. The petitioner has further pointed out that vide application No. 1067 the petitioner on 7.6.2001 applied for allotment of a dwelling unit as an Oustee as per the 1996 scheme of Chandigarh Administration. On 24.9.2001 the list of eligible applicants became known and the petitioner through her son, who visited at the office of respondent No. 1 to get information, was asked and she was shocked to learn that her application had been rejected on the ground that she had not been residing in Chandigarh for the last three years preceding the opening of the

Housing Board Scheme. Draw of lots took place on 10.10.2003 and the application of the petitioner was rejected. The petitioner has finally pleaded he, admittedly, is an ous-tee and has been deprived of her only house and as such, one HIG Flat No. 5464 is still lying vacant in Section 38 (West) Chandigarh can be allotted to the petitioner. The petitioner has further prayed for quashment of action of respondent No. 1 in rejecting the application of the petitioner. Hence, this petition.

4. On the other hand, the petition was contested by the respondents and through their written statement, it was pointed out that the petition has suppressed the material facts with regard to complete eligibility conditions that were made applicable for the Oustees applicants in the 336 Category-I Housing Scheme of 2001 in Sector 51-A, Chandigarh under which she had applied. It is further pleaded that Clause 3 of "The Chandigarh Allotment of Dwelling Units to the Oustees of Chandigarh, Scheme 1996" (Annexure P-3) envisages that the allotment shall be made by the answering respondent and the same shall be subject to the provisions of the Haryana Housing Board Act, 1971, as extended to U.T. of Chandigarh and Chandigarh Housing Board (Allotment, Management & Sale of Tenements) Regulation, 1979, as amended from time to time. Regulation-6 of the Statutory Regulations lays down the eligibility criteria for allotment to be made by the answering-respondent, wherein it has been provided that an applicant should have been a bonafide resident of Union Territory of Chandigarh for a period of at least three years immediately preceding the opening of a Housing Scheme. The petitioner is-ineligible for allotment of a flat in Sector 51-A, Chandigarh as per terms and conditions laid down in the Scheme 2001 and as such, she is not entitled to the allotment of a flat. While denying the other assertions raised in the petition, it was finally prayed that the petition be dismissed.

5. I have heard the learned Counsel for the parties and have also gone through the record of the case carefully.

6. It is crystal clear from the facts quoted above that a thick battles took place between the parties on the platform of eligibility and in order to arrive at a right conclusion and to appreciate the point involved in the present petition, it is necessary to reproduce the relevant portion of procedure of 336 Category-I Housing Scheme-2001 in Sector 51-A, Chandigarh particularly Condition No. III (Eligibility) appearing at Page 2 of the said Brochure, which runs as under:

III Eligibility

1. A person will be eligible for allotment of a dwelling unit in case he/she or his/her wife/husband or any of his/her minor children does not own on free hold or lease hold or on hire purchase basis a residential plot/house in the U.T. of Chandigarh or in either of the Urban Estate of Mohali or Panchkula. Similarly in case he/she has acquired a house/residential site anywhere in India through Govt./Semi Govt./ Municipal Corporation/Improvement Trust etc. at concessional

rates, i.e., at reserved/ fixed price in his/her name or in the name of his/her spouse or any minor children, he/she will not be eligible for allotment of a dwelling Unit.

2. The applicant should have been a bonafide resident of U.T. of Chandigarh for a period of at least three years immediately preceding the date of opening of the Scheme.

(a) For this purpose, the applicant has to produce any one of the documents, i.e., Telephone Bill, Passport, Water/Electricity Bill, Employer Certificate, Permanent Account Number, Sales Tax Assessment Order, Ration Card, driving Licence, Income Tax Assessment Order/Acknowledgment of Income Tax Return and Voter Identity Card supported by an affidavit duly attested by an Executive Magistrate/ Notary Public as per specimen attached with the application form.

(b) The condition of a being a bonafide resident of Chandigarh for at least three years on the date of opening of the Scheme shall not be applicable in case of the following:

(i) Defence/Ex-defence personnel including pensioners belonging to the defence forces.

(ii) Employees of Govt. of India, Punjab Govt. Haryana Govt. and Chandigarh Administration and their Boards/Corporations/Undertakings;

(iii) Retired employees of Govt. of India, Punjab Govt. Haryana Govt. and Chandigarh Administration and their Boards/Corporations/Undertakings.

3. The applicant must be a citizen of India.

4. The applicant must have completed 18 years of age on the date of opening of the scheme.

5. Only one member of a family, i.e., one or the other spouse, shall be eligible to apply in the category, i.e. either in the general category or in any of the reserved categories, for which he/she may be eligible.

6. The applicant under Sub Scheme "B" in addition to the above conditions, must fulfill the following conditions:

(i) The land of the oustee must have been acquired for the development of U.T. of Chandigarh and the Award of compensation under the relevant provisions of the Land Acquisition Act made on or after 1.11.1996.

(ii) The minimum area of the land acquired for the development of Chandigarh must be more than 3 Acres. In the case of a joint Khata, the entitlement shall be on the basis of the holding under the-Joint Khata and Co-sharers within the Khata would not be taken into reckoning for the purpose of allotment of dwelling unit.

(iii) The oustee furnish a certificate from the LAO U.T. Chandigarh to the effect

that his land has been acquired for the development of Chandigarh and the Award of Compensation under the relevant provisions of the Land Acquisition Act has been made on or after 1.11.1996. The certificate should also specify the area of land acquired. In case the applicant is one of the co-sharer in the joint Khata, he/she must furnish affidavits of other co-sharers to the effect that neither they have availed any such benefit under "The Chandigarh Allotment of DUs to the Oustees of Chandigarh 1996 Scheme" or under the earlier scheme for allotment of plots nor shall claim any allotment in future under the above said scheme against the land in the joint khata acquired by the Chandigarh Administration for development of Chandigarh and that they have no objection for the allotment of DU. By the CHB under the Scheme to other Co-sharer(s) namely in the land under joint khata.

The above quoted Clause clearly spells out that in order to be eligible for the oustees' Scheme, the petitioner must be a resident of Union Territory for at least three years immediately preceding the date of opening of a Housing Scheme and moreover, eligibility conditions as enshrined in Clause 4 of the Oustees Scheme, 1996 are in addition to the eligibility conditions as laid in Regulations 6 of the Haryana Housing Board Act 1971, as extended to Union Territory, Chandigarh and the Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979, as amended. From time to time Regulation 6 of the said Regulations lays down the criteria qua allotment to be made by the respondents, wherein it has been provided that the applicant should have been a bonafide resident of U.T. of Chandigarh for a period of at least three years immediately preceding the date of opening of the scheme. Meaning thereby that it had specifically been laid down in Clause 6 of Brochure of the 336 Category-I Housing Scheme 2001 in Sector 51-A, Chandigarh under the heading "Eligibility" as reproduced above that the applicants under the sub scheme "B" i.e., for Oustees, in addition to the conditions specified under Clause 1 to 5, must fulfil certain additional conditions. Learned Counsel for the petitioner has only referred to the eligibility criteria for Oustees under the 1996 Oustees Scheme, wherein Condition No. 4 spells out under Heading No. II "The Scheme" on page-1 of the Brochure for allotment of dwelling unit under the Scheme shall be made as per provisions of Chandigarh Housing Board (Allotment, Management & Sale of Tenements) Regulations, 1979 and Regulation 6 of the said Regulations further lays down that the applicant should be a bonafide resident of U.T. Chandigarh for the last three years immediately preceding the date of opening of the scheme. Meaning thereby that, as per the terms and conditions of the brochure in question under which the petitioner had applied being an oustee. She ought to have fulfilled all the eligible conditions before submitting an application. The application form of the petitioner bearing No. 1267 along with earnest money further spells out the petitioner applied in sub-scheme "B" meant for Oustees of Chandigarh and disclosed his address as House No. 15, Sector 9, Panchkula against serial No. 5(b) in her application form and since the applicant was not found a bonafide resident of U.T. Chandigarh for a period of three years

immediately preceding the date of opening of the scheme, her application was rejected and in other words, she was not found eligible for allotment of a flat under 336 Category-I Housing Scheme in Sector 51-A, Chandigarh as she did not fulfill the condition of being a bonafide resident of U.T. Chandigarh for the last three years immediately preceding the date of opening of the scheme and thus, her name was not included in the list of eligible applicants displayed at the Reception Counter of the office of the respondents for the draw of lots.

7. Learned Counsel for the petitioner has not been able to place on record any document which could show that the petitioner was a bonafide resident of U.T. Chandigarh for the last three years at the time of opening of the scheme. Faced with this situation, learned Counsel for the petitioner further submitted that three years" residence condition does not exist in the Oustees Scheme is liable to be noticed only for the sake of rejection since it had clearly been stipulated in the Brochure of the Housing Scheme under the Heading "Eligibility" on page 3 that applicant under Sub Scheme "B" in addition to above conditions, i.e. which also includes Condition No. 2 of being a bonafide resident of U.T. Chandigarh for a period of at least three years immediately preceding, on the date of opening of the 336 category-I Housing Scheme in Sector 51-A, Chandigarh must fulfill the conditions mentioned therein. I would also like to observe that while framing 1996 Oustees "Scheme, it has been specifically laid down that allotment shall be made subject to the provisions of the Statutory Regulations of 1979, which inter alia provides that only such applicants shall be eligible for allotment, who are the bonafide residents of U.T. Chandigarh for a period of at least three years immediately preceding the date of opening of the Housing Scheme and since the petitioner was declared ineligible, she is not entitled for allotment of a flat in Sector 38 (West) as being asserted by her in her petition. Provisions of the Oustees" Scheme further clearly spells out that while framing scheme by the Administration, Union Territory, Chandigarh, the intention was that the Chandigarh Housing Board shall make provision for allotment of dwelling, units to the Oustees to a certain extent under the various Housing Schemes floated by it as per the provisions of the Haryana Housing Board Act, 1971 as extended to U.T. of Chandigarh and the Chandigarh Housing Board (Allotment, Management & Sale of Tenements) Regulations - 1979 and that even the procedure for allotment shall also be as per the said Regulations. In view of this, it is ipso facto clear that there is no doubt that the allotments are to be made by the respondent-Board strictly in terms of Statutory Regulations, Regulation 6 whereon inter alia provides that an applicant must be a bonafide resident of U.T. Chandigarh for at least 3 years immediately preceding the date of opening of the Scheme, in addition to the eligibility laid down under Clause 4 of the Oustees Scheme 1996 and in view of all this provisions of Oustees Scheme-1996, the respondent-Board, while framing the 336 Category-I Housing Scheme 2001 in Sector 51-A, Chandigarh had incorporated the eligibility conditions as per Regulation 6 and Clause 4 of the Oustees Scheme-1996 in respect of the applicants seeking allotment of flats as an Oustee of Chandigarh. Therefore, the respondent-Board

has not violated 1996 Oustees" Scheme in any manner.

In the light of what has been discussed above, the petition filed by the petitioner fails and is hereby dismissed with no order as to costs.