
(2013) 05 P&H CK 0248
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 22769 of 2010

Pran Nath

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision : 02-05-2013

Acts Referred:

Improvement Trust Land Disposal Rules, 1976 — Rule 2(e)

Citation : (2013) 05 P&H CK 0248

Hon'ble Judges : Satish Kumar Mittal, J; Amol Rattan Singh, J

Bench : Division Bench

Advocate : Jagdish Manchanda, for the Appellant; Siddharth Batra, A.A.G. for the Respondent No. 1 and Mr. Mahavir Sandhu, Advocate for the Respondent No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Amol Rattan Singh, J.—The single petitioner in this case has sought a writ of mandamus, directing the respondents to allot a booth site in a scheme floated in the year 1973, by the Improvement Trust, Kamal, to rehabilitate those persons who were doing business in front of shops in the Old Sabzi Mandi of Karnal. The said scheme was known as "Street Development Scheme No. 37". The case set up by the petitioner is, that he was a tenant in the land in front of the shops in the Old Sabzi Mandi and the scheme was actually floated only to rehabilitate those persons who were doing business, like him, in front of the shops in the said mandi.

2. He claims to be in the category of "Local Displaced Persons" as defined in Rule 2(e) of the Improvement Trust Land Disposal Rules, 1976, i.e. Category (a) of Rule 9, in terms of the Scheme.

Rule 2(e), defining a local displaced person, is reproduced hereunder:

"Local Displaced Person" means a person whose own property has been acquired by the trust for the execution of the scheme or who has been a tenant of a

property in the scheme for a period of not less than one year prior to publication by the trust, of the notice u/s 36 of the Act and continued as such till the property is acquired by the trust;

3. Further, Rule 9 of the said Rules, as reproduced in the writ petition and not denied by the respondents, reads as under:

Land available for sale in the scheme in the first place, be offered for sale to:-

- a) Local displaced persons;
- b) Category of persons mentioned in Rule 6;
- c) Local displaced persons of any other scheme, if any, to whom a plot could not be given by that trust. After the claims of the category of persons, referred to above, have been met with, the remaining plot of land/property, if any, under the scheme shall be sold by auction of tender in accordance with the Rule.

Thus, as per the scheme, the land available in the scheme, was to be allotted to the categories of persons mentioned in Clauses (a) to (c) of Rule 9.

4. The petitioners' claim, is for prior allotment under the scheme, as per clause (a), above the categories mentioned in Clauses (b) & (c).

5. The petitioner also deposited Rs. 2000/-, as earnest money, towards allotment of a booth site and was duly issued a receipt dated 14.08.1974, which fact is not denied by the respondents.

Somehow, the scheme seems to have not fructified in actual allotment of booths, till the year 1989, when a proposal to allot the plots by a draw of lots, amongst those persons who had deposited the amount of Rs. 2000/- in the years 1974-75, was floated. As per the petitioner, the said proposal was not advertised. Letters were sent to persons who had deposited the above said amount. A copy of one such letter, issued to one Sh. Manohar Lal, dated 11.10.1989, has been annexed as Annexure P-3 with the petition. As per the petitioner, he and a large number of other persons were not issued any such letter, leading to a protest by them, consequent upon which the draw to be held was cancelled. (This fact is specifically denied in the reply and shall be referred to later).

According to him, his claim as "local displaced person", was not accepted by the trust, essentially because he was a tenant on the open "phar" area (courtyard/open area) in front of the shops in the Old Sabzi Mandi, on payment of rent to the owners, whereas the Improvement Trust (respondent No. 2), all along had been claiming itself to be the owner of the "phari".

6. Again, as per the petitioner, this claim of the Trust was dispelled in a judgment of a learned Single Judge of this Court in Vijay Kumar Vs. State of Haryana, In this judgment, the learned Single Judge held that the "phari" or open courtyard in front of the shops, was actually the property of the owners, as per a decision, pertaining to these very areas, of the Privy Council, in year 1920.

Be that as it may, the petitioner being a tenant on the "phar", that judgment would have no bearing on the issue, because it is an undisputed fact that the trust eventually decided to offer allotment of booth sites, vide a resolution passed to that effect, to those who had deposited the amount of Rs. 2000/- in the years 1974-75. Hence, that issue, whether the "phari" was in the ownership of the shop owner or the Trust, becomes irrelevant. As per the petitioner, the offer was for allotment of a site, in extension of the New Sabzi Mandi (in Scheme No. 67); however, as per the respondents, the decision was not in relation to Scheme No. 67.

7. The petitioner still further claims that, he and other similarly situated persons, started the business of selling fruits and vegetables in the New Sabzi Mandi and continued to represent their case for allotment of alternative sites, to various authorities, but to no avail. A copy of one of such application, claimed to have been made on 21.12.1989, has been annexed as Annexure P-6, with the petition. This demand was finally con-ceded by the respondent-trust by way of Resolution No. 172 passed in the meeting dated 29.12.1989, wherein it was resolved that "Phari" booth sites, in Scheme No. 67, should be allotted to those persons who were selling vegetables on "phar" areas in the Sabzi Mandi and a Committee was constituted to identify the persons who were actually working. A copy of the resolution has also been annexed as Annexure P-7 with the petition.

As per the petitioner, however, no report of the committee has been submitted till date. Further, submissions have been made with regard to increase in the number of "phari" booth sites in 1989, superseding the earlier lay out plan of 1985, owing to the fact that a large number of people were found eligible by this Court, or otherwise, and still further, reliance has been placed on directions issued by this Court in various writ petitions filed for allotment of booth sites.

8. The petitioner's case further is that Scheme No. 67 became a matter of dispute by way of a challenge to the same, by the owners of the land which was acquired for the scheme, in CWP No. 5829 of 1986. The said petition is said to have been dismissed on 10.03.1987 as having become infructuous, in view of the statement of the Improvement Trust, that the petitioners (in that petition) would be given alternative sites.

Some other owners of the land which was acquired, also filed another writ petition in which the acquisition is stated to have been completely set aside. Neither the petitioner, nor the respondents have given specifics of the said writ petition, but it is admitted by both sides that SLP No. 8505 of 1986 was filed against the said judgment, which was allowed by way of a compromise between the parties before the Hon'ble Supreme Court, on 25.08.1988.

However, the stand of the respondents, in this regard is that the petitioner was not concerned, in any manner, with this litigation, inasmuch as he has nothing to do with the land acquired/purchased which became subject matter of the said litigation.

9. Thus, the petitioner is claiming allotment of a booth, first on the basis of his entitlement as a "lo-cal displaced person" in Scheme No. 37 of 1973 and, subsequently, on the basis of judgments of this Court in CWP No. 5829 of 1986 and of the Hon"ble Supreme Court in SLP No. 8505 of 1986 respectively. He claims to have been left out and discriminated against, in what he claims is recent allotment of shops/booths/other sites to the concerned persons.

10. In the reply filed by the respondents, other than admission or denial of the facts, already dealt with above, preliminary objection with regard to delay and laches has been taken, stating that the scheme was confirmed in the year 1976 and the petitioner has filed this petition in the year 2010, after a delay of 34 years. The second objection is with regard to the fact that certain directions given in a judgment of this Court dated, 07.02.1997, passed in CWP No. 1893 of 1989.

A perusal of the said judgment, shows that a survey was ordered to be carried out, to determine the entitlement of all the 330 persons who had made applications for allotment in pursuance of Resolution No. 172, dated 29.12.1989, passed by the respondent No. 2-Trust, by which it had been resolved that "phari walas" to be uprooted I on account of formulation of Scheme No. 67, would be given preference in the matter of allotment of alternative sites, so that these poor persons could go on with their business.

However, in the reply filed, the preliminary objection taken is that, this survey was made for only those persons who had filed CWP Nos. 13613, 13171 of 1989 and 10353 of 1990, in this Court. The reply further states that during the survey, only 57 persons were found to be working on the spot and accordingly plots were allotted to them. It is further stated that the petitioner was not even found working at the spot, during the said survey; thus, the petitioner's contention in the present petition, to the effect that he is also doing the business of selling vegetable and fruits in the Sabzi Mandi, has been specifically denied. The survey report, dated 17.03.1998 has been annexed with the reply, in which the petitioner's name does not figure. This survey report gives a total number of 343 persons, who were petitioners in the above mentioned three writ petitions, in respect of whom the survey was conducted.

11. The third objection taken is that the petitioner has not come with clean hands, inasmuch as, the application dated 21.12.1989, annexed as Annexure P-6, and representations dated 12.012.1998 and 21.06.2009 annexed as Annexures P-9 and P-10, respectively, are false creations, as the same were never received in the office of the Improvement Trust. The allegation is that these have been created only to buttress the case of the petitioner in Court and are an attempt to cover up the inordinate delay and laches.

12. Further objection has been, taken that the petitioner, though relying upon various judgments/directions/pendency of such cases in this Court, on the same issue, is not a party to any of them and that his case is completely different from

all of them, and as such, he is not entitled to the allotment, either as per the scheme, or as per the rules.

As regards the judgment and directions given in CWP No. 1893 of 1989, decided on 07.02.1997, it is stated by the respondents, that even that judgment has nothing to do with the present controversy, the facts and circumstances being completely different.

In support of the contention that the petitioner was not found carrying on the business of selling vegetables and fruits in the area of the Sabzi Mandi, during the survey, it is further stated that, as a matter of fact, he was employed in the business of selling fruit juice, in a shop bearing No. 13, taken by him on rent from the Shri Murti Durga Bhiwani (Hetuwali) Trust, near the Bus-Stand, Karnal. It is further stated that he was carrying on the said business in the shop, much prior to confirmation of the scheme in question, and as such, he was not a displaced person of the scheme of the Old Sabzi Mandi.

13. In view of the above, respondents have, consequently prayed for dismissal of the writ petition.

14. We have heard Sh. Jagdish Manchanda, learned counsel for the petitioner, as also Sh. Mahavir Sandhu, learned counsel for respondent No. 2-Improvement Trust, Karnal.

15. Other than the issue on merits, one thing which definitely cannot be denied and has not been explained at all by learned counsel for the petitioner, is the delay and laches in filing the present petition. Though the stand of the respondents of 34 years' delay is not correct, inasmuch as rights of such persons continued to be determined, on the basis of various objections filed, right up to 1997 and, in some cases, the matters are stated to be still pending; however, one thing which cannot be denied is that the petitioner never approached this Court till the year 2010.

16. No doubt, the petitioner, admittedly, submitted an application along with Rs. 2000/- in the year 1974 for such allotment, the allotments were actually made only after 1998. Further, even as per the respondents themselves, in compliance with resolution dated-114 dated 27.06.1989, they had decided to allot him a booth site in the New Sabzi Mandi Extension Development Scheme No. 67, on a reserve price of Rs. 3100/- per square yards, in view of the fact that he had deposited Rs. 2000/- in the year 1974. He was also told by letter dated 11.10.1989, that he was required to deposit Rs. 5000/-, as advance money, within 15 days from the date of draw and that the draw of lots would be held on 14.10.1989 at 11.30 a.m. This letter is stated to be acknowledged by him and a copy thereof has been annexed as Annexure R-2/4, depicting receipt of the letter by the petitioner, under his signature. However, no money is stated to have been deposited in this regard, (emphasis supplied).

It has also been stated in the reply, that all the allotments were stayed by a

Division Bench of this Court, vide order dated 12.01.1990, passed in CWP No. 1893 of 1989, a copy of which has been annexed as Annexure R-2/5 with the reply to this petition.

A perusal of the said order shows that some earlier order had been passed on 21.08.1989 (probably restraining the respondents from making any allotment), despite which, 20 to 30 plots had been allotted. On 12.01.1990, these allotments were also ordered to be not finalized, on pain of contempt.

17. Thus, though the petitioner is not guilty for a delay of 34 years, however, in our opinion, he is definitely guilty of a delay of at least about 12 to 20 years, as petitions challenging non-allotment in Scheme No. 37/67 etc. came to be filed by those aggrieved, in the years 1986 to 1990.

At best, the petitioner could claim consideration for allotment, on the basis of directions contained in the judgment of this court, dated 07.02.1997, passed in CWP No. 1893 of 1989 (already referred to above), whereby the merits of each case were ordered to be determined, with regard to all 330 persons, who had submitted applications for allotment of plots, in pursuance to Resolution No. 172 dated 29.12.1989, passed by the trust. (Though the petitioner has referred to Resolution No. 114, and not No. 172, it is not denied by the respondents that they had offered allotment at the rate of Rs. 3100/- per sq. yd., during that period, subject to a deposit of Rs. 5000/-).

18. The respondents have specifically stated in their preliminary objections that the petitioner was found working near Bus-Stand, Karnal, selling fruit juice from a shop, taken on rent, by him from a registered trust. According to the respondents, the petitioner was continuing with this business before the closure of the scheme. This fact too has gone uncontroverted by way of any replication.

19. However, de hors this, even if his claim was in terms of direction (i) of the said judgment, whereby those who had deposited Rs. 2000/-, and Rs. 1000/- in 1974 and 1976, were ordered allotment of sites/booths before all other categories, the petitioner did not take any legal remedies after such non-allotment in 1998, if he was so aggrieved.

20. Thus, if the petitioner was aggrieved of wrongful exclusion in the survey conducted in the year 1998, or exclusion from any draw of lots held in the year 1998-99, definitely, he could have approached this Court at the relevant time. The petitions that he is referring to, which are stated to be still pending in this Court, are of the year 1998 (CWP Nos. 4532 & 10089 of 1998). Hence, the petitioner, in our opinion, cannot take the advantage of the pendency of these writ petitions.

21. Taking all the above facts and sequence of events, all of which have now become subject matter of challenge, only in the year 2010, we do not find that this is a case, where we can entertain the writ petition, at such a belated stage, especially as factual findings have gone uncontroverted. However, it would be

unfair if we do not notice one important fact which is, that the respondents themselves have not been entirely clear in their projection of facts in their pleadings, to the extent that they have stated in the reply (para No. 7 of the reply on merits) that the petitioner has no concern with Scheme No. 67. This is unacceptable, in view of the fact that, firstly, in the judgment of this Court dated 07.02.1997, passed in CWP No. 1893 of 1989, it has specifically been recorded as a finding that Scheme No. 37 itself (under which petitioner had deposited Rs. 2000/- in the year 1974), was converted into Scheme No. 67. Secondly, in para 4 of the reply on merits, it has been stated that in compliance of Resolution No. 114 dated 27.06.1989, it had been decided to allot the petitioner a booth site in New Sabzi Mandi Extension Development Scheme No. 67, on a reserve price of Rs. 3100/- per sq. yd., and for that purpose, he was told to deposit Rs. 5000/- as advance money, within 15 days from the date of draw of lots. As to what happened in that draw of lots is not very clear from the pleadings, though it appears from a perusal of the interim order dated 12.01.1990 passed in CWP No. 1893 of 1989, that further allotments pursuant to said draw of lots were stayed by this Court, as already noticed above. However, on a specific query put to learned counsel for the respondents-Trust, he has clarified, on instructions, that no draw of lots was held in view of the stay order of this Court dated 21.08.1989.

22. Of course, no plea has been taken by the petitioner in the petition, to the effect that the Rs. 5000/- asked for, could not be deposited by him, in view of the stay order passed by this Court or because no draw of lots was held.

23. Thus, we find that though the respondents themselves had admitted the claim of the petitioner, by virtue of having issued him a letter on 11.10.1989 (Annexure R-2/4 with the reply), to the effect that the draw of lots would be held on 14.10.1989 and he was to deposit Rs. 5,000/- as advance money, within 1 days from the date of the draw, however, thereafter the petitioner also made no effort whatsoever in respect of his right to be considered in the draw of lots and, for the first time, after that date, he has approached this Court by filing the present petition on 16.12.2010. Though, with the petition, two representations dated 12.02.1998 and 21.06.2009 have been annexed, addressed to Chairman, Improvement Trust, Karnal, they have been specifically denied by the respondents, referring to them as created documents which were never received in their office. We would believe this contention, in view of the fact that in case such representation had been made in 1998, at the time when a draw of lots was ordered to be held for various categories, and a survey was ordered to be conducted by this Court, and the petitioner did not find himself a beneficiary of such survey, he would have immediately approached this Court at that point of time. Obviously, he slept over his right, if any had arisen out of the letter dated 11.10.1989. We are firmly of the view that, 12 years later, he can have no cause of action subsisting in his favour. He neither approached this Court at the time when the draw of lots was held, nor did he even approach this Court after the decision of the said writ petitions, upon which the survey was conducted in 1998. Obviously, now that prices escalated to their present heights, he has

suddenly woken up from his slumber. In view of the above, we are not inclined to entertain this writ petition at this belated stage and the same is hereby dismissed on the ground of delay and laches alone.