
(2015) 12 P&H CK 0102
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3086 of 2015

Ram Jass Yadav

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 23-12-2015

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 17(8)

Citation : (2015) 12 P&H CK 0102

Hon'ble Judges : S.J. Vazifdar, Actg. C.J. and Tejinder Singh Dhindsa, J.

Bench : Division Bench

Advocate : S.K. Yadav, Advocate, for the Appellant; Rahul Dev Singh, Deputy Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Tejinder Singh Dhindsa, J.—Petitioner impugns the action of the respondent-HUDA Authorities in having cancelled the allotment of a residential plot. Petitioner is further aggrieved whereby his request for allotment of an alternative plot has been declined.

2. In pursuance to a draw of lots conducted in the year 2000, a residential plot ad-measuring 209 sq.mtrs. bearing No. 776, Sector 3, Rewari was allotted to the petitioner at a tentative cost of Rs. 5,50,000/-. Conditions No. 4 and 5 of the allotment letter dated 4.12.2000 would be relevant to the issue at hand and are re-produced hereunder:

"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 also stand forfeited by authority & you shall have no claim for damages.

5. In case you accept this allotment, please send your acceptance by registered post along with an amount of Rs. 82500/- within 30 days from the date of issue

of this allotment letter, which together with an amount of Rs. 55000/- paid by you along with your application form as an earnest money, will constitute 25% of the total tentative price."

3. The plot in question was found to be encumbered. Petitioner filed a complaint before the District Consumer Forum, Rewari on 11.12.2000 with a prayer that HUDA Authorities be directed to allot an alternative site in lieu of plot No. 776 and in case alternate site is not allotted, then to refund Rs. 55,000/- paid towards earnest money, along with interest @24% from the date of deposit till realization. During the pendency of such complaint, the third respondent i.e. Estate Officer, HUDA, Rewari issued order dated 8.5.2001, Annexure P6, cancelling the allotment of the plot on the ground that the allottee had failed to deposit 15% of the allotment price within the stipulated period of 30 days. Forfeiture of 10% earnest money deposit was also directed. The District Consumer Forum, Rewari vide order, dated 11.7.2001, directed the refund of earnest money of Rs. 55,000/- to the petitioner along with interest @12% per annum. Two proceedings ensued thereafter. On the one hand, the petitioner preferred an appeal before the Administrator, HUDA, Gurgaon on 22.11.2001 challenging the order of cancellation of allotment made by the Estate Officer, while on the other hand, HUDA filed an appeal before the State Commission under the Consumer Protection Act against the order of District Consumer Forum, whereby refund of the earnest money had been directed. The State Consumer Commission dismissed the appeal filed by HUDA vide order dated 28.8.2008. The appeal that had been preferred by the petitioner against the order of cancellation of allotment was partly accepted vide order dated 1.8.2013 passed by the Administrator, HUDA, Gurgaon, Annexure P9, and in terms of which, cancellation of the plot was upheld but as regards forfeiture of earnest money, the same was directed to be refunded. Petitioner thereafter having preferred a revision petition under Section 17(8) of the Haryana Urban Development Authority Act, 1977, the same has been dismissed vide order dated 26.8.2014, Annexure P13, passed by the Principal Secretary to Government, Haryana, Town and Country Planning Department. It is against such brief factual backdrop that the petitioner seeks a writ of certiorari to quash orders dated 8.5.2001, Annexure P6, dated 1.8.2013, Annexure P9 and dated 26.8.2014, Annexure P13. Writ of mandamus is also sought to direct the HUDA Authorities to allot to him an alternate plot.

4. The precise case set up on behalf of the petitioner is that on the plot that had been allotted, there existed a sewerage disposal plant and as such, the offer of allotment made by HUDA was itself defective. It has been contended that having been successful in the draw of lots, the petitioner was vested with a right to be allotted an unencumbered plot and in view of the fact situation obtaining on the ground, he was entitled to be allotted an alternate plot under the policies framed by HUDA from time to time on the subject of exchange of plots/allotment of alternate plots. It has also been argued that the right to be considered for allotment of an alternate site could not have been defeated merely on the basis

that 15% of the allotment price had not been deposited.

5. Per contra, learned counsel appearing for HUDA would submit that the letter of allotment dated 4.12.2000 was an offer which was required to be accepted by the allottee within the period prescribed and it was only upon acceptance of the offer by way of deposit of 15% of the allotment price that a contract would come into existence. The action of cancellation of allotment is stated to be strictly as per terms and conditions of the allotment letter as the allottee had failed to deposit 15% amount within 30 days from the date of issuance of the allotment letter. The claim for allotment of an alternate plot has been resisted also on the ground that an amount of Rs. 1,38,702/- i.e. earnest money deposited by the petitioner along with interest already stands refunded vide cheque dated 7.8.2013.

6. Learned counsel for the parties have been heard.

7. The submission advanced on behalf of HUDA that it is only on acceptance of the offer i.e. by deposit of 15% of the allotment price as per condition No. 5 of the allotment letter that a concluded contract would come into existence is well founded. Be that as it may, the facts of the present case are peculiar. We find ourselves persuaded to grant the relief of allotment of an alternate plot in favour of the petitioner. The reasons for taking such a view are indicated hereinbelow:

"i) The assertion of the petitioner that the plot in question was a part of a pre-existing sewerage treatment plant stands admitted by the HUDA Authorities. During the course of arguments, Mr. Deepak Sabharwal, learned counsel appearing for the HUDA has produced before us a copy of policy dated 15.4.1998 issued by the Chief Administrator, HUDA, Panchkula on the subject of allotment of alternate plots/exchange of plots. Learned counsel has informed us that such policy dated 15.4.1998 held the field at the relevant point of time i.e. in the year 2000. Such policy would require to be read along with the allotment letter issued to the petitioner. Relevant extract of the policy dated 15.4.1998 reads as under:

"The existing policy for giving alternative plots does not provide detailed procedure for the allotment of alternative plots in lieu of disputed plots. In order to streamline the procedure and to work out the modalities for allotment of alternative plots in lieu of disputed plots, the Authority in its 73rd meeting held on 31.03.98 have approved the following procedure for allotment of alternative plots in lieu of disputed plots:--

i) The Estate Officer shall maintain a separate register in which all the disputed plots shall be entered category-wise in ascending order (on the basis of date of allotment). Simultaneously the list of vacant plots free from all encumbrances shall be prepared and entered in a separate register/Sector-wise and category-wise. The allottee shall give in writing that he would abide by the policy of allotment of alternative plots laid down from time to time and he will accept plot that would be offered by draw of lots before his particulars are entered in the register otherwise the allottee can claim refund of the amount deposited by him

as per the existing policy or he may give an undertaking that he will take the original plot as and when it is free from all encumbrances and shall have no right either of an alternative plot or for the interest on the amount deposited by him.

ii) Every year, preferably in the months of January and July the draw of lots will be held for allotment of alternative plots in place of the disputed plots, out of the list available in the register, with the first preference going to the same sector. In case it is not possible to give plot in the same sector, then the draw will be for any of the developed sector, then the draw will be for any of the developed sector in the Urban Estates as the second priority. In case even that is not possible, equal number of plots will be earmarked for allotment in lieu of disputed plots in the new sectors to be floated in that particular Urban Estate.

iii) To avoid such situation, in future, no allotment shall be made in any Urban Estate without demarcation of plot and approval of demarcation plan by the competent authority.

iv) Regarding pricing of the alternative plots, when the offer is made in the same sector, the same original rate will be made applicable (as per the existing policy) and when the alternative allotment is offered in any other sector in the Urban Estate, the updated floatation rates of that sector or the rates at which disputed plots was allotted, whichever is higher should be charged from the allottee. In the cases where rates of allotment of alternative plot, works out to be higher than of original rates of allotment, then interest shall be allowed on the earlier deposits made by the allottee as per existing HUDA policy. The other terms and conditions of the original allotment shall, however, remain the same.

v) As and when the disputed plots (in lieu of which alternative plots have been allotted, as discussed above) are free from all encumbrances, the same shall be disposed off by way of auction.

It shall be ensured that the lists/registers/documents as per laid down procedure, as aforesaid are prepared immediately. A copy of the same shall be supplied to Headquarters for reference and record. In future all the claims for allotment of alternative plot shall be disposed off strictly in accordance with the above laid down procedure."

Clearly, the policy obligates the Estate Officer concerned to maintain a separate register in which all the disputed plots are to be entered category wise. For purposes of considering the claim for allotment of an alternate plot, the policy refers to disputed plots having been allotted to an "allottee". The details of such disputed plots are to be entered in the register only upon an "allottee" having furnished in writing that he would abide by the policy of allotment of alternate plots. The pricing mechanism of the alternate plot depending as to whether the offer is made in the same sector or in any other sector of the Urban Estate is also provided for under the Policy.

It has been conceded before us that as per policy dated 15.4.1998 for allotment

of alternate plots, a register was maintained and the plot in question i.e. bearing No. 776, Sector 3, Rewari was duly entered therein as a disputed plot. The relevant extract from the register has been produced on record and appended as Annexure P8-A along with the petition. The contents thereof are not disputed. Such entry had been made only to facilitate the allotment of an alternate plot. The plot in question having been entered in the relevant register, the respondent -Authorities have themselves viewed the petitioner as an "allottee". The factual position as regards the petitioner having given in writing at the very threshold that he be allotted an alternate site is also not disputed. It was certainly open to the respondent-Authorities to have insisted upon the allottee to make good the deposit of 15% of the allotment price prior to entering the plot number in the register to be maintained under the policy for allotment of alternate site. The respondent-Authorities chose not to do so. In our considered view, the plot in question having once been entered in the concerned register, the benefit of an alternate plot under the policy dated 15.4.1998 cannot be denied to the petitioner.

ii) In the impugned order dated 26.8.2014, Annexure P13, passed by the revisional authority, whereby the claim of the petitioner seeking allotment of an alternate site has been declined, a view has been taken that such a claim could have been raised by an allottee only at the stage of offer of possession of the original plot. Reasoning furnished is that the allottee in the first instance should have entered into a binding contract with HUDA by making payment of 15% of the allotment price and it is only thereafter that the stage of offering possession of the original plot or considering the claim for an alternate site could arrive.

In our considered view, such view is patently erroneous. It has gone uncontroverted that a status report with regard to the plot in question had been sought from the Estate Officer, Rewari and, accordingly, a report dated 6.8.2014 had been submitted in which it was clearly mentioned that a sewerage pumping station is still existing on site and the same was functional even prior to the floating of the scheme for allotment of residential plots in Sector 3, Rewari. The revisional authority has chosen to overlook that the plot in question was indeed encumbered. That apart, the revisional authority has also proceeded oblivious of the factual position obtaining on record i.e. the Estate Officer having entered the particulars of the plot in question in the relevant register to consider allotment of an alternate site as per policy framed by HUDA dated 15.4.1998. The decision declining consideration of an alternate plot in favour of the petitioner is arbitrary and unjustified.

iii) In the facts of the present case, the State action cannot also sustain if tested on the touch-stone of fair play and equity. Having conducted the draw of lots, the names of successful applicants had been posted on the notice board in the office of respondent No. 3. Petitioner was assigned plot No. 776, Sector 3, Rewari. Upon inspection and finding that a sewerage disposal plant existed at the spot, petitioner immediately vide communication dated 23.10.2000, Annexure P2,

informed respondent No. 3 and requested for an alternate plot. A reminder dated 1.11.2000, Annexure P3, was also sent to respondent No. 3 through registered post. In spite thereof, the allotment letter dated 4.12.2000, Annexure P4, in respect of an encumbered plot was issued to him. This certainly was not expected from a State instrumentality. Be that as it may, respondent No. 3 took a remedial step by entering the plot in question in the relevant register under the policy dated 15.4.1998 to facilitate the allotment of an alternate site. The petitioner was, thus, placed in a situation whereunder he could foresee the allotment of a residential plot coming his way in the shape of an alternate site. Even the cheque dated 7.8.2013 issued by HUDA towards refund of earnest money was not encashed by him. The petitioner has been made to irretrievably alter his position. Denial of allotment of an alternate plot under such peculiar circumstances would be grossly unfair and unjust.

8. In view of the reasons recorded above, writ petition is allowed. Impugned orders are set aside. The petitioner is held entitled to the allotment of an alternate plot as per policy dated 15.4.1998 issued by Chief Administrator, HUDA. The pricing of such plot would be as per terms and conditions contained in the policy itself. It is made clear that the benefit of this order would enure to the petitioner only upon deposit of Rs. 82,500/- i.e. 15% of the allotment price towards the original plot allotted to him along with interest @ 10% per annum from the date such deposit had become due i.e. 4.1.2001.

9. Petition is allowed in the aforesaid terms.