
(2013) 08 P&H CK 0936

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 937 of 2013

Santokh Singh Randhawa

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 27-08-2013

Acts Referred:

Citation : (2013) 172 PLR 443

Hon'ble Judges : Mehinder Singh Sullar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : Anish Garg, for the Appellant; Hari Pal Verma, Additional Advocate General, Punjab for the Respondent-State and Mr. Rupinder S. Khosla, for the Respondent

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of CWP Nos. 937 and 3378 of 2013 as according to learned counsel for the parties the factual matrix and the issue involved therein are identical. For brevity, the facts are being extracted from CWP No. 937 of 2013. In this writ petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for quashing the order dated 5.11.2012 (Annexure P-9) passed by respondent No. 3. Further, a direction has been sought to be issued to respondent No. 3 for restoring the allotment of plot No. D-124 in PDA Omaxe City, Village Baran, District Patiala in favour of the petitioner.

2. The facts necessary for adjudication of the present petition as narrated therein are that respondent No. 4 was allotted plot No. D-90 vide letter No. 17886 dated 13.2.2008 and plot No. D-124 vide letter No. 1662 dated 4.2.2008 by respondent No. 3. The petitioner had purchased the aforesaid plot No. D-124 measuring 400 square yards which was transferred on 28.3.2008 in his name and the possession of the plot was handed over to the petitioner on 21.10.2010 (Annexure P-3). According to the petitioner, the payments/installments were being regularly paid by the allottees and construction was being raised on the said plot with the approval of respondent No. 3. However, on 5.11.2012, a letter

was issued by respondent No. 3 to the original allottee, i.e. respondent No. 4 with a copy to the petitioner for cancellation of plot No. D-124. The reason for cancellation was that the original allottee had been allotted two plots which was not as per the policy of respondent No. 3. The cancellation order, Annexure P-9, in that behalf was issued by respondent No. 3. The petitioner had approached this Court impugning order dated 5.11.2012 (Annexure P-9) by way of instant writ petition.

3. Upon notice of motion having been issued, respondents No. 2 and 3 have filed their written statement controverting the averments made in the writ petition.

4. We have heard learned counsel for the parties and perused the record.

5. Learned counsel for respondents No. 2 and 3 submitted that the order, Annexure P-9, passed by the Estate Officer, Patiala Urban Development Authority (PDA)-respondent No. 3 was an order passed under Sections 45(3) and 45(4) of the Punjab Regional and Town Planning and Development Act, 1995 (in short "the Act") which was appealable u/s 45(5) of the Act. It was also urged that against the order of the appellate authority- Chief Administrator, a further remedy of revision u/s 45(8) of the Act thereof is maintainable before the Special Secretary, Government of Punjab, Department of Housing and Urban Development. Learned counsel for respondents No. 2 and 3 further stated that in case an appeal is filed within 30 days from the date of receipt of a certified copy of the order, no objection with regard to the maintainability and limitation would be raised before the appellate authority.

6. It would be expedient to reproduce Section 45 of the Act which reads thus:--

45. Resumption and forfeiture for breach of transfer.-

(1) XXXX

(2) to (4) xxxx

(5) Any person aggrieved by an order of the Estate Officer u/s 44 or under this section may, within a period of thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed:

Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(6) and (7) xxxx

(8) Where a person is aggrieved by any order of the Chief Administrator, deciding the case under sub-section (6) or sub-section (7), he may, within thirty days of the date of communication to him of such order, make an application in writing to the State Government for revision against the said order and the State Government may confirm, alter or rescind the order of the Chief Administrator.

7. Learned counsel for the petitioner did not dispute that an appeal was maintainable. He submitted that an effort was made for filing the appeal, however, the appellate authority had refused to accept the appeal papers on the ground that there was a reference to an order of the Special Secretary-cum-Revisional Authority in the impugned order and, therefore, appeal was not competent. However, in view of the objection taken by learned counsel for respondents No. 2 and 3, the petitioner is relegated to avail the remedy of appeal against the order, Annexure P-9 passed by respondent No. 3 before the appellate authority. Learned counsel for the petitioner states that he will avail the alternative remedy of appeal u/s 45(5) of the Act. In view of the above, the writ petitions are disposed of with the direction that in case an appeal is filed by the petitioner within 30 days from the date of receipt of a certified copy of this order, the same shall be decided by the appellate authority on merits without being influenced by any observation made hereinabove in accordance with law.