

(2013) 11 P&H CK 0280
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 12635 of 1992 (O and M)

Sohan Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2013) 11 P&H CK 0280

Hon'ble Judges : Ajay Tewari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajay Tewari, J.—On 04.07.2013, the following order was passed:--

By this petition the petitioner has challenged the cancellation of the allotment of 10 kanals 9 marlas of land in village Moholi. This surplus land was originally allotted to respondent No. 4 in the year 1979, however, he neither paid any amount nor took possession for 13 long years. The allotment was cancelled by order dated 08.04.1992 (Annexure P-1) and the land was allotted in the name of Gopal s/o Ratti Ram (predecessor in interest).

Respondent No. 4 did not challenge the cancellation order. Thereafter by order dated 3rd August, 1992 (Annexure P-3) the allotment in favour of the Gopal was cancelled and the land was re-allotted in favour of respondent No. 4. This order has been challenged in this writ petition by the successor in interest of the Gopal.

The ground on which the allotment was cancelled was that in fact Gopal had died on 2nd July, 1992 and the final allotment (Form US-4) was issued in his name on 3rd July, 1992 and thus the present petitioner had played fraud with the Government. Learned Senior Counsel has argued that in fact Gopal had become the full owner of the land prior thereto and, therefore, even if the final allotment was made in his name after he died it could not have the effect on rendering the allotment in his favour illegal. In this regard he has referred to Section 15(4), (5) & (6) of The Haryana Ceiling on Land Holdings Act, 1972 which are reproduced

here in below:--

15(4) The purchase price of the land, along with interest at the rate of five percent per annum, shall be payable by the allottee in whose favour the proprietary rights are conferred in ten annual equated installments, at the rate not exceeding that mentioned in column 1 of the table in sub-section (1) of Section 16.

(5) On payment of full price or the first installment thereof, as the case may be, the allottee shall be deemed to have become the owner of the land and the prescribed authority, where the allottee is not already in possession shall put him in possession thereof.

(6) The unpaid portion of the purchase price along with the interest shall be the first charge on the land so allotted.

On the contrary the stand of the respondents is that in terms of the scheme formed by the Government and more particularly form US-3, if the first installment was not paid within one month the allotment was liable to be cancelled and there is no averment in the writ petition that the first installment was in fact paid within the period of one month. Learned Senior counsel has argued that the scheme being a subsidiary legislation would not over-ride the express provision of the Parent Act under which Gopal had become the full owner and, therefore, the argument of learned counsel for the respondents cannot be accepted.

Apart therefrom without prejudice to this arguments learned Senior Counsel has shown to the Court photocopy of a receipt whereby Rs. 1276/- representing the first 9 installments have been shown to have been deposited. However on this photocopy it is not possible to discern the date on which payment has been made. Before entering into the merits of the arguments I deem it appropriate to direct the Assistant Advocate General, Haryana to produce the record relating to this payment so that, if it is shown that the first installment was paid within time, the case can be decided accordingly on that short ground alone.

Matter is adjourned to 29th July, 2013.

On 20.09.2013, it was noticed:--

Learned A.A.G. has verified the fact of payment of the purchase price by the petitioner and has clarified that 9 installments were deposited on 30.06.1992 and the 10th was deposited on 02.07.1992.

On 18.11.2013, the following order was passed:--

The contention of learned counsel for respondent No. 4 that there is a provision for mandatory cancellation of allotment on account of non-payment is borne out from the record.

However, learned Senior counsel for the petitioner has argued as per the

practice, the price of the land is always assessed after the allotment is made and as per him the price was paid within few days of the fixation thereof. He has further stated that since the cancellation order proceeded on a totally different ground, there was no occasion to make this argument at the time when the writ petition was filed and only due to this reason, the said ground was not mentioned in the petition.

Learned A.A.G., Haryana is directed to ascertain if, on fact this argument is correct.

Adjourned to 22.11.2013.

Copy of the order be handed over to the Learned A.A.G., Haryana under the signatures of the Court Secretary.

Thereafter, on 22.11.2013, the following order was passed:--

In terms of order dated 18.11.2013, learned Assistant Advocate General, Haryana, has produced the record. As per the same, at the time when US-3 form was issued to the petitioner, there was neither mention of the purchase price nor was stipulated as to what amount of first installment and on which date, he has to pay the same. As per the record, on 24th April, 1992, the petitioner moved an application for permission to deposit the installments which was allowed by the competent authority on 27th April, 1992. However, by report dated 28th April, 1992, it was mentioned that the installments sought to be deposited by the petitioner could not be deposited since by then, respondent No. 4 had deposited the full amount. Thereafter the petitioner moved another application on 12th May, 1992, in which he requested the competent authority that after the allotment in his favour, respondent No. 4 in connivance with the revenue authorities, had got deposited the full price but that deposit was meaningless and he should be permitted to deposit the price. On this application, there are two endorsements by the competent authority on 22nd May, 1992 and 16th June, 1992 asking for a report. Thereafter, the entire amount was deposited by the petitioner on 2nd July, 1992 and US-4 form was also issued on 3rd July, 1992.

Record is returned to learned Assistant Advocate General, Haryana.

Adjourned to 29.11.2013.

The question which now arises is whether the allotment in favour of the petitioner could have been cancelled, in view of Section 15 of The Haryana Ceiling on Land Holdings Act, 1972 on the ground that the payment was not made within one month of the allotment order.

2. In my opinion, from the orders reproduced above, it cannot be said that the petitioner did not make the necessary deposit within the prescribed time because in the form US-3, no price has been mentioned and learned Deputy Advocate General is not in a position to reveal from the record on which date, the petitioner was asked to pay the price. In view of the absence of any material to

show that when the petitioner was informed about the price which he had to pay, the benefit thereof has to go to the petitioner and it has to be held that there was no delay in the deposit made. It is not out of place to reiterate here that the cancellation order was on the different ground viz. the fact that the allottee had died on 2nd July, 1992 and the present petitioner had played a fraud with the Government. Section 15(5) of The Haryana Ceiling on Land Holdings Act, 1972, has been quoted in the order dated 4th July, 2013 (supra) and a perusal thereof reveals that on the deposit of the first installment allottee shall be deemed to have become the owner. In this case, it is admitted that the first nine installments had been paid before the death of Gopal, thus he had become the owner of the land and the act of issuance of form US-4 would be merely a clerical act which would not have any impact.

Consequently, the writ petition is allowed; the impugned order dated 03.08.1992 (Annexure P-3), is set aside.