
(2014) 04 P&H CK 0019
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 4218 of 2013 (O&M)

Sushila Devi

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6

Citation : (2014) 04 P&H CK 0019

Hon'ble Judges : Surya Kant, J; Lisa Gill, J

Bench : Division Bench

Advocate : Naveen S. Bhardwaj, Advocate for the Appellant; Palika Monga, DAG Haryana and Mr. Rahul Garg, Advocate for HUDA, Advocate for the Respondent

Judgement

Surya Kant, J.—The controversy pertains to the petitioner's eligibility for allotment of a residential plot under the Oustees policy. The facts may be noticed briefly.

2. The petitioner was joint owner in possession of the land measuring 2 bigha 16 1/2 biswa i.e. 2825 sq.yards comprising Khewat No. 821, Khatauni No. 2702, Khasra No. 10339/8382, Khatauni No. 2705, Khasra No. 10334/8380 by virtue of Civil Court decree dated 13.03.1984. The above-stated land was acquired vide notifications dated 08.02.1989 and 07.02.1990 issued under Sections 4 & 6 of the Land Acquisition Act, 1894 (in short, "the Act"), respectively for development of Residential and Commercial Sectors 4 & 5 at Karnal.

3. Before the above-stated acquisition, the HUDA formulated a policy dated 10.09.1987 (Annexure P1) for allotment of residential/commercial sites to the oustees in various Urban Estates developed by it.

4. The petitioner also sought allotment in terms of the above-stated policy: her claim was recommended but finally it was turned down on the ground that the policy dated 10.09.1987 was inapplicable in her case.

5. The petitioner along with other aggrieved persons then approached this Court

in CWP No. 12921 of 1993 (Anu Gupta & Ors. vs. State of Haryana & Ors.) (she was petitioner No. 4) which was finally allowed by this Court vide order dated 10.11.2008 with the following directions:-

Consequently, this writ petition is allowed to the extent that the Chief Administrator, HUDA, Panchkula is directed to reconsider the claim of petitioners No. 1 to 4 in terms of the policy dated 10th September, 1987 and if found eligible, to allot them plots as per their entitlement. The needful shall be done within a period of three months from the date a certified copy of this order is produced before him.

6. In purported compliance of the above reproduced directions, the Chief Administrator, HUDA has passed a speaking order which was issued on 23.07.2009 (Annexure P13) whereby the petitioner's claim has been turned down (para 10) on the ground that she did not deposit the mandatory earnest money along with her application form and that she was not the owner of the acquired land for one year before the issuance of Section 4 notification dated 08.02.1989.

7. The aggrieved petitioner has again approached this Court.

8. The respondent-Authority has filed its reply/affidavit taking yet another plea that vide advertisements dated 09.09.1991, 22.12.1999, 23.02.2000 and four more subsequent advertisements upto 28.03.2003, applications for allotment of plots in Sectors 4&5 were invited and the petitioner did not apply in response thereto.

9. We have heard learned counsel for the parties and gone through the record.

10. In our considered view, all the three objections taken by the respondents to deny petitioner the benefit of the policy dated 10.09.1987 are unsustainable. We say so firstly for the reason that the petitioner admittedly acquired ownership qua the subject-land vide Civil Court decree dated 13.03.1984 and even if there was a delay in sanctioning the mutation, it was inconsequential. The ownership of the petitioner thus was for more than one year before issuance of Section 4 notification on 08.02.1989.

11. Secondly, the objection that the petitioner did not submit earnest money along with the application form should not work to her disadvantage as no such issue was ever raised when the benefit of policy dated 10.09.1987 was earlier denied. In any case, such an irregularity could be rectified by asking the petitioner to deposit the earnest money along with interest as may be leviable under the HUDA Act.

12. Thirdly, the petitioner was not obligated to submit applications time and again in response to the advertisements referred to by the respondents in their written statement as she had already applied and her application was required to be considered on merits in terms of the directions issued by this Court Anu Gupta and others case (supra). We may mention here that the petitioner had

approached this Court in 1993 and her writ petition remained pending till the directions were issued on 10.11.2008. During this period, it would be too unfair and unjust to expect the petitioner to submit one after the other applications for allotment of only one residential plot under the oustee category.

13. For the reason afore-stated, this petition must succeed. We order accordingly. The impugned speaking order dated 23.07.2009 (Annexure P13) to the extent it pertains to the petitioner's claim is hereby quashed. The respondents are directed to re-consider the petitioner's claim in the light of the policy dated 10.09.1987 and in accordance with law. If the petitioner is found eligible, she shall not be denied allotment of plot on the ground that she did not deposit the earnest money along with her application form. However, the respondents shall be at liberty to ask the petitioner to deposit such amount along with interest.

14. The needful shall be done within a period of four months from the date of receipt of a certified copy of this order.

15. Ordered accordingly.