
(2016) 02 P&H CK 0215
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 19132 of 2014

Veena Rani

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 10-02-2016

Acts Referred:

Haryana Urban Development Authority Act, 1977 — Section 23, Section 30, Section 30(2)

Powers of Attorney Act, 1882 — Section 1A, Section 2

Citation : (2016) 02 P&H CK 0215

Hon'ble Judges : S.J. Vazifdar, Actg. C.J. and Arun Palli, J.

Bench : Division Bench

Advocate : Devender Punia, Advocate, for the Appellant;

Final Decision : Allowed

Judgement

Arun Palli, J.—1. A writ of certiorari is prayed for to quash the order dated 10.07.2014 (Annexure P10), vide which respondent No. 1 reviewed the order dated 01.05.2012 (Annexure P5), rendered by the then Financial Commissioner and Principal Secretary to Government of Haryana, Department of Town & Country Planning, whereby the residential site/plot allotted to the allottee was restored.

2. In brief, vide allotment letter dated 04.09.1991 (Annexure P1), issued by the Estate Officer, Haryana Urban Development Authority (HUDA), Bhiwani (respondent No. 3), a residential plot bearing No. 218, Sector 23, measuring 10 marlas was allotted to Sh. Ashok Bhalla (hereinafter referred to as the allottee) for a sum of Rs. 1,17,480/-. As per the terms and conditions of the letter of allotment, 75% of the price of the plot could either be deposited in lump-sum within 60 days from the date of issuance of the allotment letter without interest or in 6 half yearly installments along with 10% interest. As the allottee failed to deposit balance 75% price of the plot, respondent No. 3, vide order dated 17.01.2001 (Annexure P2), resumed the site. Appeal preferred by the allottee,

through his duly constituted attorney, namely, Sh. Rajpal, against the order of resumption was dismissed by the Administrator, HUDA, vide order dated 24.02.2006 (Annexure P3). However, the revisional authority in reference to the decision rendered by this court in CWP No. 8048 of 2008, decided on 06.01.2009 [M/s. Akash Ganga and another v. State of Haryana] and, for the allottee was willing to retain the site even at current price i.e. Rs. 2,800/- per sq. yard, ordered its re-allotment vide order dated 01.05.2012 (Annexure P5). The conclusion reads thus:

"7. On 01.05.2012; the petitioner showed his willingness to retain the plot at current price i.e. Rs. 2800/- per sq. yard. He furnished four drafts bearing No. 943969 dated 26.04.2012 UCO Bank, 943971 dated 28.04.2012 UCO Bank, 499398 dated 28.04.2012 SBOP and 943924 dated 30.04.2012, UCO Bank amounting to Rs. 2,45,000/-, 49,000/-, 1,50,000/- and 2,27,000/- aggregating to Rs. 6,71,000/-. Taking into consideration, the circumstances vide which the petitioner could not make the due payment and judgment of Hon''ble High Court in CWP No. 8048 of 2008 decided on 06.01.2009 titled as M/s. Akash Ganga and another Vs. State of Haryana, I deem it a fit case where one more opportunity is given to the petitioner to retain the plot at the current price.

8. In view of the fact that the full price of the plot has been paid by the petitioner now, the plot is ordered to be reallocated. Estate Officer, HUDA, Bhiwani is directed to offer the possession of the plot to the petitioner who should undertake construction within a period of two years from the date of offer of possession."

3. Accordingly, respondent No. 3 delivered actual physical possession of the site to the allottee and issued a possession certificate dated 10.10.2012 (Annexure P6). Deed of conveyance, dated 21.11.2012 (Annexure P8), was also executed in his favour by respondent No. 3. Subsequently, he was even accorded permission to transfer the site in favour of the petitioner i.e. Veena Rani, vide letter dated 26.11.2012 (Annexure P7). And, vide a sale deed dated 30.11.2012, executed by the allottee, the site was sold to the petitioner. As a result, re-allotment letter, dated 19.03.2013, was issued in favour of the petitioner by respondent No. 3. Petitioner commenced construction at site, which was purportedly near completion at the time of institution of this petition.

4. It would be apposite to point out at this stage that in another writ petition bearing CWP No. 13228 of 2011, filed by an allottee of plot No. 170, Sector 23, Bhiwani, in reference to the decision of the revisional authority in this case, vide which the site was restored, petitioner therein pleaded discrimination, for the order of resumption in his case was sustained and his revision petition was dismissed. Faced with this situation, the authorities in the said proceedings agreed to re-consider the matter. Accordingly, the order passed by the revision authority was set aside and the matter was remitted for re-consideration. It was at that stage, and in this background, the Government purports to have decided to review even the order dated 01.05.2012 (Annexure P5), rendered by the

revisional authority in the present case. Consequently, vide order dated 10.07.2014 (Annexure P10), the said order (Annexure P5) was reviewed and respondent No. 3 was directed to take possession of the site. And the conclusion arrived at reads thus:

"5. In view of the observation of the Hon"ble High Court in above mentioned CWP, it was decided by the Government of Haryana to review the orders dated 01.05.2012 passed by Sh. S.S. Dhillon, I.A.S, the then FCTCP in respect of plot No. 218 Sec 23 Bhiwani exercising the powers vested in the Government under section 30 of the HUDA Act. Accordingly, Sh. Y.S. Malik, I.A.S, Principal Secretary to Government of Haryana, Industries Department, was nominated to submit recommendations after giving hearing to the petitioner and take necessary action.

6. The parties i.e. Sh. Ashok Kumar Bhalla i.e. the original allottee, Sh. Rajpal i.e. GPA of the original allottee and Smt. Veena Rani i.e. the present allottee, were heard at length by Sh. Y.S. Malik, I.A.S and vide note dated 05.10.2013, it was recommended that the Revision Petition filed by Sh. Ashok Kumar Bhalla through GPA may be dismissed mainly on the grounds that execution of a GPA in respect of a property, after it had ceased to belong to the allottee, is nothing short of a fraud. Both the allottee and the GPA have connived in taking this fraudulent act to its fruition. The GPA in this case has been executed after more than 4 years of resumption of plot. The said recommendations of Sh. Y.S. Malik, I.A.S have been accepted by the competent authority on 07.03.2014.

7. Therefore, exercising the powers under Section 30(2) of the HUDA Act, 1977, the Revision Petition filed by Sh. Ashok Kumar Bhalla through GPA Sh. Rajpal is hereby dismissed and consequently, the resumption order dated 17.01.2001 is upheld. Since, Smt. Veena Rani is the bonafide purchaser of the plot in question, she needs to be reimbursed the amount she had paid to the seller i.e. Rs. 30,80,000/-. Therefore, it has been decided that the Estate Officer, Bhiwani would take over the possession of the plot which may be put to auction and out of the auction proceeds, the investments of Smt. Veena Rani may be refunded without deductions subject to the conditions that she assigns all her rights to claim damages and seek refund of unlawful gain from Sh. Rajpal, GPA to the Government/HUDA.

The Estate Officer, Bhiwani is directed to complete the exercise of auction within 2 months from the date of receipt of copy of the order."

5. That is how, as indicated above, the petitioner is before this court.

6. Learned counsel for the petitioner submits that the only reason that has been assigned by respondent No. 1 in support of its order is; that post resumption the allottee executed a General Power of Attorney in favour of Sh. Rajpal, though he ceased to have any interest in the site and this was nothing short of a fraud. He submits that resumption does not deprive the allottee even of a right to question the order of resumption. Therefore, he could always avail the remedies that the Statute provides in this regard for restoration of site, either himself or through

his attorney. And this, under no situation, could be termed as a fraud. Further, he submits that Sh. Rajpal (GPA holder) happened to be a personal friend of the allottee, who was a resident of Chandigarh, and found it convenient to appoint the former as his attorney, for he was residing at Bhiwani where the site was situated.

7. We have heard learned counsel for the parties and perused the records.

8. On a due and thoughtful consideration of the matter in issue, we are of the considered view that the order being assailed is palpably erroneous and is thus liable to be set aside for the reasons that are being recorded hereinafter.

9. Ex facie, the short ground upon which respondent No. 1 reviewed the order dated 01.05.2012 (Annexure P5), rendered by the revisional authority, is; "that execution of a GPA in respect of a property, after it had ceased to belong to the allottee, is nothing short of a fraud. Both the allottee and the GPA have connived in taking this fraudulent act to its fruition." Concededly, the site in question was allotted to Sh. Ashok Kumar Bhalla (allottee). And he even deposited 25% of the price of the plot. Resultantly, he acquired interest in the allotted site. No doubt, as a result of cancellation of allotment Sh. Ashok Kumar Bhalla ceased to be an allottee but he did not cease to have a right to assail the order of resumption. Particularly, when the Statute itself i.e. HUDA Act, 1977, provides him a right of an appeal and then a revision before the designated authorities. That being so, he could always assail the order of resumption or question its validity, notwithstanding whether his claim contained any merit or was devoid thereof. It was to protect and enforce that right that he executed a General Power of Attorney in favour of Sh. Rajpal. In law, he could either file an appeal himself or through his duly constituted attorney. If, post resumption, execution of the GPA to avail the remedy, if admissible in law, constitutes fraud or is impermissible, it would imply that allottee even loses the right to file appeal or question the validity of the order of resumption. Something, which is apparently misconceived and defies logic. Thus, cannot be sustained. Even the learned State counsel expresses his inability to justify the reason that forms basis of the order being assailed. The expression "fraud" involves two elements, deceit and injury to the person deceived. However, both are conspicuous, in the matter in hand, by their absence.

10. Likewise, the observation "Both the allottee and the GPA have connived in taking this fraudulent act to its fruition" suggests that perhaps the Government drew an impression that pursuant to some unholy nexus, the allottee sold his interest, though he was left with none, to the GPA holder. To set the records straight, we deem it necessary to reiterate that vide GPA dated 05.04.2005 (Annexure P11), Sh. Rajpal was constituted as attorney of the allottee. And, he was duly authorized to resort to appropriate measures for restoration of the resumed site. The position of law is settled that a power of attorney is only an instrument of convenience and hardly conveys any right, title or interest in an immoveable property unless otherwise specified or indicated. Further, we are

reminded to point out that Sh. Rajpal (GPA holder) never claimed any right, title or interest in the site in question. He never propounded any sale agreement, will or power of attorney sale in his favour, which could be said to have been executed to circumvent the law. Nothing was brought, at least, on record to show that any consideration amount ever passed on from the GPA holder to the allottee. Of course, we would have viewed the matter from a different perspective, if the site was eventually transferred in the name of a GPA holder. But, such is not the case in the matter in hand. That being so, and before we proceed further, it would be expedient to refer to certain observations made by the Hon'ble Supreme Court in *Suraj Lamp and Industries Pvt. Ltd. v. State of Haryana and another*, , 2012 AIR (SC) 206:

"13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see section 1A and section 2 of the Powers of Attorney Act, 1882)."

And in *State of Rajasthan v. Basant Mehata*, , 2005(12) SCC 77:

"A grant of power of attorney is essentially governed by Chapter X of the Contract Act. By reason of a deed of power of attorney, an agent is formally appointed to act for the principal in one transaction or a series of transactions or to manage the affairs of the principal generally conferring necessary authority upon another person. A deed of power of attorney is executed by the principal in favour of the agent. The agent derives a right to use his name and all acts, deeds and things done by him and subject to the limitations contained in the said deed, the same shall be read as if done by the donor. A power of attorney is, as is well known, a document of convenience.

Execution of a power of attorney in terms of the provisions of the Contract Act as also the Powers-of- Attorney Act is valid. A power of attorney, we have noticed hereinbefore, is executed by the donor so as to enable the donee to act on his behalf. Except in cases where power of attorney is coupled with interest, it is revocable. The donee in exercise of his power under such power of attorney only acts in place of the donor subject of course to the powers granted to him by reason thereof. He cannot use the power of attorney for his own benefit."

11. A conspectus of the position that has been sketched out above, crystallizes that Sh. Rajpal was indeed and merely a duly constituted attorney of an allottee, and not a beneficiary in the process. Rather, it appears that after the Division Bench of this court, vide its order dated 12.08.2013 (Annexure P9) in a petition preferred by another allottee, namely, Sh. Sanjay Gupta, remitted the matter to the revisional authority for reconsideration, respondent No. 1 to justify its order in the said proceedings reviewed the order passed by the revisional authority in the present case. Whereas, the site in question was restored by the revisional

authority at current price, which was duly furnished by the allottee. Resultantly, he was put in actual physical possession thereof. Respondent No. 3 executed a conveyance deed in his favour. Permission to transfer the site in favour of the petitioner was also accorded by respondent No. 3. And, post execution of the sale deed by the allottee in favour of the petitioner, respondent No. 3 even issued a re-allotment letter in her name. And, she purports to have even constructed the site. Ex facie, petitioner is a bona fide purchaser for consideration. And, for we find the entire transaction to be genuine and bonafide, we are constrained to set aside the order passed by the revisional authority.

12. Accordingly, the order dated 10.07.2014 (Annexure P10) is set aside and the writ petition is allowed.