

as shamlat deh Hasab Rasad Khewat ever since the consolidation proceedings.

5. Mr. Thakur, learned counsel for respondent No.3, has vehemently argued that the allotment of land in the years 1981 and 1984 is actuated by fraud and misrepresentation and that the proceedings for recovery of possession were completed soon after the land is said to have been purchased by the petitioners, but after more than 10 years of the alleged allotment.

6. Having heard learned counsel for the parties, we find that on the basis of the record as on today, the allotment in favour of the vendors of the petitioners was made prior to 09.07.1985. Such allotment is protected by virtue of amendment inserted vide Punjab Act No.8 of 1995. However, the question whether the allotment is actuated by fraud or misrepresentation is not the question, which can be examined in the present writ petitions. Therefore, it shall be open to the Panchayat or such other competent authority to take such remedy as is permissible in respect of allotments in favour of the vendors of the petitioners as ineffective on any legally permissible grounds, but till such time the allotments are set aside, it cannot be said that the sales in favour of the petitioners are not protected by the aforesaid Act.

7. The sales effected prior to the judgment in **Malwinder Singh's case (supra)** have been protected by virtue of amendment inserted vide Punjab Act No.8 of 1995. Since the vendors of the petitioners have been allotted land prior to 09.07.1985 i.e. the date of judgment in **Malwinder Singh's case (supra)**, therefore, the petitioners being vendee of vendors, whose allotment is protected, are entitled to the possession of the land so purchased.

8. In view of the above, both the writ petitions are allowed and the orders dated 10.07.2008 are set aside. It shall be open to the petitioners to take possession of the land in accordance with law subject to the liberty granted above.

Petitions allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Jasbir Singh & Augustine George Masih, JJ.

Civil Writ Petition No. 12070 of 2009

Decided on: 06.09.2011

Jai Bhagwan Sharma

Petitioner

Versus

Chandigarh Administration and others

Respondents

Alongwith

Civil Writ Petitions No. 16084 of 2009

For the Petitioner: Mr. Arun Jain, Sr. Advocate, with Mr. Amit Jain, Advocate.

For the Respondents: Mr. Amar Vivek, Advocate.

Chandigarh Allotment of Land to Co-operative House Building Societies Scheme – Allotment of flat by Society – Challenge to --

Eligibility of Individual – Date of Eligibility – Future acquisition – Effect of -- Petitioner submitted an affidavit on 8.6.1983 to the effect that he or his dependent family member did not own or possess any other residential allotment of a house in Chandigarh, Mohali or Panchkula -- Wife of the petitioner had been allotted a house at reserve price on 15.9.1983 – Held, eligibility of an individual to get a plot has nothing to do so far as future acquisitions are concerned -- Impugned orders cancelling allotment of a plot to the petitioners, quashed. Chandigarh Housing Board's case 2007(2) RCR (Civil) 640, relied.

In response to notice issued by this Court, reply has been filed. Para No. 3 of the reply, filed at the instance of respondents No. 1 to 3, reads thus:

"That contents of para No. 3 of the writ petition are admitted. However, at this stage, it is submitted that the petitioner had submitted an affidavit through his Society on 8.6.1983 to the effect that he or his dependent family member did not own or possess any other residential allotment of a house in Chandigarh, Mohali or Panchkula. As a matter of fact, wife of the petitioner had been allotted a house at reserve price on 15.9.1983."

Besides, as above, there is no other allegation against the petitioner. A similar matter came up for consideration before the Supreme Court in the case of Chandigarh Housing Board v. Devinder Singh and another, (2007(2) RCR (Civil) 640), after noting the relevant provisions, it was opined that the eligibility is to be seen at the relevant date. A portion of the judgment reads thus:

"26. We will assume that the Scheme framed by the 'AWHO' was to obtain lands either through its own efforts or from the Government or Semi-Government organisations so as to enable it to construct houses for the retired army personnel. The declaration, however, which is required to be given by a Member of the Society must be held to have application which the Scheme seeks to achieve. It applies only when the conditions to allotment are required to be complied with. It does not prohibit any future acquisition. If any declaration is made, which may subsequently be found to be false, the Society may or may not proceed against the allottee. If it does, it again must be confined only to a situation arising within the four corners of the said Scheme."

In the judgment, it is stated that eligibility of an individual to get a plot has nothing to do so far as future acquisitions are concerned.

In view of above, we allow these writ petitions and quash the impugned orders cancelling allotment of a plot to the petitioners.

(Para 6-9)

Cases referred:

1. Chandigarh Housing Board v. Devinder Singh and another, 2007(2) L.A.R. 51 (SC) = 2007(2) RCR (Civil) 640.

JUDGMENT

JASBIR SINGH, J. (ORAL) –

1. This order will dispose of two writ petitions, i.e., Civil Writ Petitions No. 12070 and 16084, both of the year 2009, involving a common questions of law and facts. To dictate an order, facts are being mentioned from CWP No. 12070 of 2009.

2. Petitioner is a member of the Progressive Cooperative House Building

(III) Society Ltd., Chandigarh. The land was allotted to the Society for construction of the residential houses by its members. As per the requirements, petitioner was found eligible and a plot was allotted to him by the Society on March 28, 1985. The petitioner paid the entire price for the said plot and also raised construction of a residential house thereon after getting necessary permission from the competent authority. Occupation certificate was also issued to the petitioner on December 6, 1991.

3. On March 12, 1999, after 14 years of the date of allotment of a plot, a show cause notice, issued by respondent No. 2, was received by the petitioner calling upon him to show as to why allotment of the plot be not cancelled. The said notice is stated to have been issued on the basis of an enquiry, which was conducted at the back of the petitioner. It was an allegation against him that he had filed a false affidavit on 8-6- 1983, stating therein that neither he nor any of his family members own a house/ plot in U.T. Chandigarh, Mohali or Panchkula. It was noticed by the authorities that a house was allotted to his wife at a reserve price on September 26, 1983.

4. Petitioner appeared before the competent officer and stated that the eligibility has to be seen on the date when the applications were invited and an affidavit was filed. Any subsequent event cannot be taken into consideration to declare the petitioner ineligible, to get a plot. However, respondent No. 2 did not agree with the petitioner and cancelled his allotment vide order dated October 15, 2001. Petitioner went in appeal, which was partly accepted vide order dated April 10, 2003 and the matter was remitted back to respondent No. 2 to decide it afresh. The matter was again taken up by respondent No. 2 and vide an order dated January 12, 2005, claim of the petitioner was rejected. The petitioner again went in appeal, which was dismissed on September 26, 2007. His revision and review application were also dismissed on August 27, 2008 and November 5, 2008, respectively. Hence this writ petition.

5. When notice of motion was issued, following contention of counsel for the petitioner was noticed by this Court on August 11, 2009:

“Vide order dated January 12, 2005 (P-8), plot allotted to the petitioner was cancelled on the ground that before allotment in the year 1985, his wife had acquired a property in Chandigarh on September 26, 1983. It is contention of counsel for the petitioner that eligibility for allotment of plot was to be seen on March 31, 1980 or at the maximum when affidavit was filed by the petitioner on June 8, 1983. To support his contention, reliance has been placed upon a judgment of the Supreme Court in Chandigarh Housing Board v. Davender Singh, 2007(2) R.C.R. (Civil) 640.

Notice of motion for October 27, 2009. Dispossession of the petitioner shall remain stayed till further orders.”

6. In response to notice issued by this Court, reply has been filed. Para No. 3 of the reply, filed at the instance of respondents No. 1 to 3, reads thus:

“That contents of para No. 3 of the writ petition are admitted. However, at this stage, it is submitted that the petitioner had submitted an affidavit through his Society on 8.6.1983 to the effect that he or his dependent family member did not own or possess any other residential allotment of a house in Chandigarh, Mohali or Panchkula. As a matter of

fact, wife of the petitioner had been allotted a house at reserve price on 15.9.1983.”

7. Besides, as above, there is no other allegation against the petitioner. A similar matter came up for consideration before the Supreme Court in the case of **Chandigarh Housing Board v. Devinder Singh and another, 2007(2) L.A.R. 51 (SC) = (2007(2) RCR (Civil) 640)**, after noting the relevant provisions, it was opined that the eligibility is to be seen at the relevant date. A portion of the judgment reads thus:

“26. We will assume that the Scheme framed by the ‘AWHO’ was to obtain lands either through its own efforts or from the Government or Semi-Government organisations so as to enable it to construct houses for the retired army personnel. The declaration, however, which is required to be given by a Member of the Society must be held to have application which the Scheme seeks to achieve. It applies only when the conditions to allotment are required to be complied with. It does not prohibit any future acquisition. If any declaration is made, which may subsequently be found to be false, the Society may or may not proceed against the allottee. If it does, it again must be confined only to a situation arising within the four corners of the said Scheme.”

8. In the judgment, it is stated that eligibility of an individual to get a plot has nothing to do so far as future acquisitions are concerned.

9. In view of above, we allow these writ petitions and quash the impugned orders cancelling allotment of a plot to the petitioners.

Petitions allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Ranjit Singh, J.

Civil Writ Petition No.5510 of 1992

Decided on: 05.09.2011

Sat Pal Verma

Petitioner

Versus

The Panchayat Samiti, Garhshankar & others

Respondents

Present: Mr. K.S. Sandhu, Advocate, for Mr. Anupam Gupta, Advocate, for the petitioner.

Mr. Ankur Soni, Advocate, for respondent No.1.

Mr. Vivek Chauhan, Asstt. AG, Punjab, for the State.

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, Section 4, 5 -- Retirement from service -- Eviction -- Lease terminated, the petitioner obviously would not have any right to continue or to occupy the premises -- Order of eviction legally passed by the competent authority.

Once the petitioner has retired and his lease, which may have been upheld earlier, has been terminated, the petitioner obviously would not have any right to continue or to occupy the premises. The petitioner has retired from service and thus, cannot be permitted to remain in occupation of the quarter belonging to the Panchayat Samiti