

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

DATE OF DECISION: September 5, 2011.

Parties Name

Nisha Singal

...PETITIONER

VERSUS

Haryana Urban Development Authority and others

...RESPONDENTS

CORAM: Hon'ble Mr. Justice Jasbir Singh
Hon'ble Mr. Justice Augustine George Masih

PRESENT: Mr. Arun Jain, Sr. Advocate, with Mr. Amit Jain,
Advocate, for the petitioner

Mr. Sidharth Batra, Advocate, for respondents No.1 and 2.

Ms. Palika Monga, D.A.G., Haryana, for respondent No. 3.

Jasbir Singh, J. (oral)

JUDGMENT

This writ petition has been filed with a prayer to quash an order dated October 3, 2003 (P-20) vide which allotment of a plot No. 746, to the petitioner in Gurgaon was cancelled and also to challenge an order dated April 24, 2008 (P-22), vide which revision petition filed by the department was allowed and an order dated August 25, 2006, passed in favour of the petitioner was set aside. Challenge is also made to an order dated June 20,

2008 (P-23), vide which review application filed by the petitioner was dismissed.

As per facts on record, on an advertisement made in the year 2001, the petitioner submitted two applications for allotment of the plots. Her applications were found in order and accordingly she was allotted two plots bearing No. 745-P and 746 vide order dated April 20, 2001 (P-6) at the rate of Rs. 3,000/- per square metre. Regarding payment of price assessed, the following stipulation was made in that letter:

“In case you accept this allotment please send your acceptance by a registered post along with an amount of Rs. 26,77,500/- within 30 days from the date of issue of this allotment letter, together with an amount of Rs. 6,30,000/- paid by you alongwith your application form as an earnest money will constitute 25% of the total tentative price.

6. The balance amount i.e. Rs. 9923500/- of the above tentative price of the plot/ building can be paid in lump sum without interest within 60 days from the date of issue of allotment letter or in five half yearly instalments. The first instalment will fall due after the expiry of six months of the date of issue of this letter. Each instalment would be recoverable together with interest on the balance price of 18% P.A. interest on the remaining amount. The interest shall, however, accrue from the date of offer of possession.”

It is an admitted fact that the petitioner complied with the

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above said condition by depositing an amount so far as plot No. 745-P is concerned. However, nothing was deposited with regard to plot No. 746. Rather a delaying tactic was adopted and on August 10, 2001, i.e. after about four months of the allotment, a letter (P-8) was written by the petitioner making a request to the department that instead of a joint allotment letter, separate allotment letters for both the plots be issued.

Relevant contents of the letter read thus:

- “1. I intend to take loan for construction of Plot No. 745 and plot No. 746 from two different financial institutions.
- 2. Plot No. 746, as stated in my application, is required for expansion. Therefore, its construction will be taken up at a latter date.
- 3. I intend to make payment of Plot No. 746 in five half yearly instalments, whereas I am making efforts to make payment of Plot No. 745 in lump sum.

In view of above, it is requested that allotment of both the plots be made separately.”

It was only stated that separate allotment letters will facilitate raising of loan by the petitioner. We are of the opinion that when, as per terms and conditions, mentioned in the allotment letter dated April 20, 2001, (P-6) the petitioner failed to deposit the requisite amount, the said allotment had become ineffective. However, the authorities took a very lenient view and on May 14, 2002, separate allotment letters were issued so far as plots No. 745P and 746 are concerned. Because regarding plot No. 745P, the

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requisite amount already stood deposited in terms of the allotment order dated April 20, 2001, the price of the land in the subsequent letter was kept the same, as quoted earlier, i.e., at the rate of Rs. 3,000/- per square metre. However, so far as second plot bearing No. 746 is concerned, the price was fixed at Rs. 3450/- per square metre.

We feel that it was a favour shown to the petitioner, otherwise, for want of deposit of amount in terms of the allotment order earlier issued, she was not entitled to get the plot reallocated. The second allotment was made after a gap of more than one year. We feel that the authorities were justified to enhance the price to the extent of Rs. 450/- per square metre only. Otherwise, it was incumbent for the petitioner to pay an interest because of default committed in terms of the previous allotment letter. The petitioner saved the interest amount and at the same time did not want to make any attempt to pay the enhanced amount of Rs. 450/- per square metre. Without making any payment as per terms and conditions of the letter dated May 14, 2002, again an attempt was made to delay the matter by filing a representation and asking for the decrease of price of the plot. That representation was declined by the competent authority and allotment was cancelled on October 3, 2003, by observing as under:

“In accordance with the terms and conditions of allotment you have failed to deposit the 25% cost of plot within 30 days from the date of issue of allotment letter. Hence allotment of above plot is hereby cancelled and earnest money amounting to Rs. 6,30,000/- already deposited is hereby forfeited.”



Petitioner went in appeal, which was accepted by the competent authority without looking into the facts as stated above. It was only said that the authority below has not taken a realistic view, in not accepting a request made by the petitioner. The department went in revision, which was allowed by the competent authority vide order dated April 24, 2008. When granting relief to the department, it was observed as under:

“I have heard the arguments and gone through the detailed history of the case. The facts of this case are very peculiar. In the normal course HUDA does not allot two separate plots against the same application. In the present case, two different adjoining plots i.e. Plot No. 745 and 746 , Sector 37, Part II, Gurgaon, were allotted to the respondent. A joint allotment letter for both the plots was issued on the same date and charging the same rate of Rs. 3,000/- per square metre. There can be no two opinion that the allottee was required to deposit the due amount in respect. of both the plots within the prescribed period. Subsequently, the request of the allottee for issuing separate allotment in respect of Plot No. 746 was accepted by the Chief Administrator, HUDA on 28.3.2002. It was decided to charge the current rates of Rs. 3450/- per square metre in respect of Plot No. 746. At the same time a view was taken that the delay in making 15% payment for plot No. 746 from 20.4.2011 till 16.5.2002 be condoned and no penal interest be charged for this delay. Despite this concession made by Chief Administrator HUDA the allottee failed to comply

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with the conditions of the allotment letter and continued to make representations via-a-viz the rate to be charged for plot No. 746. Finally the representation relating to the rate of Plot No. 746 was rejected by Chief Administrator HUDA vide Memo No. 29885 dated 18.9.2003 addressed to the allottee. Therefore, the argument raised by the respondent that Estate Officer canceled the allotment without affording opportunity of hearing to the allottee does not hold water. Thereafter also the allottee took six months to file an appeal before the Commissioner and Secretary, Town and Country Planning, HUDA, Gurgaon. Whereas it should have been filed before the Administrator, Planning to give permission for withdrawing the appeal since the same is to be considered by the Administrator, HUDA, Gurgaon. Ultimately in May 2006, the allottee requested the Commissioner and Secretary, Town and Country Planning to give permission for withdrawing the appeal since the same is to be considered by the Administrator, HUDA, Gurgaon. Finally the appeal was heard and decided by Administrator, HUDA, Gurgaon in August 2006. In this manner, there was a gap of almost 3 years between the cancellation of the allotment of Plot No. 746 and the hearing and acceptance of appeal by the Administrator, HUDA, Gurgaon. Whereas earlier the allottee was disputing the allotment price of Rs. 3450/- per square metre, at the time of appeal, she willingly agreed to pay the said price along with interest/ penalty as per policy. This lends credence to the contention made by the Estate Officer, HUDA Gurgaon in the

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revision petition that the numerous representations made by the allottee from time to time were mere camouflage to cover up her real motives of buying time and when market rates of the plot soared, the appeal was filed for restoration of the resumed plot even at the rates as per revised allotment letter. For all the detailed reasons mentioned above, I have come to the conclusion that Administrator, HUDA, Gurgaon has erred while accepting the appeal. Ample opportunity had been given to the allottee to make the payment. HUDA had even agreed to issue a revised allotment letter in respect of Plot No. 746 as per the request of the allottee. Therefore, the revision petition is allowed and the order dated 25.8.2006 passed by Administrator, HUDA, Gurgaon is set aside. Order had been reserved in this case after conclusion of arguments. The same is being pronounced today. May be conveyed to the parties."

Thereafter, review application, filed by the petitioner, was dismissed vide order dated June 20, 2008.

After hearing counsel for the parties, we are satisfied that the order passed by the authorities below is perfectly justified. It has come on record that initially one joint allotment letter was issued with regard to plots No. 745-P and 746 and the price was fixed at Rs. 3,000/- per square metre for both the plots and it was also mandated that 25% of the price be deposited within 30 days from the date of allotment letter.

So far as plot No. 745-P is concerned, the compliance was

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made. However, regarding plot No. 746 , no attempt was made to comply with the terms and conditions incorporated in the letter of allotment dated April 20, 2001. For non-deposit of that amount, the allotment stood cancelled. Nothing was done for a period of four months and the representation to give separate allotment letters was sent only on August 10, 2001. By that time, everything was over and the allotment of plot No.746 stood cancelled in terms of terms and conditions mentioned in allotment letter dated April 20, 2001.

In view of above, we are satisfied that the authorities while issuing second letter of allotment on May 14, 2002, were justified in putting in marginal increase in the price of plot by Rs. 450/- per square metre over and above the price already fixed. That amount was also not paid at any stage. The revisional authority is perfectly justified in saying that the attempt was only to delay the matter and not to pay the amount to the department, which was huge. No case is made out for interference. Dismissed.

sd- (Jasbir Singh)
Judge

sd- (Augustine George Masih)
Judge



September 5 , 2011
DKC

Amir
29/11/11

*DA added
may 18/11
10.11
S. D.
13/11
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