

Chandigarh Housing Board & another

Vs

Narinder Kaur Makol

Civil Appeal No. 3728 of 2000

13.07.2000

JUDGMENT

1. Leave granted.

2. This appeal is preferred by the Chandigarh Housing Board against the judgment of the National Consumer Disputes Redressal Commission, New Delhi in R.P.No. 1469 of 1997 dated 29.4.1999.

3. A commercial plot was allotted to the husband of the respondent on 4.4.1979 by the Notified Area Committee, Union Territory of Chandigarh, on free hold basis in the Motor Market and Commercial Complex at Manimajra, by the appellant.

4. Para 8 (a) of the said allotment order stated that the allottee should complete the building in accordance with the sanctioned plan which shall be according to the control sheets prepared by the Chief Architect and Secretary of the Board. Thereafter, the Administrator issued a letter on 9.7.93 to the respondent's husband that the procedure relating to preparation of Architectural Control Sheets for Shop-Flats are applicable for Motor Shops also and that in these cases the said procedure of Architectural Control permits the construction of shops on the ground floor and flats on the first and second floor. On the basis of the above said order, the respondent's husband submitted the Plan to the Architect for construction of ground floor for commercial purposes and for construction of first and second floor as residential flats. A Deed of Conveyance was thereafter executed by the Board in favour of the respondent's husband, on 30th September, 1981. Para 4 of the said Conveyance also stated that the transferee should complete the said building in accordance with the sanctioned Plan which should be according to the Control Sheets prepared by the Chief Architect and the Secretary.

5. On the basis of the above Plan, the husband of the respondent got constructed a building in which the ground floor was used for commercial purposes and the first and second floor for residential purposes.

6. Subsequently, the respondent (i.e. wife of the above allottee) filed an application for allotment of a residential plot and she filed declaration by way of an affidavit that neither she, nor her husband nor any of her dependent relations including any married children own any free hold or leasehold or on hire purchase basis,, residential plot or house in the Union Territory of Chandigarh or in any of the Urban Estates of Mohali or Panchkula. She had to file such an affidavit in view of the conditions of eligibility mentioned in Regulation 6 of the Chandigarh Housing Board (Allotment, Management and Sale or Tenements) Regulations 1979. The said Regulations were framed under Section 74 of the Haryana Housing Board Act, 1971, as extended to the Union Territory of Chandigarh. The relevant Regulation reads as follows:—

"Eligibility of Allotment:—

(1) A dwelling unit of flat in the Housing Estates of the Board shall be allotted only to such person who or his wife/her husband or any of his/her dependent relations including unmarried children does not own on freehold or leasehold or on hire purchase basis a residential plot or house in the Union Territory or Chandigarh or in any of the Urban Estates of Mohali or Panchkula. Similarly persons who have acquired a house/residential site anywhere in India through Govt./Semi-Govt./Municipal Committee/Corporation/Improvement Trust At Concessional Rate in their name or in the name of any dependent member of their family will not be eligible to apply to the Board for allotment of a dwelling unit, or flat. Subject to the above provision, the applicant should have been a bonafide resident of U.T. of Chandigarh for a period of at least three years on the date of submitting the application.

(2) The applicant shall furnish an affidavit in the prescribed form with regard to his eligibility along with the application. In the event of the affidavit being found false at any stage, the Board shall be entitled to cancel the registration or the allotment of dwelling unit or flat, as the case may be, and to forfeit the deposit received with the application and all the payments made to the Board thereafter".

7. An allotment of a residential plot was made in favour of the respondent on the basis of the affidavit.

8. Later on, realising that the husband of the respondent was owning a residential flat the authorities cancelled the allotment in favour of the respondent. This was done by an order dated 15.12.1993. Aggrieved by the said order, the appellant moved the District Consumer Disputes Redressal Forum, Union Territory at Chandigarh, in Complaint Case No. 1/1996. The said forum allowed the application set aside the order of cancellation dated 15.12.1993 and directed that the respondent to be put in possession of the residential plot allotted to her.

9. Aggrieved by the said order of the District Forum, the appellant moved an appeal before the State Consumer Disputes Redressal Commission, Union Territory at Chandigarh, in appeal Case No. 106/97, which by its order dated 11.11.1997, confirmed the order of the District Forum. Aggrieved by the said order, the appellant preferred a Revision before the National Consumer Disputes Redressal Commission, New Delhi. As already stated, the National Commission dismissed the Revision by its order dated 29.4.1999.

10. In this appeal, it is contended by Mr. B. Batta, learned Senior counsel appearing on behalf of the Chandigarh Housing Board that all the Tribunals below had gone wrong in their interpretation of Regulation 6(1) referred to above. Learned Senior counsel contended that it was an undisputed fact that on the commercial plot allotted to the respondent's husband, admittedly a residential flat had been constructed in the second and third floors, while the ground floor was being used for commercial purposes. Learned Senior counsel contended that for incurring a disqualification under Regulation 6(1), it was not necessary that the entire building owned by respondent's husband must be one exclusively used for residential purposes. Even if the ground floor was used for commercial purposes and there was a residential flat in the second and third floors, the said ownership of a flat in the said floors on the part of the husband of the respondent would be a ground to disqualify the respondent (wife of the original allottee) from seeking any allotment of another plot for residential purposes.

11. On a reading of the Regulation No.6 referred to above, it is clear that the eligibility of the other spouse is to be decided on the basis as to whether the other spouse or their dependents do not own a residential plot or house in the U.T. of Chandigarh or in any of the Urban Estates of Mohali or

Panchkula. Therefore, in the present case, while considering the question of eligibility of the respondent we have to see whether her husband owned an original plot or house in the U.T. of Chandigarh or in the Urban Estates of Mohali or Panchkula, for residential purposes.

12. In our opinion, in view of the admitted fact that there is a residential flat in the second and third floors of the ground floor commercial plot, it must necessarily be held that the husband of the respondent owned a residential house within the territory in question and that therefore the respondent (wife of the first allottee) is not eligible for allotment of another residential plot from the said authority. It must be realised that these plots are allotted on concessional basis to the allottees by the public authority and the relevant Regulations must therefore be interpreted in such a manner to save their real purpose so that the plots are available, as far as possible, to the largest number of persons, and for preventing the same family members husband or wife or dependents, as the case may be from getting more than one plot or house, for the same purpose. We are of the view that the words 'residential house' in Regulation 6(1) must be treated as including a flat constructed above the commercial flat on the ground floor. This will be so even if originally the plot was allotted for commercial purposes. If incidentally construction of residential flat above the ground floor commercial plot is permitted as per the plans. In other words, even though the plot is allotted as a commercial plot, if it is permissible to build a residential flat above the commercial plot and is so constructed, then such a residential flat will come within the prohibition in Regulation 6(1).

13. We, are therefore, of the view that the declaration made by the respondent that her husband did not own a residential house was not correct. It may be a bonafide statement by her, but it does not in our opinion reflect the facts correctly. The cancellation of the allotment in favour of the respondent by the authorities on 15.12.1994 was therefore, justified.

14. For the aforesaid reasons we set aside the orders passed by the District Forum, the State Commission and the National Commission and uphold the order of cancellation of allotment.

15. In view of the fact that the statement made by the respondent in her affidavit is bonafide it is contended for the respondent that the amount of deposit made by the respondent should be refunded to her.

16. But, learned Senior counsel appearing on behalf of the appellant contends that the relevant Regulation permits forfeiture of the deposit amount. On the peculiar facts of this case, we are permitting the respondent to get back the amount deposited by her but without interest. This will not be treated as a precedent in any other case.

17. For the reasons stated above, the appeal is allowed, subject to the direction with regard to the refund of the amount as mentioned above.