

# SUPREME COURT OF INDIA

Chaman Lal Singhal

Vs.

Haryana Urban Development Authority

C.A.No.803 of 2009

(S.B. Sinha and Dr. Mukundakam Sharma JJ.)

09.02.2009

## JUDGMENT

**Dr.Mukundakam Sharma, J.**

1. Leave Granted.

2. In this appeal we are called upon to adjudicate and decide an issue as to whether the land allotted to the appellant could have been cancelled in the manner in which it was done by respondent No. 1 - Haryana Urban Development Authority (in short the "Authority").

3. The appeal is filed against the judgment and order of the Division Bench of the Punjab and Haryana High Court, whereby the Division Bench dismissed the writ petition not only on the ground of inordinate delay but also on the premise that no reasonable ground is made out to exercise the equitable jurisdiction of the court under Article 226 of the *Constitution of India*.

4. In order to appreciate the contentions raised on behalf of the parties it would be necessary to state few facts leading to filing of the writ petition before the Punjab and Haryana High Court.

5. The appellant submitted an application for allotment of a residential plot to the respondent-Authority. The aforesaid request of the appellant was considered and accepted. Accordingly the respondent-Authority passed an order allotting a residential plot to the appellant bearing No. 1042-P in Sector 43, Gurgaon measuring about 135 square meter at a tentative cost of Rs. 4,843.8 per square meter. As the said plot was a preferential one the appellant was required to pay an additional 10% of the price, thus making the total sale consideration at approximately Rs. 7,19,312/- An allotment letter dated 14-06-2002 was issued by the respondent- Authority to the appellant wherein the terms and conditions of allotment were mentioned. Some of the relevant clauses having a bearing in the present case are extracted below :

“Clause 4. In case you refuse to accept this allotment you shall communicate your refusal by a registered letter within 30 days from the date of issue of this allotment letter, failing which this allotment shall stand cancelled and the earnest money deposited by you shall be forfeited to authority and you shall have no claim for damages.

Clause 5. In case you accept this allotment, please send you acceptance by registered post an amount of Rs. 114436.00 within 30 days from the date of issue of allotment letter, which together with an amount of Rs. 65392.00 paid by you along with your application form an earnest money, will constitute 25 percent of the total tentative price.

Clause 6. The balance amount i.e. Rs. 539484.00 of the above tentative price of the plot can be paid in lump sum without interest within 60 days from the date of issue of allotment letter or in six annual installments. The first installment will fall due after the expiry of one year of the date issue of this letter. Each installment would be recoverable together with interest on the balance price at 15% interest of the remaining amount. The interest shall however, accrue from the date of offer of possession.”

6. In accordance with the aforesaid terms and conditions of allotment letter the appellant was required to deposit an amount of Rs. 1,14,436/- within 30 days from the date of the said allotment letter. The balance tentative amount of Rs. 5,39,484/- was required to be paid either in lump sum without interest within 60 days from the date of issue of the allotment letter or in six annual installments with interest at the rate of 15% per annum. The interest, however, was to be calculated from the date of offer of possession. Some of the other relevant terms of the allotment letter which would have a bearing while deciding the present matter are extracted hereinbelow :

“Clause 10. In case the installment is not paid by the 10th of the month following the month in which it falls due for in the case the additional price is not paid within time, the Estate Officer shall proceed to take action for imposition of penalty and resumption of plot in accordance with the provisions of Section 17 of the Act.

Clause 11. In the event of the breach of any other condition of transfer the Estate Officer may resume the land in accordance with the provision of Section 17 of the Act.”

7. The appellant received the aforesaid letter of allotment but he did not send any letter of acceptance of the aforesaid allotment to the respondent-Authority nor did he pay the amount of Rs. 1,14,436/- within 30 days from the date of issue of the aforesaid allotment letter. Consequent thereto, due to non-payment of the amount due and payable, the Estate Officer issued an order which was communicated under letter dated 3.12.2003 whereby the allotment in favour of the appellant was cancelled. In terms of the aforesaid clauses appearing in the

allotment letter earnest money equivalent to 10% was forfeited by the respondent-Authority. The contents of the aforesaid letter issued by the Estate Officer are as under:

"As per terms and Conditions No. 5 of the allotment letter issued vide this office Memo No. 2222 dated 11.6.2002 (11th June, 2002), you have failed to deposit the 15% amount within 30 days from the date of issue of allotment letter i.e. upto 10.7.2002. Hence, the allotment letter of the above said plot issued vide this office memo No. 2222 dated 11.6.2002 is hereby cancelled and 10% amount deposited by you is also forfeited in favour of the Authority."

8. Being aggrieved by the aforesaid cancellation of the allotment the appellant approached the appellate authority namely, the Chief Administrator, Haryana Urban Development Authority (for short `HUDA'). However, the same was of no avail and the appeal of the appellant was dismissed by the Chief Administrator on the ground that the cancellation order passed by the Estate Officer was in accordance with and in consonance with the terms and conditions of the allotment letter. Consequent upon passing of the said order the order forfeiting the earnest money was also upheld. While disposing of the said appeal the appellate authority also mentioned that no order was passed by the Estate Officer under Section 17 of the *Haryana Urban Development Authority Act, 1977* (hereinafter referred to as the "Act").

9. The appellant still aggrieved, filed a revision petition which was also dismissed by the revisional authority i.e. the Commissioner and Principal Secretary to Government, Haryana, Town and Country Planning Department, Chandigarh by an order passed on 14.7.2006. In the said order which was communicated to the appellant the revisional authority held that as per departmental instructions delay in depositing 15% of the amount up to 150 days could be condoned by the Chief Administrator, HUDA. As per instructions, Chairman of HUDA is competent to condone the delay beyond 150 days if he is satisfied that the allottee has failed to deposit the amount due to the reasons which were beyond his control. However, while disposing the revision petition an option was given to the appellant-allottee to approach the respondent- Authority for condonation of delay in depositing 15% price and for restoration of the plot. In terms of the aforesaid order the appellant-allottee gave a representation to the respondent-Authority but the said representation was rejected by the Estate Officer by only mentioning that the appeal and revision petition filed by the appellant having already been rejected by the Chief Administrator, HUDA as well as by the Commissioner, the said representation also stands dismissed. Thus, having no other alternative left the appellant approached the High Court of Punjab and Haryana by filing the aforesaid writ petition which was also dismissed in the manner stated hereinabove.

10. We heard the learned counsel appearing for the parties who had taken us through the records and also the relevant provisions. Since the letter of allotment makes a reference to Section 17 of the Act and since the counsel for the parties referred to and relied upon the same while making their submissions, the said section is extracted hereinbelow:

“Section 17. Resumption and forfeiture for breach of conditions of transfer

(1) Where any transferee makes default in the payment of any consideration money, or any installment, on account of the sale of any land or building, or both, under Section 15, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why a penalty which shall not exceed ten percent of the amount due from the transferee, be not imposed upon him.

(2) After considering the cause, if any, shown by the transferee and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer may, for reasons to be recorded in writing, make an order imposing the penalty and direct that the amount of money due along with the penalty shall be paid by the transferee within such period as may be specified in the order.

(3) If the transferee fails to pay the amount due together with the penalty in accordance with the order made under Sub-section (2), or commits a breach of any other condition of sale, the Estate Officer may, by notice in writing, call upon the transferee to show cause within a period of thirty days, why an order of resumption of the land or building, or both, as the case may be, and forfeiture of the whole or any part of the money, if any, paid in respect thereof which in no case shall exceed ten per cent of the total amount of the consideration money, interest and other dues payable in respect of the sale of the land or building, or both, should not be made.

(4) After considering the cause, if any, shown by the transferee in pursuance of a notice under sub- section (3) and any evidence that he may produce in support of the same and after giving him a reasonable opportunity of being heard in the matter, the Estate Officer, may for reasons to be recorded in writing, make an order resuming the land or building or both, as the case may be, and directing the forfeiture as provided in sub- section (3) of the whole or any part of the money paid in respect of such sale.

(5) Any person aggrieved by an order of the Estate Officer under section 16 or under this section may, within a period of thirty days of the date of the communication to him of such order, prefer an appeal to the Chief Administrator in such form and manner, as may be prescribed:

Provided that the Chief Administrator may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(6) The Chief Administrator may, after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit.

(7) The Chief Administrator may, either on his own motion or on an application received in this behalf, at any time within a period of six months from the date of the order, call for the record of any proceedings in which the Estate Officer has passed an

order for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order in relation thereto as he thinks fit:

Provided that the Chief Administrator shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.”

11. The learned counsel appearing for the appellant while relying upon Section 17 of the Act submitted that all the authorities including the High Court failed to appreciate that the cancellation of the allotment of the plot in favour of the appellant was in contravention of the statutory provision namely Section 17 of the Act. By placing reliance on the said provision he submitted that the said Section imposes a responsibility and duty upon the Estate Officer to issue a show cause notice, if the allottee fails to deposit the requisite amount within the stipulated period mentioned, stating to show cause as to why a penalty should not be imposed upon the allottee. It was also submitted by him that there is not only violation of the statutory provision but also of the principles of natural justice as no opportunity was given to the appellant before passing the order of cancellation of the allotment and also before passing the order forfeiting the earnest money deposited by the appellant.

12. The learned counsel appearing for the respondent, however, submitted before us that the provisions of Section 17 of the Act could not be applied to the facts and circumstances of the present case as there was in fact no agreement/contract between the parties. He also submitted that as the appellant failed to accept the offer of the respondent-Authority by making payment of the amount as directed in the letter of allotment, there was no binding contract between the parties and, therefore, Section 17 of the Act has no application at all. It was further submitted that the forfeiture of the amount could have been and rightly done by the respondent- Authority by invoking the mandate of clause 4 of the letter of allotment.

13. In the light of the aforesaid submissions and facts we are required to answer the issue which was raised before us. While it is true that an allotment letter was issued to the appellant by the respondent-Authority, but the said allotment was subject to the conditions as mentioned in the terms and conditions of the allotment letter, some of which have been extracted hereinabove. In terms thereof the appellant was required to send a communication to the respondent-Authority by registered post that he is accepting the aforesaid allotment made in his favour along with an amount of Rs. 1,14,436/- within 30 days from the date of issue of allotment letter. That amount was supposedly 15% of the price payable for the plot of land allotted to him. The said amount together with the amount of Rs. 65,392/- which was paid by the appellant- applicant along with his application form would, therefore, have constituted 25% of the total tentative price of the land. If the appellant refused to accept the offer of allotment he was required to communicate his refusal by a registered letter within 30 days from the date of issue of allotment letter failing which it was made clear that the aforesaid allotment would stand cancelled and that the earnest money deposited by him would be forfeited by the Authority and the appellant would have no claim for damages thereafter.

14. A bare perusal of the aforesaid relevant clauses of the allotment letter would indicate that the balance amount of the cost price i.e. Rs. 5,39,484/- could be paid either in lump sum without interest within 60 days from the date of issue of allotment letter or in six annual installments which were recoverable in terms of the Schedule given in clause 6 of the aforesaid allotment letter. Clause 10 provides that in case the installment which is payable is not paid by the 10th of the month following the month in which it falls due or in the case the additional price is not paid within time, the Estate Officer shall proceed to take action for imposition of penalty and resumption of plot in accordance with the provisions of the Section 17 of the Act. Clause 11 of the said terms and conditions also makes a reference of Section 17 of the Act.

15. In our considered opinion the appellant failed to comply with the aforesaid clauses of the letter of allotment and, therefore, his allotment stood cancelled and the earnest money deposited by him could be forfeited by the Authority. The order of cancellation came to be passed by the competent authority after 500 days. Be that as it may, the aforesaid allotment of plot of land in favour of the appellant came to be cancelled because of non-payment of the amount as stipulated in clause 5 and, therefore, the earnest money deposited by him could be forfeited by the Authority. Since the case of the appellant comes within the ambit of clauses 4 and 5 of the allotment letter, the provisions of Section 17 of the Act would have no application and would not apply. It is thus established that there was no agreement/contract between the appellant and the respondent-Authority and there being no such agreement/contract and because of non-compliance of requirement of clause 5 the issue with regard to violation of principles of natural justice also would not arise. Therefore, the contentions that provisions of Section 17 of the Act are violated and that there is non-compliance of the principles of natural justice have no merit.

16. It is, however, explicit from the records that there is an instruction of the respondent-Authority in terms of which delay in depositing 15% price up to 150 days could be condoned by the Chief Administrator, HUDA and that the Chairman of HUDA is competent to condone the delay beyond 150 days if he is satisfied that the allottee failed to deposit 15% of the amount due to the reasons which were beyond his control. The revisional authority while disposing of the revision petition also granted such a liberty to the appellant to approach the appropriate authority for restoration of the plot and for condonation of the delay in depositing 15% price of the plot. The appellant availed the said opportunity provided by the revisional authority but his representation came to be dismissed by the Estate Officer on the ground that his appeal and the revision petition stood dismissed.

17. In our considered opinion the aforesaid disposal of the representation by the Estate Officer was not proper, for the Estate Officer while disposing of the said representation did not at all deal with or mention as to whether or not the same was a case for condonation of delay in depositing the 15% amount. Besides, in terms of the aforesaid departmental instruction it is the Chief Administrator who is required to consider the said representation initially and if it is a case of delay of more than 150 days the same is required to be considered by the Chairman, HUDA. In the instant case, in terms of the records available and

shown to us the said representation was rejected by the Estate Officer and, therefore, such disposal was not in accordance with law.

18. Considering the aforesaid facts, we set aside the order of the Division Bench of the Punjab and Haryana High Court and remand the matter to the Chairman, HUDA for considering the aforesaid representation of the appellant in accordance with law and as expeditiously as possible. We may mention that we have taken the decision to send the same to the Chairman, HUDA because the records available with us disclose that the delay to be condoned, if any, in the present case would be more than 150 days, for which Chairman, HUDA is the competent Authority. We also make it clear that no part of observations made herein would have any effect in the process of disposal of the representation which shall be disposed of on its own merit.

19. In terms of the aforesaid observations this appeal stands disposed of.