# Greater Mohali Area Dev. Authority & Ors vs Manju Jain & Ors on 19 August, 2010

## Equivalent citations: AIR 2010 SUPREME COURT 3817, 2010 AIR SCW 6443, (2010) 6 ALLMR 462 (SC), (2010) 2 LANDLR 757, (2010) 4 CAL HN 279, (2010) 4 ICC 427, 2010 (9) SCC 157, (2010) 7 MAD LJ 1052, 2010 (8) SCALE 275, (2010) 4 RECCIVR 224, (2011) 1 ALL WC 292, (2011) 1 CPJ 4, (2010) 8 SCALE 275

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## Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6791 OF 2010
(Arising out of SLP (C) No. 6427 of 2008)

Greater Mohali Area Development Authority & Anr. ..... Appellants

Versus

Manju Jain & Ors. .....Respondents

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. Leave granted.

2. This appeal has been preferred against the judgment and order dated 22.11.2007 passed by the High Court of Punjab and Haryana at Chandigarh, in Civil Writ Petition No. 16621 of 2007, by which the High Court has set aside the judgments and orders of the Revisional Authority dated 31st July, 2007 and the Appellate Authority dated 30th March, 2006 and the order of cancellation of the suit plot dated 20th August, 2003 by the statutory authority.

3. Facts and circumstances giving rise to this case are that the respondent No.1 applied vide application No.026012, dated 27.1.1997, for allotment of a flat under a hire purchase scheme along with application money of Rs.20,000/-. After considering the application of the respondent No.1

along with other applicants, a draw of lots was held on 28.6.1997 and an M.I.G. flat was allocated to the respondent No.1 and she was informed vide letter dated 19.11.1997 about the said allocation. As per the said allocation letter, the allotment was for a tentative cost to the tune of Rs.4,79,200/-. Respondent No.1 would deposit a further 15% of the price of the flat within 30 days of the issuance of the allotment letter and the balance amount was to be deposited in equal monthly installments over a period of 13 years. It was also open for her to make payment of the balance amount in a lump sum within 60 days from the date of issue of the allotment letter. The authority issued the letter of allotment dated 9th March, 1999 in her favour, which made it clear that the price of the house was Rs.5,55,200/- and that she had to send her acceptance of the allotment and deposit 25% of the amount within 60 days of the receipt of the allotment letter. She had to deposit the balance amount in monthly installment over a period of 13 years. The respondent No.1 did not make any response to the said letter nor did she deposit any amount. The appellant- authority on her query vide letter dated 28th August, 2003, informed the respondent No.1 that the allotment made in her favour stood cancelled, as she did not deposit any amount in pursuance of the allotment letter dated 9th March, 1999.

4. Being aggrieved, respondent No. 1 preferred an appeal before the Estate Officer of the appellants challenging the order of cancellation. The said appeal was dismissed vide order dated 30th March, 2006, against which the respondent No.1 preferred a revision which was also dismissed by the Revisional Authority vide order dated 31.7.2007.

5. Being aggrieved, respondent No. 1 preferred Writ Petition No.16621 of 2007 challenging the orders passed by the authorities of the appellants, as well as the State Government. The writ petition has been allowed quashing all the orders passed by the authorities of the appellants and of the State of Punjab. Hence, this appeal.

6. Mr. Satinder S. Gulati, learned counsel appearing for the appellants, has submitted that the respondent No.1 was sent the letters of allocation as well as the allotment by Registered Post. She did not send her acceptance nor did she deposit any amount whatsoever and she filed an appeal wherein she did not take the ground that she had not received the letter of allotment. Respondent No. 1 had made very vague pleadings stating that she had not heard anything from the appellants after depositing the application fee. She failed to make any deposit at any stage and the High Court has wrongly proceeded as if she did not have any notice of the allocation or allotment. The High Court summoned the officer of the appellant-authority and quashed the order of cancellation and all other consequential orders only on the ground that the allotment letter had not been sent to the correct person at correct address, placing reliance upon the receipt and dispatch register of the authority alone. The appellant- authority was not given a proper opportunity to file a reply to the writ petition. Thus, the order impugned passed by the High Court is liable to be set aside.

7. On the other hand, Shri Govind Goel, learned counsel appearing for the respondents, has submitted that greater injustice has been done to the respondent by the authorities, as in spite of the order of allotment, the allotment had been cancelled without issuing any show cause notice to her or sending any information whatsoever. The High Court has rightly taken note of the fact that the notice was sent to an incorrect person and to the incorrect address. Therefore, the order of the High

Court does not warrant interference. The appeal lacks merit and is liable to be dismissed.

8. We have considered the rival submissions made by learned counsel for the parties and perused the record.

9. The Appellate Authority, after considering the pleadings, appreciating the evidence on record and hearing both the parties, came to the conclusion that respondent No. 1 did not deposit the required amount and did not execute the hire- purchase agreement and she failed to give any cogent reason for the same. The appeal was rejected.

10. Before the Revisional Authority, no factual foundation had been laid by respondent No. 1 on relevant factual aspects, particularly, on the fact that she had not received the allotment letter. The only relevant ground reads as under:

> "That due to some financial difficulties, the applicant-petitioner could not arrange the huge sum of Rs.1,19,800/- to be paid within the stipulated period. The applicant-petitioner also approached some banks for loan but the Bank Authorities did not agree to grant loan for the purpose. However, now the applicant- petitioner has arranged funds for the purpose and is willing and ready to make the payment at any time."

The revision was dismissed by the Revisional Authority vide order dated 31.7.2007.

11. This ground impliedly amounts to admission that respondent No. 1 was fully aware of her liability and she could not fulfill the requirement only for non-availability of funds. The fact that she had not received the allotment letter was neither pleaded before the Appellate Authority nor before the Revisional Authority. Thus, there was no occasion for either of the said authorities to record a finding on this factual aspect.

12. In the writ petition filed on 25-10-2007 before the High Court, a totally new case was built up on a new factual matrix, i.e. that respondent No. 1 had never received the allotment letter and after waiting for a long time when she made a representation to the authorities, she was informed that allotment made vide letter dated 9.3.1999 has been cancelled vide order dated 28.8.2003.

13. The Writ Petition came for admission before the High Court on 29.10.2007, wherein the following order was passed:-

> "Let concerned records be produced by Greater Mohali Area Development Authority, Mohali on 12.11.2007. Copy of the order be given dasti under the signature of Bench Secretary."

14. When matter came up on 12.11.2007 before the High Court, the appellants herein did not appear, and thus, the Court passed the following order:-

> "Accordingly, Special Secretary to Govt. of Punjab, Department of Housing and Urban Development, Mini Secretariat, (ii) Chief Administrator, Greater Mohali Area Development Authority and (iii) Addl. Chief Administrator of Punjab Urban Planning & Development Authority, Mohali, are directed to remain present in Court on 22.11.2007 to explain reasons for disobeying order dated 29.10.2007 of this court.
>
> A copy of this order be given to Mr. A.G. Masih, Senior Deputy Advocate General, Punjab for ensuring compliance."

15. The officers of the appellants received the order dated 29.10.2007 on 13.11.2007 and that is why, they did not enter appearance and none of their officers could be present in the Court on 12.11.2007. To this effect, an affidavit was filed on 20.11.2007. A specific plea was taken therein that the allotment letter was sent to respondent No. 1 at the correct address under registered cover as was recorded at serial no.364 of the Register for dispatch of registered letters and on which the stamp of the Post Officer, SAS Nagar, dated 11.3.1999 had been affixed along with 11 other registered letters dispatched on that date. Photocopies of those allotment letters were appended along with affidavit. It was further submitted that the letter of cancellation was also sent to the same address where the allocation and allotment letters had been sent.

16. The matter came up before the Court on 22.11.2007 when the writ petition filed by the respondent No. 1 stood allowed without examining the entire record placed before the Court, only on the ground that the dispatch register did not contain the correct name and address of respondent No.1.

The writ petition was finally allowed by the High Court within a period of 26 days of its filing without giving any proper opportunity to the present appellants to file a reply and produce material to controvert the averments made in the writ petition.

17. The High Court failed to note that the appellants had taken a specific plea that the letter of allotment had been communicated to respondent No. 1 by Registered Post. The Privy Council in Harihar Banerjee Vs. Ramshashi Roy AIR 1918 PC 102, held that there can be a presumption of receipt of a letter sent under postal certificate in view of the provisions of Section 114 Ill.(f) of the Indian Evidence Act, 1872 (hereinafter the Evidence Act).

18. In Mst. L.M.S. Ummu Saleema Vs. B.B.Gujral & Anr. AIR 1981 SC 1191, this Court dealt with the issue of presumption of service of letter sent under postal cover, and observed:-

> "The certificate of posting might lead to a presumption that a letter addressed to the Assistant Collector of Customs was posted on 14-8-80 and in due course reached the addressee. But it is only a permissible and not an inevitable presumption. Neither Section 16 nor Section 114 of the Evidence Act compel the Court to draw a presumption. The presumption may or may not be drawn. On the facts and circumstances of a case, the Court may refuse to draw the presumption. On the other hand, the presumption may be drawn initially but on a consideration of the evidence,

> the Court may hold the presumption rebutted."

19. In C.C. Alavi Haji Vs. Palapetty Muhammed & Anr. (2007) 6 SCC 555, this court re-iterated a similar view that Section 27 of General Clauses Act, 1897 and Section 114 Ill.(f) of the Evidence Act, give rise to a presumption that the service of a notice has been effected when it is sent to the correct address by registered post. This Court held as under :-

> "Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post..... Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business."

20. This Court has reiterated a similar view in Gujarat Electricity Board & Anr. Vs. Atmaram Sungomal Poshani AIR 1989 SC 1433; Chief Commissioner of Income Tax (Admn.), Bangalore Vs. V.K. Gururaj & Ors. (1996) 7 SCC 275; Poonam Verma & Ors. Vs. Delhi Development Authority (2007) 13 SCC 154; Sarav Investment & Financial Consultancy Private Limited & Anr. Vs. Llyods Register of Shipping Indian Office Staff Provident Fund & Anr. (2007) 14 SCC 753; Union of India Vs. S. P. Singh (2008) 5 SCC 438; Municipal Corporation, Ludhiana Vs. Inderjit Singh & Anr. (2008) 13 SCC 506; and V. N. Bharat Vs. Delhi Development Authority & Anr. AIR 2009 SC 1233.

21. In view of the above, the High Court ought to have examined the issue in the correct perspective, as respondent No. 1 did not controvert the plea taken by the appellants of sending the allotment letter by Registered Post.

22. Mere draw of lots/allocation letter does not confer any right to allotment. The system of draw of lots is being resorted to with a view to identify the prospective allottee. It s only a mode, a method, a process to identify the allottee i.e. the process of selection. It is not an allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment. (See Delhi Development Authority Vs. Pushpendra Kumar Jain, AIR 1995 SC 1).

23. Constitution Benches of this Court in Bachhittar Singh Vs. State of Punjab & Anr. AIR 1963 SC 395; and State of Punjab Vs. Amar Singh Harika AIR 1966 SC 1313, have held that an order does not become effective unless it is published and communicated to the person concerned. Before the communication, the order can not be regarded as anything more than provisional in character.

A similar view has been reiterated in Union of India & Ors. Vs. Dinanath Shantaram Karekar & Ors. AIR 1998 SC 2722; and State of West Bengal Vs. M.R. Mondal & Anr. (2002) 8 SCC 443.

In Laxminarayan R. Bhattad & Ors. Vs. State of Maharashtra & Anr. (2003) 5 SCC 413, this Court held that the order of the authority must be communicated for conferring an enforceable right and in case the order has been passed and not communicated, it does not create any legal right in favour of the party.

Thus, in view of the above, it can be held that if an order is passed but not communicated to the party concerned, it does not create any legal right which can be enforced through the court of Law, as it does not become effective till it is communicated.

24. Clause 4 of the allotment letter reads as under:-

> "In case you accept this allotment, you should send your acceptance by registered post along with amount of balance of twenty five percent of price within sixty days from the date of receipt of allotment letter." (Emphasis added) In the instant case, an acceptance letter had not been sent by respondent No.1. Thus, the allotment in her favour remained of no significance.

25. The respondent No.1 raised the plea of non-receipt of the letter of allotment first time before the High Court. Even if it is assumed that it is correct, the question does arise as to whether such a new plea on facts could be agitated before the Writ Court. It is settled legal proposition that pure question of law can be raised at any time of the proceedings but a question of fact which requires investigation and inquiry, and for which no factual foundation has been laid by a party before the Court or Tribunal below, cannot be allowed to be agitated in the Writ Petition. If the Writ court for some compelling circumstances desires to entertain a new factual plea the court must give due opportunity to the opposite party to controvert the same and adduce the evidence to substantiate its pleadings. Thus, it is not permissible for the High Court to consider a new case on facts or mixed question of fact and law which was not the case of the parties before the Court or Tribunal below. (Vide State of U.P. Vs. Dr. Anupam Gupta, AIR 1992 SC 932; Ram Kumar Agrawal & Anr. Vs. Thawar Das (D) through Lrs., (1999) 7 SCC 303; Vasantha Viswanathan & Ors. Vs. V.K. Elayalwar & Ors. (2001) 8 SCC 133; Anup Kumar Kundu Vs. Sudip Charan Chakraborty, (2006) 6 SC 666; Tirupati Jute Industries (P) Ltd. Vs. State of West Bengal, (2009) 14 SCC 406; and Sanghvi Reconditioners (P) Ltd. Vs. Union of India & Ors. (2010) 2 SCC 733.

In the instant case, as the new plea on fact has been raised first time before the High Court it could not have been entertained, particularly in the manner the High Court has dealt with as no opportunity of controverting the same had been given to the appellants.

More so, The High Court, instead of examining the case in the correct perspective, proceeded in haste, which itself amounts to arbitrariness. (Vide Fuljit Kaur Vs. State of Punjab AIR 2010 SC 1237).

26. In Teri Oat Estates (P) Ltd. Vs. U.T. Chandigarh & Ors. (2004) 2 SCC 130, this Court held that cancellation of an allotment should be a last resort. The allotment should not be cancelled unless the intention or motive on the part of the allottee in not making due payment is evident. The drastic power of resumption and forfeiture should be exercised in exceptional cases but that does not mean that the statutory rights conferring the right on the authority should never be resorted to. In exceptional circumstances, where the allottee does not make any payment in terms of allotment, the order of cancellation should be passed. Sympathy or sentiment by itself cannot be a ground for passing an order in favour of allottees by the courts nor can an order be passed in contravention of

the statutory provisions.

27. If the instant case is examined in the light of the aforesaid settled legal propositions, it becomes clear that respondent No.1, did not make any response whatsoever after applying for allotment. No explanation could be furnished by respondent No.1 for why she kept quiet for 4= years after receiving the allocation letter and why she did not make any attempt to find out what had happened to her application. Respondent No.1 did not send her acceptance of the allotment; did not deposit the amount which became due in 1999 itself; and did not execute the required hire-purchase agreement with the appellant-authority. Thus, it is solely because of her that no concluded contract could come into existence between the parties. In such a fact-situation, the respondent No.1 could not be handed over possession of the flat. The forfeiture of the earnest money is in terms of the statutory provisions.

While deciding the writ petition, the High Court did not even consider the well reasoned judgments/orders by the authorities under the Statute. The Court was supposed to examine the correctness of those orders. More so, the relevant record of the authority was not examined.

No reason, leave alone a cogent reason has been given by the High Court for the reversal of these orders.

28. The High Court while deciding the case did not give opportunity to the authority to file a reply to the writ petition. The Court proceeded in haste and decided the case relying upon irrelevant materials. An appropriate course may be to set aside the Judgment and order of the High Court and remit it for consideration afresh. However, as a period of 13 years has already been elapsed, since the proceeding came into existence and we ourselves have examined the entire record and re-appreciated the evidence, such a course would not serve any purpose.

29. In view of the above, the appeal is allowed. The judgment and order of the High Court is set aside and the orders passed by the authorities under the statute are restored. No order as to costs.

.....J. (P. SATHASIVAM) .....J. (Dr. B.S. CHAUHAN) New Delhi, August 19, 2010