

Punjab-Haryana High Court

Anil Kumar Chawla vs The Housing Board on 3 January, 1994

Equivalent citations: (1994) 108 PLR 285

Author: V Bali

Bench: V Bali

ORDER V.K. Bali, J.

1. Anil Kumar Chawla through present petition filed by him under Articles 226/227 of the Constitution of India, seeks writ in the nature of mandamus so as to direct the respondent-Board to allot him MIG Ground Floor corner house in Sector 3, Faridabad or in any other Sector in Faridabad in pursuance of draw held on November 3, 1981 at the same rates that were prevalent in the year 1981. In the alternative he prays that the respondent-Board be directed to refund the amount of Rs. 1,970/- deposited on April 21, 1981 and Rs. 4,740/- deposited on September 6, 1983 along with interest at the rate as paid by a Nationalised Bank in accordance with the condition laid down in the application.

2. Brief facts of the case reveal that respondent Board advertised MIG Houses to be sold in Sector 3, Faridabad in the year 1981. Petitioner paid 10% cost of the house for being allotted MIG house on the ground floor. Along with the receipt that was given to him, another letter was also issued to him wherein terms and conditions of the ultimate allotment of the houses were laid down. It is pleaded that as per condition 7 it was stated that no interest would be paid on the amount deposited. However, if the respondent-Board did not give the house within two years, then interest was to be paid at the rate at which the nationalised banks pay. Draw was held on November 3, 1981 in which registration numbers were allotted to all the applicants. Petitioner was allotted provisional registration No. 703 and thereafter he was allotted a final registration number 64S. He received a letter on May 4, 1982 by which he was informed that his chances of getting a house in Sector 29 were not very bright. It was further stated that the respondent-Board was going to acquire land in Sector 3 Faridabad and construction of houses on that land would be started in early 1983. The said houses were to be allotted in accordance with the draw and in case he was interested to keep his registration number intact, he should inform the Board within 15 days and in case he was not so interested, he should apply for refund of earnest money by sending an advance receipt in the proforma enclosed with the letter. Inasmuch as petitioner was interested in keeping his registration number intact, he duly addressed a letter to the Board and did not apply for refund of the earnest money. He received another letter on July 13, 1983 wherein respondent Board stated that it had been allotted 40 acres of land in Sector 3 and it was proposing to construct 572 houses besides the 202 houses which were being constructed and allotted in Sector 29. He was also informed that his final registration number was 64S and in case he was interested for allotment of a house in Sector 3 then he should send Rs. 3,940/- to the Housing Board towards 10% of the approximate cost of the house. He was also told that if he wanted to have a corner house then he should send another sum of Rs. 800/-. In pursuance of the said letter, petitioner duly deposited Rs. 4,740/- vide receipt No. 125115 dated 6.9.1983 in addition to Rs. 1,970/- already deposited by him as 10% cost of one corner MIG house on the ground floor. Years after years rolled by thereafter but no information was given to him. Even though he kept on meeting the officials of the respondent-Board from time to time, he was only informed that the house was being constructed and he will be given allotment as per his

turn. Meanwhile, more than 500 houses were constructed in Sector 3, Faridabad and 202 houses were constructed in Sector 29. Contrary to the assurances held out to the petitioner, a letter was received at his end on December 18, 1990 which also contained a cheque for Rs. 7,598/-. The amount was refunded on the ground that he had been unsuccessful in draw of lots. This constrained the petitioner to send a legal notice to the Board inter-alia pleading that his registration No. being 645 and there being available at least 700 houses, which were constructed in Sectors 3 and 29, Faridabad, reply to this legal notice was received at the end of the petitioner thus constraining him to file the present writ for the relief as indicated in the earlier part of this judgment. On the present writ for the relief as indicated in the earlier part of this judgment. On the pleadings referred to above, learned counsel appearing for the petitioner, Mr. Patwalia contends that the action of the respondent-Board in not allotting the house is arbitrary as more than 500 houses were constructed in Sector 3 and 202 in Sector 29, there being thus 702 houses available, the petitioner whose registration No. was 645 had necessarily to be given a house. Not-allotment of the house, it is contended, is attributable to the policy of the respondent-Board of pick and choose and was actuated on account of extraneous considerations. It is further argued that the petitioner had paid the money as far back as in 1981 and 1983. The cost of construction had increased manifold in the meantime. The petitioner was waiting patiently all this time with the hope that he will be allotted a house on the basis of money deposited by him, However, now the respondent has returned the petitioner's money and this action of the respondent has left him at such cross-roads that he cannot make a homestead now when the prices both of land and of construction have gone sky high.

3. The cause of the petitioner, has been opposed and in the written statement filed on behalf of the respondent-Board, it has been pleaded by way of preliminary objection that the writ is liable to be dismissed in view of the decision rendered by a Full Bench of this Court in "Surjith Singh and Ors. v. State of Punjab and Ors. (1979)81 P.L.R. 413 (F.B.) wherein it has been held that the petitioner has no right of allotment even if .10% of the earnest money is paid. It is further the case of the respondent-Board that one Shri. Anil Kumar Goel had filed Civil Writ Petition No. 6146 of 1991 who was one of the applicants for allotment of MIG houses in Faridabad in the same colony and applied in the same year having serial No. 1320, which writ after notice of motion was dismissed by a Division Bench of this Court on February 14, 1991 and that being so, the petitioner who has similar claim cannot succeed in the matter.

4. On merits of the case, the stand of the respondent-Board is that 200 MIG ground floor houses were constructed in Sector 29 and 290 MIG ground floor houses in Sector 3. By the time this petition was filed, registration No. 609 covered for the purpose of allotment of house and as such the petitioner and other applicants had a belated chance for the allotment of already constructed houses, referred to above, and as such, their registration money was returned along with interest.

5. After hearing learned counsel for the parties and going through the records of the case, I am of the view that the points made out by Mr. Patwalia, learned counsel for the petitioner have merit and, therefore, this petition must succeed. However, before reasons in support of my opinion are given, it shall be useful to meet the preliminary objections raised by the learned counsel appearing for the respondent.

6. On the basis of Full Bench Judgment of this Court in "Surjit Singh and Ors. v. State of Punjab and Ors." (1979) 81 P.L.R. 413 (F.B.), it is canvassed that the petitioner who made payment of 25% has no vested right for allotment of house. The facts of the aforesaid case, however reveal that it was a case where the petitioners had deposited 10% of sale price i.e. the initial deposit as required under the Rules and were asking for allotment on the basis of "first come first served". It is in context of these facts that the Full Bench of this Court held that a person after making initial deposit gets a right of consideration of his application but he does not get a vested right for the allotment of the plot.

7. In so far as Civil Writ Petition No. 6146 of 1991 "Anil Kumar Goel v. Housing Board Haryana" is concerned, suffice it to say that the petitioner of the said colony and applied in the same year having registration No. 1320 and he did not have even remote chance of getting allotment of house commensurate to the houses that were built by the Housing Board. Narration of facts given above would clearly reveal that when the petitioner had initially applied way back in the year 1981, 202 houses were to be constructed in Sector 29. The petitioner who had registration No. 64S had obviously no chance of allotment of house in Sector 29. However, in the years 1981 to 1983, petitioner was given the option to keep his registration intact as more houses were going to be built up in Sector 3. On 13.7.1983, the Housing Board addressed letter (Annexure P-4) to the petitioner. Paragraphs 2 and 3 which have crucial bearing on the decision of this case read thus:-

"2. Housing Board Haryana has been allotted 40 acres of land in Sector 3, Faridabad. The Board proposes to construct about 572 houses each of MIG category on first floor-and-ground floor. 202 houses are being constructed and allotted in Sector 29, Faridabad.

3. On the draw held on 3.11.1981, your final registration No. is 645. Houses in Sector 3, shall be allotted on the seniority decided as per the draw held on 3.11.1981. In case you are interested for allotment of a house in Sector 3, you may please deposited a sum of Rs. 3,940/- by Bank draft in favour of Housing Board Haryana, Chandigarh. This amount is 10% of the approximate cost of house advertised, which shall positively cover the cost of land already acquired. The amount is to be deposited in the following manner :-

(i) Amount is deposited within 30 days from the issue of the letter no interest.

(ii) Amount can be deposited upto next 15 days with 8-1/2%."

(iii) Amount can be deposited within 20% interest upto next 30 days also."

8. In pursuance to letter Annexure P-4 received by the petitioner, he did deposit additional amount of Rs. 3,940/- A perusal of paragraphs 2 and 3 of the letter aforesaid clearly reveals that 572 houses each of MIG category on first floor and ground floor were to be built in Sector 3, Faridabad. As mentioned above, the petitioner is having registration No. 645. 202 houses were already built or were in the process of being built in Sector 29. The total number of houses that were to be built in the two Sectors, referred to above, was 774. A perusal of written statement further reveals that few more houses were also built. The petitioner who had registration No. 645 was, thus, sure of getting a house and for that reason, it was mentioned in letter Annexure P-3 dated 4.5.1982 that chances of

his getting house in Sector 3 were very bright. The learned counsel appearing for the respondent, however, contends that there were 202 houses in Sector 29 whereas in Sector 3, there were 290 ground floors available and inasmuch as the case of petitioner was for allotment of ground floor only he could not be allotted a house on the first floor. This contention of learned counsel for the respondent has to be rejected as while writing letter Annexure P-4 to the petitioner, he was given to understand in no uncertain terms that he could be allotted a house on first floor as well. It is for that precise reason that he was given option to keep his registration number intact. If the argument of Mr. Vashishat is accepted then in no circumstances the petitioner could get an allotment in Sector 3 and that certainly would be contrary to the contents of Annexure P-4.

9. For the reasons stated above, this petition is allowed. A direction is issued to the respondent-Housing Board to allot a house to the petitioner either on the ground floor or on the first floor in either of the Sectors, i.e. 3 and 29 in Faridabad. Mr. Vashishat learned counsel appearing for the respondent has pointed out that there are two houses available in Sector 29 but some litigation with regard to the same is going on. There are four houses bearing Nos. 3244, 2782A, 2783A and 3311A available on the first floor in Sector 3. He further states that in these houses, the employees of the Board are living on rent and the files pertaining to these houses are missing. The Board is directed to make available to the petitioner and allot him either of the houses mentioned above in Sector 29 and 3 the number of which are given above. In so far as the employees of the Board are concerned, they can be accommodated elsewhere. It is further directed that the petitioner be allotted house on the price as was taken from others in the same scheme. Let directions given be complied with within a period of two months from today. No order as to costs.