

Smt. Kamla Rani Vs. Punjab Housing Development Board

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Court : Punjab and Haryana

Decided On : Jul-17-1991

Reported in : AIR1992P& H202

Judge : Jawahar Lal Gupta, J.

Acts : [Constitution of India](#) - Articles 14 and 226

Appeal No. : C.W.P. No. 3780 of 1989

Appellant : Smt. Kamla Rani

Respondent : Punjab Housing Development Board

Advocate for Def. : Mr. K.K. Cuccria, Adv.

Advocate for Pet/Ap. : Mr. Ravinder Chopra and; Mr. Arun Chander, Adv.

Judgement :

ORDER

1. The petitioner is aggrieved by the order dated February 24, 1988, by which an amount of Rs. 2,000/- deposited by her as earnest money for the allotment of a dwelling unit has been ordered to be forfeited. A copy of this order is at Annexure P.5. A few facts relevant for the decision of the case may be noticed.

2. In the year 1981 the petitioner submitted an application to the Punjab Housing Development Board (hereinafter referred to as 'the Board') for the allotment of a

dwelling unit. Along with the application she deposited an amount of Rs. 2000/- as earnest money. After six long years, the petitioner was informed vide letter dated March 17, 1987 that a dwelling unit of MIG category had been allotted to her in Phase XI SAS Nagar. A copy of the order of allotment is at Annexure P1 with the writ petition. Vide letter dated April 14, 1987 (Annexure P.2), the petitioner requested the Housing Commissioner of the Board to allot the unit on the ground floor as on account of medical reasons it was not possible for her to climb stairs. A medical certificate was enclosed with the application. In response to this letter, the petitioner was called upon to deposit the due amount first and further informed that her request for allotment of a ground floor house will be 'considered afterwards'. A copy of this letter is at Annexure R/1/2 with the written statement. The petitioner did not deposit the amount, but vide her letter dated October 17, 1987, she requested the Housing Commissioner to refund the earnest money deposited by her. In response to this letter, she was informed vide letter dated November 11, 1987, (Annexure P.4) that since she had failed to complete the initial formalities mentioned in the allotment letter within the stipulated period, the 'allotment in her favour is cancelled.' She was further informed that 'You may seek refund of earnest money deposited by you by surrendering original receipt(s). Also furnish pre-receipt (copy enclosed) duly completed and signed by you on revenue stamp of 20 paise but leaving the amount column blank, which shall be filled in by the Accounts Wing before the cheque is issued.' Thereafter vide letter dated February 24, 1988, she was informed that the earnest money 'is liable to be forfeited to the extent of 20 per cent and you are also liable to pay interest @ 18 per cent on the price of the house from the date of allotment till the date of cancellation. Thus in all a sum of Rs. 400/- on account of earnest money and Rs. 7329.30 ps. on account of interest are liable to be recovered from you. You have, however, deposited only a sum of Rs. 2,000/- as earnest money. In the circumstances of this case, it has been decided to forfeit, the amount deposited by you as earnest money i.e. Rs. 2000/- only.' The validity of this order has been questioned in this petition.

3. In the written statement filed on behalf of the respondent the impugned order has been justified with reference to Clause 17 of the terms and conditions of allotment. The said clause reads as under:--

'If the allotment on hire purchase is cancelled or terminated due to any reason whatsoever including at the request of the allottee or due to nonfulfilment by the allottee of the terms and conditions of allotment, the Board's obligations to allot a house to him shall be deemed to have been discharged and his registration with the Board of the allotment dwelling unit shall be treated as cancelled. Thereafter his money deposited with the Board shall be refunded, after forfeiting a sum as is specified by the Housing Commissioner or any other officer authorised by him but not exceeding 20% of the earnest money plus interest calculated @ Rs. 18% P.A. on the cost of dwelling unit allotted and adjusting any other amount outstanding against the allottee. The interest shall not be chargeable in case the allotment on Hire Purchase is cancelled or terminated or request for cancellation is received within a period of 30 days from the date of issue of the letter of allotment. The allottee as well as his dependent relations including his wife and unmarried children shall not thereafter be considered for allotment in any other schemes. However, the Housing Commissioner may revive the registration/allotment on Hire purchase as the case may be on such terms and conditions and by imposing such penalty as he considers fit, in appropriate cases.'

4. A preliminary objection that the petition has been filed after undue delay has also been raised. It has also been averred that a writ petition for a pure claim of money is not maintainable. Reliance has been placed on a Full Bench's judgment in the case of Daulat Ram v. State of Punjab, 1976 (78) PLR 708 (AIR 1976 Punjab 304).

5. I have heard Mr. Ravinder Chopra, learned counsel for the petitioner and Mr. K. K. Cuccria, learned counsel for the respondent.

6. The impugned order was passed on February 24, 1988. The writ petition was filed on March 20, 1989. It appears to have been filed almost within one year of the date of the communication of the order. In the circumstances of the case I am not satisfied that the petition is belated Even a suit for the refund of money could not have been dismissed merely on the ground of limitation. As such, the writ petition cannot be dismissed on the ground of delay.

7. Equally lacking in merit is the objection that the writ petition raises a pure claim for refund of money. The petitioner is aggrieved by an order by which the earnest money deposited by her has been ordered to be forfeited. The validity of that order has been challenged on the ground of violation of the principles of natural justice. The refund of earnest money is a consequential relief. The decision in Daulat Ram's case was in an entirely different situation. In that case the petitioner was seeking refund of the market fee which had been collected from him. There was no prayer for the setting aside of any order. Such is not the situation in the present case. Consequently even this objection cannot be sustained.

8. Coming to the merits of the controversy, Mr. Chopra contends that the order is violative of the principles of natural justice. On behalf of the respondent, Mr. Cuccria submits that the action is in strict conformity with the terms and conditions of allotment. No hearing is envisaged. None was required to be given. The principles of natural justice, according to Mr. Cuccria, are not attracted at all.

9. A perusal of clause 17, as reproduced above, shows that the 'money deposited with the Board' has to be refunded to the petitioner after forfeiting a sum as is 'specified by the Housing Commissioner or any other officer authorised by him but not exceeding 20% of the earnest money.....' Under this term of the allotment, the quantum of amount which is to be forfeited has to be determined by the Housing Commissioner or any other officer authorised by him. This determination in its very nature involves civil consequences. It results in deprivation of money or property. Such an action, which has civil consequences, cannot be taken except in accordance with the principles of natural justice. Even with regard to the quantum of the amount to be forfeited, i.e. whether it should be one per cent or 20 per cent, the person concerned has a right to be heard. The circumstances may be disclosed which may persuade the authority to impose a cut of even less than one per cent. In the present case, no opportunity whatsoever was given. That being so, the order passed by the authority was in complete violation of the principles of natural justice.

10. Mr. Cuccria contends that the principles of natural justice are not at all attracted. In fact, according to the learned counsel the requirement of hearing is

excluded by Clause 17.

11. In my view whenever the rights of a person are adversely affected, the principles of natural justice are attracted. The Apex Court in *S. L. Kapoor v. Jagmohan*, AIR 1981 SC 136 has observed as under at page 147 :--

'The principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudice.'

12. In view of the above, I hold that the order at Annexure P. 5 was passed in violation of the principles of natural justice and is consequently vitiated.

13. Even otherwise, I find that the action of the respondent is arbitrary. The petitioner applied for the allotment of a dwelling unit in 1981. For almost six years, no action was taken by the Board. The unit was allotted to the petitioner vide letter dated March 17, 1987. Within less than 30 days, she had informed the Board that on account of medical reasons, she could only accept the unit on the ground floor. She had expressed her willingness to deposit the amount if a unit on the ground floor was allotted to her. Without conveying to her any decision to this request, she was called upon to deposit the money. For obvious reasons, the petitioner was not willing to take that risk. Consequently, she asked for the refund of the earnest money. In the process, the Board has suffered no loss. They had kept her money for almost six years. The action in forfeiting money and even levying the interest on the total cost of the unit, in the circumstances of the case, is wholly arbitrary, and unfair. It was even violative of Article 14 of the Constitution.

14. In view of above, the writ petition is allowed and the order at Annexure P. 5 is set aside. The respondent is directed to refund the amount of Rs. 2,000/- deposited by the petitioner within three months. The petitioner shall also be entitled to her costs which are assessed at Rs. 1000/-.

15. Petition allowed.

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