

Before M. M. Kumar & Jora Singh, JJ.

VINAY KUMAR,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

CWP No. 7533 of 2007

4th November, 2008

Constitution of India, 1950—Art. 226—Cancellation of initial allotment of flat—Change of correspondence address—Letters sent at correspondence address of petitioner received back—Respondents sending show cause notice at permanent address erroneously describing incorrect—Show cause notice also received back undelivered—No fault of petitioner—Petitioner cannot be made to suffer for wrong committed by respondents—Petitioner held entitled for allotment of LIG flat.

Held, that the petitioner cannot be considered at fault because he had given his address as AK-20, Shalimar Bagh, Delhi whereas the respondents had entered correspondence at correspondence address and permanent address by erroneously describing the same as A-20, Shalimar Bagh, Delhi. Therefore, the petitioner cannot be made to suffer for the wrong committed by respondents.

(Para 8)

Sachin Mittal, Advocate, *for the petitioner.*

Suresh Ahlawat, Advocate, *for the respondent Nos. 2 & 3.*

M. M. KUMAR, J.

(1) The petitioner has approached this Court with a prayer for quashing action of the respondents in canceling the initial allotment of the Flat in favour of the petitioner being totally illegal. A further prayer for issuance of directions to the respondents has been made for allotment of the Flat in Sector 4 & 5, Housing Board, Karnal.

(2) Facts in briefs necessary for disposal of the instant petition are that the Housing Board, Haryana, respondent No. 2 invited applications for allotment of Flats in various districts of the State of Haryana which included Sector 4 & 5, Karnal. The petitioner had applied for Lower Income Group (LIG) Flats and submitted his application form duly filled in alongwith the Bank Draft of Rs. 34,800, dated 20th December, 2004. A perusal of his application form shows that he has given two addresses, one for the correspondence and other his permanent address. Both the addresses are as under :—

Correspondence Address	Permanent Address
Vinay, EP-72, Pathanwara, Sohna Distt. Gurgaon.	Vinay, AK-20, Shalimar Bagh Delhi

(3) The application was duly accepted by the respondents and he succeeded in draw of lots. It is pertinent to mention that before the draw of lots, the temporary/correspondence address of the petitioner had changed and he remained sanguine to hear from the respondents at his permanent address regarding the fate of draw of lots. When he did not hear anything, he visited the office of the respondents at Panchkula, where he came to know that he had been successful in the draw of lots. However, on account of change of his temporary address, the letter had come back undelivered. On the inspection of the record, petitioner came to know that the show cause notice was sent to him on 26th September, 2005 at his permanent address but his permanent address was incorrectly mentioned as A-20, Shalimar Bagh, Delhi instead of AK-20, Shalimar Bagh, Delhi. The show cause notice was also received back undelivered. The petitioner made a representation on 5th February, 2007 (Annexure P-2) after apprising the respondents all the facts on 1st February, 2007. He again sent a communication on 14th February, 2007 under registered cover. The Housing Board sent a cheque to him on 25th April, 2007 for a sum of Rs. 31,320 whereas he had deposited a sum of Rs. 34,800. However, the petitioner did not

encash the aforementioned cheque. He has also claimed that several Flats are available with the respondents.

(4) When the matter came up for consideration before this Court on 18th May, 2007, the respondents were directed to keep one Flat reserved for the petitioner till the disposal of the petition.

(5) The respondents have taken the stand that in the brochure it has been clarified in categorical terms that the draw of lots was to take place within six months from the closing date of the scheme. It was also notified through the newspapers that the draw of lots was to be held on 26th June, 2005. It is conceded position that the petitioner was successful allottee in the draw of lots and on account of change of his correspondence address as given in the application form without any intimation to the respondents, he failed to deposit the required amount within the stipulated period of 45 days after the allotment letter dated 20th July, 2005 was sent on his correspondence address which was received back undelivered with the remark of the postal authorities ' Bar-Bar Pata Kiya Kuch Pata Nahi Chalta, Vapis'. It has also been claimed that show cause was sent to the petitioner at his permanent address which was wrong address under registered post which was not received back as undelivered. Likewise, Cancellation order dated 13th January, 2006 was also attempted to be served to the petitioner through registered post, which has also not been received back undelivered. Therefore, it was presumed that the registered letter containing show cause notice and cancellation orders have been delivered to the petitioner. The respondents had claimed that waiting list was prepared for allotment of Flats and the Flats had been offered to the applicants in the waiting list in the month of April, 2006. The copy of the letter dated 20th July, 2005 sent at the correspondence address of the petitioner has been placed on record as Annexure R-1 and copy of the letter dated 26th September, 2005 has been placed on record as Annexure R-2. Further copy of the cancellation of allotment and refund of registration deposit have also been placed on record as Annexure R-3 and R-4.

(6) From the aforementioned facts, it becomes clear that letter of demand dated 20th July, 2005 for depositing an amount of Rs. 34,800

within 30 days was sent purportedly on the permanent address of the petitioner. However, a perusal of the aforementioned letter dated 26th September, 2005 (Annexure R-II) shows that the same was sent at A-20, Shalimar Bagh, Delhi whereas the address of the petitioner is AK-20, Shalimar Bagh, Delhi. Likewise, all other letters had been sent on his correspondence address which had been received back by the respondent.

(7) We have also perused the original record and find that the petitioner had given his permanent address being AK-20, Shalimar Bagh, Delhi whereas the letter had been sent with regard to demand of Rs. 34,800 at A-20, Shalimar Bagh, Delhi where obviously it could not have reached him.

(8) After hearing learned counsel for the parties at a considerable length, we find that the petitioner can not be considered at fault because he had given his address as AK-20, Shalimar Bagh, Delhi whereas the respondents had entered correspondence at correspondence address and permanent address by erroneously describing the same as A-20, Shalimar Bagh, Delhi. Therefore, the petitioner can not be made to suffer for the wrong committed by respondents. During the course of hearing, Mr. Suresh Ahlawat, learned, counsel for the respondents has conceded that one Flat of LIG category has been kept reserved for the petitioner and the same can be allotted to him. Therefore, we find that the petitioner deserves to the allotment of LIG Flat.

(9) For the reasons aforementioned, this petition succeeds. The respondents are directed to allot LIG Flat to the petitioner at the price mentioned in the brochure in accordance with the terms and conditions laid down therein. We further direct that the petitioner shall be liable to pay simple interest on the aforementioned price @9% per annum till the date of payment. The needful shall be done within a period of one month from the date of receipt of copy of this order.

R.N.R.