

Gurpreet Kaur v. Union of India and others (M. M. Punchhi, J.)

on wrong premises. The whole procedure and the attitude shown by the first and second respondents are obnoxious calling for serious strictures. But the nobility of the office we hold prevents us.

(5) For the aforesaid reasons, the judgment dated November 21, 1988, of the learned Single Judge is set aside and respondents No. 1 and 2 are directed to appoint the appellant against the second post of Lecturer in Public Administration for which she was duly selected by the Selection Committee and her selection was duly approved by the Syndicate. However, it is made clear that selection and appointment of respondent No. 3 is not disturbed. The appeal is allowed accordingly but with no order as to costs.

P.C.G.

Before M. M. Punchhi and A. L. Bahri, JJ.

GURPREET KAUR, *Petitioner.*

versus

UNION OF INDIA AND OTHERS, *Respondents.*

Civil Writ Petition No. 5497 of 1989

October 3, 1989.

Constitution of India, 1950—Arts. 226/227—Petitioner allotted flat by Housing Board—15 per cent deposit made after the expiry of stipulated date—Deposit accepted by the Board—Subsequent instalments also accepted—No amount refunded by the Board—Cancellation of plot on the ground of late deposit—Whether permissible.

Held, that the Board was, in case the allotment is cancelled, under obligation to refund forthwith the amount as provided in Clause 19 of the agreement. Concededly, no refund was sent to the petitioner. Rather on the contrary, from time to time, the instalments were being kept accepted. In this situation, it is too late in the day for the Housing Board to say that there was a deemed cancellation of allotment. We are rather of the view that the allotment in favour of the petitioner cannot be held to have deemingly been cancelled. (Para 3)

Writ petition under Articles 226/227 of the Constitution of India praying that the records of the case be sent forward after perusal of the same, the following reliefs may be given:—

- (i) *issue a writ of mandamus directing the respondents to hand over the possession of the dwelling unit No. 3058 of*

LIG/F Category in Sector 41-D, Chandigarh to the petitioner with intact position of dwelling unit;

- (ii) *further a writ of mandamus be issued to the respondents to remove the Chandigarh Housing Board Possession Office in H. No. 3058 of LIG/F Category in Sector 41-D, Chandigarh and the respondents be directed to the rent or damages to the petitioner for the entire period i.e. from the date of initial deposit of Rs. 12723, when the petitioner was entitled for its possession;*
- (iii) *any other relief, order or direction which the Hon'ble Court deems fit in the circumstances of the case be also given;*
- (iv) *filing of certified copies of the Annexures and service of advance notices on the respondents be dispensed with;*
- (v) *costs of the writ petition be also awarded to the petitioner.*

M. L. Sharma, Advocate, for the petitioner.

Ashok Bhan, Sr. Advocate, with R. K. Garg, Advocate, for Respondent.

R. S. Mongia, Sr. Advocate with J. S. Sathi, Advocate, for Respondent No. 2.

JUDGEMENT

M. M. Punchhi, J.

(1) The petitioner on 12th March 1987 was allotted a flat by the Chandigarh Housing Board. In terms of the agreement she was required to accept or refuse the allotment within 30 days of the issue of the letter. In case of acceptance, she was required to deposit a sum of Rs. 12,723 and the balance regulated instalments. Clause 3 of the agreement provided that in case the deposit was not made within the time stipulated then the allotment shall be deemed to have been cancelled and the deposit would be refunded after forfeiting such amount as provided in Clause 19 thereof. Forfeiture was to be from the initial deposit of 10 per cent. Besides the petitioner was required to submit some documents. The petitioner made payment belatedly on 29th April, 1989 which was accepted at the counter by the Board. Thereafter the petitioner made various payments as detailed in para 2 of the petition which too were accepted by the Board. Now the Board has turned round to invoke Clause 3 of the agreement to say that since 15 per cent, that is to say, Rs. 12,723 were deposited belatedly, the allotment of the petitioner stood deemingly cancelled.

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(2) Clause 4 of the agreement makes interesting reading. The Chairman of the Chandigarh Housing Board or any other person authorised by the Board can extend the period of 30 days referred to in Clause 3. The time is further extendable subject to the maximum of three months. On belated payment interest is chargeable and in some cases even penal interest is permissible.

(3) Contention of the learned counsel for the Housing Board in these circumstances that the terms of Clause 3 of the agreement are absolute is not sound. If in a given set of circumstances, time is extendable under Clause 4 then rigour of Clause 3 is not absolute. Besides, the Board was, in case the allotment is cancelled, under obligation to refund forthwith the amount as provided in Clause 19 of the agreement. Concededly, no refund was sent to the petitioner. Rather on the contrary, from time to time, the instalments were being kept accepted. In this situation, it is too late in the day for the Housing Board to say that there was a deemed cancellation of allotment. We are rather of the view that the allotment in favour of the petitioner cannot be held to have deeming-ly been cancelled.

(4) Learned counsel for the Board says that the petitioner has not complied with the directions requiring her to send some documents and those sent have been found to be suspicious. No order as yet in regard thereto seems to have been passed by the Board. If it is a case of cancellation of allotment, the respondent Board would have to initiate proceedings in accordance with law against the petitioner. On that part, we do not pronounce and leave it open to the Board to take such appropriate action against the petitioner as is known to law.

(5) For the foregoing reasons, we partially allow this petition declaring the allotment of the petitioner subsisting even though there was late payment leaving other questions as spelled out earlier open to the Board. The Board could, however, raise a demand of interest for belated payment. The Board's learned counsel says that no interest on that count shall be charged from the petitioner. No costs.

P.C.G.