

Aruna Luthra v. State of Haryana, and others. (G. C. Mital, J.)

7. The learned appellant's counsel then placed reliance on *Dalip Singh and another v. Raj Mall and others*, (3). A perusal of the judgment would show that it is entirely irrelevant for our purposes. In that case two separate suits filed by the plaintiff with regard to agricultural land measuring 341 Kanals 3 Marlas were dismissed by the trial Court. The plaintiffs appealed against the judgments and decrees of the trial Court. The Additional District Judge in whose Court the appeals were pending fixed 12th of March, 1980, for hearing. A few days before the date of hearing the Additional District Judge took up these appeals at the request of the counsel for the parties on the plea that the matter had been compromised. Besides the statements of the counsel for the parties only the statement of one of the defendants was recorded. On the basis of these statements the appellate Court decreed one of the suits and dismissed the appeal in the other suit. In the second appeal before this Court it was contended that the lower appellate Court had decreed the plaintiffs' suit in derogation of the provisions of Order XXIII, rule 3 of the Code. This plea was rightly accepted by the Court because the parties to the litigation except one defendant had not signed the statements on the basis of which the appellate Court had passed the decree. The requirement of rule 3 was manifestly not fulfilled and consequently the impugned cannot possibly render any help to the present appellant.

8. In the light of what is stated above, we find no merit in this appeal and dismiss the same. The parties are left to bear their own costs.

S. P. Goyal, J.—I agree.

H. S. B.

Before : *G. C. Mital, J.*

ARUNA LUTHRA,—*Petitioner.*

versus

STATE OF HARYANA, and others,—*Respondents.*

Civil Writ Petition No. 5118 of 1982

May 28, 1986.

Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978—Regulation 5(5)—Plot purchased by a person in open auction—Purchaser/allottee required to communicate acceptance or refusal under Regulation 5(5) within 30 days of

(3) 1981 P.L.J. 298.

the allotment—Purchaser communicating acceptance beyond 30 days of issue of allotment letter but within 30 days of its receipt by the purchaser—Words “within 30 days of the allotment” in Regulation 5(5)—Interpretation of—Said period—Whether to be reckoned from the date of receipt of the allotment letter or from the date of its issue—Payment made within 30 days of the receipt of the letter—Whether valid.

Held, that Regulation 5(5) of the Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978 provides 30 days time to the allottee for taking a decision and for making arrangements to pay the amounts indicated in the allotment letter. The only reasonable interpretation that can be given to the words “30 days of the date of allotment” is to read the date of allotment as the date on which the intimation is received by the allottee and not merely from the date mentioned in the letter of allotment. If any other interpretation is placed then it is possible that in many cases the letter of allotment may reach the allottee sometimes immediately before or even after the expiry of 30 days’ time for which the allottee would not be at fault. Therefore, the reasonable meaning that can be put to Regulation 5(5) is that 30 days time would start from the date of receipt of the allotment letter and not from the date of issue of the letter of allotment. The letter of allotment or the conditions mentioned therein are subject to Regulations. The Regulation does not provide ‘from the date of issue of the allotment letter’ and merely provides ‘from the date of allotment’. Since the word ‘issue’ has been inserted in the condition of the allotment letter the same is beyond the scope of the Regulation and would have no legal effect. The condition in the allotment letter requires the allottee to transmit the amounts required to be paid under the condition alongwith the letter of acceptance by registered post. Such a condition is to be read in terms of Regulation 5(5) and as such the payment received within 30 days of the receipt of the allotment letter is valid.

(Paras 4 and 5)

Petition Under Articles 226/227 of the Constitution of India praying that :—

- (i) *The impugned order Annexure P/10 be ordered to be quashed by means of a writ in the nature of Certiorari,*
- (ii) *The respondents be directed to deliver the possession of the shop-cum-flat to the petitioner by means of an appropriate writ, order or direction,*
- (iii) *The operation of the impugned order Annexure P/10 be ordered to be stayed during the pendency of the writ petition and the respondents be directed not to allot or sell the shop-cum-flat to any other person or authority.*

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- (iv) *Any other appropriate writ, order or direction as this Hon'ble Court may deem fit in the circumstances of the case be issued ;*
- (v) *Advance notices upon the respondents be dispensed with ;*
- (vi) *Filing of certified copies of the Annexure be dispensed with ;*
- (vii) *The costs may also be awarded to the petitioner.*

Balwant Singh Malik, Advocate with S. V. Rathee Advocate, for the Petitioner.

R. P. Bali, Advocate for State of Haryana, Harbhawan Singh, Sr. Advocate, for the H.U.D.A.

JUDGMENT

Gokal Chand Mital, J.

(1) Whether the words 'within 30 days of the allotment' in regulation 5(5) of the Haryana Urban Development (Disposal of Land and Buildings) Regulation, 1978, (for short Regulations'), mean within 30 days from the date of receipt of the allotment letter or from the date of issue of the allotment letter, is the main point, which arises for consideration in these writ petitions.

C.W.P. No. 5118 of 1982

(2) The facts of this writ petition are that on 30th October, 1980, the Haryana Urban Development Authority (for short 'HUDA'), held auction for sale of plots in Faridabad. Smt. Aruna Luthra gave the highest bid for : Shop-cum-flat No. 33, Sector 7, Faridabad, and deposited Rs. 28310, towards the 10 per cent sale consideration at the time of auction and completed the other formalities. Allotment letter Annexure P—1 was issued to her. According to condition No. 5 of the allotment letter, she was to deposit Rs. 42,465 within 30 days from the date of issue of the allotment letter. Payment of this amount would have constituted payment of 25 per cent of the sale consideration. According to the petitioner, she got the allotment letter Annexure P1, dated 5th December, 1980, on 22nd December, 1980. On 16th January, 1981, Rs. 43,000 were deposited by her,—*vide* receipt No. 92, book No. 270. *Vide* letter Annexure P-2, dated 19th January, 1981. She demanded possession of the plot as per the terms

and conditions of the allotment letter. *Vide* letter dated 20th April, 1981, Annexure P3, HUDA replied that possession was being vacated for issuing possession letter to her. It was also made clear that no interest would be charged on the 75 per cent balance amount till the date of delivery of possession. Annexure P4 dated 3rd June, 1981 was issued as a reminder for delivery of possession. *Vide* letter dated 12th August, 1981, Annexure P5, HUDA informed the petitioner that since the amount had not been deposited within 30 days of the letter of allotment, conditions Nos. 4 and 5 stood violated. She was asked to clear her position. *Vide* Annexure P6, reply was sent in which it was clearly mentioned that the letter of allotment was received on 22nd December, 1980 and within 30 days of the same, the amount was deposited. On 1st September, 1981, another instalment of Rs. 35,000 was sent by bank draft, which was duly received by HUDA,—*vide* receipt Annexure P7 dated 1st September, 1981. The petitioner is alleged to have sent the legal notice dated 20th July, 1982 stating all facts and demanded the possession of the shop-cum-flat ('SCF' for short), copy of which is Annexure P8. In reply to the notice, the petitioner was surprised to learn,—*vide* letter Annexure P9, dated 2nd September, 1982 that the allotment had been cancelled,—*vide* office letter dated 15th February, 1982, copy of which was enclosed with letter Annexure P9. Copy of the cancellation order dated 15th February, 1982 is Annexure P10. In this writ petition under Articles 226/227 of the Constitution of India, the legality of cancellation order Annexure P10, has been challenged.

(3) On behalf of HUDA, the stand taken in the written statement is that the allotment letter was issued on 5th December, 1980 and the petitioner was required to deposit the amount by 4th April, 1981 as per conditions Nos. 4 and 5 of the allotment letter and as per regulation 5(5) of the Regulations, the petitioner had to send acceptance or refusal within 30 days as per condition No. 4 of the allotment letter. Neither acceptance nor refusal came nor amount was deposited within 30 days and, as such the allotment stood automatically cancelled under the regulations. The amount received on 16th January, 1981 was said to have been received by the clerk in routine without application of mind by the relevant authority under the Act. Receipt of letter Annexure P2, issue of letter Annexure P3 and receipt of letter Annexure P4 were admitted. On the aforesaid facts, two points arise for determination:

- (i) What is the true interpretation of regulation 5(5) of the Regulations;

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- (ii) Whether the petitioner has complied with the terms and conditions of the allotment letter.

In order to appreciate the first point, the regulation 5(5) of the Regulations deserves to be reproduced :

“The applicant to whom the land/building has been allotted shall communicate his acceptance or/refusal in writing within 30 days of the date of allotment, by registered post to the Estate Officer. In case of acceptance the letter shall be accompanied by such amount as intimated to him in the allotment letter. In case of refusal, he shall be entitled to the refund of the money tendered with the application. In case he fails to either accept or refuse within the stipulated period, allotment shall be deemed to be cancelled and the deposit made under sub-Regulation (2) may be forfeited to the Authority and the applicant shall have no claim for damages.”

(4) The only difference between the stand of the parties is about the meaning of ‘within 30 days of the date of allotment’. While according to the petitioner, it should be meant to read ‘30 days from the date of receipt of the allotment letter’, whereas according to the counsel for HUDA, 30 days should be counted from the date of issue of the letter of allotment. The idea of providing 30 days’ time is to give another opportunity to the allottee to accept or refuse the allotment and in either of the events to inform HUDA. In case allotment is not accepted then HUDA may offer it to some body else in accordance with the rules and regulations and in case allotment is accepted, the acceptance should be accompanied by an amount to be intimated in the allotment letter. The amount involved is big and 30 days’ time has been provided for taking a decision and for making arrangement to pay the amount indicated in the allotment letter. On this basis the only reasonable interpretation is to read the date of allotment as the date on which intimation is received by the allottee and not merely from the date mentioned in the letter of allotment. If any other interpretation is placed, then it is possible that in many cases the letter of allotment may reach the allottee sometimes immediately before or even after the expiry of the 30 days time, for which the allottee would not be at fault. It is sometimes also possible that the concerned authority may order the issue of letter, which may be typed but may be kept

in office for the signatures of the concerned authority. It is equally possible that even after signatures, in issue and despatch, it may take some time and then in transit it can be delayed. Therefore, I hold that the reasonable meaning to be put to the regulation is that 30 days' time would start from the date of receipt of the allotment letter and not from the date of issue of the letter of allotment.

(5) Coming to the second point, the case of the petitioner from the very beginning has been that she got the allotment letter on 22nd December, 1980. On 16th January, 1981 she sent acceptance and also sent a draft. *Vide* letter Annexure P2, she demanded possession of the premises. *Vide* Annexure P3, the draft was received without any objection and the petitioner was told that she would be delivered possession as soon as the premises were got vacated. Soon thereafter, letter Annexure P4 was written asking for possession of the plot and it was on 12th August, 1981,—*vide* Annexure P5 that the petitioner was told about the delayed payment and her explanation was sought. She furnished the explanation that she had received the allotment letter on 22nd December, 1980. This fact no body refuted either before the filing of the writ petition or after the filing of the writ petition. Since the factual position that the allotment letter was received by the petitioner on 22nd December, 1980 remains un-challenged and un-controverted, it is evident that the draft dated 16th January, 1981 was received within 30 days' of the receipt of the allotment letter, and hence the petitioner complied with the regulations.

(6) On the second point, one more matter deserves to be discussed. On behalf of HUDA reference was made to conditions No. 4 and 5, continued in the allotment letter, Annexure P-1. According to condition No. 4, if the allotment was not accepted, the refusal was to be communicated by registered letter, within 30 days from the date of allotment letter, failing which the allottee was not to have any claim for damages. According to condition No. 5, in case the allotment was accepted, the acceptance along with the amount stated in that condition, had to be sent by registered post within 30 days from the date of the issue of the allotment letter. In this condition the words date of issue of the allotment letter are mentioned and because of this condition it was sought to be argued that 30 days are to be counted from the date of issue of the allotment letter and not from the date of receipt. A letter of allotment or the conditions mentioned therein are subject to the regulations. The regulation did not provide 'from the date of issue of the allotment letter' and merely provides 'from the date of allotment'. Since the words

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'issue' has been inserted in condition No. 5, which is beyond the scope of the regulation, it would have no legal effect. Hence condition No. 5 has to be read in terms of the regulation.

(7) Moreover, on the facts of the present case, there was clear application of mind by the Estate Officer of HUDA while issuing letter Annexure P3, which is dated 20th April, 1981, long after the draft is alleged to have been received by a clerk in the office on 16th January, 1981. On the peculiar facts of this case, the second point is also decided in favour of the petitioner and it is held that the petitioner has fully complied with the terms and conditions of the allotment letter and regulation and the order Annexure P10 is clearly illegal and in excess of authority.

(8) For the reasons recorded above, this writ petition is allowed with costs and the order Annexure P10 is quashed with the result that the allotment of the plot in dispute in favour of the petitioner continues.

C.W.P. No. 1761 of 1981

(9) In this case M/s Haryana Polymers Corporation (for short 'the petitioner') applied to HUDA for allotment of industrial site in Faridabad. By letter dated 12th September, 1978, the petitioner was allotted industrial plot No. 10 in Sector 27-B, Faridabad, measuring 1,250 sq. yards. The tentative price of the plot was determined at Rs. 37,500 and since the petitioner had sent Rs. 2,500 with the application, it was required to deposit Rs. 6,875 within 30 days' of the issue of the allotment letter to make up the payment of 25 per cent of the price. The balance was payable in six annual instalments with specified interest. Since Rs. 6,875 and the acceptance of the allotment was not sent by the petitioner within 30 days, the Estate Officer of HUDA issued notice dated 28th November, 1978, under section 17(1) of the Act to show cause as to why the penalty of Rs. 687 be not imposed. In this letter it was further mentioned that the date for payment was extended up to 30th November, 1978. Copy of this letter/notice is Annexure P2. By letter dated 26th June, 1979, Annexure P3, the petitioner was informed that since it had not accepted the offer of plot and had not deposited the amount, under regulation 5(4) and (5) of the Regulations, the allotment stood automatically cancelled and deposit of Rs. 2,500 was forfeited. It is thereafter that on 21st February, 1980, the petitioner deposited

Rs. 6,875 during the pendency of the appeal against letter of cancellation Annexure P3, and the appeal was dismissed on 28th January, 1981, copy of which is Annexure P6. The petitioner's revision failed on 22nd April, 1981, copy of which is Annexure R1.

(10) Against the aforesaid orders, this petition under Articles 226/227 of the Constitution of India is directed.

(11) A reading of the facts stated above shows that HUDA is not clear as to the meaning of section 17(1) coupled with other relevant sections of the Act nor of regulation 5 and its sub-regulations. Section 15 of the Act provides for disposal of land by HUDA. Sub-section (3) of this section provides that the concerned authority can sell, lease or transfer, whether by auction, allotment or otherwise, any land or building belonging to HUDA, on such terms and conditions, as it may by regulations provide. If lease is created under the regulations so framed in case of default of any terms and conditions of the lease, penalty as provided by section 16 of the Act can be imposed. In case any property is transferred by it by sale or allotment and if the transferee makes default in any of the specified conditions, penal action can be taken under section 17 of the Act. Section 2(x) of the Act defines 'transferee' and it means a person including a firm or body of individuals whether incorporated or not, to whom land or building is sold, leased or transferred in any manner, whatsoever, under this Act. Regulation 5 of the Regulations prescribes the procedure for transfer by allotment. Under sub-regulation (i), the intending purchaser has to file an application in the prescribed form, which is to accompany with 10 per cent of the price as provided by under sub-regulation (2), and under sub-regulation 5 on allotment being made, the allotment has to communicate his acceptance or refusal in writing within 30 days of the date of allotment by registered post to the Estate Officer and in case of acceptance, the letter has to be accompanied by an amount as intimated in the allotment letter, i.e., to make up initial payment of 25 per cent. In case of refusal, the applicant is entitled to refund of the amount tendered with the application. In case an applicant fails to either accept or refuse within the stipulated period, the allotment is to be deemed to be cancelled and the deposit made under sub-regulation (2) may be forfeited.

(12) A binding contract between the applicant and HUDA comes into being only when the offered allotment is accepted

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by the applicant and the acceptance along with balance price to make up 25 per cent is sent to HUDA within 30 days of the receipt of the allotment letter failing which the offer of allotment stands automatically cancelled. Till allotment is accepted in the aforesaid manner by the person to whom the offer of allotment is made it does not become a transfer within the meaning of section 2(x) of the Act. If he does not become a transferee, section 17 of the Act would not apply, because the question of taking penal action for breach of condition of transfer would arise only if allotment becomes a contract, on acceptance and payment of the balance price within 30 days of the receipt of letter of allotment. In this case the petitioner did not convey either acceptance of the allotment nor sent the amount asked for within 30 days of the receipt of the allotment letter. Hence under rule 5(5) of the Regulations, offer of allotment stood automatically cancelled.

(13) As has been seen above, HUDA was not clear about the scope of the regulations and the provisions of the Act and that is why show cause notice Annexure P2 was issued under section 17(1) of the Act. When the petitioner did not send the amount required in the letter of allotment, it was not a case in which show-cause notice under section 17(1) of the Act was required and this mistake was rectified,—*vide* letter Annexure P3, by which information was given to the petitioner that the allotment stood automatically cancelled for non-compliance of the terms and conditions of the allotment letter and regulation 5(5) of the Regulations.

(14) It was sought to be argued on behalf of the petitioner that on 21st February, 1980 HUDA received Rs. 6,875 and, therefore, it was estopped from disputing the allotment. In the written statement it has been explained that the amount was paid in the office to a clerk who was not aware of the facts of the case. On the peculiar facts of this case, such a deposit does not amount to estoppel because this deposit was made after the order of automatic cancellation was conveyed and when the petitioner's appeal was pending under the Act. After the allotment of the petitioner stood automatically cancelled, HUDA allotted the plot in dispute to Smt. Sudha Rani Bhandari,—*vide* letter dated 3rd February, 1981, who was impleaded as respondent to this petition on her application.

(15) Before parting with this matter, it may be noticed that the petitioner did not file any appeal under the Act, but filed application

Annexure P5 before the HUDA for re-allotment of the plot by withdrawing the order of cancellation. However, the request was not accepted.

(16) In view of the facts stated above, it is clear that on account of the non-compliance with the regulation 5(5) of the Regulations, which is incorporated in the conditions of the allotment letter, the offer of allotment automatically stood cancelled, and, therefore, there is no merit whatsoever in this writ petition, which is dismissed leaving the parties to bear their own costs. However, in case Rs. 6,875 are still lying with HUDA, that would be refunded forthwith.

C.W.P. No. 3467 of 1982

(17) M/s Krishna and Company (hereinafter called 'the petitioner') in the month of March, 1979, applied for allotment of Plot No. 12 measuring $2\frac{1}{2}$ acres in the industrial area of Dharuhera, Phase I and sent Rs. 2,500 along with the application form to HUDA. On 28th March, 1979, another sum of Rs. 8,500 was sent by the petitioner to HUDA, which was duly received on 2nd April, 1979. *Vide* letter dated 10th October, 1979 (Annexure P3), the petitioner was informed about the allotment of the aforesaid plot, the total price of which was Rs. 90,750. A further sum of Rs. 11,688 was asked for, which was to be paid within 30 days of the allotment letter and the balance was payable further within 60 days of the letter of allotment without interest or in six annual equal instalments with 10 per cent interest thereon. The petitioner,—*vide* letter dated 9th November, 1979, acknowledged the receipt of the allotment letter and made a request for time up to 30th November, 1979, for making payment,—*vide* letter Annexure P4. HUDA did not extend the time and the petitioner did not pay the requisite amount within 30 days of the receipt of letter of allotment. After expiry of 30 days on 29th November, 1979, the requisite amount was sent along with letter Annexure P5, which was received in the office of the Estate Officer on 4th December, 1979, for which receipt Annexure P6 was issued. HUDA by letter dated 4th December, 1979, copy Annexure P7, informed the petitioner that the amount of Rs. 11,688 was not deposited in accordance with the condition No. 4 of the allotment letter, i.e. within 30 days of the date of allotment, and, therefore, the allotment stood cancelled and the earnest money of Rs. 11,000 stood forfeited. Feeling aggrieved, the matter was taken up in appeal, which was dismissed by the Administrator,—*vide* order Annexure P10 and the revision

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was dismissed by the Minister,—*vide* order Annexure P12. Thereafter, this petition under Articles 226/227 of the Constitution of India was filed.

(18) In the written statement, reliance is placed on regulation 5(5) of the Regulations, and condition No. 4 of the allotment letter, which shows that since the petitioner neither conveyed the acceptance of the offer of plot nor deposited the amount within 30 days of the allotment letter, the allotment stood automatically cancelled. It was also pleaded that thereafter the plot in dispute was allotted to M/s Orient Rains Ltd. on 29th July, 1980. As regards the receipt of the amount on 4th December, 1979, it was stated that the same was received by the clerk in routine, after the expiry of the due date, which was meaningless and that amount has been refunded to the petitioner on 26th July, 1980.

(19) After hearing the learned counsel for the parties, I am of the view that in view of regulation 5(5) of the Regulations and condition of the allotment the petitioner was required to convey his acceptance of the allotment within 30 days, which had to be accompanied with Rs. 11,688, failing which the allotment stood automatically cancelled. Letter Annexure P4 does not specifically state that the allotment is accepted, nor does it show that the same was refused. However, time up to 30th November, 1979, was sought for payment of the amount asked for. It may mean that the allotment was accepted subject to the condition that time was extended, and if not then the allotment was not acceptable. Therefore, in a way so far as the acceptance or refusal of the allotment was concerned, that was conveyed within 30 days in the aforesaid manner. However, since payment was not made within the requisite period of 30 days, the allotment stood automatically cancelled and the petitioner cannot make any grievance of it in this writ petition. Moreover, the rights of the third party have come into being.

(20) The only point, which remains for consideration is whether the forfeiture of Rs. 11,000 is justified on the peculiar facts and circumstances of this case. In C.W.P. No. 1761 of 1982, from the written statement of HUDA, it is clear that it had extended time for payment beyond 30 days. There is no clear cut provision in the Regulations empowering extension of time. Without going into the matter whether HUDA had the authority to extend the time or not, the fact remains that in that case the time was extended and may be,

that the petitioner in this case was labouring under the same impression that HUDA could extend time, and, therefore, asked for the extension of time. The amount of Rs. 11,000 deserves to be refunded because the petitioner did reply back within 30 days of the receipt of the allotment letter. If it is taken that he accepted subject to the condition of extension of time it can be inferred that he complied with first part of regulation 5(5) of the Regulations, due to which, amount could not be forfeited and had to be returned.

(21) For the reasons recorded above, the allotment of the plot in favour of the petitioner stood automatically cancelled and, therefore, no relief can be granted. But a direction is issued to HUDA to refund the earnest money of Rs. 11,000 to the petitioner within a period of two months from today.

R. N. R.

Before P. C. Jain, C.J. and J. V. Gupta, J.

STATE OF PUNJAB, and others,—Appellants.

versus

JANAK RAJ JAIN,—Respondent.

Regular Second Appeal No. 1580 of 1983.

May 29, 1986.

Constitution of India, 1950—Article 16—Adverse entry made in the annual confidential report of a government employee—Suit filed challenging the correctness of such entry and as having been recorded in violation of the procedure prescribed by government instructions—Civil suit filed—Whether maintainable—instructions issued by the government for recording annual confidential reports—Whether statutory in nature—Such instructions—Whether can be enforced in the Court of law.

Held, that the recording of annual confidential reports is, in essence, subjective and administrative. The recording of such reports is in the sheer public interest and in a large governmental organisation, the same would be imperative, and equally, its confidential nature must also be maintained to a certain extent. Once that is so, either on the basis of a larger public policy or