

No. 120 (DW) Writs Dated 3/9/14

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.



1. State of Haryana through the Secretary, Urban Estate, Haryana, Chandigarh.
2. The Chief Administrator, Haryana Urban Development Authority, Panchkula.
3. The Estate Officer, Haryana Urban Development Authority, Panchkula.

update CCT No. Take 2/9 J - 8/9/14

Subject : CWP No. 9699 of 1992 .

Rajpal Singh

.....Petitioner (s)

Versus

Haryana State and others

.....Respondent(s)

Sir,

I am directed to forward herewith a copy of orders dated **05.08.2014** passed by this Hon'ble High Court in the above noted case for immediate compliance together with copy of order dated 05.08.2014 passed in CWP No. 4743 of 1991.

Given under my hand and the seal of this Court on this 12th day of August, 2014.

**Superintendent(Writs)
For Assistant Registrar (Writs)**



*1. Patey AB
2. Utseetha
3. CWP dismissed
Rajpal Singh*

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CIVIL WRIT PETITION No. 9699 of 1992

Rajpal singh son of Ram singh,
resident of village Lajwana Khurd,
District Jind, presently resident of
House No.658, Sector 6, Panchkula.

.....Petitioner.

Versus

- M/S*
1. The Haryana State through Secretary,
Urban Estate, Haryana, Chandigarh;
 2. The Chief Administrator, Haryana Urban
Development Authority, SCO No.841-848
Mani Majra, U.T. Chandigarh;
 3. The Estate Officer, Haryana Urban Development
Authority, Panchkula.
- As to*

....Respondent.

Amended petition under articles
226/227 of the Constitution of
India for the issuance of a writ
in the nature of Certiorary quashing
the Instruction Annexure P/6 and
also a write in the nature of
mandamus directing the respondents
to issue formal allotment letter
in respect of Plot No. 84,

in Urban Estate, Sector 15
Panchkula, measuring 10 Marlas and
to deliver the possession of the
same forthwith.

Respectfully showeth

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1. That the petitioner is a citizen of India and as such is entitled to invoke the extraordinary writ jurisdiction of this Hon'ble court under articles 226/227 of the Constitution of India.
2. That the petitioner is an employee of the Haryana Government and is posted at Civil Secretariat, Haryana Chandigarh. He applied to the Chief Minister for allotment of a residential plot out of discretionary quota in urban estate, Panchkula.
3. That on the application of the petitioner, the Haryana Government decided to allot him a 10 Marlas' plot in urban estate, Panchkula and the Chief Administrator, Haryana Urban Development Authority, Manimajra UT, Chandigarh informed the petitioner in this respect vide his letter No.ADA(R)-91/6539, dated 22.3.1991. In this letter, the Chief Administrator asked the petitioner to submit an affidavit to the effect that he did not own any plot in his name or in the name of his spouse or any other member of the family dependent upon him in Panchkula.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 9699 of 1992
Date of Decision : 5.8.2014

Rajpal Singh

..... Petitioner

Versus

The Haryana State and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. I.P. Goyat, Advocate, for the petitioner.

Mr. D. Khanna, Additional Advocate General, Haryana,
for respondent No. 1-State.

Mr. Rahul Garg, Advocate, for respondents No. 2 and 3.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

HEMANT GUPTA, J. (ORAL)

The petitioner claims a writ of certiorari for quashing of Instructions (Annexure-P-6) and claims a writ of mandamus directing respondents to issue formal allotment letter in respect of Plot No. 84, Sector-15, Panchkula, measuring 10 Marlas.

The petitioner applied for allotment of a residential plot out of discretionary quota to the Chief Minister. The Chief Minister decided to allot him a 10 Marlas plot. The communication in this respect was issued on 22.3.1991. The petitioner, in terms of communication (Annexure-P-1),

CWP No. 9699 of 1992

-2-

deposited the amount of earnest money, but formal letter of allotment was not issued. On 3.4.1992, it was decided to withdraw the offer of allotment made during the period from April to June, 1991. It is the said letter, which is sought to be challenged by the petitioner in the present writ petition.

The allotment of plot in discretion of the Chief Minister of the State Government has been dealt with today in a separate writ petition in CWP No. 4743 of 1991 titled as *Sumer Chand Bhatt Versus Haryana Housing Board and others*. It has been held that the plot allotted by way of discretion cannot be enforced more so, when the letter of allotment has not been issued. In view of the reasoning recorded in the aforesaid case, we do not find any merit in the present writ petition. However, while dismissing the writ petition, we direct the respondents to refund the amount deposited by the petitioner along with 6% per annum simple interest within a period of two months.

[Redacted Signature]

Sd - (HEMANT GUPTA)
JUDGE

[Redacted Signature]

Sd - (KULDIP SINGH)
JUDGE



5.8.2014
sjks

DW
12-8-14

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Handwritten notes and signatures at the bottom center, including the date 30/8/14.

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.4743 of 1991(O&M)

Date of decision:5.8.2014

Sumer Chand Bhatt

....Petitioner

VERSUS

Haryana Housing Board and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Arjun Partap Atma Ram, Advocate for the petitioner.

Mr. V.K. Vashisht, Advocate for the respondents No.1, 2 and 4.

Mr. Amrinder Vir Singh, Advocate for respondent No.3.

HEMANT GUPTA, J.(Oral)

The challenge in the present writ petition is to an order dated 28.05.1987 (Annexure P-10) and the order passed by the Chairman of the Housing Board as an Appellate Authority on 13.11.1990 (Annexure P-15) in terms of the directions of the Hon'ble Supreme Court in Special Leave Petition (Civil) Nos.16547 and 16548 of 1983 on 02.03.1987.

The facts in brief are that the Haryana Housing Board published an advertisement inviting applications for allotment of five single-storey High Income Group (HIG) houses to be built at Panchkula, Ambala City, Panipat, Jind, Kurukshetra, Gurgaon, Hissar and Rohtak on 08.11.1977. The petitioner was not the applicant for the allotment of house in terms of the advertisement. However, the petitioner, who was the then Member of the Legislative Assembly, Haryana was communicated a letter dated 07.05.1980 (Annexure P-1) wherein it was conveyed that it has been decided to allot HIG House No.489-P, Housing Board Colony at Sector 6, Panchkula

out of the discretionary quota of the Chairman. The petitioner was required to apply on the prescribed application form and also deposit the initial payment of Rs.10000/- within 15 days. However, admittedly, no letter of allotment was issued to the petitioner, though, the petitioner deposited the amount of Rs.10,000/-.

The petitioner filed a writ petition before this Court bearing CWP No.1878 of 1983 (Annexure P-8) claiming allotment of the said house in respect of which the communication (Annexure P-1) was made. The said writ petition was allowed on 24.10.1983 and the competent authority was directed to consider the allotment of HIG House No.489-P, Sector 6, Panchkula after hearing the petitioner and Major S.P. Singh, one of the respondents in the said writ petition, who was allotted HIG House No.489 in Sector 6, Panchkula in the meantime. The Letters Patent Appeal filed against the said order was dismissed by the learned Letters Patent Bench. However, in Special Leave Petition bearing SLP (Civil) Nos.16547 and 16548 of 1983 against the said order filed by Major S.P. Singh, the Hon'ble Supreme Court passed the following order:-

“Special leave granted. Learned counsel for the parties are heard. The Competent Authority is directed to dispose of the question of allotment of House No.489-P, Sector No.6, Panchkula after hearing all the parties concerned as directed by the High Court. The Competent Authority shall proceed to dispose of the matter without feeling itself bound by any of the observations made by the High Court on merits. The Competent Authority shall decide the matter within two months from the date of receipt of this order Appeals are disposed of accordingly. No costs.”

It is thereafter, the Competent Authority passed an order declining the claim of the petitioner for allotment of HIG House No.489-P, Sector 6, Panchkula after upholding the allotment in favour of Major S.P. Singh. It was found that no letter of allotment has been issued before the discretionary quota was abolished with retrospective effect from 26.02.1981.

An appeal before the Chairman was filed, which was dismissed vide order communicated on 13.11.1990. The learned Chairman relied upon Full Bench judgment of this Court reported as Surjit Singh and others Vs. State of Punjab and others, AIR 1980 Punjab 65, wherein it has been held that no right accrues to an applicant merely on the submissions of the application forms along with earnest money.

In the present writ petition, the challenge is to an order of the Competent Authority and that of the Chairman in appeal. After the aforesaid orders were passed, there is much change in law. A Full Bench of this court in Anil Sabharwal Vs. State of Haryana and others, 1987 (2) PLR 7, found that the allotment of plots by way of discretionary quota is illegal but allotments made in respect of certain categories were upheld. The allotment under the category to which the petitioner belongs and the kind of house which was proposed to be allotted was not within the exceptions carved out by the Full Bench of this Court in Anil Sabharwal's case (supra).

In appeal against the judgment of this Court in Anil Sabharwal's case (supra), the Hon'ble Supreme Court in Harsh Dhingra vs State Of Haryana & Others, (2001) 9 SCC 550, held that the allotment of plots by way of discretion of the State Government and/or the Chief Minister are not tenable but made it effective from 23.4.1996. The Court observed as under:-

"8. These appeals, therefore, stand allowed to the extent indicated above and declaring that the judgment of the High Court in Anil Sabharwal Vs. State of Haryana and others, 1987 (2) PLR 7 shall be effective from 23-4-1996. In the event in any of the cases any allotment has been cancelled, the same shall be brought in conformity with the order made by us whether those allottees are parties in these proceedings or not. The declaration made by us will have a general application. It is also made clear that allotment orders made prior to 23-4-1996 can be cancelled if

they are not made in conformity with the decision in *S.R. Dass vs. State of Haryana, 1988 PIJ 123* after following due procedure”.

In Surjit Singh's case (supra), a Full Bench of this Court held that by filing an application, the applicant only gets a right of consideration of his application, but he does not get a vested right for allotment of the plot. The Court observed as under:-

“.....By filing an application in accordance with law, the applicant only gets a right of consideration of his application, but he does not get a vested right for allotment of the plot. The conditions laid down in the first scheme or the provisions of rule 5 (3) do not give any right to the applicants to claim allotment of plots as a matter of right. There is nothing in the scheme or the Act or the Rules which requires the adoption of the principle of 'first come first served' at the time of allotment, or debars the Government from adopting the method of drawing lots. The petitioners have not been able to lay foundation for establishing their right which could legally be enforced and the petitioners have completely failed to make out a case for the exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India.”

In another Judgment of Division Bench of this Court in CWP No. 17397 of 2010 titled as 'Rajinder Kumar Rawal and others Vs. State of Haryana and others', decided on 24.04.2012, in which one of us was member (Hemant Gupta J.) examined other judgments of the Supreme Court and observed as Under:-

“The Hon'ble Supreme Court (Jasbir Singh Chhabra and others Vs. State of Punjab and others, (2010) 4 SCC 192) approved the findings recorded by the Division Bench of this Court and held that by making an application pursuant to the advertisement and on being declared successful in the draw of lots, no promise is made out.

The Hon'ble Supreme Court in case Greater Mohali Area Development Authority and others Vs. Manju Jain and others, (2010) 9 SCC 157, allowed an appeal, wherein the allotment made to the petitioner stood cancelled for failure to deposit 25% of the amount within 60 days of the receipt of the allotment letter. The Hon'ble Court held that mere draw

of lots/allocation letter does not confer any right to allotment. It was held to the following effect:-

“21. Mere draw of lots/allocation letter does not confer any right to allotment. The system of draw of lots is being resorted to with a view to identify the prospective allottee. It is only a mode, a method, a process to identify the allottee i.e. the process of selection. It is not an allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment.”

In the aforesaid case, the Hon'ble Court allowed the appeal while holding that the writ petitioner has not sent the acceptance letter within the time granted in the letter of allotment.

In view of the above discussion, we find that no right of the petitioner(s) has been infringed when the authorities decided not to proceed with the allotment of plots, but to conduct public auction of such plots”.

In view of the discussion above, we find that no right accrues to the petitioner merely on deposit of the earnest money. Still further, the petitioner claims allotment of a house in exercise of the discretionary quota which has not been found sustainable in the judgments referred to above.

Learned counsel for the petitioner has referred to Single Bench judgment of this Court reported as Gurmukh Singh Vs. State of Punjab and others, 2010(5) RCR (Civil) 225. In the said judgment, issue was entitlement for allotment of a plot as a Local Displaced Person. We find that it was not a case for allotment on the basis of discretionary quota. Similarly in Chandigarh Police Cooperative Housing Society Vs. Chandigarh Administration, 2001 AIR (Punjab) 230, the Division Bench was considering the allotment in pursuance of Chandigarh Allotment of Land to the Cooperative House Building Societies Scheme, 1979. Again the issue was not a case of allotment by way of discretionary quota.

It is also argued that the Housing Board in reply admitted that a concluded contract has come into existence. We do not find that the stand of the respondent in the written statement will confer any enforceable right to

the petitioner. The claim of the petitioner is based upon discretionary quota which does not satisfy the requirement of Article 14 of the Constitution of India.

Consequently, we do not find any merit in the present writ petition.

Dismissed.

"Sd/-"

(HEMANT GUPTA)
JUDGE

"Sd/-"

(KULDIP SINGH)
JUDGE

AUGUST 5, 2014
'D. Gulati'

Ra
30/8/14

