
(1999) 12 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 485 of 1996

Dr. Satinder Pal Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-12-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2000) 124 PLR 819 : (2000) 1 RCR(Civil) 352

Hon'ble Judges : R.L. Anand, J

Bench : Single Bench

Advocate : Salil Sagar, for the Appellant; Naresh Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Anand, J.—By this judgment, I will dispose of Civil Writ Petition No. 485 of 1996, Dr. Satinder Pal Singh and Anr. v. State of Punjab and Ors., Civil Writ Petition No. 18126 of 1995, Dr. Sanjay Bansal and Anr. v. State of Punjab and Ors. and Civil Writ Petition No. 1 1819 of 1995 Dr. Satnam Singh Nijjer v. State of Punjab and Ors., as common questions of law and fact are involved in all these three writ petitions.

2. For the purpose of facts, I have taken the same from Civil Writ Petition No. 485 of 1996 in which Dr. Satinder Pal Singh and Dr. Satinderjit Kaur, are the petitioners and they have filed the writ petition under Article 226 of the Constitution of India for the issuance of a writ in the nature of certiorari for the quashment of impugned advertisements Annexures P. 11 and P. 12 whereby the plots for Nursing Home have again been put for allotment by respondents No. 2 and 3. The petitioners, have further prayed that a writ of mandamus may be issued to respondents No. 1 and 2 to allot a plot to the petitioners measuring 1000 sq. yards in Sector 70, Phase-I, S.A.S. Nagar, which was earmarked for the petitioners vide letter Annexure P-4, at the rate calculated earlier on the basis of which an earnest money was deposited by the petitioners.

3. The case set up by the petitioners is that both the petitioners are the doctors and they are running a Nursing Home by the name of Chawla Nursing Home in S.A.S. Nagar, District Ropar. Respondent No. 1, State of Punjab in the month of August, 1989, issued a policy regarding the allotment of land for health centres, dispensaries and medical clinics in various urban estates. As per this policy, some plots of reasonable sizes were to be earmarked "and reserved for setting up of private hospitals, clinic/nursing homes etc. The Director of Housing Department in consultation with the Health Department was to lay down the eligibility criteria for the allotment of these reserved plots and such plots were required to be allotted to the suitable applicants on a reserved price which could be fixed at reasonably concessional level. In pursuance of that policy, Annexure P-1, the respondents invited applications for the allotment of the land to Health Centres. The petitioners submitted their joint application for the allotment of the land in S.A.S. Nagar, Urban Estate, for the purpose of opening of Nursing Home. The application of the petitioners was found in order. On 13.2.1990 the Deputy Director, Housing and Urban Development wrote a letter to Estate Officer, showing his intention to allot 12000 square yards of land to Chawla Nursing Home (petitioners) and in this respect a direction was issued to have 1 per cent of the entire cost at that moment. Immediately, the office of the Estate Officer, sent a demand on 14.2.1990 and the petitioners were told to deposit Rs. 37,200/- as a tentative cost of 10000 square yards which was calculated at Rs. 37,20,000/-. On receipt of the information, the demanded sum of Rs. 37,200/- was deposited by the petitioners vide Bank Drafts favouring Estate Officer and the same was received by the Department. The Director, Housing and Urban Development, recommended the case of the petitioners to the Chief Town Planner, Punjab for allotment of 1051.93 square yards of land. The Chief Town Planner, vide letter dated 22.3.1990 recommended for the allotment of the plot measuring 1051.93 square yards in Sector-70, S.A.S. Nagar. The petitioners demanded a plot of 12000 square yards instead of 1051.93 square yards as they had already deposited the money. Since the Chief Town Planner was competent to earmark the plots and since the petitioners had already paid one per cent of the earnest money, therefore, according to the petitioners, their offer was accepted by the competent authority on 10.3.1990 for the allotment of the land in question.

4. On 23.4.1994, the petitioners made a request to the Department to allot the land on priority basis. In spite of the fact that the petitioners made several representations requesting the respondents to allot 12000 square yards land for setting up hospital at Mo-hali, yet their request was not accepted. On 19.5.1994, the petitioners received a letter from the office of Additional Housing Commissioner about the formation of a new policy and petitioners were told that the moment the policy was finalised their case would be considered along with other applicants. The petitioners gave a reply and informed the Department that new policy had no relevancy. The petitioners are entitled to the land measuring 12000 square yards on the basis of the previous policy which was applicable as

on 14.2.1990. On 7.9.1994 Punjab Housing Development Board, sent an information to the petitioners and sites for Nursing Home/Private Clinics, which were kept reserved, would now be allotted at the rate of Rs. 3600/- per square yard and the petitioners should give a consent in this regard. The petitioners received another Memo dated 10.11.1994 to that effect. The petitioners replied vide letter dated 21.11.1994 and stated that their case was to be decided under the old policy. On 23.11.1995, the petitioners received a letter from Additional Housing Commissioner, in which it was mentioned that the department was helpless to allot the site at the old rate but now the rate has been reduced from Rs. 4,200/- per square yard on Rs. 1,400/- per square yard. Therefore, if the petitioners were interested for the allotment of the land they can send their request.

5. Some advertisement was issued in the various Newspapers in which it was expressed that PUDA invited applications from the doctors for the sites and it was mentioned in the advertisement that the cost of the said site is about Rs. 14,20,000/-. The land earmarked for this purpose was 0.21 acres and fresh applications were invited from the interested persons and they were required to deposit 10 per cent of the tentative costs.

6. The petitioners further alleged that in identical circumstances, one Shri Kartar Singh, filed a Civil Writ Petition in the High Court and demanded a plot meant for private nursing home at a reserved price at the rate of Rs. 1,200/- per square yard. During the pendency of the writ petition, Shri J.N.L. Srivastava, Principal Secretary to the Government, filed an affidavit on behalf of the State of Punjab and took the stand that Government in order to minimise the litigation had decided to grant plot of 1000 square yards to Kartar Singh to open Nursing Home. The said Shri Kartar Singh had deposited Rs. 6,200/- and his application for grant of 1000 square yards plot has been allowed and a site has been earmarked in Sector 54. The Government had decided to allot the plot and the plot has been actually allotted to Shri Kartar Singh. The petitioners are alleging that allotment of the plot in favour of Shri Kartar Singh has given a cause of action to them also because they have been discriminated in this behalf. Moreover, the plot for allotment in their favour has already been earmarked by the respondent authority. With the above broad allegations, the petitioners have sought the directions for the allotment of the plot in their favour.

7. Notice of the writ petition was given to the respondents. A joint written statement was filed on behalf of respondents No. 2 and 3 and preliminary objection was taken that since the petitioners claim their right under a contract and contractual obligation, in such like cases, the writ jurisdiction of this Court, cannot be invoked and petitioners should be relegated to avail their remedy through the Civil Court. It was also pleaded by the respondents that the writ is liable to be dismissed on the ground of delay and laches; that the disputed question of facts cannot be gone into in the writ jurisdiction. On merits, the stand of these respondents is that the earlier policy was not in force subsequently. As

per the old policy, after the receipt of the amount, Government was to give the approval for the allotment of the land and thereafter a letter of intent was supposed to issue to the institutions/applicants. Chief Town Planner was asked only to identify the plots who identified plot measuring 1051.93 square yards for the petitioners and as desired plot of 12000 square yards was not feasible. The application of the petitioners was supposed to be considered alongwith other eligible applicants but their case was to be governed by the policy which was prevalent at the time of the allotment. It was the categorical stand of respondents No. 2 and 3 that no plot was earmarked for the petitioners. It was also denied that any plot was ever offered to the petitioners. With regard to the case of Shri Kartar Singh, it was submitted by respondents No. 2 and 3 that in the affidavit of Shri Srivastava, it was clearly stated that "as a matter of abundant caution, it is categorically and specifically stated that the offer being made to the petitioner is only as a special case in the peculiar facts and circumstances of the case and it will not be treated as precedent or concession to anyone else." In short, the defence of the respondents is that since there was no valid allotment in favour of the petitioners, therefore, the petitioners have no case to claim for the plot and the Government has the right to formulate a new policy and as per new policy, the petitioners can ask for the plots, if they fulfil the criteria and parameter of the new policy. Further the short stand of the respondents is that the facts of Shri Kartar Singh's case may not be helpful to the petitioners.

8. The petitioners filed rejoinder to the written statement of respondents No. 2 and 3 in which they denied the stand of the respondents by reiterating that of the writ petition. It was pleaded by the petitioners that Shri Kartar Singh was neither a doctor nor a professional. He applied for the allotment of land for nursing Home and same was allotted for the reasons that his son Shri G.S. Ahluwalia was the Director Health Services, Chandigarh. As being in service at that relevant time the land could not be allotted in his name. Similarly, Dr. B.S. Cheema, who was also the Director, Health Services, Punjab, was allotted 4 kanals of land for Nursing Home in S.A.S. Nagar and that too was allotted in the name of his mother. Both these persons being the Directors of the Health Services are influential persons, therefore, they have been allotted the land. The petitioners who are the genuine doctors and professionals in the field of medicine, cannot be deprived on the ground of discrimination.

9. In support of their petition, the petitioners have placed on record the following annexures :-

10. Annexure P-1 is the Memo No. 3/97/82/2Hg/12789 issued by the Department of Department of Housing and Urban Development through which a policy was floated and applications were sought. Annexure P-2 is the letter from the Director to the Estate Officer vide which it was stated that since the petitioners have applied for the allotment of the land measuring 12000 square yards, therefore, they may be directed to deposit one per cent of the total cost of

the land keeping in view the reserved price. The copy of this letter was also endorsed to Dr. S.P.S. Chawla. Annexure P-3 is the letter from the Estate Officer to Shri Chawla, in which it is clearly mentioned as follows:-

"The proposal of allotment of 12000 square yards of land at S.A.S. Nagar reveals that the cost of the said land is Rs. 3720000/-. 1% of the above cost is Rs. 37200/-. The aforesaid amount be deposited in the office of the Estate Office, Urban Estate, Punjab, Chandigarh."

11. P3/A is the letter vide which an amount of Rs. 37200/- was deposited. P-4 is the letter from the Chief Town Planner, Chandigarh to the Director, Housing and Urban Development Department, Punjab, in which it is mentioned that " In the meeting dated 1.3.1990, it has been decided that a site of 1000 square yards, be earmarked in different sectors for nursing homes. Accordingly, 5 sites in Sector 53, 54, 64, and 70 have been identified for this purpose. These sites are recommended for consideration and allotment to the first applicants and those were Dr. Ahluwalia, Dr. Nihhar, Dr. Sehgal, Dr. Chawla and Dr. Kapoor."

12. Annexure P-5 is the letter dated 23.4.1994 issued by Dr. Chawla for Chawla Nursing Home wherein, a request was made for the allotment of the land on priority basis. Annexure P5/A is a letter dated 19.5.1994 addressed to Dr. Chawla, in which it has been clearly intimated to him that policy for allotment of land to Nursing Homes is under the active consideration of the Board and on the finalisation of this policy his case would be considered at the appropriate time along with other eligible applicants.

13. Annexure P-6 is again a letter from Dr. Chawla in which he had stated that he had deposited a sum of Rs. 37200/- and he may be allotted 12000 square yards land at the earliest as per the policy which was applicable on 14.2.1990. Annexure P-7 is the letter dated 7.9.1994 addressed by Punjab Housing Development Board, to Dr. Chawla intimating to him that land kept reserved for Nursing Home would be allotted at the rate of Rs. 3600/- per square yard and, therefore, he was required to give his consent within fifteen days. One more letter was issued on 10.11.1994 reminding him to this effect which is annexure P-8, P-9 is the letter from the petitioners in which they had reiterated their old stand that they are entitled to the allotment of 12000 square yards of land costing Rs. 37,20,000/-. Annexure P-10 is the letter dated 23.11.1995 in which it has been stated that the request to allot the land at old rates to Nursing Home has become impossible. However, the rates of land for Nursing Home sites had been reduced from Rs. 4200/- to Rs. 1400/- per square yard, therefore, advertisements have been issued and applications have been invited and if the petitioners are interested they can apply afresh for the purpose of allotment.

14. Vide Annexures P-11 and P-12, the PUDA had invited fresh applications from the doctors/institutions for the allotment of the plots situated in Sectors 55,64 and 65. Annexure P-12 is the corrigendum of Annexure P-11. Annexure P-13 is the copy of the affidavit of Shri J.N.L. Srivastava the then Principal Secretary to

Government filed in Civil Writ Petition No. 16379 of 1994, titled Shri Kartar Singh v. State of Punjab. In para No. 2 of the affidavit, it has been clearly mentioned that as per the orders of His Excellency, the then Governor of Punjab, dated 28.11.1989, a letter of intent for allotment of plot on reserved price was issued by the Government on 14.2.1990 and that Shri Kartar Singh had deposited a sum of Rs. 6200/-. So much so the Chief Town Planner had earmarked a plot in the name of Shri Kartar Singh in Sector-54 and further the application of Shri Kartar Singh was pending with the State Government since 1989 but due to various factors the allotment could not be finalised. The petitioner, Shri Kartar Singh had challenged the action of the Board which demanded the price of the plot at the rate of Rs. 3600/- per square yard. During the pendency of the writ petition, it was observed by the Hon"ble Bench that since the application of Shri Kartar Singh was pending with the State Government since 1989 and that he had also been issued a letter of intent for allotting a plot and that the petitioner had deposited the requisite 1% of the total amount on the basis of the prevailing price at that time, therefore, the demand of the Government to enhance the price from Rs. 310 to Rs. 3600/- was not justified. The Hon"ble Division Bench remarked that let the land be allotted to Shri Kartar Singh at the rate of Rs. 1200/- per square yard. It was clearly mentioned that the offer being made to Shri Kartar Singh was only as a special case in the peculiar facts and circumstances of the case and it would not be treated as a precedent or a concession to anyone else.

15. No document has been placed on record by the respondents but they are relying upon the documents which have been placed on record by the petitioners.

16. I need not incorporate the pleadings of the other two writ petitions because the stand of the petitioners in these two petitions is the same as that of the petitioners of Civil Writ Petition No. 485 of 1996.

17. On behalf of the petitioners of the three writ petitions, I have heard Shri Salil Sagar, Shri V.K. Jindal and Shri Indarpreet Singh, Advocates, and Shri Naresh Prabhakar on behalf of respondents No. 2 and 3 and with their assistance have gone through the record of this case.

18. Vehemently, it was urged by the learned Counsel appearing on behalf of the petitioners that a great discrimination has been done vis-a-vis the petitioners when they have not been allotted the land in spite of their eligibility and land has been allotted to Shri Kartar Singh who was not a doctor even but only the father of the Director, Health Services. The petitioners are similarly situated, still, a special treatment has been granted to Shri Kartar Singh. Since the petitioners have been discriminated in the matter of allotment, therefore, directions should be given to the respondents for the allotment of the plot which at one point of time was earmarked for the petitioners.

19. On the contrary, it was submitted on behalf of the respondents that the case of Shri Kartar Singh was totally on a different footing. His application was

pending with the Government since 1989. So much so a letter of intent was also issued. In that case, the government wanted to enhance the price from Rs. 310/- to Rs. 3200/-per square yard and the Hon"ble Division Bench made some observations during the course of the pendency of the writ petition of Shri Kartar Singh and the observations of the Court were respected by the Government with a clear understanding that the case of Dr. Kartar Singh would not become a precedent for the others.

20. Before any relief may be given to a petitioner on the ground of discrimination it is obligatory on the part of such petitioner to make out a case of clear discrimination. In this case, there was no letter of intent which was ever issued in favour of the petitioners. The Government only floated a policy. In pursuance of that policy, the petitioners submitted applications. As per the policy, the petitioners were supposed to make initial payments. Thereafter, the correspondence between the Director and the Estate office would show that it was desired to identify some land. Ultimately, it was found that land measuring 12000 square yards was not feasible. Some plots were identified. No doubt it was expressed that the small plots may be allotted to the five applicants but the fact is that no allotment letter was ever issued in favour of the petitioners at any point of time. Since there was no conferment of any right, title or interest in favour of the petitioners, therefore, they cannot seek the directions of this Court against the respondents for the allotment of the plot nor they can agitate that they have been discriminated in the matter of allotment. Even if it is assumed for the sake of argument that Shri Kartar Singh has been allotted a plot still the petitioners cannot seek any relief in the present petition. Shri Kartar Singh has not been added as a party in this case. A wrong which has been committed by the State qua Kartar Singh, cannot give a legitimate right to the petitioners to say that State should commit the same wrong in their favour also. The High Court in the writ jurisdiction cannot allow to perpetuate a wrong by encouraging one more wrong.

22. The learned counsel for the petitioners relies upon *Harbilas Rai Bansal Vs. Union of India (UOI) and Another*, and submitted that a preferential treatment could not be given to Shri Kartar Singh because action on the part of the Department had no rationality and this action suffers from the vice of individual discrimination and could not be sustained and as such is ultra vires of Article 14 of the Constitution of India. The cited judgment is not applicable to the facts in hand. It was the case of allotment of telephones. The Government of India decided to allot the telephones on priority basis to the retirees of the Central and the State Governments but other officers were not treated alike. With that background, it was observed by his Lordship that part of the Rule suffered from the vice of individual discrimination and could not be sustained.

23. It was then submitted by the counsel for the petitioners that the sites were earmarked for the petitioners as is evident from Annexure P-4, therefore, it should be inferred readily that there was a valid allotment in favour of the

petitioners. The argument is not acceptable to this Court. The reading of the letter Annexure P-4 would clearly show that the Chief Town Planner wrote to the Director by making recommendation for consideration and for the allotment of the five sites identified by him to the various doctors including Dr. Chawla. It does not indicate that any formal order was passed for allotment. Mere expression of intention on the part of Chief Town Planner and mere making recommendations to the Director, do not give a valid and enforceable right to the petitioners. It was then submitted by the counsel for the petitioners that by their act and conduct, the respondents are estopped from depriving the petitioners of the allotment of the plots. In support of this contention the counsel relies upon Gyanendra Prakash Bageshwar Prasad Mishra Vs. Indore Development Authority, Indore and Another, . The cited judgment is not applicable to the facts in hand. In the cited case the Development Authority agreed to allot the plot to the party at a certain rate but actual allotment was deliberately delayed and prolonged on one pretext or the other for the years together. In that situation, the High Court held that Development Authority could not claim enhanced rate from the party when such party was, at no point of time, at fault for the delay specially when the Development Authority was an instrumentality of the State. In the present case, I am reiterating as to where is the allotment in favour of the petitioners. Rather the cited judgment supports the case of the Department wherein a higher rate was asked for from Kartar Singh and the High Court showed indulgence for Shri Kartar Singh and virtually a consent order was passed.

24. The counsel for the petitioners also relied upon Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , and submitted that doctrine of promissory estoppel has been proved and the respondents No. 2 and 3 cannot back out. There is a fallacy in the argument. The Government has the power to amend the policy from time to time. Had there been a firm allotment in favour of the petitioners, in such a situation, the Department may not be right in asking for the changed condition unless there is a contract to the contrary. Merely because a person applies in pursuance of a Scheme, does not get a vested right in his favour. At the most, he gets a right to be considered along with others in that Scheme. If the Government for one reason or the other, has changed the policy with regard to the allotment of the plots, it cannot be said that this decision was arbitrary or illegal or capricious or with mala fide intent until it is so proved by the person complaining thereof. The new policy was available to everybody including the petitioners and whosoever fulfilled the new criteria.

25. Lastly, it was submitted that right of consideration of the petitioners has been taken away with the issuance of the new advertisement. Again this argument is totally devoid of any merit. As per the advertisement every eligible person/institution had the right to apply and to be considered for the allotment of the plots.

26. Resultantly, I am of the considered opinion that all these three writ petitions are totally devoid of any merit and the same are hereby dismissed with no order

as to costs.