
(2012) 05 P&H CK 0164

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 23774, 24418, 23780, 23781, 23775, 23776, 23777, 23778, 23782, 23783, 23784, 23785, 23786, 23787 and 24559 of 2011 and 17135, 22782 and 23273 of 2010 and 1944, 1947, 212, 288, 289, 636, 687, 2101 and 5701 of 2012

Kapil Dev

APPELLANT

Vs

Housing Board Haryana and Another

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 1 RCR(Civil) 113

Hon'ble Judges : Hemant Gupta, J;A.N. Jindal, J

Bench : Division Bench

Advocate : V.K. Jindal, for the Appellant; Ashwani Talwar, for the Respondent

Judgement

Hemant Gupta, J.—This order shall dispose of CWP No. 23774 of 2011, 17135, 22782, 23273 of 2010, 24418, 23780, 23781, 23775, 23776, 23777, 23778, 23782, 23783, 23784, 23785, 23786, 23787, 24559 of 2011, 1944, 1947, 212, 288, 289, 636, 687, 2101, 5701 of 2012, as common questions of law and facts are involved in all these cases. For reference, the facts are taken from CWP No. 23774 of 2011. Challenge in the present writ petition is to the order dated 30.11.2011 (Annexure P-6), whereby registration of the petitioner for allotment of Type-I flat has been cancelled and 10% of the earnest money forfeited.

2. Respondent-Haryana Housing Board has been established under Haryana Housing Board Act, 1971. In January, 2010, the Housing Board offered built up multi storey flats on Hire Purchase basis. The period of registration was from 19.02.2010 to 19.03.2010. The relevant eligibility condition is as under:-

(e) The applicant must be an industrial worker/employed in the industrial Unit situated in Haryana. Preference will be given to the industrial workers/employees of industrial units of the Industrial Estate at Bawal.

3. The petitioner being eligible applied for the allotment of the flat. The petitioner was successful in the draw of lots. The petitioner was informed vide communication dated 30.08.2010 (Annexure P-2) that he is successful in draw of lots and was called upon to deposit a sum of Rs. 1,08,000/- on or before 30.09.2010, failing which, the registration was to be cancelled and 10% of the registration amount was to be forfeited. The said amount is 15% of the total sale consideration. The petitioner deposited the said amount. However, on 03.08.2011, a show cause notice was issued to the petitioner, wherein it was pointed out that the petitioner is not an industrial worker belonging to Bawal Industrial Estate and therefore, he is not eligible for allotment of flat in the category, in which he has been declared successful. After considering the reply filed, the allotment has been cancelled vide communication dated 30.11.2011 (Annexure P-6), which is subject matter of challenge in the present writ petition.

4. In the written statement, it has been pointed out that flats were reserved for industrial units/entrepreneurs and the industrial workers in the ratio of 50:50. 33% of the flats were reserved for solo/first women industrial workers. The process of allotment of 280 flats has been described in para No. 5, which reads as under:-

(ii) In the case of industrial units/entrepreneurs, 11 applications were received for 35 flats and all the 35 demand letters have been issued. Spill over 105 flats were clubbed with the 140 flats reserved for industrial workers at Bawal and total number of flats thus available for allotment worked out to 245.

(iii) 33% of the flats were to be reserved for female applicants, 81 flats out of above 245 were to be allotted to female workers at Bawal or thereafter for industrial workers working at places other than Bawal.

(iv) 68 applications were received from female industrial workers employed in industrial units situated at Bawal and all the above 68 applicants were allotted flats. However, on scrutiny, it has transpired that 9 out of them do not belong to Bawal. Show cause notices have been issued to all the 9 women allottees for cancellation of allotment and decision shall be taken in due course.

(v) There were 41 female industrial applicants working in Haryana at places other than Bawal. 13 flats remaining for female workers were allotted out of draw of lots from amongst the above 41 female applicants.

(vi) The flats belonging to female categories, which become available on finalization of Show Cause Notices in respect of 9 female allottees as mentioned in above para shall be allotted from amongst remaining unsuccessful female applicants through draw of lots.

(vii) After allotment of 81 flats to female workers, 164 flats were available for allotment to workers employed in industrial units situated at Bawal. Since number of such applicants was 284, there was no scope for allotment of flat to workers of industrial units situated outside Bawal and thus, in respect of 89 such

applicants, the earnest money was refunded.

164 flats were allotted by way of draw of lots out of 284 workers.

5. Earlier, the allotment of flats to men, as consequence of reservation to women i.e. 67% of the remaining flats, came up for consideration before this Court in *Savita Chaudhary Vs. State of Haryana and others*, titled "*Savita Chaudhary v. State of Haryana*", decided on 01.05.2010, wherein such allotment process was set aside and the Housing Board was directed to allot the flats in view of the directions contained therein.

6. In the present case, the petitioner has contended that there cannot be any reservation for industrial workers working at Bawal, as such is not the classification recognized in Housing Board, Haryana (Allotment, Management and Sale of Tenements) Regulations, 1972 (for short "Regulation"). It is contended that reservation is only permissible in terms of the categories, which are mentioned in sub clause 2 of Regulation 7.

7. Mr. Talwar, on the other hand, pointed out that there was no reservation for the industrial workers working at Bawal, but it was only a preference for the industrial workers and in the preference they have been allotted tenements. It is further pointed out that the Haryana State Infrastructure and Industrial Development Corporation (HSI-IDC) has given 5 acres of land for construction of tenements for industrial workers of Bawal, therefore, such a condition was proper and justified.

8. We find that the process of allotment of tenements is not justified. The reservation in the scheme is contemplated as per Sub Clause 2 of Regulation 4. Sub Clause 1 and 2 of Regulation 4 as well as Regulation 7 read as under:-

4. Issue of notice for inviting applications and power of Board to allot tenement-
(1) The Board shall issue a notice in such newspapers as the Board may think fit for inviting applications from person in need of residential accommodation in buildings constructed/likely to be constructed by the Board under any scheme before such date as may be specified in the notice.

(2) The notice shall specify the location of the building, the number of tenements available for allotment, the class of persons for whom the number of tenements in any scheme is reserved, the amount payable as earnest money as provided in sub-regulation (3), amount of initial payment to be made to the Board towards purchase of the tenement, payment of the balance of the purchase price to the Board either in lump sum or in such instalments together with such interest as may be determined by the Board, the amount of each instalment/monthly instalment together with interest in respect of each tenement, the stamp and registration charges, the last date for submission of applications and such other particulars as the Board may consider necessary.

(emphasis supplied...)

7. Drawing of lots for purpose of allotment - (1) Allotment of houses shall be made by "draw of lots" or in such other manner as may be determined by the Board.

(2) Unless otherwise specified by the Board out of total number of houses/flats floated in a scheme for allotment to the eligible income categories, i.e. Economically Weaker Section, Lower Income Group, Middle Income Group and Higher Income Group, the reservation for various categories of applicants shall be as follows-

The benefit of reservation to all above mentioned categories shall only be admissible to the residents/domicile of Haryana.

33% reservation in each of the above reserved categories except widows and also in general category shall be for women applicants as first/solo applicant. In case sufficient women applicants are not forthcoming in any of the categories, balance of the houses shall be allotted to other applicants in that same category:

Provided that if sufficient applicants are not forthcoming from any of reserved categories mentioned above, the balance of the reserved houses shall be allotted to the applicants in the general category. The allotment of remaining houses after the allotment to the applicants belonging to the ten reserved categories referred to above shall be made to the applicants of general category.

Note:-

1. The above reservation shall be available only for residential property under Economically Weaker Section, Lower Income Group, Middle Income Group and Higher Income Group categories to be allotted under the hire purchase scheme and shall not be made applicable to other category of allottees, whether residential or commercial. No reservation shall be applicable in case of sale of property by auction.

2. The spill over unsuccessful applicants in any of the reserved categories shall not be considered again in the general pool.

3. Where no house is available for women applicants) in any of the reserved category, registered women applicant(s) under that reserved category shall be considered along with general applicants of that reserved category.

The employees of autonomous bodies like university, employees of District Rural Development Agency and employees of the Cooperative Federations except Haryana State Cooperative Banks are not eligible for reservation under category 1.

9. A perusal of Regulation 7 (2) would show that there is no reservation for the industrial workers working in that particular industrial estate. The process of allotment, as mentioned in the written statement, shows otherwise. All the tenements, after allotting tenements to women, have been allotted to the industrial workers of Bawal. Such process of allotment of tenements is

contradictory to the scheme of reservation as contemplated in the regulation.

10. We do not find any merit in the argument that since the land was given to the respondents by HSIIDC for providing tenements to the industrial workers at Bawal, therefore, such condition is legal. The industrial workers of Bawal can be treated as a separate category, for which reservation can be provided, if permissible on the touchstone of Article 14 of the Constitution of India, is not a question, which requires our consideration at this stage. As on today, the allotment of tenements by the Housing Board is governed by the statutory regulations. Therefore, any reservation, which is not in terms of the regulations, is not permissible. The Housing Board is not constructing tenements and handing over to Haryana State Infrastructure and Industrial Development Corporation. The Housing Board is constructing tenements and allotting to the interested persons as an independent scheme. Therefore, such allotment has to be in terms of the regulations already notified.

11. Consequently, the orders of cancellation of the registration are quashed. The respondents shall consider the applications, received in pursuance of the advertisement published in January 2010; re-determine the eligibility of the applicants and then proceed to conduct draw of lots in terms of the regulations. It shall be open to the Housing Board to seek option from the applicants, who have been refunded the amount of earnest money, to deposit the same to be considered along with other eligible candidates for allotment of tenements. However, the respondents shall refund 15% of the amount received from the petitioners, so that all the applicants are at par for consideration of allotment of tenements.

Writ petitions stand disposed of accordingly.