
(1994) 01 P&H CK 0044
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7822 of 1990

Mritanjaj Dosaj

APPELLANT

Vs

Haryana Housing Board

RESPONDENT

Date of Decision : 13-01-1994

Acts Referred:

Haryana Housing Board Act, 1971 — Section 44

Citation : (1994) 108 PLR 438

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : H.N. Mehtani, for the Appellant; Jagan Nath Kaushal V.K. Vashistha and Ashok Jindal, for the Respondent

Judgement

V.K. Bali, J.—Mritanjaj Dosaj through present petition filed by him under Articles 226/227 of the Constitution of India, seeks writ in the nature of certiorari so as to quash the decision of respondents in transferring 39th house built by Haryana Housing Board in self-financed scheme in Sector 21-C, Faridabad to Shri S.P. Johra Respondent No. 4. He also seeks direction to be issued to respondent to allot him the aforesaid house.

2. Brief facts, on which the relief aforesaid rests, reveal that Haryana Housing Board framed a scheme known as "Self Financing Scheme" of type I, II and III in Sector 21-C, Faridabad in the year 1986. An advertisement in various newspapers including The Tribune inviting applications on the prescribed form to be accompanied by demand draft of 10% of the tentative cost of the house for its allotment under the said Scheme was given. In accordance with the terms and conditions of the said advertisement, the houses under the Scheme were to be allotted to eligible applicants on the basis of draw of lots, which was to take place within the period specified in the advertisement. Tentative price of Type III houses under the said Scheme was Rs.1,50,000/-. The houses were to be ready for allotment within two years from the date of draw of lots. The price of the house was to be paid by the successful buyer in installments, petitioner, in consequence

of the advertisement aforesaid, submitted his application on the prescribed form duly accompanied by demand draft of Rs.15,000/- and other requisite documents for allotment of house in the aforesaid Scheme (Type III) on July 11, 1986. The application was duly registered for its participation in the draw of lots and provisional registration number for the purpose of draw of lots was given. 38 houses were to be built by respondent-Board at Self Financing Scheme of Type III in Sector 21-C, Faridabad. The draw of lots for the allotment of houses was held in July, 1987. The name of petitioner was at Serial No.44 in the draw of lots. Inasmuch as only 38 houses were to be built in the Scheme aforesaid, the same were to be allotted to first 38 persons. However, after the names of 38 successful allottees, a waiting list was also prepared on the basis of which petitioner was shown at Sr. No. 6. All the 38 successful allottees, however, did not deposit the money in consequence of the notices sent to them for that purpose, thus, the name of petitioner in the waiting list came at Sr. No.1. The construction of Type III houses in Sector 21-C, Faridabad was completed in October/November, 1989 and somewhere in the month of February, 1990 petitioner came to know that Housing Board in fact had constructed 39 houses and in as much as he was at Sr. No.1 in the waiting list, he made enquiries on which he was told that after getting approval of the Chairman of the Board, an intimation would be sent to him. On account of receipt of no reply, he made repeated visits and each time he was assured that he would be asked to deposit the amount for allotment of house in due course of time. However, when such assurance as mentioned above were being extended to petitioner, it came to his notice that Housing Board had decided to allot 39th house to respondent R.S. Johra simply on account of the fact that he had influence in the corridors of the Housing Board. It is this action of the respondent-Board that has been styled to be discriminatory and arbitrary violating Article 14 of the Constitution of India.

3. Mr. Mehtani, learned counsel for the petitioner contends that as petitioner was at Serial No. 1 in the waiting list, there was no choice whatsoever for the respondent-Board to prefer a person whose name was not even included in the draw of lots and who was trying to seek back-door entry only on account of the influence exerted, by him. If the facts as stated above were true, there is no doubt that petitioner would have been entitled to the relief asked for by him but from the written statement filed on behalf of the Housing Board it rather reveals that under the Scheme in question respondent-Board was to construct 50 houses of Type III out of which 12 houses were to be allotted to those applicants who opted to pay the price of the houses in lump-sum and rest 38 houses were to be allotted to those applicants who opted to pay the price in installments. Draw of lots was held for 50 houses. When the lay-out plan was made, it was found that one more house of Type-III could be constructed. Instead of wasting the land, the Board decided to construct one more house but it was not put in the draw for the allotment of Type III houses nor any decision was taken regarding the mode of disposal of the house. Respondent No. 4 was in fact registered applicant and opted for lump-sum payment of the cost of the house but on account of

inadvertent mistake his name could not be entered either in the lump-sum payment category or in the installment category. He made numerous representations for his claim which was considered and found genuine. Consequently, house in question was allotted to him over which no applicant of either category referred to above had a claim.

4. The fact that name of respondent No. 4 was inadvertently excluded when draw of lots was held, has not been controverted. Petitioner has also not been able to prove that respondent No. 4 got the additional house constructed which was ultimately allotted to him, on account of the influence exerted by him. In view of the fact that, respondent No. 4 was preferential applicant as he had opted in his application that he was ready to give the entire amount in lump-sum, it was his claim which required to be protected and it was in this precise direction that the respondent-Board moved. Assuming that respondent No.4 could not get house when the draw of lots of all the houses was held, then the entire draw has to be held had as, admittedly, the name of respondent No. 4 was inadvertently omitted and, therefore, was not considered when the draw was held. That the court would not like to pass such orders which might result in totally nullifying the allotment of so many people who are not even party to the present writ. That apart, petitioner has not been able to make out a where justice and equity might demand cancellation of allotment of house to respondent No. 4. At the most, it can be said that since the petitioner had been waiting all this while and pursuing the case for allotment of house and, particularly, when he was at Serial No. 1 in the waiting list, respondent-Board might consider his case sympathetically for allotment of another house to him, construction whereof might be in offing in near future.

5. With these observations, the present writ is disposed of Parties are, however, left to bear their own costs.

6. Writ petition disposed of.