
(1983) 04 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4936 of 1981

Sajjan Kumar Sharma and another	Vs	APPELLANT
State of Haryana and others		RESPONDENT

Date of Decision : 29-04-1983

Acts Referred:

Citation : (1983) 04 P&H CK 0076

Hon'ble Judges : D.S. Tewatia, J

Bench : Single Bench

Advocate : P.S. Jain, Mr. C.B. Koushik and S.K. Jain, for the Appellant;
Harbhagwan Singh, A.G. Haryana with Mr. G.L. Batra, D.A.G. Haryana and Mr.
Naubat Singh, for the Respondents Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

D.S. Tewatia, J.—Three writ petitions viz., C.W.Ps. No. 4936 of 1981, No. 3416 and 3417 of 1982 involve identical question of law and facts excepting slight variations regarding the date of the application, date of the deposit of the amount etc. Wherever found necessary, reference to facts is made from the C.W.P. No. 4936 of 1981.

2. The common case set up by the petitioners is that the Haryana Urban Development Authority, respondent No. 2 issued an advertisement (annexure P/1) on 28.8.1977 published in the daily Tribune of the said date inviting applications for developed plots with modern amenities located in the Urban Estates at Faridabad, Sonapat, Gurgaon Jind, Hissar, Karnal and Kurukshetra on easy instalments, inter alia on the basis of "first come first served" except for those offering full payment who would get preference over others 15th September, 1977 was indicated to be the date for the start of the sales. The petitioners allegedly in pursuance of the said offer contained in the said advertisement applied for allotment of plots measuring 250 square yards in Sector 2 of Urban Estate, Hissar, on various dates between January, 1981 and 20th June, 1981. The respondents instead of allotting plots to the petitioners on

the basis mentioned in the advertisement (annexure P-1) informed the petitioners vide letter (Annexure P-3) that the respondents had taken a decision to make allotments by draw of lots; that the last date of the receipt of the applications was 10-11-1981; that in case the petitioners were willing for being considered for draw at the enhanced rate of Rs. 140/- per square yard, they were to send their consent along with a bank draft for a given amount before 10.11.1981.

3. The petitioners have impugned the orders of the respondents as conveyed to them vide Memo 4603 dated 20.10.1981 (annexure P-3) and the decision conveyed vide letter 18/21-12-1981 (Annexure P-5) as being illegal and have sought a writ of mandamus directing the respondents to allot plots of the given size to the petitioners on the basis of first come first served as mentioned in Annexure P-1.

4. In reply to the allegations contained in the writ petition, respondents Nos. 2 and 3 have taken the stand that on the date on which the petitioners applied for allotment of 250 sq. yds. plots, no plot of that size was available for allotment; that the plots of 250 sq. yds. (74 in number) became available on 20.6.1981; that the respondent by that date received applications for allotment of 93 plots; that since number of the applicants desiring allotment of plots of 250 sq. yds. exceeded the number of plots available for allotment, the respondent No. 3 decided to make allotment by draw of lots and made its decision known by advertisement dated 11.10.1981.

5. In regard to the allegation that some persons who had applied after the petitioners were allotted plots of size of 250 sq. yds. It was mentioned that no person who had applied for 250 sq. yads. plots had been allotted any plot after December, 1980 in the general category; that the persons mentioned in the petition had applied for plots of 350 sq. yds. and they were allotted such plots in the month of July/August.

6. Before proceeding with the consideration of rival contentions advanced on behalf of the parties, it would be appropriate to notice (Annexure P-1) in its entirety for the whole case of the petitioners appears to rest on this document.

ANNEXURE "P-1" HARYANA URBAN DEVELOPMENT AUTHORITY Offers

Free Hold Residential Plots in the Urban Estate at Faridabad, Sonapat, Gurgaon, Jind, Hissar, Karnal & Kurukshetra on easy instalment basis.

These plots are fully developed having modern amenities viz. Road Sewerage Water Supply under Ground Drainage Electricity & Shopping etc.

General Conditions of allotment

First come first served except for those offering full payment who will get preference over others.

10% extra for preferential plots.

20% extra for plots facing Delhi Mathura Road at Faridabad.

Applications should be accompanied by a draft equivalent to 10% of the provisional price of the plot, in the name of Estate Officer concerned payable at any schedule bank in the concerned Urban estate.

15% payable within 30 days of the date of the allotment. Balance is payable either in lump sum within 60 days of the issue of allotment letter without interest or in six equated annual instalments with interest.

SALE STARTS FROM 15.9.77

For full details regarding the application forms, sizes of plots, Sectors, price, rate of interest and other terms and conditions of allotment; price, rate of interest and other terms and condition of allotment please get in touch with the Estate Officer concerned or Chief Administrator Haryana Urban Development Authority, Sector 18-A, Chandigarh personally or by sending a self addressed envelope of size 10 cm x 25 cm bearing 25 Paise stamp.

Applications for plots at Gurgaon should be sent to the Estate Officer, Rohtak.

7. Mr. P.S. Jain, learned counsel for the petitioners, who primarily addressed on behalf of the petitioners, canvassed that the applications made by the petitioners for allotment of plots were to be treated in pursuance of the advertisement (Annexure P-1) and as such the same constituted the terms of the contract between the petitioner and the respondent No. 2 that the change either in regard to the criteria of allotment or in the price amounted to breach of contract and that the respondent being a public authority was bound to abide by the contract and was estopped from going back on the said contract in view of the ratio in Union of India v. Anglo Afghan Agencies AIR 1968 S.C. 718.

8. On the other hand, Mr. Naubat Singh, appearing for respondent No. 2, has urged that the petitioners have no legal right for issuance of writ of mandamus as no right statutory or otherwise vested in them and no corresponding legal duty requiring respondent No. 2 to allot plots to the petitioners existed; that the advertisement (Annexure P-1) did not constitute a contract between the petitioners and the respondent and that the applications were not made in pursuance of the said advertisement; that in any case the advertisement was issued at a time when the Regulations Haryana Urban Development (Disposal of Land and Buildings) Regulations 1978 (hereinafter called the Regulations) were not in force; that after the promulgation of the said Regulations, it is these regulations or the advertisements issued under the Regulations that would govern the rights of any applicant applying for allotment of plots; that the terms of Annexure P-1 at best were to hold good till the promulgation of the said regulations, that is, till then it could be said that no other option was available to respondents in regard to the criteria for the allotment of plots but the one of "first come first served" as envisaged in the said advertisement, but after the promulgation of the said regulations by virtue of regulation No. 5(3) respondent

No 2 could make allotment on the basis of draw of lots also; that since plots of the requisite size were not available for allotment on the date on which the petitioners submitted their applications and the plots of the given size became available for allotment only on 20.6.1981; the date by which the demand for such plots had far exceeded the number of plots available, it was open to the respondent No. 2 to exercise the other option of allotting plots in terms of sub-clause (3) of the clause 5 of the Regulation, which is in the following terms :--

(3) In the case of residential plot/building when the application has been so tendered, the Estate Officer or such other officer as may be empowered, shall subject to such directions as may be issued by the Authority in this behalf, consider the applicant for allotment of a plot or building of the size applied for. The allotment be on "first come first served" basis or by draw of lots, as may be determined by the Authority and the successful applicant (s) shall be sent allotment letter in form "C or "CI" by registered post; provided that for the purposes of proper planning and development of an urban estate, land or building may be reserved for groups or individuals or for persons practising any profession or carrying on any occupation, trade or business or for such other category of persons. Government Departments and Institutions, charitable institutions and other organisations of public welfare, as may be decided by the Authority from time to time.

9. I am of the considered opinion that after the promulgation of the Regulations, the criteria for allotment of plots would not remain confined to the one mentioned in Annexure P-1. If for the sake of argument, it is to be accepted that the said advertisement remained operative even after the promulgation of the Regulations and it is to be treated as having been issued under the said regulation, the allotment of plots by draw of lots shall be valid as the said criteria also stood incorporated therein by force of law with the result that it would be open to the respondent-authority to decide in view of the exigency of the given situation as to whether allotment was to be made on the basis of "first come first served" basis or on the basis of draw of lots. If the applications are less than the number of plots available, then obviously the question of adopting the criteria of draw of lots would not arise. That question would arise only if the applications for plots exceeded the number of plots available. In a situation where applications are being received continuously and the plots are being made available continuously and there is no offer to invite applications for allotment of given number of plots by a given date, then such option has to be exercised by the allotting authority on the date it decides to make allotment and it would be seen on that date as to what criteria should be adopted.

10. In the present case 74 plots became available for the first time on 20.6.1981. Earlier thereto when the applications of the petitioners were received, no plots were available of the given size. On 20.6.1981 the applications for allotting 250 sq. yards plots far exceeded the number of plots. In that situation, it was open to the authority to decide as to whether the said plots were to be

allotted on the basis of draw of lots or otherwise. The government took the position that not only plots which became available for allotment on 20.6.1981 were to be allotted on the basis of draw of lots but it was to charge higher price than was hitherto charged and, therefore, it invited applications for the allotment of the said plots on 11.10.1981. Persons in the position of petitioners who had applied for allotment of 250 sq yds. plots when no such plots were available and had also deposited 10 per cent on the basis of the old price in fairness to them were required to bring up their deposit at the rate of 10 per cent on the basis of the changed price by 10.11.1981 so that their names could be included in the list meant for the draw of lots.

11. A Full Bench of this Court in *Surjit Singh v. State* AIR 1980 Pb. & Hary. 65, has clearly ruled that an applicant by merely submitting an application along with 10 per cent of the tentative price of the plot does not become entitled in law to claim allotment as a matter of right. By doing so, he merely gets entitlement to have his application considered for allotment. What criteria for allotment has to be adopted, that is for the allotting authority. The following observations of their Lordships in this regard may be noticed with advantage :--

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.

12. As regards the point of discrimination in regard to the allotment of plots of 350 square yards it is alleged that the criteria followed was "first come first served" even though there were more applications than the number of plots, while a similar criteria was not followed in regard to allotment of plots of 250 square yards. In this regard, the stand taken by the respondent is that there were 5 applications; one of the applicants had applied in the alternative for 250 square yards plots also and that by inadvertance that application along with those who had applied for both kinds of plots was overlooked and taking into consideration the fact that there were four plots and only four applications, the allotment was made to such applicants.

13. In view of the above, it cannot be said that the authorities had deliberately discriminated against the petitioners in the matter of criteria for allotment of plots.

14. For the reasons aforementioned, I find no merit in these petitions and dismiss the same, but with no order as to costs.