

(1998) 01 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11871 of 1997

Subedar Anokh Singh

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 07-01-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1998) 119 PLR 61 : (1998) 3 RCR(Civil) 206

Hon'ble Judges : P.K. Jain, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Ashok Aggarwal and Amit Rawal, for the Appellant; Rupinder Khosla, D.A.G. for Respondent No. 1 and Anil Malhotra, for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—This is a petition for directing the respondents to consider the petitioner's name for allotment of a plot measuring 500 square meters at S.A.S. Nagar (Mohali).

2. The facts necessary for deciding whether the petitioner is entitled to the relief prayed for by him are that the petitioner, who is an ex-serviceman, applied for allotment of a plot measuring 500 square yards in the Urban Estate of Amritsar in pursuance of the notice issued by the Estate Officer, Urban Estates, Punjab on behalf of the Directorate of Housing Urban Development Punjab for allotment of plots to the officers and members of the Defence Services and B.S.F./C.R.P., C.R.P.F, I.T.B.P., S.S.B. etc. After he had waited for 12 years, the petitioner was informed by the Estate Officer, Urban Estates, Punjab that the Urban Estate has not been set up at Amritsar and, therefore, he may opt for transfer of the application to one of the existing Urban Estates, namely, S.A.S. Nagar (Mohali), Ludhiana, Jalandhar, Patiala and Bhatinda. After waiting for another 2 years, the petitioner was told by the Estate Officer, P.U.D.A., Jalandhar that no plot is available in the Urban Estate at Jalandhar under the Defence Personnel Category. He, therefore, requested for transfer of the application to the Urban Estate at

S.A.S. Nagar (Mohali). The respondent No. 6 forwarded the petitioner's application to the General Manager (Allotment), P.U.D.A., Chandigarh. The petitioner also made representations to the General Manager (Allotment), the Chief Administrator and the Chairman, P.U.D.A., Chandigarh. However, what he got in the reply was the letter Annexure P-7 dated 28.02.1997 which was accompanied by a cheque of Rs. 2,000/- representing the earnest money deposited by the petitioner. The petitioner made further representations to the respondents No. 3 to 6 but failed to persuade them to consider his case for allotment of plot reserved for Defence Personnel in the Urban Estate at Mohali. This is the reason why he has invoked the writ jurisdiction of the High Court for directing the respondents No. 2 to 7 to allot a plot to him at S.A.S. Nagar (Mohali). His plea is that the respondents have played fraud upon him by making a wrong representation that he can opt for Urban Estate at Jalandhar, even though they knew that no plot has been reserved for Defence Personnel in the Urban Estate at Jalandhar. His further contention is that the ex-servicemen, who had sought transfer from Amritsar to S.A.S. Nagar (Mohali) have already been allotted plots but in his case an altogether different attitude has been adopted by the respondents resulting in denial of his right to equality before law.

3. In the written-statement filed on behalf of the respondents, it has been pleaded that having exercised option for allotment of plot in the Urban Estate at Jalandhar, the petitioner cannot now seek change of option and request for allotment of plot in the Urban Estate at Mohali. The respondents have pleaded" that the petitioner is bound by the option exercised by him for allotment of plot in the Urban Estate at Jalandhar. According to the respondents, the refund of earnest money is fully justified because no plot in the Defence Personnel quota is available in the Urban Estate at Jalandhar. The respondents have also pleaded that the mere submission of application by the petitioner did not create a right in his favour to be allotted a plot and as such he cannot make grievance against the refund of the earnest money. They have contested the petitioner's plea of discrimination by stating that each Urban Estate constitutes a separate class and as. the petitioner had opted for the Urban Estate at Jalandhar, he cannot claim parity with the applicants who had opted for the Urban Estate at Mohali. They have also pleaded that in the absence of any provision for transfer of the application from one Urban Estate to another Urban Estate, the petitioner cannot seek issuance of mandamus directing the respondents to consider his claim for allotment of plot in the Urban Estate at Mohali. In the replication, the petitioner has, alleged that the respondents are guilty of having acted in violation of the interim order passed by the High Court on 27.8.1997, because instead of considering the petitioner for allotment of plot in the draw of lots held after 27.8.1997, the respondents refunded the earnest money once again vide letter dated 5.9.1997.

4. The question whether or not the petitioner is entitled to seek allotment of plot reserved for Defence personnel has to be decided in the background of the admitted facts that the petitioner and other ex-servicemen, who had initially

applied for allotment of plots at Amritsar in pursuance of the notice Annexure P-1 issued in the year 1977, were given option in the year 1994 for transfer of their applications to any of the 5 Urban Estates, namely, S.A.S. Nagar (Mohali), Ludhiana, Jalandhar, Patiala and Bhatinda because the Punjab Housing Development Board (predecessor of the respondents No. 2 to 7) did not set up Urban Estate at Amritsar. Although, the availability of the plot for Defence Personnel in the Urban Estate at Jalandhar was implicit in the action of the Board to give option to the applicants to apply for any of the 5 Urban Estates including Jalandhar, the fact of the matter is that the plots reserved for Defence Personnel were not available in that urban Estate. The petitioner was informed about the true factual position, namely, the non-availability of plot meant for Defence Personnel in the Urban Estate at Jalandhar after 2 years of his exercising the option in pursuance of notice Annexure-P2. In view of this, we hold that the Punjab Housing Development Board, the respondent No. 2 and the officers concerned made false representations to the petitioner and other Defence Personnel which resulted in depriving them of an opportunity to seek allotment of plots reserved for them. For a period of 17 years, the petitioner was made to believe-that he will be considered for allotment of plot in the Urban Estate at Amritsar, though no such Estate was ultimately created at Amritsar. From 1994 to 1996, the Board and other respondents kept the petitioner waiting for allotment of plot by giving a false hope to him that his application will be considered for allotment of plot in the Urban Estate at Jalandhar. The Board gave option to the petitioner to seek transfer of his application to the Urban Estate at Jalandhar, even though it must have been known to the officers concerned that no plot has been reserved for Defence Personnel in the Urban Estate at Jalandhar. As a logical corollary to the above mentioned conclusion we hold that the petitioner has been discriminated vis-a-vis other applicants who had initially applied for allotment of plot in the Urban Estate at Amritsar and who opted for in the Urban Estate at S.A.S. Nagar (Mohali) in pursuance of the notice Annexure P-2. If the petitioner was told that in the Urban Estate at Jalandhar, plots have not been reserved for Defence Personnel, he may have opted for such Urban Estate where the plots were available for persons like him. By not disclosing the correct facts to the petitioners, the respondents created a situation in which the petitioner has been deprived of his right to be considered for allotment of plot in the quota of Defence Personnel. Thus, the respondents are guilty of violating the petitioner's right of equality before law as enshrined in Article 14 of the Constitution by treating equals unequally.

5. The plea of estoppel raised by the respondents is without substance. The exercise of option by the petitioner for transfer of his application from Amritsar to Jalandhar was based on a mis-leading representation made by the Board that the petitioner can seek allotment of plot in the Defence Personnel Quota at Urban Estate Jalandhar. Therefore, the petitioner cannot be held bound by the option exercised by him and he cannot be estopped from seeking transfer of his application to the Urban Estate at S.A.S. Nagar (Mohali). In the facts of this case,

his plea for transfer of application to the Urban Estate at S.A.S. Nagar (Mohali) has to be treated as the first exercise of option by the petitioner pursuant to the notice Annexure P-2.

6. We are also of the opinion that the petitioner deserves to be compensated for the harassment caused to him due to the false and mis-leading representations made by the authorities like the Punjab Housing Development Board, the respondent No. 2 and their officers. He has been deprived of the right of consideration for allotment of plot for a long period of 19 years. It is unfortunate that the respondents subjected the petitioner to this treatment ignoring the fact that he has devoted his life in the service of the nation. Atleast, qua the persons belonging to the category of the petitioner, the public authorities are expected to be more sympathetic. A little application of mind by the officials of the P.U.D.A. would have saved the petitioner from the burden of this litigation. If they had realised that the petitioner had suffered due to the fault of the officials and given him option to seek allotment of plot in S.A.S. Nagar (Mohali) or any other Urban Estate where the plots are reserved for Defence Personnel, the petitioner may have been relieved of the agony and sufferings to which he was subjected for 19 years. This having not been done, we deem it appropriate to compensate him by award of costs.

7. In the result, the writ petition is allowed with cost of Rs. 2,500/-. The respondents No. 2 to 7 are directed to give opportunity to the petitioner to exercise fresh option for allotment of plot in any Urban Estate including the Urban Estates mentioned in Annexure P-2 where plots are available for ex-servicemen. This shall be done within 15 days from today. Thereafter the petitioner's application for allotment of plot shall be considered by the respondents and on being successful, he shall be allotted plot at the same rate at which the applicants who had given option in pursuance of Annexure P-2 for transfer of applications to the Urban Estates other than at Jalandhar have been allotted plots.

8. In order to obviate the necessity of litigation by similarly situated persons, we direct the respondents to give opportunity of fresh option to all such applicants who had opted for the Urban Estates at Jalandhar in pursuance of Annexure P-2. This the respondents shall do within a period of one month from the receipt of certified copy of this order.