

(2000) 05 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Revision No. 3270 of 1999

Vijay Cooperative Group Housing Society Ltd. Gurgaon	APPELLANT
Vs	
Haryana Urban Development Authority	RESPONDENT

Date of Decision : 12-05-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 05 P&H CK 0013

Hon'ble Judges : Swatanter Kumar, J;Bakhshish Kaur, J

Bench : Division Bench

Advocate : R.S. Mittal, Mr. Sudhir Mittal and Ms. Palika Mongo, for the Appellant; O.P. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

Swatanter Kumar, J.—Learned Counsel for the Petitioner while impugning the "draw of lots" held by Haryana Urban Development Authority, hereinafter referred to as HUDA, for the purpose of brevity, in respect of group housing scheme has raised the following contentions on behalf of the Petitioner in this writ petition under Articles 226/227 of the Constitution of India, for the consideration of the Court:

- i) Respondents are bound by the terms and conditions of the brochure and they having failed to declare the modus-operandi to be adopted in relation to draw of lots of the plots, the action of the Respondents is bad in law.
- ii) Subsequent to the publication of the brochure 60 acres of land had come to the pool of HUDA for allotment of plots to group housing societies in Gurgaon and the same has not been proportionately allotted to various categories in terms of the prescribed percentage, which resultantly vitiate the allotment.
- iii) The action of the Respondents is arbitrary and, thus, is liable to be quashed.

2. In order to examine the merits of these contentions reference to basic facts

would be necessary. The Petitioner is a Co-operative Group Housing Society with 160 members. The bye-laws of the Society are stated to be in conformity with the prescribed bye-laws of the Registrar, Co-operative Societies as well as the Model Bye-laws of the Group Housing Societies. HUDA had announced a housing scheme for the whole state of Haryana known as "Group Housing Scheme, 1988." In all 14 different schemes were floated for different districts. This also included the town of Gurgaon. Under the scheme Cooperative Group Housing Societies, out of which 50 acres was reserved for general category, 10 acres for Economically Weaker Sections Cooperative Societies, 10 acres for cooperative societies of employees of Haryana Government, its Boards and Corporations, Haryana Universities and retired employees of Haryana Government departments/its Corporations and Under takings/University employees and 10 acres for Welfare Housing Organisations of Central Government employees/its Corporations and Undertakings/University employees. A copy of the brochure published by HUDA has been annexed as Annexure P/1 to the petition. It was declared on behalf of HUDA that an applicant could be allotted 1.25 acres of land for development of the cooperative group housing society subject to their satisfying the eligibility criteria. As per Clause 2.1 of the brochure, a society was to have at least 40 members. The Petitioner claims that it fulfilled all the criteria and had submitted an application for allotment of a, plot of the size of 5 acres. In addition to the Petitioner other societies had also applied for plots of different sizes under the reserved category. As there were large number of applicants the Respondents held draw of lots. Respondents held draw of lots at Gurgaon on 14.2.1999. In its draw of lots other societies under the general category were allotted plots but Petitioner was not successful in getting a plot.

3. The Petitioner contends that it was only on 5.2.1999 that he learnt about intention of the Respondents to adopt the novel and unique procedure of draw of lots for allotment of plots. It was an arbitrary procedure. The Petitioner if would have known that the draw of lots would determine the allotment of plot, he instead of floating one society would have floated four societies each with more than 40 members and would have applied for allotment of one acre of plot to each society. The change of policy, thus, has caused prejudice to the Petitioner. As already noticed that subsequent to the publication of the brochure nearly 60 acres of land had been added by HUDA for allotment purposes to general as well as various reserved categories in the district of Gurgaon. The HUDA, thus, had increased the extent of land available for each category in terms of Clause 1 of the brochure "Group Housing Scheme, 1998". From the land available for general category under the original broacher, which was 50 acres, it was increased to 94.6 acres and likewise where for cooperative societies of Central Government and State Undertaking the land from 5 acres was increased to 14 acres and that welfare housing organisation of the Central Government, Corporations etc. it was increased from 10 to 23.5 acres, for the cooperative societies of employees of Haryana State it was increased from 10 to 11 acres and for economically weaker section societies it was increased from 10 acres to 13 acres. The Petitioner is

aggrieved from both these actions of the Respondents.

4. Upon notice, the Respondents had filed written statement and they took up a specific plea that the procedure to be followed for allotment of plots was declared in advance by a committee of officers and much prior to the conduct of draw of lots. Copy of the announcements made before the draw of lots has been annexed to the reply as Annexure R.1. The Respondents claim that they have made the allotment in accordance with their terms of the brochure and their action is neither arbitrary nor discriminatory, It is also stated that the HUDA had increased the additional land made available to them for allocation of societies upon due consideration of the various matters and the need of the public at large. They have acted in public interest and the Petitioner has suffered no prejudice in any manner, whatsoever. They pray for dismissal of the writ petition.

5. It must be noticed that no rejoinder was filed by the Petitioner to the written statement filed on behalf of the Respondents.

6. In the light of the above facts now we will proceed to discuss the merit of the submissions made on behalf of the Petitioner, The facts are really not in much dispute in the present case. The Petitioner was eligible to apply for allotment of the plot and had admittedly submitted the application before the last date of submission of applications as required according to the brochure by 31.8.1998. Clause 1.5 of the brochure deals with the reservation and empowers HUDA to make such reservations. Under Clause 2.1 the Cooperative Society applying under the above categories had to have at least 40 members. The other two relevant and material clauses which would have a direct bearing on the matter in issue before us are Notes to Clause 1 and Clauses 4.1, 8.3 and 8.4, which read as under:

Notes: i) The above categorization of acres is tentative and interchangeable to 6 other categories, if required.

ii) For Urban Estates other than Gurgaon, Faridabad and Panchkula. Welfare Organisation will be allotted land for group housing on first come first serve basis.

Sites will be allotted by HUDA under this scheme to the eligible co-op. Group Housing Societies (organisations) registered with Registrar, Co-operative Societies, Haryana and who apply to HUDA for registration and allotment of land under this scheme within the stipulated period for the construction of flats. The scheme does not envisage allotment of plots to the individual members.

As and when additional land is available in these or some other towns, the same would be announced separately.

Societies/organisations being allotted land by HUDA under this scheme will not be required to obtain a Licence under the Haryana Development Regulations of Urban Areas Act 1975 (Act No. 8 of 1975).

4.1 Land measuring 1 acre to 5 acres may be allotted in Urban residential sector

or area earmarked for group housing to the societies covered under the eligibility conditions mentioned in the Clause (2).

8.3 The Chief Administrator, HUDA would get these applications examined and assess the land requirement of societies/organisations after the closure of the Scheme. The applications found in order would be accorded priority by draw of lots or as may be decided by Chief Administrator HUDA.

8.4 After the last date of receipt of application prescribed in this scheme, the scheme GHS-98 will be closed and after the draw the earnest money will be refunded to unsuccessful societies. No interest shall be payable against the earnest money so deposited.

7. In the light of the above Clauses of the brochure we would revert back to the contentions raised by counsel for the parties. The contention No. (i) raised on behalf of the Petitioner is based upon misreading and misconstruction of the relevant terms and conditions of the brochure and the law governing the subject. It is the pleaded case of the Respondent to which no rejoinder has been filed on record that the draw of lots has been held in consonance with the terms and conditions of the brochure and as per announcement-made before draw of lots (Annexure R.1 to the reply filed by the Respondents). Annexure R. 1 is not a merely typed copy of the announcement but has been signed by a team of senior officers of HUDA. Clause (4) of Annexure R,1 clearly provided in furtherance to Clause 8.4 of the brochure that the final allotment would be made by draw of lots. Under Clause (4) of Ex. R.1 slips were to be filled in mentioning the name of the society, size of the plot, application number etc. All these slips were put in a container. Thereafter applicants were allotted plots of the size required by them of lots. This process continued till land under that category was exhausted. The expression "draw" occurring in Clause 8.4 of the brochure without doubt indicates that the authorities concerned had duly declared that there shall be draw of lots of the applicants. The expression "draw" must be read and construed in conjunction with the other clauses of the brochure and its scheme. We find it very difficult to accept the arguments that the modus-operandi adopted by the Respondents in conducting the draw of lots was contrary to the brochure or declared policy of HUDA.

8. The other limb of the same submission that the applicant had a preferential right for allotment of the plot as he had applied for a plot of five acres and was the only person in that category. This submission is equally unfounded. The terms of the brochure had specifically provided that an applicant could apply for a plot of land measuring 1 to 5 acres, which may be allotted in urban residential sector or the area earmarked for Group Housing Societies to the applicants covered and eligible as per the conditions of the brochure. Eligibility of the applicant is not disputed. It is not possible to construe from any of the conditions of the brochure and more particularly the afore-noticed conditions that the land was to be allotted in groups made out on the strength of area of the plot requested by the applicant society.

9. It was brought to our notice during the course of hearing that there were 208 applicant societies who had applied for different kinds of plots measuring between 1 to 5 acres of land and ultimately 115 applicant-societies were allotted the plots as per the size requested and thereafter the land available under the general category exhausted. As already noticed, process of allotment by draw of lots continued till the total land available under general category was exhausted. Till then the name of the Petitioner-Society was not picked up in draw of lots. Obvious result thereof was that the Petitioner-Society was not allotted plot. The method of determining priority as disclosed under the instructions and Clause 8.3 of the brochure was to be determined by draw of lots. The Chief Administrator, HUDA had issued instructions and the announcement before draw of lots was specific and definite in regard to the manner in which the draw of lots was to be conducted. We are unable to see any arbitrariness or unjustifiable act on the part of the Respondents in holding the draw of lots of the applicant society under the general category though asking for different sizes of plots by a common draw of lots. It would rather help to serve the public purpose namely more societies would be able to get the plots rather than one or two odd societies getting huge chunk of land. In any case, it cannot be termed as an action opposed to policy of the State or public interest as the case may be. Where-ever there were more applicants and had asked for land in excess of the prescribed/allotted land under Clause 1, inevitable result even otherwise would be decision by draw of lots and such a decision would be in consonance with the principles of fair play.

10. The concept of the competence of the government or authorities concerned to alter or change its policies in the larger public interest or as per its administrative needs and situation created subsequent to the declaration of policy, is no more *res integra* and has been settled by the Hon'ble Supreme Court of India in the case of *Paradise Printers and Ors. v. Union Territory of Chandigarh and others*, (1988) 93 P.L.R. 400 (S.C.) and *State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others*, . In the case of *Vijay Bahadur Singh* (supra) the Supreme Court held as under:

Moreover, the Government is entitled to change its policy from time to time according to the demands of the time and situation and in public interest and such a change, subsequent to the auction but before its confirmation, may be sufficient justification for the refusal to accept the highest bid. In the present case, the decision to allot the forest lots to the Forest Corporation was in conformity with the legislative policy and the earlier decisions taken by the Government to implement it. It was no more than a revision to a policy decision already taken and was a good and sufficient reason for setting aside the auction. The circumstance that the Corporation may not be able to pay the same price as forest contractors, would not make the decision of the Government arbitrary and cannot be a reason for denying the Government the right to give effect to the legislative policy.

11. The decision and the decision making process of the public authorities is

open to judicial review within its limited scope in the case of Chandigarh Housing Board v. K.K. Kalsi and others, 1996 (2) All IJ 554, a Division Bench of this Court held as under-Held - "the decision making process and the decision of the authorities taken thereupon are certainly open to judicial review, but what is more material is the extent of judicial review. Distinction has to be drawn between appellate authority, appellate Court and the courts exercising such powers under writ jurisdiction. If the basis of the decisions are apparently unreasonable, wholly irrational, unfair, arbitrary or erratic, the Court would interfere in such process and consequently interfere in the action taken pursuant thereto, but once a proper and satisfactory explanation is tendered, then it may not be permissible for the Court to go into the niceties of accountancy and minute details of amounts in such cases.

12. Even if we assume for the sake of arguments that there has been a slight change in the declared policy of HUDA and the terms and conditions declared at the time of draw of lots vide Annexure R.1 to the reply, even then such a change in view of the authorities concerned per se would not offend any accepted norms of jurisprudence, more particularly when such action is neither malafide nor arbitrary. The government or the authorities of the State are normally at liberty to change their policies in larger public interest or as per the needs of the administration. The exception to this basic rule has been held to be a very few and limited one. The Hon^{ble} Supreme Court of India in the case of Sher Singh and Others Vs. Union of India (UOI) and Others, commented upon this aspect of the matter as follow:

As a matter of fact the Courts would be slow in interfering with matters of Government Policy except where it is shown that the decision is unfair, malafide or contrary to any statutory directions. There will be no justification for the Court to interfere with the policy of the Government merely on the ground of change in the policy.

13. Further more, submission of application in furtherance to the brochure published by the authority even on the draw of lots does not vest an indefeasible right in the allottee for allotment at the price or size prevailing at the date of draw of lots. In the case of Delhi Development Authority Vs. Pushpendra Kumer Jain, where the Hon^{ble} Apex Court was concerned whether draw of lots vests an indefeasible right in the allottee and the allottee was entitled to get a plot on the price as prevailing on the date of draw of lots while answering the same in the negative held as under:

We are unable to find any legal basis for holding that the Respondent obtained a vested right to allotment on the draw of lots. Since D.D.A. is a public authority and because the number of applicants are always more than the number of flats available, the system of drawing of lots is being resorted to with a view to identify the allottee. It is only a mode, a method, a process of selection. It is not allotment by itself." 14 Still in another case titled as M/s. Bharat Wools, Ludhiana Vs. State of Punjab and others, this Court has held action of the authorities to

expend the scope of applicants as a result of long lapse of period was not unjustifiable and did not operate as a bar against the authorities concerned. It was held as under:

However, I do not find any merits in the contention of Shri Mahajan that the Allotment Committee or the Corporation or for that reason the Government should be bound down to restrict the zone of consideration to limit to the parties who had applied in the year 1994. A period of more than one year and six months has elapsed since the issue of advertisement inviting applications for allotment of plots. The prices of the land have increased substantially. Therefore, it would be wholly unreasonable to exclude new competitors from the zone of consideration and force the Respondents to allot the plots only from amongst those who had applied in the year 1994 and that too on the prices enumerated in the advertisement dated 8.6.1994. In such contractual matters, what is more important is the element of public interest and the public interest warrants that the Government and the Corporation get maximum price and the most competent entrepreneur is given opportunity to set up expend industry. Therefore, there is no reason for compelling the Respondents to make allotment of plots only from amongst the seven applicants who had applied in the year 1994.

15. Learned Counsel for the Petitioner stretched the principles of estoppel to come to the aid of the Petitioner against HUDA. Firstly, we have already construed the various terms and conditions of the brochure Annexure R. 1 on record. There is no change in the policy of allotment, much less a material change which would prejudice the interests of the Petitioner in any manner, whatsoever. The principle of estoppel being a principle in evidence and of equity always tills in favour of the public policy and public interest. The government is even free to modify its industrial policies and grant, withdraw or modify fiscal benefits from time to time in consonance with its schemes and notified matters despite the fact that such benefits might have been granted earlier (Arvind Industries and others Vs. State of Gujarat and others, .

16. For the principles of estoppel to be applied to the facts of the case, the applicant must show if any serious prejudice caused to special equities in his favour. It is the misconception of the Petitioner that he becomes a class in himself merely by applying for a plot of five acres which was more than the size of the plot applied by other applicant-societies. This self created hypotheses of the Petitioner is not substantiated on record and is a mere wishful self-serving thinking on the part of the Petitioner. The averments of the Petitioner that he constituted only one society of 140 members instead of four societies of 40 members each, with an intention of applying for a five acres of land does not bind the authorities by any stretch of imagination to allot him the said plot in contravention of its policies and declared terms of draw of lots.

17. A half hearted attempt was made by the Petitioner to convince the Court that the Petitioner had a vested right for allotment of the said plot on the doctrine of

legitimate expectancy. The doctrine of legitimate expectancy would not even be attracted in the facts and circumstances of the present case. From the above narrated fact and the principles of law enunciated, the Petitioner does not even satisfy the basic ingredients for invoking such principles. The declared policy of the Government must be construed and read as it stands and not as it was understood by the Petitioner for his personal benefits. We do not even consider it necessary to discuss this issue in any great details on the facts of the present case.

18. The allocation of the additional land completely fell in the domain of the authorities concerned. The authorities for valid and proper reasons bifurcated the additional land made available to them for such purpose to different societies falling under different categories. The authorities were fully aware about such a policy and therefore, in proviso to the note of Clause 1 (Main Features of the G.H.S.-1998) it had categorically stated that as and when the additional land is available in this or other towns, the authority to reserve plots for different categories was vested in the Respondents under Clause 1.5 and the competent authority could alter the same. The discretion to do reservation has a direct nexus to the number of applications received by the department and the comparative need of the particular class for which the land was being reserved. These are the matters of public policy of the State and would normally be not interfered with by the Court, unless such reservations are opposed to constitutional provisions or protection to public policy of the State or otherwise wholly erratic, arbitrary or unreasonable.

19. It has been specifically stated in the reply filed by the Respondents that the additional land was distributed amongst other categories including the general category as per revised distribution of land scheme of the government. The draw of lots was only held where the area demanded was in excess of available area. Annexure R.3 has been attached to the reply to show that a meeting was held under the chairmanship of the Administrator. HUDA, who is otherwise competent and in the terms of the brochure was vested with the powers to hold the draw of lots. The re-allocation of the land to various categories was made by the committee. Nothing has been brought to our notice which could indicate that the action of the Respondents was beyond their authority or was not within the four corners of law. The minor adjustment per se would not frustrate the policy itself. Similar view was taken by another Division Bench of this Court in the case of C. Narayan and Another Vs. Chandigarh Housing Board, wherein it was held as under:

We have already indicated that some adjustment within the four corners of law, rules and regulations and the scheme cannot result in frustration of the scheme and the action of the Board cannot be said to be mala fide. The reservations have been duly provided for in the scheme and the regulations including provisions for discretionary quota. There is no challenge to the scheme or regulations No. 25 and 26, which empower the Board in this behalf. A Division

Bench of this Court in the case of *Paradise Printers. Chandigarh and Ors. v. The Union Territory Chandigarh and others*, (1988) 93 P.L.R. 400 (S.C.). while following the observations of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, . held as under:

After hearing the learned Counsel for the parties, we are of the view that the action of the Chandigarh Administration in not giving full effect to the earlier policy is not arbitrary as before the plots could be allotted to the Petitioners there was reasonable basis for revising the policy as at that time also there were more number of printing press owners who wanted plots.

20. While we find no merit in any of the contentions raised on behalf of the Petitioner, where in fact the Petitioner himself participated in all the stages of allotment of plots to Societies without prejudice and demur and after being unsuccessful has turned up before the Court to challenge the same, cannot escape the attention of the Court. The principle of acquiescence would operate as an obstacle in the way of the Petitioner from seeking relief from the Court, particularly under Articles 226/227 of the Constitution of India. There is no dispute to the fact that the "slip in furtherance to the brochure and Annexure R.1" relating to the name of the Petitioner was put to draw of lots, but the Petitioner remained unsuccessful like 93 other applicant-societies. The Petitioner himself claims that he came to know about the decision of the Respondent authorities to hold the draw of lots in the afore-stated manner (Annexure R.1) on 5.2.1999, while the draw of lots was admittedly held on 14.2.1999 and he took on steps to challenge the same. On the contrary he participated without any protest or demur, thus, becoming a party to the declared method of draw of lots.

21. For the reasons afore-stated we see no merit in this writ petition and dismiss the same with costs, which are assessed at Rs. 2000/-.

Sd/- Bakshish Kaur, J.