

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 13613 of 1991
Date of Decision:-06.01.2015**

Smt. Kartar Kaur (died) through LRs Amrik Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

Present:- Mr. D.S. Brar, Advocate
for the petitioners.

Mr. Manoj Bajaj, Additional A.G., Punjab
for respondent No.1-State.

Mr. S.C. Pathela, Advocate
For respondent No.2.

HEMANT GUPTA J.(Oral)

The petitioners are claiming writ of mandamus for directing the respondents to allot the plots under the Scheme advertised and also for quashing of the advertisement (Annexure P-9).

Initially, the respondent-Improvement Trust invited applications for allotment of residential plots of different measurements in the Trust Scheme known as Bela Road, Development Scheme Part-I, Ropar, on 16.7.1989. Petitioner No.1 applied for a plot measuring 250 square meters i.e. 300 square yards; whereas petitioner No.2 applied for 350 square meters i.e. 420 square yards respectively on the prescribed forms with

earnest money. The draw of lots for the allotment of plots was held on 23.10.1989 but the petitioners were not successful. The consent of petitioners was sought to include their applications for the draw of lots for Bela Road Part-II Scheme as and when plots are to be sold. As per the petitioners, they gave their consent for allotment of plots in Bela Road Part-II Scheme. The petitioners claim that they continue to represent for allotment of plots but it was on 4.7.1991 vide Annexure P-9, an advertisement was published inviting the applications for allotment of plots by the Improvement Trust in Bela Road Part-II, Scheme as well as Bela Road Scheme-1 Dashmesh Nagar. The petitioners challenged the advertisement through the present writ petition. In the written statement filed, it is averred that the Trust has never sought the consent of petitioner No.1 for the draw of lots in any subsequent Scheme whereas petitioner No.2 has been refunded the amount of earnest money vide cheque dated 11.3.1991, which was encashed on 7.5.1991. The petitioner No.2 did not apply for a plot in pursuance of the advertisement published (Annexure P-9).

Learned counsel for the petitioners vehemently argued that the petitioners were not required to apply since there was a categorical representation on behalf of respondents that they will be considered in Bela Road Part-II Scheme vide communication dated 16.1.1990 (Annexure P-2). Therefore, non-consideration of the petitioners for allotment of plots in Bela Road Part-II Scheme for the reason that the petitioners did not apply for plot in pursuance of the advertisement is illegal and arbitrary.

On the other hand learned counsel for respondent No.2 has

vehemently argued that in view of the categorical stipulation in the advertisement (Annexure P-9) that old unsuccessful applicants of Bela Road Part-I Scheme had to apply afresh, the petitioners cannot claim consideration for allotment of plots in Bela Road Part-II Scheme without applying for the plots so advertised.

We have heard learned counsel for the parties and find no merits in the present writ petition. The plot can be allotted through public advertisement only. There was a condition in the advertisement that those applicants who have already applied for Bela Road Part-I Scheme and had remained unsuccessful, should apply again on the prescribed application forms. The relevant note reads as under:-

“Those applicants who already applied for Bela Road Part-I and have been unsuccessful, if they are interested in the above scheme, should apply again on the prescribed application form. Applications already submitted shall not be considered.”

Admittedly, in pursuance of such advertisement none of the petitioners applied. While issuing public advertisement, a note was specifically given that all those applicants, who had applied for Bela Road Part-I Scheme and have been unsuccessful, should apply again on the prescribed application form. The argument raised that it was meant for those applicants, who had not given consent is not tenable. The note is clear, categorical and unambiguous that all those applicants, who had already applied for Bela Road Part-I Scheme and are unsuccessful, have to apply again. Since the

petitioners have not applied again in response to public advertisement, they cannot claim any right of consideration for allotment of plots only on the basis of communication sent by the Improvement Trust on 16.1.1990. Since the petitioners have not submitted application forms in pursuance to public notice, we do not find that the petitioners have any right of allotment of plots.

In fact, a Full Bench judgment of this Court in **Surjit Singh vs. State of Punjab (1979)81 PLR 413** wherein it has been held that mere submission of an application for allotment of the plot does not create any right in favour of the applicant. It was held as under:-

“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. The conditions laid down in the first scheme or the provisions of rule 5(3) do not give any right to the applicants to claim allotment of plots as a matter of right. There is nothing in the scheme or the Act or the Rules which requires the adoption of the principle of ‘first come first served’ at the time of allotment, or debars the Government from adopting the method of drawing lots. The petitioners have not been able to lay foundation for establishing their right which could legally be enforced and the petitioners have completely failed to make out a case for the exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India.”.

In view thereof, we do not find any merit in the writ petition and the same is hereby dismissed.

The amount, deposited by petitioner No.1, which has still not been refunded, be refunded to the petitioner within a period of two months along with interest @ 9% per annum from the date of deposit till its payment.

(HEMANT GUPTA)
JUDGE

January 06, 2015
Vijay Asija

(HARI PAL VERMA)
JUDGE