

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.12721 of 1995 (O&M)
DATE OF DECISION: 27.08.2015

Dr. S.P. Gupta

....Petitioner

versus

The State of Haryana and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. Jaivir Yadav, Advocate for the petitioner

Mr. Rahul Dev Singh, DAG, Haryana

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Ranjit Singh Kalra, Advocate for respondents
No.7,8 and 11

Mr. Harsh Aggarwal, Advocate for respondent No.12

None for respondents No.9 and 10

..

S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

The petitioner has sought a writ of certiorari for quashing the allotment of sites for nursing homes and clinics at Gurgaon issued in favour of respondents No.7 to 12 and for an order directing respondents No.1 and 2 not to issue allotment letters and possession letters to respondents No.7 to 12.

2. On 6th June, 1992, the petitioner filed an application for allotment of a plot admeasuring 500-600 square yards for a nursing home indicating his preference for Sectors 31 and 32-A. The application stated that his wife and he constituted a team of doctors, both of them having acquired an MD qualification.

Clauses, 7, 10 and 12 of the application, which was filled in by the petitioner as per the prescribed form, stated as under:-

"7. Medical Facilities/Services to be provided in the proposed clinic/Nursing Home.	...	...	...	As per HUDA guidelines a team of doctors/specialists including husband and wife, will be given weightage provided they are capable of providing wide range of medical facilities.						
8., 9.										
10. Why applied for Site? As per HUDA guidelines Doctors already running Nursing Home/Clinics by the rented buildings should be given preference provided they are not have any site buildings for this purpose in the estate.										
11.										
12. Are you due to retire	<table><tr><td>Yes</td><td>1</td><td>X</td></tr><tr><td>No</td><td>2</td><td>X</td></tr></table>	Yes	1	X	No	2	X			As per HUDA guidelines doctors who are Retired or due to retire from the eminent medical institutions will be given preference."
Yes	1	X								
No	2	X								

3. The petitioner applied under the category of GYNE/MAT. In Clause-10, the petitioner indicated that he was operating out of rented premises. The petitioner does not come under the category stipulated in paragraph-12 but some of the other respondents do. The interview of the various applicants was held on 12.07.1990. The petitioner was not allotted a plot.

4. Before considering the petitioner's contentions, it is necessary to refer to the "Offer of sites for nursing home &

clinic" issued by the official respondents. It states that the Haryana Urban Development Authority (HUDA) was seized of the problems of residents of primary medical facilities and maternity needs and accordingly a scheme for making provision of nursing home and clinic sites in each sector of the urban estate has been launched so that the residents may not have to go a long way to get such primary medical aid. The sites for nursing homes and clinics were offered for allotment to qualified medical personnel in various urban estates including Gurgaon with which we are concerned. The relevant portions of the offer of sites for nursing home and clinic read as under:-

"NOTE:

The sizes of about 500 sq.yds. and 250 sq.yds. have been fixed for Nursing Homes and Clinics respectively. The number of sites are being planned according to requirement and the same will be exhibited at the time of interview of the applicants after the receipt of applications.

.....

9. The transferee will have to complete the construction within 2 years of the date of offer of possession after getting the plans of the proposed building approved from the competent authority in accordance with the Regulations governing the erection of buildings.

.....

11. The site will be offered on the basis of 'Letter of Intent' and Regular Letter of Allotment will be made only when he fulfils the pre-requisites i.e. arrangement of funds, loan from Banks, approval of building plan etc. The site so allotted will not (sic) be allowed to be transferred. In case the allottee fails to set up the Clinic or the Nursing Home as per condition No.9, the land alongwith structures, if any, will revert back to the Authority.

.....

ELIGIBILITY

1. Only those who can construct/run the Nursing Homes/Clinics within the stipulated period of 2 years from the date of offer of possession may apply for allotment of sites."

2.
3. Doctors in active service can be considered for allotment of the sites provided they are willing to resign.
4. Doctors already running Nursing Homes/Clinics in the rented buildings will be given preference provided they do not have any site/building for the purpose in the Estate."
5. The second sentence in the Note to the offer of sites for nursing homes and clinics, quoted earlier, stated that the number of sites were being planned according to the requirement and that the same would be exhibited at the time of interview of the applicants after the receipt of the applications. Mr. Rajiv Atma Ram, the learned senior counsel appearing on behalf of respondents No.7,8 and 11 invited our attention to the percentage-wise site allocation in each speciality for nursing home sites in Gurgaon. This allocation, in so far as it is relevant, reads as under:-

"NURSING HOME SITES IN GURGAON

The following is the %wise site allocation in each speciality for Nursing Home sites in Gurgaon.

Sector	No. of clear existing Nursing Home Sites
.....-	
E.N.T.	1
EYE	1
GYNE/MAT	3
LAB.	2
DENTAL	1
MEDICINE	2
ORTHO.	1
PAED.	1
POLY CLINIC	2
SURGERY	1
.....-	
TOTAL	15
....."	

6. The petitioner contends that he was entitled to priority over the respondent Nos.7 to 12 under Clauses 7 and 10 of the form prescribed as his wife and he formed a team of doctors and as they were running a nursing home from premises rented by them.

7(A) Respondent No.7 had applied in the category of "clinic". As we mentioned earlier, the petitioner had filled in the prescribed form seeking an allotment of a "nursing home". There is, therefore, no lis between the petitioner and respondent No.7. Clinics were to be allotted plots admeasuring 250 square yards and nursing homes were to be allotted plots admeasuring 500 square yards. The petitioner is, therefore, not concerned with the allotment made in favour of respondents No.7. The petitioner, therefore, has no *locus-standi* qua respondent No.7.

7(B) Respondent Nos.8, 11 and 12 applied in the sectors of "Surgery", "Eye" and "Ortho", respectively. The petitioner, as we mentioned earlier, had applied in the sector of "GYNE/MAT". There is, therefore, no lis between the petitioner on the one hand and respondents No.8, 11 and 12 on the other. The petitioner has, thus, no *locus standi* qua the allotments in favour of respondent Nos.8, 11 and 12.

8. Respondent Nos.9 and 10 were absent. They have not filed a written statement/affidavit in reply either. Despite the same, the petitioner is not entitled to have the allotments in their favour set aside. It was for the petitioner to establish the sectors under which respondent Nos.9 and 10 were allotted the plots. The petitioner has not contended that they applied in the same sector i.e. "GYNE/MAT". Moreover, the petitioner applied for a

plot in Sectors 31-32A. He has not even indicated the sectors in which respondents No.9 and 10 had applied. It would be unfair then to set aside the allotment in their favour especially considering the fact that they had constructed their nursing homes/clinics over 20 years ago.

9. The petition, therefore, is liable to be dismissed against all the respondents on the above grounds alone.

In this view of the matter, the petitioner's reliance upon Clauses 7 and 10 of the form is of no assistance to him. He contended that he was entitled to a priority in view of the fact that he and his wife formed a team and are, therefore, entitled to be given preference. Even if they are, it will make no difference for the petitioner has no *locus-standi* to challenge the allotments made in favour of the private respondents as they had applied under different sectors/categories. Respondent No.7 had applied for a plot for a clinic. Respondents No.8, 11 and 12 had applied in the sectors of "Surgery", "Eye" and "Ortho", respectively, whereas, the petitioner had applied for a nursing home in the sector of GYNE/MAT.

10. Mr. Yadav further contended that the allotment in favour of respondent No.7 was contrary to Clause-3 of the eligibility criteria set out in the "Offer of sites for nursing home & clinic", which we quoted earlier. He contended that Clause-3 specified that the doctors in active service can be considered for allotment of sites provided they are willing to resign. Mr. Yadav invited our attention to an affidavit dated 04.02.1992 filed by respondent No.7 where he stated that he was working in the Health Department of the Government of Haryana and that in case he was allotted a plot for

clinic, he would resign from the government job as soon as his clinic was completed/ready. This affidavit, Mr. Yadav submitted, is contrary to eligibility Clause-3.

11. We would not, in exercise of our extra-ordinary jurisdiction under Article 226 of the Constitution of India, strike down the allotment on the basis of this affidavit. Clause-3 can be read as requiring a doctor to resign as a condition of allotment. On the other hand, it does not specify when the person ought to resign. The possession of the plot was handed over in the year 2004 and respondent No.7 completed the construction within the stipulated time. This could well have given an impression that a doctor holding a government job would be required to resign upon the completion of the construction.

12. We will presume that the first interpretation is the more likely one. Even so, we would not strike down the allotment in exercise of our power under Article 226 for more than one reason. Firstly, respondent No.7 filed the affidavit stating that he would resign as soon as the clinic was completed/ready. The official respondents did not contend at the relevant time that this undertaking was not acceptable. Had they done so, it would have been possible for respondent No.7 to agree to resign forthwith upon being allotted a plot. Without having been so informed, it would be unfair to cancel the allotment on this ground 20 years later, although the official respondents did not contend that the undertaking was contrary to eligibility Clause-3. Further, the construction was to be completed within two years as per Clause-9 of the said offer. Respondent No.7 retired in the year 2003.

13. Mr. Yadav relied upon a letter dated 31.01.1992 addressed by respondent No.7 stating that as he had applied for a plot for clinic, it would not be proper for him to sit as a member of the Allotment Committee and that he, therefore, deputed one Dr. Prem Kumar for the said purpose. He further stated that he would be available for technical advice. Strictly speaking, he ought not to have deputed anyone. Having recused himself, it was not open for him to appoint another person. This submission, however, would only affect respondent No.7. As we mentioned earlier, in any event, the petitioner has no *locus standi* against respondent No.7 for respondent No.7 had applied for a clinic whereas the petitioner had applied for a nursing home.

14. In the circumstances, the petition is dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

27.08.2015
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(TEJINDER SINGH DHINDSA)
JUDGE