

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

Date of decision: 2.3.2015

1. CWP No.12933 of 2001(O&M)

Surjit SinghPetitioner

VERSUS

State of Punjab and othersRespondents

2. CWP No.19680 of 2001(O&M)

Rajinder KaurPetitioner

VERSUS

State of Punjab and othersRespondents

2. CWP No.1552 of 2002(O&M)

Bhupinder KumarPetitioner

VERSUS

State of Punjab and othersRespondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present: Mr. G.C. Dhuriwala, Advocate for the petitioner.

**Mr. P.S. Bajwa, Additional Advocate General, Punjab
for respondent No.1.**

**Mr. Rupinder S. Khosla, Senior Advocate with
Mr. K.S. Mamrat, Advocate for respondents No.2 and 3.**

HEMANT GUPTA, J.

This order shall dispose of three writ petitions bearing CWP Nos.12933, 19680 of 2001 and 1552 of 2002 wherein the petitioners are disputing the rate of allotment of plots at Rs.3750/- per square yard. The claim of the petitioners is that the rate of allotment should have been Rs.1200/- per square yard.

Since the issues are common in all the three writ petitions, therefore, all the petitions are taken up and being decided together. However for the facility of reference, the facts are being taken from CWP No.12933 of 2001 wherein the petitioner purchased registration of allotment of a plot from one Raj Mal who applied for a 10 marla plot in the year 1983-84 and was granted registration No.120 SC. The transfer in his favour was allowed. The petitioner was informed on 29.04.1997 (Annexure P-3) that draw of lots in respect of pending applications would be conducted in which the petitioner was called upon to furnish identification documents and also to furnish an affidavit that he or his family does not own any plot, house or flat in Mohali. It was also mentioned that allotment shall be made as per the new rates which are as follows:-

- | | |
|------------------------------|--------------------------|
| a) upto 100 sq. yard. | Rs.1800.00 per sq. yard |
| b) from 101 to 249 sq. yards | Rs.2700.00 per sq. yard |
| c) Above 250 sq. yards | Rs.3600.00 per sq. Yard. |

The petitioner made up the amount of earnest money required. The petitioner objected to the said circular on 09.05.1997 (Annexure P-4) contending that the conditions regarding price of the plot and ratio of allotment to old applicants are at variance with those

originally advertised, the same will be accepted as per ruling of the Court. On 01.03.2001 (Annexure P-6/T), the respondent communicated that a scheme has been formulated for allotment of plots in Sectors 76 to 80 Urban Estate, Mohali permitting the petitioner to apply up to 16.03.2001 and to make up the earnest money at the prevailing rate i.e. Rs.3350/- per square yard for a plot up to 200 square yard and Rs.3750/- per square yard for a plot size above 200 square yards. Since the petitioner did not make up the earnest money, the earnest money deposited by the petitioner i.e. Rs.30,000/- was refunded on 24.07.2001. It is thereafter, the petitioner has filed the present writ petition.

In the written statement, the stand is that Raj Mal applied for 250 square yard plot in the year 1983 by depositing Rs.5000/- as earnest money. He was asked to give his consent by 20.09.1993 for draw of lots in respect of vacant plots in Sector 70 at the rate of Rs.1200/- per square yard but Raj Mal did not give consent and therefore, his name was not included in the draws held on 28.01.1994 and 01.08.1995. However, subsequently, the transfer of the registration was allowed subject to completion of necessary formalities. It is asserted that the letter dated 09.05.1997 (Annexure P-4) was not received in the office. It is also pointed out that the original applicant agreed to abide by the terms of the application and one of them (condition No.12) was that the plots will be given at the rate which prevailed at the time of allotment. After transfer of registration, the petitioner also impliedly agreed to be governed by the undertakings given by the original applicant. It is pointed out that

there was no promise for allotment of plots in Sector 70. All these applicants who had opted for plots in Sector 70 had given their assent to the new rates and were allotted plots in Sector 70 and Sector 69 at the new rates. All those applicants who were unsuccessful were given another chance to apply for allotment of plots in Sectors being floated i.e. Sector 76 to Sector 80. The petitioner did not opt for allotment of plot in such sectors and therefore, he does not have any valid grievance.

In response to an interim order dated 05.12.2013 an affidavit has been filed by the Estate Officer, Greater Mohali Area Development Authority on 17.12.2013. It is averred that there were 219 applicants for 250 square yard plots, 237 plots were available and 17 plots were added from the other sectors, therefore, total available plots in Sector 69 were 254.

Learned counsel for the petitioner vehemently argued that the petitioner is entitled to allotment of a plot at the rates which were prevailing at the time the original applicant submitted application i.e. Rs.1200/- per square yard. The respondents are bound to consider the petitioner for allotment of plot in Sector 70 against which the original application was submitted and that if the petitioner or his predecessor was unsuccessful, his name should have been considered in the other schemes but at the same rate.

Learned counsel for the petitioner relies upon judgments of Hon'ble Supreme Court reported as 2001(4) SCC 359 titled Industrial Assistance Group Government of Haryana v. Ashutosh Ahluwalia; Civil Appeal No.6668 of 2004 titled State of Punjab and

others v. K. L. Sharma, decided on 08.10.2004 and judgment of Division Bench of this Court reported as 2001 AIR (Punjab) 230 titled Chandigarh Police Cooperative Housing Society v. Chandigarh Administration.

On the other hand, learned counsel appearing for respondents No.2 and 3 argued that Raj Mal, predecessor-in-interest of the petitioner, applied for allotment of a plot in the year 1983. He was not successful in the draw of lots but subsequently vide communication dated 07.09.1993 (Annexure P-1), the application of predecessor-in-interest of the petitioner was communicated to be considered subject to the option of the applicant i.e. Raj Mal for a plot in Sector 70, Mohali. Raj Mal has not given option for allotment of plot consequent to the said communication. Therefore, in the draw of lots held on 28.01.1994 and 01.08.1995, the name of Raj Mal was not considered. Later another option was given to the pending applicants on 29.04.1997 for allotment of plots at the new rates i.e in case of plot size for which petitioner was the applicant i.e. Rs.3600/- per square yard. The petitioner has given his option but the petitioner was again not successful in the draw of lots. The petitioner was given another option for allotment of plots in Sector 76 to 80 at the still revised rates of Rs.3750/- per square yard in respect of plot size of which the petitioner was the applicant but the petitioner has not opted and therefore, the earnest money deposited by him has been refunded.

It is argued that mere submission of an application form, for allotment of plot, does not confer any right of allotment. The original applicant was unsuccessful in the draw of lots earlier held,

and thereafter, he has not opted for draw of lots of the plots available in Sector 70, Mohali. Thereafter, the petitioner opted for allotment of plots in Sector 70 but was not successful. Therefore, his name was again decided to be considered for available plots in Sector 76 to 80 but he has not participated. Thus, he does not have any right to seek allotment of a plot much less at a rate prevailing in the year 1983. Reference was made to Full Bench judgment of this Court reported as AIR 1980 Punjab 65 titled Surjit Singh and others v. State of Punjab and others, and (2010) 9 SCC 157 titled as Greater Mohali Area Development Authority and others v. Manju Jain and others.

We have heard learned counsel for the parties and find no merit in the present writ petition. By merely submitting an application in response to a public advertisement, the petitioner does not get any right of allotment of a plot. The right is only of consideration. In the draw of lots pursuant to the application submitted by Raj Mal in the year 1983, he was not successful. Raj Mal has not given his consent for participation in the draw of lots for the plots available in Sector 70 in pursuance of communication dated 07.09.1993 (Annexure P-1). Therefore, his name was not considered in the draw of lots held on 28.01.1994 and 01.08.1995.

It is thereafter, the petitioner stepped into the shoes of Raj Mal. He gave his consent for allotment of plot in Sector 70 and made up the deficiency of earnest money but objected to the rate of allotment in communication dated 09.05.1997 (Annexure P-4). The relevant extract from the communication reads as under:-

“1. Please refer your Letter No.PUDA-EO-97/ 10275 dated 29th Apr, 97.

2. Affidavit as desired is attached herewith.
3. Since the conditions regarding the price of the plot and ratio of allotment to old applicants are at variance with those originally advertised, the same will be accepted as per ruling of the Court.
4. My name, however, may please be included for the draw of lots.”

Unfortunately, the petitioner was not successful in the draw of lots. Thereafter, the petitioner was again communicated on 01.03.2001 (Annexure P-6/T) that his pending application can be considered for allotment of plots in Sector 76 to 80 but the petitioner has not opted for participation in such process. Therefore, the petitioner lost his right of consideration on account of his failure to opt for the draw of lots in the sectors in which plots were available.

In the judgment referred to by learned counsel for the petitioner in Industrial Assistance Group (supra), a concluded contract after the allotment came in to existence but in view of the subsequent policy, Haryana Urban Development Authority refused to complete the formalities. It is in these circumstances, it was held that allotment once made cannot be withheld on account of subsequent change of policy. The said judgment does not deal with the issue that merely on submission of an application form, the plot has to be allotted.

A Division Bench of this Court in a judgment reported as (2001)(2) PLR 759 titled Dr. K.L. Sharma v. State of Punjab, referred to judgment of Surjit Singh's case (supra); 1997(2) RRR (Civil) 498 (P&H) titled Kabul Singh and others v. Punjab Urban Planning and Development Authority and CWP No.8905 of 1997 titled The Express Co-operative Group Housing Society Ltd. and others v. State of Haryana through its Chief Secretary and others, decided on

03.10.1997, to hold that by submitting application in pursuance of the advertisement issued, they did not acquire a right to be allotted plots.

In Surjit Singh's case (supra), a Full Bench of this Court held that by filing an application, 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 Court observed 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 fir 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 Express Co-operative Group Housing Society's case (supra) the Court said to the following effect:-

“However, we are unable to agree with them that mere submission of application by the petitioners has created a right in their favour to be allotted plots of land. The advertisement issued by the Authority can, at the best, be termed as an invitation to the prospective buyers to apply for consideration for allotment of land. The very fact that the advertisement did not contain any restriction on the number of applications which could be made by the Co-operative Group Housing Societies is a clear proof of the intention of the Authority that the prospective applicants will be considered by it for the purpose of allotment of land earmarked for group housing purposes. Such advertisement cannot be construed as promise held out by the Authority to allot land to the applicants and once the Government has, in exercise of its powers under the Act, revised the existing policy and decided to allot land at the revised

rates under the new scheme, the inchoate right of consideration which came to vest in the petitioners on the basis of the applications submitted by them, stood extinguished. The petitioners cannot enforce their so-called expectation nor can they seek a mandamus against the authority on the basis of the doctrine of promissory estoppels.”

This Court in K.L. Sharma’s case (supra) found that non-inclusion of the name of the petitioner in the draw of lots held on 01.08.1995 was discriminatory as the letters for inclusion of his name was not sent on the correct address. It was held that exclusion of petitioner’s application from draw can be upheld only if it is not proved that despite having received intimation he did not give consent for allotment. The relevant extract from the same reads as under:-

“16. We have given serious thought to the respective submissions. In our opinion, non-consideration of the petitioner’s application for allotment of plot in the draw held on 1.8.1995 must be held as vitiated by arbitrariness and violation of his fundamental right to equality. Once a policy decision had been taken by the concerned authorities to consider the pending applications for allotment of plots at the rate of Rs.1,200/- per square yard by draw of lots, it was their duty to have ensured that opportunity of exercising option is given to all the eligible applicants and only such of the applicants could be excluded from the draw who did not exercise option despite due notice. Thus, the exclusion of the petitioner’s application from the draw held on 1.8.1995 can be upheld only if it is proved that despite having received intimation about the proposed allotment of plots at the rate of Rs.1,200/- per square yard, he did not give consent for allotment. Respondents No.2 and 3 have produced Annexure R.2/1 and R.2/2 in an attempt to show that opportunity was given to the petitioner to exercise option for allotment of plot at the rate of Rs.1,200/- per square yard, but after carefully perusing the same, we are convinced that he had not been given due notice for exercise of option. This is clearly proved from the fact that the two communications sent to him were returned back undelivered because the address written on them was incorrect.....”

In appeal against the said judgment before the Hon'ble Supreme Court, the respondent agreed to pay Rs.3600/- per square yard and thus the Court has not examined the legal issues raised. It is not the case of the petitioner that he has not received the communication dated 01.03.2001 (Annexure P-6/T). In fact the stand of the petitioner in para 9 of the writ petition is that such Scheme was not applicable to him since his application was pending, he having completed his earnest money in the year 1994. Therefore, even in terms of the judgment of Division Bench of this Court in K. L. Sharma's case (supra), the petitioner does not get any right for allotment only on submission of application form more so when he has not given consent for allotment of a plot in another Scheme even though letters have been received by him.

The issue has been examined by the Supreme Court in judgment reported as (2010) 9 SCC 157 titled Greater Mohali Area Development Authority and others v. Manju Jain and others and (2013) 5 SCC 182 titled U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma.

In Manju Jain's case (supra), the Court held to the following effect:-

“21. Mere draw of lots/allocation letter does not confer any right to allotment. The system of draw of lots is being resorted to with a view to identify the prospective allottee. It is only a mode, a method, a process to identify the allottee i.e. the process of selection. It is not an allotment by itself. Mere identification or selection of the allottee does not clothe the person selected with a legal right to allotment. (See DDA v. Pushpendra Kumar Jain, AIR 1995 SCC 1).”

In Om Prakash Sharma's case (supra), it was held to the following effect:-

“31. In view of the law laid down by this Court in the aforesaid decisions, the learned Senior Counsel Mr Rakesh Dwivedi has rightly placed reliance upon the same in support of the case of the first defendant, which would clearly go to show that the plaintiff had not acquired any right and no vested right has been accrued in his favour in respect of the plot in question merely because his bid amount is highest and he had deposited 20% of the highest bid amount along with the earnest money with the Board. In the absence of acceptance of bid offered by the plaintiff to the competent authority of the first defendant, there is no concluded contract in respect of the plot in question, which is evident from letters dated 26-5-1977 and 8-7-1977 wherein the third defendant had rejected the bid amount deposited by the plaintiff and the same was refunded to him by way of demand draft, which is an undisputed fact and it is also not his case that the then Assistant Housing Commissioner who has conducted the public auction had accepted the bid of the plaintiff.”

Thus, the petitioners cannot seek allotment of plot merely because at one stage, they submitted application seeking allotment. The petitioners have remained unsuccessful in the draw of lots and then failed to respond to another chance for participation in the process of allotment. Thus, we do not find any merit in the writ petitions. Consequently, all the three writ petitions are dismissed.

(HEMANT GUPTA)
JUDGE

MARCH 2, 2015
‘D. Gulati’

(HARI PAL VERMA)
JUDGE