

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

Date of decision:22.1.2015

1.

CWP No.1222 of 2012(O&M)

Pradeep Mehra

....Petitioner

VERSUS

State of Haryana and others

.....Respondents

Present: Mr. Sanjeev Sharma, Senior Advocate with
Mr. Shekhar Verma, Advocate for the petitioner.

Mr. P.K. Jangra, Additional Advocate General, Punjab
for respondent No.1.

Mr. D.V. Sharma, Senior Advocate with
Mr.Sikander Bakshi, Advocate for respondents No.2 to 4.

Mr. P.R. Yadav, Advocate for respondent No.5.

Mr. Suman Jain, Advocate for respondent No.6.

2.

CWP No.3905 of 2012

Atul Jain

....Petitioner

VERSUS

Haryana Urban Development Authority and others

.....Respondents

Present: Mr. J.K. Goel, Advocate for the petitioner.

Mr. D.V. Sharma, Senior Advocate with
Mr.Sikander Bakshi, Advocate for respondents.

3.

CWP No.5455 of 2012

Sushil Kumar Jain

....Petitioner

VERSUS

Haryana Urban Development Authority and others

.....Respondents

Present: Mr. J.K. Goel, Advocate for the petitioner.

Mr. D.V. Sharma, Senior Advocate with
Mr.Sikander Bakshi, Advocate for respondents.

4. CWP No.6114 of 2012

Dinesh Chand Jain and anotherPetitioners

VERSUS

**Haryana Urban Development Authority and others
.....Respondents**

Present: Mr. Anil Kumar Rana, Advocate for
Mr. Sharad Aggarwal, Advocate for the petitioners.

Mr. D.V. Sharma, Senior Advocate with
Mr.Sikander Bakshi, Advocate for respondents.

5. CWP No.18379 of 2013

G.S. TyagiPetitioner

VERSUS

**Haryana Urban Development Authority and others
.....Respondents**

Present: Mr. S.K. Yadav, Advocate for the petitioner.

Mr. D.V. Sharma, Senior Advocate with
Mr.Sikander Bakshi, Advocate for respondents.

6. CWP No.18381 of 2013

M/s Vibhavi Foot Mark (Pvt.) Ltd.Petitioner

VERSUS

**Haryana Urban Development Authority and others
.....Respondents**

Present: Mr. S.K. Yadav, Advocate for the petitioner.

Mr. D.V. Sharma, Senior Advocate with
Mr. Sikander Bakshi, Advocate for respondents.

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?

HEMANT GUPTA, J.(Oral)

This order shall dispose of six writ petitions bearing CWP Nos.1222, 3905, 5455, 6114 of 2012 and 18379 and 18381 of 2013 wherein the petitioners have sought a writ of mandamus directing the respondents to allot industrial plots advertised in the year 1995. Since all the petitioners are the applicants in response to such an advertisement, therefore, all the writ petitions are taken up for decision together.

However, for the facility of reference the facts are being taken from CWP No.1222 of 2012 titled Pradeep Mehra v. State of Haryana and others, wherein the petitioner in response to the advertisement applied for a plot measuring 1000 square yards along with earnest money of Rs.42,500/- representing 10% of the total allotment price. It was recommended to the Head Office of the Haryana Urban Development Authority (for short 'HUDA') for allotment of a plot to the petitioner but it was also mentioned that some area of the land is under dispute. Therefore, further action regarding draw of allotment of industrial plots be taken after the

litigation is over. The said communication dated 24.05.1996 reads as under:-

“Reference your application for allotment of Industrial Plot in Sec 59, Faridabad.

It is to inform you that your case for allotment of plot was recommended to the Head Office and the same has been approved. It is mentioned that some area of the land is under dispute. Further action regarding draw for allotment of Industrial Plot will be taken after the litigation is over.”

It is admitted by learned counsel for the petitioners that the litigation regarding acquisition of land came to be decided on 31.10.2011. It is pointed out that about 303 acres of land was acquired for development of Industrial Area out of which land measuring 86.36 acres became subject matter of dispute before this Court in various writ petitions. However, all the writ petitions were dismissed except the writ petitions in respect of land measuring approximately 4 acres. The petitioners thus claim that they are entitled to allotment of plots in terms of communication dated 24.05.1996 after the litigation has come to an end.

It is also pointed out that the petitioner has invoked the jurisdiction of the Consumer Disputes Redressal Forum, Faridabad (for short ‘the Forum’) under Section 12 of the Consumer Protection Act, 1986. Such complaint was allowed by the Forum on 06.12.2010 directing the HUDA to allot plot to the petitioner. In appeal, the complaint was withdrawn by the petitioner in view of the judgment of Hon’ble Supreme Court that complaint is not maintainable in respect of commercial plots. The petitioner was given liberty to approach the

Court of competent jurisdiction. It is, thereafter, present writ petition was filed.

It is also pointed out that certain other entrepreneurs invoked the jurisdiction of the Forum or the jurisdiction of this Court wherein in terms of the directions issued, the plots have been allotted. The claim of the petitioners is that if similarly situated applicants have been allotted plots, the non-allotment of plots to the petitioners is arbitrary and discriminatory. Therefore, on the parity of allotment of plots to similarly situated entrepreneurs, the plots should be allotted to the petitioners. Learned counsel for the petitioners has also pointed out that 25 plots are still available. Therefore, one of such plots can be allotted to each of the petitioners.

On the other hand, in the reply filed on behalf of HUDA, it is pointed out that the petitioner was an applicant for 1/4th acre of a plot. Against the 4 plots available, there were 14 applicants. It is also pointed out that a decision has been taken by the Chief Administrator to refund the amount deposited by the applicants. Since, earlier the order of Forum was passed but due to subsequent withdrawal of the complaint, the case of the petitioner is at par with the other applicants in whose matters it has been decided to refund the earnest money. It is also pointed out that one Tarun Gupta was allotted plot in terms of the orders passed by the Forum. It is pointed out that Mahender Kumar Bareja was allotted a plot on 28.03.2011 at the prevailing rates of HUDA i.e. at the rate of Rs.6750/- per square meter in view of the fact that his complaint was pending before the Forum and Legal Assistant of the respondents opined that his case is at par with that of

Tarun Gupta. In respect of M/s OMCO Enterprises, it is informed that M/s OMCO Enterprises was allotted plot on 24.05.2010 at the prevailing rate of Rs.5200/- per square meter in terms of directions of this Court in CWP No.8455 of 2009 titled M/s Omco Enterprises Pvt. Ltd. v. Haryana Urban Development Authority and another, decided on 28.05.2009, wherein a direction was issued for deciding the representation of the said petitioner.

In terms of the directions issued by this Court, an inquiry was conducted by the Chief Vigilance Officer of HUDA, Panchkula on 07.03.2014 wherein in respect of Mahender Kumar Bareja it has been pointed out that the building on the plot stands constructed and industry is functioning whereas in respect of M/s OMCO Enterprises it is stated that the plot was under construction. In an affidavit filed by M/s OMCO Enterprises, it is mentioned that the construction is since completed and that on account of interim order of this Court, the finishing work could not be completed but the said-respondent is to set up industry and will commence commercial production within six months.

We have heard learned counsel for the parties and find that no direction can be issued for allotment of plots on the basis of communication dated 24.05.1996. Mere fact that name of the petitioner was recommended for allotment of a plot does not give rise to any enforceable right. Till such time the letter of allotment is issued, the rights of the applicant are not determined. Reference may be made to a Full Bench judgment of this Court in Surjit Singh and others v. State of Punjab and others, AIR 1980 Punjab 65.

In the absence of concluded contract, mere fact that the petitioner was informed that his name has been recommended for allotment will not entitle him to claim allotment of a plot after more than 15 years of the communication. Even if the plots are available, the same can be allotted only in the manner permissible in law i.e. by public advertisement inviting applications from all eligible applicants who choose to apply.

Such is the view of Hon'ble Supreme Court in Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh and others, (2011) 5 SCC 29; Saroj Screens (P) Ltd. v. Ghanshyam and others, (2012) 11 SCC 434 and Civil Appeal No.2143 of 2007 titled Institute of Law & others Vs. Neeraj Sharma & others, decided on 19.09.2014.

Though, the allotment in favour of Tarun Gupta was in terms of the order passed by the Forum but allotment in favour of M/s OMCO Enterprises and Mahender Kumar Bareja was a voluntary act of the respondents. The stand of the respondents is that such allotment was made since they accepted the allotment of plots under the new policy and new Rules. Therefore, the allotments have been made to Mahender Kumar and M/s OMCO Enterprises in terms of their options and at the rates fixed by the HUDA prevailing at the time of allotment. Such allotment of plots will not confer any right in the petitioners so as to perpetuate illegality. The plots allotted after long lapse of time in pursuance of a communication which only considers the petitioner suitable cannot be said to be justified.

Since the construction has been completed by M/s OMCO Enterprises and Mahender Kumar Bareja whereas unit set up

by Mahender Kumar Bareja has started functioning as well, we do not wish to set aside the allotment of plots in their favour at this stage but allotment of plots in their favour will not be a ground on the basis of which the petitioner can claim allotment in their favour.

Consequently, we do not find any merit in the writ petitions and all the writ petitions are dismissed.

However, the respondents are directed to take steps for disposal of the available industrial plots in accordance with law.

(HEMANT GUPTA)
JUDGE

JANUARY 22, 2015
‘D. Gulati’

(HARI PAL VERMA)
JUDGE