

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

**CWP No.12356 of 2014
Date of decision: 30.6.2015**

Kulbir Singh

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. G.S.Punia, Sr. Advocate with Ms. Harveen Kaur,
Advocate for the petitioner.

Ms. Munisha Gandhi, Addl.A.G. Punjab with Mr. S.K.Bansal,
AAG, Punjab.

Mr. Harsh Aggarwal, Advocate for respondent Nos. 2 and 3.

Mr. Ferry Soffat, Advocate for respondent No.4.

Ajay Kumar Mittal,J.

1. The petitioner inter alia seeks a writ in the nature of mandamus directing the respondents to allot a plot to him as he was at Sr.No.1 in the waiting list and also seeks quashing of the order dated 21.11.2013, Annexure P.1 passed by respondent No.1 rejecting his claim for allotment on the ground that the waiting list was valid for one year from the date of the draw.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The Greater Ludhiana Area Development Authority (GLADA) floated a scheme for allotment of 247 free hold residential plots at Urban Estate, Dugri road, Ludhiana on

18.9.2006, Annexure P.2. The last date for submission of applications was 17.10.2006. As per the Information Brochure, 15 plots of 611.11 square yards were available in the general category. As per the conditions mentioned in the Information Brochure, in case the applications were more than the number of plots then a waiting list in order of seniority list was to be drawn to the extent of 5% of the number of plots available under each category. Further, it was provided that the applicants in the waiting list shall be given allotment only after completing the process of allotment of eligible applicants and in the event of surrender of plots under the scheme only. The waiting list was valid for one year from the date of draw. The petitioner being eligible applied under the said scheme for allotment of plot measuring 611.11 square yards under the general category. The petitioner submitted the application through UTI bank alongwith earnest money amounting to ₹ 5,01,110/-. The draw of lots was conducted on 18.4.2007 whereby name of the petitioner figured at Sr.No.1 in the waiting list. One Ajay Kumar Gupta figured in the successful candidates at Sr.No.12 and was allotted Plot No.5085, Phase II, Dugri Road, Ludhiana. Later on, it transpired that the said person was allotted Plot No.2293 measuring 400 square yards in Urban Estate, Phase II, Dugri Road, Ludhiana on 1.1.2004. Similarly, he was owner of Plot No.796, Phase II, Urban Estate, Dugri Road, Ludhiana. He owned another plot in the name of his wife Madhvi Gupta i.e. Plot No.450-D, Model Town Part II, Ludhiana. He filed false and defective affidavit. His application was not scrutinized by the respondent authorities initially and he was allotted plot on 18.6.2007. The petitioner made a complaint to the respondents against the allotment made in favour of Ajay Kumar Gupta.

On persistent demand of the petitioner, the respondents initiated enquiry

and issued show cause notice to Ajay Kumar Gupta vide memo dated 22.1.2010 calling upon him to appear in person and explain the position before cancellation of Plot No.5085, Phase II, Urban Estate, Dugri Road, Ludhiana. The said show cause notice was challenged by Ajay Kumar Gupta before the civil court and vide order dated 18.3.2010, the civil court directed the respondents to initiate arbitration proceedings as per the terms and conditions of the allotment letter. The award was passed on 26.8.2010, Annexure P.10 by Arbitrator-cum-Additional Chief Administrator, GLADA, Ludhiana directing the respondents to cancel the plot. Accordingly vide order dated 29.12.2010, Annexure P.11, the Estate Officer, GLADA, Ludhiana cancelled the allotment in favour of Ajay Kumar Gupta and ordered forfeiture of 10% of the total sale consideration. The appeal filed by Ajay Kumar Gupta against the cancellation order was dismissed vide order dated 1.4.2011, Annexure P.12. The petitioner wrote letter dated 15.7.2010, Annexure P.15 to the Chief Administrator, PUDA, Mohali that he being at Sr.No.1 in the waiting list be allotted the plot. Vide letter dated 25.1.2010, Annexure P.16, the Estate Officer informed the petitioner that as per policy, waiting list was valid for one year only and the earnest money had already been refunded to him. The petitioner moved various representations to the respondent authorities. Finally, vide order dated 21.11.2013 (Annexure P.1), the Additional Chief Administrator, GLADA, Ludhiana declined allotment of plot to the petitioner. Hence the instant writ petition.

3. In the written statement filed on behalf of respondent Nos. 2 and 3, it has been inter alia stated that the waiting list was valid only for one year as provided in the Information Brochure. Once the said period of

one year had expired on 17.4.2008 and the earnest money was also refunded on 8.8.2010, the petitioner could not lay any claim on the said plot for allotment. It was further stated that the cancellation order dated 21.11.2013, Annexure P.1 had not attained finality as yet as the same is under challenge before the Additional District Judge, Ludhiana in proceedings under Section 34 of the Indian Arbitration and Conciliation Act 1996 (in short, “the 1996 Act”).

4. A separate written statement has also been filed by respondent No.4 in Court today and the same is taken on record. It has been inter alia stated that the allotment of the plot in question is still lying in the name of respondent No.4 and the same has not been cancelled till date being pending consideration before the Additional District Judge, Ludhiana in proceedings under Section 34 of the 1996 Act.

5. We have heard learned counsel for the parties.

6. Learned counsel for the petitioner submitted that the affidavit of respondent No.4 filed with the application form was defective. Clause (f) of the mode of allotment provides that any applicant whose affidavit/documents are not found in order shall not be considered for final allotment even if he has been found eligible after the scrutiny of the application form after the draw. Learned counsel further submitted that after the draw of lots, the official respondents were required to scrutinize the form and they were to reject the same being defective at that time. It is wrong that the amount deposited by the petitioner was withdrawn or refunded. It was by way of loan which was illegally refunded to the Bank. The draw of lots was held on 18.4.2007 whereas the cancellation of the plot was made on 27.8.2010. The period of one year had to be reckoned from the

date of cancellation of the plot.

7. On the other hand, learned counsel for the respondents submitted that the matter relating to cancellation of plot to respondent No.4 is still sub judice as is discernible from the order dated 21.2.2015 passed by the Additional District Judge, Ludhiana, Annexure R.4/1.

8. Admittedly, the draw of lots was held on 18.4.2007. The petitioner was at Sr.No.1 in the waiting list. Clauses (c) , (d) and (f) of the mode of allotment as per terms and conditions given in the Information Brochure provide as under:-

(c) Where the applications are more than the number of plots then a waiting list in order of seniority will be drawn to the extent of 5% of the number of plots available under each category. The plots so made available under this scheme will be offered to the applicants in the waiting list in order of their merit. The applicants in the waiting list shall be made allotment only after completing the process of allotment of eligible applicants. However, the applicants kept on waiting list will be given allotment in the event of surrender of plots under this scheme only. (emphasis supplied).

(d) The waiting list will be valid for one year from the date of draw.

(f) Any applicant whose affidavit/documents are not found in order shall not be considered for final allotment even if he/she has been found eligible after the scrutiny of the application form after the draw.

A perusal of the above clauses shows that the applicants on the waiting list were entitled for allotment of plot in the event of surrender of plots under the scheme only. The waiting list was valid for one year from the date of the draw. Further, the applicant whose affidavit/documents were not found to be in order was not to be considered for final allotment even if he had been found eligible after scrutiny of the application form after the draw.

9. Examining the factual matrix in the present case, Ajay Kumar Gupta was allotted plot No.5085, Phase II, Dugri Road, Ludhiana in the draw held on 18.4.2007. The petitioner had claimed that he be allotted the said plot being at Serial No.1 in the waiting list. The petitioner had made a complaint against Ajay Kumar Gupta that he was also allotted Plot No.2293, Dugri Ludhiana earlier, for which show cause notice dated 22.1.2010 was issued to him. The said show cause notice was challenged by Ajay Kumar Gupta before the civil court and vide order dated 18.3.2010, the civil court directed the respondents to initiate arbitration proceedings as per the terms and conditions of the allotment letter. The award was passed on 26.8.2010 by the Arbitrator cum Additional Chief Administrator, Ludhiana. It was found that the affidavit and declaration given by Ajay Kumar Gupta regarding allotment of plot were false and the respondents were directed to cancel/resume the plot and initiate action against Ajay Kumar Gupta. The allotment made in favour of Ajay Kumar Gupta was cancelled vide order dated 29.10.2010, Annexure P.11 by the Estate Officer. The appeal filed by Ajay Kumar Gupta was also dismissed on 1.4.2011, Annexure P.12. Ajay Kumar Gupta challenged the award dated 27.8.2010 by filing objection petition under Section 34 of 1996 Act before the Additional District Judge, Ludhiana. The Additional District Judge, Ludhiana vide judgment dated 21.2.2015 (Annexure R.4/1) had set aside the award dated 27.8.2010 with liberty to the Chief Administrator to initiate fresh proceedings against the objector (respondent No.4 herein) after giving him adequate notice of the proceedings. Since the petitioner submitted his earnest money through UTI Bank and authorized the Bank on 19.4.2007 to claim refund of earnest money being unsuccessful in draw, the refund was made to the bank vide

letter dated 8.8.2007. The waiting list being valid for one year expired on 17.4.2008. Further, as per clause (c) of the mode of allotment, the allotment to the applicants in the waiting list was to be given in the event of surrender of plots only. No plot was surrendered during the period of one year from the date of the draw. No error could be pointed out by the learned counsel for the petitioner in the impugned order dated 21.11.2013, Annexure P.1, which may call for interference by this Court under Articles 226/227 of the Constitution of India. Further, CWP No.171 of 2014 (*Inderjit Singh vs. State of Punjab and others*) involving identical issue has already been dismissed by this court vide order dated 25.5.2015. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

June 30, 2015
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(Rekha Mittal)
Judge