

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

**CWP No.1623 of 2014
Date of decision: 19.3.2015**

Narinder Singh

.....Petitioner

Vs.

Haryana Urban Development Authority and others

.....Respondents

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

Present: Mr. Gaurav Mohunta, Advocate in CWP Nos.26143 of 2013 and 1623 of 2014, Mr. Pawan Attri, Advocate in CWP No.1232 of 2014 for the petitioners.

Mr. Arun Walia, Sr. Advocate with Mr. Servedaman, Advocate in CWP No.1623 of 2014, Mr. Raman Gaur, Advocate in CWP No.26143 of 2013 and Mr. Servedaman, Advocate for Mr. Ajay Nara, Advocate in CWP No.1232 of 2014 for HUDA.

Ajay Kumar Mittal, J.

1. This order shall dispose of CWP Nos.26143 of 2013, 1232 and 1623 of 2014 as according to the learned counsel for the parties, the issue involved in all the three writ petitions is identical. However, the facts have been extracted from CWP No.1623 of 2014.

2. Prayer in CWP No.1623 of 2014 filed under Articles 226/227

of the Constitution of India is for issuance of a writ in the nature of mandamus directing the respondents to allot Plot No.825, Sector 32, Karnal measuring 6 marlas under general category to the petitioner forthwith as the same has been denied to him solely on the ground that the said plot had been allotted to him under the defence/paramilitary forces category and not under the general category.

3. A few facts relevant for the decision of the controversy involved as narrated in CWP No.1623 of 2014 may be noticed. The petitioner applied for a 6 marlas residential plot in Urban Estate, HUDA, Karnal under the general category in pursuance to the advertisement issued by the respondents on 4.3.2011. The booking was to commence w.e.f 6.1.2011. The last date for receipt of applications was 7.3.2011. The petitioner got the said plot financed through Punjab National Bank, Sonapat Branch and deposited ₹ 5030/- in furtherance thereof. The Bank forwarded 10% earnest money to the tune of ₹ 1,05,800/- alongwith application form filled by the petitioner to the office of the respondents which was duly acknowledged by them. As per the advertisement, 46% plots of 6/4 marlas were earmarked for allotment under the general category out of total of 591. The petitioner applied for allotment under the said category. Draw of lots was held on 30.8.2011. The petitioner was declared successful as an allottee for allotment of 6 marla plot No.825, Sector 32, Urban Estate Karnal under Defence/paramilitary forces category. The petitioner being a non-privileged individual had applied for allotment of this residential plot under general category and not under the defence/paramilitary forces category. Consideration of the name of the petitioner under the category of

defence/paramilitary forces was not on the ground of his furnishing such details but on account of the fault of the respondents by putting his name in the draw of lots of the said category instead of general category. Vide letter dated 6.9.2012, Annexure P.1, the respondents informed the petitioner that he had been declared successful in the draw of lots and had been allotted plot No.825, Sector 32, Urban Estate, Karnal. He was required to furnish defence/paramilitary forces certificate issued from the competent authority. The petitioner vide letter dated 19.9.2012, Annexure P.2 requested the respondents that the said plot be allotted to him under the category in which he had applied. According to the petitioner, he cannot be made to suffer for the fault on the part of the respondents. Hence the instant writ petition by the petitioner.

4. Upon notice of motion, written statement has been filed by Shri R.K.Singh, Estate Officer, HUDA, Karnal on behalf of respondent Nos. 1 to 3, wherein it has been inter alia stated that in the uploaded data, the name of the petitioner was shown under the general category and he was allotted registration No.11336. Another applicant namely Narender Singh son of Shri Bhale Ram, resident of H.No.654, Sector 9 and 11, Hisar had also applied for 6 marla plot in DEPER PAFOR category and he was allocated registration No.458. Accordingly, registration cards were issued to both of them through ordinary post. There was error in the uploading of the data. According to the respondents, departmental action is being taken against the erring official. The inadvertent error occurred due to two applicants with the same name. On these premises, prayer for dismissal of the petition has been made.

5. Affidavit dated 9.7.2014 was filed by the petitioner to the written statement wherein in para 2, it was stated as under:-

“2. That on perusal of the written statement filed by the respondents it has transpired to the deponent that there was another applicant in the name of Narinder Singh son of Bhale Ram, resident of House No.654, Sector 9 and 11, Hisar. The said applicant is the namesake of the petitioner and his father name is also the same as that of the petitioner. The said Narinder Singh (applicant) made an application to the respondents dated 18.8.2011 (Annexure R-3/4) that his name has wrongly been shown in the general category whereas he belongs to and had applied in DEPER PAFOR category for allotment of a 6 marlas plot in Urban Estate, Karnal. It is worthwhile to mention here that the petitioner too had applied for a 6 marlas plot in the same Urban Estate of Karnal under the general category. The respondents on the said application having been made by the namesake of the petitioner, unmindfully and for extraneous gains and considerations changed/converted the category of the petitioner from general to DEPER PAFOR category without there being any request from the petitioner to do so. That now in order to cover up the said wrong, the respondents have put/shifted the entire blame upon the petitioner to say that he never objected regarding change of category from general to DEPER PAFOR.”

6. Affidavit dated 5.2.2015 by Shakti Singh, Estate Officer, HUDA, Karnal was also filed stating that the respondents were ready to conduct dummy draw for the petitioner for the category under which he had applied for a plot and in case he is declared successful, the allotment of plot would be made to him. Rejoinder was filed by the petitioner stating inter alia that the concept of dummy draw would have been applicable if his name had been left out of the draw for some reason and was allowed to

participate in the same at a later point of time but herein once the petitioner has been successful in the draw of lots though in the wrong category for which he had never applied, he cannot be forced to participate in the dummy draw due to fault of the respondents. Even otherwise, his case is squarely covered by the decision of this Court dated 20.9.2013 in CWP No.2519 of 2013, *Shakuntla vs. HUDA and others*.

7. We have heard learned counsel for the parties and perused the record.

8. On December 16, 2014, learned counsel for the petitioner relied upon judgment of this Court in *Shakuntla's* case (supra) to contend that as there was no fault on the part of the petitioner and his case was wrongly considered by the respondents in the category of plots reserved for para military forces where the petitioner had been successful in the draw of lots, in view of the decision in *Shakuntla's* case (supra), the plot had been rightly allotted to him and cancellation thereof was illegal.

9. Learned counsel for the respondents disputing the claim of the petitioner submitted that on 16.12.2014, the respondents were required to consider the case of the petitioner and take a decision as to how the mistake could be undone in respect of him and other similarly situated persons. Thereafter, in the affidavit dated 5.2.2015, the Estate officer, HUDA, Karnal stated that name of the petitioner could be put in the dummy draw of lots and his case will be considered accordingly. We do not find any justification for the same.

10. This Court in *Virender Singh vs. Haryana Urban Development Authority, Manimajra*, 1994(3) PLR 289 while dealing with

a case where the wrong category was assigned and there was no fault of the petitioners, it was held that it was entirely on account of fault of the respondents. A direction was issued to the respondents to allot a plot to the petitioners of their entitlement. The relevant observations read thus:-

“5. After hearing the learned counsel for the parties and having gone through the record, I am of the considered view that cause of the petitioners is meritorious and the petitions must succeed. The petitioners had applied in the category to which they belonged. Their application form clearly indicate that they belong to a particular category. The fact that they had applied for the category to which they actually belong has not been denied by the respondents. If the petitioners are considered in the category to which they did not belong it was entirely on account of fault of the respondent-HUDA. May be, there was no mala fide involved in the matter and it was only pure accidental mistake that the petitioners were considered in the wrong category but the fact remains that the category to which they actually belonged, they were not considered at all. It is possible that if the petitioners were considered in the category to which they belong, they still might have been successful. Be that as it may, the non-consideration of their names by the respondents in the correct category has resulted into the non consideration of their case. The only course thus open to the respondents-authorities, on detection of the mistake was to hold draw of lots de novo but that necessarily would have resulted into lot of harassment to those who had since been declared successful in the draw of lots. If the respondents did not choose the course as suggested above, then perhaps the only option open to them was to correct the category of the petitioners and to allot the plots that came to their share in the draw of lots. This court, in the circumstances, that has been fully narrated above, has no choice but to direct the respondents authorities to

choose the second course that was open to it i.e. to allot the petitioners the plots that came to their share in the allotment of plots and to correct the category and made it to the one of which they actually belong. This Court, vide interim order while hearing the case on 25th January 1994 directed the respondent HUDA to produce on record the registration card that was sent to the petitioners as mentioned earlier. Annexure Rule 1 attached to the written statement is only proforma. This course was adopted with a view to verify the plea of the respondent HUDA that the petitioners even though issued registration card in the wrong category kept silent over the issue and did not object to the authorities at any given stage that they have been registered in wrong category. No record has been produced at the adjourned date. The very fact that instead of placing on record the registration card of the petitioners only proforma has been attached as also for the added reason that the registration card has not been produced on the record even after the direction was given by this Court, the presumption can legitimately be drawn that then same if produced would have been gone against the contention of the respondents. It is required to be mentioned here that the petitioners had categorically denied that they had received the registration cards. Be that as it may, even if it is assumed that the petitioners were issued registration cards in wrong category and the petitioners kept silent over it, the authorities concerned i.e. the HUDA has also to equally share the blame. The Motion Bench, at the time of hearing on 29th September 1992 had reserved one plot each for the petitioner and that necessarily means that the plots are lying vacant on which the petitioners can be accommodated. It is thus directed that the petitioners would be allotted one plot each which was reserved for them within one month. The conditions for allotment would be and remain the same as are mentioned in the advertisement in pursuance of which the petitioners made the applications.”

Following the said decision, similar view was expressed by this Court in *Shakuntala's* case (supra).

11. In view of the above, following the decision in *Virender Singh* and *Shakuntala's* cases (supra), all the three writ petitions are allowed. The respondents are directed to allot the respective plots to the petitioners for which they have been declared successful. The conditions of allotment would remain the same as are mentioned in the advertisement in pursuance of which applications were made by them.

12. Before parting, it may be noticed that on 29.1.2014, in CWP No.1623 of 2014, a Show Cause Notice was issued to the HUDA authorities to explain as to why an independent probe be not ordered against them and the matter be referred for investigation to an independent agency on account of the reason that irregularities were surfacing in several other cases of illegal allotments. An affidavit of Shri R.K.Singh, Estate Officer, HUDA, Karnal dated 5.7.2014 has been filed in response thereto wherein it has been stated that another applicant namely Narender Singh son of Shri Bhale Ram of the same description of the petitioner including parentage, resident of H.No.654, Sectors 9 and 11, Hisar had also applied for 6 marla plot in DEPER PAFOR category vide his application No.BK010R00090000004350 and he was allocated Registration No.U026/32/6.00M/DEPER/PAFOR/458. On the basis of the said list prepared by IT Cell HUDA, Panchkula, registration cards were then issued to the individual applicants including the present petitioner as well as to the aforesaid person through ordinary post. It was on this account that the error of putting up the name of the petitioner in wrong category had occurred.

The aforesaid explanation appears to be reasonable in the circumstances.

Accordingly, the matter is dropped.

(Ajay Kumar Mittal)
Judge

March 19, 2015

(Rekha Mittal)
Judge

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