

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CIVIL WRIT PETITION NO.17109 of 2015

DATE OF DECISION: AUGUST 19, 2015

Suman and othersPetitioners

Versus

State of Haryana and othersRespondents

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

Present: Mr.Vineet Dhanda, Advocate for the petitioners.

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TEJINDER SINGH DHINDSA, J.

The petitioners seek the issuance of a writ of mandamus for directing respondent No.2 – Housing Board Haryana to include their names in the draw of lots scheduled for 21.8.2015 pertaining to allotment of Flats at Narnaul by exempting them from deposit of earnest money.

2. Pleadings on record would reveal that Housing Board Haryana had launched Housing Schemes for allotment of Houses/Flats by way of draw of lots in the cities of Bahadugarh, Sirsa, Narnaul and Bawal in the year 2010. Petitioners No.1 to 3 had applied for Flats under the LIG (Lower Income Group) category, petitioner No.4 had applied under the MIG (Middle Income Group) category and petitioner No.5 under the HIG (High

Income Group) category. The applications submitted by the petitioners were duly accompanied by the supporting documents as also the requisite earnest money deposit. Draw of lots was held on 2.5.2011. The petitioners were, however, unsuccessful in such draw of lots and as such, the earnest money stood refunded to them.

3. Civil Writ petitions No.17910 of 2010 (**Savita Chaudhary v. State of Haryana and others**), No.18940 of 2010 (**Chander Kanta v. State of Haryana and others**) and No.3050 of 2012 (**Rakesh Rani and another v. State of Haryana and others**) came to be filed in this Court impugning the allotment of Flats by Housing Board Haryana and in which process the present petitioners had also participated. We do not consider it necessary to delve into the specific grounds of challenge that had been raised by the petitioners in such connected petitions. Suffice it to notice that by common judgment dated 1.5.2012 passed by a Division Bench, the method of allotment of the tenements was found to be bad in law. Accordingly, directions were issued to refund the amount deposited by the successful applicants along with interest @ 10% per annum and the Housing Board Haryana was directed to conduct a fresh draw of lots from amongst the original applicants.

4. In purported compliance of the directions issued by the Division Bench in the judgment rendered in **Savita Chaudhary's** case (supra), respondent No.2 has issued numerous advertisements dated 7.7.2012, 12.11.2014, 13.11.2014, 9.4.2015, 10.4.2015, 9.5.2015, 2.6.2015 and 12.6.2015 calling

upon all the original applicants who had participated in the initial draw of lots to submit applications.

5. Learned counsel appearing for the petitioners would submit that in the light of the Division Bench judgment dated 1.5.2012, the present petitioners are vested with a right to be considered in the draw of lots to be conducted afresh for Flats at Narnaul and now slated for 21.8.2015. The solitary contention raised before us is that the applications of the petitioners be accepted and their names be included in the draw of lots without insisting on the deposit of earnest money. Learned counsel would submit that the petitioners belong to the Economically Weaker Section (EWS) and have been unable to collect funds to make good the earnest money deposit and even finance has been declined by the Financial Institutions/Banks.

6. Having heard learned counsel for the petitioners at length, we find that the prayer made in the instant petition is wholly mis-conceived.

7. Even though the petitioners have chosen not to place on record the various advertisements issued by the Housing Board Haryana between the period 12.11.2014 to 12.6.2015, yet learned counsel has, during the course of arguments, conceded before us that there was a specific stipulation in each of the advertisements calling upon the applicants to submit the application along with the requisite earnest money deposit. It is not the case of the petitioners that such stipulation/condition for deposit of earnest money to render an applicant eligible for the draw of lots is arbitrary or unreasonable. It is a condition

applicable across the board to all the applicants who had earlier participated in the draw of lots conducted on 2.5.2011 and who were now being invited to participate in the fresh draw of lots in pursuance to the judgment dated 1.5.2012 rendered by the Division Bench. Such stipulation of deposit of earnest money would be in the nature of a policy decision taken by the Housing Board Haryana and would not call for any interference by this Court in exercise of its writ jurisdiction.

8. The prayer of the petitioners seeking exemption from deposit of earnest money only on account of paucity of funds cannot be accepted. Carving out an exemption in favour of the petitioners in such regard would amount to putting a number of other applicants at a disadvantageous position who also are similarly situated as the present petitioners and have not submitted their applications for the reason that they have not been able to muster resources to make the earnest money deposit. Acceptance of the prayer of the petitioners would also work to the prejudice of such applicants who have applied in pursuance to the various advertisements issued between the period 12.11.2014 to 12.6.2015 and submitted applications along with the requisite earnest money and as such, are even shouldering the burden of the interest component.

9. It would not even lie in the mouth of the present petitioners that sufficient time had not been granted to them for submission of applications along with earnest money. It is the submission of the learned counsel himself that the petitioners had become aware of the fresh draw of lots to be conducted by virtue

of advertisement dated 9.4.2015 and in which the closing date was fixed as 15.6.2015 and the petitioners had duly approached the Financial Institutions/Banks, but the request for finance had not been acceded to and as such, funds could not be arranged. The petitioners, as such, cannot even complain as regards sufficient time and opportunity having not been granted to arrange for the deposit of earnest money.

10. There is yet another aspect of the matter. The directions issued by the Division Bench in its judgment dated 1.5.2012 in Civil Writ Petition No.17190 of 2010 and other connected matter were in the following terms:

- 1. The Board shall conduct fresh draw of lots from amongst the original applicants;*
- 2. The Board shall give opportunity to all the unsuccessful applicants, if willing, to deposit the earnest money to be eligible for draw of fresh lots by way of advertisement in the daily news paper and in such other manner, which the Board considers appropriate;*
- 3. After holding fresh draw of lots, the amount will be refunded to those candidates, who are unsuccessful in the draw of lots; and*
- 4. The entire process is to be completed within three months.*

11. In terms of the directions re-produced hereinabove, the Housing Board Haryana was mandated to conduct fresh draw of lots from amongst the original applicants and opportunity was to

be granted to all unsuccessful applicants, if willing, to deposit the earnest money to be eligible for draw of lots afresh by way of advertisement.

12. The prayer made in the instant writ petition for exemption as regards deposit of earnest money and to be included in the list of candidates for conduct of draw of lots afresh would even run counter to the directions issued by the Division Bench and which thereafter have been affirmed by the Hon'ble Supreme Court.

13. For the reasons recorded above, we do not find any merit in the present writ petition and the same is, accordingly, dismissed.

14. Petition dismissed.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

(TEJINDER SINGH DHINDSA)
JUDGE

AUGUST 19, 2015
SRM

Note: *Whether referred to Reporter? (Yes/No)*