

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

**CWP No.2961 of 2014
Date of decision: 21.5.2015**

Sarbati Devi

.....Petitioner

Vs.

**Appellate Authority under Section 72-A of the Haryana Housing Board
Act 1971 and another**

.....Respondents

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

Present: Mr. Vinod S.Bhardwaj, Advocate for the petitioner.

Mr. Ashwani Talwar, Advocate for the Housing Board, Haryana.

Ajay Kumar Mittal,J.

1. The petitioner seeks quashing of order dated 7.6.2012, Annexure P.12 whereby allotment of MIG flat in her favour at Dadri Gate, Bhiwani has been cancelled by the respondent-Housing Board. Further prayer has been made for quashing the order dated 4.7.2013 dismissing her appeal and the show cause notice dated 12.4.2012, Annexures P.14 and P.10 respectively.

2. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner is the widow of late Shri Gokal Singh who had served as Hawaldar in the Indian Army and had rendered unblemished services to the nation with sincerity

and dedication. In the year 2007, the respondent Housing Board, Haryana invited applications for 1590 built up modern double storey flats of LIG, MIG and HIG categories at Dharuhera, Sonapat and Bhiwani. The last date for submission of applications was 31.7.2007. The scheme contemplated 33% reservation for the women under all categories including general. The reservation was made to various categories which was restricted to Haryana State Government employees, retirees, Housing Board Employees, scheduled castes, handicapped, blind persons, backward classes, freedom fighters, disabled servicemen, war widows and widows etc. 10% reservation was for war widows, disabled servicemen, ex servicemen, serving military personnel and their wives, IAF Benevolent Association, freedom fighters and CRPF personnel under Code-H. Further, two per cent reservation was provided for widows (excluding war widows). Thus, the ex-servicemen as well as serving military personnel including their wives were eligible to apply for the flats under Code 'H'. The petitioner got her application form filled up under category 'H' upon being advised by the officials of the Housing Board, Bhiwani. The draw was held on 25.1.2008 in which the petitioner was found successful for MIG flat in Housing Board Colony, Phase III, Bhiwani. The petitioner was called upon to deposit 10% of the total cost i.e. ₹ 86,000/- vide letter dated 14.2.2008, Annexure P.2. She was thereafter called upon to deposit ₹ 1,29,000/- on or before 31.3.2008 vide letter dated 29.2.2008, Annexure P.3. The petitioner submitted the requisite documents alongwith the required payment vide letter dated 31.3.2008, Annexure P.4. The said letter was acknowledged by the respondent Board vide receipt dated 17.3.2008, Annexure P.5. The respondent Board vide letter dated 3.9.2008, Annexure P.6, though admitted that the petitioner was

declared successful under Code 'H' as wife of defence person, they called upon her to furnish pension and other certificates. The petitioner vide letter dated 8.9.2008, Annexure P.7 submitted the requisite certificates. Thereafter, the respondent Board vide letter dated 2.12.2011, Annexure P.8 demanded a further sum of ₹ 1,10,592/- and offered to hand over the possession of the flat within 30 days. It was also conveyed to the petitioner that the balance price of the flat was to be paid in monthly instalments of ₹ 5909/- over a period of 10 years. The petitioner deposited the said amount and started depositing the monthly instalments. After a period of four years, a show cause notice was served by the Board upon the petitioner dated 12.4.2012, Annexure P.10 for cancellation of the said allotment. It was stated that as per terms and conditions of the brochure, only the categories mentioned in Table 5 (Code H) were allowed to apply and the wives of ex servicemen were not covered under the said quota. Hence the petitioner was stated to be ineligible for allotment of the flat under the said quota. The petitioner submitted her detailed reply to the notice which was received in the office of the respondent Board on 23.4.2012, Annexure P.11. The respondent authorities without considering the reply cancelled the allotment in favour of the petitioner vide letter dated 7.6.2012, Annexure P.12. Aggrieved thereby, the petitioner filed appeal, Annexure P.13 before the appellate authority under Section 72-A of the Haryana Housing Board Act, 1971 which was dismissed vide order dated 4.7.2013, Annexure P.14. Hence the instant writ petition.

3. We have heard learned counsel for the parties.
4. The question herein relates to whether there was concealment of facts and furnishing inaccurate particulars intentionally by the petitioner

as her case was considered under Category 'H', Column No.11 of Table 5 which is to the following effect:-

“War-widows, disabled servicemen, ex-servicemen, serving military personnel and their wives, IAF Benevolent Association, Freedom fighters and GREF personnel”

5. The petitioner is a widow of an ex-serviceman. Column No.11 of Table 5 provides for specific reservation for the wives of military personnel. The object of the said clause appears to be that reservation is to provide social security to the families of serving or retired military personnel. Though strictly interpreting the aforesaid clause, the case of the petitioner would not fall thereunder. However, as per averments of the petitioner, she had filled the application under category 'H' being advised by the officials of the respondent-Housing Board. The case of the petitioner was considered under category 'H' by the respondent-Board after noticing the factual position of the petitioner being widow of an ex-serviceman. She continued to deposit the entire amount with the respondent-Board. Still further, the petitioner is in possession of the flat in dispute and had not concealed or furnished inaccurate particulars. Keeping in view the totality of facts and circumstances of the present case, the action of the respondent-Board in cancelling the allotment of MIG flat at Dadri Gate, Bhiwani is not justified.

6. This Court in *Inderbir Kaur vs. Chairman, Chandigarh Housing Board, Chandigarh*, 1994(1) PLR 87 considering an issue where the petitioner had not concealed anything and had clearly mentioned in the application to be an employee of Municipal Committee and residing at Faridkot. The Board issued allotment letter to the petitioner and kept on receiving the instalments from her. It was held by this Court that the Board

by its own act and conduct was debarred from raising any objection as regarding eligibility of the petitioner. It was recorded as under:-

“4. After hearing learned counsel for the parties and going through the record of the case I am of the view that this petition deserves to succeed. It shall be seen from the array of facts that the application for allotment of flat was made way back in 1987 when she was registered at serial No. 536 in the category of HIG (L) II houses. It is conceded as there is nothing in the written statement controverting the fact that petitioner had not concealed anything and clearly mentioned her self to be an employee of Municipal Committee and residing at Faridkot. Ignoring this, admittedly as well, the Board issued her allotment letter and kept on receiving the instalments of money till October, 1992. It is too late in the day for the respondent to raise the plea of eligibility as by its own act and conduct the Board is debarred from raising such an objection at such a belated stage. This apart, the petitioner who applied for a house as far back as 1987 cannot be denied the benefit of allotment made to her on equity as well. Had she been told in the beginning that she was not eligible she would have applied for a flat elsewhere but at this stage when the prices have gone sky-rocketing she cannot be compensated as she cannot possibly apply for a plot of the same area for the prices prevalent in the year 1987.’

7. In view of the above, the writ petition is allowed. The impugned orders dated 7.6.2012 and 4.7.2013 Annexures P.12 and P.14 respectively are quashed.

(Ajay Kumar Mittal)
Judge

May 21, 2015
'gs'

(Rekha Mittal)
Judge