

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

CWP No.9185 of 2013
Date of decision:27.2.2015

Jagbir Singh Dhanda

....Petitioner

VERSUS

Estate Officer, HUDA and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Samir Rathore, Advocate for
Mr. Sumeet Goel, Advocate for the petitioner.

Mr. Ajay Nara, Advocate for respondents.

HEMANT GUPTA, J.

The petitioner has sought a writ of certiorari for quashing of the communication dated 11.04.2012 and also a writ of mandamus for directing the respondents to allot Plot No.532, Sector 21, Urban Estate, Kaithal (Haryana).

The Haryana Urban Development Authority (for short 'HUDA') issued a policy dated 29.08.2008 for reservation of residential plots for Advocates in Urban Estates being developed by HUDA. The father of the petitioner applied for allotment of a residential plot on 18.10.2010 measuring 8 marlas out of Advocate Quota in Urban Estate, Sector 21, Kaithal. In the draw of lots held on 05.04.2011, the father of the petitioner was successful but unfortunately before the draw of lots, the father of the petitioner died on 08.03.2011. The petitioner claimed allotment of a plot being a legatee of his father on the basis of registered Will. It is the said

request which has been declined vide the order impugned in the present writ petition.

In the written statement filed, it is asserted that father of the petitioner expired before draw of lots and that mere participation in the draw of lots would not create any right for allotment. No concluded contract came into existence as no allotment letter was ever issued since the applicant had already died even before the draw of lots. It is also pointed out that the policy dated 29.03.2008 is a beneficial policy specifically providing for reservation of plots for Advocates only and no non-Advocate is entitled to consideration for allotment of plot under this category. Reference was also made to judgment of Hon'ble Supreme Court reported as (2010) 9 SCC 157 titled Greater Mohali Area Development Authority and others v. Manju Jain and others, to contend that mere participation in the draw of lots does not confer any right of allotment.

Learned counsel for the petitioner has vehemently argued that the claim of the petitioner for allotment of a plot has been declined by passing a non-speaking order. Therefore, the petitioner as a legal heir of his deceased father who was successful in the draw of lots is entitled to allotment of a plot.

We do not find any merit in the present writ petition. The father of the petitioner was an applicant under the reserved category of the Advocates. Before draw of lots he died. The petitioner a non-Advocate is not entitled to benefit of reservation as no concluded contract in respect of immovable property has come into existence with the issuance of letter of allotment.

Similar issue has been examined by Hon'ble Supreme Court in judgments reported as 2009(4) SCC 369 titled as Chaman Lal Singhal v. Haryana Urban Development Authority & Others; Manju Jain's case (supra) and (2013) 5 SCC 182 titled U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma.

The argument of the petitioner is that right of allotment of a plot is a right in property, therefore, it is a heritable right. We do not find any merit in the said argument. The rights which are heritable are specified in Section 306 of the Indian Succession Act 1925. It reads as under:-

“306. Demands and rights of action of, or against deceased survive to and against executor or administrator.—All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

In view of the aforesaid provisions the “right to prosecute or defend any action” would arise only if there is concluded contract which has come into existence during the lifetime of a person. No such right fructified during the lifetime of the father of the petitioner. Prior to concluded contract, it was a personal right to apply as a candidate belonging to reserved category. A legal heir will be entitled to benefit of reservation only if he also satisfies the conditions of eligibility as a reserved category candidate. It was a personal right which died with the father of the petitioner. The petitioner as a legal

heir of his father cannot claim the benefit of reservation of plots meant for advocates, in the absence of a contract or a right to plot.

Consequently, we do not find any merit in the present writ petition.

Dismissed.

(HEMANT GUPTA)
JUDGE

FEBRUARY 27, 2015
‘D. Gulati’

(HARI PAL VERMA)
JUDGE