

In the High Court of Punjab and Haryana at Chandigarh

CWP No.8295 of 2014

Date of Decision:23.4.2015

Balwan Singh

---Petitioner

versus

State of Haryana and others

---Respondents

**Coram: Hon'ble Mr. Justice Ajay Kumar Mittal
Hon'ble Mrs. Justice Rekha Mittal**

**Present: Mr. Sandeep Sharma, Advocate
for the petitioner
Ms. Palika Monga, DAG, Haryana**

**Mr. Atul Aggarwal and Mr. Padam Kant Dwivedi, Advocates
for respondent Nos. 2 to 4-HUDA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

REKHA MITTAL, J.

The petitioner has invoked Articles 226/227 of the Constitution of India for issuance of writ of certiorari quashing Annexure P-6 dated 29.4.2014 and direction to allot plot to the petitioner at the rate of ₹5,262/- per square meter as per advertisement dated 12.2.2004 (Annexure P-2).

2. Some of the facts which require to be noted are that 05 acres of land belonging to the petitioner was acquired in the year 1993 for development of Sectors 38 to 41 and 47, Gurgaon. In the year 2004, respondents invited applications from the oustees for allotment of plots.

The petitioner submitted application (Annexure P-1) for allotment of 01 kanal plot, deposited an amount of ₹2,21,004/- as earnest money and was informed vide memo (Annexure P-3) that he was found eligible for allotment of residential plot measuring 01 kanal in Sector 47, Gurgaon under oustees policy. However, the petitioner was not allotted any plot and he filed CWP No. 1025 of 2013, decided on 27.8.2013 wherein the respondents were directed to allot 01 kanal plot to the petitioner either in Sector-38 or Sector-39, Gurgaon. In terms of order passed by this Court, the impugned allotment letter (Annexure P-6) was issued and the petitioner was allotted plot No. 35 (01 kanal), Sector-38, Gurgaon on free hold basis at the rate of ₹24,400/- per square meter making tentative total price to the tune of ₹1,02,48,000/-.

3. Counsel for the petitioner contends that the petitioner submitted application in the year 2004 for 01 kanal plot in Sector-47, Gurgaon and he was found eligible for allotment of such a plot in the aforesaid sector. It is further argued that failure of the authorities to allot 01 kanal plot in Sector-47, Gurgaon for more than one decade should not cause prejudice to the petitioner requiring him to pay price for the plot at the rate of ₹24,400/- per square meter in place of ₹5,262/- per square meter, the price of one kanal plot in Sector-47, Gurgaon fixed in the year 2004. According to learned counsel, the petitioner has been allotted plot No.35 Sector 38, Gurgaon in compliance with the directions issued by this Court holding him entitled to get 01 kanal plot on the basis of his application dated 29.4.2004. It is argued that in the earlier litigation, it was never the case of the respondents that in case, the petitioner is held entitled to allotment of 01 kanal plot in

any of the Sectors of Gurgaon, he would be liable to pay price at the current rate fixed by the authorities. It is prayed that the respondents may be directed to allot a plot to the petitioner either in Sector-47 or in Sector-38, Gurgaon but at the rate of ₹5,262/- per square meter as per advertisement dated 12.2.2004.

4. Counsel for the respondents, on the contrary contends that as one kanal plot in Sector-47, Gurgaon was not available for allotment, the petitioner has been allotted 01 kanal plot in a better sector i.e. Sector-38, Gurgaon but he is liable to pay price at the rate fixed by the Haryana Urban Development Authority, Panchkula (for brevity "HUDA") in the year 2013-2014, in terms of allotment made in the year 2013.

5. We have heard counsel for the parties and perused the records.

6. Concededly, the petitioner submitted application dated 30.4.2004 (Annexure P-1) in response to advertisement issued by the respondents for allotment of residential plots in Sector-47, Gurgaon in the category of oustees and deposited an amount of ₹2,21,004/- being 10% of price of plot in Sector-47, Gurgaon. On scrutiny of his claim, the petitioner was found eligible for allotment of residential plot measuring 01 kanal in Sector 47, Gurgaon as intimated by Estate Officer, HUDA, Gurgaon vide Annexure P-3. The respondents failed to make any allotment in favour of the petitioner and as a result, the petitioner filed CWP No. 1025 of 2013, decided by the Division Bench of this Court on 27.8.2013. A relevant extract from the judgment reads thus:-

“In view of the situation as hereinbefore depicted, the petitioner was entitled to allotment of plot, in preference

to aforesaid Dharam Parkash, and the allotment of plot, to said Dharam Parkash by ignoring claim of the petitioner, would have been sufficient to cancel allotment in favour of the said Dharam Parkash but he being not before us, we refrain ourselves from passing an order adverse to his interest, more-so, the petitioner can be compensated by directing the respondents to allot a one-kanal plot to him either in Sector-38 or in Sector-39, Gurgaon.

In the consequence, we accept the writ petition, quash order dated 14.01.2013 (Annexure P-15) and direct the respondents to allot a one-kanal plot to the petitioner either in Sector-38 or Sector-39, Gurgaon, within two months from today, after taking his option as regards the sector. The petitioner is also held entitled to costs of Rs.10,000/-, to be recovered from the officer responsible for allotment of a plot to aforesaid Dharam Parkash by ignoring better claim of the petitioner.”

7. It appears that the judgment passed by this Court has attained finality and in compliance thereof, allotment letter (Annexure P-6) was issued whereby plot No. 35 measuring 420 square meters in Sector -38, Urban Estate Gurgaon was allotted to the petitioner at the rate fixed for 01 kanal plot in Sector-38 Gurgaon as per Annexure R-1(Fixation of Rates of Residential plots in various Urban Estates of HUDA for the year 2013-14).

8. The short dispute between the parties is whether the petitioner

was entitled to allotment of plot at the rate fixed in the year 2004 or for the year 2013-14.

9. Counsel for the respondents is not in a position to point out if delay in allotment of plot is attributable to the petitioner in any manner whatsoever. The entitlement of the petitioner to 01 kanal plot on the basis of his application submitted in the year 2004 has been upheld by this Court in CWP No. 1025 of 2013. As the petitioner was held entitled to 01 kanal plot on the basis of his application submitted in the year 2004, plea of the respondents that he would be liable to pay at the rate fixed in the year 2013-14 cannot be allowed to sustain being unjustified and unfounded. Thus, the petitioner shall be entitled to 01 kanal plot at the rate prevalent (fixed) in the year 2004.

10. Another aspect of the matter is whether the petitioner shall be liable to pay at the rate of ₹5,262/- per square meter or ₹7,104/- per square meter in terms of rates fixed for 01 kanal plot in Sector-47 and Sector-38, Gurgaon, respectively, in the year 2004?

11. Indisputably, the petitioner applied for 01 kanal plot in Sector-47, Gurgaon. As there was no 01 kanal plot available in Sector-47, Gurgaon he has been allotted 01 kanal plot in Sector-38, Gurgaon. Counsel for the petitioner has not disputed that in the year 2004, rate of 01 kanal plot in Sector-38, Gurgaon was ₹7,104/- per square meter and it was ₹5,262/- per square meter in Sector-47, Gurgaon. Perusal of Annexure R-1, relied upon by the respondents would make it evident that in the year 2013-14, the rate of residential plot in Sector 47, Gurgaon has been fixed at ₹21,500/- per square meter but the same is ₹24,400/- per square meter for plot in Sector-

38, Gurgaon. The rates of plots in Sectors 47 and 38, Gurgaon fixed in the year 2004 and for the year 2013-2014 certainly indicate that land in Sector 38-Gurgaon, is more valuable than that of Sector-47, may be, Sector 38 is more developed than Sector 47, Gurgaon. Though there is no material to record a definite finding as to the basis for fixing higher rates of land in Sector 38, viz-a-viz Sector 47, Gurgaon, but as the petitioner has been allowed plot in Sector-38, Gurgaon, the petitioner cannot be put to an extraordinary advantage by holding him liable to pay for the plot in Sector 38, Gurgaon at the rate of ₹5,262/- per square meter instead of ₹7,104/- per square meter.

12. In view of the above, we are of the considered opinion that the petitioner shall be entitled to allotment of plot No. 35, Sector-38, Gurgaon, however, he shall be liable to pay the price at the rate of ₹7,104/- per square meter. The respondents are accordingly directed to issue a fresh allotment letter to the petitioner modifying the rate at ₹7,104/- per square meter and consequential modification in the tentative price and schedule for payment of installments etc.

13. For the reasons aforesaid, the petition is allowed in the aforesaid terms leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

(Ajay Kumar Mittal)
Judge

23.4.2015
PARAMJIT