

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 07.08.2015

**RA-CW-150-2015 in
CWP-1552-2002**

Bhupinder Kumar through his wife Suman Dhiman ...Applicant-Petitioner

Versus

State of Punjab & others

...Respondents

**RA-CW-151-2015 in
CWP-19680-2001**

Rajinder Kaur

...Applicant-Petitioner

Versus

State of Punjab & others

...Respondents

**RA-CW-152-2015 in
CWP-12933-2001**

Surjit Singh

...Applicant-Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. G.C. Dhuriwala, Advocate,
for the applicant-petitioner(s).

HEMANT GUPTA, J.

This order shall dispose of aforesaid three review applications seeking review of the common order dated 02.03.2015 rendered in three writ petitions filed by the applicant-petitioner(s). Though the applicant-

petitioners have sought review in all the petitions on identical grounds, but Mr. Dhuriwala pointed out that facts of Rajinder Kaur's case and Bhupinder Kumar's case are different from that of Surjit Singh's case and that the distinction between these cases has escaped attention of this court.

The applicant-petitioners have sought review of the orders relying upon:

- (i) Order dated 07.10.1998 passed by the Consumer Disputes Redressal Commission, UT, Chandigarh;
- (ii) Order dated 27.11.2003 National Consumer Disputes Redressal Commission, New Delhi;
- (iii) Jagdish Kumari Vs. State of Punjab & others 2001(1) RCR (Civil) 260;
- (iv) Subedar Anokh Singh Vs. State of Punjab & others (CWP No.11871 of 1997 decided on 07.01.1998);
- (v) Revision petition titled 'Sucha Singh Vs. The Estate Officer, SAS Nagar & another' decided by the Principal Secretary to Government of Punjab on 20.02.2007;
- (vi) Revision petition titled 'Smt. Manjit Kaur Vs. The Estate Officer & another' decided by the Additional Secretary, Government of Punjab on 11.11.2000;
- (vii) CWP No.11284 of 2001 - Wg. Cdr. Raman Kumar Kapoor Vs. PUDA;
- (viii) CWP No.13723 of 2001- Satinder Pal Singh Vs. PUDA;
- (ix) CWP No.13724 of 2001 - Sohan Lal Arora Vs. PUDA;
- (x) CWP No.14453 of 2001 - Sain Dass Vs. PUDA;
- (xi) CWP No.14454 of 2001 - Gurpal Singh Bal Vs. PUDA; &
- (xii) CWP No.14455 of 2001 - Bakhshish Singh Vs. PUDA.

In the said cases, it has been decided to allot plots at the rate of Rs.1400/- per sq. yard. Since the said orders have not been noticed, therefore, there is error apparent on record. It is also pointed out that in Bhupinder Kumar's case, the petitioner has communicated unconditional

acceptance for allotment at the rate of Rs.3600/- per sq. yard on 04.02.2000.

In Rajinder Kaur's case also, the acceptance was conveyed without prejudice to her legal and constitutional rights on 02.03.2000. Therefore, the basis of judgment proceeds on wrong assumption of law and facts.

Firstly, in respect of the facts of the case, we may notice that in the order, it has been inter alia found that mere submission of an application for allotment of a plot does not create any right to seek allotment. Submission of an application only confers a right of consideration.

All the petitioners are purchasers of the applicants, who registered for allotment of plots in the year 1983-84. The predecessors of the petitioners were not successful in the draw of lots.

Bhupinder Kumar's case

In Bhupinder Kumar's case, 500 sq. yards plot was applied by Surinder Singh and Parabhjot Kaur, when earnest money of Rs.10,000/- was deposited on 31.01.1984. The registration was permitted to be transferred in favour of the petitioner. Such transfer was allowed in favour of the petitioner on 06.08.1997 (Annexure P-1). It appears that the petitioner deposited Rs.60,000/- and Rs.10,000/- in response to a letter addressed to Rajmal, the predecessor of Surjit Singh – petitioner in CWP No.12933 of 2001. On 30.06.1997, it was decided by the respondents that plots will be offered to all genuine eligible persons at the rate of Rs.2700/- for plot sizes upto 100 sq. yards; Rs.3200/- for plot sizes upto 249 sq. yards and Rs.3600/- for plots sizes above 250 sq. yards. It was said to be one-time solution.

The petitioner relies upon a letter issued to Rajinder Kaur – petitioner in CWP No.19680 of 2001 seeking her option. The petitioner

communicated his acceptance on 04.02.2000. There is no letter for seeking option from him. It was on 23.02.2001, the petitioner was informed that for the purpose of allotment of plots in Urban Estate, Mohali from the pending applicants, the last opportunity for allotment of plot in Sectors 76 to 80, Urban Estate, Mohali is being given. The petitioner was also informed to apply by making up the deficiency in their earnest money by paying 10% of the price at the rate of Rs.3750/- per sq. yard for the plot size of which the petitioner was the applicant. In response to such letter, the petitioner stated that he needs the plot in every situation and that too in Sector 69 only. The relevant extract from the letter dated 15.03.2001 (Annexure P-8) reads as under;

“It is humbly requested that regarding the allotment of plot at Urban Estate, Mohali, I have been giving the consent regarding its rate from time to time. The documentation of my R.No.169 is complete in every respect from the very beginning. Sometimes back, the draw which was held for 80 plots and the numbering of the plots has been done, in that draw my name was to be considered for the allotment as per the orders of Additional Chief Administrator, PUDA, Mohali. But my name was not considered in the above said draw. What is my fault? When the documents of this R.No.169 are complete in all respect from the very beginning and I have given my consent regarding the rate of plot @ Rs.3600/- per sq. yd (under protest). The condition of your letter No.6752 dated 23.02.2001 are not acceptable to me. I need the plot in every situation and that too in sector 69 only. Because you have given an affidavit in the High Court that plot will be given to every pending application. In this, it is also mentioned ‘that we have reserved the plots against the every R number’. I do not want to have the plot in Sectors 76 to 80. You have given the plots in Sector 69 to all the pending R numbers uptill now. I also be given the plot there only. I shall be highly grateful to you and I do not want to take the refund.”

It is, thereafter, the present petitioner invoked the writ jurisdiction of this Court.

In the order dated 02.03.2015, the facts for decision were picked up from Surjit Singh's case (CWP No.12933 of 2001), wherein in identical situation, Surjit Singh did not opt for participation for the allotment of plots in response to the communication dated 01.03.2001, which is in the case of the petitioner – Bhupinder Kumar as well. The petitioner has categorically refused to opt for the alternative plot. In view of the said fact, the petitioner cannot seek allotment of a plot being an old applicant of the year 1984. The communication dated 04.02.2000 produced by the petitioner was not in response to any offer. Later, the option for consideration in another scheme was not accepted as per letter reproduced. Therefore, the petitioner cannot be permitted to raise any grievance in respect of the plots allotted to others and to non allotment of plot to him.

Orders mentioned at Serial No. (i), (ii), (v) and (vi) referred to by the learned counsel for the applicant-petitioner, are passed by the Consumer Disputes Redressal Commission, UT, Chandigarh and National Consumer Disputes Redressal Commission, New Delhi - the quasi judicial Tribunals constituted under the Consumer Protection Act, 1986 or under the Punjab Urban Estate Development Regulation Act, 1964, thus, are not binding precedent.

In respect of the judgment in Raman Kumar Kapoor's case (supra) as well as other writ petitions at Sr.Nos.(vii) to (xii), we find that in the aforesaid cases, there is no effective order passed by the Court, but the writ petitions were dismissed as infructuous on account of an affidavit filed by the respondents therein. All these petitioners were the Ex-servicemen

and a decision for allotment of plots was taken in a meeting held on 12.12.2001. The said decision is, in fact, consequent to an order passed by this Court in CWP No.11871 of 1997 titled 'Subedar Anokh Singh Vs. State of Punjab & others' decided on 07.01.1998 i.e. the judgment at Sr.No.(iv). In the said case, the petitioner – an Ex-serviceman applied for allotment of plot at Amritsar, but the plot was not available and was given option for allotment of a plot including at Urban Estate, Jalandhar, where there was no plot available. This Court found that the offer made by the respondent was a false representation and that the petitioner has been discriminated. It has been also found that the petitioner has been deprived of right of consideration of allotment of a plot and that the public authorities are expected to be more sympathetic, when the petitioner has devoted his life in the service of Nation. The aforesaid judgment as well as the other judgments are not applicable to the present applicant-petitioners, as the applicant-petitioners have not opted for consideration of an alternative plot. The categorical stand being that they should be allotted plot on the basis of their original application. The petitioners have remained unsuccessful in the draw of lots, when the original applicants of the petitioners and other applicants were considered. To adjust the pending applicants, an option was given, but the petitioners categorically and unequivocally, as reproduced above, declined to accept the offer.

In Jagdish Kumari's case (supra), judgment at Sr.No.(iii), initially plot was allotted in the year 11980, but such allotment was cancelled. It was in 1999, plot was allotted again in lieu of the plot allotted in the year 1980. In these circumstances, the Court held that the price prevailing at the time of allotment of plot in the year 1980 should be

charged, as the allotment in the year 1999 is in lieu of the plot allotted in the year 1980.

During the course of arguments, learned counsel for the applicant-petitioners also referred to a Division Bench judgment of this Court in Kabul Singh Vs. Punjab Urban Planning and Development Authority 1997 (1) PLR 713, wherein the issue considered was, as to whether the petitioner has a legal right to be allotted HIG (Single Storey) category dwelling unit or similar property on the application made by him pursuant to a notice (Annexure P-1). The Court held that the petitioner, who applied pursuant to Annexure P-1, does not acquire perennial right of consideration for allotment of HIG house for all times to come. It has been held to the following effect:

“7.The petitioners, who had applied for allotment of HIG (single storey) houses pursuant to the notice Annexure P-1, acquired a right to be considered for allotment of houses under the scheme floated in February 1989. However, there is nothing in Annexure P-1 or any of the provisions of ‘the Act of 1972’ indicating that the petitioners and others, who had applied pursuant to Annexure P-1, acquired a perennial right of consideration for allotment of HIG house for all times to come. In the absence of such a provision either in the statute or in the notice issued by the Board inviting applications for allotment of HIG houses, it is not possible to accept the argument of Shri Sarjit Singh that the petitioners acquired a right to be allotted HIG (single storey) houses. In our opinion, the right acquired by the petitioners to be considered for allotment of HIG (single storey) house in Phase IX, SAS Nagar did not subsist after the Board had undertaken an exercise for allotment of the houses constructed by it. Rather that right stood extinguished the day the process of allotment was completed. The announcement made by the Housing Commissioner vide Annexure P-4 to the effect that the unsuccessful applicants will be given priority in allotment in any of the HIG Schemes which the Board may take up in the SAS Nagar in

future can at the best be treated as an extraordinary concession given to the successful applicants that they may be considered in future. The Board could not have, in the absence of any notified scheme, conferred a right upon the unsuccessful applicants to be allotted a house in future or a right to be considered in preference to others, who may apply in response to the advertisement of fresh scheme. As and when the board was to notify a fresh scheme and invite applications from eligible persons, all the applicants had to be considered at par and no preference could be given to the petitioners because they had applied in response to notification issued for allotment of house under an earlier scheme.

8. In view of the conclusion that the announcement made by the Housing Commissioner of the Punjab Housing Development Board cannot be construed as a promise made by the Board to the petitioners for allotment of houses or giving of preferential treatment to them in disregard of the provisions of the statute and the doctrine of equality, the respondent-Authority cannot be held bound by the announcement made by its predecessor. Under Sections 148 and 149 of 'the Act of 1995', the respondent-Authority can be treated as bound only by those promises made by the Board which were in accordance with the provisions of 'the Act of 1972' and not de hors the same."

In the aforesaid case, the argument that the respondents are bound by the principle of promissory estoppel was negated and the refund of the earnest money was found to be a necessary concomitant of the decision taken by the respondents to invite fresh application for allotment of house.

Thus, the applicant-petitioner, who has refused to accept the offer of consideration on deposit of revised earnest money in pursuance of communication dated 23.02.2001, lost right of consideration for allotment of a plot.

Consequently, we do not find any merit in the review petition

filed by Bhupinder Kumar. The same is accordingly dismissed.

Rajinder Kaur's case

In Rajinder Kaur's case, the applicant-petitioner was given option to apply for allotment of a plot on 10.02.2000 (Annexure P-4). The petitioner gave consent without prejudice to her legal and constitutional rights. However, it appears that her name was not put in the draw of lots. The petitioner has not attached the communication addressed to her in the year 2001, but states that offer of alternative allotment of plot was not applicable to her, as she has already stepped into the shoes of the original applicant. The petitioner has averred to the following effect:

“13. That number of plots are still lying unallotted in Sectors 69 and 70 and other sectors at Mohali. In spite of this, the respondents have asked the pending applicants vide Annexure P/7 written to one Sh. Surjit Singh fixing the rates of plots @ 3350/- per sq. yard for a plot upto 200 sq. yards and at the rate of Rs.3750/- per sq. yards for plots above 200 sq. yards. Since the application of the petitioner was already pending and she completed the earnest money in June, 1994 by depositing the balance amount of Rs.55,800/-, therefore, the present scheme, Annexure P/7, was not applicable to the petitioner and she (as has been stepped into shoes of original applicants) did not apply for the same.

14. That it is mentioned in the letter Annexure P/7 that those who would not opt for the new rate and apply afresh, their deposited amount will be refunded without interest and the petitioner has come to know that the amount deposited by the petitioner and original applicants against registration No.402 subsequently change to 593 from the year 1984 to 1994 is being refunded shortly and the name of the petitioner is going to be removed from the pending list.

15. That the other applicants, who have opted for new rates and have also opted for allotment of plots in Sectors 69-70 have been considered and have been allotted the plots by draw of lots held on various dates and the petitioner is being discriminated as her name was never put in the draw of lots held on different occasions. Even

some similarly situated applicants have been allotted plots at the old rate of Rs.1200/- per sq. yard under the old scheme and the same is not being done in the case of the petitioner.”

For the reasons recorded in the review application of Bhupinder Kumar’s case, we do not find any error apparent on record, which may warrant review of the order. The petitioner has also not opted for consideration of alternative plot. Consequently, the review application filed by Rajinder Kaur is dismissed.

Surjit Singh’s case

There is no error apparent on record, which may warrant review of the order dated 02.03.2015. For the reasons recorded in Bhupinder Kumar’s case, the review application filed by Surjit Singh is also dismissed.

(HEMANT GUPTA)
JUDGE

07.08.2015
Vimal

(HARI PAL VERMA)
JUDGE