

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 11764 of 2015

Date of Decision: 10.8.2016

Binay Shankar Jha

...Petitioner.

Versus

State of Haryana and others

...Respondents.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE RAMENDRA JAIN.**

PRESENT: Ms. Geeta Sharma, Advocate for the petitioner.

Ms. Shubhra Singh, Additional Advocate General, Haryana.

Mr. Sudeep Mahajan, Advocate for respondents No.2 to 4.

AJAY KUMAR MITTAL, J.

1. By way of instant petition filed under Articles 226/227 of the Constitution of India, the petitioner has prayed for issuance of a writ in the nature of certiorari for quashing the decision dated 26.2.2013 (Annexure P-6) taken by the Housing Board, Haryana (hereinafter referred to as “the Board”) in the meeting held on the supplementary Agenda Item No. 199.10 on the basis of letter dated 7.7.2010 (Annexure P-4) of the Chief Minister, Haryana scraping the waiting list which had already been acted upon and the candidates at Sr. Nos. 1 and 2 of waiting list had been considered and allotted the flats and the petitioner figuring at Sr. No.3 of the waiting list is entitled to the allotment of cancelled vacant flat registration Nos. 9, 27 and 72. Further, a prayer has been made for setting aside the letter dated 3.9.2014 (Annexure P-9) informing for the first time to the petitioner regarding the scraping of waiting list as per the decision, Annexure P-6, on the basis of the letter, Annexure P-4, whereby the Chief Minister had asked

interest by way of amendment to Regulation 5(2) of Housing Board Haryana (Allotment, Management and Sale of Tenements) Regulations, 1972 (in short "1972 Regulations"). Also, a writ of mandamus has been sought directing the respondents to allot one of the vacant flats out of the cancelled three flats and hand over the possession thereof after due repairs in functional condition in all respects.

2. Briefly stated, the facts necessary for adjudication of the instant writ petition as narrated therein may be noticed. The Board launched a scheme of 320 built up houses under categories EWS-I & II and LIG-II on Hire Purchase basis at Gurgaon and Karnal. As per the Scheme, 320 houses were to be allotted, i.e. 160 houses on the ground floor and 160 houses on the 1st and 2nd floor (combined). The tentative price of the ground floor house was ₹ 3.50 lacs. In response thereto, the petitioner applied for EWS-I category flat on ground floor in Sector 52, Gurgaon vide application dated 5.6.2004 along with earnest money. In the Brochure (Annexure P-1), the mode of allotment was mentioned. The waiting list to the extent of 25% of the total number of units was to be prepared by the draw of lots which was to remain operative/valid for a period of six months from the date of draw of allotment of house number and after the expiry of validity period of six months, earnest money was to be refunded to all the applicants in the waiting list. The first draw of lots was held on 9.9.2005 for only 48 houses on the ground floor out of stipulated 160 houses and allotment was made to successful candidates. Similarly, first draw of lots of 48 houses on the 1st and 2nd floor was held. The Board vide letter dated 30.9.2005 (Annexure P-2) informed the petitioner that his name figured at Sr. No.3 in the waiting list. After the first draw of lots held on 9.9.2005, the allotment made to the

four successful candidates of ground floor was cancelled by the Board. Out of the four cancelled flats, one candidate, namely, Shri Vijay Kumar Sharma figuring at Sr. No.1 of waiting list had been allotted Flat No.1151 whereas the case of candidate at Sr. No.2 of the waiting list had been considered for allotment. The second draw of lots was held on 27.4.2012 for the remaining 112 houses. The allotment of the candidate figuring at Sr. No.2 in the waiting list was cancelled on receiving a complaint vide letter dated 16.7.2012. However, the name of the petitioner was not considered against three vacant flats. As per office noting page 84-85 (Annexure P-3) received under the Right to Information Act, 2005, the name of the petitioner along with other waiting list candidates was considered and approval was sought from the authority for the allotment of flat in the original list at Sr. Nos. 9, 27 and 72 on the ground floor. The Board after getting approval for allotment in the name of the petitioner for the allotment of a flat had taken a decision to scrap the waiting list on the basis of the decision taken on the letter dated 7.7.2010 (Annexure P-4) sent by the office of the Chief Minister, Haryana regarding amendment in Regulation 5(2) of the 1972 Regulations and to put up the proposal regarding maintaining of waiting list by the said Regulations. As per the documents received by the petitioner under the Right to Information Act, 2005, he came to know that on the basis of the letter, Annexure P-4, respondent No.1 vide letter dated 31.8.2010 decided that there should be no waiting list in future. Further, as per page No.80 of the noting dated 21.9.2013 (Annexure P-5), the petitioner was entitled to the allotment of a flat prior to the expiry of six months period for maintaining waiting list upto 27.10.2012 after the draw of lots held on 27.4.2012. The Board had taken the decision on 26.2.2013 (Annexure P-6)

to scrap the waiting list pending since 2005 in their meeting held on 26.2.2013 in supplementary Agenda Item No. 199.10 on the basis of the letter, Annexure P-4. The petitioner was never informed about the said decision and for the first time he came to know in the year 2014. As per the noting pages No.75 to 79 dated 6.8.2013 to 14.8.2013 (Annexure P-7), it is mentioned that as per rule, the flats are to be allotted to the wait listed applicants according to their seniority. Shri Binay Shankar Jha wait listed applicant at Sr. No. 163/3 and Smt. Sunita Rani wait listed applicant at Sr. No. 164/4 may be considered for allotment of flat due to cancellation of registration Nos.9 and 72/EWS-I/GF. The registration No. 162/2 has been cancelled and amount had been refunded. The petitioner sent a letter dated 4.6.2014 (Annexure P-8) by way of an appeal to the Chairman of the Board and the respondents for the first time informed the petitioner vide letter dated 3.9.2014 (Annexure P-9) that the decision to scrap the waiting list had already been taken in the meeting of the Board vide decision, Annexure P-6. Hence, the present writ petition.

3. Upon notice of motion having been issued, written statement on behalf of respondents No.2 to 4 was filed. The averments made in the writ petition were denied and a prayer for dismissal of the same was made. The petitioner controverted the averments made in the written statement by filing replication and reiterated that of the averments made in the writ petition.

4. We have heard learned counsel for the parties.

5. The question arising for adjudication in this petition is whether in the facts and circumstances of the case, the waiting list was to be reckoned for six months from 9.9.2005 or 27.4.2012.

6. According to the Brochure (Annexure P-1), the waiting list to the extent of 25% of the total number of units was required to be prepared by draw of lots which was to remain operative/valid for a period of six months from the date of draw of allotment of house number. Thereafter, on the expiry of period of six months, the earnest money was to be refunded to the applicants of the waiting list. The Board had issued a Brochure (Annexure P-1) offering 160 houses in EWS-I category in Sector 52, Gurgaon and the draw of lots in respect of 48 houses was held on 9.9.2005 whereas for the remaining 112 houses, the draw of lots was held on 27.4.2012. Thus, in our opinion, the major allotment of 112 houses was made on 27.4.2012 and, therefore, the waiting list would be valid upto 27.10.2012. The decision dated 31.8.2010 of the Board not to have waiting list in future would be operative prospectively and would not affect the rights of the petitioner as the present case is governed by the terms and conditions of the Brochure (Annexure P-1) issued in 2004.

7. Further, in para 7 of the writ petition, the petitioner has given the details of the four flats cancelled by the Board, which are as under:-

- i) Regd. No. 9/EWS-1 G.F., Ved Parkash Flat No. 1167 cancelled vide letter No. 248 dated 4.6.2010;
- ii) Regd. No. 72/EWS-1 G.F., Jagdip Singh, Flat No. 1549 cancelled vide letter No. 681 dated 16.3.2011;
- iii) Regd. No. 57/EWS-1 G.F., Flat No. 1151;
- iv) Regd. No. 27/EWS-1 G.F., Neelam.

8. Still further, para 8 of the writ petition contains the particulars of cancellation of flats of the allottees. One of the candidates, namely, Shri

Vijay Kumar Sharma who was also an applicant in the draw of flats and was at Sr. No. 1 of the waiting list was allotted Flat No. 1151 by the Board against the cancelled registration No. 57 EWS vide order dated 22.1.2010. Further averment has also been made that the second candidate of the waiting list, namely, Smt. Madhu was also considered for the allotment against cancelled registration No.72. However, in the written statement filed by respondents No.2 to 4, the averments made in paras 7 and 8 of the writ petition have not been denied.

9. Accordingly, in the flats cancelled prior to 27.04.2012, the petitioner would have a right and as noticed above, the four persons had surrendered the flats whereas the name of the petitioner in the waiting list was at Sr. No.3. Therefore, the petitioner is entitled to a flat against the cancelled flats. Learned counsel for the petitioner submitted that three flats are still lying vacant and the petitioner is agreeable for allotment at the rate prevalent for allotment in the year 2012 when the draw of lots was held in respect of remaining 112 houses on 27.4.2012. Learned counsel for the respondents was unable to controvert the aforesaid facts.

10. In view of the above, we dispose of the writ petition by quashing Annexures P-6 and P-9 and directing the respondent-Board to allot a flat of EWS Category-I to the petitioner at the prevalent rate of allotment in the year 2012, expeditiously in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

August 10, 2016
gbs

(RAMENDRA JAIN)
JUDGE

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes