

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.24401 of 2014 (O&M)
DATE OF DECISION: 12.04.2016

Meenu Sood

....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Mansur Ali, Advocate for the petitioner

Mr. Alok Jain, Addl. Advocate General, Punjab

Mr. R.S. Khosla, Senior Advocate with
Mr. Harsh Aggarwal, Advocate for respondent
Nos.2 to 4

Mr. Piyush Kant Jain, Advocate for respondent No.5

..

S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

The petitioner seeks a writ to quash orders dated 30.09.2014/14.11.2014 and 25.06.2014 and a writ directing the respondents to allot plot No.5088 in her favour.

2. Respondent No.2 is the Greater Ludhiana Area Development Authority (GLADA). Respondent Nos.3 and 4 are the Additional Chief Administrator (ACA) and Estate Officer of respondent No.2. Respondent No.5 is one Ashneet Kaur, who has been allotted the plot sought by the petitioner in this writ petition upon the petitioner having been held not to be entitled to it.

3. On 18.09.2006, the Punjab Urban Planning and Development Authority (PUPDA) issued a brochure for the allotment of 247 freehold residential plots in Ludhiana. There was a reservation of 3% for the 'Handicapped and Blind' category. Accordingly, one plot admeasuring 611.11 square yards was reserved for this category. The relevant provisions of this circular are as under:-

"RESERVATION"

- ...
- ii) Physically handicapped/blind:
Should be 40% or above disabled or 100% blind to be certified by concerned authority (Civil Surgeon) of the District.

Note:- ...

3. The beneficiary will not be entitled for allotment of plot under the scheme once he has already availed the benefit for allotment under the reserved category in any other scheme/station from any Govt. Agency.

MODE OF ALLOTMENT

- ...
- b) For the purpose of draw all applications received under the scheme shall be put in the draw of lots category wise without scrutiny of applications. The successful applicants who on the basis of documents submitted by them are found to be eligible as per eligibility criteria will be issued allotments letters. If the successful candidates are not found eligible their applications shall be rejected.
- ...
- e) The applications of successful applicants shall be scrutinized on the basis of information given in the applications from and declaration made therein. However, allotment letter shall be issued only after completion of requisite formalities furnishing of required documents and affidavit on non judicial stamp paper worth Rs.15/- in the format as indicated in the brochure within 15 days from the date of demand by the Estate Officer PUDA, Ludhiana."

4. One Rajesh Kumar (hereinafter also referred to as the 'original allottee'), by an application dated 30.10.2006, applied for the allotment of a plot in the said category. He annexed a certificate of the Civil Surgeon dated 06.08.1982 regarding his disability which read as under:-

"TO WHOM IT MAY CONCERN

I have examined Shri Rajesh Kumar son of Baldev Raj, resident of House No.103, Bazar No:2, Ferozepur Cantt: whose identification marks and signatures are given below. He was residual poliomyelitis of left lower limb. Hence handicapped but fit for clerical post.
Identification marks: 1. Linear scar on (illegible) of right wrist finger.
2. Scar 2cm x 0.5 cm left eyebrow.
Signature: Rajesh Kumar.

Sd/- 6/8/82
Civil Surgeon Ferozepur"

5(A) Rajesh Kumar was declared successful at the draw of lots held on 18.04.2007. He was accordingly allotted a plot on the terms and conditions contained in an allotment letter dated 18.06.2007. The tentative price was fixed at Rs.50,11,102/-.

(B) PUPDA, by a letter dated 17.07.2007, informed the petitioner that Rajesh Kumar's application for transfer of the plot in her favour was allowed and, accordingly, the plot was re-allotted in her name.

6. It is important to note at this stage a few facts that preceded the PUPDA's letter of allotment dated 17.07.2007.

(i) On 23.04.2007, i.e. five days after the draw of lots held on 18.04.2007, the original allottee

executed a General Power of Attorney in favour of one Rakesh K. Sood, who is the petitioner's husband. It is pertinent to note that the GPA stated the address of the original allottee at that time to be the residential address of the constituted attorney.

- (ii) By a letter dated 17.05.2007, the PUPDA informed the original allottee that he had been declared successful for the allotment of the plot and that he should, therefore, send the requisite affidavit together with his photograph as per the specimen given in the brochure duly attested within fifteen days. He was also called upon to remove certain discrepancies in his form within fifteen days.
- (iii) PUPDA, by a further letter dated 30.05.2007, informed Rakesh Kumar, the constituted attorney/GPA of the original allottee-Rajesh Kumar, that the original allottee had not fulfilled the preliminary formalities and that only upon completing the same would the case for allotment of the plot be considered. The requisitions contained in this letter were similar to those contained in the letter dated 17.05.2007 addressed to the original allottee. It is not clear from the record as to the circumstances in which the letter was addressed directly by PUPDA to the original allottee's constituted attorney.

This issue is not relevant for the purpose of this judgment but may be necessary at the hearing upon remand.

(iv) The original allottee, by a letter dated 06.06.2007 requested the Civil Surgeon to examine him medically and issue him a physical handicap certificate.

(v) The Ferozepur Superintendent/CMO/Head of Hospital issued a Certificate dated 11.06.2007 stating that the original allottee suffered a permanent disability of 40%.

7. With this, we return to the narration of facts in chronological order.

8. Respondent No.5, who was first on the waiting list, by a letter dated 11.09.2007 raised objections to the allotment of the plot in favour of the original allottee-Rajesh Kumar. As we will be dealing with the objections pressed before us, it is not necessary to refer to them at this stage.

9. Pursuant to the 5th respondent's complaint dated 13.06.2007, an enquiry was held. The ACA by an order dated 21.11.2007 found that the handicap certificate issued on 11.06.2007 was not as per the terms and conditions of the brochure as it was submitted after the draw of lots. He further found that the transfer of the plot in favour of the

petitioner was in haste and should have been avoided till the complaint was decided. He further observed that the Estate Officer's reply to the 5th respondent's complaint on his own did not address the basic issue of eligibility for allotment.

The ACA's proposal to cancel the allotment of the plot in favour of the original allottee was approved as was his proposal to file a charge-sheet against the Estate Officer, the AEO, the Superintendent and the dealing Assistant. Lastly, it was decided to refer the matter to the Government to decide whether the plot ought to be offered to the persons on the waiting list or whether a fresh draw of lots ought to be held.

10. The petitioner filed Civil Suit No.403/10.12.2007 against the respondents. From the judgment, it appears that the suit was filed on the apprehension that the allotment may be cancelled. It is sufficient, however, to note that by a judgment dated 14.06.2012 the learned Civil Judge (Senior Division) dismissed the suit, but set aside the enquiry report on the ground that it was violative of the principles of natural justice and directed the official respondents to conduct a fresh enquiry after affording the parties an opportunity of being heard before passing any order qua the plot and as to the original allottee's eligibility under the scheme.

11(A) The Chief Administrator conducted an enquiry and by his report dated 02.09.2013 opined that the eligibility

certificate, obtained after the application had been filed by the original allottee, could not be considered and held that the allotment in favour of the original allottee and the transfer in favour of the petitioner by him ought to be cancelled.

(B) The petitioner filed CWP No.25046 of 2013 to challenge the order of the Chief Administrator. The petition was disposed of by an order and judgment dated 15.11.2013. The Division Bench noted that a review petition had been filed against the order of the Chief Administrator. The Division Bench, therefore, disposed of the petition with a direction to the Chief Administrator, who was respondent No.2 therein, to take a decision on the review application after affording the petitioner an opportunity of being heard and by a speaking order.

(C) The Chief Administrator thereafter heard the parties and by a detailed order dated 25.06.2014 reiterated the decision to cancel the allotment in favour of the original allottee and also directed that the plot be allotted to the 5th respondent, who was first in the waiting list. The decision was on the same ground viz. that the subsequent handicap certificate issued after the closure of the scheme could not have been relied upon.

(D) The petitioner filed CWP No.13447 of 2014 to challenge this order. By an order and judgment dated 15.07.2014, the Division Bench permitted the petitioner to

withdraw the petition with liberty to file a revision petition.

(E) Ultimately, the revisional authority passed the order dated 14.11.2014 which is impugned in this writ petition. The revisional authority confirmed the decision to cancel the allotment on the same ground.

12. The respondents contended that the original allottee Rajesh Kumar had, in the first instance, submitted a certificate regarding his disability dated 06.08.1982 which did not meet the requirements of the terms and conditions of the brochure. We quoted the certificate earlier. It was contended that an applicant is not permitted to submit a fresh certificate after the declaration of the result of draw of lots. The Estate Officer wrongly called upon the petitioner to furnish a disability certificate after the draw of lots. The second certificate relied upon by the petitioner was, therefore, according to the respondents, invalid. The application ought to have been considered only and only on the basis of the documents originally filed.

13. The terms and conditions of brochure at least, in so far as they relate to applicants under the reserve category of 'Physically Handicapped/Blind' ought to be read liberally and not strictly. They ought to be read so as to subserve the purpose of the reservation and not to negate it. The rules regarding matters relating to tenders especially international tenders cannot possibly apply to such applicants. The

applicants in the two cases are entirely different. Indeed, the purpose and object of inviting applications from persons belonging to a reserve category of 'Physically Handicapped/ Blind' is entirely different from the notices inviting tenders in commercial matters. The entire object of these invitations is fundamentally different. While the former is in the realm of the commercial activities of the State and its instrumentalities, the latter is in discharge of the welfare activities of a State. The rules/terms and conditions in the two invitations cannot be the same either.

14. The terms in the brochure undoubtedly require the disability of 40% or above of the applicants to be certified by the concerned authority (Civil Surgeon) of the district. The first certificate dated 06.08.1982 tendered by the original allottee did not specify the extent *i.e.* the percentage of the disability. The brochure, however, did not prohibit an applicant being permitted to rectify such a defect in the application. The terms and conditions stipulated in the brochure did not prohibit the original allottee from tendering a certificate in accordance with the requirements contained therein. Clause (e) under the caption "MODE OF ALLOTMENT" does not indicate the contrary. It did not prohibit an applicant to furnish the certificate as per the requirements of the brochure after the declaration of the result of the draw. Clause (e) requires the applications to be scrutinized on the basis of the information given in the application forms and declarations made therein. It merely provides for the scrutiny

of the application on the basis of the information given in the application-form and declaration made. Once a proper certificate is given in support of the application, it is that certificate that forms the basis of the application. The application as rectified is what is to be scrutinized under Clause (e).

15. If a person, who is otherwise eligible to apply under this category, we see no reason for rendering him ineligible on a technicality. We see no reason why such an applicant cannot be or is not given an opportunity to remedy the defects in his application. To hold otherwise would defeat the very purpose of such a reservation.

Even otherwise, as held earlier, the terms and conditions do not prohibit the official respondents from giving an applicant an opportunity of producing the requisite certificate.

16. The impugned action, in so far as it is based on the ground that it was impermissible for the applicant to produce the second certificate, is liable to be quashed and set aside.

17. It was then contended on behalf of respondent No.5 that this court ought not to exercise any discretion in favour of the petitioner as she is not the original applicant/allottee.

18. This contention is not well-founded either. The terms and conditions of the brochure do not prohibit an allottee under the reserve category 'Physically

Handicapped/Blind' from selling a tenement allotted to him. It may well be reasonable and even desirable for the State to impose such a condition for the object is really not to enable the applicant to profiteer from such an allotment but to provide shelter at affordable rates. However, that is a matter of policy which must be left to the State to decide. The Court cannot impose such a condition upon the allottees.

19. The matter, however, does not end there for one thing is certain. The application itself must be made for and on behalf of a person, who belongs to the category for which the reservation is made. A person who does not belong to a reserved category cannot himself apply for or be allotted a plot reserved for that category. If he cannot do so himself, a person who belongs to the reserved category cannot do so on his behalf.

20. An eligible person may deal with the property in such manner as he wants even immediately after he is allotted the property. The terms and conditions of the brochure do not prevent him from doing so. The application for the allotment must of necessity be made by him on his behalf and for his benefit. A person who belongs to reserve category can in no circumstances make the application on behalf of another. A view to the contrary would defeat the purpose of the reservation. It would, in fact, entitle ineligible persons to apply through eligible persons. Such applications would not be for the benefit of the eligible persons but for the benefit of ineligible persons.

21. Whether an applicant in the reserve category has made an application on his behalf or *benami* on behalf of another is a question of fact the determination of which must depend upon the facts and circumstances of each case.

22. This issue has not been considered by the authorities. In the circumstances of this case we are of the view that it must be considered, even if this point was not raised so far. Considering the nature of the reservation, we are of the view that the matter cannot go without proper scrutiny. There are several factors which require an explanation from the petitioner for the determination of the question as to whether the application was made by Rajesh Kumar, the original allottee, for himself or on behalf of the petitioner, who, admittedly, does not fall within the reserve category of the 'Physically Handicapped/ Blind'. Some of the factors that require consideration are these.

23. Immediately after the draw of lots on 18.04.2007, a power of attorney dated 23.04.2007 was executed by Rajesh Kumar in favour of the petitioner's husband Rakesh K. Sood. The power of attorney mentions the petitioner's address to be the place of the first/original allottee's residence at the time of execution thereof. By this time, the letter of allotment had not even been issued. The original allottee obtained the permission to transfer the premises to the petitioner within a month of the issuance of the letter of allotment. It will also have to be examined whether the original allottee required the premises and whether he was

able to afford it. The respondents relied upon certain documents in support of their contention that the petitioner and her husband are involved in a devious scheme for the acquisition of such properties. They rely on the above facts in support of their contention. They also rely upon certain other documents, such as, the visiting card/letter-head of Omni Estate with which the petitioner and her husband, it is contended, are associated. The documents at Annexure R/1 (collectively) are relied upon in this case. The authorities must consider these facts also when the matter is decided on remand.

24. The apprehension that if the allotment is set aside the original allottee, a handicapped person, would suffer for he may be called upon to refund the amount to the petitioner is unfounded. If the finding is against the petitioner, there would be no question of the petitioner seeking a refund from the original allottee of the amounts paid by him for the agreement between them being illegal would be void and the loss must then lie where it falls. Moreover, in any event, a claim in this regard would be barred by limitation for the transaction was entered into latest in the year 2007 itself.

25. In the circumstances, the writ petition is disposed of by setting aside the impugned order. The basis on which the impugned order was passed is set aside. The official respondents, however, shall consider the validity of the allotment in favour of the original allottee itself in the light of what we have stated, namely, as to whether the application for the original allotment was made by the

original allottee for his own benefit or whether it was, in fact, made by him *benami* for and on behalf of the petitioner.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

12.04.2016
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(ARUN PALLI)
JUDGE

<u>Note</u>: Whether reportable - YES
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