

CWP No.24495 of 2015

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

CWP No.24495 of 2015
Date of decision: 10.11.2016

Smt. Sunehri Devi

..... Petitioner

Versus

Appellate Authority under Section 72(A) of the Haryana Housing Board
Act, 1971 and another

..... Respondents

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

Present: Mr. Vinod S. Bhardwaj, Advocate, for the petitioner.
Mr. Sandeep Moudgil, Advocate, for respondent No.2.

RAMENDRA JAIN, J.

By way of present writ petition filed under Articles 226/227 of the Constitution of India, petitioner has sought issuance of a writ in the nature of *certiorari/mandamus* for setting aside the cancellation order dated 19.10.2012 (Annexure P-10) whereby the respondents have cancelled the allotment of HIG house to the petitioner at Dadri Gate, Bhiwani, and the order dated 29.09.2014 (Annexure P-12) whereby the appeal of the petitioner has been dismissed. Further prayer has been made for directing the respondents to restore the aforesaid allotment with all consequential formalities.

2. Succinctly, the facts necessary for disposal of the present writ petition are that the petitioner was allotted HIG house at Dadri Gate, Bhiwani being widow of late Sh. Pala Ram, who had served as Naik in the

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sincerity and dedication w.e.f. 19.05.1972 to 31.05.1987. The Housing Board, Haryana issued brochure inviting applications for 1590 built up modern double storey flats of LIG, MIG and HIG categories at Dharuhera, Sonapat and Bhiwani. The Board provided for reserved category which was restricted to Haryana State Government employees, retirees, Housing Board employees, scheduled castes, handicapped, blind persons, backward classes, freedom fighters, disabled servicemen, war widows and widows etc., including 10% reservation for war widows, disabled servicemen, ex-servicemen, serving military personnel and their wives, IAF Benevolent Association, freedom fighters and GREF personnel under Code 'H'. Two per cent reservation was provided for widows (excluding war-widows). Besides 33% reservation was also provided for women amongst all categories including General. The petitioner being an illiterate lady got her form filled up under Category 'H'. In the draw of flats held on 25.01.2008, the petitioner was successful. Vide letters dated 14.02.2008 (Annexure P-2) and 28.02.2008 {Annexure P-3 (colly)} the petitioner was asked to deposit amount of ₹ 1,06,000/- and ₹ 1,59,000/- which were duly deposited on time. Petitioner fulfilled all the formalities in time and deposited the requisite payment and allotment letter dated 25.11.2011 (Annexure P-6) was issued to her. However, after issuing show-cause notice dated 12.04.2012 (Annexure P-8) to the petitioner, respondents cancelled the allotment vide letter dated 19.10.2012 (Annexure P-10) on the ground that as per the terms and conditions of the brochure, petitioner being wife of ex-serviceman was not eligible under SMP quota for allotment of said house as she was not eligible under Category Code 'H'. Petitioner challenged the decision of

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cancellation of her house dated 19.10.2012 (Annexure P-10) by way of appeal before the Appellate Authority, which has been dismissed vide order dated 29.09.2014 (Annexure P-12).

3. We have heard learned counsel for the parties and perused the record.

4. The matter is no longer res-integra. Under identical circumstances, the flat allotted to Sarbati Devi was cancelled on similar grounds. This Court in **Sarbati Devi v. Appellate Authority under Section 72-A of the Haryana Housing Board Act 1971 and another (CWP No.2961 of 2014)** decided on 21.05.2015 to which one of us (Ajay Kumar Mittal, J.) was a member had quashed the cancellation order and the appellate order dismissing the appeal with the following observations: -

“4. The question herein relates to whether there was concealment of facts and furnishing inaccurate particulars intentionally by the petitioner as her case was considered under Category 'H', Column No.11 of Table 5 which is to the following effect:-

“War-widows, disabled servicemen, ex-servicemen, serving military personnel and their wives, IAF Benevolent Association, Freedom fighters and GREF personnel”

5. The petitioner is a widow of an ex-serviceman. Column No.11 of Table 5 provides for specific reservation for the wives of military personnel. The object of the said clause appears to be that reservation is to provide social security to the families of serving or retired military personnel. Though strictly interpreting the aforesaid clause, the case of the petitioner would not fall thereunder. However, as per averments of the petitioner, she had filled the application under category

'H' being advised by the officials of the respondent-Housing Board. The case of the petitioner was considered under category 'H' by the respondent-Board after noticing the factual position of the petitioner being widow of an ex-serviceman. She continued to deposit the entire amount with the respondent-Board. Still further, the petitioner is in possession of the flat in dispute and had not concealed or furnished inaccurate particulars. Keeping in view the totality of facts and circumstances of the present case, the action of the respondent Board in cancelling the allotment of MIG flat at Dadri Gate, Bhiwani is not justified.

6. This Court in ***Inderbir Kaur vs. Chairman, Chandigarh Housing Board, Chandigarh***, 1994(1) PLR 87 considering an issue where the petitioner had not concealed anything and had clearly mentioned in the application to be an employee of Municipal Committee and residing at Faridkot. The Board issued allotment letter to the petitioner and kept on receiving the instalments from her. It was held by this Court that the Board by its own act and conduct was debarred from raising any objection as regarding eligibility of the petitioner. It was recorded as under:-

“4. After hearing learned counsel for the parties and going through the record of the case I am of the view that this petition deserves to succeed. It shall be seen from the array of facts that the application for allotment of flat was made way back in 1987 when she was registered at serial No. 536 in the category of HIG (L) II houses. It is conceded as there is nothing in the written statement controverting the fact that petitioner had not concealed anything and clearly mentioned her self to be an employee of Municipal Committee

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and residing at Faridkot. Ignoring this, admittedly as well, the Board issued her allotment letter and kept on receiving the instalments of money till October, 1992. It is too late in the day for the respondent to raise the plea of eligibility as by its own act and conduct the Board is debarred from raising such an objection at such a belated stage. This apart, the petitioner who applied for a house as far back as 1987 cannot be denied the benefit of allotment made to her on equity as well. Had she been told in the beginning that she was not eligible she would have applied for a flat elsewhere but at this stage when the prices have gone sky-rocketing she cannot be compensated as she cannot possibly apply for a plot of the same area for the prices prevalent in the year 1987.'

5. In view of the above, the writ petition is allowed. The impugned orders dated 19.10.2012 and 29.09.2014 Annexures P-10 and P-12, respectively are quashed.

(RAMENDRA JAIN)
JUDGE

November 10, 2016
R.S.

(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No