

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-25353-2016

Date of Decision: January 18, 2017

S.P.Mittal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE GURMIT RAM

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|----|---|---------|
| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Shekhar Verma, Advocate
for the petitioner.

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SURYA KANT, J.

The petitioner seeks quashing of order dated 25.04.2016 (P-23) and a writ of mandamus to direct the respondent-HUDA authorities to allot him a 250 square yards plot in Urban Estate, Bahadurgarh on the basis of 'letter of offer' dated 16.09.1981 whereby the petitioner was offered such allotment under the 'Discretionary Quota' of the State Government. The petitioner also places reliance on the policy decision dated 25.02.2002 (P-6) as, according to him, denial of allotment of discretionary quota plot is totally contrary to the above-stated policy decision.

[2] The facts are like this:

[3] Government of Haryana evolved a policy of allotment of plots under the 'Discretionary Quota' of the Chief Minister of the State-cum-Chairman HUDA whereunder several categories of influential persons were allotted residential plots in different urban estates. Almost 3000 such allotments were cancelled by the State Government on 29.06.1987 after it withdrew its Policy but the said order could not withstood the test of judicial scrutiny and was set aside by a Division Bench of this Court in **S.R.Dass vs State of Haryana**, 1988(1) 93 PLR 430.

[4] Thereafter again thousands of such allotments were made. However, those allotments also came under challenge before this Court and the matter was heard by a Full Bench consisting three Judges in **Anil Sabharwal vs State of Haryana**, 1997(2) PLR 7. The Full Bench declared the allotments illegal and struck down the same except those which had been protected in **S.R.Dass**'s case (supra).

[5] The petitioner was also a beneficiary of allotment under the discretionary quota to whom the Chief Administrator, HUDA vide Memo dated 16.09.1981 (P-1) offered "*the allotment of a residential plot measuring 250 sq.yds/mts. in Sector 6 at Bahadurgarh.*" The above-stated offer was admittedly not the 'allotment letter' as neither it contained the description /Number of the plot nor the allotment price. Only tentative rate of allotment was quoted asking the petitioner to deposit the earnest money within 30 days. The petitioner deposited that amount on 14.10.1981.

However, no allotment letter was issued to him and meanwhile the

allotments became subject matter of judicial scrutiny and eventually were set aside by this Court.

[6] The Full Bench decision of this Court in Anil Sabharwal's case (supra) was challenged by some of the affected allottees before the Hon'ble Supreme Court in Harsh Dhingra vs State of Haryana, 2001(9) SCC 550. The Hon'ble Supreme Court upheld the Full Bench judgment of this Court but held that the same shall be effective from 23.04.1996, namely, the date when some interim order was passed in the pending matter. The operative part of the Hon'ble Supreme Court order reads as follows:-

“8. These appeals, therefore, stand allowed to the extent indicated above and declaring that the judgment of the High Court in Anil Sabharwal vs State of Haryana and others (supra) shall be effective from 23.04.1996. In the event of any of the cases any allotment has been cancelled, the same shall be brought in conformity with the order made by us whether those allottees are parties in these proceedings or not. The declaration made by us will have a general application. It is also made clear that allotment orders made prior to 23.04.1996 can be cancelled if they are not made in conformity with the decision in S.R.Dass vs State of Haryana (supra), after following due procedure.”

[7] It may be seen that the allotments under the discretionary quota made prior to 23.04.1996 were protected provided that such allotments were in conformity with the decision of this Court in S.R.Dass's case (supra).

[8] With a view to give effect to the decision of the Hon'ble Supreme Court in Harsh Dhingra's case (supra), HUDA issued a Policy

Circular dated 25.02.2002, which begins with the following preface:-

“As you are aware that some allottees of discretionary quota plots whose plots have been cancelled in the light of Hon’ble Punjab and Haryana High Court’s judgment dated 21.03.1997 had filed SLPs in Supreme Court of India. The Hon’ble Supreme Court of India has announced its judgment on 28.09.2001 in Harsh Dhingra and others vs. State of Haryana and others. The order made by the Hon’ble Supreme Court will have a general application and the decision of the hon’ble High Court in Anil Sabharwal’s case shall be made effective from a prospective date, the date on which interim order had been passed i.e. on 23.04.1996. Thus the allotments made upto 22.04.1996 have been validated. However, to implement the above judgment, the decision on the following points have been approved by the Government as under:-

[9] Clause 1 of the above stated Policy Circular reads as follows:-

“1. Regarding cut of date of order of allotment of plot made under discretionary quota.

As per procedure, order for allotment of plot was made by the Government. Thereafter a letter was issued by Secretary, HUDA asking the applicant to submit the requisite affidavit. After submission of affidavit and finding the applicant eligible for allotment of a plot, Secretary HUDA issued letter to applicant asking him to deposit 25% cost of the total tentative price of the plot. Thereafter, Estate officer of concerned Urban Estate issued the allotment letter on deposit of the aforesaid tentative price. The date of letter issued by Secretary, HUDA intimating the applicant regarding allotment of plot and requiring him to deposit 25% of the tentative price of plot may be treated as the date of order of allotment provided the applicant had deposited.

the amount within stipulated period i.e. 30 days.”

[Emphasis applied]

[10] There should remain no doubt from the contents of para 1, as reproduced above, that in a case where the applicant was offered the allotment and after submission of his affidavit when it was found that he is eligible for allotment of a plot, such applicant had deposited 25% of the total tentative price of the plot then only the “*Estate Officer of concerned Urban Estate issued the allotment letter on deposit of the aforesaid tentative price*”..... The issuance of ‘allotment letter’ was a condition precedent to seek protection of allotment in terms of the decision in **Harsh Dhingra**’s case (supra).

[11] We have reproduced Clause 1 above as the entire case of the petitioner rests upon the said Clause only.

[12] It further appears that on the premise as if an allotment letter had already been issued to the petitioner, the Estate Officer HUDA, Bahadurgarh issued a letter dated 01.04.2003 (P-7) seeking his consent for allotment of an alternative plot in Sector -2, Bahadurgarh. The petitioner gave his consent. His name was accordingly decided to be included in the limited draw of lots which was to be held for allotment of alternative plots and a communication to this effect dated 27.02.2004 was sent to the petitioner. It further appears that on 19.04.2006 also a letter was addressed to the petitioner informing that he had not given his acceptance for allotment of alternative plot. No effective step was taken thereafter by HUDA authorities except some correspondence.

[13] The petitioner then filed a complaint before the District Consumer Disputes Redressal Forum at Jhajjar which was allowed by District Forum on 08.05.2009 directing HUDA to allot an alternative residential plot to the petitioner. HUDA filed appeal before the State Consumer Disputes Redressal Commission, Haryana, which was accepted by the Commission on 16.12.2011 and the petitioner's complaint was dismissed being not maintainable as he was held to be not a consumer within the meaning of the Act.

[14] The petitioner then represented the authorities and approached this Court in CWP No.19821 of 2015 which was disposed of on 18.09.2015 on his request that the authorities may be directed to decide his representation.

[15] It appears that a Senior Law Officer from the Office of Advocate General, Haryana opined in favour of the petitioner but regardless of such opinion, the Chief Administrator, HUDA vide impugned order dated 25.04.2016 has rejected petitioner's claim on the following premise:-

"I have been directed by the competent authority to inform you that the matter has been considered by the competent authority and has found that only offer of allotment of 250 sq.yard plot under DQ category was issued on 16.09.1981 and no allotment letter was issued by Estate Officer, HUDA, Bahadurgarh. Since the allotment letter was not issued in this case therefore the question for allotment of alternative plot at this belated stage after a period of more than 34 years does not arise at all. At present there is no scheme of Government for allotment of residential plot under DQ

category. Hence applicant is not entitled for allotment of residential plot/alternative plot under DQ category.

[16] We have heard learned counsel for the petitioner at a considerable length and gone through the record.

[17] In our considered view, no case to interfere with the order passed by the Chief Administrator is made out. Thousands of offers for allotments under discretionary quota were apparently made by HUDA authorities even without ascertaining whether or not requisite unallotted plots were available to satisfy such claims. No allotment letter was admittedly issued to the petitioner, though an offer was made to him, which he accepted too. The offer or acceptance in the instant case does not constitute a conclusive contract enforceable through the Court of law. Admittedly, neither a specific plot was allotted nor the petitioner paid the allotment price. The decision of the Hon'ble Supreme Court in Harsh Dhingra's case(supra) protects only to those allottees in whose favour the allotments were made before 23.04.1996. There is no allotment made in favour of the petitioners prior thereto. In this view of the matter, his case does not fall within the ambit of Clause 1 of the Policy Circular dated 25.02.2002.

[18] That apart, the claim suffers from inordinate delay and laches. From 1981 to 2013 the petitioner appears to have acquiesced and reconciled with the situation. It is only a letter mistakenly written by Estate Officer triggered the petitioner's hope. The subsequent correspondence cannot revive the cause of action.

[19] For the reasons aforestated, we do not find any merit in the writ petition.

[20] Dismissed.

(SURYA KANT)
JUDGE

January 18, 2017
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(GURMIT RAM)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |