

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

C. W.P. No.20974 of 2019

Date of Decision:- 26.08.2019

Surinder Kumar Garg and others

....Petitioners

vs.

State of Haryana and another

....Respondents

C. W.P. No.21246 of 2019

Umang Garg and another

....Petitioners

vs.

State of Haryana and another

....Respondents

C. W.P. No.21376 of 2019

Devinder Singh Bedi

....Petitioner

vs.

State of Haryana and another

....Respondents

C. W.P. No.20986 of 2019

Dheeraj Gupta and another

....Petitioners

vs.

State of Haryana and another

....Respondents

C. W.P. No.20976 of 2019

M/s Cosy Shoes Industries Pvt. Ltd. and another

....Petitioners

vs.

State of Haryana and another

....Respondents

C. W.P. No.20995 of 2019

Anil Kumar and another

....Petitioners

vs.

State of Haryana and another

....Respondents

C. W.P. No.20914 of 2019

Nisha Gupta and another

....Petitioners

vs.

State of Haryana and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Arun Jain, Sr. Advocate with
Mr. Amit Jain, Advocate,
for the petitioners.

SUDHIR MITTAL, J.

All the above-mentioned writ petitions are being decided by a common judgment as identical questions of law arise therein. For ease of writing the judgment, facts are being extracted from CWP No.20974 of 2019 **Surinder Kumar Garg and others vs. State of Haryana and another.**

The Haryana State Industrial and Infrastructure Development Corporation Limited (hereinafter referred to as 'HSIIDC') issued an advertisement dated 8.3.2019 inviting applications online for allotment of industrial plots in various industrial estates in the State of Haryana. The last date for receipt of applications was 22.3.2019. Vide email dated 13.6.2019, the applicants were informed that in respect of applications for IMT Kharkhauda, draw of lots would be held on 18.6.2019 at 11.00 A.M. in the office of HSIIDC in Sector 6, Panchkula. This was followed by an email dated 15.6.2019 whereby the draw of lots was postponed and the applicants were informed that the next date would be conveyed separately. Thereafter, advertisement dated 8.3.2019 was republished

sometime in the month of July, 2019 with an endorsement thereupon that the last date for receipt of applications had been extended upto 31.7.2019. This advertisement has attracted challenge through the present writ petitions.

Learned senior counsel for the petitioners submits that in terms of the Estate Management Procedure (EMP-2015), in case the number of applications are less than the number of plots available, the applicants are entitled to allotment of plots through draw of lots. In this regard, reference is made to a Chart referred to in para 6 of the writ petition which shows that for Industrial Estate, Kharkhauda, the number of applicants was less in the category of the petitioners. Thus, the argument is that the applicants had acquired a right of allotment through draw of lots and by the extension of the last date for receipt of applications, their rights have been adversely affected. It is further argued that the extension of the last date for receipt of the applications, after four months of issuance of the first advertisement dated 8.3.2019 without giving any reason, is arbitrary. Reliance has been placed upon judgment dated 13.2.2019 passed by a Division Bench of this Court in CWP No.31799 of 2018 *Aashish Jain vs. HSIIDC* and other similar cases.

The pleading, in respect of allotment of a plot by way of auction in Industrial Estate, Barhi, vide bid annexed as Annexure P-4 pursuant to the same advertisement dated 8.3.2019, has not been argued.

By issuing an advertisement, the HSIIDC had invited applications for allotment of industrial plots in accordance with the procedure prescribed there-for. In terms of the invitation, the petitioners submitted their applications online but before allotments could be made, HSIIDC extended the last date for receipt of applications. Under the

circumstances, can it be said that the petitioners had acquired a right for the vindication of which a writ petition could be filed?

From the facts narrated here-in-above, it is apparent that no binding contract came into being between the petitioners and the HSIIDC. Pursuant to an invitation, the petitioners had submitted their applications and the party giving the invitation was entitled to even withdraw from the same without giving any reasons. In the present case, HSIIDC has only extended the last date for receipt of applications which cannot be termed to be illegal or arbitrary in any manner. In *Greater Mohali Area Development Authority vs. Manju Jain and others*, 2010 (9) SCC 157, the Hon'ble Supreme Court has held that a person who has participated in draw of lots and has been issued the letter of appointment but has failed to make any payment pursuant thereto, does not get clothed with any right as no concluded contract has come into being. In *Haryana Urban Development Authority vs. Smt. Raj Dhulhari*, 1998 (2) RCR (Civil) 689, a Division Bench of this Court, by placing reliance upon various judgments of this Court and the Hon'ble Supreme Court, held as follows:-

“10. We are also of the opinion that the District Forum and the State Commission have gravely erred in taking the view that the advertisement issued by the Chief Administrator, HUDA amounted to a binding promise for allotment of plot and, therefore, a direction could be given for allotment of plot to respondent No. 1. In law, an advertisement issued by a public authority like HUDA inviting applications for allotment of plots cannot be treated as a promise made to the applicants that they will be allotted plots. At best, such advertisement can be

construed as an invitation to the prospective allottees to apply for consideration of their cases for allotment of land in accordance with the provisions of law and the Constitution. The right of consideration available to an applicant can mature into a right to be allotted plot only if the land is available for allotment, the draw is held and the applicant is successful. In fact, even in such a situation, the successful applicant does not get an absolute and indefeasible right to be allotted land which can be enforced in a Court of law. The right, if any, can be claimed by the applicant only if allotment is physically made by the competent authority in accordance with law.

In **Delhi Development Authority v. Pushpender Kumar Jain, AIR 1995 Supreme Court 1 : 1994(3) RRR 723**, the plea of the respondent that he had acquired right to be allotted flat at the price which was prevailing on the date of drawal of lots was also nullified by a two Judges Bench of the Supreme Court. While reversing the judgment of the Delhi High Court, which had upheld the claim of the petitioner-respondent, their Lordships of the Supreme Court observed as under :-

"No provision of law also could be brought to our notice in support of the proposition that mere drawal of lots vests an indefeasible right in the allottee for allotment at the price obtaining on the date of drawal of lots. In our opinion, since the right to flat arises only on the communication

of the letter of allotment, the price or rates prevailing on the date of such communication is applicable, unless otherwise provided in the scheme."

In Surjit Singh v. State of Punjab, 1979 P.L.R. 413, a Full Bench of this Court considered the nature of the right, if any, acquired by submission of an application for allotment of land and held as under :-

"By filing an application in accordance with law, the applicant only gets a right of consideration of his application, but he does not a vested right for allotment of plot."

In Kabul Singh and others v. Punjab Urban Planning and Development Authority, 1997(1) P.L.R. 713 : 1997(2) RRR 498, a Division Bench considered the prayer made by the petitioners for issuance of a mandamus to be allotted HIG single storey dwelling units on the ground that the Punjab Housing Development Board had while inviting applications made promise for allotment of the flats. After noticing the relevant statutory provisions, the Court held as under :-

"In our considered opinion, the announcement contained in Annexure P4 cannot be equated with a promise made by the competent authority under the statute. The power of the Board to dispose of the

land, buildings or other property vested in it could be exercised by it consistent with the doctrine of equality embodied in the Constitution. It is one of the settled principles of law that a public authority discharging public duty must act in public interest and its action should not be arbitrary or unfair. The wider meaning given to the concept of equality required that every State action must be reasonable and must not be arbitrary or opposed to public interest. Therefore, it was not open to the Board to make any promise to the petitioners and other unsuccessful applicants for allotment of houses in disregard of the provisions of the statute and the doctrine of equality."

In C.W.P. No. 8905 of 1997, The Express Co-operative Group Housing Society Ltd. and others v. State of Haryana through its Chief Secretary and others, decided on 3.10.1997, a Division Bench of this Court analysed the provisions of the 1977 Act and the 1978 Regulations in the context of the plea raised by the petitioner that it had become entitled to allotment of land under Group Housing Scheme, 1995. The Court upheld the power of the Government to issue directions to HUDA regarding the policy of allotment of land and also that HUDA can abandon the scheme notified in the year 1995. The Court also negated the plea that the advertisement issued by HUDA in the year 1995

amounted to a promise to the prospective applicants for allotment of plots and held as under :-

"However, we are unable to agree with them that the mere submission of application by the petitioners has created a right in their favour to be allotted plots of land. The advertisement issued by the Authority can at the best be termed as an invitation to the prospective buyers to apply for consideration for allotment of land. The very fact that the advertisement did not contain any restriction on the number of applications which could be made by the Co-operative Group Housing Societies is a clear proof of the intention of the Authority that the prospective applicants will be considered by it for the purpose of allotment of land earmarked for group housing purposes. Such advertisement cannot be construed as a promise held out by the Authority to allot land to the applicants and once the Government has, in exercise of its power under the Act, revised the existing policy and decided to allot land at the revised rates under the new scheme, the inchoate right of consideration which came to vest in the petitioners on the basis of the applications submitted by them, stood extinguished. The petitioners cannot enforce their so-called expectation nor can they seek a mandamus against

the Authority on the basis of doctrine of promissory estoppel."

The same view has been reiterated in **C.W.P. No. 14632 of 1997 Rajinder Aggarwal v. State of Haryana and others decided on 29.9.1997** in which the petitioner had sought allotment of an industrial plot."

It is, thus, obvious that no right accrued in favour of the petitioners merely by making an online application. Consequently, they are not entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. The extension of the last date for receipt of applications after four months of issuance of the advertisement also, cannot be termed to be arbitrary. It may be noted that advertisement dated 8.3.2019 pertained to 23 different industrial estates and collation of data could have taken sometime. A period of four months cannot be termed to be so excessive so as to attract the charge of arbitrariness.

The judgment in *Aashish Jain (supra)* is not applicable to the facts of this case. In the said case auction had been conducted pursuant to receipt of the applications and thereafter, some of the auctions were cancelled and it was directed that fresh manual auctions be held in certain cases. The said direction was set aside by this Court by holding that the respondent could not successfully explain why only certain auctions were scrapped. It may also be noticed that the issue of rights having not accrued in favour of the applicants just by participating in the auction process, even though urged on behalf of the respondents, was not considered by the Division Bench. Further, as admitted by learned senior counsel for the petitioners himself, the said decision is under challenge in the Hon'ble

Supreme Court of India.

Thus, we do not find any merit in these writ petitions and the same are accordingly dismissed, however, without any order as to costs.

(DAYA CHAUDHARY)
JUDGE

(SUDHIR MITTAL)
JUDGE

August 26, 2019

poonam

Whether speaking/reasoned

Yes

Whether reportable

Yes