

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

CWP-26784-2018 (O&M)
Date of decision : 25.07.2019

Suman Bala

...Petitioner(s)

Versus

Chandigarh Housing Board and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. J.R. Syal, Advocate,
for the petitioner(s).

Mr. Anhad S. Miglani, Advocate,
for respondent No.1.

JITENDRA CHAUHAN, J.

Prayer in the instant petition is for quashing of order dated 14.05.2018 (Annexure P-4), passed by learned Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh, whereby, the application of the petitioner for direction to respondents to allot dwelling unit on the first floor under Sub-Scheme 'B' has been declined.

It is contended that respondent No.1 floated a housing scheme namely, Scheme 200 – TWO BED ROOM FLATS UNDER SELF FINANCING HOUSING SCHEME 2016 ON LEASE HOLD BASIS IN SECTOR 51-A, CHANDIGARH. The petitioner had applied for Sub-Scheme 'B' i.e. 50 units under assured allotment scheme (first floor only).

Incidentally, the name of the petitioner did not figure in the first 50 applicants, however, from the website of the respondent, he came to know that she was placed at serial No.51. Since, the petitioner was not successful in Sub Scheme 'B', as per condition No.IV of the Scheme, after the draw of lots, the remaining applicants/unsuccessful bidders were included in the draw of lots of Sub-Scheme 'A'. Consequently, the petitioner was successful in the draw of lots held under Sub-Scheme 'A' and was accordingly, allotted dwelling unit No.134-D (4th floor). It is further contended that as per the conditions of the brochure, a waiting list is maintained for Sub-Scheme 'A', whereas, no such waiting list was maintained for Sub-Scheme 'B'. However, it was provided in the Brochure that “in case there is a shortfall of applicants in Sub Scheme 'B', the surplus dwelling units shall be transferred to Sub Scheme 'A' at the time of draw of lots. The petitioner came to know that some of the allottees, who were successful in the draw of lots, under Sub-Scheme 'B', have surrendered their dwelling units, resulting in shortfall of applicants in Sub Scheme 'B'.

The grouse of the petitioner is that the shortfall on account of surrender of flats by certain successful candidates has to be met out of the remaining applicants in seriatim who applied under the Scheme-B and thus, the petitioner being at serial No.51 of the list, is entitled to be offered such a flat under Sub Scheme 'B'.

On the other hand, learned State counsel submits that as per the terms and conditions of the scheme, surrender of a unit by some successful allottee under Sub Scheme 'B' does not entitle the petitioner to allotment of such surrendered unit insofar as there was no waiting list for Sub Scheme 'B'

and the units thereunder. Further, the unsuccessful applicants stood transferred to Sub Scheme 'A' and the petitioner has also been allotted a dwelling unit thereunder. Cites *Paramjit Singh Vs. State of Punjab (P&H) (DB), 2013 (3) PLR 103.*

Heard.

Before proceeding further, it would be appropriate to refers to the brochure of the scheme issued by respondent No.1, the relevant portion whereof, reads thus:-

SCHEME 'B':

Assured Allotment Scheme

1. The sub Scheme 'B' is designed for the people who want assured allotment and are willing to pay at a rate higher than the prescribed rate in the Scheme.
2. In case there is a shortfall of applicants in Sub-Scheme 'B', the surplus dwelling units shall be transferred to Sub Scheme 'A' at the time of draw of lots.
3. Un-successful bideders will be included in Sub Scheme-A of General Category.
4. The floor wise dwelling units and reserve price is as under:-

Floor	No. of Dwelling Units.	Reserve price (in Rs. Lacs).
First Floor	50	Rs. 69 Lakhs

5. The applicants for these dwelling units are required to quote the amount, at which they are willing to purchase the dwelling units. However, the price quoted should be higher than the reserve price indicated above. The quoted price should be submitted in a sealed envelope as per the format given along with the Application Form. The quoted price should be in multiples of Rs.50,000. In

*the Sub Scheme-B there are 50 dwelling units earmarked on the First Floor, **which is lowest floor with stilt parking on the ground floor.** The allotment for the dwelling units will be made at the actual price quoted. All remaining applicants shall be included in the draw of lots to be held under the General Category of Sub Scheme-A. In case the applicant withdraws before the opening of the bid, 10% of the initial deposit will be forfeited. In case a successful applicant in this category withdraws/surrenders, 25% of the earnest money will be forfeited. However, if the applicant under the present Sub Scheme withdraws after the second draw of lots the 25% of the earnest money shall be forfeited and the said unit shall be allotted to the person on the waiting list under the General Category.....”*

From the perusal of the above, it is manifestly clear that the purpose of Sub Scheme-B was to offer some dwelling units to those persons who were ready and willing to pay the price higher than the normal price indicated for rest of the dwelling units in Sub Scheme-A. Further, all the bidders must have quoted a price higher than the reserved price. The petitioner being at Serial No.51 in the said list, thus, was highest bidder after the first fifty.

The reasoning put forth on behalf of the respondent-Board in denying the petitioner allotment of a dwelling unit under Sub Scheme 'B' is that there was no provision of waiting list under the said scheme. However, such a reasoning is bereft of logic *inasmuch* as the action of transferring the units of Sub Scheme 'B', which stood surrendered by the successful bidders, to the general category Sub Scheme 'A' would definitely cause loss to the

exchequer. If such dwelling units had been allotted to candidates like the petitioner, the same would have fetched the respondent-Board more money and no one would reasonably have had any grouse against such a course. Moreover, there was a provision in the scheme itself that in case of shortfall of applicants in Sub Scheme 'B', the dwelling units therein would be transferred to Sub Scheme 'A'. To the contrary, the number of applicants was more than the number of units on offer and there was no harm in allotting a unit which was surrendered by a successful bidder to the applicant who was next in the list of top bidders. The case law cited by learned counsel for the respondent-Board is distinguishable on facts.

In view of the above, the instant petition is allowed; impugned order dated 14.05.2018 (Annexure P-4) is, hereby, quashed; and the respondents are directed to offer the petitioner a dwelling unit under Sub Scheme 'B' which had been surrendered by a successful bidder. Needless to say, any amount already deposited by the petitioner with respondent-Board, shall be adjusted against such allotment in pursuance of this judgment. The necessary exercise be carried out within a period of six weeks from the date of receipt of a certified copy of this judgment.

Allowed.

25.07.2019

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**(JITENDRA CHAUHAN)
JUDGE**

Whether speaking / reasoned : Yes No

Whether Reportable : Yes No