

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

**CWP-17741-2021 (O&M)
Date of Decision:09.09.2021**

Ashish Gupta & another

... Petitioners

Versus

State of Haryana & others

... Respondents

**CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.
HON'BLE MR. JUSTICE VIVEK PURI.**

Present:- Mr. SKS Bedi, Advocate for the petitioners.

Mr. Sandeep Moudgil, Advocate for respondents No.2 to 5..

...

TEJINDER SINGH DHINDSA, J. (ORAL).

Matter has been taken up through Video Conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

Instant writ petition is directed against the order dated 28.06.2021 (Annexure P-7) passed by the Chief Administrator, Haryana Shehri Vikas Pradhikaran (in short 'HSVP'), Panchkula rejecting the representation filed by the petitioners seeking allotment of a plot under the oustee category.

Brief facts emanating from pleadings on record are that land of the father of the petitioners, namely, Om Parkash Gupta was acquired in the year 1993 for development of Sectors 39, 40, 44 to 46, Gurugram. Petitioners herein along with their brother, Sh. Vipin Gupta and their mother, Smt. Vimla Gupta applied for allotment of plot under the oustee

category separately on 13.07.1994 and 12.07.1994 respectively on the ground that land belonging to their father had been acquired and since he has died, they being the co-sharers be considered for allotment under the oustee category. It has been averred that vide Memo dated 04.03.1998, petitioners were intimated with regard to draw of lots which was fixed on 09.03.1998. Petitioners are stated to have been successful in the draw of lots and a residential plot No.998-A, Sector-40, Gurugram ad measuring 286 sq. meters was earmarked in their name. The allotment letter, however, was not issued. Apparently, no objection of other co-sharers was sought from the petitioners but that had not been placed on record. It is further pleaded that since no further orders have been passed with regard to formal allotment of the plot, a representation appended as Annexure P-1 was filed. The representation at Annexure P-1 does not carry any date.

Learned counsel representing the petitioners places heavy reliance upon two communications at Annexures P-3 and P-6 dated 17.10.2019 and 09.03.2021 in terms of which the Estate Officer-II, HSVP, Gurugram had been called upon to issue allotment letter of the plot in question by taking indemnity bond from the petitioners. As per counsel, the documents at Annexures P-3 and P-6 and decision contained therein was pursuant to the representation filed by the petitioners at Annexure P-1.

It is argued that the action of the respondent/authorities in not having issued the allotment letter and to the contrary, having issued the impugned rejection order dated 28.06.2021 at Annexure P-7 is patently unjust, unfair and illegal. It has further been argued that the objection that has been raised by the department at the initial stage for a 'No Objection Certificate' to be

procured from other co-sharers is not sustainable in law as each co-sharers oustee is entitled to a separate individual plot to the extent of his/her share in the total land holding of the deceased land owner.

Counsel contends that the claim of the petitioners ought to have been considered in the light of Instructions dated 11.08.2016 wherein Clause 15(a) reads as under:

“Clause 15(a): Where an application is made by an oustee in an advertisement issued afresh, the price of plot that may be charged from him if he is successful in draw of lots out of plots reserved for oustees shall be the rate as advertised in new advertisement.

In cases where the allotment of plot could not be effected despite determination of his eligibility, the prevalent price at the time of application by the oustee in pursuance to an advertisement may be charged along with simple interest of 11% per annum till date.

It is clarified that eligibility for the purpose as aforesaid shall be treated as determined only when such an oustee completed and satisfied all the formalities/conditions as per the applicable policy.”

It is submitted that since eligibility of the petitioners had been determined way back in the year 1998, the plot in question should be allotted at the prevailing price at the time of submission of application.

Yet another submission raised by counsel is that there has been a negation of the principles of natural justice inasmuch as vide impugned order dated 28.06.2021 (Annexure P-7), the previous communications/approvals at Annexures P-3 and P-6 have been withdrawn without affording any opportunity of hearing and without issuance of a notice to the petitioners.

Having heard counsel at length and having perused the pleadings on record, we are of the considered view that there is no merit in the instant petition and the same deserves to be dismissed.

Undisputedly, in a draw of lots that was held on 09.03.1998, Plot No.998-A, Sector-40, Gurugram had been earmarked in the names of petitioners. Such draw of lots was for purposes of consideration of allotment under the oustee category. Since land acquired was in a joint khata, the petitioners herein had been directed to submit a NOC of the other co-sharers vide Memo dated 04.06.1998. It is not disputed by counsel and as has been observed in the impugned order itself that repeated reminders were thereafter issued on 04.06.1998 and 28.01.2001 to submit the NOC but the same had not been furnished. It is also not disputed by counsel that as per prevailing policy in the year 1998, submission of NOC from other co-sharers was mandatory. Petitioners thereafter have raked up the issue only in the year 2019 in terms of filing representation dated 05.04.2019. Even though, the representation placed on record and appended as Annexure P-1 does not carry a date, yet counsel does not dispute the observation made in the impugned order as regards the inordinate delay at the hands of the petitioners in having submitted the representation dated 05.04.2019 and having kept quiet over a period of almost two decades after the draw of lots that had been held on 09.03.1998.

It is pursuant to the Full Bench decision of this Court in **Rajiv Manchanda's case i.e. CWP-22252-2016** decided on 22.11.2017 that certain instructions had been issued by the HUDA authorities (now HSVP).

Reliance placed by counsel on Clause 15(a) of the Instructions

dated 11.08.2016 is wholly misplaced. Under these instructions, it is only upon an application having been made by an oustee pursuant to an advertisement that has been issued afresh that his claim could have been considered. In the impugned order, it has been categorically recited that in the light of Instructions dated 11.08.2016 previous applications were to be rejected and applicants were required to apply afresh as and when advertisement is issued. It has further been stated that online claims were invited on 03.09.2018 for oustee category allotment in the light of Instructions dated 11.08.2016 but the petitioners did not apply. This fact is not disputed in the pleadings on record. Under such circumstances, the benefit of Clause 15(a) of the Instructions dated 11.08.2016 cannot enure to the petitioners.

With regard to the communications/approvals placed on record at Annexures P-3 and P-6 are concerned, the same can only be construed as Inter Departmental Communications. Such communications did not vest in the petitioners any absolute right. Consideration of the claim of the petitioners was possible only if pursuant to the Instructions issued by the respondent/authorities towards compliance of the Full Bench decision in **Rajiv Manchanda's case (supra)** and an advertisement having been issued, the petitioners had applied in response thereto. In the facts of the present case, petitioners have not submitted their applications. They cannot rake up the issue for allotment of the plot under the oustee category in relation to a draw of lots held in the year 1998 merely upon waking up and filing a representation in the year 2019.

Furthermore, we find that the claim of the petitioners for

allotment under the oustee category has not been foreclosed finally vide impugned order dated 28.06.2021 (Annexure P-7). It has been observed therein that petitioners would be at liberty to apply as and when claim from oustees are invited afresh.

In view of the discussion hereinabove, we do not find any patent infirmity or illegality in the order dated 28.06.2021 passed by the Chief Administrator, HSVP, Panchkula (Annexure P-7).

No intervention is warranted.

Petition dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

09.09.2021
harjeet

(VIVEK PURI)
JUDGE

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| i) Whether speaking/reasoned? | Yes/No |
| ii) Whether reportable? | Yes/No |