

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

**CWP-18190-2021 (O&M)
Date of Decision:14.09.2021**

Harbhajan Singh Virk

... Petitioner

Versus

State of Haryana & others

... Respondents

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

Present:- Mr. Gaurav Bakshi, Advocate for the petitioner.

Mr. Deepak Balyan, Advocate for respondents No.2 to 4.

...

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.

Present writ petition is at the hands of Sh. Tejinder Pal Singh Virk claiming himself to be the son/legal heir of Harbhajan Singh Virk (since deceased).

Challenge has been laid to the order dated 26.03.2021 (Annexure P-8) passed by the Principal Secretary to Government of Haryana, Town and Country Planning Department declining the request of the petitioner for restoration of allotment of a residential Plot No.3157-P, Category Residential (8 marla) in Sector 14P-II at Urban Estate, Hisar in the name of the petitioner.

Brief facts pleaded are that Harbhajan Singh Virk (since deceased) applied for allotment of a plot ad measuring 168.30 square meters

under the reserved (defence) category. He was successful in the draw of lots and residential Plot No.3157-P, Sector-14P-II, Urban Estate, Hisar was earmarked for him. Thereafter, even allotment letter dated 25.07.2015 was issued indicating a tentative price of Rs.26,84,385/- for the plot. As per Clause 5 of the allotment letter, 15% amount i.e. Rs.4,36,196/- was payable within a period of 30 days from the date of issuance of the allotment letter. It so transpires that the applicant, namely, Harbhajan Singh Virk died on 21.10.2014 i.e. even prior to the allotment of the plot made on 25.07.2015.

Counsel submits that the 15% of the total sale consideration amount could not be deposited by the petitioner within a period of 30 days from the date of issue of allotment letter as applicant, Harbhajan Singh Vrik had died. The petitioner herein being legal heir sent demand draft dated 22.09.2015 for an amount of Rs.4,71,000/- towards balance 15% amount i.e. after a delay of 28 days. However, Estate Officer, Hisar returned the demand draft. Petitioner then approached the Chief Administrator, HUDA, Panchkula seeking condonation of delay for deposit of 15% amount. In spite of repeated requests having been made, no final decision as regards condonation of delay was taken. Petitioner then preferred revision petition before the 1st respondent under Section 30(2) of the HUDA Act, 1977 and which has been dealt with vide impugned order dated 26.03.2021 at Annexure P-8.

Counsel has argued that the delay that has occurred in deposit of 15% of the total consideration amount was on account of circumstances which were beyond the control of the petitioner as his father had expired. In any event, the delay was only of 28 days and the respondent/authorities are

wrongly calculating the delay to be of 353 days. Even as per Policy formulated by the respondent/HUDA (now Haryana Shehri Vikas Pradhikaran), delay upto 90 days can be condoned by the concerned Zonal Administrator by charging 7.5% surcharge in addition to interest. It is asserted that the petitioner is ready and willing to deposit any such additional charge(s) that may be levied. A plea of discrimination has also been raised by submitting that the respondent/authorities has condoned the delay in respect of other plot owners. Reliance has also been placed upon a Division Bench judgment of this Court in **Estate Officer, HUDA and others Vs. Mahesh Kumar (LPA-868-2009)** decided on 23.11.2009, wherein it had been held that cancellation of a booth/site cannot be held to be proper merely on the ground that the allottee therein was guilty of a delay of 5 days in making deposit of a certain amount of money. It had further been held that delay beyond control of an allottee can always be condoned in genuine cases subject to additional charge(s) being levied.

We have heard counsel at length and have perused the pleadings on record.

We are of the considered view that the aspect of delay would be irrelevant insofar as examining the validity of the impugned order dated 26.03.2021 (Annexure P-8).

Admittedly, father of the petitioner was an applicant for a plot under a reserved (defence) category. Even prior to issuance of an allotment letter, the applicant, namely, Harbhajan Singh Virk died on 21.10.2014.

Regulation 5(5) of the Haryana Urban Development (Disposal of Land and Buildings) Regulation, 1978 reads as follows:

“The applicant to whom land building has been allotted shall communicate its acceptance or refusal within 30 days of the date of allotment, by registered post to the Estate Officer. In case of acceptance, the letter shall be accompanied by such amount as intimated to him in the allotment letter. In case of refusal, he shall be entitled to the refund of the money tendered with the application. In case he fails to either accept or refuse within the stipulated period, allotment shall be deemed to be cancelled and the deposit made under sub-regulation (2) may be forfeited to the Authority and the applicant shall have no claim for damages.”

In the facts of the present case, the applicant to whom the plot had been allotted was mandated to communicate his/her acceptance or refusal within 30 days of the date of allotment by way of registered post to the Estate Officer. Such communication was to be accompanied by such amount as stipulated in the allotment letter.

In the present case, the allotment letter is dated 25.07.2015 indicating tentative price of plot of Rs.26,84,385/-. As per Clause 5 of the allotment letter, 15% of the sale consideration amount i.e. Rs.4,36,196/- was payable within a period of 30 days from the date of issuance of allotment letter. Unfortunately, the applicant, namely, Harbhajan Singh Virk died on 21.10.2014, much before the issuance of the allotment letter. As such, there was no occasion of acceptance of the allotment at the hands of the applicant (since deceased). In other words, no concluded contract had come into existence during the lifetime of the applicant. That apart, it was a personal right of the applicant, namely, Harbhajan Singh Virk to apply as a member belonging to a reserved (defence) category. The legal heir would be entitled to the benefit of reservation only if he also satisfies the conditions of

eligibility of a reserved (defence) category candidate. It was a personal right which stood extinguished on the death of the father of the petitioner herein. Even otherwise, counsel concedes that the petitioner herein would not satisfy the conditions of eligibility to claim benefit of reservation under the defence category.

In view of the above and even without going into the aspect of delay, the petitioner does not have any right in law to claim allotment of the plot in question in which the name of his late father had been entered in the draw of lots but he having expired even prior to allotment having been made.

In taking such view, we would draw support from a Division Bench judgment of this Court in **Jagbir Singh Dhanda Vs. Estate Officer, HUDA & another (CWP-9185-2013)** decided on 27.02.2015 (Annexure P-12). In **Jagbir Singh Dhanda's case (supra)**, father of the petitioner therein had applied for allotment of a residential plot against a reserved category earmarked for 'Advocates'. Applicant/father of the petitioner therein had also died prior to formal allotment. The claim of the legal heir in that case for allotment of the plot on the ground that his deceased father had been successful in the draw of lots was rejected in terms of the following reasons:

“We do not find any merit in the present writ petition. The father of the petitioner was an applicant under the reserved category of the Advocates. Before draw of lots he died. The petitioner a non-Advocate is not entitled to benefit of reservation as no concluded contract in respect of immovable property has come into existence with the issuance of letter of

allotment.

Similar issue has been examined by Hon'ble Supreme Court in judgments reported as 2009(4) SCC 369 titled as Chaman Lal Singhal v. Haryana Urban Development Authority & Others; Manju Jain's case (supra) and (2013) 5 SCC 182 titled U.P. Avas Evam Vikas Parishad v. Om Prakash Sharma.

The argument of the petitioner is that right of allotment of a plot is a right in property, therefore, it is a heritable right. We do not find any merit in the said argument. The rights which are heritable are specified in Section 306 of the Indian Succession Act 1925. It reads as under:-

“306. Demands and rights of action of, or against deceased survive to and against executor or administrator.—All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.”

In view of the aforesaid provisions the “right to prosecute or defend any action” would arise only if there is concluded contract which has come into existence during the lifetime of a person. No such right fructified during the lifetime

of the father of the petitioner. Prior to concluded contract, it was a personal right to apply as a candidate belonging to reserved category. A legal heir will be entitled to benefit of reservation only if he also satisfies the conditions of eligibility as a reserved category candidate. It was a personal right which died with the father of the petitioner. The petitioner as a legal heir of his father cannot claim the benefit of reservation of plots meant for advocates, in the absence of a contract or a right to plot.”

The dictum laid down above would squarely apply to the facts of the present case as well.

We do not find any infirmity in the impugned order dated 26.03.2021 (Annexure P-8) in rejecting the claim of the petitioner.

Petition is dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

14.09.2021
harjeet

(VIVEK PURI)
JUDGE

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