

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

107

**CWP-20150-2021(O&M)
Date of decision: 21.01.2022**

PHOOL SINGH DABER

....Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA
HON'BLE MR. JUSTICE VINOD S. BHARDWAJ**

Present : Mr. Sandeep Sharma, Advocate
for the petitioner.

Mr. Rajesh Sheoran, Advocate
for HSVP.

VINOD S. BHARDWAJ. J.

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

2. The question that arises for consideration in the present petition is whether a person should be allowed to retain the benefit of allotment secured by him by submission of incorrect declaration contrary to the terms of the Brochure/ advertisement and the conditions of the letter of allotment.

3. By means of the instant writ petition, the petitioner has raised a challenge to the impugned orders dated 20.11.2019 (Annexure P-6); 28.05.2021 (Annexure P-16) and 12.07.2021 (Annexure P-18), whereby the respondents have cancelled allotment of plot No.756-P, Sector 6, Urban Estate, Jhajjar. The

petitioner further seeks restoration of the said plot by impugning that cancellation of the allotment is contrary to the policies dated 06th May, 1997 (Annexure P-20), 01st September, 1998 (Annexure P-21) and 07th January, 2008 (Annexure P-22).

4. Learned counsel for the petitioner submits that the petitioner is a 78 years old senior citizen, who retired from the Central Reserve Police Force after serving 36 years and having been awarded the President Police Medal in addition to 19 other awards received from various higher authorities as a mark of his exemplary service. Learned counsel submits that the petitioner had purchased one plot bearing No.244 situated in Sector 31-32A in Urban Estate Gurugram on 02.07.2001 from one Shree Ram Attri and thereafter a re-allotment in his favour was issued by HSVP on 12.07.2001. The said plot had been allotted in favour of the vendor of the petitioner under the general category and was thus not a concessional allotment.

5. Applications were invited by the respondent-HSVP (Haryana Urban Development Authority as it was then) from personnel of the Defence and Paramilitary Forces for allotment of residential plots in Sector 6, Jhajjar in the month of August 2007. The petitioner submitted an application for allotment of plot in Sector 6, Jhajjar and was found successful. A letter of allotment bearing memo No.1262 dated 07th March 2008 was issued in favour of the petitioner pertaining to residential plot No.756-P, Sector-6, Jhajjar. The petitioner had never sought any concessional allotment or benefit of any reservation except for the said plot.

6. Pursuant to a complaint made by some RTI Activist with the officials of the respondents against illegal allotment in favour of the petitioner, a show cause notice was served upon the petitioner by the Estate Officer, HSVP Jhajjar on August 26, 2019 calling upon the petitioner to respond as to why allotment of the

plot in favour of the petitioner be not cancelled. The petitioner filed his response raising various objections against the proposed action by the respondents. After consideration of the reply filed by the petitioner, the plot bearing No.756-P Sector 6, Jhajjar was cancelled by the Estate Officer, HSVP Jhajjar for having been secured by mis-declaration by submission of misleading and wrong affidavit. The allotment, being in violation of the eligibility criteria and eligibility conditions in the advertisement as well as the terms and conditions of the allotment, was cancelled vide memo No.2207 dated 20.11.2019.

7. Learned counsel for the petitioner contends that the subsequent appeal as well as the revision filed by the petitioner were also dismissed by the respective Authorities vide orders dated 28.05.2021 (Annexure P-16) and 12.07.2021 (Annexure P-18) respectively. The writ petition was thus filed raising a challenge to the said orders.

8. Learned counsel on behalf of the petitioner has argued that the plot in question has been cancelled without application of mind and notwithstanding that the petitioner had never availed of any benefit of concessional allotment under the reserved category except for the plot in question. He submitted that the earlier plot was purchased by the petitioner in the year 2001 by way of re-sale and the same was a general category plot. Reliance was placed on the policy bearing memo No. A- PHK-2008/UB-1/40089-40093 dated 28.11.2008 (Annexure P-23). The relevant clause referred to by the petitioner is as under:-

'3. Allotment to the person qualifying under above stated categories will be subject to the following terms and conditions:-

a. xxxxxxxxxxxxxxxxxxxxxx

b. That the applicant should not own any plot in any urban

estate of HUDA either in his own name or in the name of his or her spouse or any dependent children.'

9. By making a reference to the aforesaid clause, it was submitted that the restriction for seeking allotment against an applicant was incorporated for the first time in the policy dated 28.11.2008 and hence there was no such prohibition for seeking allotment prior to the above-said policy coming into force. The respondents could not have thus enforced any such condition in the advertisement or the letter of allotment for eligibility as the same was contrary to the policy in force. Consequently, the allotment in favour of the petitioner was not in violation of any policy and the order of cancellation thus suffers from non-adherence to the policy then in force. A further argument was raised that every person is entitled to avail benefit by seeking concessional allotment for one time and as the petitioner had not taken benefit of any other concessional allotment, hence, the allotment in favour of the petitioner was proper. Apart therefrom, there was no concealment of any fact or mis-declaration made by the petitioner with the respondent authorities. Reliance was placed upon the affidavit filed by the petitioner with the respondent authorities as per condition No.25 of the letter of allotment, a copy, whereof, was passed on during the course of hearing. A prayer was further made that considering the long service of the petitioner to the nation, the allotment in question be restored.

10. We have heard learned counsel for the petitioner and have gone through the record of the case with his assistance. We do not find ourselves in agreement with the arguments advanced on behalf of the petitioner.

11. The advertisement inviting applications was published in August 2007. Certain essential terms and conditions of the said advertisement are extracted as under:-

' Eligibility Criteria:

i) xxxxxxxxxxxx

ii) xxxxxxxxxxxx

iii) xxxxxxxxxxxx

- *Only those applicants are eligible to apply who do not own a residential plot/house in any urban estate in Haryana in his/her name or spouse's name or in the name of any dependent family member. An affidavit to this effect attested by Executive Magistrate First Class/Notary Public shall accompany the application.*

Eligibility Conditions

i) xxxxxxxxxxxx

ii) xxxxxxxxxxxx

iii) xxxxxxxxxxxx

iv) xxxxxxxxxxxx

(v) *Only those applicants are eligible to apply who have never been allotted a plot under reserved category in any Urban Estate developed by HUDA, and **who do not own a residential plot/house in any Urban Estate in Haryana in his/her name or spouse's name or in the name of any dependent family member. An affidavit to this effect attested by Executive Magistrate 1st Class/Notary Public shall accompany the application.***

12. A perusal of the said eligibility criteria and conditions in the advertisement clearly establish that for a person to be eligible to seek a concessional allotment of residential plot in the Urban Estate Jhajjar, the applicant should not own a residential plot/house in any urban estate in Haryana in his name or in the name of his spouse or any of the dependent family members. The aforesaid condition of eligibility stands reiterated in the terms and conditions of allotment of residential plot as well. Twin conditions were prescribed thereunder and both had to be satisfied by an applicant for allotment viz. (i) the applicant

should have never been allotted a plot under the reserved category; and (ii) the applicant should not own a residential plot/house in any urban estate in his/her name or that of spouse or any dependent family member. The said condition as prescribed in the brochure/advertisement was never challenged by the petitioner at any point of time and he submitted the application seeking the allotment. Thus, the eligibility conditions as prescribed in the brochure/ advertisement were accepted by the petitioner.

13. Further, the letter of allotment vide memo No.1262 dated 07.03.2008 (Annexure P-3) was issued in favour of the petitioner in which condition No.25 reads as under:-

' 25. You shall have to submit an affidavit duly attested by 1st Class Magistrate stating therein that you do not own a residential plot/house in any Urban Estate of Haryana, Delhi and Chandigarh in your name or in the name of any dependent family member. (for Reserve category).'

14. The aforesaid condition mandated a beneficiary under the reserved category to submit an affidavit to the effect that he did not own a residential plot/house in any urban estate of Haryana, Delhi and Chandigarh. It has been submitted by the petitioner that an affidavit dated 03.04.2008 in this regard was duly furnished and the same reads as under:-

' I, Comdt. Phool Singh Daber S/o Sh. Bihari Lal R/o H. No.244, Sec-31, Gurugram do hereby solemnly declare and affirm as under:-

- 1. That I am retired from Central Reserve Police Force as a Commandant.*
- 2. That I am permanently resident of Haryana State and address mentioned as above.*
- 3. That I am an Ex-Paramilitary Force person.*
- 4. That I do not own a residential plot/house/flat in Urban*

Estate of Haryana, Delhi and Chandigarh in my name or in the name of any dependent of my family member. (For Reserve Category).

15. While making a reference to the declaration made at Sr. No.4 and a specific reference to the words '(for Reserve Category)' learned counsel for the petitioner has sought to argue that the said declaration only meant that the petitioner has not availed of any residential plot/house in any urban estate of Haryana in a reserved category and as such there was no mis-declaration by the petitioner.

16. We find that the argument raised by the petitioner is an afterthought and not the correct interpretation of the affidavit so furnished or the conditions so prescribed in the letter of allotment. No such plea has been raised by the petitioner in his appeal before the Administrator or in the revision before the government. The argument as noticed in the order also do not suggest any such submission raised by the petitioner. There is no dispute to the orders passed by the authorities below on the ground that such an argument had been raised on behalf of the petitioner and the same has not been dealt with. Besides, the declaration made at Sr. No.4 was categorical that the deponent did not own any residential plot/house/flat in his name or in the name of any dependent member of his family. The extract 'for reserved category', made in the bracket of the said declaration was only a ministerial reproduction of the words mentioned in the letter of allotment, under condition No.25 thereof for compliance by the persons seeking allotment under the reserved category. Further, even the condition of allotment under clause No.25 of the letter of allotment dated 07th March 2008, was never a subject matter of challenge by the petitioner and not even in the instant petition.

17. Further, the argument of the petitioner that the condition of not

owning any other plot in any urban estate of HUDA having been prescribed only in the policy dated 28.11.2008, would by necessary inference imply that the erstwhile policies permitted person to apply despite owning a plot in HUDA and that the successful applicant cannot be denied an allotment by prescribing any condition to the contrary in the advertisement, cannot be accepted. A policy has to be read on the basis of what it provides for and not by that it does not incorporate. It cannot be assumed that merely because a policy of 2008 prescribed an additional term pertaining to the eligibility, the converse would be deemed to be valid and binding prior to the said policy. The terms and conditions of the eligibility as incorporated in the brochure as well as in the letter of allotment are not in violation of any rule/ regulation or policies framed by HUDA (now HSVP), as were in force then. The petitioner was fully aware of the said conditions, as an affidavit to this effect was also submitted by the petitioner. A specific declaration of not owning a plot in any urban estate of HUDA was given by the petitioner despite being owner of plot bearing No.244 situated in Sector 31-32A in Urban Estate Gurugram. The affidavit was thus a deliberate act of mis-declaration on the part of the petitioner. We **do not** find any merit in the submission that there was no mis-declaration by the petitioner or that the finding recorded by the authority was incorrect.

18. Insofar as, the argument of learned counsel that the petitioner has never availed of the benefit of concessional allotment and thus must be permitted to retain the said plot is concerned, the same cannot be accepted. The legality of an allotment has to be tested on the basis of eligibility conditions prescribed therein. The petitioner cannot be permitted to capitalise on his own wrongs and to retain for himself fruits of his misdeed. The object of concessional allotment was intended to reach out to people from amongst Defence/Paramilitary services who

did not have any plot or flat and to afford them concessional allotment to construct their residential houses. The said concession was consciously not extended to people who already owned a plot/flat/residential units. The object of concessional allotment being to cater the employees of Defence/Paramilitary to buy plot for their need, cannot be permitted to be defeated by protecting allotment permeating from greed. Such an approach would be contrary to the objective behind the condition of the brochure and would instead promote disregard to the Rule of Law.

19. The Hon'ble Supreme Court has long recognised and upheld the legal maxim '*Nullus commodum capere potest de injuria sua propria*' that is no one can be allowed to benefit of his own wrongful act. In Broom's Legal Maxim (10th Edition) at p. 191 it is stated:

".....it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure."

While relying on the said principle in the matter of Indian Council For Enviro-legal Action versus Union of India reported as (1996)3 SCC 212, the Supreme Court of India observed as under:

"149. It is settled principle of law that no one can take advantage of his own wrong. Unless courts disgorge all benefits that a party availed by obstruction or delays or non-compliance, there will always be incentive for non compliance, and parties are ingenious enough to come up with all kinds of pleas and other tactics to achieve their end because they know that in the end the benefit will remain with them."

20. The petitioner secured allotment of the plot by giving an information

known to the petitioner to be false and incorrect and thus secured the allotment for himself. The benefits so secured must be disgorged by the Court of law so that violator of law is not incentivised and to believe that the benefit shall remain with him in the end.

21. We do not find any illegality or infirmity in the orders passed by the authorities below. The writ petition is devoid of merit and is accordingly dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

(VINOD S. BHARDWAJ)
JUDGE

21.01.2022

S.Sharma(syr)

<i>Whether speaking/reasoned</i>	:	<i>Yes/No</i>
<i>Whether reportable</i>	:	<i>Yes/No</i>