

2025:PHHC:020224-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-15134-2003 (O & M)

Reserved on: 24.01.2025

Pronounced on: 11.02.2025

ISHAR SINGH WALIA (since deceased) THROUGH LRs. ...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. Saksham Mahajan, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Dharamveer Sharma, Senior Advocate with
Ms. Sunder Kumari, Advocate
for respondent No. 2.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein,
prays for the hereinafter extracted relief.

“Writ of mandamus directing the respondent No. 2 to allot to the petitioner a residential plot measuring 250 sq. yards @ Rs. 125/- per sq. yard (the rate prevalent in the year 1982 when the application was made) in 475 acres scheme known as Shaheed Bhagat Singh Nagar Scheme or any other appropriate scheme of the respondent Trust.”

Factual Background

2. The petitioner in response to an advertisement dated 28.12.1981 (Annexure P-1), applied for the allotment of plot measuring

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250 sq. yards. The said scheme was floated by the Ludhiana Improvement Trust for allotment of plots in Raj Guru Nagar. However, the petitioner was not successful in the draw of lots, as became held in October, 1982 vis-a-vis the said scheme.

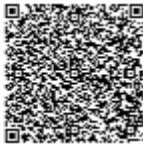
3. Thereafter, the respondent Trust published another advertisement (Annexure P-3), whereby, applications became invited for allotment of plots under various categories, through the conducting of draw of lots, thus, in Shaheed-e-Azam Bhagat Singh Nagar. In condition No. 3 of the said advertisement, condition whereof, is extracted hereinafter, it was mentioned that 25 % of the plots, thus were reserved for such persons, who had applied for allotment of plots in other Trust Schemes, but were not successful in the allotment of plots.

“ 25 % plots will be reserved for those persons who have already applied for the allotment of plots in other Trust Schemes but were not successful in getting plots together with applicants left out of Sr. No. 2 above.”

4. Pursuant to the aforesaid advertisement, the petitioner made a written request on 21.10.1982 to the respondent-Trust, to the extent, that the amount deposited by him for allotment of plot, in the earlier scheme, wherein, he was not successful in getting allotment of the plot, be adjusted for the allotment of plot measuring 200 square yards in the advertised scheme.

5. However, before the draw of lots could be held, the State of Punjab framed the Punjab Town Improvement (Utilization of Land and Allotment of Plots) Rules, 1983 (hereinafter called as the 1983

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4. Reservation of residential plots and multi-storeyed houses.

(1) Subject to the provisions of rule 10, residential plots and multi-storeyed houses shall be reserved for allotment to the following categories of persons to the extent specified against each :-

Category of persons	Extent of reservations
(i) Members of the parliament representing the state of Punjab and the Members of the Punjab Legislature Assembly.	Eight per cent of plots of 250, 300, 400 and 500 square yards only.
(ii) Freedom fighters and political sufferers having domicile in the State of Punjab and who have been awarded Tamra Patras by the Punjab Government; and in the case of death of such persons their widows and in the absence of widows their children.	Two per cent.
(iii) Defence Personnel, Border Security Force Personnel, members of the Central Reserve Police Force, Ex-servicemen and War Widows having domicile in the State of Punjab.	Eight per cent
(iv) Persons appointed to Public Services by the State Government, who are holding posts in connection with the affairs of State of Punjab and in case of their death while in service, to their widows;	
(v) Persons belonging to the Scheduled Castes and Backward Classes	Eight per cent.
(vi) Employees of the the concerned Trust and in case of their death while in service, their widows.	Two per cent
(vii) Non-Resident Indians	Four per cent of plots of 500 Square Yards size only.

Provided that ten per cent of the residential plots and multi- storeyed houses shall be reserved for persons whose applications for allotment of residential plots and multi-storeyed houses are pending for a period of more than five years ending with the date of commencement of these rules :

Provided further that the unutilized plots reserved for different categories of persons under sub-rule (1) for want of eligible persons shall be open for allotment to the persons other than the reserve categories of persons :

Provided further that ten per cent of the residential plots and multi-storeyed houses shall be allotted by the Trust with the approval of the Government to such category or class of persons and in the manner as the Government may from time to time keeping in view the socio-economic conditions of such persons specify.

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6. It is apt to mention here that CWP-7401-1996 was filed by

Dr. Amar Singh and others, wherebys, the petitioners challenged the

vires of Rule 4 of the 1983 Rules. The said writ petition was disposed

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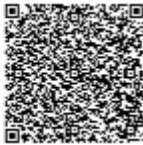


of vide order dated 25.07.2003, wherebys, Rule 4(i), (iv), (vii) and proviso 3 to the aforesaid Rules, wherein, allotments were being made under the discretionary quota, were held to be both illegal, and unconstitutional, thus by the Full Bench of this Court. The relevant paragraphs of the said verdict are extracted hereinafter.

15. *In the present case, written statements have been filed on behalf of the Improvement Trusts pursuant to the orders passed by this Court on 30.5.1996. The details of allotment of residential plots out of the discretionary quota of the Government have also been given. Reasons for making the allotment in individual cases is not discernible either from written statement filed by the respondents or from material placed on record. In view of the law laid down by this Court in Anil Subharval's case (supra), it would not be possible to uphold the reservation provided in Rule 4(i), (vii) and proviso 3 to the aforesaid rule. **No justification is given for carving out a reservation for Members of Parliament representing the State of Punjab and the Members of the Punjab Legislative Assembly. 8% of the plots of all size i.e. 250, 300, 400 and 500 square yards are reserved for this category. This reservation has absolutely no nexus with the object sought to be achieved by the Improvement Trust Act. It is simply largesse bestowed on an individual after winning a parliamentary or State Assembly seat. This kind of reservation is abhorrent to the concept of equality enshrined under various provisions of the Constitution of India.** xxxx*

16. *5% of the plots have been reserved to be allotted by the Trust with approval of the Government to such category or class of persons and in the manner as the Government may from time to time keeping in view the socio-economic condition of such persons, satisfy. The aforesaid discretion is wholly unguided. It is unlimited. It leaves the Government to take the decision keeping in view the socio-economic condition of the persons specified. The only criteria which has been placed on the record is the policy contained in the Notification No.5537/3CII-88/1604 dated 31.1.1989. If the discretion is to be limited only to categories No. 1, 2 and 3, the reservation would have to be held to be valid. Clause (i) of this policy seeks to*

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ameliorate the suffering of the dependents of persons who may have suffered at the hands of Terrorists or rioters. It appears that this category was created to give some protection to the sufferers whose family had suffered during the period of militancy in Punjab and to the families of those persons who suffered in the riots in 1984. Reservation similar to those contained in categories No. 2 and 3 made by State of Haryana have already been upheld by this Court in Anil Subharwal's case (supra). Therefore, the same would also have to be held to be valid. But the power granted to the Government under Clause (iv) is wholly arbitrary and is capable of abuse. We, therefore, hold that the discretionary quota of 5% as contained under proviso No. 3 to Rule 4 is vague and arbitrary, and therefore, violative of Articles 14 of the Constitution of India. We also hold that the power contained in Clause (iv) of the Notification No.5/537/3CII-88/1604 dated 31.1.1989 gives the competent authority unbridled discretion and is, therefore violative of Article 14 of the Constitution of India. We, therefore, hold that the allotment of residential plots made under the aforesaid provision i.e. to Members of Parliament and Members of the Punjab Legislative Assembly; Non-Resident Indians and under the discretionary quota w.e.f. 31.1.1989 are illegal and void. The allotments are hereby quashed. xxxx

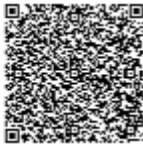
7. Further, Rule 11 of the 1983 Rules is also extracted hereinafter.

11. Manner of allotment.

- (1) Every Trust shall invite applications for allotment of residential plots or multi-storeyed houses by the dates to be specified in the notice to be published in the newspapers widely circulated in the locality for this purpose.
- (2) Every intending purchaser shall make application to the concerned Trust in Form 'B' by the date specified in the notice alongwith an affidavit in Form 'C' to the effect that he fulfils the conditions of eligibility under rule 10.
- (3) No application made under sub-rule (2) shall be valid unless accompanied by a bank draft in favour of the Trust in token of earnest money as under :-

Area of plot		Amount of earnest money
500 yards	Square	Rs. 10,000
400 yards	Square	Rs. 8,000
300 yards	Square	Rs. 6,000

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250 yards	Square	Rs. 5,000
200 yards	Square	Rs. 4,000
150 yards	Square	Rs. 3,000
100 yards	Square	Rs. 1,000

Provided that an application for allotment of a multi-storeyed house shall be accompanied by a bank draft of the amount equivalent to 10 per cent, to the estimated cost of such house.

(4) Every person, whose application for allotment of residential plot or multi-storeyed house is pending with any Trust on the commencement of these rules shall also be required to apply afresh for allotment of residential plot or multi-storeyed house, as the case may be, in Form 'B' in accordance with his eligibility as specified in rule 10:

Provided that if such a person fails to so apply to the Trust within a period of three months from the date of notice under sub-rule (1) within a period of three months from such commencement, whichever period is later he shall be considered for allotment of a residential plot or a multi- storeyed house for which he is eligible in accordance with the gross annual income or gross monthly income shown in the application already pending with the Trust.

xxxx xxxx ”

8. The draw of lots for allotment of 100 sq. yards was held on 11.02.1985 of those applicants, who had made good the deficiency in the deposit of their earnest money **as per Rule 11(3) of the 1983 Rules**. However, no draw of lots could be held for allotment of 150 and 200 square yards of plots, thus owing to a sub judice litigation(s).

9. Thereafter, the petitioner made a number of representation(s) that his case be considered for allotment of plot under Shaheed Bhagat Singh Nagar Scheme or any of the schemes of the respondent-Trust, as he was duly registered applicant of the respondent Trust, with effect from 01.01.1982. Moreover, the petitioner also made a representation dated 16.07.1990, to the effect that he is a Govt. Servant, and, therefore, he is entitled to allotment of plot in the category of Govt. employees, under the (supra) scheme.

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10. The Government considered the representation made by the petitioner and passed an order to the effect that his case for allotment of plot shall be considered within the reservation quota meant for serving/retired Government employees, provided that the petitioner had already applied for a plot in any scheme of the Improvement Trust, Ludhiana.

11. Furthermore, the petitioner instituted CWP-15870-1995, titled as **Ishar Singh Walia Vs. the State of Punjab**, which was disposed of vide order dated 03.11.1995, with a direction to the respondents to decide the representation of the petitioner.

12. In terms of the afore order, the petitioner was communicated vide letter dated 20.11.1995, that his request for allotment of a plot, rather shall be considered within the reservation quota meant for serving/retired Govt. employees, but provided that he had already applied for a plot in any of the schemes issued by respondent No. 2. However, the name of the petitioner was not put in the draw of lots and consequently no allotment of plot was made to the petitioner.

13. Further, the petitioner made a complaint before the District Consumer Disputes Redressal Forum, Ludhiana. The said complaint was disposed of by an order dated 30.05.1997, wherein, the said Forum had ordered that the name of the petitioner be considered in the draw of lots for 250 square yards plots in the scheme known as Shaheed

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Bhagat Singh Nagar. The relevant part of the said order is extracted hereinafter.

*“It is admitted case of the complainant himself that he had filed a writ petition in the Hon'ble High Court and there also he had claimed the same relief. That writ was decided on merits and a direction was given to the opposite party to decide the representation of the complainant within three months. Thereafter, we are afraid that the complainant cannot approach over again to this Forum over and above the Hon'ble Punjab & Haryana High Court. It is a settled law that a person who has already chosen one Forum to seek Redressal of his remedy cannot agitate the matter in another Forum and he has to be satisfied with the decision of the first Forum. This is based on sound public policy that there must be an end to litigation and a party cannot be allowed to approach one Forum after the other. Since the complainant has also exhausted his remedy and availed the jurisdiction of the Hon'ble High Court with the same allegations and for the same relief. He is bound by the orders of the Hon'ble High Court and if those had not been complied with, he can approach the Hon'ble High Court again for redressal of his grievance but he cannot agitate the matter in this Forum over again. **However, since the opposite party has already undertaken that his name would be considered in the draw of lots for Shaheed A Azam Bhagat Singh Nagar Scheme, we hope that the opposite party shall honour their commitment and consider the name of the complainant in the draw of lots for 250 yards plot in that scheme. It is moreover clear from the case of the opposite party that now there is no hurdle in the draw of lots for that scheme. It is accepted that the opposite party will held the draw of lots within six months of this order but it will not be taken as any direction to the opposite party to do so.**”*

For the reasons to be assigned hereinafter, this Court finds merit in the writ petition and is constrained to allow the same.

14. A perusal of paragraph No. 16 of the reply dated 11.12.2024 reveals, that the draw of lots were respectively held on 03.07.1999, thus for 150 and 250 square yards of plots, but for the applicants, who had applied in response to the advertisement (Annexure R-1), appertaining to the allotment of plots in Saheed E Azam Bhagat Singh Nagar. A perusal of the records reveals that the petitioner had only applied for the scheme/advertisement, floated for the allotment of

plots in Raj Guru Nagar, for which he was found unsuccessful, and had

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not applied in the supra advertisement (Annexure R-1), as appertains to the allotment of plots in Shaheed E Azam Bhagat Singh Nagar, and, in respect of allotments whereof, a specific scheme nomenclatured as **“Prestigious Offer for Houseless Persons”** rather was formulated. Therefore, in the face of the present petitioner seeking allotment of plots in Shaheed E Azam Bhagat Singh Nagar, in respect whereof, rather the scheme formulated for allotment of plots in Raj Guru Nagar, was not applicable. Resultantly when only vis-a-vis allotments being made in Shaheed E Azam Bhagat Singh Nagar, thus the supra scheme became formulated, with envisaging therein that, even unsuccessful allottees who had earlier applied for allotment of plots in Dr. Kitchlu Nagar, Bhai Sahib Bhai Randhir Singh Nagar and Model Town Extension, Scheme, Part II, thus were entitled to re-participate in the aforesaid scheme.

15. Therefore, the petitioner's claim, that despite his admittedly being a unsuccessful allottee in the previous auction, whereupon *ipso facto*, he became covered under the said scheme, besides his also becoming covered by the hereinabove re-extracted condition no. 3, in the Advertisement (Annexure P-3), yet his claim rather became untenably rejected.

“ 25 % plots will be reserved for those persons who have already applied for the allotment of plots in other Trust Schemes but were not successful in getting plots together with applicants left out of Sr. No. 2 above.”

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16. The said rejection is untenable, as an insightful reading of the above extracted relevant condition, does not create any segregations between plots which occur respectively in Shaheed E Azam Bhagat Singh Nagar or which existed in Raj Guru Nagar. Contrarily, vis-a-vis all the schemes which became floated at the instance of the Improvement Trust, Ludhiana, but become covered within the ambit of supra extracted relevant condition.

17. Moreover, since the present petitioner was evidently unsuccessful in the earlier floated scheme, though appertaining to the contra distinct locality, but his earlier lack of success, but in terms of the supra extracted condition as occur in Annexure P-3, rather endowed qua him a right to participate in the subsequent draw of lots, or the public auction, as became made by the respondent.

18. Though the present petitioner in terms of the supra inferences, as become drawn by this Court, upon its making an insightful reading of the supra extracted condition, as occur in Annexure P-3, besides also making a well application thereof, to the present facts, was entitled to participate in the draw of lots, but he has been denied an opportunity to participate in the draw of lots. The said denial is discountenanced by this Court.

19. Moreover, though the respondents appear to refund the amount of earnest money, through theirs posting, a cheque bearing No.533507 dated 10.11.2015 drawn on the Punjab National Bank, Ludhiana, rather carrying an amount equivalent to the amount of

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earnest money, thus through registered post on the address of the present petitioner. However, the said cheque remains un encashed.

20. Though therebys, the respondents appear to snatch from the petitioner the right to re-participate in the draw of lots, but the said endeavour is an ill made endeavour, besides is completely contrary to the supra made interpretation by this Court to the condition (supra), wherebys, there was a right conferred in the applicant, but on his evidently failing in the earlier draw of lots, to subsequently re-participate, in the subsequently floated draw of lots.

21. Moreover, the argument raised by the respondents, that owing to the framing of the 1983 Rules, the respondents were unable to conduct the draw of lots, pursuant to advertisement (Annexure P-3), wherebys, the petitioner in terms of the supra condition, rather was eligible to participate in the draw of lots, but also is rudderless. The reason being that the amendment (supra) is in consequential, as the Rule which was in force at the time of the publication of the advertisement (supra), in response whereto, the present petitioner made his application, thus, is deemed to apply to the petitioner's application. Moreso, when the petitioner's application, thus plainly on account of the misdemeanors, on the part of the respondents, rather remained inactioned. Therefore, for the lapses on the part of the respondents, no ill encumbrance could be laid upon the present petitioner nor therebys his claim under the then prevailing policy could be denied to him.

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22. Therefore, it also appears that the said amendment is but a cleverly disguised move on the part of the respondents, to preempt the petitioner to claim his re-participation in the subsequent draw of lots. Resultantly the amendment is ridden with a vice of malafides and therebys, it does not eclipse the right of the present petitioner to re-participate in the subsequent draw of lots, as the said right of re-participation becomes erected upon the benchmark of his eligibility stemming from the rules which were in force at the time of the filing of the relevant application.

23. In consequence, after allowing the writ petition, the respondents are directed to, in respect of the subject plots, hold a draw of lots or if the subject plots are already allotted, then to invite fresh application(s) from all concerned, for the conducting of draw of lots, wherein, the petitioner shall also be permitted to participate and on conclusion of the draw of lots, the petitioner be allotted the apposite plot.

24. Since the present respondents did untenably debar the petitioner from participating in the earlier draw of lots, despite his eligibility to participate therein, wherebys, vis-a-vis the present petitioner, the respondents are directed to, as a compensatory measure, thus arising from their malfeasance, nonfeasance, and, misfeasance, thus ensure that a special price equivalent to the one, which was prevailing at the time, when he was earlier debarred to participate in the draw of lots, thus be offered to the present petitioner.

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25. The unencashed cheque (supra) be returned and cancelled but the earnest money fixed for the allotment of the plot in the scheme (supra) be re-paid by the petitioner to the respondent and the said re-paid earnest money be adjusted against the price of the allotted plot concerned.
26. Since the main case itself has been decided, thus, all the pending application(s), if any, are disposed of as such.

(SURESHWAR THAKUR)
JUDGE

11.02.2025	(VIKAS SURI)
kavneet singh	JUDGE
Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No