

SUPREME COURT OF INDIA

Aayush Buildwell Pvt.Ltd.

Vs.

Haryana Urban Development Authority

C.A.Nos.2833-2834 of 2014

(Surinder Singh Nijjar and Pinaki Chandra Ghose JJ.)

25.02.2014

JUDGMENT

PINAKI CHANDRA GHOSE, J.

1. Leave granted.

2. These appeals have been filed by the present appellant -- Aayush Buildwell Pvt. Ltd. -- against the final order dated March 13, 2008 passed by the High Court of Punjab and Haryana in CWP No.9962 of 2007 which was disposed in terms of judgment passed in CWP No. 7790 of 2007 titled "Delhi Roadways Corporation Ltd. vs. The Haryana Urban Development Authority & Ors." and the order dated March 30, 2009 dismissing the review petition being Review Application No. 132 of 2008 in CWP No. 11501 of 2007.

3. The question which came up before this Court, as pressed by the appellant, is whether on the basis of a comparative analysis, the appellant was eligible to have allotment of a plot in its favour, and further while setting aside the process for allotment of plots, can it direct the process afresh allowing the ineligible candidates/parties to participate in the said fresh process.

4. The facts of the case briefly are as follows:-

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1. In January/February 2006, the respondent-authority (Haryana Urban Development Authority) issued an advertisement for allotment of freehold institutional plots for Corporate Offices, R&D Centres, Corporate Towers and Staff Training Institutes in Sectors 18, 32 and 44 of Gurgaon. The appellant obtained the brochure and duly applied for a half an acre plot in accordance with the said advertisement. The earnest money of Rs. 27,75,000/- by way of a demand draft and the project report of the appellant were duly submitted.

2. The respondent-authority duly conducted interviews of 371 applicants and on June 9, 2006, the appellant duly appeared in an interview for such allotment before the authority in terms of letter dated June 1, 2006. By letter dated September 22, 2006, the earnest money of the appellant was refunded without giving any reasons therefor.

3. The allotments made were challenged before the High Court in CWP No. 17138 of 2006 by M/s. Sigma Corporation India Ltd., notice was issued on October 31, 2006 and interim stay was granted. Subsequently, said CWP No.17138 of 2006 was allowed to be withdrawn by an order dated October 3, 2007 in an application being Civil Misc. No.15033 of 2007 in CWP No.17138 of 2006.

4. It appears that Delhi Assam Roadways Corporation Ltd., an applicant for such allotment, which had filed CWP No. 7790 of 2007, also filed an application under the Right to Information Act, 2005 in respect of the allotments made by the said authority. Since no reply was received within the time prescribed under the Act, the said applicant moved the Central Information Commission on March 14, 2007 and subsequently, by letter dated May 7, 2007, the respondent-authority provided the requisite information, admitting that no report/comments were given by the Committee regarding the individual application for such allotment. The appellant found discrepancies in the allotment and duly asked for the information under the RTI Act, with regard to the profiles of the companies which were allotted plots in Sector 32 of Gurgaon.

5. Being aggrieved by the action on the part of the respondent-authority, the appellant filed CWP No. 9962 of 2007 before the High Court. The said CWP was disposed of by order dated March 13, 2008 along with the writ petitions in terms of a common order passed in CWP No. 7790 of 2007 in Delhi Roadways Corporation Ltd. vs. The Haryana Urban Development Authority & Ors.

6. The High Court in its judgement dated March 13, 2008, observed that no pre-determined criteria was published nor terms and conditions which were to apply to the allotments were made known to the applicants, and that the guidelines framed by the Committee regarding the allotments were also not kept in mind and no reasons have been highlighted for adopting the allotment method over the method of sale by auction. Thereby, the Court held that:

“We are further of the view that the so called selection committee failed to advert to the comparative merits of the applicants and it has not been pointed out as to why the allottee was selected from amongst those applicants who have been left out”.

7. The Court perused the comparative table submitted by the petitioner in CWP No. 7790 of 2007 and identified the discrepancies in the allotment process, thereby holding that the “respondents have adopted the pick and choose method”. The Court further held that:

“...in the absence of any declared pre-determined criteria element of arbitrariness has crept in which has resulted in flagrant violation of Article 14 of the Constitution”.

8. On these grounds the High Court set aside the allotments made to the private respondents in Sectors 18, 32 and 44 of Gurgaon. Furthermore, the Court gave the Government and respondent no. 1 two options ‘A’ and ‘B’ along with a set of directions each regarding the allotment; and either of the options had to be followed.

9. Being aggrieved, one of the private respondents filed Review Application No. 418 of 2008 in CWP No. 9962 of 2006 before the High Court for recalling of its order dated March 13, 2008. The High Court by a common

judgment dated March 30, 2009 dismissed both Review Application No. 418 of 2008 and the earlier filed review application being R.A. No. 132 of 2008 in CWP No. 11501 of 2007.

10. Delhi Assam Roadways Corporation Ltd. as well as the respondent-Authority- Haryana Urban Development Authority and 28 other allottees filed special leave petitions against the orders of the High Court before this Court. All the petitions were tagged together under SLP [C] Nos.10818-10823 of 2008 and were disposed by this Court on 29th April, 2011 when the following order was passed:

“Delay condoned.

Learned Additional Solicitor General, on instructions, submits that the petitioner, namely, Haryana Urban Development Authority shall be making available half an acre of plot, as far as possible, Plot No.55-P, Sector-44 (Institutional), Gurgaon to the first respondent in SLP© 10818-10823 of 2008, namely, Delhi Assam Roadways Corporation Ltd.

In the circumstances, there shall be a direction directing the Authority to allot the said plot, as expeditiously as possible, preferably within four weeks from today. The allotment shall be made on the same terms and conditions on which the other respondents had been earlier allotted.

Obviously, no further dispute, as such, survives so far as the allotments made in favour of other respondents are concerned.

In such view of the matter, no further orders, as such, are required to be passed and the order of the High Court shall stand modified to the extent.

It is made clear that allotments already made in favour of the other respondents is not interfered with.

The impleadment application in SLP (C) No.10818- 10823 of 2008 is allowed.

The special leave petitions are, accordingly, disposed of.”

4.11. It appears from the facts that the appellant filed SLP [C] Nos.672-673/2011 before this Court raising the question which has been mentioned

hereinabove, and on January 7, 2011 notice was issued on the SLP as well as the application for condonation of delay. It further appears that by an order dated March 8, 2011 on the basis of the application filed by the appellant, it was ordered in Chambers :

“At the risk and peril of the petitioner, respondent Nos.2-32 are deleted from the array of parties. Amended cause title shall be filed within two weeks from today.”

5. Thereafter, the matter did appear before the Court for hearing and the respondents duly filed their counter in the matter. In the counter affidavit it appears that the respondent duly pointed out that the appellant duly participated in the process of allotment and had been unsuccessful, hence, filed the present appeals to the limited extent that the impugned order while allowing the writ petition, did not direct allotment of a plot in favour of the appellant because the appellant's claim was more meritorious. It is stated that allotment of a plot in favour of the appellant could not be made by the High Court and, furthermore, without explaining the inordinate delay, the appeal has been filed by the appellant. It is further pointed out that the appellant was a party in the case of Haryana Urban Development Authority vs. Delhi Assam Roadways Corporation & Ors. being SLP [C] Nos.10818-10823 of 2008. It is pointed out that since the appellant was a contesting party before this Court wherein a batch of petitions had been decided, the appellant cannot challenge the same again by way of the present appeals. It is further pointed out that the impugned order of the High Court did not direct allotment of plot in favour of the appellant, neither alleges that the criteria adopted for allotment of plots was arbitrary nor challenges the criteria but merely seeks the benefit of allotment of a plot despite being unsuccessful. This Court by the final order dated April 29, 2011 clarified that the allotments already made in favour of other respondents should not be interfered with. It is further stated that the appellant is now estopped from contending/contesting the claim since the claim is barred by res judicata. Since challenge to the impugned order of the High Court has already been decided by this Court, the appellant cannot challenge the same.

6. It is submitted that the appellant was not found eligible for allotment as per the Selection Committee and hence no plot was allotted to it. The appellant without challenging the process of allotment is merely seeking a direction for allotment of plot in its favour which cannot be acceded to. In these circumstances, the learned senior counsel appearing on behalf of the respondent authority, HUDA, submitted that no order can be passed on these petitions on the ground of res judicata, and

further the appellant did not challenge the process of allotment. In reply, it was stated that the appellant was a party in the earlier SLP [C] Nos. 10818- 10823 of 2008 as respondent No.26. According to the appellant, no notice was received in the same.

7. We have heard learned counsel for the parties at length. It appears to us that the appellant was an unsuccessful party in the initial allotment. It is also not disputed that the earnest money deposited by it was also refunded. The initial allotment was also set aside by judgment dated March 13, 2008 but the same did not give any right to the appellant to claim allotment as a matter of right.

8. This Court in *Manjul Srivastava vs. Government of Uttar Pradesh* [(2008) 8 SCC 658], while disallowing a claim for allotment made on the basis that there was a “plot reserved”, held that “the appellant could not have acquired any legal right for allotment of a plot until and unless she could be found to be successful in the draw of lots.” In *Haryana State Agricultural Marketing Board vs. Sadhu Ram* [(2008) 16 SCC 405], this Court in a matter where the allotment by way of auction was cancelled on the ground that the reserve price was not met, held regarding the claim of allotment by the highest bidder that:

“It is, therefore, difficult to accept the views expressed by the High Court that since reserve price was not known to the respondents and they were found to be the highest bidders in the said auction, they have acquired a right to get the allotment of alternative plots and the appellants had no authority to reject the highest offers given by the respondents or to cancel the auction itself. Since the entire auction was cancelled, we do not find any justification how the High Court could pass an order directing allotment of the alternative plots on the same terms and conditions when, after cancellation, the second auction was held in which the price fetched was much higher than the offers made by the respondents.”

Therefore, when no right arises to an applicant in a vitiated/cancelled allotment procedure, a subsequent claim for allotment may or may not succeed, depends upon the factual circumstances of each case.

9. We have also noticed that in *A. Jithendernath v. Jubilee Hills Coop. House Building Society* [(2006) 10 SCC 96, at page 114], while deciding a dispute regarding allotment, this Court held that:

“Even in exercise of its jurisdiction under Article 142 of the Constitution while making an attempt to do complete justice to the parties this Court cannot pass an order which could cause injustice to others and in particular to those who are not before it.”

We have noticed that in *Industrial Assistance Group, Government of Haryana & Anr. vs. Ashutosh Ahluwalia & Anr.* [(2001) 4 SCC 359], the respondent was allotted land, however the allotment process was cancelled on the basis that plots allotted could only be sold by open auction. Subsequently, the allotment to the respondent was cancelled and the earnest money was returned. The Court was of the opinion that he can be allotted a plot under the new policy, however, as in his case the allotment process was complete, he was not asked for the difference in rates as paid by the earlier allottees. In *U.G. Hospitals (P) Ltd. v. State of Haryana* [(2011) 14 SCC 354], there was an irregular allotment of a plot for construction and the appellant filed a writ challenging the same after a delay of one and half years. Apart from the appellant, there were other applicants for the allotment of land as well, however, all barring the appellant and another person had withdrawn their applications. Since the other applicant was allotted a plot, this Court held that as there was a delay, it would not interfere with the earlier allotment. However, as the appellant was willing to accept another plot, the Court directed the Authority to consider the request of the appellant on such terms as it deems fit, as per its rules and regulations in accordance with law.

10. We have noticed that in *SLP [C] Nos.10818-23 of 2008 – Haryana Urban Development Authority etc. vs. Delhi Assam Roadways Corporation Ltd. & Ors.* where this Court issued a direction directing the Authority to allot Plot No.55-P, Sector 44 (Institutional), Gurgaon to Delhi Assam Roadways Corporation Ltd. within four weeks from the date of the order, i.e., 29th April, 2011. It appears that the said order was passed by this Court since the learned Additional Solicitor General, on instructions, who appeared on behalf of HUDA, conceded to the effect that half an acre of plot No.55-P, Sector 44 (Institutional), as far as possible, shall be made available to Delhi Assam Roadways Corporation Ltd.. The said order was passed on concession granted on behalf of HUDA. But it appears that in view of the facts and circumstances of this case and the submissions made on behalf of respondents, the respondent did not agree to concede it to that extent in this case. Accordingly, in our opinion, there is a distinction in the situation in passing the said order and the present order so passed by us.

11. Accordingly, in this factual matrix and the law laid down by this Court, we hold that the right of the appellant has not been crystallised. No right can be conferred on the appellant, granting allotment as has been prayed before us. In our opinion, the appellant has to comply with the process followed by HUDA to allot plots in favour of the allottees and, accordingly, we direct that if the appellant fulfils all the criteria laid down by HUDA in the process of allotment, HUDA shall consider its case for such allotment. In these facts and circumstances we direct that steps be taken by the appellant in accordance with the process of HUDA and if the criteria is being fulfilled by the appellant, HUDA shall take necessary steps in the matter for allotment in accordance with the provisions of law.

12. In light of the above, the appeals are disposed of accordingly.