

**PUNJAB AND HARYANA HIGH COURT**

(DB)

Before :- Jawahar Lal Gupta and N.K. Sud, JJ.

**Civil Writ Petition No. 1038. D/d. 9.5.2001.**

9.5.2001

Smt. Bhagwanti – Petitioner

Versus

The Haryana Urban Development Authority - Respondent

For the Petitioners :- M.S. Jain, Senior Advocate and Adarsh Jain, Advocates.

For the Respondents :- Ms. Promila Nain, Advocate.

**Land Acquisition Act, Sections 4 and 6 - Allotment of Plot - To oustees of land acquired - Purpose to ensure that persons are not rendered shelterless - Petitioners failed to suggest that they rendered shelterless when their land was acquired - Petitioners submitted their applications for allotment of plot after prescribed date - Authority is not expected to wait for more than four years for an oustee to apply at his convenience and then proceed to make allotments to others - No infirmity in action of respondents proceeding to make allotment of plots to others.**

**2002(4) R.C.R.(Civil) 21 : 2003(1) L.J.R. 325 : 2002(1) P.L.J. 17**

[Paras 7, 8 and 10]

Case referred :-

S.B. Kishore v. Union of India and others, AIR 1991 Supreme Court 90.

JUDGMENT

**Jawahar Lal Gupta, J.** (Oral) - On June 26, 1989, the State of Haryana issued a notification under Section 4 of the Land Acquisition Act, 1894 (in short to be called "the Act") for the development and extension of Panchkula. On June 25, 1990, the notification under Section 6 of the Act was issued. On July 17, 1992, the Land Acquisition Collector had given the award. After a lapse of more than six years of the issue of the notification under Section 6 of the Act and after more than four years of the award of the Land Acquisition Collector, the petitioners made an application to the Haryana Urban Development Authority for allotment of a one kanal plot. The respondents having not made any allotment, the petitioners approached this Court through the present writ petition. They allege that the action of the respondents is violative of the Instructions issued Memorandum dated March 18, 1992, a copy of which has been produced as Annexure P5 with the writ petition. On this basis, the petitioners pray for the issue of a writ of mandamus, directing the respondents to allot a residential plot in accordance with the Instructions of the Authority.

2. The respondents have filed a written statement, contesting the claim of the petitioners. It has been *inter alia* pleaded that the cause of action had arisen to the petitioners when the land was acquired and later on when the Sectors were floated in the year 1993-94. Since the petitioners had applied in November, 1996, the claim was highly belated and could not, thus, be entertained.

3. It appears that this writ petition was taken up for hearing by a Bench of this Court in the year 1999. Learned counsel for the respondents was directed to place before the Court "advertisement/notice, if any, issued by the competent authority inviting application for allotment of residential plots to the oustees of the land, which was utilised for floating Sectors 25 and 26 for Urban Estate Panchkula". These documents were placed before the Bench on May 26, 1999. Thereafter, their Lordships had dismissed the writ petition. It was *inter alia* observed as under :

"... .. while inviting applications for allotment of plots to the various categories of persons, the competent authority of HUDA had specifically asked the oustees of the acquired land to make applications before 12.1.1993 for allotment of residential plots. The petitioners have not come forward with the plea that the landowner Shri Agya Ram and they did not know about the publication of these advertisements. They have not even controverted the assertion made in para 9 of the written statement that they did not submit applications when the Sectors for allotment of plots were floated in the year 1993-94. In our opinion the failure of the petitioners to submit applications on or before the last date specified in the notices got published by the HUDA inviting applications for allotment of plots to various categories including the oustees is sufficient to disentitle them from seeking a mandatory direction from the Court for allotment of plots."

The writ petition was dismissed.

4. An application, viz. Civil Miscellaneous No. 27121 of 1999 was filed. It was *inter alia* averred that the counsel could not appear. Therefore, it was prayed that the order be recalled. The Bench recalled the order. Thus, the matter has now been listed before us.

5. Mr. Jain, learned counsel for the petitioners has contended that according to the decision of the Authority, the oustees are entitled to the allotment of plots. It is only after the oustees have been accommodated that the remaining plots can be offered to the general public for allotment. He has further contended that the delay in the submission of the application is of no consequence. Relying upon the decision of their Lordships of the Supreme Court in **S.B. Kishore v. Union of**

**India and others, AIR 1991 Supreme Court 90**, the counsel submits that even a delay of 19 years can be condoned.

6. The purpose of the Instructions issued by the Authority vide Memorandum dated March 18, 1992 is only to ensure that persons, whose land has been acquired, are accommodated by allotment of small plots, so that they are not rendered shelterless. Otherwise, strictly speaking, the law contemplates the payment of compensation alongwith solatium etc. In the present case, it is not even suggested on behalf of the petitioners that they were rendered shelterless when land measuring 6 Kanals 16 Marlas belonging to their predecessor-in-interest was acquired. In fact, a perusal of the petition shows that the petitioners are living in Sector 19, Chandigarh.

7. In the very nature of things, when an Authority acquires land for the purpose of developing a township, it has to ensure a speedy allotment of plots, so that the area is inhabited and the money spent by it on acquisition of land etc, is recovered. Admittedly, the award had been given by the Land Acquisition Collector on June 17, 1992. The applications for allotment of plots had been invited by issue of brochures etc. from all concerned including the oustees. The applications had to be submitted on or before January 12, 1993. The petitioners had failed to make the application. In fact, the application was submitted for the first time on November 28, 1996. The authority is not expected to wait for more than four years for an oustee to apply at his/her convenience and then proceed to make allotments to others. A fair opportunity was granted to all concerned to apply. The petitioners and their predecessor-in-interest had failed to avail of that opportunity. That having happened, the petitioners have to thank themselves for failure to get any plot.

8. Mr. Jain contends that the oustees have to be accommodated before the claims of the general public for allotment of plots could be considered. It may be so. But only such oustees, as had applied, are to be considered. Since the petitioners had failed to submit their applications by the last date, viz. January 12, 1993, they cannot make a grievance regarding the action of the Authority in proceeding to make allotments to others.

9. Mr. Jain contends that in the case of B. Kishore (supra), their Lordships had overlooked the delay. In that case, their Lordships were pleased to notice that the respondent had entertained claims of certain persons despite delay. It was "keeping the conduct of the respondent in view" that the delay was overlooked. In the present case, the petitioners have not pointed out even a single instance where the respondents may have entertained the claim of an oustee after January 12, 1993. Thus, the petitioners can derive no advantage from the decision in S. B. Kishore's case (supra).

10. Learned counsel for the petitioners has also contended that their Lordships of the Supreme Court have granted relief in various cases to the oustees. There is no quarrel with the proposition. However, each case has to be examined on its own facts. In the present case, the oustees were given an opportunity to apply by January 12, 1993. The petitioners had failed to avail of that opportunity. Thereafter the respondents have proceeded to make allotment of plots to others. We do not find any infirmity in the action of the respondents so as to call for interference.

11. In view of the above, we find no merit in this writ petition. It is consequently dismissed. No costs.

Petition dismissed.