

(9) Resultantly, the revision is partly accepted. The learned trial Court is requested to prepare a decree in accordance with law leaving the plaintiff to take recourse to such remedy as may be available to him in law. It is also clarified that the learned Trial Court would be at liberty to pass such other orders as are permissible in law for recovery of the Court fee from the plaintiff, There shall be no order as to costs.

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**S. C. K.**

*Before M.L. Singhal, J*

HOUSING BOARD HARYANA—*Appellant*

*versus*

RAM NATH & OTHERS—*Respondents*

R.S.A. NO. 1169 OF 1993

7th July, 2000

*Haryana Housing Board Act, 1971—S. 67 & Reg. 7(i)—Housing Board Haryana (Allotment, Management & Sale of Tenements) Regulations, 1972—Rl. 10.—Applications invited for allotment—Last date for general category fixed—Reserved category applicants could submit applications before the date of allotment—Draw of lots held—Only 3 applicants belonging to reserved category applied—Whether reserved category applicants could apply after the date of draw—‘Date of draw’ and ‘date of allotment’—Distinction between—General category applicants have no right of allotment of houses meant for reserved category.*

*Held*, that it is clear from Clause 6 of the advertisement that the members of Scheduled caste/Backward class were treated as a special category vis-a-vis serving military personnel and their wives/Ex-servicemen/war widows/ freedom fighters whereas for serving military personnel and their wives/Ex-servicemen/freedom fighters, the last date for applying for allotment of houses was 31st August, 1987, the last date for members of SC/BC was the date of allotment or the date upto which their quota was fully subscribed whichever was earlier and for all other applicants, the last date was 1st June, 1987. If members of scheduled caste/backward class were treated as special category keeping in view that they are down trodden and economically backward vis-a-vis other categories, it could not be said that in their case, the date of applying should be taken as 29th January, 1988 or the date upto which quota was

fully subscribed whichever was earlier. Housing Board Haryana treated them liberally keeping in view that they are down trodden and highly economically backward and, therefore, it was provided that they could apply till the date of allotment or till the date upto which their quota was fully subscribed whichever was earlier. Intention of Clause 6-b was that the HIG houses built by the Housing Board Haryana meant for Scheduled caste/Backward class should be utilised by them and should not be utilised by other categories.

(Para 11)

V.K. Vashishta, Advocate for the appellant

Ram Nath-Respondent No. 1 in person.

### JUDGMENT

*M.L. Singhal, J.*

(1) Housing Board Haryana, Chandigarh invited applications for the allotment of various categories of houses,—*vide* advertisement published in 'The Tribune' dated 28th April, 1987. In response to the said advertisement, Ram Nath applied on the prescribed form No. 041821 on 19th May, 1987 alongwith the requisite earnest money of Rs. 7500,—*vide* draft No. TTA/11/561793 dated 19th May, 1987 complete in all respect within the due date. Clause 4(i) and 6 of the advertisement, Annexure P1, reads as under :—

"4. GENERAL INFORMATION :

(i) Allotment of houses will be made by Draw of Lots.

6. PERIOD OF REGISTRATION :

Registration will commence with effect from 1st May, 1987 and the last date for accepting the Registration application Forms for different categories of applicants is as under :—

Category of applicants	Last Date
*(a) Serving Military personnel and their wives/Ex- Servicemen/ War Widows/ Freedom Fighters	31st August, 1987
(b) Members of Scheduled Castes/ Backward Classes	Till the date of allotment

or the date upto which quota is fully subscribed, whichever is earlier.

(c) All other applicants 1st June, 1987.

(2) From the above provision of the advertisement, it emerges that (a) there was to be only one mode of allotment i.e. by draw of lots. (b) Secondly, the last date even for the members of Scheduled Caste/Backward Class was date of allotment i.e. date on which, the draw of lots was to be held. No application after the "draw of lots" or allotment thus could be entertained. Application of Ram Nath plaintiff was found in order and his name was included in the lot for the drawal of lots which was fixed on 29th January, 1988. The draw of lots was held on 29th January, 1988 in the premises of Housing Board Colony, Sector 1, Rohtak. At the time of draw of lots, there were only three applications received from the reserved categories of members of Scheduled Castes/Backward Classes. Rest of the seven seats were transferred to the general categories on that day and accordingly the draw of lots was held on 29th January, 1988. Since no other candidate except the three applicants had applied before or at the time of draw of lots from the reserved categories of Scheduled Caste/Backward Classes, rest of the unutilised quota was transferred to the general category. Plaintiff was one of the successful applicants in the draw of lots and a formal letter of appointment was to be issued by the Housing Board, Haryana-defendant No. 1, to the successful allottees. He came to know that Housing Board Haryana had issued formal allotment letters on 3rd March, 1988 to others as per the draw of lots with the request to them to deposit the first instalment of Rs. 15,000 as per the conditions of allotment. No such allotment letter was, however, issued to the plaintiff. On inquiry by him (Ram Nath) from the office of Housing Board, Haryana, he came to know that formal allotment letter to him was being withheld on the plea that members of the Scheduled Castes/Backward Classes could submit their applications even after the draw of lots and they would be allotted houses if any body came forward till the date of the giving of actual possession of these houses to the successful allottees. Action of the defendant-Housing Board, Haryana was arbitrary and contrary to the conditions viz. to allow the reserved categories to submit their applications after the draw of lots. Action of the

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defendant Housing Board, Haryana, which is in their contemplation viz. to issue letters to the people belonging to the reserved categories of Scheduled Castes/Backward Classes by ignoring the vested legal right of the plaintiff thereby causing legal injury to the plaintiff's right, is arbitrary and illegal. In case, the Housing Board succeeds in their design, there would be loss and injury to the plaintiff, which cannot be compensated in terms of money. On these allegations, Ram Nath filed suit for mandatory injunction with consequential relief of permanent injunction against Housing Board Haryana through its Chief Administrator and Officer Incharge, Housing Board, Haryana, Sector 1 Rohtak directing the latter to honour the list prepared through draw of lots and issue formal letter of allotment to the plaintiff for one HIG house so as to enable him to deposit the first instalment and deliver him possession of HIG House accordingly and if during the pendency of the suit, it was found that house had been delivered/allotted to the reserved category, the said action be quashed and the defendants be restrained permanently from allotting HIG houses to reserved categories whose applications had not been received till the time of draw of lots i.e. upto 29th January, 1988 and declare the plaintiff entitled to one HIG House in the draw of lots held on 29th January, 1988. It was alleged in the plaint that he has every legal and vested right to get formal letter as he was successful in the draw of lots. There were 28 HIG Houses for allotment to general category. There were 10 HIG houses for allotment to reserved categories. Defendants were estopped from permitting reserved category candidate to submit his application against the said seven houses. Defendants had no power or authority under the rules to permit the reserved category candidate to submit his application after the draw of lot. Plaintiff had every legal and vested right to get formal letter of allotment issued in his favour as his name was duly included and it appeared in the list of successful candidates prepared after holding draw of lots. This vested right cannot be taken away by arbitrariness of the defendants. Defendants are bent upon encroaching upon the vested right of the plaintiff on extraneous considerations.

(3) Defendants No. 1 and 2 contested the suit of the plaintiff urging that, in fact, according to the Housing Board Rules and Regulations Act, 1971, after draw of lots, the reserve houses for scheduled castes and backward classes will be reserved for scheduled castes and backward classes. It was denied that rest of seven houses were transferred to general category. It was submitted that the reserved quota of scheduled castes/backward

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classes would be utilised only for scheduled castes/backward classes and not for general category as per Housing Board, Haryana Rules and Regulations Act, 1971. It was denied that plaintiff was one of the successful candidates in the draw of lots or formal letter of allotment was to be issued in his favour by the Housing Board, Haryana. In fact, plaintiff was not successful in the draw of lots. His name figured at serial No. 35 in the waiting list. Formal allotment letters were issued to the successful allottees and as per draw, the successful candidates were asked to deposit Rs. 15,000 as per conditions of allotment. No allotment letter was issued to the plaintiff when he did not emerge successful in the draw of lots. As such, plaintiff could not be called upon to deposit Rs. 15,000. 28 houses were meant for general category and 10 houses were meant for scheduled castes and backward classes category. Claim of general category for allotment could operate only on 28 houses.

(4) As per plaintiff there were only three applications received from the reserved category of scheduled caste/backward class. As such the remaining seven houses were transferred from the reserved categories of scheduled castes and backward classes to the general category. 35 houses were thus available for allotment to general category candidates. Name of the plaintiff figured at serial No. 35 of the list prepared after the draw of lots. As such he was entitled to the allotment of one house.

(5) On the application of one Dr. Mrs. Vineeta Bhatnagar made under Order 1, Rule 10, Sub Rule 2 CPC to whom one of the HIG houses was allotted she was impleaded as party (defendant No. 3). Smt. Vineeta Bhatnagar defendant No. 3 contested the suit of the plaintiff. It was urged that in response to the advertisement issued by the Housing Board in The Tribune of 28th April, 1987, she applied on a prescribed form No. 563471 on 1st June, 1987 for the allotment of HIG house in Housing Board Colony, Sector 1, Rohtak. She submitted all the necessary papers including income statement and amount of Rs. 7,500 through a demand draft drawn from State Bank of India, Rohtak payable at Chandigarh in favour of Housing Board, Haryana. Her name was included in the list of candidates, who were to be included in the draw. As per terms of the contract with Housing Board, the draw of lots was held on 29th January, 1988. She was amongst the successful candidates in whose favour lots were opened and allotment was made then and there on 29th January, 1988. Thereafter, Housing Board Haryana,—*vide* communication No. HBH/CRO-I/RA-II/88/2024,

dated 3rd March, 1988 despatched on 7th March, 1988 confirmed the allotment of HIG house at Rohtak to her issuing her final registration No. 28/HIG/RTK/87 and on demand, she deposited Rs. 15,000 for getting allotted the house. Advertisement disclosed last date for submission of the application for service personnel as 31st August, 1987, for scheduled cast/backward class was till the day of allotment or upto the date, quota is exhausted, whichever is earlier and for general category as 1st June, 1987. There were 54 houses in HIG scheme, 44 houses were for Ex-servicemen and general category, 10 were reserved for scheduled caste/backward class. Till 29th January, 1988 quota for Ex-serviceman and general category was fully exhausted while only three applications were received against the reserved quota of scheduled caste/backward class. As quota of scheduled caste/backward class was not exhausted, the draw of lots was held and all other applicants including plaintiff who had applied in general category alongwith all other candidates were included in the draw of lots which was held for 44 houses and the houses for general category were 28 and while drawing lots for general category, the name of Vineeta Bhatnagar appeared on 28th lot and hence she was successful in getting one HIG house in Housing Board Colony, Sector 1, Rohtak for general category. The quota for scheduled caste/backward class is still lying vacant for the purpose of allotment to the scheduled caste/backward class personnel. The remaining quota of backward class/scheduled caste was never transferred to general category. Waiting list for general category was prepared, in which plaintiff figured at Sr. No. 7. It was urged that in this way plaintiff had no claim against any of the first 28 HIG houses meant for general category as his name did not appear in the first 28 lots. Unexhausted quota of scheduled caste/backward class reservation was never transferred to the general category. 10 HIG houses reserved for scheduled castes/ backward classes are still lying unallotted. Neither plaintiff was given any registration number nor was he asked to deposit any money for allotment of house because no draw was opened in his name in first 28 lots.

(6) On these pleadings of the parties, the following issues were framed :—

1. Whether the plaintiff is entitled for the allotment of the house on the basis of draw of lots held on 29th January, 1988 as alleged ? OPP.
2. Whether the plaintiff is entitled to get the house allotted from the quota for reserved category. If so, to what effect ? OPD

3. Whether the suit in the present form is not maintainable ?  
OPD
4. Whether the plaintiff has no *locus standi* to file the present  
suit ? OPD
5. Whether the civil court has got no jurisdiction to try the  
suit ? OPD
6. Whether the suit is bad for want of notice ? OPD
7. Whether the suit is time barred ? OPD
8. Relief.

(7) *Vide* order dated 16th May, 1992, Sub Judge Ist Class, Rohtak dismissed the plaintiff's suit, in view of his finding, that the plaintiff was not entitled to allotment of any HIG house on the basis of draw of lots held on 29th January, 1988 as his name figured at serial No. 35 among general category while 28 HIG houses were meant to be allotted to the general category and he was not entitled to the allotment of any house meant for the reserved category of scheduled caste/backward class. It was found that unexhausted quota of scheduled caste/backward class of HIG houses was not transferred to be allotted to the general category. It was found that there was no rule laying down that unexhausted quota of houses meant for reserved category stood automatically transferred to the general category. Civil Court was found not to have jurisdiction to try the matter. Suit was not found maintainable without prior notice to the Housing Board, Haryana as envisaged in section 67 of the Haryana Housing Board Act, 1971. Plaintiff's suit was found to be beyond time.

(8) Plaintiff went in appeal, which was allowed by learned District Judge, Rohtak,—*vide* order dated 8th February, 1993 and the Housing Board Haryana was directed to allot the first HIG house built by it in Housing Board Colony, Sector 1, Rohtak to the plaintiff on the same cost and same terms and conditions as laid down in the advertisement copy Ex. P 1, in view of his findings, that he was entitled to allotment of one HIG House after the draw of lots held on 29th January, 1988. After 29th January, 1988, no application could be entertained from the members of scheduled castes/backward classes for the allotment of HIG houses and their quota of HIG houses should have been allotted to the persons whose names appeared in the waiting list of the applicants belonging to general category.

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(9) I have heard both the sides and have gone through the record.

(10) *Vide* advertisement Annexure P1, which appeared in The Tribune dated 28th April, 1987, Housing Board, Haryana invited applications for allotment of various categories of houses built in Housing Board Colony, Sector 1, Rohtak. In response to this advertisement, Ram Nath applied on prescribed form No. 041821 on 29th May, 1987 with the requisite earnest money of Rs. 7,500,—*vide* Draft No. TTA/11/561793, dated 19th May, 1987. Clause 4 (i) and 6 of this advertisement (*supra*) is relevant. Members of the scheduled castes/backward classes could apply for the allotment of plot by draw of lots till the date of allotment or the date up to which the quota is fully subscribed whichever is earlier. Draw of lots was held on 29th January, 1988. Till 29th January, 1988, there were only three applications by members of the scheduled castes/backward classes for allotment of HIG houses. There were 10 HIG houses available for being allotted to the members of scheduled castes/backward classes by draw of lots. For members of scheduled castes/backward classes, draw of lots could take place only for 3 HIG houses on 29th January, 1988. No draw of lots could take place on 29th January, 1988, for allotting the remaining 7 HIG houses which were meant for allotment to the scheduled castes/backward classes. There were 28 HIG houses available for allotment to the people belonging to general category. Ram Nath respondent-plaintiff did not figure anywhere. 28th HIG house became exhausted by allotment to Smt. Vineeta Bhatnagar. So far as Ram Nath is concerned in the draw of lots held for the allotment of 28 HIG houses meant for general category, he did not figure anywhere. While preparing the list after the draw of lots was held for allotting HIG houses, he was shown in the general category at Serial No: 35. Smt. Vineeta Bhatnagar was shown at Serial No. 28. Ram Nath was shown in the waiting list at Serial No. 35. Case of Ram Nath respondent is that draw of lots was held on 29th January, 1988. Members of scheduled castes/backward class could apply for allotment of HIG houses till 29th January, 1988. If till 29th January, 1988, the quota of HIG houses meant for allotment to scheduled castes/backward class remained unsubscribed, the unsubscribed quota of HIG houses meant for scheduled caste/backward class could be made over to the general category. His case was that in this case also, the quota of the rest 7 HIG houses which remained unsubscribed by member's of scheduled caste/backward class, was transferred to the general category on 29th January, 1988 and, therefore, he became entitled to allotment of



one HIG house out of those 7 HIG houses, which remained unsubscribed till 29th January, 1988, by members of scheduled castes/backward classes. His case was that after 29th January, 1988, the members of the scheduled caste/backward class could not apply for allotment of HIG house pertaining to their quota to them. In their case, the last date was 29th January, 1988, i.e. when the draw of lots was held. While in the case of serving military personnel and their wives/Ex-servicemen/War Widows/Freedom Fighters, the last date for applying was 31st August, 1987. In case of all other applicants, the last date for applying was 1st June, 1987. His case was that keeping in view the poor financial condition of the scheduled castes/backward classes and the fact that they are downtrodden, they were allowed to apply for allotment of HIG houses till the date of draw of lots or till the date up to which quota was fully subscribed, whichever was earlier. His case was that in this case also, the Housing Board had not laid down any particular date i.e. 31st August, 1987 or 31st October, 1987 or 30th November, 1987, and so on, till which the members of scheduled caste/backward class could apply for allotment of HIG houses to them. Housing Board did not do so, the Housing Board being cognizant of the fact that their financial condition is poor and they may not be able to arrange money at such a short notice. The Housing Board gave them edge over other categories of applicants in the matter of the date for applying for the allotment of HIG houses. Naresh Kumar, Estate Manager, Housing Board Haryana, Rohtak, stated that the Housing Board has no such policy whereunder, the unallotted houses meant for allotment to the people belonging to the reserved categories can be transferred to the quota meant to be operated by people belonging to the general category. He stated that till the date of allotment, they wait for the people belonging to the reserved category to apply for allotment of houses meant for them. He stated that if till the date of allotment, members of the scheduled caste/backward class do not come forward and apply for the remaining houses meant for their quota, Housing Board allots those houses to the people belonging to the general category. Naresh Kumar also stated that Ram Nath applied for allotment of HIG house only in general category. In the draw of lots held on 29th January, 1988, Ram Nath figured at Serial No. 7 of the waiting list. To the general category people, the allotment of 28 HIG houses took place. At serial No. 28 among the general category applicants, Smt. Vineeta Bhatnagar figured. 28th HIG house was allotted to her. Quota of HIG houses meant to be operated by general category stood exhausted with the allotment of HIG house to Vineeta Bhatnagar, who was the last allottee in the general category.

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According to Ram Nath, after 29th January, 1988, i.e. when draw of lots was held, the Housing Board had no right to entertain applications from scheduled castes/backward classes for allotment of 7 HIG houses of their quota. In view of the terms of advertisement, 7 HIG houses which remained unsubscribed by the members of scheduled castes/backward classes till 29th January, 1988, became automatically transferred to general category. In this appeal, the question that arises for determination is "whether the members of scheduled castes/backward class could apply for the allotment of HIG houses meant to be operated by them till 29th January, 1988, i.e. when draw of lots was held or the date up to which their quota was fully subscribed by then whichever was earlier or the date till the allotment of houses meant for them took place. In this appeal, another question that arises is whether HIG houses meant for allotment to the scheduled castes/backward classes category could be transferred to the general category for being allotted to them if there were no sufficient applicants belonging to the scheduled castes/backward classes for operating the quota meant for them to the fullest. According to the Housing Board Haryana, houses meant for scheduled castes/backward classes category were to be allotted to the members of that category only and could not be transferred to the general category. According to the Housing Board, Ram Nath could claim allotment of HIG house only out of HIG houses meant to be allotted to the general category. 28 houses were available for allotment in the general category. He was not successful in the draw of lots. His name was placed in the waiting list at Serial No. 35. He could be considered for allotment of HIG house if out of 28 successful candidates, 7 had withdrawn. He figured only in the waiting list and not in the substantive list. He could not look to any of those 7 houses, which were meant for allotment to scheduled caste/backward class category. According to Ram Nath, he had alleged in para 3 of the plaint that "the last date for the members of scheduled castes/backward classes was the date of allotment i.e. the date on which the draw of lots was to be held and, therefore, no application after the draw of lots or allotment could be entertained" was admitted by the Housing Board Haryana in their written statement saying that para 3 of the plaint is also admitted to be correct. According to Ram Nath, thus in case of members of scheduled castes/backward classes, the date for applying for allotment of HIG houses was 29th January, 1988 and after 29th January, 1988, no application for allotment of HIG houses to members of scheduled castes/backward classes could be entertained. According to him, Housing Board could not be allowed to urge that the date of draw

of lots was not the date of allotment. As per advertisement Annexure P1 issued by the Housing Board Haryana offering single storeyed house. Rs. 7,500 was to be paid alongwith application in respect of HIG house. Rs. 15000 was to be paid after six months of registration/draw of lots. Rs. 15,000 was to be paid at the time of allotment/possession and thereafter monthly instalments were to be paid for a period of 13 years. In the advertisement, Ex. P1, is provided that the allotment of houses shall be by draw of lots.

(11) It is clear from Clause 6 of advertisement, Ex-P1, that the members of scheduled caste/backward class were treated as a special category vis-a-vis serving military personnel and their wives/Ex-servicemen/war widows/freedom fighters whereas for serving military personnel and their wives/Ex-servicemen/freedom fighters, the last date for applying for allotment of houses was 31-8-87, the last date for members of SC/BC was the date of allotment of the date up to which their quota was fully subscribed whichever was earlier and for all other applicants, the last date was 1st June, 1987. If members of scheduled caste/backward class were treated as special category keeping in view that they are down-trodden and economically backward vis-a-vis other categories, it could not be said that in their case, the date of applying should be taken as 29th January, 1988 or the date up to which quota was fully subscribed whichever was earlier. Housing Board Haryana treated them liberally keeping in view that they are downtrodden and highly economically backward and, therefore, it was provided that they could apply till the date of allotment or till the date up to which their quota was fully subscribed whichever was earlier. Intention of Clause 6-b was that the HIG houses built by the Housing Board Haryana meant for scheduled caste/backward class should be utilised by them and should not be utilised by other categories. Members of SC/BC could thus apply till the date of allotment or the date up to which quota was fully subscribed whichever was earlier ? In this case, the remaining seven houses in the reserved categories were allotted to the members of SC/BC on the basis of the applications submitted by them after 29th January, 1988, i.e. on which the draw of lots had taken place. According to Ram Nath, no allotment could take place in their favour, otherwise than through draw of lots. Allotment of HIG houses to them without holding draw of lots was bad in law. It is true that the allotment of houses to those members of SC/BC who had applied after 29th January, 1988, without holding draw of lots was bad as it impinges upon the provisions of Regulation 24 of Haryana Housing Board Act, 1971. It was held in *Daljit Singh*

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*.hluwalia vs. Chandigarh Housing Board (1)* that “the language of Regn. 24 being that the allotments, as determined by the Board, can be in such other manner is not to say that it can be in any other manner. The word such has its roots in the main dictate of the Regulation and that is by draw of lots, meaning thereby that none is to be favoured or preferred by any means, logic or reason in the matter of allotment of property and understandably there should be no discrimination or choice in the matter with any one. Regn. 24 cannot be read to mean that the Board can devise any such method so as to destroy equal opportunity and deny the possibility of equal chance of allotment to all concerned.” Ram Nath has, however, no *locus standi* to question the allotment of 7 houses to the members of SC/BC, who had not applied till 29th January, 1988, but who had applied after 29th January, 1988, as the legality, if any, of the allotment in their favour could be challenged by other members of SC/BC only if their right to equality as enshrined in Article 14 of the Constitution of India had been violated. Members of SC/BC could apply for allotment of those 7 houses meant for them even after 29th January, 1988, till the date of allotment.

(12) Ram Nath could not call upon the Housing Board to put those 7 houses meant for SC/BC to be put at draw of lots for being allotted, as he belongs to general category. He could look only to the allotment of 28 HIG houses. Regulation 7 (i) of the Haryana Housing Board Act, 1971, which was relied upon by Ram Nath, reads as under :—

“Allotment of houses shall be made by draw of lots or by such other manner as may be determined by the Board. Unless otherwise provided own or specified by the Board, out of total number of houses, reservation in favour of applicants shall be to the extent of 25% of the total cost or extra amount over and above 25 % including full cost at the time of registration. The applicants paying full cost at the time of registration will be given a choice to select the house . *Spillover (applicants/houses as the case may be) shall go to the general pool.*”

(13) It was submitted by Ram Nath that spillover houses were required to go to general pool in view of the said provision and; therefore, he was entitled to allotment of HIG house in the Housing

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Board Colony, Sector 1, Rohtak. Suffice it to say, how could those 7 HIG houses be treated as “spillover” when the members of the SC/BC could apply for allotment of those houses till the date of allotment or till the quota of houses meant for SC/BC was fully subscribed. Housing Board was required to wait for the members of SC/BC so that the quota of allotment of HIG houses meant for them could be utilised by them. It would bear repetition that 28 houses were meant to be allotted to the general category. 10 HIG houses were meant to be allotted to the members of SC/BC. Members of SC/BC were treated as special category vis-a-vis other categories. Quota meant for SC/BC category was to be utilised only by them. It was not meant for general category as per Haryana Housing Board Act, 1971.

(14) Date of draw of lots could not be treated as date of allotment. After draw of lots is held, there are several formalities, which are required to be complied with. After those formalities are complied with letter of allotment is issued. Rule 10 of the Housing Board, Haryana (Allotment, Management and sale of tenements) Regulations, 1972 lays down that the “allotment letter would be issued by the Estate Manager informing the allottee that *it is proposed to allot* to him the tenement on the terms and conditions specified in the letter, accept the allotment of the tenement. Allotment is thus a process which starts with holding of draw of lots and concludes after completion of all the formalities including those mentioned in rule 10 of the Housing Board, Haryana (Allotment, Management and Sale of Tenements) Regulations 1972. In this case, thus 29th January, 1988 could not be construed as the date of allotment. In case of members of SC/BC, the date when they could apply for allotment of HIG houses become extended till the date when actual allotment was made by the Housing Board in favour of the successful candidates. 7 houses of the quota of SC/BC thus did not become available on 29th January, 1988 for being transferred to general category. Members of SC/BC could apply for allotment of these houses any time prior to the actual allotment of these houses in favour of members of the general category. Those 7 houses could not be treated as spillover on 30th January, 1988 or thereafter. Members of SC/BC could apply for allotment of those houses after 29th January, 1988 till the date of allotment had taken place in favour of successful persons belonging to the general categories.

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(15) In my opinion, learned District Judge was not right when he found Ram Nath entitled to allotment of the house on the basis of draw of lots held on 29th January, 1988 out of the houses meant to be allotted to members of SC/BC, as he was to operate only on the quota meant for the general category and he could not hope to operate on quota meant for SC/BC till the date of allotment". The use of the words date of allotment in Clause 6 of the advertisement Ex-P1 should be interpreted as the date of allotment and not as the date of draw of lots, as on the date of draw of lots, allotment does not take place. Allotment takes place afterwards when the so-called allottee agrees to fulfil the terms of allotment. In Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1972 allottee has been defined as meaning a person to whom a tenement is allotted in a building constructed under any scheme referred to in regulation 1(2) by way of sale or hire-purchase. Applicant has been defined as meaning a person applying to the Board for allotment under these regulations. Interpretation, which has been put by this court on clause 6 b of advertisement Ex-P1 is the only interpretation which should have been put as this interpretation furthers the intention of the framers of the Constitution of India. Constitution of India has provided for reservation in favour of the members of SC/BC, keeping in view, that they require to be pushed up from the age long social, educational and economic backwardness. State can make special provision for advancing any socially, economically and educationally backward class or community. Ram Nath could not thus ask for allotment of HIG house in Housing Board Colony, Sector 1, Rohtak, which was meant for being utilised by the members of SC/BC. Civil Court had jurisdiction to entertain the suit because it was the Civil right of Ram Nath, which was involved. His case was that the refusal to allot to him HIG house in Housing Board Colony Sector 1, Rohtak by Housing Board was violative of the provisions of Housing Board Haryana (Management, Allotment and Sale of Tenements) Regulations, 1972. Inasmuch as the spillover of 7 houses fell in general category and he figured at Serial No. 7 of the waiting list and he should have been allotted one of the houses. Such a question did not fall within the ambit of the Chairman, Housing Board, Haryana for being decided. Even otherwise, the ouster of jurisdiction of Civil Court should not be readily inferred. Civil Court shall have jurisdiction to go into the question of legality or otherwise of order of a special Tribunal constituted under the statute and determine whether that

Tribunal has acted within the frame work of that statute which has created it. It was thus the jurisdiction of the Civil Court to determine whether the Housing Board, Haryana has complied with the Housing Board Haryana Act, 1971 and Housing Board, Haryana (Management, Allotment and Sale of Tenements) Regulations 1972 while effecting the allotments of HIG houses in Housing Board Colony, Sector 1, Rohtak. Plaintiff should have served notice upon Housing Board, Haryana under Section 67 of the Housing Board, Haryana Act, 1971 prior to the institution of the suit. Plaintiff sought exemption only from serving notice u/s 80 CPC, which was granted to him. Notice u/s 80 CPC is required to be served only when the suit is to be instituted against the Government or any of its functionaries. Section 67 of the Housing Board, Haryana Act, 1971 lays down that "no person shall institute suit against the Board or against any officer or servant of the Board or any person acting under the orders of the Board for anything done or purporting to have been done in pursuance of this Act, without giving to the Board, officer or servant or person concerned, two month's previous notice in writing of the intended suit and of the cause thereof, nor after six months from the date of the act complained of. Plaintiffs suit was thus bad without prior notice under section 67 of the Housing Board, Haryana Act, 1971. Plaintiff brought this suit on 19th December, 1988. He came to know of allotment on 3rd March, 1988. It was submitted by the learned counsel for the appellant that respondent—plaintiff should have brought suit within six months of the date of the act complained of. In this case, draw of lots was held on 29th January, 1988 and plaintiff had come to know on 3rd March, 1988 that Housing Board, Haryana had issued allotment letters asking successful people to deposit first instalment of Rs. 15,000. In my opinion, plaintiff's suit was within time as the cause of action persisted in his favour every day from 3rd March, 1988. Plaintiff was required to file this suit within three years of the letter of allotment issued to some one, who had succeeded at the draw of lots.

For the reasons given above, this appeal succeeds and is accepted and the judgment and decree passed by learned District Judge, Rohtak is set aside and those passed by the trial Court are restored.

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**S.C.K.**