pointed out as also there is no proof of *mala fides* against any bureaucrat or politician while issuing the notification in question.

(14) For the reasons given above, this writ petition fails and is dismissed.

R.N.R.

Before G.S. Singhvi & V.S. Aggarwal, JJ

HARYANA URBAN DEVELOPMENT AUTHORITY THROUGH ITS SECRETARY,—*Petitioner*

versus

RAJ DULHARI & OTHERS,—*Respondents*

CWP No. 6554 of 1997

5th May, 1998

Constitution of India, 1950—Art. 226—Alternative remedy–Remedy of Revision—Whether absolute bar to exercise of writ jurisdiction.

Held that, the rule that the High Court will not exercise jurisdiction under Article 226 of the Constitution in favour of a petitioner who can avail alternative remedy is a rule of self imposed restraint evolved by the Courts in order to deny relief to a litigant. The object underlying this rule is that the High Court should not be made a substitute of all other remedies available to an aggrieved party for redressal of its grievance. However, this rule of self-restraint cannot be treated as a constitutional embargo on the exercise of power by the High Court under Article 226 of the Constitution in all those cases in which the petitioner can avail alternative remedy. Rather, the settled law is that in appropriate cases, the High Court can exercise its jurisdiction to nullify the orders passed by the administrative/quasi judicial/judicial authorities if it finds that the impugned order is patently illegal or erroneous and manifestly unjust. Moreover, the remedy of revision is not an effective alternative remedy.

Constitution of India, 1950—Art. 226—Advertisement inviting applications for allotment of plots–Such invitation whether an enforceable promise.

Held that, an advertisement inviting applications for allotment of plots can be construed as an invitation to the prospective allottees to apply for consideration of their cases for allotment of land in accordance with the provisions of law and the Constitution. The right of consideration available to an applicant can mature into a right to be allotted plot only if the land is available for allotment, the draw is held and the applicant is successful. In fact, even in such a situation, the successful applicant does not get an absolute and indefeasible right to be allotted land which can be enforced in a Court of law. The right, if any can be claimed by the applicant only if allotment is physically made by the competent authority in accordance with law.

(Para 16)

Further held that a careful reading of section 15 of the 1977 Act read with the 1978 Regulations shows that HUDA can dispose of the land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon or after carrying out such development as it thinks fit. This power of HUDA is subject to the directions which may be given by the State Government under Section 30. In terms of Section 15(3), HUDA is empowered to sell or lease or transfer by way of auction or otherwise any land or building belonging to it on such terms and conditions as it may, by regulations provides. Regulations 3,5 and 6 of the 1978 Regulations provide for the mode of disposal, the procedure of sale or lease of land or building by allotment or by auction. A perusal of these provisions shows that if the number of applications received by HUDA is more than the number of plots available for allotment, then the draw of lots is to be held and allotment is to be made in favour of the successful applicants. This is possible only if the land available for allotment is free from all encumbrances. It is, therefore, logical to say that the land which is under dispute by way of litigation even otherwise, cannot be advertised for allotment of plots. However, in this case, the Chief Administrator, HUDA issued advertisement for allotment of 444 plots of 10 marla size along with other plots even though it was known to the authorities that a part of the land for allotment of which applications were being invited was under litigation with the owners and it will be extremely difficult to create the Sector. Another factor which must have been in the knowledge of HUDA authorities was that the land was encroached by unauthorised squatters. These two factors led to ultimate abandonment of the scheme of sector 23. All this may cause serious reflection on the

working of HUDA but that cannot be a legal justification for giving a direction to HUDA to allot plot to respondent No. 1. What has surprised us is the unusual mode adopted by the District Forum of issuing order for direct allotment of plot to respondent No. 1 in Sector 23 or in any adjacent sector of her choice ignoring the fact that the land of Sector 23 was not available for allotment and under no circumstance allotment of plot could be made to respondent No. 1 without the drawal of lots. How respondent No. 1 could be singled out for a favourable treatment by a quasi-judicial authority like the District Forum is beyond our comprehension. If at all the land was available at the disposal of HUDA, the District Forum could, at the best, direct the authorities of HUDA to hold draw of lots for allotment of plots to the successful applicants. We, therefore, hold that the order passed by the District Forum is clearly contrary to the provisions of the 1977 Act and the 1978 Regulations.

(Para 15)

S.C. Kapoor, Sr. Advocate, assisted by Sh. O.P. Sharma, Advocate, *for the Petitioner.*

A.K. Mittal, Advocate, *for respondent No. 1.*

JUDGMENT

G.S. Singhvi, J.

(1) The all important question that arises for adjudication in this petition filed by the Haryana Urban Development Authority (hereinafter described as HUDA) for quashing the orders passed by the District Consumer Disputes Redressal Forum, Chandigarh (for short, the District Forum) and The Consumer Disputes Redressal Commission, Union Territory, Chandigarh (for short, the State Commission) is whether the District Forum could direct the allotment of a residential plot to respondent No. 1 even though draw of lots was not held by the competent authority due to non-availability of land and pending litigation.

(2) The facts necessary for deciding the above question are that in pursuance of advertisements issued by the Chief Administrator, HUDA in 1984, 1280 persons including respondent No. 1 submitted applications for allotment of 10-marla plots in Sector 23, Urban Estate, Faridabad, However, draw of lots could not be held due to pending of two-prolonged litigation, one between

the land owners and HUDA and the other between HUDA and the unauthorised occupants who squatted over the land in the name of Sanjay colony. Having realised that HUDA may not be able to allot plots to those who had applied for 10-marla plots in Sector 23, the Estate Officer issued memo no. 23/2511 dated 19th February, 1986 to the applicants giving them option to seek refund of the earnest money deposited by them. In pursuance of this communication, 1238 out of 1280 applicants withdrew their earnest money. Respondent No. 1 was among the remaining 42 applicants who did not seek refund although,— *vide* memo no. P-114 dated 26th May, 1992, the Estate Officer, HUDA, Faridabad asked her to intimate whether or not she had sought refund. Thereafter, the amount of nearest money was sent to respondent No. 1,— *vide* cheque no. 0407928 dated 15th July, 1993. In the meantime, she served notice of demand dated 2nd July, 1993 upon the authorities of HUDA seeking allotment of plot and as she did not get any favourable response, respondent no. 1 instituted a complaint before the District Forum under Sections 12 and 13 of the Consumer Protection Act, 1986 (for short, the 1986 Act) and prayed that respondent HUDA (petitioner herein) be directed to allot a 10-marla plot either in Sector 23 or in any other well developed section in Faridabad on same rates, terms and conditions on which plots were offered to the public in the year 1984. In the alternative, she prayed for award of compensation to the tune of Rs. 2.5 lacs.

(3) In response to the notice issued by the District Forum, the Chief Administrator, HUDA and the Estate Officer, HUDA Faridabad filed a joint reply to contest the claim of respondent No. 1. They objected to the maintainability of the complaint and urged that the District Forum does not have the jurisdiction to direct allotment of plot. They also pleaded that in view of the abandonment of the scheme of sector 23 due to massive enrochment and pending litigation, no relief should be given to the complainant.

(4) After hearing the parties, the district Forum accepted the complaint and directed the authorities of HUDA to allot a plot measuring 10 marla to respondent No. 1 in Sector 23, Faridabad or in any adjacent Sector according to her choice. The appeal filed by the Chief Administrator and the Estate Officer, HUDA has been dismissed by the State Commission with costs of Rs. 5000/-. simultaneously, the State Commission accepted the appeal filed by respondent no. 1 and directed the authorities of HUDA to pay Rs. 10,000 to her by way of damages.

(5) Shri S.C. Kapoor, learned Senior Counsel appearing for the petitioner challenged the correctness and legality of the impugned orders. One of the various face of his contention is that the District Forum did not have the jurisdiction to entertain the complaint of respondent No. 1 because she is not covered by the definition of consumer under Section 2(1)(d) of the 1986 Act and the advertisement issued by the Chief Administrator for allotment of plots cannot be regarded as service within the meaning of Section 2(1)(o) of the 1986 Act. The Second facet of Shri Kapoor's argument is that even if the District Forum had the jurisdiction to entertain the complaint, it could not order allotment of plot to respondent No. 1 ignoring the fact that draw of lots had not been held because the scheme of Sector 23 was abandoned in view of pending litigation and encroachment. The third facet of his submission is that the District Forum could not order allotment of plot to the complainant ignoring the statutory provisions contained in the Haryana Urban Development Authority Act, 1977 and the Haryana Urban Development Authority (Disposal of Land and Buildings) Regulations, 1978 which contain the detailed procedure to be followed for allotment of residential and non-residential plots. Shri Kapoor also argued that mere submission of application by the complainant did not create a right in respondent No. 1 to be allotted a plot without consideration of applications filed by others and, therefore, the impugned direction given by the District Forum is liable to be declared ultra vires to Articles 14 and 15 of the Constitution. Learned counsel assailed the appellate order on the ground that the State Commission ignored the verdict of the Division Bench in CWP No. 2272 of 1995 Savita Khanna and two others Vs. HUDA Faridabad and also on the ground that it misread the judgment of the learned Single Judge in *Subhash Chugh* v. *State of Haryana* (1) Shri A.K. Mittal countered these arguments and submitted that being a beneficial legislation, the Act should received liberal construction so as to take within its fold a person who applies to allotment of plot in pursuance of advertisement issued by a public authority, like HUDA and the failure of the latter to make allotment of plot after keeping the application of respondent No. 1 pending for more than one decade provided sufficient justification for issuance of a direction by the District Forum for allotment of plot to her. Shri Mittal submitted that the State Commission has rightly awarded compensation to respondent No. 1 in lieu of harassment suffered by her at the hands of the authorities of HUDA. Shri Mittal

(1) 1996 P.L.J. 607

also objected to the maintainability of the writ petition by arguing that the petitioner can avail the alternative remedy of revision available to it under Section 21 of the Act.

6) The question whether a person who makes an application for allotment of plot in a scheme notified by HUDA can be treated as consumer, and the functions discharged by it can be regarded as service within the ambit of the 1986 Act must be deemed to have been conclusively answered against the petitioner by the Apex Court in *Lucknow Development Authority* v. *M.K. Gupta* (2). The facts of that decision show that the appellant-Lucknow Development Authority undertook development of land and formed plots of different categories/sizes and constructed dwelling units for people belonging to different income groups. After the construction was complete the authority invited applications from persons desirous of purchasing plots or dwelling house. The respondent—M.K. Gupta, applied for registration for allotment of a flat in M.I.G. category in Gomti Nagar Scheme on cash down basis. In the draw of lots held by the appellant, the respondent was one of the successful applicants. However, as the possession was not delivered to him on the ground of non-completion of construction work, the respondent filed complaint before the District Forum. Though it is not clear as to what order was the passed by the District Forum but it appears that the State Commission directed the appellant to pay 12% simple interest on the deposit made by the respondent and also to hand over possession of the flat to the respondent. The National Commission upheld the order of the State Commission. One of the contentions urged before the Apex Court was that the complaint filed under the 1986 Act was not maintainable because the allottee is not covered by the definition of consumer and the activities of the authority do not fall within the definition of service. Their Lordships of the Supreme Court referred to the definition of the word "consumer", analysed it and held as under:—

> "The Legislature has taken precaution not only to define complaint, complainant, consumer but even to mention in detail what would amount to unfair trade practice by giving an elaborate definition in clause (r) and even to define defect and deficiency by Clauses (f) and (g) for which a consumer can approach the Commission. The Act thus aims to protect the economic interest of a consumer as understood in commercial sense as a purchase of goods and in the larger sense of user of services.

(2) AIR 1994 S.C. 787

The common characteristics of goods and services are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. But the defect in one and deficiency in other may have to be removed and compensated differently. The former is, normally, capable of being replaced and repaired whereas the other may be required to be compensated by award of the just equivalent of the value or damages for loss. Goods have been defined by Clause (i) and have been assigned the same meaning as in Sale of Goods Act, 1930 which reads as under :

> "goods means every kind of movable property other than actionable claims and money; and includes stock and shares growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale."

(7) Their Lordships also referred to the definition of the term "service" and then held as under :—

> "It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made available to potential users. The words any and potential are significant. Both are of wide amplitude. The word any dictionarily means one or some or all. In Black's Law Dictionary it is explained thus, word any has a diversity of meaning and may be employed to indicate all or every as well as same or one and its meaning in a given statute depends upon the context and subject matter of the statute. The use of the word any in the context it has been used in Clause (o) indicates that it has been used in wider sense extending from one to all. The other word potential is again very wide. In Oxford Dictionary, it is defined as capable of coming into being, possibility. In Black's Law Dictionary it is defined as extending in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future instalments or payments on a contract or engagement, already made. In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users.

But the Legislautre did not stop there. It expanded the meaning of the word further in modern sense by extending it to even such facilities as are available to a consumer in connection with banking, financing etc. Each of these are wide ranging activities in day to day life. They are discharged both by statutory and private bodies. In absence of any indication, express or implied there is no reason to hold that authorities created by the statute are beyond purview of the Act. When banks advance loan or accept deposit or provide facility of locker they undoubtedly render service. A State Bank or nationalised bank renders as much service as private bank. No distinction can be drawn in private and public transport or Insurance Companies. Even the supply of electricity or gas which throughout the country is being made, mainly, by statutory authorities is included in it. *The legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature or the duty and function performed by it is service or even facility."*

(8) Their Lordships also answered in affirmative the question whether the housing construction falls within the definition of service. This conclusion is discernible from the following observations made in the judgment :—

"What remains to be examined is if housing construction or building activity carried on by private or statutory body was service within meaning of Clause (o) of Section 2 of the Act as it stood prior to inclusion of the expression housing construction in the definition of service by Ordinance No. 24 of 1993. As pointed out earlier the entire purpose of widening the definition is to include in it not only day to day buying and selling activity undertaken by a common man but even to such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. *Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and other statutory service. If the service*

is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in respect of immovable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in Sub-clause (ii) of Clause (r) of Section 2 as unfair trade practice. If a builder of a house uses sub-standard material in construction of a building or makes false or misleading representation about the condition of the house then it is denial of the facility or benefit of which a consumer is entitled to claim value under the Act. When the contractor or builder undertakes to erect a house or flat then it is inherent in it that he shall perform his obligation as agreed to. A flat with a leaking roof, or cracking wall or sub-standard floor is denial of service. Similarly when a statutory authority undertakes to develop land and frame housing scheme, it, while performing statutory duty renders service to the society in general and individual in particular. The entire approach of the learned Counsel for the development authority in emphasising that power exercised under a Statute could not be stretched to mean service proceeded on misconception. It is incorrect understanding of the statutory functions under a social legislation. *A developmtent authority while developing the land or framing a scheme for housing discharges statutory duty the purpose and objective of which is service to the citizens. As pointed out earlier the entire purpose of widening the definitions is to include in it not only day to day buying of goods by a common man but even to such activities which are otherwise not commercial but professional or service oriented in nature.* The provisions in the Acts, namely, Lucknow Development Act, Delhi Development Act or Bangalore Development Act clearly provide for preparing plan, development of land, and framing of scheme etc. *Therefore, if such authority undertakes to construct building or allot houses or building sites to citizens of the State either as amenity or as benefit then it amounts to rendering of service and will be covered in the expression service made available to potential users. A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential*

user and nature of transaction is covered in the expression service of any description. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service except when it is free of charge or under a constraint of personal service is included in it. Since housing activity is a service it was covered in the clause as it stood before 1993."

(9) The next and all important issue which arises for our consideration is whether the District Forum could direct allotment of plot to respondent no. 1 in Sector 23 or in any other adjacent Sector of the choice of respondent no. 1.For deciding this, we may briefly recapitulate some of the salient facts which are borne out from the record of the case. These are :—

(a) The petitioner had issued advertisement inviting applications for allotment of residential plots of different measurements in Sector 23, Faridabad. In the brochure issued by it, the petitioner gave out that the plots were fully developed and free from encumbrances although as a matter of fact possession of a portion of the land which was to form part of Sector 23 was still with the land owners and was under litigation.

(b) In all 1280 applications were received for allotment of 444 plots of 10 marla. Respondent no. 1 was also one of the applicants for allotment of 10 marla plot of general category.

(c) Draw of lots was not held because of the litigation.

(d) Subsequently land in which 10 marlas plots were to be carved out was encroached and unauthorisedly occupied by some persons who constructed Sanjay Colony over it.

(e) In the year 1986, the Estate Officer intimated the applicants about the inability of the Haryana Urban Development Authority to hold draw of lots because of litigation and 1238 applicants withdrew the earnest money. Respondent no. 1 was also offered refund of the earnest money in the year 1986 and 1992 (Annexures P2 and P3) but she did not accept the same. Later on, the earnest money was sent to her along with letter dated 26 May, 1993 (Annexure P5).

(10) In the light of these facts, it is to be seen whether the District Forum could direct the allotment of plot to respondent no.

1. A careful reading of the order Annexure P9 passed by respondent no. 3 shows that the District Forum was greatly influenced by the facts that authorities of HUDA did not place any material to show that the number of applications received in pursuance of the advertisement was more than the number of plots available for allotment. This is evident from the observation made in paragraph 8 of the impugned order, the relevant portion of which is extracted below:—

> "It is true in the brochure it is incorporated that in case the number of applicants goes beyond the number of plots available, allotment will be made through draw of lots but file is totally bereft of any material in this regard. We cannot presume that the applicants out numbered the available number of plots. Conversely we are inclined to conclude that plots were available for allotment to all the applicants."

(11) However, a bare reading of the reply filed by HUDA authorities before the District Forum shows that the above extracted observation has been made by the District Forum without going through the contents of paragraphs 1, 2, 10 and 15 thereof. In these paragraphs, it was specifically averred that 1280 applications were received and except 42 applicants, all others had withdrawn the earnest money in view of the communication dated 19th May, 1985 sent by the Estate Officer intimating that land is under litigation. This is one of the parent errors in the order of the District Forum.

(12) The other factor which appears to have greatly influenced the thinking of the members of the District Forum is the allegation made by the complainant that the authorities of HUDA failed to fulfil the promise to the prospective allottees of the allotment of plots even though the applications were kept pending for more than one decade. This is clearly discernible from the observation made in paragraph 9 of the order :—

> "On their own showing OPs are developing numerous sectors at Faridabad. If for any reason plot applied for by the complainant could not be allotted to her in Sector 23 as promised in the brochure, she could have been ajdusted in any adjoining sector by allotting a plot of the same size and having identical advantages. OPs do not seem to have worked on these lines they have acted arbitrarily. HUDA on its part never thought it fit to keep the applicants duly informed about

the progress of the litigation. It was complainant herself who had to approach HUDA to know the fate of her application. OP No. 2 wrote to complainant letter dated 26th May, 1993 photocopy of which is annexure C6. In this letter it was recorded that with a view to facilitate the refund of the earnest money deposited by the complainant in respect of Section 23 Faridabad she was requested to furnish an affidavit to the effect that she had not received any refund of her earnest money till then and that in case of double refund she will be liable for legal action. The test of the letter gives the impression as if complainant was interested to get back the earnest money whereas to the contrary complainant was keen to get the plot allotted. She never requested for refund of earnest money. In response to the letter of OP No. 2 written to the complainant the latter sent registered letter dated 2nd July, 1993 to OP No. 2 and a photocopy of this letter, complainant had sought information on several points which she had listed in her letter. At the close of her letter complainant had stated that in case OP No. 2 failed to furnish the information asked for in her letter, she will be constrained to approach the Civil Courts/ Fora under the provisions of Consumer Protection Act. OP No. 2 instead of furnishing the requisite information to the complainant, suo moto issued account payee cheque for Rs. 4943 dated 15th July, 1993 drawn in favour of the complainant. The payment was made to the complainant vide covering letter dated 20th July, 1993 which read as under as desired, the cheque no. 0407928 dated 15th July, 1993 for Rs. 4943 is enclosed. Please acknowledge the receipt. All these facts clearly show the high handedness of OPs who had been least considerate to take into account rights of the citizens like the complainant. In the brochures, it is no where provided that HUDA will have the authority to refund the earnest money/booking advance of any applicant at any point of time and without assigning any reason. Almost 5000 rupees of the complainant remained with OPs for nearly 9 years. OPs refunded the money but never thought of compensating the complainant by way of interest for retention of the substantial amount of the complainant for such a long time."

(13) In our opinion, the above extracted observations which the District Forum appears to have made without going through the written reply filed by the authorities of HUDA are totally unjustified because it had been categorically stated in the reply

filed by HUDA that draw of lots was not held because the land was under litigation with the owners and the unauthorised occupants. They had offered refund of the earnest money as early as in the year 1986. It cannot, therefore, be said that HUDA authorities had withheld the earnest money deposited by the complainant with an ulterior motive. This conclusion of ours is fully supported by the order dated 15th January, 1996 passed by a Division Bench of this Court in C.W.P. No. 2272 of 1995 Savita Khanna & two others Vs. H.U.D.A, Faridabad and another. The facts of that case show that Mrs. Savita Khanna, Mrs. Neelam Khanna and Mrs. Manju Khanna had applied for allotment of residential plot of 10 marlas in Sector 23, Faridabad in pursuance of the advertisement issued by the authorities of the Haryana Urban Development Authority. They filed writ petition for issuance of a mandamus to the respondents to allot plot or to refund their earnest money along with interest at the rate or 24% per annum. While rejecting their prayer, this Court held as under :—

> ".....Admittedly, the petitioners applied for allotment of 10 marlas of plot each in Sector 23 Faridabad and as per terms 10% amount of the tentative price of the plot i.e. earnest money was also deposited. Some how draw of plots could not take place as some litigation was pending with regard to the acquisition of land and so the authorities vide communication dated 27th November, 1986, annexure P-3, informed the petitioners of the same and further gave them an option of withdrawing the earnest money, if they so wish. So, the authorities in the year 1986 gave the petitioners an option of withdrawing the earnest money deposited by them. For reasons best known to the petitioners they did not avail of the same and so the amount remained deposited with the respondent-authorities.
>
> Whether the petitioners are entitled to interest upon the amount which remained deposited with the authorities is primarily to be considered in the light of agreement between the parties. No specific averment has been made by the petitioners in this regard. On the other hand the respondent-authorities have referred to document, exhibit R-1, dated 10th October, 1994 whereby 10% of the tentative amount was deposited by the petitioners and note appended under this receipt clearly makes mention that no interest is payable on the money deposited by the petitioner/petitioners for the period for which the same is lying with the authorities. Thus, the petitioners have no

legitimate claim for awarding of interest. Otherwise too, the authorities gave an option way back in the year 1986 (27th November, 1986) which for reasons best known to the petitioners they did not avail. On this ground also the respondents cannot be burdened with interest as claimed by the petitioners."

(14) Indeed, it is unfortunate that the District Forum ignored the judgment of this Court in Savita Khanna's case (supra) even though it had direct bearing on the issue raised in the complaint and was referred to on behalf of the petitioner.

(15) The issue deserves to be examined from another angle. A careful reading Section 15 of the 1977 Act read with the 1978 Regulations shows that HUDA can dispose of the land acquired by it or transferred to it by the State Government without undertaking or carrying out any development thereon or after carrying out such development as it thinks fit. This power of HUDA is subject to the directions which may be given by the State Government under Section 30. In terms of Section 15(3), HUDA is empowered to sell or lease or transfer by way of auction or otherwise any land or building belonging to it on such terms and conditions as it may, by regulations provides. Regulations 3, 5, and 6 of the 1978 Regulations provide for the mode of disposal, the procedure of sale or lease of land or building by allotment or by auction. A perusal of these provisions shows that if the number of applications received by HUDA is more than the number of plots available for allotment, then the draw of lots is to be held and allotment is to be made in favour of the successful applicants. This is possible only if the land available for allotment is free from all encumbrances. It is, therefore, logical to say that the land which is under dispute by way of litigation even otherwise, cannot be advertised for allotment of plots. However, in this case, the Chief Administrator, HUDA issued advertisement for allotment of 444 plots of 10 marla size along with other plots even though it was known to the authorities that a part of the land for allotment of which applications were being invited was under litigation with the owners and it will be extremely difficult to create the Sector. Another factor which must have been in the knowledge of HUDA authorities was that the land was encroached by unauthorised squatters. These two factors led to ultimate abandonment of the scheme of Sector 23. All this may cause serious reflection on the working of HUDA but that cannot be a legal justification for giving a direction to HUDA to allot plot to respondent

No. 1. What has surprised us is the unusual mode adopted by the District Forum of issuing order for direct allotment of plot to respondent no. 1 in Sector 23 or in any adjacent Sector of her choice ignoring the fact that the land of Sector 23 was not available for allotment and under no circumstance allotment of plot could be made to respondent No. 1 without the drawal of lots. How respondent no. 1 could be singled out for a favourable treatment by a *quasi-judicial* authority like the District Forum is beyond our comprehension. if at all the land was available at the disposal of HUDA, the District Forum could, at the best, direct the authorities of HUDA to hold draw of lots for allotment of plots to the successful applicants. We, therefore, hold that the order passed by the District Forum is clearly contrary to the provisions of the 1977 Act and the 1978 Regulations.

(16) We are also of the opinion that the district Forum and the State Commission have gravely erred in taking the view that the advertisement issued by the Chief Administrator, HUDA amounted to a binding promise for allotment of plot and, therefore, a direction could be given for allotment of plot to respondent No. 1. In law, an advertisement issued by a public authority like HUDA inviting applications for allotment of plots cannot be treated as a promise made to the applicants that they will be allotted plots. At best, such advertisement can be construed as an invitation to the prospective allottees to apply for consideration of their cases for allotment of land in accordance with the provisions of law and the Constitution. The right of consideration available to an applicant can mature into a right to be allotted plot only if the land is available for allotment, the draw is held and the applicant is successful. In fact, even in such a situation, the successful applicant does not get an absolute and indefeasible right to be allotted land which can be enforced in a Court of Law. The right, if any, can be claimed by the applicant only if allotment is physically made by the compete authority in accordance with law. In *Delhi Development Autho* v. *Pushpender Kumar Jain*(3), the plea of the respondent that he had acquired right to be allotted flat at the price which was prevailing on the date of drawal of lots was also nullified by a two Judges Bench of the Supreme Court. While reversing the judgment of the Delhi High Court, which had upheld the claim of the petitioner-respondent, their Lordships of the Supreme Court observed as under :—

(3) AIR 1995 S.C. 1

"No provision of law also could be brought to our notice in support of the proposition that mere drawal of lots vests an indefeasible right in the allottee for allotment at the price obtaining on the date of drawal of lots. In our opinion, since the right to flat arises only on the communication of the letter of allotment, the price or rates prevailing on the date of such communication is applicable, unless otherwise provided in the scheme."

(17) In *Surjit Singh* v. *State of Punjab* (4), a Full Bench of this Court considered the nature of the right, if any, acquired by submission of an application for allotment of land and held as under :—

"By filing an application in accordance with law, the applicant only gets a right of consideration of his application, but he does not a vested right for allotment of plot."

(18) In *Kabul Singh and others* v. *Punjab Urban Planning and Development Authority*(5), a Division Bench considered the prayer made by the petitioners for issuance of a mandamus to be allotted HIG single storey dwelling units.on the ground that the Punjab Housing Development Board had while inviting applications made promise for allotment of the flats. After noticing the relevant statutory provisions, the Court held as under :—

"In our considered opinion, the announcement contained in Annexure P4 cannot be equated with a promise made by the competent authority under the statute. The power of the Board to dispose of the land, building or other property vested in it could be exercised by it consistent with the doctrine of equality embodied in the Constitution. It is one of the settled principle of law that a public authority discharging public duty must act in public interest and its action should not be arbitrary or unfair. The wider meaning given to the concept of equality required that every state action must be reasonable and must not be arbitrary or opposed to public interest. Therefore, it was not open to the Board to make any promise to the petitioners and other unsuccessful applicants for allotment of houses in disregard the provisions of the statute and the doctrine of equality."

(19) *In C.W.P. No. 8905 of 1997. The Express Co-Operative*

(4) 1979 P.L.R. 413.
(5) 1997 (1) P.L.R. 713.

Group Housing Society Ltd. and others v. *State of Haryana througits Chief Secretary and others,* decided on 3rd October, 1997, a Division Bench of this Court analysed the provisions of the 1977 Act and the 1978 Regulations in the context of the plea raised by the petitioner that it had become entitled to allotment of land under Group Housing Scheme, 1995. The Court upheld the power of the government to issue directions to HUDA regarding the policy of allotment of land and also that HUDA can abandon the scheme notify in the year 1995. The Court also negatived the plea that the advertisement issued by HUDA in the year 1995 amounted to a promise to the prospective applicants for allotment of plots and held as under :—

> "However, we are unable to agree with them that the mere submission of application by the petitioners has created a right in their favour to be allotted plots of land. The advertisement issued by the Authority can at the best be termed as an invitation to the prosective buyers to apply for consideration for allotment of land. The very fact that the advertisement did not contain any restriction on the number of applications which could be made by the Cooperative Group Housing Societies is a clear proof of the intention of the Authority that the prospective applicants will be considered by it for the purpose of allotment of land earmarked for group housing purposes. Such advertisement cannot be construed as a promise held out by the Authority to allot land to the applicants and once the Government has, in exercise of its powers under the Act, revised the existing policy and decided to allot land at the revised rates under the new scheme, the inchoate right of consideration which came to vest in the petitioners on the basis of the applications submitted by them, stood extinguished. The petitioners cannot enforce their so-called expectation not can they seek a mandamus against the Authority on the basis of the doctrine of promissory estoppel."

(20) The same view has been reiterated in C.W.P. No. 14632 of 1997 *Rajinder Aggarwal* Vs. *State of Haryana and others* decided on 29th September, 1997 in which the petitioner had sought allotment of an industrial plot.

(21) Applying the ratio of these decisions to the facts of this case, we do not have any hesitation in holding that the direction

given by the District Forum for allotment of residential plot to respondent No. 1 is without jurisdiction, arbitrary and illegal.

(22) .The order passed by the State Commission dismissing with costs the appeal filed by the Chief Administrator, HUDA as also the direction given by it for payment of Rs. 10,000 to respondent no. 1 by way of damages per se erroneous. The State Commission has failed to consider various statutory provisions which regulate disposal of land etc. vesting in HUDA. A bare reading of the order passed by the State Commission shows that it has based the impugned order on the judgment of the learned Single Judge in *Subhash Chugh* Vs. *State of Haryana (supra)*. With respect, we are constrained to observe that the State Commission has misread the judgment of the learned Single Judge. A careful reading of the judgment in Subhash Chugh's case shows that a plot of land had been allotted to the petitioner in Sector 14(II), Karnal. However, as possession of the plot could not be given to him due to pending litigation, HUDA authorities allotted an alternative plot to him at revised rates. The petitioner challenged the decision of HUDA authorities and prayed that the respondents be directed to allot an alternative plot to him at the old rates. While rejecting his prayer, the learned Single Judge directed that the possession of the alternative plot be handed over to the petitioner on payment of the enhanced price. This decision, in our considered view, has no similarity to the case of respondent no. 1 because in her case even the draw of lots had not been held what to say of allotment of plot. Thus, the decision of the learned Single Judge in Subhash Chugh's case could not have been made basis for holding that HUDA authorities had acted arbitrarily by not making allotment to the petitioner at the price which prevailed in the year 1984 and that she has suffered prejudicially on account of their action. We are also of the opinion that in view of the decisions of the Supreme Court in Pushpender Kumar Jain's case and of the Full Bench in Surjit Singh's case (supra), the judgment of the learned Single Judge in Subhash Chugh's case cannot be read as lying down a proposition that mere submission of application entitled a person to seek allotment of land as of right. Thus, the order passed by the State Commission dismissing the appeal filed by the Chief Administrator etc. with costs cannot be sustained.

(23) We also do not find any valid justification for award of damages to respondent no. 1. The record of the case shows that HUDA authorities had intimated the complainant as early as in the year 1986 that she can withdraw the money deposited by her. Thus, there is no basis for recording a finding that the authorities of HUDA harassed the complainant or that they withheld the earnest money deposited by her with an ulterior motive.

(24) We may now deal with the objection raised by Shri A.K. Mittal to the maintainability of the writ petition filed by the petitioner. Learned counsel strenuously urged that the High Court should not exercise its jurisdiction under Article 226 of the Constitution because of the availability of alternative remedy before the National Commission. Shri Mittal submitted that the petitioner can avail the remedy of revision under Section 21 of the Act. He placed reliance on *Miss Maneck Custodji Surajarji* v. *Sarafazali Nawabali Mirza* (6). *K.K. Shrivastava etc.* v. *Bhupinder Kumar Jain and others* (7). *Shyam Kishore & others* v. *Municipal Corporation of Delhi & another* (8). *Tulsi Enterprises* v. *Andhra Pradesh State Consumer Commission, Hyderabad and another* (9). *Padmanabhan* v. *Consumer Distt. Redressal Forum & another* (10). *ANZ Grindlays Bank & another* v. *President, District Consumer Disputes Redressal Forum and others* (11), and *Visva Bharati & another* v. *Rakhi Bebnath and others* (12). In our opinion, the objection of Shri Mittal cannot be upheld. "The rule that the High Court will not exercise jurisdiction under Article 226 of the Constitution in favour of a petitioner who can avail alternative remedy is a rule of self-imposed restraint evolved by the Courts in order to deny relief to a litigant. The object underlying this rule is that the High Court should not be made a substitute of all other remedies available to an aggrieved party for redressal of its grievance. However, this rule of self-restraint cannot be treated as

(6) AIR 1976 S.C. 2446
(7) AIR 1977 S.C. 1703
(8) AIR 1992 S.C. 2279
(9) AIR 1991 A.P. 326
(10) II (1992) C.P.J. 575
(11) AIR 1995 Calcutta 104
(12) 1996 C.C.J. 1206

a constitutional embargo on the exercise of power by the High Court under Article 226 of the Constitution in all those cases in which the petitioner can avail alternative remedy. Rather, the settled law is that in appropriate cases, the High Court can exercise its jurisdiction to nullify the orders passed by the administrative/quasi judicial/ judicial authorities if it finds that the impugned order is patently illegal or erroneous and manifestly unjust. Moreover, the remedy of revision has not been considered to be an effective alternative remedy in *Collector of Customs, Cochin* v. *A.S. Bawa* (13) and V. *Vellaswamy* v. *Inspector General of Police* (14). In this case, we have found that the order passed by the District Forum is not only patently erroneous but suffers from lack of jurisdiction. Therefore, the availability of remedy of revision cannot be made a ground to deny relief to the petitioner.

(25) Before concluding, we consider it necessary to take notice of an extremely disquietening feature which has come to our notice. Notice of motion for final disposal of the writ petition was issued on 13th May, 1997. On 28th July, 1997, Shri Ameet Awasthi, Advocate, appeared on behalf of the District Forum and the State Commission. This surprised us because he and Shri H.S. Awasthi, Advocate, who appeared on behalf of these respondents on 21st October, 1997 were counsel for the complainant before the District Forum and the State Commission. Having taken note of this fact, we asked Shri Ameet Awasthi to show as to how respondent Nos. 2 and 3 were interested in contesting the writ petition. A copy of the order, dated 28th July, 1997, was sent to the Chairman of the State Commission but no response was received from respondents Nos. 2 and 3. This has left us to make a guess as to why the District Forum and the State Commission had shown undue interest in this case. However, we refrain from making further comment on this aspect because on the last date of hearing, learned counsel did not put in appearance on behalf of respondents Nos. 2 and 3.

(26) For the reasons mentioned above, the writ petition is allowed. The orders Annexures P10 and P13 passed respectively by the District Forum and the State Commission are set aside subject

(13) AIR 1968 S.C. 13
(14) AIR 1982 S.C. 82

to the direction that the petitioner shall refund the earnest money/ any other amount deposited by respondent No. 1 within seven days from today.

S.C.K.

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