C. Narayan and Another Vs Chandigarh Housing Board

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 8, 1996

Acts Referred: Constitution of India, 1950 â€" Article 226
Evidence Act, 1872 â€" Section 115

Citation: (1996) 113 PLR 292

Hon'ble Judges: Swantanter Kumar, J; S.P. Kurdukar, J

Bench: Division Bench

Advocate: S.K. Aggarwal and Aman Vivek, for the Appellant; Puneet Kansal and Rajiv Atma Ram, for the Respondent

Final Decision: Dismissed

Judgement

Swantatar Kumar, J.
By this common judgment we propose to dispose of eight letters Patent Appeals being L.P.A. No. 1272 of 1992

arising out of C.W.P. No. 3745 of 1984, L.P.A. No. 1273 of 1992 arising out of C.W.P. No. 4784 of 1981; L.P.A. No. 1274 of 1992 arising

out of C.W.P. No. 3048 of 1984; L.P.A. No. 1275 of 1992 arising out of C.W.P. No. 701 of 1988; L.P.A. No. 1276 of 1992 arising out of

C.W.P.No.12718 of 1989; L.P.A. No. 306 of 1993 arising out of C.W.P. No. 3744 of 1984; L.P.A. No. 367 of 1993 arising out of C.W.P.

No. 13505 of 1989 and L.P.A. No. 371 of 1993 arising out of C.W.P. No. 3047 of 1984 as all these appeals involve same question of law and

are based on somewhat similar facts.

2. The necessary facts extracted from the writ petitions are that Chandigarh Housing Board which is stated to be a statutory body had issued an

advertisement on 5.11.1977 inviting applications for allotment of built up houses in the Union Territory, Chandigarh. It was stated in the

advertisement that the applications were invited for different types of built up houses and 15.1.1978 was prescribed as the last date for submission

of application forms. The advertisement provided that the persons who were demociles of Chandigarh for a period of at least three years prior to

making the applications were eligible for this purpose. The scheme which was framed by the board has been annexed as Annexure P/1 to the writ

petition. The scheme placed certain restrictions on the eligibility and classified the houses into low income group, middle income group and high

income group. The applicants were required to deposit some initial amount varying from Rs. 500/- to Rs. 7500/-. The allotment was to be made

by draw of lots. The scheme itself reserved quotas for various categories including Scheduled Castes, Scheduled Tribes, Defence Personnel, Ex-

Servicemen, War Widows, Pensioners and Government employees who are due to be superannuated within a period of five years from the date of

advertisement. It also provided discretionary quota for hard deserving cases. The draw of lots was held on 10.4.1980. Flats were given to various

categories including the reserved classes. Further draw of lots was again held on 18.10.1980 and 4.9.1981.

3. The grievance raised by learned counsel for the appellants/writ petitioner on the above facts is that their registration with the Chandigarh Housing

Board gave them an absolute right for getting a house on the old rates. He further submits that the respondent-Board is bound by the principle of

promissory estoppel.

4. The Board contested the writ petitions and took up the specific stand that the petitioners were not only considered in various draw of lots from

time to time but were also given preferential treatment but they were unsuccessful in the draw of lots. Some decisions were taken by the competent

authority to permit the change in category and the persons who were permitted to change the category were also included in the first draw of lots,

however, in the subsequent ones no change in the category was permitted. One of the objections taken in the written statement was that necessary

and better particulars had not been given in the writ petitions by the petitioners, as such it was not possible to check case of each petitioner. The

respondents denied violation of any provisions of law and claimed that all their decisions are in consonance with their policy, rules and regulations

and there is no arbitrariness on their part. Vide decision dated 15.3.1978 the respondents had taken a decision favourable to the petitioners that

these applicants will rank in priority below of applicants registered already for that category.

5. To these written statements no rejoinder affidavit was filed on behalf of the petitioners.

6. At the outset we would like to point out that the petitions filed by the petitioners before the learned Single Judge lacked complete facts. Hardly

any facts have been stated in the petition which would justify any interference by the court while exercising its jurisdiction under Articles 226/227 of

the Constitution of India. The arguments advanced before us by the learned counsel for the appellants are entirely beyond the pleadings of the

parties before the learned Single Judge.

7. Another patent defect from which the writ petitions suffer is that the petitioners had not impleaded any of the allottees as a party to the petitions

whose allotment was challenged before the learned Single Judge. Those applicants/allottees have taken possession of houses long time back and

are living in their houses after making the payments. The present letters Patent Appeals also suffer from another infirmity inasmuch as the appellants

had impleaded respondents No. 3 to 83 in the memorandum of appeal but at the request of the learned counsel for the appellant the Court vide

order dated 7.9.1993 deleted the names of all these respondents, who were parties in the original petitions and in appeals. The appellants want

that their rights be determined in this appeal. This is not permissible even in law. Learned counsel for the appellants has failed to satisfy us or show

as to how in these appeals this court would be able to grant any relief after deletion of these respondents.

8. Leaving aside all these infirmities we proceed to discuss the two contentions raised by the learned counsel for the appellants before us. The

learned counsel referred to clauses 2(4), 2(12), 2(15) and 2(26) of the scheme and the regulations which have been reproduced in the writ

petition. Relying on these clauses he has argued that all the appellants are vested with an indefeasible right for allotment of houses by the board at

the original cost and at the cost on which other applicants have been allotted flats by the Board. This submission of the learned counsel is not well-

founded. The scheme itself shows that the relevant cost was of the period when the allotments were made to the respective applicants. The mere

fact that the appellants had registered themselves with the Board and had deposited initial amounts does not in the facts and circumstances of this

case give them any indefeasible right. There is no dispute before us that the names of all the petitioners were put to draw of lots in the various draw

of lots held by the Board but they were not successful. No case of discrimination is made out because there is not an averment in the writ petition

that the appellants were not considered for allotment. The last draw of lots was held in September, 1991, but the petitioners/appellants were not

found successful. No fault can be found with the Board in this regard. The Supreme Court in a very recent judgment of Delhi Development

Authority Vs. Pushipendra Kumr Jain, held as under :-

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 draw 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. If in case

the respondent is not willing to take or accept the allotment at such rate, it is always open to him to decline the allotment. We see no unfairness in

the above procedure.

9. Though in the present case no price was fixed or declared by the Board in the brochure but even if it is assumed in favour of the applicants even

then it would give no right to the applicants to get the flats. A full Bench of this Court in the case of Surjit Singh and Others Vs. State of Punjab and

Others, held as under :

Filing of the application with the deposit of the 10 per cent price of the plot as earnest money, could not give any right to an applicant to claim

allotment of the plot on the basis of the principle of ''first come first served.

By filing an application in accordance with law, the applicant only gets a right of consideration of his application, but he does not get a vested right

for allotment of the plot. The conditions laid down in the first scheme or the provisions of Rule 5(3) do not give any right to the applicants to claim

the allotment of plots as a matter of right. There is nothing in the scheme or the Act or the Rules which requires the adoption of the principle of

''first come first served'' at the time of allotment, or debars the Government from adopting the method of drawing lots. The petitioners have not

been able to lay foundation for establishing their right which could legally be enforced. They have completely failed to make out a case for the

exercise of extraordinary jurisdiction under Article 226 of the Constitution.

Further, the petitioners wished that their names be retained, for consideration at the time of subsequent allotment, they must pay the price which

was increased later on taking into consideration the enhanced cost of acquisition of land and cost of development. The price fixed under the first

advertisement could not govern the subsequent allotment made by the State Government.

There was no infringement of the policy by the respondents. The respondents exercised their discretion under regulations 25 and 26 and allotted

the houses.

No allegations of malafides have been made in the writ petition against the respondents, nor any prayer has been made for quashing these

regulations. So far the regulations stand, the respondents have a right to act thereupon. Little change in policy here or there for the larger benefit or

for certain exigencies or for employees of the Board, which is in consonance with the scheme and regulations, cannot be permitted to frustrate the

scheme in its entirety. However, even this concession to the employees of the Board was withdrawn by the Board subsequently.

10. As we have already noticed allegations of malafides made in the writ petitions are vague, unsatisfactory and do not call for interference by this

Court in the writ jurisdiction. In fact, the learned Single Judge while disposing of the matter himself noticed in the judgment that the writ petitions

lack specific and proper averments. What has now been argued by the learned counsel for the appellants before us is based upon material record

and there is nothing to substantiate and justify the submissions made on behalf of the appellants. The learned Single Judge also declined to grant

relief to the petitioners on the grounds that allotment to the various applicants has not been challenged in the writ petition nor they were impleaded

as parties. The argument of the learned counsel that the Board was not furnishing these particulars was rejected by the learned Single Judge as no

averments have been made in the writ petition in spite of the fact that the writ petition remained pending for a considerable period before the court.

Inspite of all this the learned Single Judge passed certain favourable directions tilting the equities in favour of the applicants. We are in agreement

with the reasons given by the learned Single Judge and find no merit in the submissions made before us as well.

11. We find no merit in the argument which is being raised before us, that the Board is bound to offer and allot houses to the appellants at the initial

prices on the force of principles of promissory estoppel. It is a settled principle of law that doctrine of promissory estoppel is primarily a rule of

evidence. It is a doctrine of equity and must tilt in favour of equities when demanded. The condition precedent to application of such doctrine is

also equally well settled that the promise held out to the public at large must be definite, unambiguous and capable of being implemented without

involving the element of unfairness or undue advantage to either party. In the brochure (everything was tentative, uncertain and) at best

advertisement amounted to an offer without the essential ingredients for terming it as a definite offer or a promise. The brochure did not indicate

any costing even tentative price. There was reference to the welfare activities of the Board. A tentative period was indicated. As noticed the

payment was to be made at the time of allotment. On these facts we are afraid the doctrine of promissory estoppel is of no avail to the appellants

who themselves in fact have been sleeping over their rights and failed to take appropriate steps in accordance with law. If the request of the

appellants is accepted the Board would have to suffer tremendous losses after this long time of 15 years at the cost of other allottees, who have

already paid the amounts and are enjoying the property for all this period. It is the conduct of the appellants themselves which disentitle them from

claiming any relief in equity and on the principles of promissory estoppel. In the case of R.K. Kawatra, etc. Vs. D.S.I.D.C., etc., , a Division

Bench of Delhi High Court after considering all the judgments pronounced by the Hon''ble Supreme Court of India on the subject and after

discussing judgments of other High Courts in detail somewhat in similar circumstances held as under :-

Held, that the 1977 policy was purely tentative and no promises or assurances were held out therein. The petitioners were fully aware of this fact

and were waiting for the final policy to emerge. This fact is clear from their own letters to the DSIDC. When the final policy was announced in

1987 they subscribed to the same and have taken benefits under it by getting allotments of plots. Further they have had the benefit of their past

deposits in as much as the same have been allowed to be adjusted alongwith interest and the petitioners have been saved the risk of non-allotment

if they had been subjected to draw of lots under the 1987 scheme. It is only on the basis of their past applications that they have got firm

allotments. Case law discussed (paras 18, 31).

The facts and circumstances do not show that the doctrine of promissory estoppel can at all be attracted. The brochure issued in the year 1977

and the application forms on which the applications were made at that time made it abundantly clear that the whole thing was tentative and no legal

commitment was made and no specific promise was being held out. Apart from this is the other important fact that the petitioners were themselves

quite clear about this as is apparent from their letter to the DSIDC and the response of the DSIDC to the same. So on facts the doctrine of

promissory estoppel is not at all attracted: Therefore there is no question of its enforcement.

The doctrine of promissory estoppel is an equitable doctrine and the petitioners cannot ask the Court to apply the same to compel something

which is inequitable. One who seeks equity must do enquiry. In our egalitarian society larger public interest must get precedence over individual

interest or interest of comparatively smaller section of the society. Moreover the Govt. cannot be compelled to sell the land much below even its

cost of acquisition and development. (Para 33)"".

In this regard it will be appropriate to refer to some cases to indicate the well settled position of law as aforestated by us :

Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, ,

Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., ,

Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, ,

P.N. Verma and Others Vs. Union of India (UOI) and Others, ,

State of Uttar Pradesh and Others Vs. Vijay Bahadur Singh and Others, ,

Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ,

AND

Falmouth Boat Construction Co. Ltd. v. Howell (1950) 1 AER 438 : (1950) 2 KB 16.

12. We have already indicated that some adjustment within the four corners of law, rules and regulations and the scheme cannot result in frustration

of the scheme and the action of the Board cannot be said to be mala fide. The reservations have been duly provided for in the scheme and the

regulations including provisions for discretionary quota. There is no challenge to the scheme or regulations No. 25 and 26, which empower the

Board in this behalf. A Division Bench of this Court in the case of Paradise Printers, Chandigarh and Others Vs. The Union Territory, Chandigah

and Others, , while following the observations of the Supreme Court in Ramana Dayaram Shetty Vs. International Airport Authority of India and

Others, , held as under :-

After hearing the learned counsel for the parties, we are of the view that the action of the Chandigarh Administration in not giving full effect to the

earlier policy is not arbitrary as before the plots could be allotted to the petitioners there was reasonable basis for revising the policy as at that time

also there were more number of printing press owners who wanted plots"".

13. The appellants had deposited small amount for the purpose of registration with the Board. This deposit and registration does not give any

indefeasible right to the petitioners-appellants. Still the learned Single Judge directed the board to consider the request of the petitioners

sympathetically and make fresh allotments as early as possible preferably within a period of six months from the date of the orders. The petitioners

were also given liberty to withdraw their money and the Board was directed to pay 12% interest per annum on such deposits and if the petitioners

so desired to have the fresh allotment, the Board was directed to give benefit to the petitioners of their deposited amount with interest and adjust

towards the final cost. We find this direction also to be reasonable and well founded. The Board in any case has not made any grievance before us

on this score.

14. In result, the appeals are dismissed. However, there shall be no orders as to costs.