

(1996) 12 P&H CK 0014

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 1454 of 1992

The Chandigarh Vayu Bharti
Cooperative House Building
Society and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Dec. 18, 1996

Acts Referred:

- Constitution of India, 1950 - Article 14

Citation: (1997) 116 PLR 244 : (1997) 3 RCR(Civil) 345

Hon'ble Judges: V.S. Aggarwal, J; M.S. Liberhan, J

Bench: Division Bench

Advocate: S.P. Jain and Rajesh Gumber, for the Appellant; Ashok Aggarwal, Ajai Lamba and Subhash Goyal, for the Respondent

Final Decision: Dismissed

Judgement

M.S. Liberhan, J.

This judgment will dispose of civil writ Petition No. 1454, 2427, 3068, 3670, 3859, 4135, 6476, 6529, 6559, 6626, 6756, 7289, 12228, 13469, 1402, 14173 and 15746 of 1992. The petitioner in these writ petitions being various Co-operative House Building Societies impugned the policy decision of the respondents dated 28.5.1991. Material facts and questions of law raised in this petitions can be fairly and substantially regarded as common, the itinerary of events and the relevant facts, in order to answer the questions raised, run this :-

The petitioner-Co-operative Societies were got registered at the earliest in the year 1968 and latest by 1988 with the Union Territory Administration. The Chandigarh Administration with an object of promoting private housing and optimum utilization of land by constructing multi-storeied structures, in 1979 formulated a scheme for allotment of land to the Co-operative Housing Societies for construction and

management of residential accommodation for use of its members. The basic salient features of this scheme known as the Chandigarh Allotment of Sites to Co-operative Housing Societies Scheme, 1979 (hereinafter referred to as "1979 Scheme") were that the land would be allotted to the Co-operative Societies at a price fixed by the Estate Officer, Chandigarh for construction of houses for its members where eligibility was further defined. The allotment of land to the Societies and further to its members was subject to the provisions of Capital of Punjab (Development and Regulation) Act, 1952 and the rules made thereunder, Chandigarh Sale of Sites Rules 1970 (hereinafter referred to as "1970 Rules") and Chandigarh Lease Hold of Sites and Buildings Rules, 1973 (as amended from time to time). "1979 scheme" was amended in the year 1983 by which the only change brought about in the policy was that sites would be allotted as per norms and conditions to be fixed according to the income of its members, though certain ineligibility conditions were introduced. This "scheme" thereafter would be referred to as "1983 Scheme". Under 1979 scheme as amended by "1983 scheme", 21 societies from amongst the registered co-operative societies with the Union Territory, Chandigarh, were allotted plots with an object of providing independent plots to the members of the said societies. The respondents in terms of "1983 scheme" invited applications by 15.4.1991 for allotment of sites. Before any further progress was made on the applications, the respondent-Union Territory promoted a fresh scheme on 28.5.1991 (hereinafter referred to as "1991 scheme"). We may mention here that societies have been meeting the authorities of Chandigarh Administration who in turn have been telling them from time to time that the matter for allotment of plots is under consideration.

2. The salient features of "1991 scheme" are to the effect that "land" was defined as piece of land for multistoreyed dwelling units. Instead of directly allotting the sites to the societies, the scheme invokes the agency of the Chandigarh Housing Board for constructing a survey to access the demand by inviting applications along with 25% of the premium of land to be applied as earnest money along with proof that the Society has sufficient funds to pay the balance premium and has a capacity to undertake construction on the land to be allotted through the Chandigarh Housing Board. It was specifically made clear that survey would not be taken as a commitment for allotment of land in any way. The Union Territory was to allot plots of land to the Chandigarh Housing Board on chunk basis and the latter was further required to allot plots to the Co-operative Housing Societies for construction of dwelling units. The seniority for priority for allotment of land was required to be determined according to the registration number and date of the society concerned. Other usual conditions of the plan being sanctioned by the Union Territory, Chandigarh, the area to be allotted according to the strength of members, the premium to be determined by the Chief Executive Officer, Chandigarh Housing Board and eligibility etc. were part of the scheme. There are certain other conditions also which are not required to be noticed to answer the question raised.

3. At this stage, it may be noticed that Chandigarh Administration extended the Haryana Housing Board Act, 1971 vide notification dated 15.12.1986. There is no gain saying that the Housing Board Act was a Legislation brought about in order to diversify the State functions in the scientific development of management by the experts in various fields. The objects of the Act as categorically ordained was easing the housing problem by constructing mere houses by implementing various housing schemes sponsored by the Government and providing various financial assistance to schemes by way of loans etc. to the independent Co-operative Housing Societies etc. It was for tackling the stupendous problems of housing and speedy implementation of the Housing programme that a Housing Board was constituted.

4. Basically or primarily, the petitioners impugned "1991 scheme" being discriminatory, contrary to 1973 Rules and the Act as well as violative of the rights of the petitioners for allotment of independent plots at a price prevailing in 1981. The only prayer made by the petitioners is to the effect that they be allotted plots at the price on which 21 housing societies stated to be similarly situated, were allotted plots in 1988 and instead of flats, the petitioners be allotted plots in terms of the criteria fixed in the 1979 scheme, the intervention of the Chandigarh Housing Board between the Co-operative Housing Societies and the Chandigarh Administration was said to be arbitrary.

5. The respondents refuted the submissions made and took the stand that the societies registered upto 1981 were allotted plots in terms of the said scheme. Applications were invited to screen the need before 1991 scheme came into force. The petitioners had acquired no rights. The Chandigarh Administration is within its right to frame a policy or to amend it from time to time keeping in view the exigency and changes brought about in the schemes. The administration is at liberty to fix price of land for allotment and also provide for the eligibility conditions. The price as well as allotment of flats and the eligibility conditions provided by the scheme are realistic, justified and lawful apart from being in conformity with the building rules. It is for the State to administer its executive functions directly or indirectly or through agencies. The petitioners have no right to claim that respondents should discharge their administrative functions only in a particular manner.

6. The first and foremost question which requires determination is whether the respondents have a right to change its policy from time to time. In our considered view the framing of the policy and changing the same is the lawful right of the administration. No policy in administrative capacity can be perpetual. The policies cannot be freezed. The administration as well as the people or societies are the participants in a living State and they are required to meet the ever changing conditions like increase in population, requirement of the expansion and the economic conditions of the nation and the society. The policy cannot be termed as an end. There cannot be any doctrinal approach in the actual working in welfare State. Experience of life, emergence of new facts, the social life effecting the

individual properties are the innumeral considerations which are ordained for framing of policies. There cannot be any estoppel of any nature i.e. estoppel of State or Administration in framing the policies. Creativity of the administration cannot be permitted to be freezed thereby depriving the State to meet the social and economic realities from time to time. Thus in our considered view, it is inevitable that the policies have to be reviewed from time to time.

7. The basic consideration to see the validity of a policy is whether it is fair and does not defeat the cause of justice and fair play. Does it precisely meet the requirement at the time it has come into force? Does it advance the public welfare which is the ultimate object to all administrative actions? Ordinarily Courts of justice are to do justice and not to quash policies on technicalities. One cannot divorce oneself from the ground realities that the land is becoming more scarce and the housing problem is getting acute day by day. The authorities are required to meet the ever increasing demand of dwelling units keeping a scope for future requirement. Otherwise also it is within the purview of the administration to decide objectively whether to provide independent plots or to provide flats in multistorey buildings. One cannot have any legal or constitutional right to claim independent plots for construction. In our considered view, framing of the policy for allotment of plots irrespective of its effect being prospective or retrospective, cannot be termed to be arbitrary or suffering from violation of any principles of the Constitution or any other rule of law. The scheme on its reading goes to show that it is in the public welfare and in the national interest keeping in view the public good of whose citizens are a part. To hold the contention that once a scheme has been framed for the allotment of plots, later to continue the same indefinitely and allot the plots even to the societies which were not allotted, would be fraught with dangerous consequences. We find support in our above view from the observations of Hon"ble the Supreme Court in the judgment reported as [Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, .](#)

8. The question raised by the learned counsel for the petitioners is that since the plots were allotted to 21 societies on the basis of pick and choose, consequently declining of allotment of independent plots to the petitioner societies suffers from the vice of discrimination, which is violative of Article 14 of the Constitution of India.

9. Learned counsel for the petitioners have further vehemently argued that the societies which were similarly situated and were registered as the 21 societies whom plots have been allotted, have been denied the equal treatment. Once the plots have been allotted under 1979 scheme to the societies registered with the respondents, the respondents cannot deny the same to the petitioners. It was argued that the Government acts should be in conformity with the standards and norms of being rational. Classification cannot be arbitrary or artificial. It has to be reasonable within the object.

10. The petitioners have a vested right for allotment of plots to the members of the registered societies. The Hon"ble Supreme Court while dealing with the pari materia situation as the one in hand in Daulat Ram Jain's case (supra) noticed the principles to the effect :-

"If some person derived benefits by illegality and has escaped from the clutches of law, similar person cannot plead, nor the Court can countenance that benefit had from infraction of law must be allowed to be retained. Can one illegality be compounded by permitting similar illegal or illegitimate or ultra vires acts ? Answer is obviously no."

It was further observed by Hon"ble the Supreme Court that :-

"A wrong assumption under a wrong action taken by the authorities will not clothe others to get some benefit nor Article 14 can be pressed into service on the ground of invidious discrimination, xx xx xx xx Wrong decision in favour of any particular party does not entitle the other party to claim benefit on the basis of a wrong decision."

Hon"ble the Supreme Court in Chandigarh Administration and another Vs. Jagjit Singh and another, after taking into consideration that some persons were allotted plots and others were denied the same, observed:-

"That basis of the principle, if it can be called one, on which the writ petition had been allowed to be taken, was unsustainable in law and indefensible in principle. The mere fact that the respondent-authority had passed a particular order in the case of another person similarly situated, can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be."

In continuity of the above observations, it was further held:-

"It is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality to cause another unwarranted order."

It was further observed:-

"Judicial process cannot be abused to perpetuate illegalities."

11. Undisputedly, as put by the learned counsel for the petitioners that the plots were allotted under 1975 scheme to influential societies by means of pick and choose and the allotment cannot be sustained on the basis of reasonableness or based on any principles, though we may hasten to add that the respondents took the stand that the societies registered upto 1981 were given plots, have some force yet, in view of the law laid down by Hon"ble the Supreme Court, as referred to above, petitioners cannot claim a mandamus to the respondents to allot plots instead of flats and give them equal treatment nor the policy can be said to suffer

from the violation of Article 14 of the Constitution of India.

12. Even otherwise, the allotment of plots by the respondents to 21 societies having not been challenged, the beneficiaries being not a party to the petition, apart from the fact that the complaint against the said allotment having been made almost after 6 years of the allotment, though in the meanwhile the allottees having been made construction and changed their position to their disadvantage without there being a privity to any fraud nor any specific act of male fide being attributed to any particular person or authority, the petitioners in view of the changed circumstances and ground realities of the land becoming scarce and the policy having changed right from allotment of plots to flats, no relief can be granted to the petitioners in exercise of writ jurisdiction. The interference would introduce chaos, and confusion into the affairs of the societies settled a decade back.

13. In *Delhi Development Authority v. Pushpendra Kumar Jain* 1994 (6) JT 292, the Hon'ble Supreme Court observed that an allottee acquires a right only on communication of letter of allotment. Prior to the allotment the Society is entitled for consideration only. The petitioners are not being denied consideration. It is for the State, on consideration, to allot either plots or dwelling units keeping in view the availability of land at the time the allotment is made. Mere assertion such as that vast tracts of land are lying vacant for allotment of land to the societies only and that they require about 400 acres of land is of no consequence. Either in law or in equity, the petitioners cannot be permitted to enforce their school of thought with respect to the policy for the State or its executive who settled the same by taking into consideration innumerable factors, human exigencies, present and future. There cannot be unending policies nor the petitioners can take advantage of fortuitous circumstances of some land lying vacant particularly when the boundaries of the Union Territory, Chandigarh, are fixed and the land available is limited and all future needs of land cannot be foreseen. As it is well said that freak possibilities and Speculative abrasion not realistic enough, loose laxical amplitude is permissible as an administrative process. The Court should not be a mechanic in the power of cements, nor doctrinal approach to actual working, experience of life, emergence of new facts, community, social life effecting individual properties, can be lost sight of. Of course do justice and not rook this end of technicalities, advancing public welfare or well being. Otherwise it will paralyse all prenial administrative actions. Justice has to be seen in totality of the circumstances, having regard to the social and economic ground realities as understood by a common man.

14. Learned counsel for the petitioners has vehemently contended that in view of the fact that the respondents have invited applications, the petitioners having got registered their housing societies and the allotment scheme having been made in 1979(as amended) sections 1981 scheme having come into force after the applications were invited as well as the societies were registered, resulting in the petitioners acting on the assurance of the Officers of the respondents. Thus the

respondents in these peculiar facts and circumstances are estopped from denying to allot individual plots to the members of the petitioners' societies. Thus, the question arises for determination is, whether the respondents are estopped either from changing the policy or by their acts are bound to allot the plots. So far the question of right of changing the policy is concerned, it has been answered in the earlier part of the judgment.

15. The question of the principle of estoppel equitable or otherwise as has gained currency, if we may venture to say to the effect that if a person relying on the assurance of the promiser alter his position to his detriment, the promiser cannot be permitted to refuse to perform his promise or the promise can be specifically enforced. The broad conspectus of the facts as emerged in the present case are that the petitioners' housing societies got registered even prior to the framing of the policy of 1979. Even on registration of the societies the petitioners never applied for allotment of plots as the same has not even been asserted in the petition. Otherwise too, if we may hasten to say that eschewing the fact whether the petitioners applied for allotment of plots or not, mere registration of the housing societies or even applying for allotment of plots does not confer any right on the petitioners for allotment of plots, and that too of a particular size, at a particular place and at a particular price. The manner, to discharge the responsibilities to provide public houses, in view of the complex situation, is the sole purview of the executive fiat. The basic principle of the rule of law envisaged by the Constitution is fairness to the citizens. Petitioners cannot have a sheet anchor for their assumed rights on the facade of technicalities of the so called principle of estoppel particularly when in our opinion nothing substantial has been pointed out that in what manner, much less substantially the petitioners have altered their position on the assurance of the respondents. It we may say that even assurance are attributed to some of the administrative Officers who cannot on any principle debar the respondent State or estopp the respondent-State from discharging its statutory or legislative functions by their act or conduct though as a matter of fact after going through the pleadings of the parties and the record, we are of the opinion that the respondents have never assured that all the co-operative housing societies which have come into being, would be allotted plots though the Officers always had been saying that the question of providing the houses or the dwelling units to various societies is under consideration and would be favourably considered. There were never any expectations created or encouraged which can be termed equal to verbal agreement which may add as a factor to act as estoppel and enforce the promiser to perform his attributed promises.

16. The petitioners have relied on the law laid down in Navjyoti Coo-Group Housing Society etc. Vs. Union of India and Others, to impugn the policy of 1991. There is no dispute with respect to the law laid down, but the observations made were in the context and facts of that case, wherein it was found that fixation of seniority for allotment of houses cannot be left to the whim and fancy of any individual Officer or

official. It was stated that prior to the amendment of the scheme, the date of registration was the date for fixing the seniority and not the date of verification. Consequently, the Hon'ble Supreme Court found that the practice should have been followed. While so findings, it was observed that the criteria should have been made public. In the case in hand, there is no such question which arises for consideration. The policy has been made public. There is no dispute with respect to fixing of seniority in the case in hand though an averment has been made that the allotment has been made in terms of the policy of 1979, on the basis of which the petitioners claim their right for allotment of plots. The policy itself is devoid or any mode for fixing the seniority or the basis on which the allotment was required to be made to the registered societies. Though ordinarily, as later adopted, the viability of the societies, their means to undertake the construction and make payments, the number of the members of particular societies etc, are the numerous considerations, while allotting the sites. Additionally, the petitioners by their own act, lost their right by waiting for such a long time to approach the Court. It would be totally unfair at this stage to unsettle the things settled a decade back particularly in the absence of the parties who have taken advantage though may be that suspicious circumstances figuratively attributed by the petitioners to the high status of some of the members of the societies without naming them.

17. So far the petitioners" relying on the principle of just and legitimate expectation of following the consistent practice in the matter of allotment is concerned, as observed earlier, it cannot be said that the policy can be fixed or be freezed for all times to come. Administration cannot be denied of its legitimate right or expectations to change its policy legitimately and fairly in the interest of public for over riding reasons subject to judicial review. As observed in the earlier part of the judgment, change of policy from allotment of independent plots of land to the dwelling units in flats system cannot be said to be unfair in the changed scenario of the economic conditions, availability of land and requirement and need of the society as it stands today. Though in the past some societies might have been enjoying some benefits which the petitioners might have expected to continue yet at the annals of fairness, same benefits cannot be continued for time immemorial or indefinitely.

18. The petitioners have relied on [Mahabir Auto Stores and others Vs. Indian Oil Corporation and others](#), wherein the Hon'ble Supreme Court after taking into consideration the totality of facts and circumstances, came to the conclusion that the act of the Corporation was not fair and the equality treatment demanded by the Constitution has been denied and the fairness was not perceptible much less transparent. Thus, in the peculiar facts and circumstances, various observations were made which cannot be attracted to the facts and circumstances of the case in hand as stated above in the earlier part of the judgment.

19. In Chandigarh Administration and Anr v. Jagjit Singh and Anr. (19952) 110 P.L.R. 176, it has been categorically observed that a person is not entitled to a particular order solely in view of the fact that authorities have passed a particular order in another case of another person similarly situated, on the ground of discrimination in exercise of discretion, what is required to be seen is the nature of the order, its legality, and validity etc.

20. Action of the executive cannot be treated or elevated to the level of precedent as understood in the judicial world. One error committed may be legally or illegally, cannot bind the State to perpetuate the error or illegality or even an unwarranted order passed though to the authorities it may be directed to correct the error, if possible. As we have observed in the earlier part of the judgment that it would not be fair to unsettle the settled things after a decade and half now, the petitioners cannot be permitted to take advantage of any error, if any committed, in the allotment of plots to the societies earlier to 1988. Ordinarily no mandamus can be issued in the facts and circumstances of the case in hand.

21. We find no force in the contention raised by the learned counsel for the petitioners that the respondents cannot invoke the agency of the Chandigarh Housing Board to attain the object of solving the housing problem. It is for the Legislature or the executive to determine how best the needs of the societies can be met and in what manner. Ordinarily, the Courts cannot substitute its view, in preference to the expert view of the administration. Howsoever, *prima-facie* the view may look to be attractive, the petitioners cannot seek an injunction to restrain the administration or the respondents from complying with the ordain of a statute passed by the Legislature particularly when the vires of the Act are not in dispute.

22. Allowing claim of the petitioners with respect to fixation of price for the allotment of land at the price prevailing in 1981 would, in our considered view, be nothing else but an undue enrichment of the petitioners at the cost of State exchequer or at the cost of other tax payers. The petitioners cannot claim nor on any principle of fairness it has been shown that they are entitled to the allotment of plots as a matter of right at the cost prevailing in 1981 when infact the plots were allotted in 1993. It has been held by Hon'ble the Supreme Court that the State is at liberty to offer plots at a price fixed by it. It is for the petitioners to have it or not to have it. Courts cannot enter into an arena of arithmetical calculations in the absence various statics, which were kept in view by the authorities while assessing the market value of the plots offered to be allotted to the petitioners.

23. In view of the observations made above, we find no merit in these writ petitions so as to interfere in exercise of writ jurisdiction. The same are hereby dismissed with no order as to cost.

24. Before parting, we may observe that in view of the interim order passed by this Court wherein the petitioners were allowed to deposit 10% of the sale consideration

while applying for the allotment of plots, the Societies who had deposited 10% of the sale consideration and found eligible for allotment or have been allotted the sites, would be liable to pay the balance 15% of the amount so as to make it 25% as per terms and conditions of the allotment as agreed upon by them, with a further interest at the rate of 18% per annum.