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**(1992) 12 P&H CK 0053**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 12272 of 1990

Bal Raj Kapuria and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

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**Date of Decision :** 10-12-1992

**Acts Referred:**

Constitution of India, 1950 — Article 226

Punjab Urban Estates (Sales of Sites) Rules, 1965 — Rule 3, 5, 8(1), 8(3)

**Citation :** AIR 1993 P&H 114 : (1993) 105 PLR 624

**Hon'ble Judges :** V.K. Bali, J

**Bench :** Single Bench

**Advocate :** P.S. Patwalia and Anuj Raura, for the Appellant; A.S. Jatana, Asstt. A.G., Ashok Aggarwal and Subhash Goyal, for the Respondent

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## Judgement

1. Petitioners, Bal Raj Kapuria and others, seek issuance of writ in the nature of mandamus directing the respondents to allot plots to each of them in the urban estate of S.A.S. Nagar, Mohali in Phase IX and X @ Rs. 58/- per square yard and other terms and conditions as applicable in 1980. In pursuance of advertisement published in the newspaper by the respondents in 1969 for allotment of residential sites in the Urban Estates of S.A.S. Nagar, Mohali the petitioners being eligible for the allotment of the residential sites applied for the same. Petitioners Nos. 1, 2 and 6 applied for 10-Marla plot each, petitioner No. 3 for 16-Marla plot and petitioner Nos. 4 and 5 for 8-Marla plot each. All the petitioners sent their applications accompanied by demand draft towards 10% of the cost of plot as per advertisement. The applications were received and registered accordingly by the respondents. As per terms and conditions of the allotment, 15% of the price was to be deposited within 30 days from the date of issuance of allotment letters whereas the balance was payable in instalments with interest @ 7%. Rate per square yard of the plots up to 250 sq. yards was Rs. 20/- and from 251 to 500 sq. yards was Rs. 19/-. The petitioners deposited 10 per cent of the price of the plots applied for. The amount so deposited was duly received by the respondents and the petitioners had been allotted registration numbers as well. Petitioner No.

1 received a letter dated 1-12-1974 informing that he should deposit Rs. 3,306/- in addition to the amount already deposited so as to make the deposit of 25 per cent of the total price of the plot. It was also intimated that price of the plot has been fixed at Rs. 58/- per square yard. Similarly, other petitioners as well received similar letters and they had deposited various amounts demanded from them. The case of the petitioners is that on deposit of 25 per cent of the sale consideration as against the required 10 percent of the price of the plot @ Rs. 58/- per square yard, they were entitled to the immediate allotment of the residential plot as applied for either in Phase VI or VII, S.A.S. Nagar, Mohali on the basis of their seniority in the matter of registration. However, some of the persons filed a petition in this Court challenging the price of the plots at the rate of Rs. 58/- per square yard, but the same was dismissed. After dismissal of the writ petition aforesaid, the petitioners were allotted plots in terms of their entitlement and preference. On the files even though allotment orders were passed, the petitioners did not receive actually the allotment letters. The same were received by them very late, but the rate of plots was mentioned to be Rs. 85/- per square yard. With a view to demonstrate that the plots had actually been allotted although formal allotment letters had not been issued, it has been pleaded that the Government changed its policy of allotment/auction to the draw of lots and first such draw of lots was held on 15-3-1985. Under the new policy, all the then eligible applicants registered with the department were considered in the draw of lots except the petitioners. The petitioners were not considered" in the aforesaid draw of lot for reason that the plots had since already been allotted to them. On enquiry, however, the petitioners were informed that cases of the petitioners were under consideration of the Government and they will be issued letter of appointment in respect of the plots already allotted to them in the year 1980. This was told to them when they came to know that names were not included in the draw of lots, which was to be held in 1985. Thereafter, in the next draw of lots when names of those applicants, who had already been allotted plots, were included, the same was protested by the petitioners on the ground that the plots stood already allotted to them in the year 1980 on account of their eligibility and that they could not be made to suffer because of some mistake on the part of the department in the matter of issuance of formal allotment letters. The representations on that account have been annexed to the present writ petition as Annexures P4 and P5. Representations of the petitioner were considered and it was ordered that the allotment letters should be issued to them. However, thereafter respondent No. 3 issued a letter requiring respondent No. 1 to file an affidavit on a non-judicial stamp paper and to pay another sum of Rs. 11,008/- on account of the balance 25 per cent of the price. The other petitioners were also issued similar letters. With a view to get plots, the aforesaid demand was met, which was, however, under protest as is duly reflected from Annexures P8 and P9. On payment of the amount, as stated above, the petitioners were issued the allotment letters. The provisional price mentioned in the allotment letters was, however, taken serious note of by the petitioners and they protested the matter vide representation dated 6-11-1989 (Annexure P16).

When the protest aforesaid brought no tangible results, the petitioners filed the present writ petition.

2. Inasmuch as plots have since been allotted to the petitioners as is clear from the narration of facts given above, their only remanent prayer is that they should be charged the price that was prevailing in the year 1980 when they had become eligible for allotment of plots and in fact plots had been allotted to them even though allotment letters were ultimately issued in the year 1989. It is averred that delay in the allotment of plots was entirely attributable to the conduct of the respondents and that could not visit the petitioners with such consequences as to make the allotment of plots on such terms which may be impracticable if not impossible.

3. The matter has been contested and written statement has been filed on behalf of respondents Nos. 1 to 3 by Shri Mohinder Singh, P.C.S., Estate Officer, Urban Estate, Punjab. Before the matter is proceeded any further, it requires to be mentioned that when arguments had been heard and the judgment was reserved and then date was fixed for rehearing the matter, an application was filed by Punjab Housing and Development Board, Chandigarh so as to implead it as party-respondent during the pendency of writ petition.

4. Mr. Ashok Aggarwal, appearing on behalf of applicant only wishes the applicant to be impleaded as parly and contest the matter on the basis of written statement already filed on behalf of respondents Nos. 1 to 3. Mr. Patwalia, the learned counsel appearing for the petitioners does not oppose the application on account of fair stand taken by Mr, Ashok Aggarwal that the matter would be contested on the basis of written statement already filed in the case. The application for impleading Punjab Housing and Development Board. Sector 17, Chandigarh as party-respondent is, thus, allowed.

5. By way of preliminary objections, it has been pleaded in the written statement that petitioner No. 4 Shri Inderpal Singh had not applied himself for allotment of plot and the allotment of plot No. 679 had been made to him against an application made for allotment of plot filed by his father Shri Manohar Singh in the year 1969. Shri Manohar Singh had got his application transferred in the name of his son i.e. petitioner No. 4 in the year 1980 and that being so, as per Rules, petitioner No. 4 was not entitled for any allotment and the allotment of plot in his favour is liable to be cancelled, on account of the fact that he had concealed material facts. It is further pleaded that merely by making an application for the allotment of a plot and depositing earnest money, no one gets a vested right for the allotment of a plot and at best he gets a right for the consideration of his/her case for the allotment of plot. Further, the Government is well within its right and competent to revise the allotment policy from time to time as also the rates on which the plots were to be allotted. That being the unquestionable right of the Government, it did revise its allotment policy and enhanced the price of the plots keeping in view all the relevant factors. The Government had changed the rates in the year 1980, 1981 and 1987 and had

fixed the same in accordance with the prevalent rates in the years aforesaid and in the light of the change so brought about in the policy as well as in the prices the petitioners were asked to exercise their option and get the plots if they so desired. They deposited the demanded amount in terms of the increase in the allotment price and, therefore, they had no right to seek the allotment of plots on the rates prevailing in the year 1980. It has further been pleaded that one of the conditions of allotment letter was that the petitioners were at liberty to accept or refuse the allotment within a period of 30 days from the date of allotment and if they were not prepared to have the plots on the prevailing prices, they could refuse the allotment well in time. On merits, in so far as the claim of petitioners with regard to allotment of plots in 1976 or 1980 is concerned, it is pleaded in the written statement that plots as mentioned in paragraph 8 of the petition were not allotted to them and as a matter of fact in the process of examination of cases, there was some proposal to make them allotments but the process of allotment had not attained finality and as such no allotments were made to them. When the allotment did not attain finality, there was no question of telling the petitioners that plots have been allotted to them and the allotment letters were being issued and at the same time there was no question of issuing them any allotment letter. There was only a proposal to allot plots to the petitioners but the proposal had not attained finality and, therefore, the allotment letters were not issued. In the year 1981, the allotment policy and the allotment rates were revised and the petitioners were also asked to tender their options and deposit the increase amount in terms of the new policy/new price. The petitioners opted for the new policy and also deposited the increased amount demanded from them. That being the position, the matter of allotment of plots remained under consideration of the Government at higher level for quite sometime and ultimately a final decision was taken on 25-11-1986 that limited draw of lots of the petitioners and some other applicants of their category be held. The claim of the petitioners for straightway allotment of plots to them was not agreed to because the petitioners had no legal right for the allotment of plots and their cases were to be considered for allotment in terms of the latest prevailing allotment policy. Later, with a view to bring the petitioners at par with those applicants whose cases were considered for allotment in the draw of lots held in March, 1985 as their cases were not considered for allotment in the said draw and a limited draw only of petitioners and some other applicants of their category was held in February, 1988 and immediately after the draw, allotments were made to the successful candidates. Those who were unsuccessful in the aforesaid draw of lots made a fresh representation to the Government. It was considered on 5-10-1988 and the Government conveyed its decision that the petitioners and some other applicants of their category be allotted the plots. While conveying the decision, the Government also made it clear that the allotment would be made on the calculated provisional rates i.e. on the latest prevailing provisional price. Complying with the said orders of the Government, the office of the respondents processed the cases of the petitioners and some other applicants and after getting the requisite formalities completed from them,

allotments were made to the eligible applicants including petitioners on the latest prevailing provisional price. It is further pleaded that the petitioners having accepted the allotment made to them and having paid the price as was demanded from them, cannot agitate the matter by way of present writ petition.

6. Mr. Patwalia, the learned counsel appearing for the petitioners contends that a perusal of paragraph 8 of the writ petition and the corresponding para of the written statement, Annexures P3, P11 and P18 would make it abundantly clear that the petitioners were actually allotted the plots in the year 1980 even though such allotment was not conveyed and remained confined to the files of the respondents. He further contends that in pursuance to the application filed by the petitioners in the year 1969, decision was taken in the year 1980 to make the plots available to the petitioners. Since such plots were not only earmarked but even numbers were allotted so there will be absolutely no justification for the respondents first to delay the issuance of actual allotment letters and delivery of possession for so many years and then further to ask the petitioners to pay the price prevalent in the year 1988 or 1989 when the letters of allotment were actually issued. He further contends that the stand of the respondents that no such allotment was made and it was only a case of considering the matter for allotment of plots and changing the scheme before any orders could be passed on that behalf is not only factually incorrect but is also against the stand of the respondents taken in various other similar matters which came up for decision before this Court.

7. In paragraphs of the petition, a positive assertion has been made that the petitioners who had applied for the allotment of plots and paid 25% of the price were entitled to the allotment of plots on the basis of their registration number in terms of seniority and that the petitioners were made allotments of the plots in terms of their entitlement and preference. Further, petitioner No. 1 was allotted plot No. 1126 in Phase IX whereas petitioner No. 2 was allotted plot No. 1164 in Phase X. The plot numbers and Phase numbers of each of the petitioners have been described in paragraph 8 of the petition. Even though there is a denial in the corresponding para of the written statement with regard to allotment of plots but the same appears to be evasive; It has nowhere been specifically denied that plot numbers that have been detailed in paragraph 8 of the writ petition were not allotted to the petitioners. That apart, Annexure P3 is a letter issued by the Estate Officer, Urban Estates, Punjab, Chandigarh and is addressed to one of the petitioners namely Shri Balraj Kapuria. The aforesaid letter issued on 15-1-1988 and the very subject of the letter aforesaid is "allotment of plots at S. A.S. Nagar - draw of lots of earmarked plots." In the body of the letter it has also been mentioned that it had been decided by the Government to hold draw of lots for those applicants for whom plots had been earmarked and that the draw will be held on 10-2-1988 at 11-00 a.m. in the office of the Estate Officer. Annexure P11 is allotment letter itself issued by the Estate Officer, Urban Estates, Punjab, Chandigarh. Again the subject is "allotment of residential plot No. 1064, Phase X, Urban Estate, S. A.S. Nagar and it shall be immediately seen that it is the

same plot, reference of which has been made by the petitioners in paragraph 8 of the petition. It is contended by the learned counsel appearing for the petitioners and not disputed by the learned counsel for the respondents that the same very plots, reference of which has been made in paragraph 8 of the writ petition were ultimately allotted to the petitioners. In the allotment letter aforesaid also, it is clearly mentioned that the allotment was made with reference to the application given by Ram Avtar Bhola on that behalf on 9-8-1969 for the allotment of a residential plot in Urban Estate. Further, in copy of memo dated 5-10-1988 Annexure P18 from Punjab Government Housing Development and Urban Development Department to the Director, Housing Development and Urban Development Department, Chandigarh, it has been mentioned that with regard to earmarking of plots which are to be allotted, it has been decided that 101 plots of the earmarking category should also be allotted. The matter does not end there as it shall be seen that one Ajit Singh Sually who is similarly situate as the petitioners has filed writ petition in this Court bearing Civil Writ Petn. No. 10544 of 1988 and it was accepted by a Division Bench of this Court on 24-7-1989. The facts of the aforesaid case are identical to the one which are available in the present case. The only difference is that in the aforesaid case, the plot had not been allotted to the petitioner by then, whereas in the present case the writ petition has been filed after allotment of plots. The stand of the respondents in the aforesaid case, it appears was that Mr. Sually could not be given a plot as he had not furnished the requisite affidavit and that being so, it was held that Mr. Sually could not be called upon to pay enhanced price at the rate of Rs. 85/- per square yard and it was held that he was entitled to the allotment of plot at the rate of Rs. 58/- per square yard. It was nowhere the stand of the respondents that the matter was only under consideration and no plot had been allotted to the petitioner even though in the aforesaid case as well, no allotment letter had been issued. The writ petition aforesaid was allowed and the respondents were directed to charge from Mr. Sually the price of the plot worked at Rs. 58/- per square yard. In other similar Writ Petition bearing No. 7964 of 1991 which was filed by Bachan Singh Thind and another which, too, came up for disposal by a Division Bench of this Court where I was also a party, the facts were obviously the same as are available in (he present case. The stand of the respondents was that the plots had been earmarked to the petitioners. The aforesaid writ petition, too, was allowed on February 17, 1992 with costs. From the aforesaid facts and circumstances it is, thus, proved that the petitioners were allotted plots in the year 1980 even though formal letters of allotment were not issued to them, that being the position, the matter is squarely covered in favour of the petitioners by virtue of two Division Bench judgments of this Court, reference of which has been given above.

8. Mr. Ashok Aggarwal. the learned senior Advocate appearing for the respondents with his usual vehemence and articulate advocacy has, however, endeavoured that I should take a different stand in this case and if that be not permissible, I should refer it to the larger Bench as according to him; "decision-

arrived at in the aforesaid two judgments does not lay down correct law. In his aforesaid effort, the learned counsel basically relies upon two judgments one rendered by a Full Bench of this Court and the other by the Apex Court. In " Surjit Singh and Others Vs. State of Punjab and Others, ), a Full Bench of this Court in the context of Rr. 3 and 5 of the Punjab Urban Estates (Sales of Sites) Rules, 1965 and the scheme for sale of plots in an Urban Estate inviting applications held, that the price on which the plots were to be allotted under the first scheme ceased to be the price in respect of the plots which were to be allotted under the subsequent schemes. As the applicants 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. It was further held that the price fixed under the first scheme could not govern the subsequent allotments made by the State Government. Mr. Ashok Aggarwal contends that the Punjab Urban Estates (Development and Regulation) Act, 1964 and Capital of Punjab (Development and Regulation) Act, 1952 dealing with disposal of land as applicable to the present case are pan materia and, therefore, the judgment of the Full Bench which was not even noticed in the earlier two judgments would render the cause of the petitioners as without any merit. A perusal of the judgment aforesaid would reveal that the petitioners of the said case who were interested to purchase the plots in response to the scheme which was widely advertised, applied within the time specified, for purchase by allotment of plots in the Urban Estate Mohali. After the submission of the applications, the petitioners waited for allotment of the plots but did not hear anything from the Government. Thereafter the petitioners learnt that arbitrary allotments had been made by drawing lots in favour of certain favourites of the respondents in contravention of the provisions of the Scheme, Act and the Rules and in this manner, the principle of "first come first served" had been completely ignored. In the written statement that was filed in aforesaid case, it was pleaded that offers were invited for the sale of 636 plots and the tentative price fixed in the advertisement related to only 636 plots offered for sale by allotment. It was also averred that the principle of "first come first served" could not be adhered to as the number of applications received was more than the number of available plots and in that situation, the method of drawing lots was adopted by the allotment committee in order to do justice to all the applicants and to avoid any misgiving in the public or chance of favouritism to anyone. In the applications that were submitted by the petitioners, one of the stipulations accepted by them was that in the event of non-allotment of plots in the first phase, their earnest money may be retained by placing the applicants names on the waiting list for allotment in the next phase and that the price of plots could be enhanced in respect of the allotments which were subsequently made due to the increased cost of acquisition of land and cost of development. It was established on facts that the petitioners of the aforesaid case were not lucky enough in the first draw of lots and that being the position, there had to be another draw of lots by which time the price of the land had been increased. The judgment pressed into service by

Mr. Ashok Aggarwal would have been fully applicable if in the present case allotments were not made to the petitioners and it was only a case of carrying forward the names of persons who were unsuccessful and on whom the lady luck had not smiled and in that situation the present petition had to be dismissed but the narration of facts given above manifest that the petitioners were actually allotted a particular number of plot each against which ultimately letter of allotment was issued in the year 1988 or 1989, as the case may be.

9. The next judgment relied upon by the learned counsel for the respondents is "Paradise Printers and Others Vs. Union Territory of Chandigarh and Others, . Particular reliance of Mr. Aggarwal is on paragraphs 8 and 9 which run thus:--

"8. The scheme provided under these Rules for allotment of sites is like this: Sub-rule (1) of R. 8 provides for making an application to the Estate Officer for allotment of site. The application shall be accompanied with 10 per cent of the premium as earnest money. That amount must be tendered to the Estate Officer. The allotment of a site shall be intimated to the applicant by registered letter giving the particulars of number, sector, approximate area, premium and the rent of the site or building allotted to the the applicant. It would be open to the applicant to accept the allotment or not. If he accepts the allotment he must deposit 15 per cent of the premium and the remaining 75 per cent of the premium shall be paid as provided under R. 12.

9. Relying on these provisions, it was urged that the appellants had a right to obtain transfer of sites in respect of which the lots were first drawn in their favour. We are unable to accept this contention. Admittedly, at that stage, there was no intimation of allotment of sites to the appellants. There was no official communication to them as required under sub-rule (3) of R. 8. Such intimation alone confers right on the appellants to obtain possession of the sites. The intimation must be sent by a registered letter giving particulars of the sites allotted and the premium payable in respect thereof. In the absence of any such communication, the appellants cannot be held to have the right to get transfer of sites in their favour."

10. The Supreme Court was considering the matter under the same very Rules which are applicable to the facts of the present case and that being so, the learned counsel contends that the petitioners had no right to obtain transfer of sites in respect of which the lots were first drawn in their favour as no intimation of allotment of sites was ever given to the petitioners. The paragraphs reproduced above do support the contention of the learned counsel. However, when the facts of the case are examined, it is seen that in so far as question of fixation of price is concerned, the same turned against the Union Territory of Chandigarh. The facts of the case reveal that the Chandigarh Administration wanted the printing presses which were scattered all over the town to be located in industrial area and for that purpose 43 sites in Industrial Area Phase-II were earmarked. The sites were comparatively of bigger dimensions. In 1975, the authorities invited applications for allotment of those sites. Several persons

submitted applications. The petitioners of the aforesaid case applied with deposit of earnest money of Rs. 1,000/- each which was 10% of the premium payable for the site. All the applications were processed for final allotment but in the meantime the petitioners were called upon to deposit 25 per cent of the premium calculated at the rate of Rs. 15/- per square yard. The petitioners complied with the demand but since there were more applicants than the sites available, the authorities decided to draw the lots. In October, 1977, the lots were drawn and the petitioners were successful. However, the authorities did not issue the letters of allotment and had a second look at the scheme of allotment of sites for printing industries. There was a change in the policy and the authorities were then of the view that setting up the printing industry, larger sites such as those earmarked, earlier, would not be necessary and smaller sites would meet the requirements. Consequently, the sites proposed in the industrial area Phase II were given up and a layout of smaller sites in the industrial area Phase I was formed. About 131 sites were reserved for allotment to printing press owners. The petitioners were intimated by letters that the said sites would be allotted at the rate of Rs. 35/- per square yard, and the allotment would be made by draw of lots. The petitioners did not participate in the proceedings and rather moved the High Court with a petition under Art. 226 of the Constitution of India challenging the revised policy for allotment of smaller sites. The prayer of the petitioners with regard to change in policy, in so far as it pertained to allotment of smaller plots was repelled whereas the prayer for not enhancing the price as enshrined in the changed policy was accepted and it was held that the petitioners were entitled to allotment of sites at the initial rate which was Rs. 150/- per square yard; Against the aforesaid decision of the High Court, appeals were preferred before the Supreme Court both by the petitioners and the State and vide judgment under reference both the appeals were dismissed. From the reading of the judgment aforesaid it is, thus; clear that in so far as the question of enhancing the price is concerned, the same turned against the Union Territory of Chandigarh, In the present case, the clamour of the petitioners is not to allot a particular area in a particular sector and in fact on that count, the respondents have already conceded and actually issued allotment letters to them in pursuance of their applications which were filed way back in the year 1969. The only prayer, in the present case, is that the petitioners should be charged market price of the plots as was prevalent when the petitioners were allotted the plots and on that count the judgment relied upon by the learned counsel for the respondents turns against them. There cannot be any justification on the part of the respondents whatsoever to withhold actual allotment having accepted the money demanded from the citizens when even order of allotment had been passed. The delay in issuance of formal letter of allotment and delivery of possession is entirely attributable to the slackness of the respondents and that being so, for their own unjustified and arbitrary action, the petitioners cannot be made to suffer.

11. The last submission of learned counsel for the respondents that since the

petitioners had, in pursuance of letters of allotment issued to them, paid the demanded price, the present writ petition is not competent, suffice it to say that such an argument is not permissible in the peculiar facts and circumstances of this case. The petitioners who are all stated to be servicemen when they applied for allotment of plots have since even retired and if the pressing need to have homestead during the later part of their life has compelled them to get plots as soon as possible and to pay the price so demanded it cannot have the result of making the present petition incompetent simply on that count. Obviously, if they were to first challenge the price and on successful result of the petition, they were to get allotment of plots which had remained an illusion for them for over a period of two decades, they would not have been able to have a place to live which is a necessity of life, till date. The petitioner, thus, cannot be debarred from challenging the action of the respondents in withholding actual allotment having accepted the money. In so far as the case of petitioner No. 4 is concerned, suffice it to say that in the present case, I am not called upon to determine as to whether the allotment made to him was under the Rules or that he had concealed some material facts with a view to secure allotment. If the respondents are sure of the concealment so alleged, it shall always be open to them to proceed against the said petitioner in accordance with law and it is then that the question as to whether there was any such concealment or that he was entitled under the Rules to get the plot or not would be gone into. At this stage, the question posed by the counsel for the respondents is rather premature.

12. For the reasons stated above, the present petition succeeds and is accepted with costs which are quantified at Rs. 3,000/-. The respondents are directed to refund to all the petitioners the amount charged from them over and above at the rate of Rs. 58/- per square yard within one month from today. The allotment letters are, thus, ordered to be modified so as to read that the plots have been allotted to them at the rate of Rs. 58/- per square yard instead of Rs. 85/- per square yard.

13. Petition allowed.