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(1989) 10 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3757 of 1989

Daljit Singh Ahluwalia — APPELLANT

Vs

Chandigarh Housing Board, Chandigarh and others — RESPONDENT

Date of Decision : 04-10-1989

Acts Referred:
Constitution of India, 1950 — Article 14
Haryana Housing Board Act, 1971 — Section 74
Haryana Housing Board Regulations — Regulation 21, 22, 23, 24, 25

Citation : AIR 1990 P&H 144 : (1990) 97 PLR 79 : (1990) 97 PLR 78

Hon'ble Judges : M.M. Punchi, J;Amrit Lal Bahri, J

Bench : Division Bench

Advocate : H.L. Sibal and J.S. Mann, for the Appellant; R.S. Mongia and R.S. Bindra, J.S. Saini, Miss Renu Bala and Ashok Aggarwal, for the Respondent

Judgement

M.M. Punchhi, J.—These are two Civil Writ Petitions Nos. 3757 and 6696 of 1989 which are being disposed of by a common order. The facts are stated in these petitions are almost identical but the questions of law arising therein are indeed identical. This is the reason for writing a common order. D. S. Ahluwalia hereafter referred to as ''Ahluwalia''), the writ petitioner in the first case and S. P. Karwal (hereafter referred to as ''Karwal''), the writ petitioner in the second case, are both retired government servants. So are respondents Nos. 2 to 7 in the first petition; also impleaded as respondents Nos. 3 to 8 in the second petition. There are others involved too, who stay in the background. The contesting parties thus can appropriately be called people in the evening of their lives, and being people above 50 or 55 years of age have presumably and naturally some impairment or the other with regard to their body limbs or organs needing attention, care and careful handling for the remaining span of their lives.

2. The Chandigarh Housing Board, the common respondent No. 1 in both petitions, floated a scheme for the construction and allotment of high income group (H.I.G.) flats for retired/retiring employees of the States of Punjab and Haryana and for the Central Government and Union Territory of Chandigarh in

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Sector 43-B, Chandigarh. Applications were invited for registration of applicants for the allotment of those H.I.G. flats on partial self-financing basis. Both the petitioners and the private respondents submitted applications and after completing formalities and making payments became entitled to have flats.

3. Now the scheme undertaken by the Housing Board provided for construction of 96 dwelling units divided as 32 flats on the ground floor, 32 flats on the first floor and 32 flats on the second floor. Since the flats on the ground floor were likely to be mere convenient and extending more amenities having provision for a car park, besides front and back courtyards, its price was slightly higher. The flats had to be allotted to the persons concerned under the Regulations promulgated by the Chandigarh Administration on December 29, 1979, in exercise of the powers conferred by S. 74 of the Haryana Housing Board Act, 1971, as extended to the Union Territory of Chandigarh, and with the previous sanction of the Administrator. In Chapter III are the Regulations which provide the procedure for disposal of property which deserves pointed attention at this stage so far as they are relevant for our purpose.

4. All applications by prospective allottees are serially entered in a register and are to be acknowledged to the applicants (Regulations 18, 19 & 20). Incomplete and invalid applications can be rejected (Regulation 21). Regulation 22 prescribes that the Chandigarh Housing Board shall for the purposes of allotment of property under the regulations constitute a committee to be called the Property Allotment Committee consisting of not more than five members of whom one shall be appointed as a Chairman. The applications are scrutinised by the Committee to determine which of the applicants are eligible for allotment. The decision of the Committee is final if not appealed against to the Board under regulation 23. Regulation 24 prescribes that the allotment of property to eligible persons shall be made by draw of lots under the supervision of the Committee or in such other manner as may be determined by the Board. Under Regulation 25 reservation of certain percentage of flats in favour of Scheduled Castes/ Scheduled Tribes, Defence/ Ex-Defence Personnel and Pensioners of Defence Forces, Backward Classes, certain government employees and blind and physically handicapped persons, has been made. But this Regulation has been made flexible under the proviso that if sufficient applications are not forthcoming from any of the reserved categories, the balance of the reserved dwelling flats shall be allotted to the applicants of the general category. Regulation 26 provides for discretionary allotments. The Administrator/Chief Commissioner has been vested with the discretion to allot 5 per cent of the total number of dwelling units/ flats under any scheme to any person. Similarly the Board has been given the discretion to allot 5 per cent of the total number of dwelling units/flats under any scheme to any person. So the Administrator, Chandigarh Administration and the Chandigarh Housing Board have to themselves together 10 per cent as quota of the dwelling units/ flats which they can exercise in favour of any person.

5. Now reverting back to the framework of the scheme, there were 96 allotable

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flats. 10 flats therefrom were taken out from the purview of general allotment to cater to the needs of discretionary allotments under Regulation 26. Their break up was 4 flats on the ground floor, 3 flats on the first floor and 3 flats on the second floor. The balance thus remaining were 86 flats, the break up of which was : 28 flats on the ground floor, 29 flats on the first floor and 29 flats on the second floor.

6. The Committee on scrutiny of applications found 80 persons eligible. The flats available were 86. As was the mandate of Regulation 24 the allotment of property to the eligible persons had to be made by draw of lots under the supervision of the Committee. A draw was contemplated on January 16, 1988. However, Col. L. S. Makan who was one of the eligible persons to obtain a flat by draw of lots made an application on January 7, 1988, to the Board requesting it to allot a flat on the ground floor to him taking into consideration the medical needs of his wife. The Board readily obliged Lt. Col. L. S. Makan and in its meeting held on January 8, 1988, decided to allot a ground floor flat to him. So the available flats on the ground floor were then reduced to 27 with effect from January 8, 1988.

7. The remaining 85 flats i.e. 27 on the ground floor, 29 on the first floor and 29 on the second floor were put in the hotch-potch and a draw of lots took place on January 16, 1988, to satisfy the entitlement of 79 applicants, since Lt. Col. L. S. Makan ceased to be a contestant in the draw of lots. As a result of the draw of lots, Ahluwalia got a flat on the second floor and Karwal got a flat on the first floor. The respective lists of entitlement to a particular floor are found as Annexures P-1 to P-3 in Karwal''s petition. There were 22 allottees in the ground floor, leaving 5 ground floor flats unallotted. There were 28 allottees of the first floor, leaving 1 first floor flat unallotted. There were 29 allottees of the second floor leaving no flat on the second floor unallotted. The names of respondents other than Lt. Col. L. S. Makan figure in the second floor allotment.

8. Ahluwalia, on August 2, 1988, approached this Court by means of CWP No. 2544 of 1988 challenging Regulation 26 of the Regulations on the ground that the said Regulation did not empower the authorities to retain any specific flat or flats but only retention of 10 per cent of the total number of flats out of the discretionary quota, and which Regulation inter alia on other grounds, was ultra vires. This writ petition was dismissed on October 4, 1988, by the Motion Bench in limine, taking the view that the petitioner was an eligible person to obtain a flat by draw of lots and could not be considered to be a person aggrieved to question the discretionary quota. It was further observed that the petitioner had raised the ground of validity of Regulation 26 for giving it colour of a legal question to the writ petition and otherwise the said. Regulation giving discretionary allotment power to the Administrator, who was the highest authority in the Chandigarh Administration, was not in any way arbitrary, or ultra vires the Constitution of India.

9. The case of the Board is that the Allotment Committee before the draw of lots

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had arrived at a decision to the following effect :--

"This scheme has been floated specifically for the Retired/Retiring Government employees. It was, therefore, decided to authorise the Chairman to allot the ground floor flats which are left unallotted as a result of the draw of lots, to the eligible registered applicants of this scheme, on medical grounds in deserving cases."

It is further the case of the Board that this decision of the Committee was duly approved by it later and that in accordance with the above decision the change of allotment from second floor to ground floor was permitted in the cases of private respondents S. S. Jaspal, Mohinder Singh, Manmohan Singh, Dr. Harkrishan Singh and J. S. Bedi on applications invited for the purpose. In paragraph 12 of the return in the first case, however, the decision has been understood and averred to mean that if any ground floor flats were left unallotted, then the Chairman would consider the applications for change of floors on medical grounds in appropriate cases, and the decision was announced before the draw of lots. This averment does not, in our view, fit in with the decision presupposing that as a result of draw ground floor flats would remain unallotted. The decision in the nature of things and in the normal circumstances could, if necessity arose, have been taken after draw of lots. Be that as it may, it is averred that 10 applications were received by the Chairman of the Board inclusive that of Karwal''s but his was not found to be worthy of acceptance in preference to the remaining five pertaining to S. S. Jaspal and four others.

10. The claim of the respective petitioners of equal treatment, violation of the Regulations and the action of the respondents being arbitrary and unfair has been countered by the respondents by raisipg preliminary objections that the dismissal of Ahluwalia''s CWP No. 2544 of 1988 would operates res judicata without much ado and that Karwal''s grievance cannot be heard when he had himself applied for change of floor of flat submitting himself to the jurisdiction of the Chairman of the Board and on his being unsuccessful cannot now be permitted to raise these issues in his petition.

11. We have heard learned counsel at considerable length on these two preliminary objections in the respective cases but find no merit in the same in the backdrop of the naked usurpation of powers by the Chairman and the abject surrender of its functions by the Board. At the very outset, as a matter of detail it was given out to us that the Chairman of the Property Allotment Committee and the Chairman of the Board was the same person i.e. Shri J. S. Kohli. It is significant to note that the scrutiny of applications to determine who are the applicants eligible for allotment is the function of the Committee, but once that function is performed under Regulation 23 their job of determining eligibility for allotment is finished. Then under Regulation 24 the Committee''s function is only to supervise the allotment of property to the eligible persons which mandatorily is required to be made by draw of lots. It is only when the Board determines to have the allotment of the property in such other manner as alternate to the

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allotment of property by draw of lots that the Committee is required- to supervise the allotment in such other manner. No decision making power is given to the Committee, and much less to its Chairman, even before or after the draw of lots, and no approval by the Board is valid thereafter even to meet a situation of the kind as here, especially when the Allotment Committee and the Board remain chaired by the same person. The Board''s suggested ratifying the decision of the Committee later vesting discretion with the Chairman to alter the result of draw of lots by changing the floor, in our view, was a naked usurpation of power and an abject presupposed surrender by the Board. Our view is further fortified by the fact that the Administrator and the Board amongst themselve''s under. Regulation 26 have 10 per cent discretionary quota reserved for allotment to any one they like. And the present effort to carve out another sphere of discretion towards allotment of flats on the ground floor, violating the result of the draw of lots, is nothing but a measure to assume more discretionary allotments than permissible under Regulation 26, and to that extent not only is the action of the respondent Board and its Chairman illegal and against the Regulations but otherwise arbitrary and unfair. These five flats on the ground floor had again on the principle of draw of lots to be re-floated by another draw of lots to persons desiring change of allotment. These flats could in no event be reserved to be allotted in the discretion of the Chairman of the Board. His inviting applications for the purpose to find suitable people on medical grounds was an assumption of jurisdiction not vested in him. So the entire action of the Board and the Chairman in these circumstances has to be and is hereby declared null and void irrespective of the fact that Karwal made an application submitting to such assumption of power by the Chairman. It would be worthy to recall our observations in the earlier part of this judgment that in the age group in which the eligible persons are, it is only a matter of degree how much has one''s body decayed or diseased or that, of one''s spouse or another unfortunate member of the family. The Chairman was not expected to be an expert to distinguish between one eligible and the other on the basis of distinction between a medical certificate and another. The principle of draw of lots adopted in Regulation 24 draws a blind towards individual preferential needs and that is what is the guiding factor in the working and interpretation of these Regulations.

12. So far as the case of Ahluwalia is concerned, the cause which he pleaded in his earlier writ petition was to challenge the vires of Regulation 26. He cannot be ousted merely because he could also have challenged at that dine the change of allotments from the second floor to the ground floor. One way or the other the debate would now be academic and we do not propose to take it to the logical end since we are convinced on the case made out by Karwal that the allotments so made are in derogation of the Regulations for our views afore-expressed. In these circumstances, nonsuiting of Ahluwalia on technical gfounds or on ground of form would not alter the fate of the case.

13. It was then contended that under Regulation 49 the Board can delegate any of its powers under the Regulations to the Chairman, or to any Members or

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Officers of the Board, and that since the Board is empowered under Regulation 24 to determine in place of draw of lots such other manner of allotment, it must be taken that the Chairman had changed the manner of allotment for the remainder of flat, which were left on the ground floor, after the regular draw of lots. Nothing has been placed on record to tell us whether there was any delegation by the Board to the Chairman and what were the terms of that delegation. We cannot on suppositions assume a delegation of power with the Chairman. Then it was contended that under Regulation 50 there is a power to relax any provision of the Regulations in cases of exceptional circumstances to be recorded in writing and the decision in that regard shall rest with the Board. We have not been shown any record with regard to the exceptional circumstances which may have been recorded in writing to relax any of the provisions of the Regulations, in any case or cases and which were those cases. This argument too is on suppositions and does not appeal to us. The language of Regulation 24 being that the allotments, as determined by the Board, can be in such other manner is not to say that it can be in any other manner. The word ''such'' has its roots in the main dictate of the! Regulation and that is by draw of lots; meaning thereby that none is to be favoured or preferred by any means, logic, or reason in the matter of allotment of property and understandably there should be no discrimination or choice in the matter with anyone. Regulation 24 cannot be read to mean that the Board can devise any such method so as to destroy ''equal opportunity'' and deny the possibility of equal chance of allotment to all concerned.

14. Lastly we take note of Lt. Col. L. S. Makan''s case and the other allied subject. As is evident, he secured an allotment on medical grounds on January 8, 1988, before the draw of lots. None of the other parties could object to that course because there was a discretionary quota with the Board up to 5 per cent and the said officer could well have been adjusted in the 5 per cent quota. Undisput-ably, he was one of the eligibles as determined by the Committee but a lot was not drawn in his favour. Now, in the return it has been stated by the Board that the discretionary quota of 10 flats has already been filled by the Administrator and the Board. What has been stated above with regard to the private respondents other than Lt. Col. L. S. Makan applies with equal force to his case too. How could the Board widen its discretion to allot him a flat when the allotment was not from the discretionary quota. It appears that the instance of the discretionary allotment to Lt. Col. L. S. Makan on the ground floor on medical grounds having gone unnoticed emboldened the Board to make similar allotments on invitation of applications in derogation of the Regulations. So the allotment to Lt. Col. L. S. Makan also suffers from the same infirmity even though it was made before the draw of lots. This too is accordingly struck down.

15. Having repelled all contentions of the Board and the contesting respondents, on finding favour with the grievance voiced by the respective two petitioners, we unhesitatingly allow these petitions at the stage of notice of motion itself, having regard to the age factor of the litigants, and quash the allotments made in favour

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of the private respondents, leaving it open to the Board to allot the ground floor flats, and such other remainder flats, strictly in accordance with the provisions of Regulation 24, which has been interpreted by us in the foregoing part of the judgment, so that all desirous of change have an equal opportunity and equal chance of obtaining a ground floor flat or other flats on any floor thrown in the pool not only in the right spirit of the Regulations but in the spirit of Art. 14 of the Constitution. In the circumstances of the case, we shall leave the parties to bear their own costs.

16. Petitions allowed.

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