
(2012) 01 P&H CK 0342
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12628 of 2011

H.C. Arora

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226

Punjab Regional and Town Planning and Development Act, 1995 — Section 23, 43

Citation : (2013) 170 PLR 90

Hon'ble Judges : Rajiv Narain Raina, J; M.M. Kumar, J

Bench : Division Bench

Advocate : H.C. Arora, for the Appellant; R.S. Khosla, Sr. Addl. A.G. for State, for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—The present is a Public Interest Litigation filed under Article 226 of the Constitution for quashing clauses (4), (7) and (9) of the office order dated 24.9.2010 (P-1) because the same prescribes for allotment of identified residential plots exclusively to the employees of Punjab Urban Development Authority-respondent Nos. 2 and 3 (for brevity, "PUDA") at reserve price. Those employees of PUDA who have already owned residential plots/houses/flats either by purchasing in auction or from open market or by availing house loan facility from PUDA etc. are also eligible. The primary ground of challenge is that the impugned scheme is aimed at enrichment of employees of PUDA as also profiteering by the said categories of employees at the cost of tax paying public, thus, opposed to public policy. Brief facts of the case are that the petitioner is a public spirited person and is the State President of RTI Activists Federation Punjab. He is also convener of "Action Group Against Corruption". A news report appeared in all the leading newspapers about the scheme floated by the PUDA-respondent No. 2 for allotment of residential plots to its regular employees including those who already owned residential plots/houses or flats at reserve price. This prompted the petitioner to seek information under the Right to

Information Act, 2005 from the Public Information Officer of PUDA. As per the information received by the petitioner under the RTI Act it transpired that the PUDA has framed a scheme for allotment of residential plots to the officers/officials of PUDA and its Directorate, vide office order dated 24.9.2010 (P-1).

2. In para 6 of the petition, the petitioner has furnished glaring information about those officers/employees who already own residential houses at various places like Ludhiana, Patiala, Jalandhar, Bathinda, Amritsar, Barnala, Panchkula, Mohali etc. but yet submitted applications for allotment of one more residential plot at SAS Nagar, Mohali. The category-wise figure is as under:-

3. The petitioner has also placed on record lists of those Class-I and Class-II officers who have submitted applications for allotment of 14 Marla plots despite the fact that they own a residential house in their own name or in the name of their spouses (P-2/1 and P-2/2). As many as 1081 officers/officials of PUDA have submitted applications for allotment of residential plots at SAS Nagar Mohali under the Scheme. It has also been pointed out that on earlier occasion also one such scheme was floated on 31.8.2011 by PUDA for its employees who completed five years of regular service upto 31.8.2001 (P-3). In nut shell, the petitioner has sought to raise an issue of public importance that whether the respondent PUDA, which is State within the meaning of Article 12 of the Constitution being an instrumentality of the State of Punjab, could make allotment of plots to a selected class of employees out of the land acquired at the public expense for a public purpose.

4. In the written statement filed on behalf of respondent Nos. 2 and 3 the factual matrix pointed out in various paras of the petition have not been controverted or denied. However, in the preliminary submissions it has been asserted that it is not a new phenomenon in the respondent PUDA. Giving the past history it has been pointed out that since the inception of the Department of Housing and Urban Development and establishment of the Punjab Housing Development Board, such allotments are being made under the quota reserved for employees or by framing specific schemes for them. It has been submitted that in the year 1974, the Department of Housing and Urban Development, Government of Punjab, vide letter dated 17.4.1974 framed a policy for development of Urban Estates by creating various sizes of plots in Group-I and Group-II. Under the said policy a provision was made for making allotment of 20% plots in Group-II and 10% plots in Group-I to the Punjab Government employees including those who were on deputation to Government of India or Corporations and Companies. The said policy was further revised on 2.2.1981 and 10% plots were kept reserved for Punjab Government employees. On 26.5.1983, again a policy was framed in which 8% plots of various sizes were reserved for Punjab Government employees and widows of those employees who died in harness.

5. On 29.4.1991, the State of Punjab issued a notification and all the assets and liabilities of Urban Estates of the State were transferred to the then Punjab Housing Development Board (for brevity, "the Board"). On 26.9.1994, the Board

framed a policy and 4% plots of various sizes were reserved, which were to be allotted to different categories of Punjab Government employees and widows of State Government employees who died in harness. In the year, the Punjab Regional and Town Planning and Development Act, 1995 (for brevity, "the Act"), was enacted abolishing the Board and respondent PUDA came into existence. All the assets and liabilities of the Board were transferred to PUDA. As per Section 23 of the Act a Finance and Accounts Committee was constituted for the purposes of determining prices and policies for disposal of land, plots and houses.

6. It has further been disclosed that in its 6th meeting held on 14.5.1996, the aforesaid Finance Committee took a policy decision prescribing 2% quota for allotment of plots/houses for the employees of PUDA. This was similar to the decision dated 16.12.1983 taken by the Board whereby also 2% quota for allotment of built up houses was prescribed for the employees of the Board and 9% quota was prescribed for employees of the Punjab Government and employees of Government of India who were domiciled in Punjab. Reference has also been made to similar decisions dated 3.5.1984 and 2.9.1986 taken by the Board. However, on 16.9.1997, these quotas provided for Government, Board and PUDA employees were discontinued.

7. In year 2001, again a scheme resurfaced for allotment of residential plots for the employees of PUDA exclusively who had completed five years regular service upto 31.8.2001. The allotment of plots of various sizes were made to 524 employees of PUDA at the price which were fixed for general public. Those plots were located at Mohali, Ludhiana and Patiala. In another scheme framed on 18.1.2005, 31-H Type houses were allotted to the employees of PUDA at SAS Nagar Mohali. Since a number of employees of PUDA could not be allotted plots on earlier occasion, therefore, the impugned scheme has been made. Reference has also been made to Section 43 of the Act to assert that PUDA is competent to dispose of any land acquired by it or transferred to it by the State Government on terms and conditions to be determined by it. It is not that the scheme are framed for PUDA employees only, such schemes have also been made and implemented by PUDA for allotment of plots/houses to Defence Personnel in Sector-71, SAS Nagar and for retired employees in Sector 48, SAS Nagar. The PUDA is within its competence to frame a scheme for the welfare of its employees. Even such type of welfare schemes for employees are formulated by various government departments for example concession is given in electricity bills to the employees of Punjab State Electricity Board; traveling concession is given to the employees of Punjab Roadways/PRTC etc.

8. No written statement has been filed on behalf of State of Punjab-respondent No. 1, inasmuch as, on 22.11.2011, the learned State counsel made a statement to the effect that it is not necessary.

9. On 3.11.2011, when the matter came up for consideration, this Court stayed the scheme, dated 24.9.2011 (P-1) till further orders by observing as under:

Such a scheme is patently against law because for the purposes of allotment of plots by the Punjab Urban Development Authority to its employees alone would not constitute a separate distinct class. The employees of the Government and other Boards and Corporations would also be equally entitled as would be the general public. Therefore, it would be patently against the theory of classification as envisaged by Article 14 of the Constitution. In the case of *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , Hon"ble the Supreme Court has laid down that where the Government is dealing with public whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting any other form of largess then it cannot act arbitrarily at its sweet will. Its actions must be in conformity with the norms laid down by Article 14 of the Constitution. The State action must ensure fairness and equality of treatment and the principles of Article 14 applies to every State action, [See also *Yogender Pal Singh and others Vs. Union of India others*, Accordingly, we stay the scheme dated 24.9.2011 (P-1) till further orders.

10. We have heard learned counsel for the parties at a considerable length and have perused the office order dated 24.9.2010 (P-1), which incorporates the Scheme for the present employees of PUDA and the Directorate, of House Construction and Urban Development Department, who have been on permanent deputation to PUDA and who had completed 5 years regular service upto 31.8.2010. The retired employees at the time of implementation of the Scheme have been excluded. The main features of the Scheme may now be highlighted. A bare perusal of the office order dated 24.9.2010 shows that the following are the salient features of the Scheme:

(a) Only the present employees of PUDA and Directorate of House Construction and Urban Development Department, who are at present on permanent deputation to PUDA and who have completed 5 years of regular service upto 31.8.2010 are eligible for submitting the application.

(b) Plots of various sizes i.e. 14, 10, 8 and 5 marlas have to be allotted to Class I, II, III and IV employees respectively, which are available at Mohali, Patiala, Ludhiana and Bathinda location.

(c) Any officer/official applying for plot in particular Urban Estate, must not have been previously allotted a plot in his name or in the name of his spouse from PUDA or any other Government Institution and neither any house/plot should have been allotted to him/his spouse in any Urban Estate under discretionary or employees quota. The officer/official who had purchased plots/house/building through open sale in the market or auction is also eligible to submit application under this scheme.

(d) The plot allotted under the Scheme could not be sold before completion of a period of five years from the date of issuance of completion certificate by the competent authority.

(e) Those officers/employees who have previously availed the housing loan from

the department are not debarred from the scheme provided they fulfil the other formalities under the Scheme.

11 The "Scheme" encourages applications from those employees who already own residential houses and they have applied for allotment of one more residential plot/house. From Class-I to Class-IV employees there are 169 applications (P-2/1 & P-2/2) who already own another house.

12. If we test the Scheme on the anvil of classical theory of classification propounded under Article 14 of the Constitution then the same may not be sustainable. It is trite to observe that Article 14 forbids class legislation. But it does not forbid reasonable classification of persons, objects and transactions by the legislature for the purpose of achieving specific ends. But classification must not be "arbitrary, artificial or evasive". It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature, Classification to be reasonable must fulfill the following twin test:-

(1) The classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group; and

(2) The differential must have a rational relation to the object sought to be achieved by the Act.

13. The differential which is the basis of the classification and the object of the policy or Act are two distinct things. What is necessary is that there must be a nexus between the basis of classification and the object of the policy which makes the classification. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.

14. If we apply the aforesaid twin test to the facts of the present case, it confers benefit only on the employees working in PUDA and its Directorate. It cannot constitute a separate class because if any Scheme has to be framed to confer benefit on employees, it has to cover all employees working with Government, other Corporations and Authorities. Therefore, to postulate that the object of the Scheme is to confer benefit on employees of PUDA and its Directorate who have fixed income would amount to achieving an object which is not based on a rationale. It would result into creating a class by conferring a benefit to a set of employees by excluding the other section, which is wholly impermissible. The Scheme appears to have been finalised only by the Chief Administrator, PUDA and not by the State Government, which again is a distinguishing feature and smacks of arbitrariness. Even otherwise it is well settled, as has rightly been pointed out by Mr. H.C. Arora that there cannot be any reservation of plots in favour of the employees or their wards because it has no rationale basis and that basis cannot have reasonable relationship with the object sought to be achieved. In *Ramana Dayaram Shetty Vs. International Airport Authority of India* and

Others, the contour of Article 14 were further delineated by observing as under:-

20. Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

21. This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of this Court in *E.P. Royappa Vs. State of Tamil Nadu and Another*, and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory: it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory, corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.

15. Likewise, in *E.P. Royappa Vs. State of Tamil Nadu and Another*, the following observations were made:

85. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reasons for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations

emanating from the same vice: in fact the latter comprehends the former Both are inhibited by Articles 14 and 16.

86. It is also necessary to point out that the ambit and reach of Articles 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine.

16. We are further of the view that the impugned Scheme is arbitrary which is amply highlighted by the fact that it does not distinguish an officer/official who or his/her spouse own a house in an urban estate. In fact, clause 4 of the Scheme expressly postulates that the officers/officials who had purchased plot/house/building through open sale in market or auction is also eligible to submit application under the Scheme. This has been illustrated by the particulars of Class-I officers of PUDA who have applied for allotment of residential plot at reserve price in the remarks column (P-2/1). For illustration, the Superintending Engineer, GMADA, SAS Nagar-Mr. J.J. Kumar, has already been re-allotted/purchased from open market House No. 15, Sector 71, SAS Nagar, Mohali, which is part of Tricity of Chandigarh. The rest of the applicants candidly admit that they or their spouses have already been owner of a house either having purchased the same from open market or by availing bank loan. Similar is the position of Class-II officers, as is evident from perusal of Annexure P-2/2. All this shows that the Scheme is arbitrary and does not seek to serve the needy section of the society; and thus violates Article 14 of the Constitution.

17. In support of our view we place reliance on the judgment rendered in the case of Thapar Institute of Engineering and Technology and Others Vs. State of Punjab and Another, , Hon"ble the Supreme Court set aside the reservation to the extent of 2% of seats for wards of employees of the Thapar Institute and 5% seats for wards of employees of the Thapar Group of Industries and the same was regarded as violative of Article 14 of the Constitution. In view of the above, the writ petition is allowed. The Scheme/office order dated 24.9.2010 (P-1) or any other similar scheme is hereby quashed.