
(1997) 01 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17804 of 1996

Kabul Singh and Others

APPELLANT

Vs

Punjab Urban Planning and Development Authority

RESPONDENT

Date of Decision : 10-01-1997

Acts Referred:

Punjab Regional and Town Planning and Development Act, 1995 — Section 148, 149

Citation : (1997) 2 ILR (P&H) 113 : (1997) 115 PLR 713 : (1997) 2 RCR(Civil) 498

Hon'ble Judges : G.S. Singhvi, J;B. Rai, J

Bench : Division Bench

Advocate : Sarjit Singh and Vikas Singh, for the Appellant; Anil Malhotra, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Singhvi, J.—Whether the petitioners have a legal right to be allotted HIG (single storey) dwelling unit or similar other property on the basis of the applications made by them pursuant to the Notice Annexure P-1 is only issue raised in this petition.

2. In order to determine whether the petitioners are entitled to the relief claimed by them, it is necessary to set out some facts. In February 1989, the Punjab Housing Development Board, which stands dissolved with the creation of the Punjab Urban Planning and Development Authority (for short "PUDA"), issued notice inviting applications for HIG (single storey) category houses at Phase-IX, S.A.S. Nagar. In response to that advertisement the petitioners submitted their applications and deposited Rs. 4,000/- as earnest money. The Punjab Housing Development Board received as many as 5416 applications. The draw of lots in respect of 15 available houses in Phase-IX, S.A.S. Nagar was held on 10.11.1989. It appears that those who could not succeed in the draw of lots approached the board for keeping their applications alive. It further appears that the Board accepted the request of unsuccessful applicants and made an

announcement (Annexure P.4) that the unsuccessful applicants may continue to be registered with the Board and they will be given priority in allotment in any of the HIG scheme that the Board may take up at S.A.S. Nagar in future. The Board refunded the amount of earnest money to those who did not exercise option for continuing their registration. A second draw of lots was held by the PUDA on 20th September, 1996 for allotment of 154 houses to those applicants who had applied in response to Annexure-P.1. Thereafter the respondent returned the amount of earnest money to all the remaining unsuccessful applicants including the petitioners. At the same time the respondent issued notice Annexure-P.8 and invited applications for 200 HIG independent partially finished duplex houses on higher purchase basis in Sector 70, S.A.S. Nagar. The petitioners have pleaded that the action of the respondent in refunding the earnest money deposited by them is wholly arbitrary and unjustified because by refunding the earnest money deposited by them, the respondent has eclipsed their right to be considered for allotment of HIG houses as per the announcement made by the Board vide Annexure-P.4. The petitioners have pleaded that in order to keep their eligibility alive they did not purchase any plot or house either at Chandigarh, S.A.S. Nagar or Panchkula and now they will stand deprived of the right to be considered for allotment.

3. In its reply, the respondent-Authority has pleaded that the Punjab Housing Development Board was superseded with effect from 1.7.1995 and the burden to undertake effective and planned development of Housing Schemes etc. has been fastened on the respondent-Authority. In the year 1996, the respondent formulated a scheme for constructing 354 HIG houses on available land in Sector 70, S.A.S. Nagar. The issue of disposal of proposed 354 independently partially finished duplex houses was placed before the Finance and Accounts Committee constituted under Regulation 8 of the Punjab Urban Planning & Development Authority (Committees and Conduct of business) Regulations, 1996. The committee decided that 154 out of the 354 houses to be constructed by PUDA be offered to the applicants of 1989 without insisting on deposit of 10% costs of the house in the form of earnest money. The remaining 200 houses were decided to be advertised for being made available to the fresh applicants. In its meeting held on 24.7.1996, the Committee decided that the money deposited by old and new applicants be refunded to all unsuccessful candidates immediately after the draw of lots. In response to this decision a notice dated 12th December, 1996 was got published in the Tribune. The respondent has also pleaded that the allotment letters were issued to the successful applicants in the draw of lots held on 20th September, 1996 and the earnest money of Rs. 4,000/- was returned to all the unsuccessful applicants. The respondent has also pleaded that there is a tremendous increase in the urban population in the State during the last few years and it is not possible to construct dwelling units for the anticipated population of 85 Lacs living in the urban areas and the petitioners, who have already received consideration of their applications for allotment of HIG houses, cannot claim an indefeasible right to be allotted HIG houses. It has been stated

by the respondent that the applications of the petitioners were considered in the draw held in September 1996 on the basis of earnest money of Rs. 4,000/- as against Rs. 62,700/- required to be deposited by the new applicants.

4. Shri Sarjit Singh, learned counsel appearing for the petitioners strenuously argued that on the basis of the applications submitted by the petitioners a valuable right has come to vest in them to be allotted a HIG house and the respondent-Authority should be bound down to carry out the promise made by its predecessor i.e. the Punjab Housing Development Board. Learned counsel argued that the promise made by one agency of the Government has to be carried out by its successor-in-interest and it is not open to a public authority like the respondent to deprive the petitioners of their right to be considered for allotment of HIG houses. He further argued that the State and its machinery should not be allowed to indulge in commercial ventures and the respondent-authority should be directed to carry out the basic obligation of providing houses to the urban population. Shri Singh placed reliance on the following decisions:-

- (i) Jai Gopal Gupta v. State of Punjab (1991) P.L.R. 50;
- (ii) Capt. J.S. Gosal Vs. The Estate Officer, Urban Estates and Others, ;
- (iii) Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., ;
- (iv) Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, ;
- (v) Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, and
- (vi) Union of India v. M/s Anglo Afghan Agencies, AIR 1968 SC 718.

5. Shri Anil Malhotra, learned counsel appearing for the respondent argued that the petitioners did not acquire an absolute right to be allotted a house under HIG category merely by submitting applications in pursuance of Annexure-P.1. They have simply acquired a right to be considered for allotment of a house under HIG category (single storey) and that right of the petitioners was amply respected by the Punjab Housing Development Board when it considered their applications alongwith the applications submitted by other 5,000 persons. Learned counsel argued that the announcement made by the Housing Commissioner, Punjab Housing Development Board, which was made keeping in view the demand made by the unsuccessful applicants, did not have the sanction of law and neither the Board nor the Housing Commissioner could make a promise to the unsuccessful applicants that their applications will be kept alive for indefinite period. Shri Malhotra argued that the right of the petitioners to be considered for allotment of a house under HIG (single storey) category at Phase-IX, S.A.S. Nagar came to an end immediately on the allotment of houses on the basis of draw held on 10th November, 1989 and Annexure-P.4 could at the best be treated as a concession extended to the unsuccessful applicants and such concession cannot be enforced through the court of law. Shri Malhotra submitted that the respondent-Authority is under a constitutional as well as legal obligation to allot the houses of different categories by draw of lots or by auction or by any other mode consistent with the

equality clause enshrined in the Constitution and the petitioners cannot force it to allot houses to them excluding other persons who may be willing to apply for allotment in the new schemes floated by the respondent.

6. Before we deal with the rival contentions, it will be appropriate to take cognizance of the statutory provisions relevant to the subject matter of this petition. Having realised that the problem of housing is enormous in the State and no concerted effort had been made to tackle the problem, the Punjab Legislature enacted the Punjab Housing Development Board Act, 1972 (hereinafter referred to as "the Act of 1972") with the object of tackling the problem of housing generally and in the urban areas in particular. While enacting this piece of legislation the legislature kept in mind the fact that Government of India had sponsored a number of housing schemes such as Middle Income Group Housing Scheme, Low Income Group Housing Scheme, Village Housing Project Scheme and Subsidised Industrial Housing Scheme etc. Section 2(k) of "the Act of 1972" contains the definition of expression "Housing Scheme". Chapter-II of the Act relates to establishment of the Punjab Housing Development Board. Chapter-IV which consists of Sections 32 to 57 deal with the housing and development schemes. Chapter-V contains the provisions regarding acquisition and disposal of land. For the purpose of this case, we may reproduce Section 2(k), Section 30, 31, 32(g), 33, 42 to 45 and 58 of "the Act of 1972:-

"2(k). "housing scheme" means a housing scheme framed under this Act and includes any other such schemes entrusted to the Board by the State Government from time to time;

30. Power of the Board to undertake housing development and improvement schemes and incur expenditure:-

(1) Subject to the provisions of this Act, the Board may, from time to time, incur expenditure, and undertake works for the framing and execution of such housing, development and improvement schemes as it may consider necessary.

(2) The State Government may on such terms and conditions as it may think fit to impose, entrust to the Board the execution of framing and execution of any housing scheme whether provided for by this Act or not, and the Board shall thereupon undertake the execution or the framing and execution of such schemes as if they had been provided for by this Act.

(3) The Board may, on such terms and conditions, as may be agreed upon and with the previous approval of the State Government take over for execution any housing scheme on behalf of a local authority or co-operative society or on behalf of an employer when the houses are to be built mainly for the residence of its or his employees, and the Board shall execute such scheme as if it had been provided for by this Act.

31. Types of housing, development and improvement schemes:- The housing, development and improvement schemes may be of one of the following types, or

combination of any two or more of such types or of any special features thereof, namely: -

- (a) a house accommodation scheme;
- (b) a rebuilding scheme;
- (c) a rehousing or rehabilitation scheme;
- (d) a city or town or village expansion scheme;
- (e) a street scheme;
- (f) a deferred street scheme;
- (g) a land development scheme;
- (h) a general improvement scheme.

32. Matters to be provided for in housing, development or improvement schemes:-

Notwithstanding anything contained in any other law for time being in force, a housing, development or improvement scheme may provide for all or any of the following matters, namely: -

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- (g) the sale; lease or exchange of any property comprised in the scheme;

33. House Accommodation Scheme :-

(1) Whenever the Board is of the opinion that it is expedient or necessary to meet the needs for house accommodation in any area, the Board may frame a house accommodation scheme.

(2) Such scheme shall specify the layout of the area where the houses are to be constructed.

(3) Such scheme may provide for the construction of houses and for the sales, leasing out or sale on hire-purchase basis of the houses so constructed.

(4) The Board may provide in the area roads, streets, drainage, water supply, street lighting and other amenities.

42. Preparation, publication and transmission of notice as to housing or development or improvement schemes:-

(1) When any housing, development or improvement scheme has been framed, the Board shall cause the preparation of a notice to that effect and specify-

- (i) the boundaries of the area comprised in the scheme; and
- (ii) the place or places at which particulars of the scheme, a map of the area, and details of the land which it is proposed to acquire may be seen at reasonable

hours, and shall have the same published in the official Gazette and in two leading daily newspaper in the State and also have a copy sent to the local authority concerned.

(2) If within thirty days from the date of publication of the housing, development, or improvement scheme any person communicates in writing to the Board any suggestion or objection relating to the scheme; the Board shall consider such suggestion or objection and may modify the scheme.

43. Representation by the local authority:-

The local authority to whom a copy of a notice has been sent under clause (ii) of sub-section (1) of Section 42, shall within a period of sixty days from the receipt of the said copy, forward to the Board any representation which the local authority may wish to make regarding the scheme.

44. Abandonment modification or sanction of housing development or improvement Scheme :- (1) After considering the suggestions or objections, if any, received in pursuance of sub-section (2) of Section 42 and section 43 and after hearing the person who, having made any suggestions or objections, desires to be heard the Board may either abandon or modify or sanction the scheme, or apply to the Government for sanction with such modification, if any, as the Board may consider necessary if the cost of the scheme exceeds fifty lacs of rupees.

(2) The Government may sanction with or without modification, or may refuse to sanction, or may return for reconsideration any housing, development or improvement scheme costing over fifty lacs of rupees submitted to it under sub-section (1).

(3) If a scheme returned for reconsideration under sub/section (2) is modified by the Board, it shall be republished in accordance with section 42.

(a) In every case in which the modification affects the boundaries of the area comprised in the scheme or involves the acquisition of any land not previously proposed to be acquired, and

(b) in every other case, where the modification is, in the opinion of the Board, of sufficient importance to require republication.

45. Publication of sanction of housing development or improvement scheme:- (1) Whenever the Board or the State Government sanctions a housing, development or improvement scheme, it shall be published in the official Gazette and in two leading daily newspapers in State.

(2) The publication of the scheme under sub-section (1) shall be conclusive evidence that the scheme has been duly framed and sanctioned.

(3) Any person aggrieved by the decision of the Board Sanctioning a housing development or improvement scheme may within thirty days from the date of

publication of the said scheme, appeal to the prescribed authority and the decision of the said authority on such appeal shall be final.

(4) The scheme shall come into force and shall have effect-

(i) where no appeal is preferred under sub-section (3) on and from the expiry of the said thirty days referred to in that sub-section; and

(ii) where such appeal is preferred, on and from the date of the decision of the prescribed authority on such appeal.

58. Power to dispose of land:- Subject to any rules made by the State Government under this Act, the Board may retain, lease, sell, exchange or otherwise dispose of, any land, building or other property vested in it."

8. However, the operation of "the Act of 1972" did not yield the desired result. The Board failed to construct substantial number of houses especially for economically weaker sections of the society. Moreover rapid urbanisation led to mushroom growth of slums, uncongenial environment, choked city roads, congested highways and unplanned and uncontrolled colonisation and massive building activities in and around the city and along the highways. In order to meet the challenge of urban growth and to provide for workable frame work for comprehensive planned and regulated development of requisitioned and urban areas, the Legislature again intervened and enacted the Punjab Regional and Town Planning and Development Act, 1995 (hereinafter referred to as "the Act of 1995"). Section 2(zj) of this Act defines the term "scheme" as a scheme framed under "the Act of 1995". Chapter-II of "the Act of 1995" provides for establishment of Punjab Regional and Town Planning and Development Board and Chapter-III thereof provides for establishment of the Punjab Urban Planning and Development Authority; Special Urban Planning and Development Authorities and New Towns Planning and Development Authorities. Chapter-XII of this Act contains provision relating to Town Development Schemes. Section 91(1) of the Act empowers the authority to frame schemes. Sub Section(2)(h) thereof relates to housing schemes for different income groups etc. Section 148 and 149 deal with the abolition of Punjab Housing Development Board, transfer of its assets and liabilities and effect of vesting assets and liabilities of the Punjab Housing Development Board with the Authority constituted under "the Act of 1995". We deem it proper to reproduce Section 2(zj), 91(1) and 91(2)(h). Sections 148 and 149 of "the Act of 1995" for the purpose of ready reference :-

"2(zj). "scheme" means any town and development scheme framed under this Act;

91(1). Preparation and content of Town Development Scheme:-

Subject to the provision of this Act, the Authority may for the purpose of implementation of the provision of the Master Plan or for providing amenities where the same area not available or are inadequate or for planning for re-development or renewal of area of bad layout or obsolete or un-desirable

development, prepare one or more town development schemes (hereinafter referred to as the scheme).

91(2)(h). Undertaking housing schemes for different income groups, commercial area, industrial estate, provision of community facilities like schools, hospitals and similar types of development;

148 Abolition of the Punjab Housing Development Board and transfer of its assets and liabilities:-

(1) On and with effect from the date of establishment of the Authority u/s 17 of this Act, the Punjab Housing Development Board established under the Punjab Housing Development Board Act, 1972 (Punjab Act 6 of 1973) shall stand abolished.

(2) On and with effect from the date of abolition the Punjab Housing Development Board under sub-section (1).

(a) the members including the Chairman of the Punjab Housing Development Board shall cease to hold office;

(b) all properties, funds and dues which are vested in or reliable by the Punjab Housing Development Board shall vest in and be realisable by the Authority.

(c) all liabilities which are enforceable against the Punjab Housing Development Board shall be enforceable against the Authority.

(3) Nothing in this section shall affect the liabilities of the State Government in respect of loans or debentures guaranteed under sub-section (5) of section 67 of the Punjab Housing Development Board Act, 1972 (Punjab Act 6 of 1973.)

149 Effect of vesting assets and liabilities of the Punjab Housing Development Board:- (1) Unless otherwise expressly provided under this Act all contracts, agreements and other instruments of whatever nature subsisting or having effect immediately before the date of abolition of the Punjab Housing Development Board and to which that Board is a party or which are in favour of the said Board shall be of as full force and effect against the Authority and may be enforced and acted upon as well as fully and effectually as if instead of the Punjab Housing Development Board the Authority had been a party thereto or as if they had been entered into or issued in favour of the Authority.

(2) If on the date of abolition of the Punjab Housing Development Board under this Act, any suit, appeal or other legal proceedings of whatever nature by or against the Punjab Housing Development Board are pending then it shall not abate or be discontinued or be in any way prejudicially affected by reason of the transfer to the authority all the assets and liabilities of the Punjab Housing Development Board or of anything done under this Act, but the suit appeal or other legal proceedings, may be continued, presented and enforced by or against the Authority."

9. A conjoint reading of the various provisions of "the Act of 1972" shows that the Punjab Housing Development Board was authorised to frame various kind of schemes including the housing schemes. In terms of Section 32(g), the housing scheme could provide for sale, lease or exchange of any property comprised in the scheme. Sections 42 to 45 contain provisions for preparation and publication of the draft scheme, consideration of the objections filed by individuals as well as the local authority, sanction of the scheme by the State Government and execution thereof by the Board. Similarly, Section 91 of "the Act of 1995" empowers the Authority to frame different types of schemes including housing schemes for various categories of persons. Provisions contained in Chapter-XII of the Act which lays down the mode of publication of the draft scheme, consideration of the objections and sanction of the Government are *pari materia* with sanctions 42 to 45 of "the Act of 1972".

10. It is, therefore, clear that before the Punjab Housing Development Board could undertake construction of houses it had to prepare scheme in accordance with the provisions of "the Act of 1972". The petitioner, who had applied for allotment of HIG (single storey) houses pursuant to the notice Annexure P-1, acquired a right to be considered for allotment of houses under the scheme floated in February 1989. However, there is nothing in Annexure P.1 or any of the provisions of "the Act of 1972" indicating that the petitioners and others, who had applied pursuant to Annexure P.1, acquired a perennial right of consideration for allotment of HIG houses for all times to come. In the absence of such a provision either in the statute or in the notice issued by the Board inviting applications for allotment of HIG houses, it is not possible to accept the argument of Shri Sarjit Singh that the petitioners acquired a right to be allotted HIG (single storey) houses. In our opinion, the right acquired by the petitioners to be considered for allotment of HIG (single storey) houses in Phase-IX, S.A.S. Nagar did not subsist after the Board had undertaken an exercise for allotment of the houses constructed by it. Rather that right stood extinguished the day the process of allotment was completed. The announcement made by the housing Commissioner vide Annexure P.4 to the effect that the unsuccessful applicants will be given priority in allotment in any of the HIG scheme which the Board may take up in the S.A.S. Nagar in future can at the best be treated as an extraordinary concession given to the unsuccessful applicants that they may be considered in future. The Board could not have, in the absence of any notified scheme, conferred a right upon the unsuccessful applicants to be allotted a house in future or a right to be considered in preference to others who may apply in response to the advertisements of fresh scheme. As and when the Board was to notify a fresh scheme and invite applications from eligible persons, all the applicants had to be considered at par and no preference could be given to the petitioners merely because they had applied in response to notification issued for allotment of house under an earlier scheme. In our considered opinion, the announcement contained in Annexure P.4 cannot be equated with a promise made by the competent authority under the statute. Rather the Board had no

authority to hold out such promise to the unsuccessful applicants who had applied for allotment of HIG (single storey) houses in Phase-XI, S.A.S. Nagar. The power of the Board to dispose of the land, building or other property vested in it could be exercised by it consistent with the doctrine of equality embodied in the Constitution. It is one of the settled principle of law that a public authority discharging public duty must act in public interest and its action should not be arbitrary or unfair. The wider meaning given to the concept of equality required that every state action must be reasonable and must not be arbitrary or opposed to public interest. Therefore, it was not open to the Board to make any promise to the petitioners and other unsuccessful applicants for allotment of houses in disregard the provisions of the statute and the doctrine of equality.

11. In view of our conclusion that the announcement made by the Housing Commissioner of the Punjab Housing Development Board cannot be considered as a promise made by the Board to the petitioners for allotment of houses or giving of preferential treatment to them in disregard of the provisions of the statute and the doctrine of equality, the respondent-Authority cannot be held bound by the announcement made by its predecessor. u/s 148 and 149 of "the Act of 1995", the respondent-Authority can be treated as bound only by those promises made by the Board which were in accordance with the provisions of "the Act of 1972" and not de hors the same.

11. The decisions relied upon by Shri Sarjit Singh contains the principles of promissory and equitable estoppel. In *M/s Motilal Padampat Sugar Mills Co. Ltd. v. The State of Uttar Pradesh and others* (supra), the principle of promissory estoppel has been described in the following words :-

"The true principle of promissory estoppel seems to be that where one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not."

13. That was a case in which the appellant had set up a Vanaspati factory in the State of Uttar Pradesh on the basis of an announcement made by the Government for sales tax holiday. Before setting up the factory the appellant had written to the Government to confirm whether it would be willing to grant exemption from sales tax for a period of three years and the Government confirmed its earlier announcement regarding grant of exemption from payment of sales tax. This assurance was held out by none else than the Chief Secretary-cum-Advisor to the Government of Uttar Pradesh. After the factory was set up, the State Government went back upon its assurance and decided to give only

partial exemption in the payment of sales tax. This decision of the Government was assailed by the appellant by way of writ petition in the High Court which was dismissed by the Allahabad High Court. Their Lordships of the Supreme Court invoked the principle of promissory estoppel and accepted the appeal of the petitioner.

13. In *Union of India v. Godfrey Philip India Ltd.* (supra), the respondent invoked the doctrine of promissory estoppel with reference to the decision taken by the Central Board of Excise and Custom which was contained in a letter dated 24th May, 1976 addressed by the Under Secretary of the Board to the Cigarette Manufacturers Association. The Board conveyed to the association that Collector of Central Excise have been instructed that the cost of corrugated fibre board containers does not form of the part of the value of the cigarette for the purpose of levy of duty. On the basis of this letter, the Cigarette Manufacturers did not recover the price of corrugated fibre board from the wholesale dealers to whom they sold the cigarettes. After a period of six years the Central Board of Excise and Customs, on a re-examination of the matter in consultation with the Ministry of Law, observed that the earlier advise was incorrect. Thereupon the competent authorities took proceedings for realisation of excise duty for the period between 24th May, 1976 to 2nd November, 1982. The High Court accepted the plea of the writ petitioners based on the doctrine of promissory estoppel. The Apex Court noticed that before the Gujarat High Court it was conceded on behalf of the Union of India that corrugated fibre board containers would not form part of value of goods for excise duty. In that background the Apex Court upheld the plea of promissory estoppel by applying the principle laid down in *M/s Motilal Padampat Sugar Mills Co. Ltd. v. The State of U.P. and others* (supra).

15. In *Mahabir Auto Stores and others v. Indian Oil Corporation and others* (supra), their Lordships declared the action of the India Oil Corporation to stop supply of lubricants to the appellant as arbitrary and contrary to Article 14 of the Constitution. In *Capt. J.S. Gosal v. The Estate Officer, Urban Estates, Punjab and others* (supra), a learned single Judge held that once a decision was taken to allot a plot to the petitioner and he had completed all the formalities and paid the money, it was not open to the respondent to deny him the plot.

15. On facts none of the aforementioned decisions have any bearing on the issue raised in the instant case and, in our opinion, the principle of promissory estoppel/equitable estoppel cannot be invoked by the petitioners for compelling the respondent to give them preference in the matter of allotment of HIG (single storey) houses.

16. The refund of the earnest money deposited by the petitioners is the necessary concomitant of the decision taken by the respondent to invite fresh application for allotment of house under the newly floated schemes and we do not find any illegality in the same.

17. For the reasons mentioned above, the writ petition is dismissed.