

(2004) 12 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 9846 of 1988 and 1578 of 1986

Kulwant Singh and Others

APPELLANT

Vs

The Chandigarh Housing Board and Another

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Chandigarh Housing Board (Allotment, Management and Tenements) Regulation, 1979
— Regulation 5
Constitution of India, 1950 — Article 12, 226, 227

Citation : (2005) 139 PLR 754 : (2005) 1 RCR(Civil) 642

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : P.S. Kang, for the Appellant; Naresh Prabhakar, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Nijjar, J.

1.This justment will dispose of C.W.P. No. 1578 of 1986 (Kulwant Singh and Ors. v. The Chandigarh Housing Board and Anr.) and C.W.P. No. 9846 of 1988 (Surjit Singh and Ors. v. The Chandigarh Housing Board and Anr.), as both the writ petitions are inter-connected and also raise common questions of law. In C.W.P. No. 1578 of 1986 (hereinafter referred to as Kulwant Singh's case), the petitioners invoke the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction quashing the demand made for enhanced cost of dwelling units allotted to the petitioners under the Self Financing Scheme by allotment letters Annexure P-3 dated 18.12.1984 to P-3/B issued on 18.12.1984 and 26.2.1985 for Ground Floor, First Floor and Second Floor. The petitioners have also prayed for the issuance of a writ in the nature of Mandamus directing the respondents to re-consider the case of the petitioners and to exclude the unwarranted components from the disposal cost and charge the original price quoted in the Scheme, including the cost of land at the rate it was given to respondent No. 1,

Chandigarh Housing Board (for short "the CHB"), as indicated in statement (Annexure P4).

2. In C.W.P. No. 9846 of 1988 (hereinafter referred to as "Surjit Singh's case), the petitioners again invoked the extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India, seeking identical relief as the petitioners in Kulwant Singh's case. The CHB issued an advertisement and invited applications in the year 1981 from Government Employees of Punjab, Haryana and U.T., Chandigarh, who were domicile of Chandigarh and resided at Chandigarh for the last three years, who retired after 1.1.76 or were due to retire on or before 31.12.83, for consideration of formulation of a housing scheme for them. After receipt of the applications, CHB formulated "Self Financing Scheme, 1981" (hereinafter referred to as "the Scheme"). The Scheme was duly published in newspaper. Two categories of flats were offered under the Scheme. The salient features of the scheme were as under:-

Category

Floor Approximate area sq.ft.

Location/ Sector

Tentative Cost including cost of land

Earnest money

1

2

3

4

5

1. Category I three storied flats Accommodation one living-cum-dining room one kitchen two bed rooms two toilets one study room provision of scooter Garage

G.F. 1400

43-B

1,78,500/-

15,000/-

F.F. 1400

43-B

1,60,000/-

-do-

S.F.1400

-do-

-do-

-do-

Category-II Three storyed flats Accommodation one living room, one kitchen, two bed rooms, bath: & W.C. with provisions of a scooter garage.

G.F. 800

43-B

86,700/- :

44-D

:

-F.F.-

-do-

80,000/- :

75,000/-

-do-

-do-

:

-do-

80,000/- :

3. The Scheme was published by the CHB in a brochure called 1981 Self Financing Scheme for Punjab, Haryana and UT employees. The Scheme was floated for the intending purchaser of flats, to be constructed by the CHB. According to the petitioners, the very concept of floating the scheme was to obtain financial participation from the Intending Purchasers, themselves during the process of construction, instead of constructing the flats out of Board's resources and then selling them. The Brochure also announced that the allotment under the Scheme was to be made on the terms and conditions contained in the Scheme and were also to be governed by Chandigarh Housing Board (Allotment, Management and Tenements) Regulation, 1979 (thereinafter referred to as "the Regulation, 1979"). The Brochure had been attached to the writ petitions as Annexure P-1. The prices were said to be tentative, subject to variation, due to fluctuation in the prices of building materials, labour, cost of land etc. or any other reason. The price finally fixed by the Board shall be binding upon the registered applicants. According to the petitioners, the allottees

were not liable to pay any surcharge or payment of interest or extra disposal price over the costs indicated in Annexure P-1. All the petitioners had made applications for allotment under the Scheme. They were registered applicants and were duly allotted flats on the terms and conditions mentioned in the Brochure. Thereafter, the CHB issued a cyclostyled acceptance letter to all the petitioners, copy of one such letter is attached as Annexure P-2. The petitioners have made the payments in accordance with the schedule given in Annexure P-2. All the petitioners had made the entire payment of the price of the tenements allotted to them, at the time of filing of the writ petition. The petitioners complain that CHB has arbitrarily increased the cost of Dwelling Units on the ground floor, first floor and second floor by adding premium surcharge and interest. According to the petitioners, there was no condition in the brochure that the petitioners would be liable to pay interest or any other surcharge. Respondent No. 2-Union Territory Administration (hereinafter referred to as "the U.T.") had allotted land to the CHB at the rate of Rs. 807- per sq. yard for construction of HIG MIG Houses in Sectors 45-B and 44-B, Chandigarh. In Surjit Singh's case, the original allottees had paid the entire price, in accordance with the Scheduled mentioned in Annexure P-2. For one reason or the other, the original allottees did not accept the houses allotted to them and surrendered the same to CHB in July/August, 1984. CHB decided to allot the surrendered dwelling units, HIG category II to the petitioners, out of the alleged discretionary quota on the same terms and conditions. The allotment letters issued to the petitioners are attached as Annexures P-3/1 to P-3/6. These petitioners claim that the tenements have been allotted at higher disposal price, without laying down any criteria. They, therefore, complain of discrimination, having been unfairly treated. The details of the prices on which the Units have been allotted to these petitioners, are reproduced in Surjit Singh 's case as under:-

Sr. No.

Name of allottee

No. of house

Amount paid

Cost now

Original cost

Difference of 5&6 Excess amount now demanded

- 1
- 2
- 3
- 4
- 5

6

7

1.

Surjit Singh Petitioner

1739/1 (43-B) 9.4.85

88140 (9.4.85)

114100

80000

34100

2.

Fit. Lt.K.S. Virk Petitioner

1743/1 (43-B) 9.4.85

85245 (9.4.85)

114100

80000

34100

3.

Harivansh Petitioner

1741/2 (43-B) 9.4.85

81982 (9.4.85)

127000

80000

47000

4.

R.K.Gupta Petitioner

1715/1 (43-B) (30.1.85)

81354 (30.1.85)

111500

80000

31500

5.

Smt.Sukh-vinder Chahal

1709 (43-B) 27/29.4.85

88774 (29.4.85)

122200

86700

35500

6.

Smt.Harbinder Petitioner

1708 (43-B) 26.7.85

88852 (26.7.85)

125100

86700

4. It is further pleaded by the petitioners in both the writ petitions that possession of the land in Sector 43-B and 44-D was taken on 1.12.79 and 25.2.81, respectively. U.T. issued allotment letter to CHB on 23.2.1982 and 23.3.1984, respectively. In all communications, U.T. had allotted the land to CHB at the rate of Rs. 80 per square yard. This cost of land had been included by the CHB in the tentative costs published in the newspaper and in the brochure. The petitioners had applied for allotment on the strength of statements made in the newspaper and the brochure. According to the petitioners, the CHB is estopped from charging the higher cost at the rate of Rs. 175 per sq. yard instead of Rs. 80/-. Even otherwise, the petitioners in Kulwant Singh's case and the original allottees in Surjit Singh's case had deposited Rs. 56,000/- each upto November, 1983 with the CHB. This amount was kept unutilised upto February, 1984. No interest was paid to the petitioners. In Kulwant Singh's case, the petitioner paid another sum of Rs. 16,000/-each in May, 1984 making a total payment of Rs. 72,000/- each. The respondents had invited applications in 1981, but tenders for execution of work in Sector 44-D were only invited on 24.12.1983. The work itself was started in February, 1984. The petitioners were made to suffer a loss of Rs. 50,000/- to Rs. 10,000/- each. In Surjit Singh's case, the petitioners complain that the CHB has wrongly demanded payment of lease money w.e.f. 1982 i.e. much prior to the date on which the petitioners were given the actual possession. The petitioners also complain that similar dwelling units under another Self Financing Scheme in Sector 44-D have been allotted at the following prices:-

Ground Floor Rs. 107000.00 First Floor Rs. 93100.00 Second Floor Rs. 92000.005

5. Thus, the CHB is said to have arbitrarily increased the price which is discriminatory in nature.

6. The respondents have filed written statements. In the written statement filed by respondent No. 1 in Kulwant Singh's case, it is stated in the preliminary objections that the property shall be handed over on as is where is basis. In Clause 8 of the Allotment Letter, it is provided as under:-

8. Notwithstanding anything to the contrary, if considered essential, the Board may revise consideration from time to time and whenever the consideration is revised, it shall also determine the manner in which the revised consideration is payable as such determination, both original and revised shall be final and the allottee or hirer shall be precluded from making complaint or raising objection or setting up any claim in this behalf at any stage.

7. As is where is condition in the allotment letter was also accepted by the petitioners in a separate hire-purchase tenancy agreement executed by them, subsequently. Regulation 5 of the 1979 Regulation, is identical to the Clause 8 reproduced above. The petitioners had undertaken to be bound by the conditions of the scheme and the regulations. They had even foregone the claim to interest. The undertaking given by the petitioner(s) was as under:-

"I have carefully gone through and understood the terms and conditions of the Scheme applied for and have also gone through the Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979 and do hereby undertake to abide by the same. I also undertake to pay higher cost due to fluctuations in the prices of the building material or due to any other reason and the price of the flat finally fixed by the Board will be binding upon me. I shall abide by the terms and conditions of allotment which may be altered by the Chandigarh Housing Board, Chandigarh from time to time and shall enter into such agreement with the Board as stipulated. I further undertake to accept any dwelling unit at any floor and in any sector which may be allowed to me by the Chandigarh Housing Board, Chandigarh. I shall not claim any interest from the Chandigarh Housing Board on the amount of deposits made by me in consideration of allotment of a dwelling unit under the scheme."

8. On the basis of the above, the respondents claim that the petitioners cannot wriggle out of the terms and conditions of allotment accepted by them. It is further emphasised that the CHB does not charge any profit on the allotment price of the land. The Board charges the same price of land which is charged by the U.T. This rate is charged normally, on the basis of the rate existing at the date of taking over possession of the land by the CHB or U.T. for starting the construction of flats. The period of 99 years for the purpose of lease also commences from the date of issue of allotment letter by the Estate Officer U.T. or from the date of taking over the possession of the site or from the date of execution of work at site, whichever is earlier. The CHB, therefore, charges the same price and the ground rent from its applicants since it takes possession of

the site only at the time of starting construction and on completion of the flats, the same are immediately handed over to the applicants for whom the construction has been made. In other words, the land is possessed by the CHB only for the period of construction of houses for the applicants like the petitioners. In this case, the date of taking over the possession of the site is 26.3.1982. Therefore, ground rent has been charged from 26.3.1982. The lease period of 99 years is also to commence from 26.3.1982. The respondents have also stated that the interest has only been charged on the investment of the CHB, after excluding the amount deposited by the petitioners. It is further stated that the CHB has charged the rate of Rs. 175 per square yard, on the basis of the rate charged by the U.T. in cases where possession of the land was taken by the CHB in the year 1981 and 1982.

9. A separate affidavit dated 29.10.1987 has been filed by the Chairman of the CHB. It is stated that the admission of the U.T. in the affidavit regarding the allotment of land as a chunk in Sector 43-B and 44-D to the CHB at the rate of Rs. 80/- per sq. yard on lease hold basis for 99 years for the construction of HIG/ MIG Houses, has been misinterpreted by the petitioners. It has been clarified that CHB has taken possession of a chunk of land measuring 43665.07 sq. yards on 1.12.1979 for the construction of 200 independent houses of HIG Category. The U.T. had decided to allot the aforesaid land to CHB in July, 1979 for the construction of the houses against the General Public Housing Scheme floated in the year 1977. These houses were accordingly allotted by draw of lots held on 27.3.1981. The allotment letter in respect of this land was issued by U.T. on 23.2.1982 @ Rs. 80/- per sq. yards. Similarly, the CHB took possession of a chunk of land measuring 27790.25 sq. yard in Sector 44-D on 25.2.81 after the U.T. had decided to allot the same to the CHB for construction of 832 four-storied MIG-II category of flats, under a special Housing Scheme for the employees of the U.T. and its undertakings. The Scheme had been floated in the beginning of 1980. The CHB constructed four storied flats on this land in phases and allotted the same in different draw of lots held on different dates, to the applicants registered against the Special Housing Scheme. The allotment letters in respect of this land were issued by UT on 23.3.1984 at Rs. 80/- per square yard. The aforesaid chunk of land in Sectors 43-B and 44-D were, therefore, not meant for the construction of three storied flats under the Self Financing Scheme for 1981, floated in November, 1981. It is further stated that the price of Rs. 175/- per sq. yard was provisional. The final price was yet to be fixed. It is further stated that since no price was fixed, the CHB had not made any payment to U.T. in respect of this land till 25.7.1986, when the written statement was signed. It is further clarified that the rate of Rs. 80/- per square yard at which other dwelling units in Sectors 43-B and 44-D had been allotted, are under different hire-purchase scheme floated much earlier to the Self Financing Scheme for 1981. In those cases, the possession of the land was taken on 1.12.79 and 25.2.81.

10. During the course of hearing of the petitions, another short affidavit has

been filed on 8.9.2004 by the Secretary, CHB. In this affidavit, it has been stated that land for construction of 2,00 HIG (Independent) Houses in Sector 43-B was allotted to CHB by U.T. at Rs. 80/- per square yard. The CHB started construction of 72 three-storied Category II/HIG (Lower) Flats under the Self Financing Housing Scheme for retired/retiring Punjab, Haryana and U.T. employees without waiting for issuance of allotment letter or ascertainment of rate of land at which the U.T. was going to charge for this piece of land. While fixing the price of 72 Category II (HIG) (Lower) flats, the CHB charged land component at Rs. 175/- per square yard. Keeping in view the fact that U.T. had started charging per square yard price of land at Rs. 175/- in respect of land where the possession of land had been taken in the years 1981 and 1982, the U.T. regularised the allotment of land in favour of the CHB at Rs. 175/- per square yard. Relying on the aforesaid pleadings, the learned counsel for the parties have made their submissions.

11. Mr. Kang vehemently argued that the land had been initially offered to the petitioners at the rate of Rs. 80/- per square yard. The CHB has arbitrarily charged Rs. 175/-per square yard. The advertisement as well as the brochure had mentioned a tentative price, including the cost of land. There was no mention that the price can be increased by way of premium. But in the allotment letter, premium has been charged. The price has been increased, without giving any details. There has been no increase in the compensation paid by the CHB for the land acquired. This is a unilateral decision taken by the CHB, without giving any opportunity of hearing to the petitioners. Mr. Kang further argued that the respondents are estopped from charging the higher price. The petitioners had made their financial arrangements, one the basis of the brake-up of the price given in the advertisement as also in the Brochure. Learned counsel further argued that the respondents have sought to give a justification for the increase in the affidavit filed on 8.9.2004. But this affidavit, rather tends to show that the CHB had increased the price, without any corresponding increase having been demanded by the U.T. A perusal of the letter dated 25.2.1997 shows that the U.T. has charged price of Rs. 175/- per square yard only to regularise the price which had already been charged by the CHB. There is no material on record to show that the CHB had charged Rs. 175/- per square yard as the same had been charged as a final price by U.T. Mr. Kang submits that the statements made in the affidavit dated 8.9.2004 are contrary to the earlier stand of the respondents in the written statement dated 25.7.1986 and the affidavit of J.S. Kohli, Chairman of the CHB dated 29.10.1987. One of the petitioners had made a representation against the arbitrary increase in price which is attached as Annexure P-5/A to the writ petition. In this representation, it has been clearly stated that the land had been allotted at the rate of Rs. 80 per square yard by the U.T. whereas the CHB has illegally recovered more than Rs. 175/- per square yard. In the reply given by the CHB on 21.6.1985, it is clearly mentioned that the land had already been transferred at the rate of Rs. 175/-. Therefore, the averments made in the affidavit dated 8.9.2004 that the allotment was made on

25.2.1997, is a blatant lie. According to Mr. Kang, the respondents had admitted the claim of the petitioners in the written statement filed in the case of Surjit Singh. Learned counsel further submitted that there is no nexus between the increase in the price and the price of the land. In any event, there is no justification for charging interest from the petitioners. In support of the submissions, the learned counsel relied on a number of judgments which are as under:-

1. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, .
2. Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., .
3. Ajai Pal Singh and Others Vs. Bareilly Development Authority, Bareilly and Another, .
4. Baldev Singh Dhanju and others Vs. Chandigarh Housing Board, Chandigarh, .
5. Maj. General Ram Singh (Retd.) v. The Chandigarh Housing Board through its Chairman, Chandigarh (1991) 99 P.L.R. 397 (Single Bench).
6. Sukh Pal Singh Kang Vs. Chandigarh Housing Board and Another, (Single Bench).
7. D.S. Laungia and others Vs. State of Punjab and others, .

12. Mr. Prabhakar on the other hand, argued that it was made clear in the advertisement, the brochure and the allotment letter that the price was tentative. The prices were variable. The development which is undertaken by the CHB is on a no profit basis. Therefore, it cannot be said that the CHB had increased the price arbitrarily. The land had been allotted at the tentative price of Rs. 80/- per square yard. According to the learned counsel, the price increase is permissible. The increase is also not arbitrary. He referred to an affidavit filed by one of the petitioners on 13.10.1987. In this affidavit, it was stated that the houses allotted to the petitioners in Sector 44-D, Chandigarh are constructed on the same chunk of land which was allotted to the CHB by the U.T. for construction of HIG/MIG houses at Rs. 80/- per square yard. Therefore, no separate price could be fixed. It was in reply to this that an explanation was given by the Chairman of the Board in the affidavit filed on 29.10.1987. It was stated that in fact when the written statement was filed on 25.7.1986, no price had been fixed by the U.T. The price at Rs. 80 charged for different housing schemes are not comparable. Therefore, no advantage could be taken by the petitioners. It is further submitted by Mr. Prabhakar that the plea of estoppel is not available to the petitioners as the allotment letter clearly stated that the allotment shall be governed by the regulations. Learned counsel further submitted that the judgments cited by Mr. Kang are distinguishable. He relied on the following judgments:-

1. Chandigarh Housing Board Vs. Baldev Singh Dhanju and others, (paras 3 and 4)

2. Chandigarh Housing Board v. K.K. Kalsi and Ors. 1996 (2) A.I.J. 554.

13. I have considered the submissions made by the learned counsel for the parties and perused the pleadings and the various affidavits filed by the parties.

14. From a perusal of the facts narrated above, it becomes evident that Self Financing Scheme clearly stipulated that the costs mentioned as the average costs may vary. In the letters addressed to the allottees accepting their applications, it was also mentioned that the registration will be regulated strictly in accordance with the terms and conditions already circulated as per advertisement and brochure. It was also clearly stated that the allotment will be subject to the Regulation, 1979. In the allotment letter it was categorically provided by Clause 8 which has been reproduced above that the Board may revise considerations from time to time. The petitioners had accepted the allotment on "as is where is" basis. Subsequent to the allotment, the petitioners had also executed an undertaking which has also been reproduced above. The petitioners claim that the respondents are estopped from charging the higher costs at the rate of Rs. 175 per square yard instead of Rs. 80/-. All the petitioners had adjusted their finances by relying on the promises made by the respondents. In the judgments cited by Mr. Kang, undoubtedly, it has been held that the prices cannot be increased by the Board arbitrarily. Reference in particular may be made to the judgments rendered in the cases of Sukhpal Singh Kang (supra), Maj. General Ram Singh (Reid.) (supra), Baldev Singh Dhanju (supra). And D.S. Lanunglia (Supra), decided by Division Bench of this Court. In the case of Gujarat State Financial Corporation (supra), it has been held by the Supreme Court that the principle of promissory estoppel would also be applicable to the State and other authorities which come within the ambit of Article 12 of the Constitution of India. Mr. Kang has also placed strong reliance on a Division Bench judgment of the Allahabad High Court rendered in the case of Ajai Pal and Ors. v. Bareilly Development Authority, Bareilly and Anr. (supra). In that case, the Division Bench has quashed the enhancement of the cost of flats from Rs. 64,000/- to Rs. 1,27,000/-. In this case, it was also held that burden would lie upon the public authority to negative the charge of arbitrariness in the increase of price. However, the appeal filed by the Bareilly Development Authority, against this judgment was allowed by the Supreme Court. It was held that the High Court had gone wrong in its finding that there is arbitrariness and unreasonableness on the part of the appellants in increasing the costs of houses/flats. The judgments of the Supreme Court is reported as Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, . After considering the relevant facts and the law applicable thereto, the Supreme Court has observed as follows:-

"18. The respondents were under no obligation to seek allotment of houses/flats even after they had registered themselves. Notwithstanding, they voluntarily registered themselves as applicants, only after fully understanding the terms and conditions of the brochure inclusive of Clauses 12 and 13 and Notes 1 and 2 of

the General Information Table which we have reproduced above, they are now trying to obtain the houses/flats at the price indicated in the brochure at the initial stage conveniently ignoring the other express conditions by and under which the BDA has reserved its right to change the terms and conditions as and when felt necessary, evidently depending upon the escalation of the prices. One should not lose sight of the fact that the BDA did not compel anyone of the applicants to purchase the flat at the rates subsequently fixed by it and pay the increased monthly instalments. On the contrary, the option was left over only to the allottees. In fact the respondents in Civil Appeal No. 2809 of 1986 except the four above mentioned have unconditionally accepted the changed terms and conditions.

19. Thus the factual position in this case clearly and unambiguously reveals that the respondents after voluntarily accepting the conditions imposed by the BDA have entered into the realm of concluded contract pure and simple with the BDA and hence the respondents can only claim the right conferred upon them by the said contract and are bound by the terms of the contract unless some statute steps in and confers some special statutory obligations on the part of the BDA in the contractual field. In the case before us, the contract between the respondents and the BDA does not contain any statutory terms and/or conditions. When the factual position is so, the High Court placing reliance on the decision in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, has erroneously held:

"It has not been disputed that the contesting opposite party is included within the term other authority mentioned under Article 12 of the Constitution. Therefore, the contesting opposite parties cannot be permitted to act arbitrarily with the principle which meets the test of reason and relevance. Where an authority appears acting unreasonably this Court is not powerless and a writ of mandamus can be issued for performing its duty free from arbitrariness or unreasonableness."

20. This finding in our view, is not correct in the light of facts and circumstances of this case because in *Ramana Dayaram Shetty*'s case there was no concluded contract as in this case. Even conceding that the BDA has the trappings of a State or would be comprehended in other authority for the purpose of Article 12 of the Constitution, while determining price of the houses/flats constructed by it and the rate of monthly instalments to be paid, the authority or its agent after entering into the field of ordinary contract acts purely in its executive capacity. Thereafter the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter-se. In this sphere, they can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority (i.e. BDA in this case) in the said contractual field.

21. There is a line of decisions where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights

are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple: Radhakrishna Agarwal and Others Vs. State of Bihar and Others, , Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, . and Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., "

15. I am of the considered opinion that the aforesaid observations are fully applicable to the facts and circumstances of the present case. From a perusal of the judgments in the cases of Sukhpal Singh Kang (supra), Maj. General Ram Singh (supra), Baldev Singh Dhanji (supra) and D.S. Laungla (supra), it becomes apparent that the judgment of the Supreme Court rendered in the case of Bareilly Development Authority (supra) was not brought to the notice of the different Benches. The judgment of the Supreme Court was reported as noted above in the Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, . The decision in the aforesaid case was rendered on 17.2.1989. The judgments cited by the petitioners were given on the following dates:-

(1) Sukhpal Singh Kang (supra) : 24.12.1993 (2) Maj. General Ram Singh (supra) : 15.01.1991 (3) Baldev Singh Dhanju (supra) : 30.08.1989 (4) D.S. laungia : 28.09.1992

16. In Baldev Singh Dhanju's case (supra), the petitioner therein had relied on the Division Bench judgment of the Allahabad High Court in the case of Ajai Pal. However, it was not brought to the notice of the court that the aforesaid judgment had been specifically over-ruled in the case of Bareilly Development Authority (supra). It may be noticed here that the judgment of the learned Single Judge in the case of Sukhpal Singh Kang (supra) has been set aside in L.P.A. No. 429 of 1994 (Chandigarh Housing Board v. Sukh Pal Singh Kang and Anr.) decided on 26.3.1996. Similarly, the judgment of the learned Single Judge in the case of Maj. General Ram Singh (supra) has also been set aside in LPA No. 182 of 1991 (Chandigarh Housing Board, Chandigarh v. Maj, General Ram Singh (Retd.) decided on 19.1.1998. It must, however, be noticed here that the judgment of the learned Single Judge has been set aside only on the ground that the petitioner had not impleaded the Chandigarh Administration as respondent. The matter was remanded back to the learned Single Judge for fresh decision. Counsel for the parties have not brought to the notice of this Court as to whether the matter has been decided again by the learned Single Judge. For the aforesaid reasons the judgments relied upon by the petitioners are of no assistance to the case pleaded by the petitioners. As noticed above, the Supreme Court had observed in the case of Bareilly Development Authority (supra) that the applicants were under no obligation to seek allotment of houses/flats even after they had registered themselves. In the present case, the petitioners in Kulwant Singh's writ petition are the original allottees. The petitioners in Surjit Singh's writ petition are subsequent purchasers from the original allottees. For one reason or the other, the original allottees did not accept the houses allotted to

them and surrendered the same to CHB in July/August, 1984. It was these houses which were allotted to the petitioners out of the alleged discretionary quota. In such circumstances, it would be difficult to hold that the respondents had exerted any kind of undue influence on the petitioners with regard to the allotments made. It is also note-worthy that the judgment in Baldev Singh Dhanju's case (supra) has been over-ruled in the case of Chandigarh Housing Board Vs. Baldev Singh Dhanju and others, , Letters Patent Appeals Nos. 2282, 2283 to 2294 of 1989 and 1374 of 1990 decided on 23.4.1991). In this judgment, the Division Bench relying on the judgment of the Supreme Court in the case of Bareilly Development Authority (supra) observed as follows:-

4. After hearing the counsel for the Board and the respondents, we are of the view that the judgment reported in Bareilly Development Authority's case (supra) fully covers the matter in hand and keeping in view the ratio of this judgment, the present Letters Patent Appeal (with some exceptions which will hereinafter be dealt with) has to be allowed. In the case mentioned above, the Bareilly Development Authority had allotted various categories of flats on the advertised prices. The letter of allotment issued by the Authority clearly stated that the price shown in the letter of allotment was only tentative and could be increased or decreased according to rise in prices at the time of completion of the property. The offer of allotment on the stipulated terms and conditions was accepted by the allottees. Thereafter, the Bareilly Development Authority sought to revise the prices of the flats which led to the filing of a writ petition before the Allahabad High Court. The writ petition was allowed by the High Court and it was held that the revised price as also the revised quantum of instalments fixed by the Bareilly Development Authority were arbitrary and liable to be struck down. The matter was taken by the Bareilly Development Authority to the Supreme Court allowed the appeal holding that the applicants had accepted the terms of allotment and one of the terms of allotment was that the price advertised was only tentative and could be revised. It was held that where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed only by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple. The Supreme Court further held that the scope of a High Court while exercising its powers under Article 226 of the Constitution of India in cases of non-statutory concluded contracts was limited and a finding that the action of the authorities was arbitrary and unreasonable, could not be recorded under this jurisdiction. It will be seen that in the present case there was no attempt by the Board to revise the price upwards and the Board was only insisting that the price as accepted by the respondents (when they executed the affidavits and the agreements accepting the terms and conditions of the allotment letter) should be paid, whereas the case of the respondents is that they are not liable to pay the price which they have specifically accepted and the Board should be bound down to the tentative price advertised in the year 1977. The respondents herein accepted the

offer of allotment, executed document to that effect and were thereafter put in possession on that basis. The contract entered into between the Board and the respondents was a complete one and both the parties were bound by it. As observed by the Supreme Court no order or writ can be issued in this situation.

17. This judgment was noticed by the learned Single Judge (V.K. Bali, J.) in the case of Sukhpal Singh Kang (supra). Relying on the aforesaid judgment in paragraph 15, preliminary objections raised by the respondent-Board with regard to the maintainability of the petition were upheld. The petition was partly allowed on different points. This judgment was, however, not brought to the notice of the Division Bench in D.S. Laungia's case (supra).

18. Again in the case of Chandigarh Housing Board v. K.K. Kalsi (supra), a Division Bench of this Court (R.P. Sethi and Swatanter Kumar, JJ.) reiterated the law laid down by the Supreme Court in the case of Bareilly Development Authority (supra). The Division Bench considered the following questions of law;-

1.

i) Whether the writ petition under Articles 226/227 of the Constitution of India was maintainable for the reasons that the case of the petitioner fell entirely in the realm of contract simplicitor;

ii) Whether the court while exercising powers under Article 226/227 of the Constitution of India can go into question of minute accounts and niceties of costing?

iii) Whether the Board had the authority to change its scheme to one of hire-purchase from that of self-financing and what is the consequential effect upon the rights of the petitioner as a result of issuance of letter of allotment dated 5.12.1990?

19. With regard to question No. 1, the Division Bench observed as under:-

9. In order to answer the questions formulated by us in the beginning of this judgment, we have to discuss primarily the scope and ambit of interference by the High Court while exercising jurisdiction under Articles 226/227 of the Constitution of India, in the cases of present kind. It is a settled principle of law that the High Court does not sit as a Court of Appeal while exercising its jurisdiction under Articles 226/227 of the Constitution of India. The disputed facts, computation and the cases which would require evidence to prove or disprove the version of either of the parties have normally been treated as exception to the rule of interference under this constitutional jurisdiction. Irrespective of expending law on the subject the courts have still maintained the limits of exercise of its powers under Article 226 of the Constitution of India in consistence with the settled principles. Exercise of jurisdiction in such cases has been limited to unfairness, unreasonableness and arbitrariness. If all or any of these ingredients are satisfied then a case may be one where the Court would exercise such powers. But such unfairness, unreasonableness and arbitrariness

may be apparent on the face of the record and the Courts would not normally go into the complicated computation and disputed facts to find whether there is arbitrariness in the action of the State or not. The Courts have declined to interfere by the use of a magnifying glass to really look for an arbitrariness which could safely be termed as a probable prudent decision but still at the face of it, it may appear to be somewhat unreasonable.

20. With regard to question No. 2, it has been held as follows:-

18. In view of the settled principles of law, we are of the view that the jurisdiction under Articles 226/227 of the Constitution of India cannot be extended for entering into serious controversies with regard to accountancy. The Court is mainly concerned with the reasonableness and an appropriate explanation by the Board. It may not be permissible to go into principles of accountancy in its minutes forms. Where the Court exercising writ jurisdiction will have to investigate matters itself because writ jurisdiction may not be a very appropriate jurisdiction for such disputed accounts and especially into the reasons leading to such minute additions and alterations in the accounts.

21. I am of the considered opinion that the aforesaid observations of the Supreme Court in the case of Bareilly Development Authority (supra) and the observations made by the Division Benches of this Court in the cases of Baldev Singh Dhanju (supra) and K.K. Kalsi (supra) are fully applicable to the facts and circumstances of the present case. I am of the opinion that it would be wholly erroneous for this Court to exercise jurisdiction under Articles 226/227 of the Constitution of India. I hold that the writ petitions are not maintainable. The petitioners are at liberty to seek the ordinary remedy by filing a civil suit or adopt any other legal proceedings that may be available to them. It is made clear that the parties will be at liberty to raise all the points raised in the present proceedings before this Civil Court, if the need so arises.

22. In view of the above, the writ petition is dismissed. No costs.