

(1991) 10 P&H CK 0065

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 6149 of 1991

Managing Society, Goswami Ganesh Dutt Sanatan Dharam
College

APPELLANT

Vs

Union Territory, Chandigarh Administration, Chandigarh and
others

RESPONDENT

Date of Decision : 22-10-1991

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 22, 3
Chandigarh Lease Hold of Sites and Buildings Rules, 1973 — Rule 13
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1992 P&H 284 : (1993) 2 ILR (P&H) 362 : (1993) 105 PLR 173

Hon'ble Judges : V.K. Bali, J; M.R. Agnihotri, J

Bench : Division Bench

Advocate : G.K. Chatrath and Vikrant Sharma, for the Appellant; Anand Swaroop and Rajiv Vij, for the Respondent

Judgement

This Judgment has been overruled by : Union Territory, Chandigarh Admn. and others Vs. Managing Society, Goswami, GDSDC, (1996) 2 AD 311 : AIR 1996 SC 1759 : (1996) 113 PLR 685 : (1996) 2 SCALE 126 : (1996) 7 SCC 665 : (1996) 2 SCR 620

V.K. Bali, J.—Sequel to the order and consequent notice issued by the Chandigarh Administration for change to be brought about in the allotment letter conveying allotment of 10.5 acres of land to the petitioner nearly one and half decade ago and the threat extended by the Administration to proceed against the petitioner-Society to face drastic consequences inclusive of resumption of land is what the petitioner has taken a strong exception by way of filing this writ petition under Articles 226/227 of the Constitution of India. Before, however, the two fold grounds on which the notice and the consequential order have been attacked are probed any further, it shall be useful to notice the facts culminating into this petition.

2. The Chandigarh Administration in pursuance of the Constitutional mandate to provide education to its citizens envisaged to establish Government Schools/ Colleges in different sectors of Chandigarh town. The Chandigarh town being one of the places where all requirements of life had to be started and built up from a scratch, this massive work of providing education on account of heavy financial involvements could not be carried out by the administration exclusively at its own end, thus, necessitating involvement of private individuals and denominational societies.

3. With a view to attract individuals and the Societies, the Administration offered land at nominal price and on free hold basis. Some of such recipients of land on nominal price and on free hold basis were admittedly D.A.V. College for Men, D.A.V. College for Women, Guru Gobind Singh College for Men, Guru Gobind Singh College for Women and D.A.V. School in Sector 8. The petitioner-Society too approached the administration for allotment of 20/25 acres of land for establishing a non-Government Degree College at Chandigarh and the administration vide letter dated 5-2-1974 offered allotment 10.5 acres of land in Sector 32-C Chandigarh on lease-hold basis for 99 years at the rate of Rs. 10/- per square yard and in addition thereto, ground rent at the rate of Rs. 100/- per acre per annum. For the reason that the offer for allotment of plot measuring 10.5 acres to the petitioner-Society was on lease-hold basis and also on payment of ground rent, which was not the course adopted in the case of other Institutions, reference of which has been given above, even though the President of the Society accepted the allotment yet he requested that the price be reduced as the same was exorbitant and the annual ground rent be also exempted as the same was not charged from the existing non-Government and similarly placed educational institutions at Chandigarh. A strong plea against the very system of lease hold was also made. It appears that the administration did not give any serious thought to the pleas raised by the petitioner-Society and in fact insisted upon it to give consent with regard to allotment of land proposed in Sector 32 on lease hold basis for 99 years at the rates mentioned above. The petitioner-Society was asked to expedite the action and send its consent with regard to the allotment on the conditions mentioned in the letter of its offer. The Finance Secretary vide letter dated 21-12-1974 informed the decision of the Chandigarh Administration to transfer a piece of land measuring 10.5 acres to the petitioner-Society on lease hold basis for 99 years on the same rates as proposed by the Estate Officer vide letter dated April 3, 1974. Inasmuch as consent to get the plot at the rates referred to above was also given by the petitioner-Society, although some objections as mentioned above were raised, the Estate Officer vide letter dated January 2, 1975 informed the decision of the Chandigarh Administration to the petitioner for allotment of land measuring 10.5 acres for the construction of a full-fledged co-educational Degree College on lease hold basis for a period of 99 years at premium and ground rent as depicted above. Once again, vide the aforesaid letter, the petitioner was asked to give its consent with regard to acceptance of allotment of plot on lease hold basis at the

aforesaid rates and also to give an undertaking on the form attached to the letter on non-judicial stamp paper duly attested by a Magistrate 1st Class. The petitioner-Society was required to remit an amount of Rs. 1,27,089/- on account of 25% premium of the land so that the letter of allotment could be issued. The petitioner-Society accepted the allotment of land measuring 10.5 acres on lease hold basis for a period of 99 years at the rate of Rs. 10/- per square yard in addition to ground rent at the rate of Rs. 100/- per acre per annum.

It also furnished the undertaking signed by its President. When all the formalities had been completed, the Chandigarh Administration vide letter dated June 21, 1975 issued allotment letter on the terms and conditions as have been mentioned above. The total premium, according to the rates aforesaid, was assessed at Rs. 5,08,356/- and inasmuch as an amount of Rs. 1,27,089/- representing 25% of the premium had already been remitted, the schedule of payment by way of instalments was fixed by the Chandigarh Administration according to which the first instalment of Rs. 1,47,282/- was to be deposited on July 10, 1976. The second instalment of the same amount was to be deposited on July 10, 1977 whereas the third instalment of the same amount on or before July 10, 1978 and the annual ground rent of the current year amounting to Rs. 1,050/- on or before July 10, 1976. Admittedly, the petitioner-Society had since long and on due dates had paid all the instalments of premium along with interest. Thereafter, too, as and when the Estate Officer issued notice for payment of ground rent, the same was remitted in time. When a period of 16 years had rolled by and by which time admittedly all the instalments of premium had since long been paid as also the ground rent for all the years had been remitted and also when the entire building of the College had been constructed and the Institution was in top gear in imparting education to the students, to its total dismay and surprise, the petitioner was conveyed a decision taken by the administration through the Estate Officer that the ground rent shall be charged at increased rate as prescribed in the Rules known as Chandigarh Lease Hold of Sites and Buildings Rules, 1973. The aforesaid decision reflects that the Chandigarh Administration had taken the decision on January 29, 1991 but, as referred to above, the same was conveyed to the petitioner by the Estate Officer on March 15, 1991. The petitioner also received notice (Annexure P2) dated March 15, 1991 itself which in no uncertain terms threatened the petitioner to pay a sum of Rs. 1,74,690/- i.e. the difference between the round rent already paid by the Society as per terms and conditions of the original letter of allotment and the one which is payable under the Chandigarh Lease Hold of Sites and Buildings Rules, 1973 (hereinafter to be referred to as the Rules of 1973) within 30 days of the receipt of the notice failing which the petitioner-Society shall face consequences of non-payment of ground rent as envisaged under the said Rules. The petitioner-Society on host of valid grounds thought the aforesaid decision and the notice to be invalid and unjustified and, therefore, in the wake of its such thoughts, the decision was taken to make a representation which was actually made on April 1, 1991 copy whereof has been placed on record as Annexure P10.

However, when no one in the office thought the representation of the petitioner even worth considering the applying mind to the points projected therein, the petitioner finding no way out from the impossible situation created for it had no choice but to vindicate its stand by filing the present petition.

4. The twin contention of learned counsel appearing for the petitioner is that the Administrator/Secretary who was a competent authority to take a decision with regard to allotment of land had taken a conscious and considered decision while making allotment to the petitioner at the rate of Rs. 10/-per square yard in addition to the ground rent at the rate of Rs. 100/- per acre per annum. The decision having been taken with full application of mind, the succeeding Administrator/Secretary had no power to review the decision of his predecessor particularly so when the first decision was taken as long as 16 years ago during which time the petitioner had reached at such a stage that if new rates were not suitable, it could not retrieve from its position having already spent as many as Rs. seven lacs in constructing the building. The other contention, of course, is well known plea of equitable estoppel.

5. The petition has been opposed by the Chandigarh Administration through written statement filed by Shri R.K. Rao, on behalf of respondents Nos. 1 to 3. Even though on facts every thing has been admitted, the circumstances which necessitated retrospective amendment of allotment letter and the decision of the Administration to proceed against the petitioner-Society if the arrears were not paid, have been high-lighted and from the said circumstances narration of which shall be given hereinafter as also from the mandate prescribed in Rule 13 of Rules of 1973, the impugned order and notice have been sought to be justified. It is pleaded that one Shri M.L. Saini, Chairman of the Chandigarh Recognised Schools Management Association, Chandigarh filed a petition to the Council of States, Rajya Sabha, duly counter signed by Shri Pawan Kumar Bansal, Member of Parliament. In consequence of the petition aforesaid, the Finance Secretary and others appeared before the Rajya Sabha Parliamentary Committee on January 28, 1988 wherein the Deputy Secretary, Finance desired that the case relating to allotment of land to schools be submitted to her with full facts and circumstances so that the case could be pleaded in proper perspective before the Rajya Sabha Committee. The Superintendent Finance-I submitted a note dated February 25, 1988 which goes to state that Shishu Niketan Model School, Dayanand Bal Vidayala and Manav Martgal School were allotted land on the concessional rate of Rs. 10/- per square yard on lease hold basis for 99 years with ground rent chargeable at the rate of Rs. 100/- per acre per annum which was against the Rules. In accordance with Rule 13 of Rules of 1973, the ground rent had to be charged at the rate of 2 1/2%, 3 1/4% and 5% per 33 years but the said Rules were notified on August 20, 1973 and were in operation at the time of allotment of land to the above-mentioned educational Institutions. Inasmuch as the decision to give land to the aforesaid educational Institutions was given against the Rules, decision was taken to charge ground rent from the aforesaid Institutions at the prescribed rate and since the facts of the petitioner-

Society were also similar as were available with regard to aforesaid Institutions, the impugned order and notice were issued. From the pleadings made in the written statement and arguments raised by Mr. Anand Swaroop, Senior Advocate, representing Chandigarh Administration, the only ground on which the action of the Administration is sought to be justified is that concession of giving land to the petitioner-Society as styled in the allotment letter was against the mandate of Rule 13 and that being so, none of the contentions raised by the learned counsel for the petitioner would hold good. It is contended that the successor of Administrator/Finance Secretary was competent to take a decision contrary to the one which was taken earlier when the same was against Rules of 1973 and also that there could not be any estoppel against the Statute.

6. After hearing the learned counsel for the parties at considerable length, we are of the considered view that the cause of petitioner is meritorious and, therefore, this petition must succeed. A perusal of Rules of 1973 under which admittedly the allotment of land was made do not contain any provision with regard to review. Power to transfer land and plots in Chandigarh is regulated by the Act known as Capital of Punjab (Development and Regulation) Act of 1952. It is in exercise of the powers conferred by Ss. 3 and 22 of the Act of 1952 that the Rules of 1973 came into existence. Mr. Anand Swaroop, has not been able to point out any power of review conferred to any authority even under the Act of 1952. It is by now well-settled proposition of law that quasi-judicial authority cannot review its own order unless the said power is expressly conferred upon it by the Statute under which it derives its jurisdiction; What we have said above is amply made out from a string of judicial pronouncements and if any reference is necessary, the same is available from AIR 1937 27 (Privy Council) and Dr (Smt.) Kuntesh Gupta Vs. Management of Hindu Kanya Mahavidyalaya, Sitapur (U.P.) and Others, .

7. The facts of the case as have been fully detailed above would leave no manner of doubt that it is in the wake of utmost necessity felt at the end of the Administration that individuals and Societies were allured to join hands with the Administration in imparting education to the citizens in Chandigarh. Inadequacy of finances at the end of Administration and utmost necessity to establish educational Institutions persuaded the Administration to offer various kinds of facilities inclusive of land at concessional rates. To start with, the land was offered to number of non-Government educational Institutions on free hold basis from whom, admittedly, no ground rent was ever charged. It is true that the Rules of 1973 changed the Erstwhile policy of allotting land on free hold basis to lease hold basis but looking at the background of the events, the concessional rates i.e. rates less than mentioned in the Rules of 1973 were fixed obviously in concession or relaxation of Rules of 1973. We cannot possibly accept the plea of the Administration that far from being concession or relaxation of Rules, it was on account of mistake made by the Administration. The fact as to whether the earlier decision taken 16 years back was by relaxing the Rules or by mistake, however, need not detain us any further, for the reason that there is no provision

in the Rules for review and on this count alone, this petition deserves to succeed.

8. Even though the learned counsel appearing for the parties have addressed us on the applicability of equitable estoppel but inasmuch as on the first point that has been noticed above, we are inclined to grant the desired relief to the petitioner, we need not go into this question in details and leave it by simply observing that the counsel for the petitioner has relied upon *Union of India v. Anglo Afghan Agencies*, AIR 1968 SC 718 and *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, , whereas, the counsel appearing for the Administration has relied upon *Vasantkumar Radhakisan Vora Vs. The Board of Trustees of the Port of Bombay*, .

9. For the reasons stated above, this petition succeeds. The order Annexure PI and notice Annexure P2 are quashed and the writ petition is allowed. Parties are, however, left to bear their own costs.

10. Petition allowed.