

(2008) 02 P&H CK 0163
In the Punjab And Haryana At Chandigarh

Mrs. Rup Judge

APPELLANT

Vs

Chandigarh Housing Board and Another

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Citation : (2008) 02 P&H CK 0163

Hon'ble Judges : Vijender Jain, C.J; Kanwaljit Singh Ahluwalia, J

Bench : Division Bench

Judgement

Vijender Jain, C.J.—Present Letters Patent Appeal has been filed by the appellant aggrieved against judgment dated 9.5.2007 passed by a learned Single Judge in Civil Writ Petition No. 19347 of 2003.

2. At the outset, on query by the Court whether Clause 6 of the Chandigarh Allotment of Dwelling Units to Oustees of Chandigarh Scheme, 1996 that An oustee shall make an application to the Chandigarh Housing Board for allotment of a dwelling unit in the prescribed form, duly certified by the Land Acquisition Officer, UT, Chandigarh that the oustee has been paid the compensation in respect of the area of land acquired for the development of Chandigarh, was challenged before the learned Judge and if challenged what are the findings recorded thereon.

3. Mr. R.S. Cheema, learned senior counsel has contended that no finding by the learned Single Judge has been recorded though Clause 6 was challenged. In this regard he draws our attention to paragraphs 28 and 29 of the writ petition and grounds (a), (b) and (c) of the grounds of appeal which are to the following effect:

28. That the eligibility criteria that has been adopted by Respondent No. 1 is completely irrational and violative of the 1996 Scheme. Especially when it is a fact that allotment under the Oustees Scheme is not made immediately on dispossession from acquired land. Therefore it is absurd for Respondent No. 1 to expect that once the land and house of a person stands acquired, he is to remain

waiting for allotment of a house till such time Respondent No. 1 feels magnanimous enough to call for applications. In other words an Oustee is expected to roam the streets of Chandigarh for fear of losing his residency status which is a restriction superimposed by Respondent No. 1 upon the 1996 scheme framed by Respondent No. 1. The attitude of Respondent No. 1 is nothing but arbitrary and under the present circumstances an abuse to the basic human rights of the Petitioner. Even otherwise the Housing Board had no jurisdiction to add to or subtract from the eligibility criteria contained in the 1996 Scheme.

29. That the condition of eligibility for an Oustee has been detailed out in the 1996 scheme in paragraph 4 thereof. This is a special scheme as such the conditions of eligibility are also special. At the same time, for the general public, under the provisions of Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979, (hereinafter referred to as the 1979 Regulations) eligibility conditions are spelt out regulation 6. One of the conditions stated therein is that the applicant must be a domicile of Union Territory, Chandigarh or a bonafide resident of UT Chandigarh for a period of three years immediately preceding the date of opening of the scheme.

4. It is the case of the Petitioner that the eligibility in the case of an Oustee is to be seen in terms of the eligibility given under the 1996 scheme which is a special scheme meant for Oustees and that the eligibility conditions under the 1979 Regulations are general in nature and therefore do not concern Oustees like the Petitioner. Thus, condition 2 of the Eligibility stated in paragraph III of the Housing Scheme 2001 of the scheme floated by Respondent No. 1 requiring the applicant to be a resident of UT Chandigarh for a period of at least 3 years immediately preceding the date of opening of the scheme is illegal, null and void and totally without jurisdiction in so far as Oustees are concerned and is also violative of the 1996 Special Oustees Scheme as the Respondent No. 1 had no jurisdiction to incorporate such a condition as the condition of eligibility regarding Oustees is governed by Clause 4 of the 1996 Scheme. This condition is contrary to the specific scheme that has been framed for Oustees. The action on the part of Respondent No. 1 in incorporating the general terms of eligibility from the 1979 Regulations into the eligibility criteria for ousters is illegal and completely without jurisdiction. The 1979 Regulations are general in nature whereas the Oustees Scheme is special and for this purpose prescribes the eligibility criteria for Oustees.

5. There is no power vested with Respondent No. 1 to add to the eligibility criteria that has been prescribed under the special scheme. The inclusion of additional terms by Respondent No. 1 is wholly without jurisdiction and thus is liable to be quashed.

Grounds

a. Whether eligibility criteria specially framed for the class of Oustees who are rendered landless and homeless will apply or whether this will further be

subjected to the eligibility criteria under the general rules of allotment?

b. Whether the imposition of additional eligibility criteria under the Scheme as well as the Regulation would suffer from the vice of being oppressive?

c. Whether the rigors of the general eligibility criteria can be imposed on a special class for whom a separate eligibility criteria has been framed for being declared as Oustees?

6. Mr. Cheema, learned Counsel for the appellant has further contended that it is an admitted case that land of the appellant's husband was acquired by Union Territory, Chandigarh and the appellant had been living in Chandigarh for almost 30 years and after acquisition of land, the appellant cannot live in a street as she was having no house in Chandigarh and, therefore, there was no question of having the appellant not bona fide resident of Chandigarh.

7. Mr. Gupta, learned Counsel appearing for the respondents has also contended that there is no discussion on this issue in the impugned judgment. He further states that it was not pressed.

8. From the perusal of the impugned judgment, we find that there is no discussion on this issue. Therefore, it would be appropriate to set aside the impugned judgment and remand the case back to the learned Single Judge to decide afresh on this issue. Ordered accordingly.

9. The question of passing of any interim direction for reservation of a Flat shall be taken up by the learned Single Judge.

10. Parties to appear before the learned Single Judge on 8.4.2008.

11. With the aforesaid direction, the appeal stands disposed of.