

(1990) 05 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Amended Writ Petition No. 10004 of 1988

Rajesh Chaudhary

APPELLANT

Vs

Haryana Urban Development Authority and Others

RESPONDENT

Date of Decision : 16-05-1990

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 227

Citation : (1990) 98 PLR 167

Hon'ble Judges : K.P. Bhandari, J

Bench : Single Bench

Advocate : O.P. Sharma and S.K. Sharma, for the Appellant; N.K. Kapoor, for the Respondent

Final Decision : Allowed

Judgement

K.P. Bhandari, J.—This writ petition is directed to challenge a part of the Memo No A-14-89/10290-91, dated 19-4-1989 issued by the Chief Administrator, Haryana Urban Development Authority, Mani Majra (Union Territory), Chandigarh, in so far as it fixes the price to be charged from the petitioner for the open space measuring 300 square metres adjoining to Plot No. 32-P, Sector 13, Kurukshetra, at the latest current price plus interest at the rate of 10 per cent per annum, on the ground that, as per the policy of the Haryana Urban Development Authority contained in Resolution No. A-31/17, Annexure P-7, the price to be charged should be the same which was charged from the allottees of corner plots.

2. This writ petition was opposed by the Haryana Urban Development Authority by filing written statement dated 18.1.1989. Written statement has also been filed by Shri B. L. Suthar, District Town Planner, Kurukshetra, respondent No. 3, According to the written statement, the respondent has justified the provisions in the order for charging the price for the open space adjoining to the plot at the current price. The petitioner has filed replication to the written statement dated 18-1-1989 filed on behalf of respondents Nos. 1 and 2.

3. It has been contended by the counsel for the petitioner that the petitioner was allotted Plot No. 32-P, Sector 13, Kurukshetra, on 6-2-1-1978 at the rate of 70 90 paise per square metre. It is further contended that the Haryana Urban Development Authority has formulated a policy for transfer of open spaces adjoining to the plots, to the plot holders vide Resolution No. A-31/17, Annexure P-7. The operative portion of the policy reads as follows:--

"Keeping in view the above situation, it has been suggested that such additional open spaces are available in different Urban Estates and which are of no use from the angle of planning they may be given to the allottees of corner plots on the basis of sale. The price to be charged is the same which was charged from the allottees of corner plots. This price shall include the enhanced price of concerned plots. But only those plots may be transferred whose area is less than the corner plots. If the area of such open space is more than the area of adjoining corner plot such place should be kept open and not transferred. Such open space shall be transferred on the following terms and conditions :--

(i) Chief Administrator, Haryana Urban Development Authority shall be competent to transfer such land.

(ii) Such additional open space shall be used for as open space, ground and kitchen gardening.

(iii) The owner of this land shall have the right to construct four wall not more than four feet in height.

(iv) The owner of this land shall have no right to construct any residential building on this land.

(v) The owner of this plot after transfer, shall have no right to increase the covered area of his plot.

(vi) In this connection, the owner of the plot shall have to execute an agreement with the Chief Administrator providing that owner of this plot shall not construct any building on this additional land and if constructs any building, additional vacant land shall be resumed."

In pursuance of the policy of the respondent Haryana Urban Development Authority, the petitioner applied for allotment of the open space abutting his plot. This request was allowed by respondent No. 1, vide Memo No. A-14-89/10290-91, dated 19-4-1989 (Annexure P-8) which reads as follows :--

"The representation of Shri Rajesh Chaudhary, Kothi No. 21, Sector 4-A, Chandigarh, has been examined and it has been decided that the open space measuring 300 sq metres adjoining Plot No. 32-P, Sector 13, Kurukshetra, may be allotted on the condition that he will not raise any construction on this open space so as to cause any obstacle in the traffic but will use it only for kitchen-gardening.

An undertaking may be taken to this effect from the allottee.

The price for the said open space shall be on the basis of the latest current price for Kurukshetra plus interest at the rate of 10% upto the date of allotment which comes to Rs. 422/- (Rupees four hundred twenty-two only) per square metre tentatively."

It is clear from Annexure P-8 that the Chief Administrator, Haryana Urban Development Authority, decided to transfer the open space measuring 300 square metres adjoining Plot No. 32-P, Sector 13, Kurukshetra, to the petitioner on the condition that he raise any construction on the open space so as to cause any obstacle in the traffic but will use it only for kitchen-gardening. With regard to the price of the open space, it has been provided in the order Annexure P-8 that the price for the said open space shall be the latest current price for Kurukshetra plus interest at the rate of 10 per cent per annum. The price fixed, vide order Annexure P-8, has been challenged by the petitioner on the ground that, according to the policy laid down by the Haryana Urban Development Authority, vide Annexure P-7, the transfer of open space should be on the basis of the price to be charged from the allottees of the corner plots. In other words, according to the policy, the price for the open space should be the same at which the corner plot was transferred. It is the admitted case of the parties that the plot allotted to the petitioner was a corner plot and it was allotted to him at the rate of Rs. 70 90 paise per square metre. The Chief Administrator was not competent to depart from the policy laid down in resolution Annexure P-7. It is laid down therein that the price for the open space shall be the price at which the corner plot was transferred. It is important to note that this open space can be used by the owner of the plot for kitchen gardening only. The owner of the plot cannot raise any construction on the open space. The open space as a matter of fact, was to be used only for the purpose of beautification of the main plot. The order Annexure P-8 passed by the Chief Administrator demanding the price of the open space at the latest current rate is plainly contrary to the policy decision laid down by the Haryana Urban Development Authority, vide resolution Annexure P-7. The order Annexure P-8 is plainly arbitrary, unreasonable and capricious as there is no rational basis for charging the market price at the current rate for the open space on which the owner of the plot cannot raise any construction. It has been authoritatively laid down by the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, as follows :--

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm, which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quotas, licences etc, must be confined and structured by rational, relevant and non discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government

would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some principle which in itself was not irrational, unreasonable or discriminatory."

It is clear that the Supreme Court has authoritatively laid down in *Ramana Dayaram Shetty's* case (supra) that even in the matter of issuing quotas or licences or granting other forms of largess, the Government must act reasonably and fairly. They must proceed on the basis of the criteria laid down for its guidance and they cannot be allowed to depart therefrom. In view of the law laid down by the Supreme Court in the aforesaid case, the Chief Administrator, Haryana Urban Development Authority, in the present case, has acted plainly contrary to the criteria laid down by the Haryana Urban Development Authority, vide resolution Annexure P-7 that the open space shall be allotted to the owner of the plot at the price at which the corner plot was transferred. The price for the open space at the latest current price for Kurukshetra plus interest at the rate of 10 per cent per annum is plainly arbitrary, unreasonable and capricious and is, therefore, violative of Article 14 of the Constitution of India.

4. Mr. N. K. Kapoor, counsel for the respondents, has strongly contended that the open space is the property of the Haryana Urban Development Authority and they can charge any price for it. I do not find any weight in this contention of the respondents' counsel. The respondent-Haryana Urban Development Authority is a public authority and it is a "State" within the meaning of Article 12 of the Constitution. So, the respondent cannot act in an unjust and arbitrary manner. They must uniformly follow their policy for transfer of open space as laid down in the policy for transfer of open space as laid down in the policy decision, vide Annexure P-7.

5. In this view of the matter, the writ petition is allowed with costs; a writ of mandamus is issued thereby the fixing of price for the open space at the latest current rate is declared illegal, ultra vires and without jurisdiction, and the respondents are restrained from enforcing the said part of the decision contained in the order Annexure P-8 and, in its place, the respondents are directed to charge from the petitioner the price for the open space at the rate at which the corner plot was allotted to the petitioner, Counsel fee Rs. 500/-.