

(1993) 01 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 530 of 1990

Rangila Ram Rao

APPELLANT

Vs

Himachal Pradesh Honsing Board and Another

RESPONDENT

Date of Decision : 14-01-1993

Acts Referred:

Himachal Pradesh Allotment, Management and Sale of Houses/Plots Regulations, 1973
— Regulation 10
Himachal Pradesh Housing Board Act, 1972 — Section 3(2)
Transfer of Property Act, 1882 — Section 5, 54, 55, 55(1), 8

Citation : (1993) 1 ShimLC 314

Hon'ble Judges : Bhawani Singh, Acting C.J.; D.P. Sood, J

Bench : Division Bench

Advocate : M.C. Mandhotra, for the Appellant; K.D. Sood, for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, A.C.J.

1. This case has a long tortuous history. In order to trace it, we have to go back to June 19, 1981 when the Petitioner moved application (Annexure R-5) to the Secretary-cum Chief Engineer, Housing Board, Shimla for the allotment of plot No. 20-A in HI G. Housing Colony, Jakhoo Shimla alongwith registration charges.

2. The Petitioner belongs to Scheduled Tribe. At the relevant time, he happened to hold the office of Chief Parliamentary Secretary in the State Government. This application was followed by another application dated June 20, 1981 on the prescribed proforma. If one looks at application dated June 19, 1981, it can be noticed that the Chairman of the Respondent Board had approved the registration of the application of the Petitioner and had also sanctioned the allotment of the plot. As a sequel to the sanction granted by the Respondent-Board, a sale-deed (Annexure P-14) was executed on July 10, 1981. It has been signed by the Petitioner as well as the Secretary-cum-Chief Engineer of the Respondent-Board. The Petitioner was put in possession of the plot in September,

1981. He further claims that by virtue of this transaction, he became complete owner of the plot since he had paid the full price and by virtue of the sanction and execution of relevant documents. After the conclusion of this transaction, the Respondent-Board had no power to revoke the grant in question.

3. In addition to the present plot, the Respondent-Board had also allotted a few other plots. The matter appeared before the Court in Civil Writ No. 10 of 1981 and ended by order of this Court dated March 9, 1989 when the learned Counsel appearing for the Board submitted that the allotments made in favour of certain allottees had been cancelled by the Board.

4. The Government appointed Enquiry Officer to enquire into these allotments. The Enquiry Officer enquired into the matter and gave his report (Annexure P 25). According to him, many of the grants were not in accordance with the requirement of the Act and the Regulations of the Board and, therefore, they could not be sustained. Lastly, the Enquiry Officer recommended for the cancellation of these grants. Consequently, by order dated March 31, 1986 (Annexure P.17-A) the grant was cancelled.

5. The Petitioner challenged this grant before this Court in Civil Writ No. 286 of 1989. In it, it was contended, *Inter alia*, that the cancellation of the grant was in violation of the principles of natural justice for the reason that the Petitioner was not heard before the order in question was passed. By decision dated December 2, 1989 the order of cancellation was quashed by this Court and the Board was directed to hear the Petitioner and similarly situate persons before taking any decision in the matter.

6. As a result of this decision, the Respondent-Board issued show cause notice to the Petitioner dated January 3, 1990 (Annexure P-24) calling upon the Petitioner to reply within a period of fifteen days why the allotment in question be not cancelled and the plot resumed. The Petitioner sent two replies dated January 15, 1990 (Annexure P-26) and January 23, 1990 (Annexure P-27). However, the grant was ultimately cancelled by order dated August 7, 1990 (Annexure P-28). It is this order of the Respondent-Board which has been assailed by the Petitioner through this petition--which is the third round of litigation before this Court relating to the same plot.

7. In order to examine the matter comprehensively, it is important to refer to the stand taken by the Respondent-Board in its reply to Civil Writ No. 10 of 1982 (Annexure P-16). It has been stated by the Respondent-Board that the allotment to the Petitioner had been made under Regulation 10 of the Himachal Pradesh Allotment, Management and Sale of Houses/Plots Regulations, 1973 ("hereafter, shortly, 'the Regulations of 1973'"). The price of the land has also been justified. In para 3 of the reply on merits, it has been stated that:

3. ...It is further denied that there has been flagrant violation of bye-laws, rules and procedure of the Housing Board.... It is, however, reiterated that the allotment of plots in question has been made by the Board in exercise of its

powers under Clause 10 of H.P. Housing Board, Allotment, Management and Sale of Houses/Plots Regulations, 1973, on receipt of applications/requests from the allottees in question from time to time considering individual case on its own merit, which has prevailed with the Board for sanctioning the plots.

8. The allegation relating to the use of influence by the Petitioner for seeking the allotment has also been denied, like the allegation as to the conversion of green belt into the house sites in violation of the provisions of Himachal Pradesh Town & Country Planning Act. Then in para 6, it has been stated that:

6. ...The allotment is legal and valid and there is no infirmity attached to such allotment.

If we look to para 2 of the affidavit of Shri K.V. Jauhar, Secretary-cum-Chief Engineer of Respondent-Board, it records that:

2. That the contents of para 1 to 10 of the reply are correct according to the information derived from the official records and believed to be correct.

9. Now, we turn to the reply filed by the Respondent-Board in the present case. This reply has been filed on the affidavit of Shri J.R. Kainth, Secretary-cum-Chief Engineer of the Respondent-Board and the contents of the reply have also been verified on the basis of knowledge derived from the records. We take note of the curious turn taken by the Respondent-Board in the present case. Although it has been admitted that the Petitioner is a member of Scheduled Tribe, yet it seeks to hint at the fact that the Petitioner had been holding important assignments with the Government and it was by virtue of Petitioner's holding these assignments that the allotment was manipulated without observing the Regulations of 1973, since no applications had been invited and the Petitioner was not entitled to allotment of plot out of the discretionary quota. Further case of the Respondent-Board is that applications are sought through proper advertisement and processed as per procedure. The application of the Petitioner was received without any advertisement and the Board, in its 56th meeting held on August 19, 1981, approved the allotment of plot in favour of the Petitioner. The Petitioner deposited earnest money of Rs. 2,000 on June 19, 1981 and the deed of conveyance was executed on July 10, 1981 and registered on August 31, 1981. Since the allotment was made without adopting prescribed procedure and was obtained by the Petitioner because of his position and influence, the same was rightly cancelled after holding a proper enquiry.

10. The Petitioner was given an opportunity of being heard before order of cancellation (Annexure P25) was passed and it has been denied that this hearing was an eye-wash, illusory or arbitrary. It has also been disputed that the Respondents are estopped by principles of promissory estoppel to pass the impugned order and that the same is whimsical, based on irrelevant and extraneous considerations.

11. The Petitioner has also filed rejoinder to this reply. In it the basic grievances

raised in the main petition have been re-asserted. It has been specifically stated that the allotment had been made in accordance with rules and the Petitioner was entitled to the allotment in question and the allotment could also be granted out of 5% discretionary quota for which no advertisement was required and the Petitioner moved the application to the Respondent-Board to allot him a plot in accordance with rules. The Petitioner also states that it was for the Respondent-Board to process his application as per procedure and in case any procedure has not been scrupulously followed, that is the responsibility of the Board and not of the Petitioner. He cannot be held responsible for the same and the Board and the officials were estopped from raising such a question. So far as the Petitioner was concerned, he had complied with all the necessary formalities and conditions for seeking the grant. The allegation as to the use of influence by him, has been specifically denied and it has been asserted that the U-turn taken by the Respondent-Board has been on the behest of the political adversities of the Petitioner, otherwise there could be no reason to question the grant once made in accordance with law.

12. Supplementary affidavit filed by the Respondent-Board deals with the steps taken by the Board from time to time on the application of the Petitioner. These are the essential facts from out of the pleadings of the parties in this case.

13. Now, we advert to the basic questions raised before us by the learned Counsel appearing for the parties. Shri M.C. Mandhotra, learned Counsel appearing for the Petitioner, contended that although action of the Respondent-Board canceling the allotment in favour of the Petitioner was set aside by this Court with direction to the Board to hear the Petitioner before any further action detrimental to his interest is taken, yet there has been clear and conscious violation of the principles of natural justice in this case. Elaborating his submission, Shri M.C. Mandhotra submits that it was never the intention of this Court that the Respondent-Board would just pass on the copy of the enquiry report to the Petitioner, seek his reply and then move on to pass the impugned order. As a matter of fact, the intention was that the Board should have embarked upon a fresh enquiry, associate the Petitioner therein and then, if the enquiry went against the Petitioner, to issue him a show cause notice, seek his reply and pass an appropriate speaking order in the matter. This has not been done in the present case and the order is, therefore, liable to be set-aside.

14. Shri K.D. Sood, learned Counsel appearing for the Board, submits that it was not necessary to start the enquiry afresh and associate the Petitioner therein, since the enquiry was only a fact finding enquiry and association of the Petitioner at this stage was not a requirement of the principles of natural justice. The only stage where such an opportunity was to be given to the Petitioner, was after the Board received an adverse finding against the Petitioner. That was done as a sequel to the direction given by this Court.

15. We have considered this aspect of the matter. In our opinion, there is substance in the contention raised by Shri M.C. Mandhotra. If we look at the

enquiry report, the Enquiry Officer has gone deep into the matter, utilized the record of the Board extensively before holding that the allotment of plots was not in accordance with the requirement of law applicable in this case. Not only this, he has gone to the extent of recommending that the Government should consider the cancellation of these plots and dispense with the discretionary power of allotment under Regulation 10. It is an elaborate ex parte enquiry. The association of the Petitioner during this enquiry was essential in order to put his point of view before the Enquiry Officer and it could be that he could convince him about the genuineness of allotment in his favour. This has deprived the Petitioner of stating and representing his case during the enquiry with the result that the enquiry has become a subject-matter of challenge before this Court by the affected parties. Failure to associate the Petitioner in the enquiry not only at the initial stage but also after the direction by this Court, has created a serious flaw in the dispensation of justice in the matter by the Board in accordance with the tune and spirit of law of hearing and the direction of this Court.

16. Proceeding further, we notice that the Petitioner has moved two replies highlighting his points and supporting the grant in his favour, but the impugned order demonstrates that the Board did not deal with the matter properly. It has simply recorded that:

Now after going through the record of the allotment and enquiry report submitted by the Superintendent of Police, Enforcement, South Zone, Shimla, reply submitted by the allottee, it has been revealed that the allotment of the plot had been made contrary to the H.P. Housing Board Allotment, Management and Sale of Houses/Plots Regulations, 1973 and framed under the Housing Board Act, 1972, as such the same is liable to be cancelled.

17. It is absolutely plain that the order is not at all a speaking order. It does not disclose what kind of record/documents were seen by the Board and how it was influenced by it. Further, it does not mention the points taken by the Petitioner in his replies nor why they did not influence a decision favourable to him. Which specific rules and regulations were violated in the allotment of the plot, is also not clear from this order. This clearly means that the authority concerned did not apply its mind to the facts of the case, replies submitted by the Petitioner and the relevant rules of allotment, before passing the order of cancellation. It is not difficult to conclude, therefore, that it is no order in the eye of law and is liable to be set aside.

18. We proceed further to examine the second question in this case. Shri M.C. Mandhotra contends that the Petitioner had applied to the Board for the allotment of a plot in accordance with the rules whether it was to be allotted out of the discretionary quota or otherwise, was left to the sanctioning authority. The matter was examined by it and it was after thorough examination that the allotment was made.

19. Shri K.D. Sood submits that there was no discretionary power with the Board

to grant such plots and even if it is assumed that it could do so, the procedure for the allotment has not been followed.

20. In order to examine this question, we refer to Regulation 10 as it existed at the relevant time It says:

10. Power of Board to allot.-- Notwithstanding anything contained in these Regulations, the Board may of its own or in accordance with the directions of the State Government allot any house/plot to any person(s) provided such person(s) agrees in writing to abide by the terms and conditions of allotment under the provisions of these Regulations.

The learned Counsel for the parties read to us the other provisions of these Regulations, particularly, Shri K.D. Sood intends to submit that the procedure for the allotment of plot has not been followed in the sense that the plots have to be advertised, applications sought, processed and then selected by drawing of lots. But, the learned Counsel fairly concedes that power of the Board to allot plots under Regulation 10 is by way of an exception to the general rule and that under this Regulation the Board can grant any plot or house to any person it may so desire. When this is the state of argument, we have no hesitation in coming to the conclusion that Regulation 10 gives statutory powers to the Board to allot house/plot to any person which means any one who applies for the same. The power being an exception to the general rule of allotting plots contained in the other parts of the Regulations, has to be exercised in the manner the Board may think fit in the circumstances, but it need not follow the same procedure which is applicable to other cases of normal allotments covered by other provisions of the Regulations. Therefore, when statutory power to make allotment is conferred on the Board, we see no substance in the argument that a proper procedure was not followed, in view of our conclusion that no special procedure is prescribed for allotment under Regulation 10 and whatever procedure has been prescribed, it applies to allotments other than those covered under Regulation 10.

21. Shri K.D. Sood then contended that this power of the Board is liable to be abused and this has to be prevented by this Court, We decline to do so for two reasons, namely, (i) that these Regulations have been framed by the Board and they are statutory in character. The Board cannot be permitted to assail its own Regulations on the ground that they are arbitrary and are liable to be abused and (ii) that no specific plea assailing this Regulation has been taken in the reply-affidavits of the Respondent-Board. We have given our mind to this point despite feeling that Shri K.D. Sood need not have been heard by us on this point in the absence of raising a clear case on this aspect in the return.

22. In addition, this argument also becomes insignificant in view of the amendment brought to this Regulation by decision of the Government dated May 24, 1982 (Annexure R-8) whereby the allotment of plots under Regulation 10 have been reduced to 5% only. This is in tune with the position prevailing in the neighbouring States of Punjab and Haryana and was subject-matter of discussion

and decision in Full Bench case reported in 1988 (1) PLR 430, Shri S.R. Dass, Headmaster. Lawrence School Sanawar (Shimla Hills) v. State of Haryana through the Secretary Department of Town and Country Planning, Government of Harvana, Chandigarh and Ors. 1988 (1) PLJ 123, where allotment of plots to the extent of 5% has been upheld.

23. Next, it was contended that the grant in the present case had become final and was not, therefore, liable to be cancelled in any case by the Respondent-Board. The contention of Shri K.D. Sood is that the Board could cancel the grant in case it was procured by misuse of official position by the Petitioner and was not in accordance with the procedure.

24. We turn to the question whether the grant in the present case was complete. We answer this question in the affirmative. The Petitioner applied for H.I.G. Plot No, 20-A through application dated June 19, 1981. It was allotted to him vide office allotment letter No. H.B. 2-H/74-Admn-13028-30, dated July 2, 1981. The allotment was also approved by the Board of Directors in its 56th meeting held on August 19, 1981. It is also important to note that the Petitioner had paid all the relevant charges towards the earnest money and other incidental charges. The deed of conveyance was executed in his favour on July 10, 1981. It was registered on August 31, 1981. The Petitioner had been put in possession of the plot also. What else is left?

25. Section 5 under Chapter II defines transfer of property as under:

5. "Transfer of property" defined"--In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself; or to himself and one or more other living persons; and "to transfer property" is to perform such act.

In this section "living person" includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals.

26. Section 8 deals with operation of transfer It envisages that:

8. Operation of transfer --Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

27. Sale is defined in Section 54 Chapter III of Transfer of Property Act, 1882 as under:

"Sale" defined.--"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

The transaction in case of tangible Immovable property of the value of one hundred rupees has to be by a registered instrument and delivery of the same

can be when the person is put in possession of the property.

28. Section 55 places certain liabilities on the buyer and seller. Clause (a) of Sub-section (1) of Section 55 says that the seller is bound:

(a) to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not, with ordinary care, discover;

29. If we examine the present case in the context of the provisions extracted above, there is no manner of doubt that the Petitioner had fairly and clearly stated in his application dated June 19, 1981 that the plot in question be allotted to him according to rules. He had paid the earnest money as well as some other sundry charges. The parties executed other necessary documents completing the transaction. Later, the remaining consideration was also deposited the Petitioner was put in possession of the property. At no stage, during this time, it was pointed out by the Respondents that the Respondent-Board could not allot the plot to the Petitioner for any reason.

30. Sub-section (2) of Section 3 of the Himachal Pradesh Housing Board Act, 1972 makes it a body corporate with power to acquire, hold and transfer property, movable or immovable and to enter into contracts and sue and be sued as such. The Respondent-Board had, therefore, power to enter into the present transaction with the Petitioner to sell/allot the land under Regulation 10 (supra).

31. There is no material pointing out that the Petitioner exercised his influence in order to seek the allotment in question and it would not be practicable nor reasonable to infer from the submissions of Shri K.D. Sood, learned Counsel for the Respondent-Board that since the Petitioner was occupying a high office in the Government, therefore, the effect of influence has to be ascertained and concluded. We notice no such attempt on the part of the Petitioner in the present case, if we look at his application and the pleadings before us.

32. So far as the procedure of allotment is concerned, we have already held that for allotments under Regulation 10, no particular procedure is prescribed. However, the application of the Petitioner was processed and ultimately approved by the Respondent-Board in its 56th meeting. Further, the Petitioner was not in a position to know nor he was made known about any actual procedure, if any, nor he could by ordinary care discover the same. There is one more additional point to support this conclusion. In its affidavit of April, 1982 in reply to Civil Writ Petition No. 10 of 1982, relevant parts of which have been quoted above, it is absolutely clear that the stand of the Respondent-Board has been that the grant had been made in accordance with law and procedure and there was no infirmity attached to this allotment. In such a situation, the Respondent-Board cannot be permitted to approbate and reprobate on the same fact at two different stages, more particularly, when its stand was quite clear in the affidavit of April, 1982 sworn on the basis of official records. Therefore, it can very well be said that the Respondent-Board took an U-turn to the whole issue for reasons best known to

it. However, the fact remains that the transaction was complete and did not suffer from any kind of invalidity. The Petitioner became the owner of the plot and the allotment could not be cancelled on the grounds asserted by the Respondents.

33. No other point was argued by the learned Counsel for the parties. The result of the aforesaid discussion is that the order of cancellation of allotment in favour of the Petitioner is absolutely wrong and the impugned order dated August 17, 1990 (Annexure P-28) is hereby quashed. The Petitioner is the rightful owner of the plot in question. The writ petition is allowed, however, the parties are left to bear their own costs.