
(1975) 12 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 655 of 1975

Sangat Singh

APPELLANT

Vs

Union Territory Chandigarh and anothers

RESPONDENT

Date of Decision : 10-12-1975

Acts Referred:

Capital of Punjab (Development and Regulation) Act, 1952 — Section 3(1)

Citation : (1975) 12 P&H CK 0004

Hon'ble Judges : Ajit Singh Bains, J

Bench : Single Bench

Advocate : B.S. Wasu, for the Appellant; Anand Swaroop and Mr. K.G. Chowdhry, for the Respondent

Final Decision : Allowed

Judgement

A.S. Bains, J.—The Chandigarh Administration some-time in the end of year 1968 framed a scheme for the allotment of plots in Sector 38 as also in other developed Sectors for the Indians settled abroad. This scheme is stated to have been framed u/s 3(1) of the Capital of the Punjab (Development and Regulations) Act, 1952 (hereinafter called the Act). The scheme (Annexure P1) is in the following terms:

A copy of the plan indicating the location of various Sectors and distribution of plots is enclosed for reference and information.

2. In order to help the Indians residing abroad in settling at Chandigarh, it has been decided to reserve Sector 38 for them. A brief sketch of these sub-Sectors showing various sizes and location of plots as well as their serial Nos. is also enclosed for reference. Plots in the developed Sectors may also be allotted subject to availability.

3. Plots will be allotted to those Indians who wish to settle in this Sector, out of the plots shown in this plan. As such you are requested to indicate your preference in respect of the plot or plots you want to purchase. Efforts will be

made to allot a plot of your choice, in case there is no claimant for the same. In the event of more than one claimant in respect of one plot, lots may be drawn and plots will be offered accordingly.

4. The price is based on the average price fetched by similar category of plots in the last 2 auctions. The price of different categories of plots at present is as under:

(i) x x x

(ii) x x x

(iii) x x x

(iv) Rs. 33.60 per square yard for plots of 2 Kanal category (1000 square yards)

(v) x x x

(vi) x x x

You are requested to remit 10 per cent of the price of the plot you require as earnest money to the Estate Officer, Chandigarh Administration, Chandigarh, within 21 days of receipt of this letter. The balance amount would be payable within two months from the date of allotment.

5. x x x

6. x x x

In para 4 of the scheme, it is mentioned that the price of a 2 Kanal plot would be @ Rs. 33.60 per square yard and that 10% of the price of the plot is required to be remitted as earnest money along with the application for allotment of the plot. It was in accordance with this condition that the Petitioner, who is an Indian settled in Malaysia, submitted an application for allotment of a 2 Kanal plot on January 31, 1969 (annexure P2) by annexing a bank draft of Rs. 3,460/-, being 10 per cent of the purchase price of the plot. In the forwarding letter (annexure P4) vide which the Petitioner had sent the application for allotment of the plot, he had mentioned his preference for 3 or 4 Kanal plots and had further stated that in case any plot of his preference was not available, he may be consulted before an alternate allotment is made. The Petitioner heard nothing from Respondent No. 3 for seven months. So he sent a reminder letter on July 12, 1969 (annexure P5). However, Respondent No. 3 acknowledged the receipt of the demand draft of Rs. 3,360/-, vide letter dated August 29, 1969 (annexure P6). In a subsequent letter dated September 24, 1969 (annexure P7) Respondent No. 2 informed the Petitioner that as 3 or 4 Kanal plots were not available for allotment in Sector 38 he might intimate if he was willing to have a two Kanal plot in the said Sector. This letter was superfluous because the Petitioner had already stated in his application for allotment of plot (annexure P4) that he be allotted 1,000 square yards (2 Kanals) plot and accordingly he had sent bank draft for Rs. 3,360/- being 10% of the price of the plot. It was averred that the

matter again remained pending for a considerably long time and the Petitioner sent a letter dated October 12, 1970 (annexure P8) and another letter dated June 20, 1972 (annexure P10) to Respondent No. 3. who ultimately vide letter dated July 15, 1972 (annexure P11) informed him that his cases for allotment of plot had been referred to the Government and that he would be informed as and when the decision was arrived at.

2. Having not been informed of the decision of the Government for another three months, the Petitioner wrote letters dated October 10, 1971 (annexure P12) and dated March 7, 1973 (annexure P14) and was ultimately informed by Respondent No. 2, vide memorandum dated September 3, 1974 (annexure P15) that a plot of one kanal was proposed to be allotted to him in Sector 38 at the rate of 104 per square yard and that the allotment will be on lease-hold basis and besides premium, ground rent shall be charged. It was further mentioned in this memorandum that the rate of Rs. 104/- per square yard was subject to alteration in case another auction was held before actual allotment of the plot to the Petitioner. The Petitioner then submitted a representation dated September 28, 1974 (annexure P 16) to Respondent No. 2 who vide memo dated November 23, 1974 (annexure P 17) informed the Petitioner that a plot cannot be allotted to him at the rate of Rs. 33.60. The Petitioner then saw the Chief Commissioner who refused to intervene. It is against this attitude of Chandigarh Administration and the impugned order (annexure P. 15) that the present writ petition has been filed.

3. Return has been filed on behalf of the Chandigarh Administration wherein a preliminary objection has been taken that no legal right of the Petitioner has been infringed and, therefore, this petition is not competent. It is stated that the sale of plots by the Chandigarh Administration to any party is a matter of contract; that the application for allotment of the plot made by the Petitioner was only an offer to purchase a certain plot at a certain price and that the Chandigarh Administration was within its right to accept or reject the offer.

4. Mr. Wasu, Learned Counsel for the Petitioner, has contended that once the Chandigarh Administration had agreed to sell the plot at the rate of Rs. 33.60 per square yard per the scheme prepared by it u/s 3 of the Act it was not subsequently justified in asking the Petitioner to pay the price of the plot at the rate of Rs. 104/- per square yard in support of his argument he has relied upon The Union of India and Ors. v. M/s. Anglo Afghan Agencies AIR 198 S.C. 718 Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , and Amrit Vanaspati Company Ltd. v. The State of Punjab (1975) P.L.R. 557. Mr. Anand Sarup, Learned Counsel for the Respondents, relying upon Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, , contends that as no legal right of the Petitioner is impeached no mandamus can be issued by this Court.

5. I have carefully considered the respective contentions of the counsel for the parties and find merit in what Mr. Wasu says. The formulation of the scheme by

the Chandigarh Administration for the allotment of plots in Sector 38 to the Indians settled abroad is not denied. It is also not denied that in pursuance of the scheme the Petitioner sent his application alongwith 10% of the purchase price of the plot in accordance with Rule 5 (2) of the Chandigarh (Sale of Sites) Rules. All the facts mentioned in the petition are accepted. It is also admitted that the Petitioner had been sending reminders. In such a situation, when the Chandigarh Administration had itself formulated a scheme u/s 3(1) of the Act and the Petitioner sent the application as required under Rule 5 (2) of the Chandigarh (Sale or sites) Rules with 10% of the price of a 2 Kanal plot @ Rs. 33.60 per square yard (which rate was itself mentioned in the scheme), the Chandigarh Administration was bound to allot the plot to the Petitioner in accordance with the scheme. The application for allotment of the plot was made by the Petitioner on January 31, 1969 (annexure P. 2). The Respondent Chandigarh, Administration remained silent and in July, 1972, the Petitioner was merely informed that his case for the allotment of a plot was under consideration of the Government. Further, it was only in September, 1974, that the impugned letter (annexure P. 15) was sent to the Petitioner intimating therein that a plot of one Kanal size only was available for allotment to him on leasehold basis at the rate of Rs. 104/- per square yard subject to alteration in case another auction was held before actual allotment of the plot to him. This action of the Administration is arbitrary and to the great prejudice of the Petitioner. If the Petitioner was not to be allotted the plot of the size at the rate and other terms applied for, the Administration could decide it earlier but they took 5 1/2 years to take a decision which is the height of inefficiency and red-tapeism. The concerned officials are public servants who are to work efficiently and expeditiously in accordance with rules and they cannot take arbitrary decisions.

6. The contention of Mr. Anand Swaroop that no legal right of the Petitioner has been infringed is without any merit. The Petitioner had sent the application for allotment of a plot in accordance with Rule 5(2) of the Chandigarh (Sale of Sites) Rules and deposited 10% price as the earnest money as required under the scheme framed by the Administration u/s 3(1) of the Act. The Petitioner had the legal right that his application was processed and decided expeditiously in accordance with the conditions laid down in the scheme but it took the Administration more than 5 1/2 years to decide the matter and that, too, against the scheme. Every citizen has a right to be dealt within accordance with the policy, the scheme or the rules made by the Government or the Administration. Mr. Anand Swarup also did not show me any record as to in which manner the application of the Petitioner was dealt with. This shows that somebody in the Administration had kept the application unreal with and did not even lay the same before the authorities and it was only as a result of the repeated reminders sent by the Petitioner that the impugned letter dated September 3 1974 (annexure P. 15) was sent to him. The public servants are expected to perform their duties to fulfill their assurances. It was expected of the Administration to have dealt with and decided the application of the Petitioner efficiently and

expeditiously. The impugned letter of the Chandigarh Administration only mentions that they proposed to allot about one Kanal residential plot to the Petitioner in Sector 38 at the rate of Rs. 104/- per square yard. It is not known as to how the Administration can demand the price of the plot at the rate of Rs. 104/- per square yard when it had earlier entertained the application of the Petitioner and accepted the earnest money in accordance with the scheme. It was open to the Administration to reject the application and refund the earnest money if it was not in accordance with the scheme but it chose to keep mum for over 5 1/2 years. The earnest money of Rs. 3360/- received by the Chandigarh Administration in February, 1969, is still lying with them.

7. Their Lordship of the Supreme Court in the Union of India and Ors. v. Ms Anglo Afghan Agencies, etc. AIR 19 8 S.C. 718, have held as under:

Granting that it was executive in character, the Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities. It could not be said that the executive necessity releases the Government from honoring its solemn promises relying on which citizen have acted to their detriment. Under the constitutional set-up, no person may be deprived of his right or liberty except in due course of and by authority of law ; if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law common or statute the Courts will be competent to, and, indeed, would be bound to protect the rights of the aggrieved citizen.

Their Lordships of the Supreme Court in Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , have observed as follows:

A party claiming to be aggrieved by the action of a public body or authority on the plea that the action is unlawful, highhanded, arbitrary or unjust, is entitled to a hearing of its petition on merits.

In this case, the High Court had dismissed the petition under Article 226 of the Constitution in limine and aggrieved by the order of the High Court, the appeal was filed in the Supreme Court which made the above observations. It was further observed in this decision as follows:

Public bodies are as much bound as private individuals to carry out representations of facts and premises made by them, relying on which other persons have altered their position to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced ex contract by a person who acts upon the promise ; when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation if the contract be tot in that form may be enforced against it in appropriate cases in equity. In Union of India v. Indo-Afghan Agencies Ltd. (A.I.R. 1968 S.C. 18), this Court held that the Government is not exempt from the equity arising out of

the acts done by citizens to their prejudice, relying upon the representations as to its future conduct made by the Government.

* * *

If our nascent democracy is to thrive, different standards of conduct for the people and the public bodies cannot ordinarily be permitted. A public body is, in our judgment, not exempt from liability to carry out its obligation arising out of representations made by it relying upon which a citizen has altered his position to his prejudice.

8. In another decision in Union of India (UOI) Vs. K.P. Joseph and Others, their Lordships of the Supreme Court have observed as follows:

To say that an administrative order can never confer any right would be too wide a proposition. There are administrative orders which confer rights and impose duties. It is because an administrative order can abridge or take away rights that Courts have imported the principle of natural justice of audi alteram partem into this area.

9. The ratio of their Supreme Court authorities is that the authorities are bound by their promises and representations on which the citizens have relied and such promises are enforceable in equity in appropriate cases. The Courts have the power in appropriate cases to compel performance of the obligations imposed by the Schemes upon the departmental authorities. Lakhraj Sathram Das Lalvani's case (supra) relied upon by Mr. Anand Swarup is of no help to the Chandigarh Administration; it rather helps the Petitioner. In this decision it was observed by their Lordships of the Supreme Court that the chief function of the writ is to compel the performance of public duties prescribed by statute and to keep the subordinate tribunals and officers exercising public functions within the limits of their jurisdictions. More-over, this authority has no application to the facts of the present case. There is another aspect that the impugned order (Annexure P. 15) was passed without hearing the Petitioner.

10. For the reasons recorded above I allow this petition, quash the impugned order (annexure P. 15) and direct the Chandigarh Administration to allot a two Kanal plot to the Petitioner in Sector 38 at the rate of Rs. 33.60 per square yard as mentioned in the scheme and in case the plot be not available in Sector 38, the same shall be allotted to him in some other Sector at aforesaid rate within one month. The Petitioner shall be entitled to the costs of the costs of this petition. Counsel fee Rs. 300/-.