
(1978) 07 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No's. 1713 and 3136 of 1975 and 4092 and 4427 of 1976

Surjit Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 31-07-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab Urban Estates (Sales of Sites) Rules, 1965 — Rule 5, 5(3)

Citation : AIR 1980 P&H 65 : (1979) 1 ILR (P&H) 178

Hon'ble Judges : S.S. Sandha Walia, C.J.; S.C. Mittal, J.; Prem Chand Jain, J

Bench : Full Bench

Judgement

Prem Chand Jain, J.—This judgment of ours would dispose of C. W. P. No. 1713 of 1975, filed by Surjit Singh and others, C, W. P. No. 3136 of 1975 filed by B. N. Ganjoo and others; C. W. P. No. 4092 of 1976 filed by Hussan Lal and C. W. P. No 4427 of 1976 filed by Ajit Singh Sually, as common question of law arises in all these petitions.

2. C. W. P. No. 1713 of 1975 filed by Surjit Singh and others came up for hearing before M. R. Sharma J. on May 31, 1977. The learned Judge, after hearing the arguments arrived at a conclusion that the case involved a substantial question of law and consequently referred the matter for decision to a larger Bench. That is how this petition, along with the other three petitions referred to above, has been placed before us.

3. In order to appreciate the controversy, it is necessary to notice certain facts which are being narrated from C. W. P. No. 1713 of 1975, and read as under:--

The Punjab Government notified a scheme on August 3, 1989, framed under the Punjab Urban Estates (Development and Regulation) Act, 1964 (hereinafter referred to as the Act) and the Punjab Urban Estates (Sale of Sites) Rules, 1965 (hereinafter referred to as the Rules), for setting up Urban Estates at various places in Punjab, including Mohali near Chandigarh. The petitioners, who were

interested to purchase the plots in response to the said scheme which was widely advertised, applied within the time specified, i.e., by August 31, 1969, for purchase by allotment of plots measuring 7 1/2 Marlas to 1 Kanal in the Urban Estate, Mohali, and enclosed with their respective applications demand draft covering 10 per cent. of the sale-price according to Rule 5 of the Rules. After the submission of the applications, the petitioners waited for allotment of the plots, but did not hear anything from the Government, Thereafter, the petitioners learnt that arbitrary allotments had been made by drawing lots in favour of certain favourites of the respondents in contravention of the provisions of the scheme, the Act and the Rules, and in this manner, the principle of "first come first served" had been completely ignored.

4. It is further stated that the respondents instead of making allotments to the petitioners in accordance with the terms and conditions of the scheme earlier published, have been arbitrarily making fresh schemes with regard to the allotment of plots in Mohali, and under the new scheme the petitioners have now received a memorandum (copy Annexure P-2 to the petition) from the Estate Officer, Urban Estates, Punjab, Chandigarh, calling upon the petitioners to remit the balance of the price of the land fixed at Rs. 58/- per square yard. The petitioners, through this writ petition, have called in question the scheme made by the respondents demanding an inflated rate of Rs. 58/- per square yard from the petitioners, and also for drawing lots and allotting plots to the persons who had submitted applications after the date on which the applications were filed by the petitioners.

5. In pursuance of the notice of motion issued to the respondents, written statement was filed by Gursewak Singh Sekhon, Estate Officer, Urban Estates, Punjab, Chandigarh, on behalf of respondents Nos. 1 to 3. Besides taking certain preliminary objections, the facts stated in the petition have been controverted. In the written statement, it has been averred that offers were invited for the sale (by allotment) of 636 Plots, as advertised, in the Mohali Urban Estate along with plots in the various other Urban states in the State; that the tentative price fixed in the advertisement related only to 636 plots offered for sale by allotment; that the principle of "first come first served" could not be adhered to as the number of applications received was more than the number of available plots; that in this situation, the method of drawing lots was adopted by the allotment Committee in order to do justice to all the applicants and to avoid any misgiving in the public or chance of favouritism to anyone; that in the applications that were submitted by the petitioners, one of the stipulations accepted by them was that in the event of non-allotment of plots in the first phase their earnest money may be retained by placing the applicants' names on the waiting list for allotment in the next phase; that the price of plots could be enhanced in respect of the allotments which were subsequently made due to the increased cost of acquisition of land and cost of development; that the rates advertised earlier were available only in the case of 636 plots offered for sale and in case the petitioners had been successful in the draw held for the allotment of those plots, they would have got

the plots at the rate advertised; that subsequently, the plots were to be allotted to an applicant at the current rates to be fixed by the Government and that no change in the rates of plots had been made with retrospective effect.

6. One of the main preliminary objections which has been raised is that the petitioners could not invoke the extraordinary jurisdiction of this Court under Art. 226 of the Constitution of India as no writ petition on the basis of a contract could be filed.

7. Replication was filed by the petitioners in which the allegations made in the written statement have been controverted and the stand taken in the petition has been reiterated.

8. With the permission of the Court, the Estate Officer was allowed to file rejoinder to the replication in which the averments made in the replication have been controverted and the stand taken in the written statement has been reiterated.

9. The main arguments were addressed by Mr. Harnam Singh Wasu, Senior Advocate. His first contention was that lots were not contemplated in the scheme that was advertised by the respondents and that the rules contemplated that the allotment should have been made on the principle of "first come first served". After hearing the learned counsel for the parties. I am of the view that there is no merit in this contention of the learned counsel. There is no gainsaying that the number of applications was far mote than the plots that were to be allotted under the first scheme (copy Annexure P-1 to the petition). The contention of the learned counsel that the principle of "first come first served" should have been adhered to, on the face of it, appears to be fallacious. The respondents had fixed a particular date by which the applications were to be filed after complying with all the formalities. In the advertisement (copy Annexure P-1) conditions are given which had to be complied with while filing the application for allotment. In the scheme or in the Rules, it is nowhere stated that the allotments had to be made on the basis of the principle of "first come first served." Under clause 4 of the scheme the allotment had to be made through the allotment committee constituted by the State Government, The allotment committee found the number of the applications far more than the plots to be allotted. In order to do justice to the applicants, as well as to avoid any chance of favouritism, the allotment committee adopted the method of drawing lots which, in the circumstances of the case, was the only just and proper method. Filing of the application with the deposit of the 10% price of the plot as earnest money, could not give any right to an applicant to claim allotment of the plot on the basis of the principle of "first come first served." During the course of argument, a question was put to the learned counsel for the petitioners as to what would be the position of allotment in a situation where 1000 applicants file applications complete in all respects at one and the same time on one day, and that in such a situation, how would the principle of "first come 8rst served" be given effect to ? The learned counsel was unable to give any reply and rest contented by saying

that that was not the situation in the instant case.

10. The learned counsel in support of his contention also drew our attention to sub-r. (3) of R. 5, which reads as under:--

"When 10% of the price has been tendered the State Government or such authority as it may appoint in this behalf may allot a site of the size applied for. Intimation by registered post giving the number, dimensions, area and tentative price or final price of the site allotted."

What was sought to be argued by him was that the moment 10% of the price was tendered, the authority was required to allot a site of the size applied for. It was on the strength of this sub-rule that the principle of "first come first served" was pressed into service. I am afraid, I am unable to agree with the learned counsel. The sub-rule referred to above, only provides that when 10% of the price had been tendered, the State Government or such authority as it may appoint in this behalf, may allot a site of the size applied for. But the language of the rule does not suggest that the principle of "first come first served" has to be adopted, nor does it exclude the adoption of the method of drawing lots, as has been done in the instant case. The words "may allot a site" cannot be read to mean "shall allot a site" as that, in a given situation, can create such complications which may not be remediable. By filing an application in accordance with law, the applicant only gets a right of consideration of his application, but he does not get a vested right for allotment of the plot. The conditions laid down in the first scheme or the provisions of R. 5(3) do not give any right to the applicants to claim allotment of plots as a matter of right. There is nothing in the scheme or the Act or the Rules which requires the adoption of the principle of "first come first served" at the time of allotment, or debars the Government from adopting the method of drawing lots. The petitioners have not been able to lay foundation for establishing their right which "could legally be enforced and the petitioners have completely failed to make out a case for the exercise of our extraordinary jurisdiction under Art. 226 of the Constitution of India

11. It was next contended by the learned counsel that the price could not be claimed by the respondents at enhanced rate as the price that was fixed under the first advertisement should have been the price for the plots to be allotted under the subsequent schemes. This contention of the learned counsel again is without any merit. The price on which the plots were to be allotted under the first scheme ceased to be the price in respect of the plots which were to be allotted under the subsequent schemes. In the instant case, as has been alleged in the written statement, the petitioners themselves in para 8 of the application, agreed that in the event of non-allotment of plots in the first phase their earnest money be kept by placing their names on the waiting list for allotment in the next phase. I fail to understand as to how the same price could govern the allotment in the next phase. The price related to the allotment of 636 plots only and if the petitioners had been successful in getting the allotment of any plot in

their favour, then they would have got the allotment of that plot on the basis of the price so advertised. But the petitioners cannot take benefit of that price in respect of the plots which were allotted on the basis of subsequent schemes. If they had not agreed for placing their names on the waiting list for the allotment of plots in the next phase, they even would not have been eligible to be considered for allotment later on. As they wished that their names be retained, for consideration at the time of subsequent allotment, they must pay the price which was increased later on taking into consideration the enhanced cost of acquisition of land and cost of development. The price fixed under the first advertisement could not govern the subsequent allotments made by the State Government. In this view, of the matter, as earlier observed, the contention of the learned counsel is without any merit.

12. No other point was urged.

13. For the reasons recorded above, these writ petitions fail and are dismissed, but in the circumstances of the case, I make no order as to costs.

S.S. Sandhawalia, C.J.

14. I agree.

S.C. Mittal, J.

15. I agree.

16. Petitions dismissed.