

(1993) 09 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6383, 3428, 4059, 6194, 6192, 6384, 6385, 6386 and 6387 of 1991

Syal Brothers and Others

APPELLANT

Vs

Rajasthan Housing Board and Another

RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 2 RLW 463 : (1994) 1 WLC 19 : (1993) WLN 509

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.L. Tibrewal, J.—All the petitions are disposed of by a common order as they are identical in nature. The facts of the case are startling. All public institutions and their officers are expected to act fairly, reasonably and in accordance with law. But the facts of the present case show with law. But the facts of the present case show that some high-ups of the Rajasthan Housing Board (for short "the Board") in an unusual manner, were interested to allot valuable land in "Mansarover Scheme" Jaipur to the members of Sanitary Dealers Association, Jaipur, by back door method. It appears that the ill design could not succeed on account of anonymous complaint made to High authorities, including the Prime Minister of India.

2. Mansarover Scheme is one of the prestigious scheme undertaken by the Board. Basically, it is a residential scheme. In the scheme there is no provision to establish a separate market for Sanitary Dealers. Without any provision for such market (Mandi) and without public notice inviting applications from the public for allotment of plots for shop-cum-godown-cum-residential purposes, the Board proceeded to make an offer to the President, Sanitary Dealers Association and a letter was written under the signature of Smt. Pramila Surana, the Chief Estate Manager, wherein it was stated that Board's Property Allotment Committee (for

short P.A.C) in its meeting dated 9.11.1989 had taken a decision to allot a piece of land in "Mansarover Scheme" for plots to members of the Association. It was also stated that Rs. 750/- per Sq. meter shall be charged as price of the land and allotment of plots shall be made by draw of lots. The Dealers getting allotment letter of the plot was required to deposit 40% of the price within a month from the date of letter and the balance price to be paid six monthly installments for three years. It may be stated here that neither the size of the plots, nor the place were identified in the letter. They are not identified even in the record of the Board.

3. Thereafter, on the basis of the list of Members of the Association supplied by its President a lottery was drawn on 25.1.1980. The result of the lottery has been placed on the record as Annexure 3, which contained 152 names of Sanitary Dealers. However, it is an admitted fact that neither allotment letters were issued by the Board, nor any amount towards the price of plot was deposited by any Dealer. Before further action could be taken by the Board after the draw of the lottery, an anonymous complaint came to be made. In the complaint it was stated that the so called Association of Sanitary Dealers was a fake one, having its existence in papers only, and the Sanitary Dealers who were shown as members of the Association were not genuine. It was also stated that the President of the Association had collected Rs. 2,000/- from each of the applicants on the pretext that the said amount shall be paid to the Chairman of the Board and the concerned Minister. In brief, the complaint was that the entire action and process was fishy and no such "Market" (Mandi) should be permitted to be established in centre of "Mansarover Scheme which" was a residential scheme.

4. The case of the petitioners is that after publication of the result of lottery, the Board did not issue allotment letters. The Association, therefore, made a representation to the Chief Estate Manager of the Board on April 13, 1993 requesting her to issue allotment letters to the successful members of the Association. In reference to the above letter, the Chief Estate Manager intimated that the lottery drawn on 25.1.1980 was cancelled by P.A.C. in its meeting dated 19.2.1990 and 7.8.1990 as such, it was not possible to allot plots to members of the Association. A copy of this letter has been placed on record as Annexure 5.

5. In the return, the Board has come out with a case that in the meeting dated 7.8.1990 the committee cancelled the lottery and the decision of the committee was approved by the Board in its 154th meeting dated 19.11.1990. The minutes of the above meetings were placed on the record as Annexure R/1 and R/2 respectively. It was also stated that the proposal made by P.A.C. in its meeting dated 9.11.1989 was subject to approval of the Board and the same was not approved.

6. The learned Counsel for petitioners has raised various points in his arguments and they are set out as follows:

(i) After the draw of lots on 25.1.1990, a binding contract came into being on the

basis of which the petitioners were entitled to claim allotment of plots.

(ii) The Board was estopped from going back on the "doctrine of Promissory Estoppel of Equitable Estoppel".

(iii) The action of the Board in cancelling draw was not reasonable and fair and further the reasons of cancellation were not given in the letter.

(iv) That the action of the Board was also against the principles of natural justice as neither any notice, nor any opportunity to be heard was given to the petitioners before cancelling the draw of lots In their favour.

7. I seriously considered the above submissions, and in my view one of them has any merit. The Rajasthan Housing Board is a statutory body established under the Rajasthan Housing Board Act, 1970. It was established to carry out the functions of the State Government to satisfy the need of housing accommodation in the State of Rajasthan. The Board cannot act like a private individual in making allotment of commercial or residential plots. It is not disputed before me that action of Rajasthan Housing Board is challengeable if it is found arbitrary. In a rule of law the officers of the Board cannot possess arbitrary power. Their action must be informed with reason and should be free from arbitrariness.

8. Chapter III of the Act deals with "Housing Scheme" Section 26 empowers the Board to undertake a Housing Scheme and it may be a commercial or commercial cum-residence scheme. Section 27 requires publication in official gazette, the particulars and specifications of the scheme. Then, Section 28 deals with the matters to be provided for by "Housing Schemes". Every scheme on finalisation, is required to be published in official manner as provided in Section 33. The Board has also made Disposal of Property Regulations, 1970, u/s 53 of the Act. These Regulations deal with the manner and the procedure for disposal of the properties. It was no body's case that in "Mansarovar Scheme" framed and published by the Board, there was any provision for the establishment of a separate Market (Mandi) for Sanitary Dealers. It was also not disputed before me that the Board did not issue any public notice inviting applications for the plots and members of the Association also neither made applications nor they were registered as required by Disposal of Property Regulations. Even the land was not earmarked for the establishment of such Market (Mandi). The size of the plots was also not decided. Thus, without any scheme or lay-out plan, some exercise was made by the Officers of the Board to allot plots for shop-godown-cum-residence purposes to the members of a Sanitary Dealers Association. This exercise was without any basis and was not in accordance with law or functioning of a public body. The question, therefore, arises for decision whether the petitioners can claim any legal right to have the allotment of plots in their favour or whether a binding contract came into being on the basis of which they were entitled to get plots.?

9. As pointed out earlier, the entire action of the then officers of the Board was fishy and arbitrary. It was not in accordance with law. By mere draw of lots, no

right was created in favour of the petitioners or other similar members as it was not done in pursuance of any statutory provision. Further, no letter of allotment was issued to the petitioners, nor any one of them was called upon to pay the price. None of the petitioners, either made any application or paid any amount towards price of the plot. Therefore, the matter was still at the stage of consideration and the Board was within its rights to cancel the draw and refuse to make allotment of plots. See *Paradise Printers, Chandigarh and Others Vs. The Union Territory, Chandigarh and Others*, and a decision of this Court in *Shakuntla and three others v. Chairman Housing Board, Jaipur* and Anr.: 1981 WLN 296.

10. The second point has also no merit. On admitted facts of the case, the rule of "Equitable Estoppel" does not come into play. The rule of estoppel requires that the moment a representation is made by a party and the other party acts on that representation and changes position to his/her detriment, the first party cannot be allowed to go back from the representation. In the instant case, the petitioners did not change their position and the doctrine cannot be brought by them to get any benefit.

11. The rest of the contentions also have no merit. The action of the Board had been arbitrary and unreasonable if plots were allotted to the petitioners and other similar persons. On the contrary, the action of the Board in cancelling the lottery was just and reasonable in the facts of the present case. I am not prepared to accept the contention of the petitioners' counsel that they ought to have been given a notice and an opportunity of hearing before cancellation of draw of plots. Similar argument was turned down by this court in the case of *Shakuntla and three others* (supra). I have held that mere draw of lots neither created any right in the petitioners nor a binding contract came into being, as such, there was no violation of the principles of natural justice in cancelling the said draw. The Board was also not required to state reasons for its cancellation. From the facts, it is revealed that the Board never approved the decision of P.A.C. to allot plots to the members of Sanitary Dealers Association and the decision to cancel the draw was taken by the Board in its 154th meeting. The decision of the Board cannot be said to be illegal or otherwise, unreasonable or arbitrary. The petitioners have not been able to lay foundation for establishing their right. They have completely failed to make out a case for exercise of extraordinary jurisdiction under Article 226 of the Constitution.

12. Consequently, the petitions are dismissed with costs, assessed Rs. 500/- per case.