(1997) 10 P&H CK 0064

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2468 of 1997

Vinod Kumar Sharma and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 21-10-1997

Acts Referred:
Punjab Regional and Town Planning and Development Act, 1995 — Section 17

Citation : AIR 1998 P&H 190 : (1998) 118 PLR 185 : (1998) 1 RCR(Civil) 313

Hon'ble Judges : N.K. Sodhi, J;M.L. Singhal, J

Bench : Division Bench

Advocate : Deepak Sibal, for the Appellant; Anil Malhotra, (for Nos. 2 to 4), for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This order will dispose of two Civil Writ Petitions 2468 and 2942 of 1997 in which common questions of law and fact arise. For the sake of convenience facts are being taken from CWP 2468 of 1997.

2. On March 29, 1990 the then Directorate of Housing and Urban Development Department, Punjab invited applications for allotment of plots in Sector 32-A, Samrala Road, Urban Estate, Ludhiana. The sixes and the approximate number of plots were given in the advertisement. It was mentioned that the allotment would be made by the government through draw and lots. No price was fixed at which the plots were to be allotted. Petitioners applied for the plots in pursuance to this advertisement and their applications were registered and each one was given a registration number. The first draw of lots was scheduled to be held on 18-12-1991 but before this date the Punjab Housing Development Board, Chandigarh fixed Rs. 1200/- per sq. yard as the price of the plots. The applicants including the petitioners objected to the fixation of this rate as according to them it was highly excessive. Since a large number of objections were filed, the Board and the State Government started reconsidering the matter as a result of which the draw of lots which was scheduled for 18-12-1991 was postponed. The Board

reconsidered the matter in consultation with the State Government and decided that the price of Rs. 1200/- per sq. yd. could not be reduced but some other terms of allotment (with which we are not concerned) were liberalised. The Board took a unilateral decision that at least one residential sector would be floated every year and that till all the applicants who had applied in response to the advertisement are offered plots, it will not invite any new applications. Being still dissatisfied with the price of Rs. 1200/- per sq. yd., some of the applicants challenged the same in writ petitions filed in this Court which were dismissed. Thereafter, a draw of lots was held in December, 1992 but the petitioners remained unsuccessful. All the unsuccessful applicants remained registered with the respondents and another draw took place in July, 1994 but in this draw as well, the petitioners did not have any luck. Mean hile, the Punjab Regional and Town Planning and Development Act (11 of 1995) was enacted by the State Legislature and the Punjab Urban Planning and Development Authority (for short PUD A) was established and constituted u/s 17 thereof for the purpose of promoting and securing better planning and development of any area in the State. This authority took over the development works earlier undertaken by the Punjab Housing Development Board. PUDA then published a public notice in the daily ''Tribune'' dated 4-12-1996 informing the registered applicants of Sector 32-A and two other sectors of Samrala Road, Urban Estate. Ludhiana that few plots of various sizes were available for allotment and that the reserve price of those plots had been fixed at Rs. 2,000/- per sq. yd. They were also informed that a draw of lots would be held on 23-12-1996 in PUDA Complex at Ludhiana. Only those applicants were included in the draw who had opted in 1992 to accept the allotment at the rate of Rs. 1200/- per sq. yd. The applicants were also informed that after the draw of lots, the unsuccessful applicants would be refunded their earnest money. Petitioners challenged that notice by filing C.W.P. 19838 of 1996 on 20-12-1996 which came up for hearing on 2-1-1997. During the intervening period, the draw of lots took place on 23-12-1996 but the petitioners were again unsuccessful. They withdrew the writ petition with liberty to file a fresh one. PUDA against published a public notice informing the applicants that another draw of lots would be held on 27-2-1997 at 11.30 AM and that the price of the plots would be at the rate of Rs. 2,000/- per sq. yd. The applicants were informed that after the draw of lots the earnest money of the unsuccessful applicants shall be refunded. It is against these notices that the present petitions have been filed challenging them primarily on the ground that PUDA cannot refund the application money of the petitioners who were registered applicants since the year 1990 and that PUDA cannot false the price of the plots and consider the claim of others till all the applicants like the petitioners are offered the plots. Reference in this regard is made to the decision taken by the Punjab Housing Development Board, referred to in the earlier part of the order.

3. In the written statement filed by the Estate Officer, Punjab the material facts as stated by the petitioners have not been disputed. The action of PUDA in refunding the amount to the unsuccessful applicants is sought to be justified on

the ground that in Ludhiana Town there has been no new acquisition of land for the past few years and there is a bleak possibility of any further acquisition though the need for housing in the town has grown manifold particularly keeping in view that in the three draws held in December 1992, June 1994 and December 1996, no fresh applications were invited and the petitioners and other similar applicants given the exclusive right of consideration in the draw of lots. It is submitted that in view of the growing need of the public, it is not possible to offer plots only to those who applied in 1990 and not to consider the claim of others.

4. We have heard counsel for the parties.

5. The only contention which was raised before us by Shri Deepak Sibal on behalf of the petitioners is that the erstwhile Punjab Housing Development Board had taken a decision to float a new residential sector every year and not to invite fresh applications till the applicants who had applied in April, 1990 are offered plots. According to the learned counsel, PUDA the successor of that Board is bound by that decision and that it must continue with the draw of lots till the old applicants like the petitioners get the plots. The doctrine of promissory estoppel is sought to be pressed into service to contend that PUDA is estopped from refunding the money of the unsuccessful applicants because they have not been offered the plots and that it is bound by the assurance/promises made by the erstwhile Board. He placed strong-reliance on the judgment of the Apex Court in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . We have given our thoughtful consideration to this contention of the learned counsel for the petitioners and find no merit therein. It is true that the Board had taken a decision that till all the old applicants who had applied in April, 1990 are offered the plots, it would not invite new applications. This was a unilateral decision taken at a time when enough land was available to meet the needs of the then existing applicants. PUDA which came to be constituted as a statutory body cannot be bound by the said decision. The decision of the Board did not create any indefeasible right in the petitioners to claim that their earnest money at no point of time could be returned and that they had to be offered a plot in the residential colony. It is not shown as to how the petitioners acted to their detriment on any assurance given by the Board so as to attract the principle of promisory estoppel. They had already applied in the year 1990 and by way of a concession shown to the unsuccessful applicants the then Board held two draw of lots in which exclusively the old applicants like the petitioners were made to participate. Again in December, 1996, no fresh applications were invited and the petitioners and other old applicants alone were considered. For how long can this concession continue to be given to the old applicants when the need for housing at Ludhiana has grown manifold and there has been no acquisition of land in that town for the last few years. It is well settled that an applicant like the petitioners has only a right to be considered for the allotment of a plot when he has deposited money for the same but not that he gets a right to continue to be considered for new allotments to the exclusion of others. As and when more plots

become available for allotment it is the duty of PUDA to consider the claims of all the price which is fixed by the competent authority and the petitioners cannot claim any preference merely because they had once applied in the year 1990. The decision taken by the Board cannot be said to be promise made to the petitioners that the claim of no other persons will be considered till they are offered a plot. Rather, the decision of the Board ignoring all others from consideration in future schemes is most unfair and unreasonable and PUDA is not bound by that decision.

6. In Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, , the writ petitioners therein had set up a factory in the State of Uttar Pradesh on the basis of an announcement made by the Government promising exemption in sales tax. The Government through its Chief Secretary confirmed to the appellant therein that exemption would be granted if the factory was set up.

After the factory was set up the Slate Government decided to give only partial exemption in the matter of sales tax. The decision of the Government was challenged in the High Court at Allahabad which dismissed the writ petition. The learned Judges of the Supreme Court invoked the principle of promisory estoppel and accepted the appeal filed by the writ petitioner. This case is of no help to the petitioners to whom, as we have already observed, no assurance whatsoever had been given by any authority nor had they acted to their disadvantage in pursuance to the decision of the Board.

7. No other point was raised.

8. In the result, there is no merit in the writ petition and the same stands dismissed with no order as to costs.

