

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 7171 OF 2000

CHANDIGARH HOUSING BOARD

Appellant (s)

VERSUS

DEVINDER SINGH & ANR.

Respondent(s)

(With office report)

Date: 14/03/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant(s) Mrs. Rachna Joshi Issar,Adv.

Mr. Kapil Saxena, Adv.

For Respondent(s) Mr.A.K. Ganguli, Sr.Adv.

Mr. Suresh C.Gupta, Adv.

Mr. A. Guneshwar Sharma, Adv.

Mr. Shiddhant Srivastava, Adv.

Mr. Kamal Mohan Gupta,Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is dismissed in terms of the signed reportable judgment.

(Meenu Sethi)

Court Master

(Pushap Lata Bhardwaj)

Court Master

Signed reportable judgment is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7171 OF 2000

Chandigarh Housing Board

...Appellant

Versus

Major. Gen. Devinder Singh(Retd.) ...

Respondents

& Anr.

JUDGMENT

S.B.SINHA, J

Interpretation of a condition of eligibility for

allotment of a housing plot in the Modern Housing Complex,

Manimajra under the Manimajra Housing Scheme Phase III

1993 by the appellant herein is in question in this appeal

which arises out of the judgment and order dated 25.2.2000

passed by the Division Bench of the Punjab and Haryana

High Court in C.W.P. No.7070/1998.

The fact of the matter is not in dispute.

Respondent No.1 is a retired Army Officer. He and his wife

jointly became member of a Cooperative Society known as

'Army Welfare Housing Organisation' ('AWHO' for short). The

said Cooperative Society was registered with the Registrar of

Societies, Delhi under the Societies Registration Act being

Act, XXI of 1860.

'AWHO' was allotted some land in Delhi by

the Ministry of Housing and Urban Development.

Respondents applied for and were allotted a

dwelling unit by the appellant-Board in the said Housing

Scheme. Having come to know of the purported allotment of

a housing site by the 'AWHO' in favour of the said

respondents, a show cause notice was issued by the

appellant-Board on 22.9.1997, directing the respondents to

show cause as to why the allotment in the aforementioned

Scheme shall not be cancelled and the entire amount

received by the Board against the dwelling unit and/or flat is

forfeited. The said show-cause notice was issued purported to be in terms of Clause 20 of the allotment letter dated 21.7.95.

A writ petition was filed by the respondents before the Punjab and Haryana High Court and by reason of the impugned judgment, the same had been allowed.

Ms. Issar, learned counsel appearing on behalf of the appellant-Board, would submit that the High Court committed a serious error in interpreting one of the conditions of eligibility as stipulated in the Brochure insofar as it failed to take into consideration the purport and object for which allotment is made by the Housing Board at a concessional rate and/or at reserved/ fixed price.

It was urged that respondents being members of the 'AWHO' had no independent existence and that being a part of the Society itself, would come within the purview of the word 'through Government/Semi-

Government/MunicipalCommittee/Corporation/

Improvement Trust/Notified Area Committee' and for the

said purpose the contextual rule of interpretation should be

applied.

Mr. Ganguli, learned senior counsel appearing on

behalf of the respondents, on the other hand, submits that

the condition of eligibility must receive strict construction. It

was furthermore submitted that, in any event the show cause

notice having not contained any stipulation that the land was

allotted to the respondents and/or the 'AWHO' at the

concessional rate, no order of cancellation could have been

passed relying on or on the basis thereof.

Indisputably, the Chandigarh Housing Board has

been constituted under the Haryana Housing Board Act,

1971, as extended to the Union Territory of Chandigarh. The

Union Territory of Chandigarh in exercise of its power

conferred upon it by Section 74 of the said Act, made

regulations known as 'The Chandigarh Housing Board

(Allotment, Management and Sale of Tenements) Regulations,

1979. Regulation (6) of the said Regulation, with which we

are concerned, reads as under:

"6. Eligibility of Allotment-(1) A dwelling unit or flat in the Housing Estate of the Board shall be allotted only to such person who or his wife/her husband or any of his/her dependent relations including unmarried children, does not own on free-hold or lease hold or on hire purchase basis, a residential plot or house in the Union Territory of Chandigarh or in any of the Urban Estates of Mohali or Panchkula. Similarly persons who have acquired a house/residential site anywhere in India through Government/Semi government/Municipal committee/Improvement Trust at concessional rate in their name or in the name of any/dependent member of their family will not be eligible to apply to the Board for allotment of a dwelling unit or flat. Subject to the above provision, the applicant should be domicile of U.T. of Chandigarh or should have been a bona fide resident of U.T. of Chandigarh for a period of at least three years on the date of submitting the application

[Provided that the condition of eligibility regarding the applicant being a bonafide resident of U.T. Chandigarh for at least three years on the date of submitting the application or of his being a domicile of U.T. Chandigarh shall not apply to the following categories of persons:

(i) Defence/Ex-defence personal including pensioners

belonging to the defence forces; and

(ii) Employees of the Government of India, Punjab

Government, Haryana Government and the U.T. Administration and then Boards/Corporation and undertaking]

(iii) Retired employees including pensioners of Government of India, Punjab Government, Haryana Government and Union Territory Administration and their Boards/Corporations/Undertakings.]

(2) The applicant shall furnish an affidavit in the prescribed form with regard to his eligibility along with the application. In the event of the affidavit being found false at any stage, the Board shall be entitled to cancel the registration or the allotment of dwelling unit or flat as the case may be, and to forfeit the deposit received with the application and all the payment made to the Board thereafter..."

The relevant provisions/stipulating conditions of

eligibility as stated in the Brochure reads as under:

" The applicant should not have acquired a house/residential site anywhere in India through Government/Semi-Government/Municipal Committee/ Corporation/ Improvement Trust at concessional rate i.e. at reserved/fixed price, in his/her own name or in the name of any dependent member of his/her family."

Right to acquire a property although is not a fundamental right, but is a constitutional and human right.

Before a person can be deprived of his right to acquire

property, the law and/or a contract must expressly and explicitly states so.

Regulation(6) of the Regulations is in two parts. The

First Part deals with a bar on allotment of a dwelling unit or

a flat in favour of such a person who or his wife/her

husband or any of his/her dependent relations including

unmarried children does not own any free-hold or lease hold

or on hire purchase basis, a residential plot or house in the

Union Territory of Chandigarh. The Second Part of

Regulation (6) takes within its purview a restriction on

allotment to such persons who have acquired a

house/residential site anywhere in India through

Government/ Semi-Government/Municipal

Committee,Improvement Trust at concessional rate in their

name or in the name of any of their dependents. Besides, the

applicant not also fulfill other condition.

The purport and object for imposition of such drastic

restriction on acquisition of property by a person of more than one house or a dwelling unit, appears to serve the purpose of allotment of a house by the Housing Board in question. It is obligatory on the part of the applicant to be an ordinary resident of Chandigarh.

Respondents were allotted a flat by the 'AWHO', a society registered under the Societies Registration Act. It is indisputably not a Government or Semi-Government organisation. It, indisputably, does not come within the purview of the other terms specified therein.

The status of a member vis-a-vis a Cooperative Society came for consideration before a Constitution Bench of this Court in Daman Singh and Ors. Vs. State of Punjab and Ors.- 1985 2 SCC 670, whereupon Ms. Issar, learned counsel appearing for the appellant, places strong reliance. The question which arose for consideration therein was the validity of certain provisions of the Cooperative Societies Act providing for compulsory amalgamation of Cooperative

Societies. The issue with which this Court was concerned, keeping in view the difference of opinion rendered by different High Courts, was as to whether for the purpose of amalgamation of such Cooperative Societies, individual members of Cooperative Societies are required to be heard. Dealing with the definition of term 'Corporation'; this Court while holding that it would be so and in that view of the matter a member of the Cooperative Society has no independent existence apart from the Society stated as under:

" 11.....He argued that in the absence of any provision, the rules of natural justice may be read into the provisions and notice to the members of the affected societies was imperative. Otherwise, he argued, members of one society would be formed against their will and without being heard to associate themselves with members of another society. We have no hesitation in rejecting this submission also. Once a person becomes a member of a Cooperative Society, he loses his individuality qua the society and he has no independent rights except those given to him by the statute and the by-laws. he must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body. So if the statute

which authorises compulsory amalgamation of cooperative societies provides for notice to the societies concerned, the requirement of natural justice is fully satisfied. The notice to the society will be deemed as notice to all its members....."

Yet again in State of U.P. and Another Vs. C.O.D.

Chheoki Employees' Cooperative Society and Others - (1997)

3 SCC 681, Daman Singh(Supra) was followed wherein

validity of certain provisions and the rules framed under the

U.P.Cooperative Societies Act, 1965 were in question. In that

context, it was held as under:

"16. Thus, it is settled law that no citizen has a fundamental right under Article 19(1)(c) to become a member of a Cooperative Society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory right. On fulfilment of the qualifications prescribed to become a member and for being a member of the society and on admission, he become a member and for being a member of the society is subject to the operation of the Act, rules and bye-laws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, rules and the bye-laws and is subject to its operation. The stream cannot rise higher than the source."

It is, thus, one thing to say that a member of a society has no independent status so as to acquire a higher right than the society itself or for the purpose of questioning the validity or constitutionality of the provisions of the Cooperative Society Act or the rules, it does not have any independent locus to maintain a action, but it is another thing to say that although a person acquires a right of property by reason of allotment made by another juristic person, namely, a Corporation, he can be deprived therefrom by reason of a clause of the nature with which we are concerned. Status of a member qua Society and his relationship as an allottee under a statutory organisation stands on different footings. One deals with his rights qua the Society and other with his right qua another organisation. In the first case, he exercises a limited right, in the second there would be no such restriction. In a given case if a allotment is made by different authorities in the same area, matter may have to be considered differently.

We have noticed hereinbefore, that Regulation (6) is

in two parts. We are only concerned with the second part and

in fact before the High Court as also before us the learned

counsel for the parties referred only to the second part of the

said Regulation which has been reproduced in the Brochure

and has been noticed by us hereinbefore.

We would deal with the principal contention raised

by the learned counsel a little later but at this stage, we may

notice the decisions of this Court upon which strong

reliance has been placed by Ms. Issar.

In Chandigarh Housing Board and Anr. Vs. Narinder

Kaur Makol - (2000) 6 SCC 415, this Court was concerned

with the case where a husband, an allottee, although was

allotted a plot for commercial purposes, he, in fact, used the

same for residential purpose. In that situation, a question

arose as to whether a residential plot by the same Housing

Board could be allotted in favour of his wife. In the fact

situation obtaining therein, this Court opined as under:

" 12. In our opinion, in view of the admitted fact that there is a residential flat on the second and third floors of the ground floor commercial plot, it must necessarily be held that the husband of the respondent owned a residential house within the territory in question and that therefore the respondent wife of the first allottee is not eligible for allotment of another residential plot from the said authority. It must be realised that these plots are allotted on concessional basis to the allottees by the public authority and the relevant regulations must therefore be interpreted in such a manner as to save (sic serve) their real purpose so that the plots are available, as far as possible, to the largest number of person, and for preventing the same family members, husband or wife or dependants, as the case may be, from getting more than one plot or house, for the same purpose. We are of the view that the words ' residential house' in Regulation 6(1) must be treated as including a flat constructed above the commercial flat on the ground floor. This will be so even if originally the plot was allotted for commercial purposes, if incidentally construction of residential flat above the ground floor commercial plot is permitted as per the plans. In other words, even though the plot is allotted as a commercial plot, if it is permissible to build a residential flat above the commercial plot, and is so constructed, then such a residential flat will come within the prohibition in Regulation 6(1)."

As we have noticed hereinbefore that Regulation (6) is in two parts and this Court was concerned therein with the first part of the said Regulation and thus, in our opinion, the

said decision will have no application in the instant case.

Both parts of the said regulation seek to achieve different purposes.

Reliance has also been placed on Harsh Vardhan

Bansal Vs. Chandigarh Housing Board and Anr.- (2006) 9

SCC 708, where a judgment of the High Court upholding an

order of cancellation of a dwelling unit and/or a flat in favour

of the respondent therein was not interfered with by this

Court on the premise that the same had substantially been

worked out stating as under:

"5. Learned counsel for the respondent Board submitted that though clause XI of the Chandigarh Housing Board(Allotment, management and Sale of Tenements) Regulations, 1979 enable the Board to cancel the registration of the dwelling unit or the flat and to forfeit the deposit received with the application and all the payments made to the Board thereafter, the respondent pursuant to the order passed by this Court on 12.7.2004 refunded Rs. 8,06,441. As already noticed, a sum of Rs. 10 lakhs and odd was deposited and the Housing Board has now refunded a sum of Rs. 8 lakhs and odd even though they are entitled to forfeit the entire deposit made. Now that a major portion of the amount has already been refunded to the appellant, we do

not propose to go into the merits of the rival claims or the correctness of the order passed by the High Court or the cancellation order passed by the Housing Board. We also make it clear that any observation made in the show-cause notice or in the order passed by the High Court will not affect the career of the appellant herein since, as argued and accepted by us, the appellant has furnished all the details in the application form for registration on a bona fide belief and impression."

No law has, thus, been laid down therein. The rival contentions of the parties had not been considered. No determination on the lis was made. No reason in support of any of the observations was assigned. The said decision, therefore, does not constitute any precedent far less binding precedent.

Before us, the Housing Scheme of the 'AWHO' has been placed by Ms. Issar, learned counsel for showing that the same had been constituted for promoting housing schemes under its own care and arrangements or acquire for its members houses under the schemes already in operation in public sector, i.e. Government or Quasi Government

agencies under the control of either the Central or State

Government(s). The economy in land cost was to be made by

advance planning and acquisition of land at concessional

rates through government and other agencies. It is to

function at no loss and no profit venture.

Our attention in particular has been drawn to the

Form of Declaration which is required to be made by an

allottee which is in the following terms:

"...It is certified that I do not have residential house in full or in part or lease hold or free hold basis in any urban area either in my name or in the name of my wife/husband or any of my dependent relation including unmarried children"

We will assume that the Scheme framed by the

'AWHO' was to obtain lands either through its own efforts or

from the Government or Semi-Government organisations so

as to enable it to construct houses for the retired army

personnel. The declaration, however, which is required to be

given by a Member of the Society must be held to have

application which the Scheme seeks to achieve. It applies

only when the conditions to allotment are required to be complied with. It does not prohibit any future acquisition. If any declaration is made, which may subsequently be found to be false, the Society may or may not proceed against the allottee. If it does, it again must be confined only to a situation arising within the four corners of the said Scheme.

Keeping in view the settled principles of interpretation of deed/Statue, we are of the opinion that the condition of eligibility in question must be construed literally.

If a plain meaning can be given effect to there is no reason why should not be applied. The Court would not take recourse to any other principle of interpretation when it is not necessary.

A plain reading thereof indicates that the same consists of the following ingredients:

(1)The Applicant should not have acquired a house/residential site anywhere in India;

(2)Such acquisition must be through Government/Semi

Government/Municipal
Corporation/Improvement Trust.

Committee/

(3) Such acquisition must be at a concessional rate i.e. at reserved/fixed price.

(4) Such acquisition may be in his own name or in the name of any dependent member of his/her family.

Ms. Issar, learned counsel submits that the word 'through' must be given its due meaning in construction of the eligibility conditions and in view of the fact that some allotment at concessional rate had been made by the Ministry of Housing and Urban Development to the Societies. Respondents being part of the Society would come within the purview of the said restriction.

We are unable to accept the said submission.

The word 'through' in this context would imply 'agency'. Thus

only when a person acquires some property through the 'agency' specifically mentioned therein, the condition of

eligibility which, it will be a repetition to state, imposes a

restriction on a valuable right of a citizen must be held to be applicable and not otherwise.

Acquisition of any property through any other source or through any other agency is not prohibited.

Right to acquire property is a human right. A deed must be

construed reasonably and in its entirety. If acquisition of any

property through any agency other than specified therein is

not prohibited, evidently, the restriction clause in the

condition of eligibility will have no application. The same, in

our opinion, must be construed strictly. A clause impinging

the right of a citizen must, in our opinion, receive strict

construction and the principle of contextual interpretation

will have no application in such a case.

The High Court, in our opinion, has rightly answered

the question in its judgment.

The Housing Board being a statutory organisation

and having a regulation making power, could have made an

explicit provision if it intended to put such a restriction on
the right of a citizen to acquire immovable property as has
been sought to be canvassed before us by Ms. Issar, learned
counsel and it would be free to do so. For the views we have
taken, it is not necessary to deal with the second contention
of Mr. Ganguli, learned counsel.

For the aforementioned reasons, we find no merit in
this appeal. The appeal is dismissed.

..J.

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[S.B. SINHA]

...J.

.....
[MARKANDEY]

KATJU]
New Delhi,
March 14, 2007