

Bejore. Hon'ble A. L. Bahl and N. K. Kapoor, JJ.

*K. G. VERMA,—Petitioner.
versus*

*UNION TERRITORY OF CHANDIGARH AND ANOTHER,
—Respondents.*

Civil Writ Petition No. 12688 of 1993

February 4, 1994.

Constitution of India, 1950—Art. 226—Public Interest Litigation—Conversion of writ petition into one—Whether permissible—Petitioner seeking allotment of Government House—Conversion of petition into public interest litigation sought on grounds that rules for allotment never followed. Only relief claimed in petition is for allotment of house to petitioner—No claim made for other Government servants—Petition cannot be converted into Public Interest Litigation.

Held that in the present case no specific relief is claimed for other Government servants, rather the relief claimed is only with respect to the petitioner for allotment of one of the Government houses. The contention of the petitioner to convert this petition as public interest litigation is repelled. A judicial process cannot be allowed to be used for the satisfaction of an individual whims, pious though they may apparently look, as held by the Supreme Court in State of Bihar versus Kamlesh Jain, J.T. 1992 (6) S.C. 257.

(Para 8)

Constitution of India, 1950—Art. 14—Government Residence (Chandigarh Administrative Pool) Allotment Rules 1972—Rule 26—Power of Chief Commissioner to relax rules—Justified—Every allotment made under rule 26 by relaxing rules cannot be turned unfair or arbitrary.

Held, that the two Rules need harmonious interpretation which would enhance the object of framing of such rules. The very fact that the provision was made under Rule 26 to make allotments out of turn indicates the circumstance to exist, otherwise than contemplated under other provisions of the Rules, to exercise power of allotment of houses. Such a power is given to none else but Chief Commissioner. Every order of allotment of a house under Rule 26 aforesaid cannot be termed as unfair or arbitrary being not in accordance with other provisions of the Rules providing eligibility or entitlement to the allotment of houses. It may be observed at the outset that power with the Chief Administrator under Rule 26 (supra) is very wide. Not only it confers powers of allotment of houses out of turn it also empowers him to take out houses out of the pool and also to earmark houses or change their categories.

(Para 10)

*K. G. Verma, Petitioner in person M. L. Sarin, Sr. Advocate with
Alka Sarin, Advocate, for the Respondent.*

JUDGMENT

A. L. Bahri, J.

(1) The petitioner K. G. Verma is an I.A.S. Officer posted as Secretary to Government of Haryana, Food and Civil Supplies Department, Chandigarh. He seeks *mandamus* directing the respondents to allot House No. 3408, Sector 24, or any of the Houses No. 4, 11 or 25 in Sector 7, Chandigarh, with a further direction to the respondents to follow Chandigarh Administration Pool Allotment Rules, 1972, strictly. In July 1992 he was posted as above in Chandigarh. He applied for allotment of V-Type house to the Chandigarh Administration out of Pool of Houses under the Rules aforesaid. Thereafter he met Advisor to the Administrator. It was pointed out that IV-Type house should be allotted to him if specific recommendation is received from the Chief Secretary to Government of Haryana. Thus, the petitioner requested the Chief Secretary to make such a recommendation which was accordingly done with the request to the Chandigarh Administration to allot house No. 57, Sector 5, Chandigarh to the petitioner,—*vide* Chief Secretary's letter dated March 16, 1993. The aforesaid house was not allotted to the petitioner. Subsequently the petitioner represented that in 1986 when the petitioner left Chandigarh he was occupying VI-Type House No. 509, Sector 16, Chandigarh, allotted to him after a long wait under the Rules. At that time the aforesaid Rules were strictly being followed. It was also pointed out that several officers junior to the petitioner, who applied later, were accommodated in the matter of allotment of houses. Particular reference was made to the allotment of House No. 25, Sector 7. He requested for allotment of any of the two houses to be vacated by the PGI doctors in Sector 5 and Sector 7, Chandigarh. Annexure P. 1 is the letter of the petitioner dated April 21, 1993. A reply to the same was received that the matter was being looked into which is Annexure P. 2. In June 1993 the petitioner again wrote to the Chandigarh Administration that in an arbitrary manner House No. 25, Sector 7, was allotted to the SSP, U.T., Chandigarh, who was not entitled to that category of House, House No. 520, Sector 16. A V-Type house was allotted to Shri Rakesh Singh IAS of 1978 batch belonging to Punjab Cadre who was not even eligible for VI-Type house. He was already residing in VII-Type House in Sector 16. Thus, the petitioner requested for allotment of House No. 14, Sector 7 or any other house in Sector 5 which may fall vacant. Copy of his letter is Annexure P. 3. Further reference was also made to House No. 502 of Sector 16, which was earlier occupied by Chief Secretary to Government of Haryana and on his retirement was allotted to Hon'ble Judge of the High Court. Subsequently when

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Judges Houses were completed in Sector 24, House No. 502, Sector 16 was allotted to Shri L. M. Mehta, Special Principal Secretary to the Chief Minister of Haryana who is also an I.A.S. Officer of 1968 Batch. Since Hon'ble Judge desired to continue staying in House No. 502, Sector 16, House No. 3408, Sector 24 (Judges House) was allotted to Shri L. M. Mehta.

(2) Two Houses in Sector 7 were constructed by the Chandigarh Administration for the Deputy Commissioner and the Senior Superintendent of Police, Union Territory. One of the houses on completion of construction was allotted to Shri Mehra, Chairman, Chandigarh Housing Board. He is also an I.A.S. Officer of 1975 Batch. In September 1993. The Finance Secretary, Chandigarh, informed the petitioner that House No. 3408, Sector 24 (Judges House) was being allotted to him as Shri L. M. Mehta wanted another house in Sector 7. As per information conveyed to the petitioner by the Home Secretary and the Assistant Estate Officer, the aforesaid house stood allotted to him and the formal letter was to issue. But subsequently on September 24, 1993 it came to the notice of the petitioner that the aforesaid house was handed over to the PGI for allotment to one of the doctors and that House No. 110, Sector 24 was allotted to the petitioner. It came to the notice of the petitioner that House No. 110, Sector 24 was not acceptable to the PGI. Thus, arbitrarily Judges House aforesaid was allotted to the PGI doctor. Several houses were allotted by Shri Ramesh Chander, Advisor to the Administrator on September 24, 1993 i.e. just before he handed over his charge on September 24, 1993, 25th and 26th September being Government holidays. This was termed as an arbitrary action on his part. Further reference was made to the allotment of three houses within a span of two years to persons who were not eligible for allotment under the Rules i.e. House No. 78, Sector 7, allotted to Shri S. P. Srivastava, Collector of Customs. Out of 100 houses, 65 were placed at the disposal of the Chandigarh Industrial & Tourism Development Corporation. Many houses were allotted to the journalists. A general grievance was also made that the officers allocated to the Union Territory were getting 4-tier benefits i.e. :—

- (i) Getting a house on out of turn basis ;
- (ii) Getting a out of turn allotment of a higher category house than the entitlement ;
- (iii) Retaining the same house even after reversion back to the parent State ; and
- (iv) Not paying the 3 times standard rent envisaged in the instructions.

It is on these facts that ultimately the petitioner claimed a direction to the respondents to allot Judges House No. 3408 in Sector 24 or in the alternative House No. 11, Sector 7 or any Type V or IV House or any Type VI house acceptable to the petitioner. The Motion Bench, on October 14, 1993, while issuing notice of motion directed *status quo* regarding possession of Houses Nos. 4, 11, 25 in Sector 7 and 3408 in Sector 24 till further orders. Subsequently on October 21, 1993, a direction was given to the counsel for the Chandigarh Administration to place on the records the relevant Rules of allotment along with statement showing allotment of houses of categories IV to VII from 1990 and further, if any of such houses were allotted otherwise than in accordance with the relevant Rules, the reasons for it, as also for allotments, if any, of higher category of houses than the entitlement of the allottees to be indicated.

(3) Written statement has been filed on behalf of the Chandigarh Administration along with copy of the relevant Rules and the date asked for, while controverting the allegations of the petitioner.

(4) When the matter came up for hearing, on the concession given by counsel for the Chandigarh Administration an order was sought to be passed to allot Judges House No. 3408, Sector 24 to the petitioner with the condition that as and when the same would be required by an Hon'ble Judge of the High Court another house would be allotted to the petitioner. Before the order could be signed, the petitioner requested for hearing of the case, hence opportunity was given to both the parties to address arguments. The petitioner addressed the arguments in person.

(5) In one of the prayer clauses the petitioner made a claim for allotment of House No. 3408, Sector 24 Chandigarh, as the said house was in lieu of house No. 502, Sector 16, Chandigarh (a V-Type House). Since no objection was raised on behalf of the Chandigarh Administration to grant the aforesaid relief, it was also asserted that as and when any V-Type house would become available the same would be allotted to the petitioner if he is not willing to accept allotment of House No. 3408, Sector 24, Chandigarh. As a matter of fact, after grant of such concession it was not necessary to refer to the other arguments addressed. Still the question involved relates to allotment of houses in Chandigarh, a brief reference to the arguments is being raised as the Motion Bench had called for information of allotments made of houses since 1990 out of turn and reasons thereof.

(6) It has been argued by the petitioner that the present writ petition should be treated as a public interest litigation and the entire

process of allotment of different types of houses by the Chandigarh Administration should be scanned through. According to him the Rules framed were never strictly followed in the matter of allotment in all categories of houses in routine. Always power was invoked to allot houses by relaxation of the Rules. In this manner such a power was abused. A direction need to issued to the Administration to strictly follow Rules of allotment of houses on the basis of eligibility, seniority as contemplated under the Rules. Controverting the afore-said contention Shri M. L. Sarin, Senior Advocate, appearing on behalf of the respondent-Administration has argued that no case is made out for treating the petition as a public interest litigation. In the writ petition the petitioner claims only allotment of a house. No other Government servant is aggrieved by orders of the Chandigarh Administration. Three States are functioning in Chandigarh and none of the States has grouse in that respect. Rather, as per written statement a policy has been adopted with the concurrence of the three States, the Union Territory Administration, Punjab and Haryana States, that the houses in possession of Government servants of the respective Governments would continue to be allotted to the Government servants of the respective State which policy is in consonance and not in contravention of the Rules.

(7) This is not a case which should be converted into a public interest litigation. A perusal of the Rules shows that Government houses under the control of the Chandigarh Administration are of different categories which are allotted by two allotment committees upper and lower. Lower category houses also includes houses to be allotted to class IV employees, who of course are not expected to approach the Court on account of financial restraint, as has been argued by the petitioner. It is in this context that it was argued by the petitioner that the present petition should be treated as a public interest litigation. It may be observed that allotment of lower category houses is not at all in dispute. Further-more as pointed out by the learned counsel for the Chandigarh Administration, the allotment of such houses are made in routine following the Rules of eligibility seniority strictly. Upper categories of houses are required to be allotted by the Upper Allotment Committee. Such houses are allotted to Government Officers who are in the higher-pay scales. For them, it cannot be said that they are incapacitated to approach the Court if they are aggrieved in the matter of allotment of houses for redressal of their grievances. The decision of the Supreme Court in the *State of Bihar and others v. Kamlesh Jain* (1), may be referred to in this

(1) J.T. 1992 (6) S.C. 257.

connection. Dr. Das, a Government servant, had gone abroad and on account of his absence action was sought to be taken to terminate his services. Like Dr. Das there were several other Government employees who had gone abroad and had not returned. The writ petition was filed by Ms. Kamlesh Jain as a public interest litigation for providing medical assistance/compensation to Dr. Das who was stated to be getting medical treatment in the hospital of Bihar. In a short order passed by the High Court a sum of Rs. 2,000 was directed to be paid to Dr. Das treating the petition as a public interest litigation. The decision was upset by the Supreme Court on appeal. A request was made to the Supreme Court to deliver the cheque in the name of writ petitioner Ms. Kamlesh Jain as Dr. Das was unable to encash the amount. This request was also declined. It was observed as under :—

“A judicial process should not be allowed to be used for the satisfaction of an individual's whims, pious, though, they may apparently look. Since we do not find any reason in the impugned order or in the writ petition which may justify the relief granted in the present case, we are of the view that the writ petition should have been dismissed.”

(8) In the present case as already observed above, no specific relief is claimed for other Government servants, rather the relief claimed is only with respect to the petitioner for allotment of one of the Government houses. The contention of the petitioner to convert this petition as public interest litigation is repelled. A judicial process cannot be allowed to be used for the satisfaction of an individual whims, pious though they may apparently look, as held by the Supreme Court in *State of Bihar v. Kamlesh Jain* (2).

(9) Allotment of Government house under the Government Residences (Chandigarh Administration Pool) Allotment Rules 1972 (hereinafter called 'the Rules'), means grant of a licence. Allotment is made in two manners under the Rules. One through the House Allotment Committees, Upper or Lower, as defined under Rule 2 (d) of the Rules taking into consideration eligibility and entitlement of the Government employee with respect to the availability of the house under Rule 9. Second mode of allotment is by relaxation of the Rules by the Chief Commissioner under Rule 26 of the Rules.

Rules 9 and 26 read as under :—

“9. Allotment of Residences-SR-317-AM-9(1) save as otherwise provided in these rules, when a residence falls vacant, it

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will be allotted to an applicant desiring a change of accommodation in that type under the provisions of rule 17 and if not required for that purpose to an applicant without accommodation in that type having the earliest priority date for that type of residence subject to the following conditions :—

- (i) A residence of a type higher than that for which the applicant is eligible under rule 4 shall not be allotted.
- (ii) An applicant shall not be compelled to accept a residence of a type lower than that for which he is eligible under rule 5."

"26, Relaxation of Rules S.R.-317-AM-26-The Chief Commissioner may for reasons to be recorded in writing relax all or any of the provisions of these rules in the case of any Government servant or residence or class of Government servants of types of residence."

(10) The two Rules aforesaid need harmonious interpretation which would enhance the object of framing of such rules. The very fact that the provision was made under Rule 26 to make allotments out of turn indicates the circumstance to exist, otherwise than contemplated under other provisions of the Rules, to exercise power of allotment of houses. Such a power is given to none else but the Chief Commissioner. Every order of allotment of a house under Rule 26 aforesaid cannot be termed as unfair or arbitrary, being not in accordance with other provisions of the Rules providing eligibility or entitlement to the allotment of houses. It may be observed at the outset that power with the Chief Administrator under Rule 26 (*supra*) is very wide. Not only it confers power of allotment of houses out of the pool and also to earmark houses or change their categories. No argument has been addressed about invalidity or unconstitutionality of such power.

(11) Even otherwise, the rules are not rigid but are flexible to meet different situations. Houses can be allotted out of turn, as stated above. house of below category can be allotted, such allottees, subsequently can opt for allotment of higher category house if available. After the death of Government servant, in service, his family members, as defined, can be allotted Government house. Thus comparison of an allottee with another is not called for to determine the action of allotment to be arbitrary. If more is distributed among

few, the question of equal distribution may arise. However, when few houses are available and persons desirous of allotment being much more, all cannot be accommodated. The question of equal distribution or equal treatment will not arise. The principle enunciated by the Apex Court cannot be attracted to the case in hand. In *M/s Kasturi Lal Lakshmi Reddy etc. v. The State of Jammu and Kashmir and another* (3), it was held as under :—

“Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity on the touch-stone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid.”

It was further held :—

“Where the Government is dealing with the public whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant.”

(12) Chandigarh Administration has produced statement of all the different categories of houses in Chandigarh sector-wise further indicating its allotment in favour of employees of respective States. Earmarked houses have also been shown therein. After going through the pleadings it is established fact, which is not disputed during arguments that all Upper Category houses are being allotted under Rule 26 i.e. out of turn. Two main reasons for such allotment are that number of such houses are very few as compared to the number of officers of the three states aforesaid posted in Chandigarh. Secondly, some of such houses were allotted on security reasons in view of disturbed conditions prevailing in the States, i.e. category was lowered for providing security or for providing security at a compact place such allotments were made. During arguments allotment made on security reasons have not be challenged. Thus it is not considered necessary to refer to the same.

(13) The other salient feature of the Scheme of allotment of Government houses in Chandigarh is that number of houses in occupation of Government servants of respective States at the time of reorganisation has been left with such States for allotment to that State Government Employees on the request to be made by such Governments. Sometimes out of turn allotment of house is made for such Government Employee in lieu of house to be taken out of quota of such State. Thus reference to allotment of houses to Punjab Government or U.T. Government Employees does not require detailed discussion.

(14) Shri A. N. Mathur was in occupation of House No. 691, Sector 7, Chandigarh. On his posting as Home Secretary, Haryana, a request was made in March 1993 for allotment of House No. 57, Sector 5, Chandigarh, as Home Secretary's post was sensitive. Shri Trilochan Singh was occupying the said house which was likely to be vacated on his transfer to Delhi. House No. 11, Sector 7, Chandigarh was in possession of Dr. Gujral in lieu of PGI House quota and Shri Surjit Singh in occupation of House No. 110, Sector 24, which was originally in PGI quota. Both these houses were to be vacated on the retirement of the allottees. Chandigarh Administration took a decision to allot House in Sector 24 to PGI quota and House in Sector 7 to Shri A. R. Talwar, Finance Secretary, U.T. the Director of the PGI has raised objection to such allotment on the ground that Sector 17 house being bigger was exchanged with Sector 24 house as per bilateral agreement to accommodate senior doctors of the PGI. Thus the matter stands at that stage. The petitioner being Haryana Government employees cannot make a claim of U.T. or PGI quota house.

(15) In September 1993 Shri V. N. Negi, IPS, on repatriation from Government of India was allotted House No. 1016, Sector 24, Chandigarh on medical grounds as he had suffered cardiac ailment, on priority basis, out of six new houses of VI type constructed in Sector 24, two houses fell to the share of Haryana and were allotted on security reasons to Shri H. D. Asthana and Shri Dharambir, Shri G. Vajralingam. Joint Secretary Finance, U.T. was allotted House No. 198, Sector 16. The petitioner cannot make a claim to U.T. quota house.

(16) Shri S. L. Aggarwal was allotted House No. 197, Sector 16, out of U.T. quota in September 1993, the petitioner cannot lay claim to it.

(17) Shri Sanjay Kothari, Home Secretary, Chandigarh, was allotted House No. 279, Sector 16, Chandigarh out of U.T. quota.

The officer is much junior to the petitioner but that is of no consequence as the petitioner cannot lay a claim to U.T. quota houses.

(18) Shri K. K. Bhatnagar and Shri D. S. Bains were allotted House No. 44, Sector 7 and 187 in Sector 16, respectively, out of Punjab quota. Likewise D. S. Guru, Shri V. N. Ojha, Officers of Punjab were allotted house.

(19) The allotments referred to above cannot be quashed. Firstly, there is no prayer in this respect; secondly, such of the allottees are not parties in this petition. No observation against the interest of such allottees on merits can be made as has been vehemently pressed during arguments by the petitioner by making reference to such allotments that the same were arbitrarily made to grant undue benefits to such of the employees, some of them may be junior to the petitioner working in U.T.

(20) During arguments, reference was also made to the decision of this Court in *S. P. Gupta, Accredited Correspondent 'DAINIK SHIVALIK SANDESH' and others v. Administrator, Union Territory of Chandigarh-cum-Governor of Punjab, Chandigarh and others* (4). However, the aforesaid decision is not helpful in deciding the case in hand. In that case it was held that the allotment of house made in favour of a journalist and Press Correspondent was not contemplated under the Rules and thus allotment to such persons was quashed.

(21) Thus this petition is disposed of with the directions as per concession of the Chandigarh Administration that if allotment of House No. 3408, Sector 24, Chandigarh, is not acceptable to the petitioner, he would be allotted any other house of the category the petitioner is entitled to which becomes available. No order as to costs. All the files returned to Mr. Sarin, Sr. Advocate.

J.S.T.

Before R. P. Sethi & G. S. Singhavi, JJ.

M/S SACHDEVA AND SONS RICE MILLS LTD. 17 CANTONMENT AMRITSAR,—Petitioner.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 3464 of 1994.

May 20, 1994.

Constitution of India, 1950—Art. 226/227—Punjab General Sales Tax Act, 1948—Ss. 14B, 20 and 22—Unloading and detention of