

Maj. General Ram Singh (retd.) *v.* The Chandigarh Housing Board,  
Chandigarh (S. S. Sodhi, J.)

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(10) For the reasons recorded above, the present revision petition is allowed. The orders dated 30th July, 1990 and 20th August, 1990, of the Sub Judge 1st Class, Chandigarh, are set aside, with the result that all proceedings taken by the arbitrator pursuant to his appointment are also quashed. It is further directed that the appointment of Shri A. V. Gopal Krishana, who was appointed arbitrator, on 25th July, 1990, be restored, and if he is not available, the Engineer-in-Chief is at liberty to appoint another arbitrator. In case, the respondent does not co-operate with the arbitrator, the arbitrator would be at liberty to take ex-parte proceedings.

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R.N.R.

Before : S. S. Sodhi, J.

MAJ. GENERAL RAM SINGH (RETD.),—*Petitioner.*

*versus*

THE CHANDIGARH HOUSING BOARD, CHANDIGARH,  
—*Respondent.*

Civil Writ Petition No. 15903 of 1989

15th January, 1991

*Constitution of India, 1950—Art. 226—Allotment of shop-cum-flats—Revision of price—Tentative price fixed—Allottees paying 70 per cent of the amount within stipulated period—Demand for enhanced price at par with subsequent higher auction price of similar sites is illegal—Allottee entitled to possession of flats at old price.*

*Held*, that the increase in the price of the land by the Chandigarh Administration is an exercise by it of its executive power in an arbitrary and unreasonable manner amply justifying interference under Article 226 of the Constitution of India. The Chandigarh Administration having earlier decided to allot land at the rate of Rs. 500 per square yard, and the Board thereupon having framed a Scheme and fixed the tentative price for these flats in terms thereof and the petitioners having paid the money demanded within the stipulated period, it cannot now be permitted to turn round and claim any amount as price of this land in excess of that mentioned earlier. The fixation of the price of these shop-cum-flats therefore by taking the price of the land on which they had been constructed to be Rs. 2,500 per sq. yard, is clearly contrary to law. The Chandigarh

Housing Board is consequently hereby directed to fix the total price of the shop-cum-flats by taking their land cost to be at the rate of Rs. 500 per sq. yard and to allot and deliver possession of these flats to the petitioners on the price so worked out or the tentative price as mentioned in the advertisement, whichever amount may be more.  
(Paras 14, 15 & 16)

*Civil Writ Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to issue a writ in the nature of certiorari calling for the relevant records from the respondent Board and after perusing the same may be pleased to:—*

- (i) *issue an appropriate writ, direction or order quashing those terms of the allotment letter (Annexure : P8) which demand a price higher than Rs. 5 lakhs as originally advertised and to refix the mount of ground rent payable per annum;*
- (ii) *issue a writ of mandamus commanding the respondent Board to allot the shop-cum-flat/office to the petitioner at the price of Rs. 5 lakhs as originally advertised.*
- (iii) *this Hon'ble Court may be pleased to pass any other appropriate writ, direction or order which may be found suitable in the facts and circumstances of the present case;*
- (iv) *this Hon'ble Court may be pleased to restrain the respondent from cancelling the allotment in favour of the petitioner during the pendency of the writ petition in this Hon'ble Court for the non-payment of the enhanced price;*
- (v) *as an interim measure the respondent Board be directed to deliver possession of the Shop-cum-flat/office to the petitioner at the original price as advertised;*
- (vi) *award cost of this writ petition to the petitioner.*

M. L. Sarin, Sr. Advocate (Hemant Sarin and Ms. Jayshree Thakur, Advocate with him), for the Petitioner.

K. B. Bhandari, Sr. Advocate (Pardip Bhandari, Advocate with him), for the Respondent.

#### JUDGMENT

S. S. Sodhi, J.

(1) The controversy in this bunch of writ petitions is with regard to the price of the ten shop-cum-flats constructed by the Chandigarh Housing Board in Sector 40-C, Chandigarh.

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A reference to the material on record would show that the Chandigarh Administration, by its letter to the Estate Officer (No. 5248-UTF1(2)-82) of July 13, 1982, a copy of which was endorsed to the Chandigarh Housing Board decided to allot 1191.66 square yards of land to the Chandigarh Housing Board, for ten shop-cum-flats in Sector 40 at the rate of Rs. 500 per square yard. The Board, thereafter decided to construct these 10 shop-cum-flats in Sector 40-C and in 1983 issued an advertisement (annexure P/1), inviting applications for them. Each shop-cum-flat was to be a four-storeyed building, namely; basement, ground floor and first and second floor and its tentative price was mentioned as Rs. 8.5 Lakhs. It appears that, in response to this advertisement only 3 or 4 applications were received. The Board thereupon modified the Scheme by reducing the plinth area of the shop-cum-flats to 1,800 square feet and also restricted the construction to be made to only the basement and the ground floor. The tentative price was consequently reduced to Rs. 5 Lakhs. The advertisement to this effect was issued on November 11, 1983 in response to which only another six applications were received. Construction of these shops was thereafter commenced sometimes in 1984.

(3) Later, when the shop-cum-flats were only partially built, the Board in May 1986 re-advertised the sale and allotment for these shop-cum-flats.

(4) Some of the petitioners applied for the shop-cum-flats in response to the earlier advertisement in 1983, while the others did so after the advertisement of May 1986. In response to their applications, demand-cum-allocation letters were issued to them and in terms thereof the amounts demanded were paid to the Board within the specified period; the total amount paid by them being Rs. 3.5 lakhs each. The balance amount of Rs. 1.5 lakhs being payable by them after possession had been delivered to them.

(5) The construction of all the ten shop-cum-flats was completed by September 30, 1986, but no letter of allotment was issued until October 31, 1989 (Annexure P-8), whereby, the Board fixed and demanded a sum of Rs. 12,05,514 as the price thereof as against the tentative price of 5,00,000 as mentioned in the advertisements. The petitioners were consequently called upon to deposit a sum of Rs. 3,61,672 instead of Rs. 1,50,000, besides an additional amount of Rs. 61,032 as ground rent. Further, the petitioners were required

to pay Rs. 5,54,934 within 30 days of the said letter of October 31, 1989 (Annexure P-8) and the sum of Rs. 3,61,672 alongwith interest at the rate of 18 *per cent* per annum in three equal instalments. It is this demand that is now challenged in these proceedings.

(6) The Chandigarh Housing Board, in its return, has sought to explain the delay in the allotment of the shop-cum-flats to the petitioners on the plea that the Chandigarh Administration had not settled the price of the land on which they had been constructed. Reference was here made to the letter of the Finance Secretary, Chandigarh Administration of August 12, 1988 conveying the decision of the Chandigarh Administration that the price of the land to be charged from the allottees for the land on which these shop-cum-flats had been constructed was Rs. 3,414 per square yard. It being mentioned there that this rate was based upon the average rates of auction of similar sites in Sector 40, held on February 21, 1983. On receipt of this letter, the Chandigarh Housing Board requested the Chandigarh Administration to reconsider this price in view of its earlier decision to allot land for this purpose at the rate of Rs. 500 per square yard. The Chandigarh Administration thereafter fixed the price of this land at the rate of Rs. 2,500 per square yard with the stipulation that the subsidy in the land cost would not be passed on to the allottees. It was thus on account of this increase in the price of the land that the cost of the shop-cum-flats, as demanded by the Chandigarh Housing Board was enhanced to Rs. 12,00,000 odd from the tentative price of Rs. 5,00,000 as mentioned in the advertisement.

(7) Before proceeding further, it deserves note that on its own showing, the Chandigarh Housing Board has recognized the fact that as a result of the revision of the cost of the land for these ten shop-cum-flats, the amount payable by the allottees towards the cost of land alone works out to more than the total tentative price of Rs. 5,00,000, as mentioned in the advertisement. This has been so stated in the note of the Agenda Item (Annexure P/10) of the meeting of the Chandigarh Housing Board. It is also pertinent to note from it the legal opinion obtained by the Board with regard to this aspect of the matter from its Standing Counsel Mr. R. S. Mongia, Senior Advocate (as his Lordship then was), who opined as under :—

“The price of the shop-cum-flat/office which was advertised earlier cannot be changed (on whatever method the

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price was calculated) and more price cannot be added towards the cost of the land from those applicants who had applied in response to that advertisement and have completed the formulation."

(8) Similar advice, it appears, was also given by the Advocate-General, Punjab Mr. H. S. Bedi, who was then a Member of the Board.

(9) The picture that thus emerges is in pursuance of the decision of the Chandigarh Administration to allot land to the Chandigarh Housing Board at the rate of Rs. 500 per square yard, the Chandigarh Housing Board framed a scheme and advertised the sale and allotment of 10 shop-cum-flats in Sector 40-C, Chandigarh at a tentative cost of Rs. 5,00,000. It was in pursuance of this advertisement issued in 1983 and another in 1986 that the petitioners applied for allotment and in terms thereof paid Rs. 3.5 lakhs each within the stipulated period. The construction of these flats which started in 1984 was completed in 1986. It was over two years thereafter that the Chandigarh Administration decided to revise and enhance the price of the land for these shop-cum-flats and it was then that on October 31, 1989, by the impugned letter, annexure P/8, that a sum of Rs. 12 lakhs odd was demanded as the price of the shop-cum-flats instead of the tentative price of Rs. 5 lakhs, as mentioned in the advertisement.

(10) It will be seen, therefore, that it was years after the advertisement had been issued and the shop-cum-flats having been constructed; 70 per cent of the price thereof having been paid by the petitioners, that the Chandigarh Administration suddenly decided to revise its earlier decision regarding the price of the land on which these shop-cum-flats had been constructed. In the context of the sharp increase in the price of land and building in Chandigarh, the petitioners do indeed stand gravely prejudiced by this sudden massive increase in the price of the land by the Chandigarh Administration, in that, the price demanded now is more than double the tentative price mentioned in the advertisement and at the same time, if the amount paid by them is now to be returned to them even with interest, they cannot possibly be expected to be able to purchase with it any land or building which they could have done, had this money not been taken from them on the date it was paid. Prejudice and injustice to the petitioners thereby thus stand writ large.

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(11) When confronted with the letter of the Chandigarh Administration of July 13 1982, whereby it had been decided to allot land for these ten shop-cum-flats to the Chandigarh Housing Board at the rate of Rs. 500 per square yard, Mr. K. B. Bhandari, counsel for the Board had no explanation to offer for the revision and enhancement in the price of this land by the Chandigarh Administration and that too after such a long period had elapsed.

(12) Faced with this situation, counsel for the respondent Board sought to fall back upon the hackneyed contention in such matters, namely; that the price mentioned in the advertisement was only a tentative one and further, that according to the conditions as contained in the brochure, the Board had specifically reserved to itself the right to modify the cost of the shop-cum-flats without assigning any reason. It was thus argued that the issue raised was one which arose under the contract between the parties and was thus not amenable to adjudication under the writ jurisdiction of the Court.

(13) The answer to the contention raised is provided by *Mangatram v. Delhi Development Authority* (1), where it was observed :—

“It cannot be said that there are no circumstances at all in which a contract entered into on behalf of the Government would be amenable to interference under Article 226 of the Constitution. This branch of the law is still in a process of evolution. The proliferation of statutory authorities and public corporations has brought into existence a huge contractual field in which the terms and conditions of the contract are practically dictated by the monopolistic limbs of State or other public authority and the other party to the contract has very little say in regard to the terms and conditions to which he is supposed to have agreed. In this state of things situations are likely to arise which may justify interference under Article 226 even in such cases. There are two situations where such interference can be made. The first covers cases where after entering into a contract the Government purport to exercise certain rights under the contract, but, in reality, the

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(1) A.I.R. 1984 Delhi 246.

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Government is exercising its executive power in an arbitrary and unreasonable manner, so as to violate the common law. in such cases, though the Government is ostensibly acting under the terms of a contract, it can be said, in reality, to be an exercise of the executive power of the State that is being challenged. The second situation involves an extension of the above principle. This is of case where a term of a contract 'imposed' by the State or authority on the citizen is contrary to law and, thus, *non est*. An action of the State, insisting on the observance of such a term of the contract would, in substance, be an act in the exercise of its executive or statutory power rather than as a contracting party simpliciter."

(14) In the circumstances, here, there can be no escape from the conclusion that the **increase** in the price of the land by the Chandigarh Administration is, but an exercise by it of its executive power in an arbitrary and unreasonable manner amply justifying thereby interference under Article 226 of the Constitution.

(15) Such being the situation, with the Chandigarh Administration having earlier decided to allot land at the rate of Rs. 500 per square yard, and the Board thereupon having framed a scheme and fixed the tentative price for these flats in terms thereof and the petitioners having paid the money demanded within the stipulated period, it cannot now be permitted to turn round and claim any amount, as price of this land in excess of that mentioned in its letter of July 13, 1982.

(16) It follows therefore, that the fixation of the price of these ten shop-cum-flats in Sector 40, Chandigarh by taking the price of the land on which they had been constructed to be Rs. 2,500 per square yard, is clearly contrary to law. The price as demanded by the impugned letter of October 31, 1989, annexure P/8 is accordingly hereby quashed. The Chandigarh Housing Board is consequently

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hereby directed to fix the total price of the shop-cum-flats by taking their land cost to be at the rate of Rs. 500 per square yard and to allot and deliver possession of these flats to the petitioners on the price so worked out or the tentative price as mentioned in the advertisement, whichever amount may be more.

(17) All these writ petitions are accordingly hereby accepted with costs. Counsel fee Rs. 1,000 in each case.

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R.N.R.