

Before Hon'ble Amarjeet Chaudhary, G. S. Singhvi & H. S. Bedi, JJ.

COURT ON ITS OWN MOTION,—Petitioner.

versus

ADVISER TO THE ADMINISTRATION, UNION TERRITORY,
CHANDIGARH AND OTHERS,—Respondents.

C.W.P. 16868/94.

1st June, 1995.

Constitution of India, 1950, Arts, 226/227, Government Residence (Chandigarh Pool Allotment Rules), 1972, Rls. 3, 5, 6 & 26—Eligible Office—Meaning of—Employee of Central Government undertaking or Central Government Employee—Employee—Not eligible.

Held, that rule 2(e) did envisage allotment to the Central Government Employees and officers of Public Sector Undertaking and the administration had often to go slow in evicting persons who had ceased to be entitled to continue in Government accommodation in view of the status and the standing of such persons. In this connection, it was also pointed out that a number of Hon'ble Judges of this court continued to hold over their official residences despite having lost the right to retain them. It was also urged that the Division Bench in S. P. Gupta's case had not given any consequential direction in the case of journalists who had been allotted house by the U.T. Administration.

(Para 9)

Constitution of India, 1950, Sections 226/227—Government Residence (Chandigarh Pool Allotment Rules) 1972, Rule 3-A Eligibility for allotment house—Owner of residential accommodation not eligible.

Held, that there is a mandate of Rule 3-A in which it has been stipulated in Sub Rule (2) that after the coming into force of this, no one will be eligible for allotment of a Government residence if he or any member of his family owned a house either in Chandigarh or in the adjoining urban estates as defined in Sub Rule (b) of Rule 3-A. Sub Rule (3) specifically provided that any officer who owned a house and was in occupation of government accommodation would surrender the same whereas the other sub rules of rule 3-A stipulated as to how the main purpose of rule 3-A was to be accomplished. Though this rule may cause great hardship to a large number of Government employees for various reason yet as long as it continues to be on the statute book, the administration has no option but to enforce it.

(Para 16)

Government Residence (Chandigarh Pool Allotment Rules, 1972)—Rule 5, 6 & 26—Scope of Rule 26 only an exception containing power of relaxation.

Held, that rule 26 is a relaxation clause meant to lighten the rigour of rule 5 and can be utilized only in rare and exceptional

cases and that, too, for the reasons to be recorded in writing. It can by no stretch of imagination be compared with rules 5 and 6 which talk about substantive allotment through a statutory House Allotment Committee. It is well accepted that a relaxation clause cannot have the effect of whittling down the main provision.

(Para 4)

M. L. Sarin, Sr. Advocate with Deepak Sibal, Advocate, for the Petitioner.

K. G. Verma, Petitioner in person.

Ashok Aggarwal, Sr. Advocate with Subhash Goyal and Krishan Kumar Saini, Advocates for U.T. Administration and respondents Nos. 2, 5, 7 and 11.

H. L. Sibal, Advocate General Haryana and K. K. Lehri Sr. Advocate and D. R. Trikha, DAG, Haryana.

Anil Malhotra, Advocate for respondents No. 1, 8, 9 and 12.

R. S. Mittal, Sr. Advocate with Tarun Jain.

G. S. Bal, Advocate, I. S. Balhara, Advocate Vinod Sharma, Advocate.

H. S. Gill, Sr. Advocate with G. S. Gill, Advocate.

J. S. Rathee, Senior Standing Counsel for U.O.I.

M. S. Kohli, President, High Court Employees Union.

JUDGMENT

Harjit Singh Bedi, J.

(1) Mr. K. G. Verma, an IAS officer of the rank of Financial Commissioner (1965 batch) in the Haryana Government, filed Civil Writ Petition No. 12688 of 1993 (*K. G. Verma v. Union Territory of Chandigarh and another*) in this Court seeking a direction that the Union Territory Chandigarh Administration be directed to allot a suitable residential accommodation to him with a further direction that all allotments be made strictly in accordance with Government Residence (Chandigarh Administration Pool) Allotment Rules, 1972 (hereinafter referred to as the 'Rules of 1972'). This petition was dismissed on February 4, 1994 by a Division Bench of this Court holding *inter alia* that Rule 26 under which all out of turn allotments had till then been made, could not be termed as unfair or arbitrary and that all such allotments had the sanction of the Rules. Aggrieved by this order, Mr. Verma filed the Special Leave Petition

(No. 8088 of 1994) in the Hon'ble Supreme Court. Notice was issued in the Special Leave Petition and while it was yet pending, this Court acting *suo moto* on the basis of a news item in the Chandigarh News Line dated August 4, 1994, issued a show cause notice to the respondents as to why the news item be not treated as a petition under Article 226/227 of the Constitution of India and further as to why out of turn allotments made in their favour be not cancelled. This petition was registered as CWP No. 16863 of 1994 and we propose to write the main judgment in this case. In an interim order it was also directed that further allotments of houses of certain categories could not be made without prior permission of this Court. By subsequent orders made in the *suo motu* proceedings, the States of Punjab and Haryana as also the Punjab and Haryana High Court were impleaded as respondents to the writ petition. The Union Territory Chandigarh Administration also moved an application before the Supreme Court seeking transfer of these proceedings to that court and this matter too was tagged with the petition filed by Mr. Verma. Both the petitions were disposed of by a common order dated November 7, 1994 with the following observations :—

“Having heard learned counsel for the parties and having been told that the Scheme has since been prepared, though there is a contention that the scheme is not consistent with the order passed by this Court in All India Judges' case 1993(4) SCC 288, we think that it is appropriate that the High Court should look into the matter before finalising the scheme so that if there are any creases they can be ironed out. We, therefore, do not see any reason to go into the scheme as we think that the High Court would be in a better position to appreciate the local situation and finalise the scheme.

Learned counsel for the Chandigarh Administration states that it would be desirable if the matter is placed before a Division Bench. The High Court may, when the matter comes up before it, consider this aspect. The petitioner will also be entitled to appear before the High Court and put up his grievance, if any is still surviving, since the counsel for the Chandigarh Administration says that he has already been allotted a house.

Both the petitions will stand disposed of accordingly.

Sd/- .

Prem Lata Sharma,
Court Master.”

The matter was thereafter taken up by a Division Bench and during the course of hearing, it was pointed out that the Supreme Court had neither affirmed nor upset the judgment of the Division Bench in C.W.P. No. 12688 of 1993, but had remitted the matter for re-decision to this Court and, if a view contrary to the one of that judgment was to be taken by another Division Bench, the matter would have to be referred to a larger Bench for decision. As the Division Bench dealing with the present case was *prima facie* of the view that the judgment in C.W.P. No. 12688 of 1993 required a second look, the matter was referred to a Full Bench,—*vide* reference order dated March 22, 1995. This is how the matter is before us.

2. The argument before the Full Bench were initiated by Mr. K. G. Verma himself, duly supported by Mr. K. K. Lehri, Senior Advocate, representing respondent No. 15, that is the State of Haryana. It has been argued that the judgment of the Division Bench in K. G. Verma's case was erroneous even on a mere reading of the rules. The primary reliance for this assertion was made on Rules (2j), 5, 6, 9 and 26 of the Rules. These rules have been quoted below :

'3(j) 'Priority Date' of an employee in relation to a type of residence to which he is eligible under the provisions of rule 4 of these rules means the earliest date from which he has been continuously drawing emoluments relevant to a particular type or a higher type in a post under the Chandigarh Administration or the Central Government or a State Government or on Foreign Service, except for periods of leave without pay :

Provided that where the priority date of two or more employees is the same the seniority amongst them shall be determined on the basis of the emoluments drawn by them on the date of their becoming eligible for the particular type, the employee in receipt of higher emoluments taking precedence over the employees in receipt of lower emoluments, and where the moluments are equal, on the basis of their length of services and where the service is also equal on the basis of age, the older person taking procedence over the younger.

Provided further that the priority date in respect of an employee shall be maintained at a time for or particular type of residence only.

5. CHANDIGARH ADMINISTRATION POOL OF HOUSE—S.R.
317 A.M. 5—

All residential buildings which have not been earmarked for any particular class of government servants by designation or have not been allocated to any particular Department shall form part of the Chandigarh Administration Pool. These residences shall be allotted to eligible Government Servants by the House Allotment Committee.”

6. HOUSE ALLOTMENT COMMITTEE.

There shall be two such committees :—

(i) House Allotment Committee (Upper).

(ii) House Allotment Committee (Lower).

“(2) The houses of type-III to VIII will be within the purview of the House Allotment Committee (upper) and those falling in categories IX to XIII in the purview of the House Allotment Committee (Lower). The Constitution of these Committees shall be as follows ;

(a) HOUSE ALLOTMENT COMMITTEE (UPPER).

1. Chief Commissioner.	Chairman
2. Chief Secretary to the Government of Punjab or his representative.	Member
3. Chief Secretary to Government of Haryana or his representative.	Member
4. Home Secretary, Chandigarh Administration.	Member
5. Finance Secretary, Chandigarh Administration.	Member
6. Chief Engineer and Secretary, Engineering Department, Chandigarh Administration.	Member
7. Director, Post-Graduate Institute of Medical Education and Research, Chandigarh.	Member
8. Executive Engineer, Capital Project Division No. III, Chandigarh Administration.	Member Secretary

(b) HOUSE ALLOTMENT COMMITTEE (LOWER).

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|---|---------------------|
| 1. Finance Secretary, Chandigarh Administration. | Chairman |
| 2. Deputy Secretary to the Government of Punjab, Secretariat Establishment. | Member |
| 3. Deputy Secretary to the Government of Haryana, Secretariate Establishment. | Member |
| 4. Deputy Commissioner, Chandigarh. | Member |
| 5. Executive Engineer, Capital Project Division No. III, Chandigarh Administration. | Member
Secretary |

9. ALLOTMENT OF RESIDENCE S.R. 17 A.M. 9(1).

Save as otherwise provided in these rules, when a residence falls vacant, it 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.

Provided that an applicant desiring change of accommodation in a house of the type already in his occupation may be given preference over a fresh allotment.

- (2) The committee may cancel the existing allotment of a government servant and allot to him an alternative residence of the same type or, in emergent circumstances, an alternative residence of the next below that of the residence in occupation of the officer if the residence in occupation of the Government servant is required to be vacated.

26 RELAXATION OF RULES S.R. 317 A.M. 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 or type of residence."

(3) It has been urged on this basis that the rules envisaged a priority date which was based on the date of the application made for allotment of a house and as the allotment had to be made under rule 5 on the basis of the priority date by the House Allotment Committee constituted under rule 6, any deviation from that principle was un-called for. It has been asserted that rule 26, that is, the relaxation clause could not detract from the effect of the substantive rule of allotment, i.e. rule 5 and the finding of the Division Bench to the contrary in *K. G. Verma's case* (supra) was, therefore, wrong. Serious objection was taken to the reasoning adopted by the Division Bench which was stated to be contrary to all accepted rules of interpretation of a statute and particular emphasis was laid on the following passage :

"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 circumstances 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 is very wide. Not only it confers power 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. No argument has been addressed about invalidity or unconstitutionality of such power. Even otherwise, the rules are not rigid but are flexible to meet different situations. Houses can be allotted out of turn, as stated above, houses 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."

It was also urged that the observations of the Division Bench that the question of equal distribution or equal treatment would not arise in case the applicants were large in number, whereas the accommodation available was less were, on the face of it, fallacious as the rules envisaged comparison of one allottee with another in terms of the priority date and further that the rules were required to be strictly followed, even more rigidly in case the accommodation was scarce so as to avoid any arbitrariness in the manner of allotment. As against this, Mr. Aggarwal, learned counsel appearing for the Union Territory Chandigarh Administration has argued first and foremost that the order of the Supreme Court dated November 7, 1994 envisaged that the past history leading to allotment of houses over the last two decades was not to be raked up and as the only matter that could now be agitated was with regard to the formulation of a new scheme under the auspices of the High Court and as the personal grievance of Mr. Verma had since been taken care off as he had been allotted a house befitting his status, he too had no *locus standi* to maintain his petition. He, however, admitted that the House Allotment Committee (Upper) had not met even once since the inception of the rules in 1973, whereas the House Allotment Committee (Lower) had met a couple of times but argued that as the Administration in its wisdom had interpreted rule 26 as one of the modes of allotment, and this view had even been accepted by the Division Bench, all allotments made had the sanction of law.

4. We first and foremost take up the argument of Mr. Ashok Aggarwal to the effect that no deep inquiry could be made into the allotments in Chandigarh in the light of the order of the Supreme Court remitting the case to this Court. This plea, to our mind, has absolutely no merit. It is to be noticed that Mr. K. G. Verma's Special Leave Petition was disposed of along with the *suo motu* proceedings and in both these proceedings, the manner and mode of allotment of houses in Chandigarh over the last 20 years had been

seriously questioned. For Mr. Aggarwal to contend that the Supreme Court had confined the inquiry by this Court only to a mere examination of a scheme for allotment to be framed by the U.T. Administration is, therefore, on the face of it erroneous and the effort of the Union Territory to scuttle any investigation into past allotments is to be deplored. It is to be noted that this Court, independent of what the Supreme Court had to say, has a duty to ensure that the authorities do not transgress the rules and to stray beyond the legal parameters carved out for them. Moreover, history it is said has a message for those who wish to learn, and we hope this expose will effectively carry that message. We have gone through the various rules cited above and find that rule 26 is a relaxation clause meant to lighten the rigour of rule 5 and can be utilized only in rare and exceptional cases and that, too, for the reasons to be recorded in writing. It can by no stretch of imagination be compared with rules 5 and 6 which talk about substantive allotments through a statutory House Allotment Committee. It is well accepted that a relaxation clause cannot have the effect of whittling down the main provision. The Division Bench in K. G. Verma's case had approved all the out of turn allotments as fully justified under rule 26 despite noticing that all allotments had been made under that rule from the inception of the rules till date. To accept the judgment of the Division Bench would, therefore, give a carte blanche to the administration to continue to make out-of-turn allotments taking the support of the relaxation clause. We are further of the opinion that the very reasons that weighed with the Division Bench to give its decision in the manner indicated, impels us to take a decision to the contrary. The paucity of government accommodation makes it all the more necessary that the rules framed should be clearly followed so as to avoid arbitrariness in the manner of allotment. The judgment relied upon by the Division Bench *M/s Kasturi Lal Lakshmi Reddy etc. v. The State of Jammu & Kashmir and another* (1), itself gives the answer against it in the following observation :—

“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

(1) A.I.R. 1980 S.C. 1992.

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 its pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant."

In the light of what has been held above, we are of the opinion that the judgment of the Division Bench in *K. G. Verma's case* (supra) does not lay down the correct law and is overruled.

(5) Certain other ancillary points have been raised which require to be disposed of at this stage. Mr. Verma has highlighted that the rules do not envisage any separate quota for Punjab and Haryana or the U.T. Administration's Officers and that each allotment was to be made on the basis of a priority date. He has further urged that even assuming for a moment that some quota could be fixed so as to justify the claim of the three administrations on the Chandigarh Housing Pool, the practice of the U.T. Administration to get the recommendation of the respective State government before making an allotment to an officer, was without any legal sanction.

(6) We have given our anxious thought to this argument and find some substance in it in the light of the circumstances which are peculiar to Chandigarh. It is to be noted that Chandigarh was envisaged as the capital of the State of Punjab, but on the reorganisation of the State into the States of Haryana and Punjab in the year 1966, was given a special status being designated the capital of both the States as also the U.T., Administration. It is, therefore, apparent that the quota fixed for these three administrations would not be entirely unjustified. We, however, make it clear that within the quota the allotment would be made purely on the basis of the priority date. Mr. Verma's further argument that the concurrence or the recommendation of the respective State governments was not required nor envisaged by the rules before allotment to an officer belonging to that State could be made to our mind has merit. He has pointed out that this controlling power given to the State governments had been misused time and again as a source of patronage and

as such, it should not be permitted. Although Mr. Verma has not pointed out any such specific cases, yet as the rules require allotment only on the basis of the priority date, we direct that no concurrence or recommendation of the State government concerned should be sought.

(7) It has also been urged by Mr. Lehri, learned counsel appearing for the State of Haryana, that the paucity of houses has been accentuated by the fact that allotments had been made to those who were not entitled to them and also because allottee who had ceased to be entitled to continue in occupation had been allowed to continue contrary to the rules. Mr. Lehri has relied on rule 2(e) of the Rules which defines 'eligible office' to mean—

“.....,xx.....xx..... an office of the Government of Punjab, the Government of Haryana or Chandigarh Administration located in Chandigarh, the staff of which has been declared by the Chandigarh Administration to be eligible for accommodation under these rules.”

Elaborating this argument, Mr. Verma has urged that in contravention of the above rule a large number of houses have been allotted and continued to be allotted to ineligible offices of States/Central/Semi-Government Undertakings/Corporation/Employees of the Central Government and so on, and that, as these persons were not entitled or eligible for allotment, such allotments should not be allowed to continue. He has also urged that this court had in the case reported as *S. P. Gupta and others v. Administrator, U.T. Chandigarh and others* (2), quashed the allotment with regard to Journalists and Press Correspondents as being wholly unauthorised and the directions of the Division Bench that consequential measures be taken in the light of the judgment have, in fact, not been carried out. As against this, Mr. Aggarwal learned counsel for the Administration, has argue that rule 2(e) quoted above, did envisage allotment to the Central Government employees and offices of Public Sector Undertakings and that the administration had often to go slow in evicting persons who had ceased to be entitled to continue in Government accommodation in view of the status and the standing of such persons. In this connection, it was also pointed out that a number of Hon'ble Judges of this Court continued to hold over their official residences despite having lost the right to retain them. It

was also urged that the Division Bench in *S. P. Gupta's case* (supra) had not given any consequential direction in the case of journalists who had been allotted houses by the U.T. Administration.

(8) We have considered these arguments as well, and find that Mr. Lehri's assertions have clear merit. Rule 2(e) read with rule 5 of the Rules clearly envisage allotment to only eligible government servants, that is, the employees of the State of Punjab or Haryana or the U.T. Administration located in Chandigarh and the offices who have been declared by the Administration to be eligible for accommodation under these rules. It is, therefore, apparent that the allotments made to the employees of the Central Government Undertakings etc., or to the Central Government Employees or to employees of Semi-Government or government controlled Corporations of the State of Punjab and Haryana and of the Union Territory such as CITCO do not have the sanction of the rules. However, keeping in view the facts that allotments have been made to such persons in some cases years ago, we direct that those who have already been allotted residential accommodations will not be disturbed, yet no further allotment be made to persons so employed.

(9) The situation in the case of the Journalists is, however, palpably different. Mr. Aggarwal has pointed out that though subsequent to the judgment in *S. P. Gupta's case* (supra), the U.T. Administration had not made any allotment to Journalists yet no measures had been taken to evict those who were continuing in occupation of the houses as there was no mandate from the Division Bench to that effect. This assertion of the learned counsel is factually inaccurate. In paragraph 18 of the Judgment, the Division Bench has observed as under :

"The Journalists and Press Correspondents are not entitled to allotment of government residential accommodation and, consequently it follows that all such allotments made, lack legal sanction and therefore, no further allotment be made to journalists or Press Correspondents. *The Chandigarh Administration would, no doubt, now take all the necessary consequential action in the matter.*"

It is, therefore, apparent that as no further appeal has been taken to any other forum, the judgment has attained finality and as the words underlined indicate all necessary consequential action was required to be taken. We sincerely hope that the U.T. Administration would now take all measures in conformity with the directions issued by the Court.

10. The argument of the learned counsel for the state of Haryana that continuance of those persons who had ceased to be eligible for allotment of houses either on transfer or on retirement was not in order, also has merit. On inquiry from Mr. Aggarwal, it has transpired that while some such officers had shifted out others were in the process of doing so, but his argument that in the case of houses which were in the occupation of retired/transferred High Court Judges, no action had so far been initiated on account of their status is, to our mind, wholly misconceived. The rules apply equally to all, irrespective of their status, and no deviation from this principle is called for. Rule 12 specifically provides a period during which a person can be allowed to hold over the possession of the premises in the various situations set out and the consequences of its violation and we find no justification whatsoever for the administrations reluctance to comply with the clear mandate of this rule. We accordingly direct that all persons who have ceased to be eligible for allotment of houses for whatever reasons must be equally treated and, in addition to the higher rent envisaged in rule 12 for default, prompt and necessary measures must be taken to evict them from such premises. We fully appreciate the difficulty particularly of those who have retired but no latitude is permissible in the light of rule 12 and more so, even on equity as the date of retirement being known on the date of joining service adequate arrangements should be made well in advance. As a corollary to what has been said above, we direct that any officer who was on deputation with the U.T. Administration and had been allotted a house on that basis would hence forth vacate the same on his repatriation to his parent State. However, to obviate any hardship that may be caused as a result of this direction, we order that this direction would come into force prospectively, that is, after the pronouncement of this judgment and such officers who are already holding over, would not be disturbed.

11. Mr. Verma and Mr. Lehri have been at pains to point out that the administration itself was not unaware that the allotments being made were in utter violation of the rules and in this connection reference has been made to Annexure P-8, an order of the Chief Commissioner, Chandigarh, in which it had been directed that all allotment sanctioned on out-of-turn/first available basis and which were then pending with the office of the House Allotment Committee would stand revoked with immediate effect and that henceforth government residences would be allotted to eligible employees by the respective House Allotment Committee strictly in accordance

with the provisions of the rules. It has been highlighted that despite this clear direction, no action was taken and allotments continued to be made, as before. It has also been pointed out with reference to certain Annexures (R-7 and R-10) that have been put on the file that the U.T. Administration attempted to modify the rules by mere administrative fiat to concentrate all authority in its hands or to give undue benefit to its employees. We have gone through these annexures and find that this assertion is also correct. Annexure R-7 dated 21st September, 1993 was issued to authorise the Chairman of the House Allotment Committee, i.e. the Secretary Finance, U.T. Administration to consider out-of-turn allotments and even more surprisingly, to consider the cases of employees of ineligible offices for allotment of residential accommodation in Chandigarh. Pointed reference need also be made to Annexure R-10 in which it was directed that all houses of type 6 and above, would be allotted to the officers of the State of Punjab and Haryana, as the case may be to which the officer vacating the house belonged, though this matter would necessarily be subject to the over-riding need for allotment of houses to the senior officers of the Chandigarh Administration. It is, therefore, apparent to us that even houses that had been apportioned to the quota of the State of Punjab and Haryana were sought to be withdrawn in order to satisfy the needs of the employees of the U.T. Administration. The sequence of events, quoted above do indicate that the rules have not been followed in the matter of allotments and there has been large scale departure from the principles set out therein and that even the Chief Commissioner was aware as far back as in 1984 of the way allotments were being made (as would be evident from Annexure R-8), but no corrective steps were in fact taken.

12. Mr. Lehri then argued that the power given to the Chief Commissioner under Rules 7 to "from time to time, add any residence to the Chandigarh Administration Pool or withdraw any residence from it or change the classification of any residence" for any reason whatsoever was unguided and therefore arbitrary. Mr. Verma, has to the legal submission made by Mr. Lehri, elucidated the argument by giving a specific instance whereby the authority conferred under rule 7 has been misused. That specific instance pertains to the case of allotment to Mr. A. R. Talwar, Finance Secretary to the Union Territory Administration and respondent No. 5 in the present proceedings. It has been pointed out by Mr. Verma that Mr. Talwar was entitled to a type 8 house but in the light of his status as Secretary Finance to the Union Territory Administration and on security considerations, was allotted a type-6

house in sector 24 Chandigarh instead. It appears that in the meantime, House No. 11, Sector 7, Chandigarh which was then being occupied by Dr. J. S. Gujral of the Post Graduate Institute of Medical Education and Research, Chandigarh became available on the retirement of its occupant, and as this house appeared to be better than the one occupied by Mr. Talwar, he then decided to get it allotted to himself. It has been pointed out by Mr. Verma that this was a difficult proposition as it had been noted on the file that this house was of category 4 which was for beyond the entitlement of Mr. Talwar. but undaunted Mr. Talwar, as Chairman of the House Allotment Committee (Upper) manoeuvred the allotment in his own name in a dubious way. On this argument, we summoned the files from the office of the U.T. Administration as also from the Central Bureau of Investigation, Chandigarh, which is inquiring into some of the points raised in the two petitions before us, and from the files which have been produced, it is evident that the allotment in favour of Mr. Talwar was made in a highly objectionable manner. As already indicated, there were two difficulties which had to be met before the allotment could be made; first that the house in question was in the P.G.I. Pool and was therefore, allottable by the Director of the Institution and secondly, being a category 4 house was way beyond the entitlement of Mr. Talwar. The first difficulty was got removed whereby despite the serious objections raised by the P.G.I. House No. 110, Sector 24 was given to the P.G.I. Pool and House No. 11 Sector 7 taken back and put in the Chandigarh Administration Pool. The second difficulty was got over by a circuitous route as would be evident from what follows. The Senior Assistant dealing with the matter recorded a note on July 5, 1993 which is the first document on the file that 'as desired', it was proposed that House No. 11 Sector 7 be allotted to Shri A. R. Talwar and House No. 110 sector 24 be placed at the disposal of the P.G.I. The file was then put before the Secretary, House Allotment Committee, who accepted the proposal as above. The matter was thereafter put before the Chairman House Allotment Committee, that is, Mr. Talwar himself on July 27, 1993 who made a further inquiry with regard to the circumstances under which House No. 110 Sector 24 had been given to the Chandigarh Administration Pool and House No. 11 Sector 7 to the P.G.I. On July 29, 1993 the dealing hand noted that there was no record to this effect available, but advised that the Chief Commissioner was competent to add or withdraw any house from the Chandigarh Administration Pool under rule 7. This proposal was accepted by the Secretary House Allotment Committee on the same day. The matter was put before

Mr. Talwar himself as Chairman of the House Allotment Committee (Upper) who recommended the proposal to the Adviser who accepted the same on August 2, 1993 and on that very day the order of allotment in favour of Mr. Talwar was issued. There is yet another disturbing aspect which has come to light in the course of the examination of this matter. It would be seen from rule 4 that the House Allotment Committee (upper) is to be chaired by the Chief Commissioner (now Administrator who has further delegated his authority to the Adviser), but as there appeared to be some confusion with regard to the notings with regard to House No. 11 Sector 7 in which Mr. Talwar had been identified as Chairman of the House Allotment Committee, we asked Mr. Aggarwal to clarify the position. He has informed us that rule 4 remained as it was but as the House Allotment Committee had never met, the Adviser to the Administrator who had been delegated the power of Administrator under the rules, had informally passed on the authority to the Secretary Finance. This situation to our mind, is yet another disturbing feature with regard to the allotment in question. Mr. Talwar in arrogating to himself, the power of the Chairman of the House Allotment Committee, acted in clear violation of the rules

13. Serious objection has also been taken by Mr. Verma to the decision taken by Mr. Talwar in his own favour. He has forcefully argued that a virtual fraud had been committed by the Administration in changing the categorisation of House No. 11 Sector 7 from type-4 type 6 so as to make it more convenient for Mr. Talwar to get its allotment for himself. This assertion of Mr. Verma has been strongly opposed by Mr. Aggarwal, appearing on behalf of U.T. Administration, as also on behalf of Mr. A. R. Talwar as respondent No. 5. It has been argued that House No. 11 Sector 7 was, in fact, designated as a Deputy Minister's residence and was not actually categorised as type-4 or 6 as alleged by Mr. Verma and, as such, no fault could be found in the administration making the allotment to Mr. Talwar.

14. We have considered this argument before us and find that the assertion of Mr. Verma with regard to the categorisation of House No. 11 Sector 7 appears to be correct. We have seen the files taken from the Central Bureau of Investigation which clearly indicate that this was, in fact, a type 4 house and an effort had been made to camouflage this aspect for the purposes of this petition. The entries in the Control Register pertaining to this house for the period it was in occupation of Dr. J. S. Gujral and then came into occupation of Mr. Talwar identifies it as type-4. There is also a

note on this Register dated June 6, 1994 which reads 'type-6 declared,—vide Secretary/House Allotment Committee dated 2nd June, 1994'. This note has been struck off and another undated note has been appended which reads that it has been declared to be type 6,—vide order dated 27th September, 1993. There is yet another endorsement dated 20th June, 1994 on the same register which says that the house had been declared from 6 to 5 type on completion of construction of an additional room with attached toilet. It will, therefore, be seen that there is a clear contradiction between the first note mentioned above and the last one as the first note declares it to be type 6 on June 2, 1994 whereas the second note declares it to be type 5 or 6.—vide order of the same date. There is yet another document on the file date May 3, 1994 which was executed by Dr. Gujral when he vacated the premises and had recorded the house as being of type 4. This document finds further support from the vacation receipt register entry No. 259 dated 31st May, 1994. If any doubt is still left with regard to the categorisation of the house, the same is dispelled by the document dated May 31, 1994 which is the occupation report duly executed by Mr. Talwar himself on that date and this report also indicates that the house was of type 4. This document finds further endorsement from the occupation register and entry No. 302 dated 31st May, 1994 signed by Mr. Talwar and identifying the house as category 4 type. The C.B.I. has also produced before us, in addition to the aforesaid documents, the layout plan of sector 8 which was drawn up at the time of the planning of Chandigarh. It is the conceded position that House Nos. 10 and 11 Sector 7 Chandigarh are identical in terms of the area of the plot, constructed area, and also that House No. 10 even by the admission of the respondents is of category 4. It is significant that earlier the categorisation was made exclusively on the total plot area and the plain area of both these plot is 3312.5 sq. yards. There is yet another factor which is to be borne in mind. In sub-para (d) of paragraph 35 of the Special Leave Petition filed by Mr. K. G. Verma in the Supreme Court it had been specifically averred by him that House No. 11 Sector 7 Chandigarh was a type-4 house and was, therefore, not allotable to Mr. Talwar. A reply to the SLP had been filed by Shri R. S. Doon, Estate Officer, U.T. Chandigarh and in reply given in para 27 of his affidavit. Significantly it has not been denied that House No. 11 Sector 7 was a type-4 house. From a cumulative reading of the evidence on record, we are clearly of the view that House No. 11 Sector 7 was a type-4 house and was therefore way beyond the entitlement of Mr. Talwar. It is also clear that Rule 7 is not hedged in by any guidelines or other checks on its misuse and

does not even require that some reasons be recorded for taking action under it. The rule is obviously arbitrary and is accordingly quashed. The allotment of House No. 11 Sector 7 Chandigarh in favour of Mr. Talwar cannot, to our mind, be sustained, and is accordingly set aside.

15. Some argument has also flown on the extraordinary renovations that have been made to House No. 11 after its allotment to Mr. Talwar. It appears that it was a sense of deep personal injury and hurt felt by Mr. Verma who was about 15 years senior to Mr. Talwar in the service which precipitated matters and brought him to Court. This was not only on account of the unfair treatment in the allotment of a house to him but what must have been particularly galling were the extensive renovations to House No. 11 and more than a casual and indifferent approach to Mr. Verma's needs. We have summoned the relevant record from the U.T. Administration and the C.B.I. Chandigarh and on its perusal we find that some startling facts do emerge. We notice that very substantial renovations were carried out after its allotment to Mr. Talwar. There can be no quarrel with the proposition that every person is entitled to live in comfort. It is equally true however that in satisfying his needs, no person has the right to utilise his position to secure disproportionate benefits for himself. We find that this cardinal Principle has been ignored in the case of Mr. Talwar. Attempts have been made as would be evident from the files received from the C.B.I. to conceal the actual amounts spent but it is conceded that very extensive work has been done. These amounts cannot be entirely justified more particularly as the condition of most government residences in Chandigarh is deplorable. The U.T. Administration must frame guidelines to ensure that public funds are not squandered away to satisfy the excessive demands of those in authority, while confining others less privileged to a mere existence.

16. Mr. M. L. Sarin, learned Senior Advocate, who had been requested by the Bench to assist the court as *amicus curiae*, has raised certain important issues before us which require deep consideration. He has pointed out first and foremost that the demand for government accommodation in Chandigarh far exceeds the supply for the additional reason that many government officers/officials who have their own houses either in Chandigarh, Mohali or Panchkula while renting out the same on exorbitant rents, continue to occupy government accommodation. He has urged that this was against the clear mandate of rule 3-A in which it had been stipulated [in sub-rule (2)] that after the coming into force of this rule, no officer would be eligible for allotment of a government residence if

he or any member of his family owned a house either in Chandigarh or in the adjoining urban estates as defined in sub-rule (b) of Rule 3-A. It has been pointed out that sub-rule (3) specifically provided that any officer who owned a house and was in occupation of government accommodation, would surrender the same whereas the other sub-rules of rule 3-A stipulated as to how the main purpose of rule 3-A was to be accomplished. It has been highlighted by Mr. Sarin that despite the fact that the rule continued to be on the statute book it had never been enforced and in case it was acted upon even now, the problem of government housing in Chandigarh would substantially disappear. We accept this argument of Mr. Sarin and find that though this rule may cause great hardship to a large number of government servants for various reasons yet as long as it continues to be on the statute book, the administration has no option but to enforce it. We do appreciate government servants who have rented out their private houses will have some difficulty in shifting into them. We therefore, direct that all such officer/officials will move the Rent Controller within two months of this order, and the Rent Controller would decide the application within six months thereafter.

17. It has also been urged by Mr. Sarin that the policy of the U.T. Administration to allot residential accommodation to a family member of a retired government servant, provided the family member was also a government servant, did not have the sanction of the rules and, as such, the instructions on that point could not be enforced. There is a merit in the stand of the learned counsel. Admittedly, the rules do not envisage the kind of allotments that have been made with respect to the family members of retiring government servants and in the absence of any such sanction, no allotment can be made. We, therefore, direct that the U.T. Administration will not make any such allotments in future, but those who have already secured allotment and entered into possession as of today, will not be disturbed.

18. It has also been brought to our notice that a large number of employees who have been allotted government accommodation in Chandigarh has sub-let the same to others while shifting out themselves and some action needed to be taken against such errant behaviour. There is merit in this stand as well. We therefore, direct that the administration will carry out a survey within a period of eight months so as to ensure that the government accommodation is not being misused in any way and that, in case, it is found

to be so, immediate steps are taken to recover it. Likewise residential accommodation being used for office or any other purpose must be recovered and utilized in the manner for which it had been built.

THE SCHEME

19. The U.T. Administration pursuant to the order of the Supreme Court have framed a draft scheme and have submitted the same in court. Much argument has been addressed by various interested parties on this aspect and, in addition to Mr. Lehri who addressed argument on behalf of the State of Haryana, the High Court and its employees and the federation of the U.T. Administration employees have also given their views. The primary grievance of the various interested parties has been that even the draft scheme proposed by the U.T. Administration was heavily tilted in favour of the employees of the U.T. Administration. Mr. G. S. Gill, learned Senior Advocate, appearing on behalf of the High Court as also on behalf of the Judicial Officers for the States of Punjab and Haryana has contended that the scheme did not take into account the directive given by the Supreme Court in the *All India Judges and others v. Union of India and others* (3). In particular, it has been pointed out that the directions of the Supreme Court that residential accommodation be provided to all Judicial Officers on a priority basis and, if necessary, to the exclusion of all others, had not been implemented so far and that even some Judges of this Court who, as per their conditions of service, were entitled to rent free accommodation still continued to languish in various guest houses in Chandigarh. As against this, it has been argued by Mr. Aggarwal that some efforts have been made to implement the judgment of the Supreme Court and accommodation for all Judicial Officers holding judicial as opposed to Administrative posts, would be constructed on a priority basis. In the case of the High Court Judges, he has pointed out that as some of the houses earmarked for them continue to be in occupation of retired/transferred Judges, it had not yet been possible to accommodate everyone.

20. We have considered the points raised by the counsel and find that the directions of the Supreme Court have not really been carried out by the U.T. Administration so far. In the *All India Judges'* case (supra), a specific direction had been issued that accommodation be provided to all Judicial Officers by a certain cut

of date and, as such, the artificial distinction sought to be drawn by Mr. Aggarwal between Judicial Officers working as such and those working on other posts. Such as Legal Remembrancers, District and Sessions Judges, (Vig.) for the States of Punjab and Haryana, is totally without any warrant. The directions of the Supreme Court are clear and unambiguous and have to be scrupulously observed. It is also significant that the Supreme Court in its order dated October 10, 1994 has extended the date for the implementation of the judgment in *All India Judges' Case* (supra) upto August 1, 1995 and a warning has been administered that in case the directions were not carried out by that date serious consequences could follow. It has been observed as under :—

“It should be made clear that when we state that the quarters should be allotted to judicial officers on priority basis, the direction should be complied with letter and spirit and not by permitting special category allotments by passing allotment to judicial officers. If despite the same sufficient quarters are not available from the common pool and it becomes necessary to requisition or hire private accommodation the State Government should direct the respective Collectorates to locate accommodation of the prescribed standard and allot the same to the judicial officers. In cases where that is not done or is not possible for want of accommodation or even though the Judicial Officer is able to point out accommodation but for some valid reason it is not possible for the State Government to requisition or hire the same and the Judicial Officer is compelled to hire accommodation for himself, the rental in excess of what the judicial officer is entitled to by way of H.R.A. must be borne by the State Government provided the judicial officer intimates the State Government that on account of its default he has selected a house at a particular rental and would be occupying the same. If after such intimation the State Government/Collectorate does not provide accommodation to the Judicial Officer within a month's time to the judicial officer will be entitled to hire the house and the State Government will pay the rental in excess of the H.R.A. admissible to the judicial officer for the accommodation. In case of judicial officers already in occupation of private accommodation, the same benefit should be extended to them also, namely, of payment of the excess amount for the accommodation.

In order that the State Government may have reasonable time to comply with the direction we direct that this order should be worked out as early as possible and will become effective from 1st August, 1995. It is needless to impress upon the State Governments that we expect scrupulous implementation of this order because by the date 1st August, 1995 more than reasonable time would have elapsed, since the making of the order in the Review Application. A copy of this order will be sent to the Chief Secretary of every State Government who shall be personally responsible for the implementation of the order. failure, if any, will invite drastic action."

The observation of the Supreme Court adequately takes care of Mr. Aggarwal's argument. We are further of the opinion that accommodation for High Court Judges is a matter which should be accorded top priority as provision of rent free accommodation is a part of their service conditions. It is perhaps worth highlighting that the Cabinet Secretary in a letter dated April 7, 1994 (Annexure R-16/2) addressed to the Chief Secretary, Punjab, and stressed on the liability of the State Government to provide rent free accommodation to High Court Judges, in terms of their service conditions. It is, therefore, imperative that necessary steps be taken for providing such accommodation and attempts be made to ensure that the houses retained by Judges who had ceased to be eligible for the purpose are recovered and allotted as per rules.

21. Mr. M. S. Kohli, President of the High Court Employees Union, represented primarily with regard to type-9 accommodation. He has particularly referred to clause (f) of paragraph 7 of the Scheme in which it has been provided that houses of category 9 would be available to various officers but the employees of the High Court who are entitled to that category have been specifically left out. We are of the view that this unfair treatment to the employees of the High Court is totally uncalled for and they too should be included in clause (f) aforesaid.

22. We have already indicated in the earlier part of our judgment that the administrative set up in Chandigarh has its own peculiarity. The Union Territory Administration is now headed by the Administrator who is the Governor of Punjab, but in fact virtually all authority conferred by the rules has been delegated to the Advisor who is an officer much lower in rank than the Chief

Secretaries as also a very large number of other officers of the States of Punjab and Haryana. It will also be seen that the House Allotment Committee (Upper) which is to be chaired by the Advisor has amongst its members the Chief Secretaries of the two states. We are, therefore, of the opinion that under the given circumstances and the bureaucrats' efforts for adherence to protocol that the constitution of the House Allotment Committee (Upper) requires some changes so as to make it functional. We, therefore, feel that this Committee should be chaired by the senior of two Chief Secretaries of the two States and that the meeting of the Committee be held in the Union Territory Guest House at least once in two months. We are also of the considered opinion that in the interest of the Judicial Officers and the judicial administration that the Registrar of the High Court should also be a member of the Committee. As far as the House Allotment Committee (Lower) is concerned, not many changes would be required but we direct that the Additional Registrar (Administration) of the High Court should also be member of this Committee, which too must meet at least once in every two months.

23. The proposed scheme also indicates that upto 25 per cent of the residences available would be allotable on the discretion of the Chief Commissioner in any one year. This too, to our mind is highly excessive and violates the spirit of the rules. We are of the view that the out-of-turn allotment on the discretion of the Administrator should not exceed 10 per cent.

24. In summing up we must note that there has been a large scale subversion of the rules. What is indeed surprising is that the administration could ignore them with impunity for so many years and it took one individual catalysed into action by the what he repeatedly called the 'arrogance' of those in authority in Chandigarh to start the process which has resulted in this judgment. Mr. Verma has undoubtedly been guided by a measure of self-interest and the arguments in his writ petition would not have required as deep an analysis, but the *suo motu* notice has immeasurably widened the scope of inquiry and brought about an end result which perhaps was not visualised nor intended by him when he started it all. We do realise that some of the directions that have been issued could cause a great deal of inconvenience and as such we have wherever possible attempted to soften the blow, but the law must be followed. This, in a nutshell, is all that we have said.

25. Before we end, we summarise the salient features of this judgment over again :—

- (I) The judgment in K. G. Verma's case (CWP No. 12688 of 1993 decided on February 4, 1994) is overruled and it is held that allotment of residential accommodation in Chandigarh is to be made under rule 5 of the Rules and only in exceptional cases out-of-turn under Rule-26 ;
- (II) In making allotment to the State Government employees the recommendation or concurrence of the respective State Government would not be required ;
- (III) Only eligible persons, as defined in Rule (2) (e), would be given government accommodation but those who are already occupying such accommodation will not be disturbed with the exception of Journalists and Press Correspondents who are covered by S. P. Gupta's case (supra) ;
- (IV) Rule 7 is struck down as being arbitrary ;
- (V) The allotment in favour of Mr. A. R. Talwar is quashed and a direction is issued that he will vacate House No. 11 Sector 7 Chandigarh within three months but in the light of his security considerations, he is allowed allotment of a type-6 house instead of category 8 which is his actual entitlement ;
- (VI) Some guidelines be framed to ensure that the budget for maintenance of government accommodations in Chandigarh is spent fairly amongst the various types of accommodation covering different stratas of the population ;
- (VII) Rule 3-A of the Rules is to be strictly enforced as it remains on the statute book ;
- (VIII) No allotment be made on the basis of instructions in favour of a government employee who is a member of the family of a superannuated government servant occupying a government accommodation .
- (IX) Steps be taken to ascertain and if necessary, to recover government accommodation that has been sub-let by the allottees and to ensure that residential accommodation is not used for any other purpose ;

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son of Chet Ram, resident of Balouti Bhoi, and others
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(X) The directions of the Supreme Court in the All India Judges' case be strictly complied with within the time frame fixed by the Court ;

(XI) High Court Judges who have not been allotted government residential accommodation so far. be provided such accommodation on a priority basis.

As the administration would now make allotments in terms of this judgment, the interim stay granted is hereby vacated. All other connected matters are also directed to be disposed of in terms of this judgment.

S:C:K.

Before Hon'ble M. L. Koul, J.

BABRU S/O CHET RAM, R/O BALOUTI.—*Petitioner.*

versus

BASAKHA SINGH S/O CHET RAM, R/O BALOUTI BHOH AND OTHERS.—*Defendants.*

Regular Second Appeal No. 1448/79.

19th May, 1995.

Hindu Succession Act, 1986—Abrogation of customary Succession—Succession governed by Hindu Succession Act—Joint Family property—Succession of such property.

Held, that by virtue of section 4, the Punjab Agriculture Custom, so far as it was applicable to the Hindus in the matters of succession, has been completely abrogated and now all the Hindus defined in section 2 of the Succession act are not governed by the rules of customary Law in the matters of Succession to the property.

(Para 8)

Further, held that in a mitakshara co-operenary interest of the deceased in the property shall devolve by survivor ship upon the surviving members of the co-parcenary and not in accordance with Hindu Succession Act.

(Para 8)

L. N. Verma. Advocate. *for the appellant.*

Yogesh Kumar Sharma, Advocate, *for the respondents.*