of the shop-portion remains a non-residential one and therefore, order of ejectment can not be passed against the petitioner.

(7) The learned counsel has made reference to Ramshwar Dass v. Rishi Parkash and another (1), Dwarka Das Saraf and another v. Dwarka Prasad (2), and Sant Ram v. Rajinder Lal and others (3), It is not necessary to deal with the aforesaid cases in detail. Suffice it to observe that all these cases are distinguishable and the learned counsel for the petitioner cannot derive any benefit from the observations therein.

(8) After taking into consideration all the aforesaid reasons, I am of the view that there is no merit in the revision petition. Consequently, it is dismissed with no order as to costs. The petitioner is, however, given three months' time to vacate the premises, subject to his paying all arrears of rent within a period of three weeks. He shall also be liable to pay future rent of each month in advance by 15th of that month. In case he fails to pay the rent as ordered above, he shall be liable to ejectment forthwith.

S.C.K.

Before B. S. Dhillon and G. C. Mital, JJ.

PARADISE PRINTERS and others,—*Petitioners.*

versus

UNION TERRITORY, CHANDIGARH and others,—*Respondents.*

Civil Writ No. 3512 *of* 1979

April 25, 1980.

Constitution of India 1950—*Article* 14—*Proposal of the Administration to allot plots advertised in the press—Applications invited—Applicants depositing part-payment of purchase price as required—Number of applicants in excess of the number of plots available—Lots drawn for allotment but no allotment made—Policy of allotment revised to carve out smaller plots for allotment—Price of the new*

(1) 1964 Current Law Journal (Pb.) 513.
(2) 1973 Rent Control Journal 36.
(3) A.I.R. 1978 S.C. 1601.

plots enhanced—Draw of lots—Whether created a binding contract—Government—Whether estopped from revising the policy of allotment after the draw of lots—Enhancement of price—Whether arbitrary and unenforceable.

Held, that where no letter of allotment is issued, the mere draw of lots does not create any binding contract as the same is not in pursuance of any statutory provision. (Para 7).

Held, that the action of the Government in not giving full effect to the earlier policy is not arbitrary as before the plots could be allotted to the applicants there was reasonable basis for revising the policy as at that time there were more of persons who wanted plots. Under the revised policy larger number of plots have been carved out although of smaller size with the result that larger number of persons can be accommodated in the matter of allotment. (Para 11).

Held, that under the earlier scheme the applicants would have been allotted plots at the price then prevailing but when the Government thought of revising the policy after a long period and smaller plots were carved out, the applicants were required to pay the enhanced price. The sole reason for claiming the enhanced price was that the prices of land had gone up. If the Government took years in revising the scheme, the applicants could not be blamed for that and nor would it be reasonable to permit the Government to derive benefit of its own laches. If the Administration, had acted with expedition and revised the policy within a short period, the applicants would have got the land at the earlier existing price. There is, therefore, no rationale in demanding higher price from the applicants and this action is clearly arbitrary. (Para 12).

Petition under Articles 226/227 of the Constitution of India praying that :

(a) *a writ in the nature of certiorari quashing the memorandum of respondent No. 3 dated 24th September, 1979, annexure P-3 be issued.*

(b) *any other, writ, order or direction which this Hon'ble Court may deem fit in the circumstances of the case, be issued;*

(c) *A writ in the nature of Mandamus directing the respondents to give possession of the plots which were already allotted to the petitioners in the year, 1977 at the rate of Rs. 15 per square yard, he issued;*

(d) *condition of issuing notice of motion before-hand be dispensed with, as the petitioners have left with no time to do so.*

(e) *costs of the petition be awarded to the petitioners.*

It is further prayed that during the pendency of the writ petition the draw of the fresh allotment of plots fixed for 9th October, 1979 be stayed as if the same is not stayed, the petitioners would suffer irreparable loss.

Kuldip Singh, Bar-at-Law and R. S. Mongia, Advocates, *for the Petitioner.*

Anand Sarup and M. L. Bansal, Advocates, *for the respondents.*

JUDGMENT

Gokal Chand Mital, J.

(1) The Printing Press Association of Chandigarh moved the Chandigarh Administration for allotment of plots in Industrial Area to the Printing Press-owners, on which applications were invited in the year 1968 by the Chandigarh Administration for allotment of industrial plots to such suitable industries as were recommended by the District Industries Officer. In response to the aforesaid, some of the writ-petitioners, as printing press-owners, made applications to the Chandigarh Administration for allotment of industrial plots of the sizes required by each of them.

(2) While the matter was still under consideration, in the year 1975, an advertisement was issued in the Daily Tribune, inviting applications for allotment of industrial plots to the printing press-owners, on prescribed forms, and it was provided therein that those who had already applied should apply afresh, but need not send earnest money if they had already deposited under the previous applications. In pursuance of the aforesaid press-note, all the 21 petitioners before us, applied for allotment of plots in the prescribed forms, complete in all respects. According to the press-note, the plots were to be allotted at the rate of Rs. 15 per square yard.

(3) The Chandigarh Administration carved out industrial plots, out of which 43 plots of bigger sizes were earmarked for printing presses and the remaining for other purposes, namely, ice-cream

industry, kerosene oil, dhabas and other alike purposes. The Chandigarh Administration issued a memo in September, 1977, to all the applicants, including the petitioners before us, a copy of which has been annexed with the writ petition as Annexure P. 1. Under this memo, the petitioners were directed to deposit 25 per cent of the total price of the plot to enable the Administration to finalise the allotment of sites and also demanded certain affidavits. The petitioners deposited the requisite amounts and also furnished the requisite affidavits. The applications received by the Chandigarh Administration for allotment of industrial plots of various categories were more than the plots which were available with the Chandigarh Administration in the Industrial Area. Therefore, lots were drawn in the month of October, 1977, and in the draw of lots, all the 21 petitioners came out successful and plots were earmarked for each of them for running printing presses. However, no letter of allotment was issued to them nor the petitioners were called upon to deposit the balance of 75 per cent.

(4) Drawing of lots was given effect to, so far as other categories were concerned and to them letters of allotment were issued and the possession of the plots was delivered, but as regards the category of printing presses, the matter was kept pending by the Chandigarh Administration to give it a second thought, in view of the fact that large number of other persons had also applied for allotment of plots for running printing presses and the Chandigarh Administration had found that there was necessity of creating more plots, so that larger number of printing presses could be established to meet the necessity of printing etc., for the Chandigarh town. The Chandigarh Administration started re-examining the matter and ultimately came to a decision in 1979, that as regards the printing presses, the earlier proposal of creating bigger plots was not feasible and instead, carved out smaller plots within the same area which was earmarked for printing presses so that a larger number of press-owners may be able to get the plots for setting up their business. After the revised policy was framed, the Chandigarh Administration again issued fresh letters to the applicants for printing press plots, including the petitioners, and a copy of such letter has been attached as Annexure P. 3 with the writ petition which is dated 24th September, 1979. By this letter, the Chandigarh Administration informed the applicants of its decision to consider their applications for allotment of plots by giving them 10

Marlas plots at the rate of Rs. 35 per square yard through draw of lots which was to be held at the Panchayat Bhawan on 9th October, 1979. In pursuance of letters like annexure P. 3, all the petitioners attended the draw of lots on 9th October, 1979, and lots were drawn and plots of smaller sizes, after the process, were sought to be allotted to 92 applicants out of 108, including the petitioners before us.

(5) However, before the lots were drawn, the petitioners filed the present writ petition in this Court which came up for preliminary hearing on 9th October, 1979, in which the following interim order was passed:—

> "The draw of lots may continue but may not be finalised *ad interim.*"

The petitioners made good the deposit of 25 per cent at the rate of Rs 35 per square yard and also joined the draw of lots, without prejudice to their rights in the writ petition.

(6) In the writ petition, various points have been raised, but those which have been urged before us and require determination are set out as follows:—

(1) The draw of lots was made in favour of the petitioners on 9th October, 1977, and, therefore, a binding contract came into being on the basis of which the petitioners were entitled to claim transfer of the plots.

(2) The Chandigarh Administration was estopped from going back on the draw of lots made on 9th October, 1977, in favour of the petitioners on the rule of equitable estoppel, and

(3) the action of the Chandigarh Administration in not sticking to the policy of 1975 on the basis of which an advertisement was issued in the Daily Tribune under which the petitioners applied for transfer and deposited 25 per cent of the price, is arbitrary having no reasonable basis or *nexus* inasmuch as under the new policy the size of the plots has been reduced and price at the rate of Rs. 35 per square yard is being asked instead of Rs. 15 per square yard.

In the return, the Chandigarh Administration has admitted all the basic facts and has highlighted that since the applicants for allotment of plots for the printing presses were much more as compared to the number of plots available, therefore, there was re-thinking in the Administration regarding the allotment of plots to the other applicants of printing presses and a revised policy was sought to be framed and in the revised policy, the Administration had to carve out smaller plots and, as such, the petitioners cannot say that they were allotted plots in the year 1977 and, in any case, the re-thinging was justified and was reasonable and as such the question of estoppel does not arise. As regards the price, the only stand is that in the year 1977, the price was Rs. 15 per square yard, but the price had gone up in two years' time and, therefore, the Chandigarh Administration was justified in demanding the price at the rate of Rs 35 per square yard. It would be wirthwhile mentioning that the Chandigarh Administration carved out as many as 286 plots which have been allotted at the revised rate of Rs. 35 per square yard and the applicants, including the 21 writ-petitioners, have deposited the additional earnest money also.

(7) After hearing the learned counsel for the parties, we are of the view that there is no merit in the first point raised by the counsel for the petitioners. The mere draw of lots did not create any right in the petitioners as it was not done in pursuance of any statutory provision. Moreover, no letter of allotment was issued to the petitioners nor were they called upon to pay the balance price. Therefore, the matter was still at the stage of consideration. This view of ours finds support from a Division Bench decision of this Court in *Madan Lal and another* v. *State of Punjab and another* (1). Accordingly, we repel the first contention.

(8) As regards the second point, we find no merit therein also. On the facts of this case, the rule of equitable estoppel does not come into play, apart from the aforesaid finding, as it was based only on the fact that the petitioners had placed orders for heavy machinery involving huge expenditure for setting up big printing presses in the plots regarding which draw of lots were drawn in October, 1977, and huge money is blocked as possession of those

(1) I.L.R. 1980 (1) (Pb. & Hary.) 203.

plots was not delivered. These averments made in para 11 of the writ petition are quite vague as it was not shown if in fact the petitioners had invested any amount for the purchase of machinery and that they had purchased the machinery which could not be accommodated in the smaller plots which are now sought to be allotted to them. The rule estoppel requires that the moment representation is made by a party and the other party acts on that representation and changes his position to his detriment, the first party cannot be allowed to go back on the representation so made. But, on the facts of the present case, the petitioners did not change their position and, therefore, the rule of equitable estoppel cannot be brought in aid by them.

(9) The third point has two limbs of the argument. The Chandigarh Administration had taken a decision to carve out bigger plots and to charge price at the rate of Rs 15 per square yard and it is urged on behalf of the petitioners that even administrative decisions must be given effect to by a Court of law as held by the Supreme Court in *Ramana Dayaram Shetty* v. *The International Airport Authority of India and others* (2), and the new policy framed by the Chandigarh Administration is wholly arbitrary and violative of Article 14 of the Constitution and as such should be discarded. Hence, it is urged that the Chandigarh Administration is bound by its memo, annexure P-1, and the draw of lots which took place on 9th October, 1977, and the same should be given effect to. Reliance in this regard is placed on the following observations from the aforesaid case:—

> "Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any

(2) A.I.R. 1979 S.C. 1628.

person it likes at its sweet will, but its action must be in conformity with same principle which meets the test of reason and relevance.

This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of this Court in *E. P. Royappa* v. *State of Tamil Nadu* (3) and *Maneka Gandhi* v. *Union of India* (4), that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitarriness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in *Erusian Equipment and Chemicals Ltd.* v. *State of West Vengal,* (supra).

(10) In reply, Shri Anand Swarup, counsel for the Chandigarh Administration, also relied on the aforesaid dictum of the Supreme Court and urged that the action of the Administration was reasonable and promoted justice inasmuch as 92 plots were carved out instead of 42 to rehabilitate more printing press owners and as such the revised policy was not arbitrary and deserved to be upheld. As regards the price, it is urged that by 1979 the prices have gone up and, therefore, the petitioners were required to pay the price at the rate of Rs 35 per square yard instead of Rs 15 per square yard, as fixed in the year 1977.

(3) (1974) 2 S.C.R. 348 (A.I.R. 1974 S.C. 555).

(4) (1978) 1 S.C.C. 248 (1978 S.C. 597).

(11) After hearing the learned counsel for the parties, we are of the view that the action of the Chandigarh Administration in not giving full effect to the earlier policy is not arbitrary as before the plots could be allotted to the petitioners there was reasonable basis for revising the policy as at that time also there were more number of printing press owners who wanted plots. Under the revised policy it is not disputed that instead of 42 plots, 92 plots for printing press owners have been carved out although of smaller size, with the result that larger number of persons running printing presses would be able to carry on their business in the industrial area to cater the needs of Chandigarh town. There is a rationale in revising the policy to this extent and is fully saved by the dictum of the Supreme Court *Ramana Dayaram Shetty's case* (supra). Therefore, we uphold the new policy as regards carving out of more plots for running printing press business but of smaller size.

(12) This brings us to the second limb of the third point. As regards the price which the petitioners have to pay for smaller plots, it is admitted case of both the parties that under the earlier scheme bigger plots were allotted to other categories of persons at the rate of Rs 15 per square yard and the same offer was made to the petitioners from whom demand of 25 per cent at the rate of Rs 15 per square yard was made which the petitioners duly complied with. When the Chandigarh Administration thought of revising the policy, the 25 per cent amount still remained with them and was not refunded to the petitioner. Even the stand of the Chandigarh Administration is that the petitioners have been given plots under the revised pilicy on the basis of their applications made in the year 1975 and they have been asked to make good the difference of 25 per cent on the enhanced price fixed by the Administration. The sole reason given for claiming the enhanced price is that when offer was made in 1979, the prices had gone up. If the Chandigarh Administration took two years' time in framing the scheme, the petitioners cannot be blamed for that. Nor would it be reasonable to permit the Chandigarh Administration to derive benefit of its own laches. If the Administration had acted with expedition and revised the policy within a month or so, we have no doubt that the petitioners would have been asked to pay at the rate of Rs 15 per square yard. Therefore, there is no rationale in demanding higher price from the petitioners and this action is clearly arbitrary, in

view of the observations quoted above from *Ramana Dayaram Sheetty's case* (supra). Moreover, the action of demanding price at the rate of Rs 35 per square yard from the petitioners would be discriminatory vis-a-viz those who also applied along with the petitioners under the 1975 Scheme and were allotted plots on the basis of lots drawn in October, 1977. The petitioners and those persons constitute one class so far as the price is concerned and within the same class discrimination is not permissible and the same would be violative of Article 14 of the Constitution. The other persons, to whom plots are offered now under the new policy would constitute a separate class viz-a-viz the petitioners and, therefore, by demanding the price at the rate of Rs 35 per square yard from those persons, the demand at the rate of Rs 35 per square yard from the petitioners is wholly unjustified. Even in *Madan Lal's case* (supra), smaller plots were offered at the same rate.

(13) The Chandigarh Administration has carved out as many as 280 industrial plots. While it can charge price from others at the rate of Rs 35 per square yard, it cannot do that so far as the 21 writ-petitioners are concerned. From the petitioners, the Chandigarh Administration would be entitled to charge the price of the new allotted plots only at the rate of Rs 15 per square yard, the price at which the original offer was made to the petitioners,—*vide* annexure P-1.

(14) The counsel for the Chandigarh Administration lastly argued that the petitioners and all others, in whose favour lots were drawn in 1977, have again taken part in the lots drawn on 9th October, 1979, and in pursuance of the same have, paid additional price also. Suffice to say that before the draw of lots, the present writ petition was filed in this Court to challenge the allotment of smaller plots and the payment of higher price and the petitioners accepted the fresh draw of lots and paid the additional amount without prejudice to their rights in the writ petition. Therefore, no rule of estoppel can be raised against the petitionesrs on that account.

(15) For the reasons recorded above, we partly allow this writ petition and, while upholding the allotment of smaller plots to the petitioners, direct that the Chandigarh Administration would be entitled to charge the price for the same from them only at the rate

of Rs 15 per square yard and whatever has been paid by them so far would be adjusted against the price to be calculated at this rate. In view of the divided success, there would be no order as to costs.

Bhopinder Singh Dhillon, J.—I agree.

N. K. S.

Before D. S. Tewatia and S. S. Kang, JJ.

PREM PAL,—*Petitioner.*

versus

RAKSHA CHOHAN,—*Respondent.*

Civil Misc. No. 26-M of 1979.

April 28, 1980.

Hindu Marriage Act (XXV of 1955)—Sections 9, 10, 13, 21 and 21-A—Code of Civil Procedure (V of 1908)—Section 24—Petition for restitution of conjugal rights filed by the husband—Wife subsequently filing a petition for divorce in a different court—Transfer of the subsequent petition to the Court in which the earlier petition is pending—Section 21-A—Whether controls the application of section 24 of the Code to petitions other than those filed under sections 10 and 13 of the Act.

Held, that a close look at sections 21 and 21-A of the Hindu Marriage Act, 1955 will reveal that the legislature has ordained that a subsequent petition for a decree of judicial separation under section 10 or for a decree of divorce under section 13 shall be tried and decided by the court in which a petition for a decree for judicial separation under section 10 or for a decree of divorce under section 13 was pending before the filing of the later petition. It has been provided in mandatory terms that the later petition has to be transferred to the court which is trying the petition under sections 10 or 13 filed earlier in point of time. The Court trying the later petition has no choice and it is imperative for that Court to transfer these proceedings. However, section 21-A of the Act applies to petitions filed under section 10 or 13 only. The provisions of section 21-A do not in any manner control or exclude the application of section 24 of the Code of Civil Procedure 1908 to the other proceedings under the Act. Plenary powers have been conferred on the High Court and the District Courts for the transfer