Paradise Printers And Ors. A vs Union Territory Of Chandigarh And Ors on 4 December, 1987

Equivalent citations: 1988 AIR 354, 1988 SCR (2) 157, AIR 1988 SUPREME COURT 354, 1988 (1) SCC 440, 1988 21 REPORTS 223, 1988 HRR 409, 1987 5 JT 553, 1988 (1) UJ (SC) 365, (1988) 1 COMLJ 27, 1988 UJ(SC) 1 365, (1988) 1 PUN LR 400, 1988 93 PUN LR 400, (1987) 4 JT 553 (SC), (1988) 1 LANDLR 499, (1988) 1 RENCR 32, (1988) 1 SCJ 50

Author: K.J. Shetty

Bench: K.J. Shetty, B.C. Ray

PETITIONER:
PARADISE PRINTERS AND ORS. A

Vs.

RESPONDENT:
UNION TERRITORY OF CHANDIGARH AND ORS.

DATE OF JUDGMENT04/12/1987

BENCH:
SHETTY, K.J. (J)
BENCH:
SHETTY, K.J. (J)
RAY, B.C. (J)

CITATION:
1988 AIR 354 1988 SCR (2) 157
1988 SCC (1) 440 JT 1987 (4) 553
1987 SCALE (2)1235

ACT:
Reversion of policy of allotment of industrial sites for establishment of printing presses, under the Chandigarh (Development and Regulation) Act. 1952, and the Chandigarh Lease Hold of Sites and Building Rules, 1973, challenged.

HEADNOTE:
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The Chandigarh administration wanted the printing presses, scattered all over Chandigarh in the residential premises or small shops, to be located in an industrial

area. For that purpose, the administration earmarked forty three sites in the industrial area Phase-lI, and invited applications for allotment of the sites. Several persons submitted the applications with deposits of earnest money of Rs.1,000 in each. That was ten per cent of the premium payable for each site. The appellants in the C.A. No. 97 of 1981, who were among the said applicants, were called upon to deposit 25 per cent of the premium calculated at the rate of Rs.15 per square yard. The appellants complied with that demand. The authorities decided to draw lots as the applicants were more than the number of the sites available. In October 1977, lots were drawn and the appellants won. But the authorities did not issue the letters of allotments. The authorities had a second thought about the scheme of the allotment of the sites. They wanted to accommodate as many applicants as possible, which, however, could not be done in the industrial area phase II. The authorities also came to hold the view that for setting up the printing industry, larger sites as earmarked earlier would not be necessary and smaller sites would meet the requirements. Consequently, the sites proposed in the industrial phase II were given up and a lay-out of smaller sites in the industrial area phase I was prepared, wherein about 131 sites were reserved for allotment to the printing press owners.

The appellants as also the other applicants were intimated by letters that the said sites would be allotted at the rate of Rs.35 per square yard, and that the allotment would be made by draw of lots on October 3, 1979. The appellants did not participate in the proceedings. They moved the High Court by a writ petition, challenging the
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revised policy of the allotment of the smaller sites on the ground inter alia that they had a right to take possession of bigger plots in respect which lots were earlier drawn in their favour. The High Court did not give substantial relief to the appellants, holding that there was nothing illegal in the said revised policy since the appellants did not acquire right to get bigger sites in the phase II, it directed that the appellants would be liable to pay at the rate of Rs.15 and not Rs.35 per square yard. The appellants appealed to this Court by special leave against the decision of the High Court (C.A 97 of 1981). The respondents the Chandigarh Administration-also moved this Court by special leave (C.A. No. 98 of 1981) against the direction of the High Court as to the reduced premium to be recovered from the appellants.

Dismissing both the appeals, the Court,

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HELD: There was no substance in the appeal by the respondents. If the applicants had been allotted sites as per the original plan and as per the first draw in 1977, they would have been liable to pay at the rate of Rs.15 per square yard. In fact, the other enterpreneurs who were allotted sites in the industrial area phase II paid premium

only at the rate of Rs.15 per square yard. Why then should there be a higher rate payable by the appellants? They had not asked for the sites in the industrial area phase I. Secondly, the applicants were not responsible for the delay in the allotment of sites. Thirdly, there was no evidence that the Chandigarh Administration had to incur more expenditure in forming the new sites in the phase I. The High Court was right in directing the authorities to recover only at the rate of Rs.15 per square yard. [161H; 162A-C]

In the case of the appeal by the appellants/owners of the printing presses, admittedly, at the relevant stage, there was no intimation of the allotment of the sites to the appellants. There was no official communication to them, as required under sub-rule (3) of Rule 8 of the Chandigarh Lease Hold Sites and Building Rules, 1973. Such an intimation alone could confer the right on the appellants to obtain possession of the sites. In the absence of any such communication, the appellants could not be held to have the right to get the sites. [163F-G]

Emphasis was laid on the word "shall" used in sub-rule (3) of Rule 8, which provides that when 10 per cent of the premium has been tendered, the Estate officer shall, subject to such directions as may be issued by the Chief Administrator in that behalf, allot a site of the size
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applied for. There is not much force in this contention. Generally, the use of the word "shall" prima facie indicates that the particular provision is imperative, but that is not so always. The meaning to be given to a word depends upon the context in which it is used. The right of every applicant under sub-rule (3) of Rule 8 is only a right to have his application considered. The acceptance of the application does not create a right for allotment of a site. The word "shall" used in the sub-rule must be considered as not mandatory. The . imperative meaning would defeat the purpose of the rule. [163H; 164A-B, F]

It is not known under what provision the authorities asked the appellants to pay 25 per cent of the premium payable in respect of the sites even before allotment. There was no specific assurance or representation made by the authorities, promising to allot the sites applied for. Even if there was any such assurance, the Court did not think that it would give rise to the doctrine of promissory estoppel in the case. The authorities cannot give assurance contrary to the statutory rules. They are bound by the rule of procedure and cannot make any representation or promise to allot particular sites to the applicants. Even if they make such a promise or assurance, the doctrine of promissory estoppel cannot be invoked to compel them to carry out the promise or assurance which is contrary to law. [166B-D]

If there were enough plots to accommodate all the applicants in the industrial area Phase II, it would not be proper for the authorities to revise the policy and allot

smaller sites in phase I. But no material was placed before the Court to come to the conclusion that there were enough industrial plots to accommodate, possibly, all the applicants. The authorities formed another lay-out in phase I for want of plots in phase II. The action of the authorities was bona fide and there was no reason to doubt it. [166F-G]

The revised policy of the Chandigarh Administration did not suffer from any act of arbitrariness either in classifying the appellants as a separate group or in considering them for allotment of smaller sites in phase I. All the persons, who had applied for industrial sites for establishing printing presses were grouped together. They were considered together. They could not be accommodated in phase II for want of enough sites. So, another lay-out was formed in phase I. The grievance of the appellants about the revised policy of the Chandigarh Administration to allot smaller sites to them, being discriminatory, was not justified. [168H; t69A-C]

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Delhi Cloth & General Mills Ltd. v. Union of India, Civil Appeal No. 223 of 1974, disposed of by this Court on October 8, 1987 and Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and Ors,. [1959] SC R 279, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 97 & 98 of 1981.

From the Judgment and order dated 25.4.1980 of the Punjab and Haryana High Court in C.W. No. 2512 of 1979.

V.M. Tarkunde and N.S. Das Behl for the Appellants. Kapil Sibal, P. Gaur and Jitendra Sharma for the Respondents.

The Judgment of the Court was delivered by JAGANNATHA SHETTY, J. These appeals by special leave are directed against the judgment dated April 25, 1980 of the High Court of Punjab & Haryana in civil writ no. 3512 of 1979.

The revised policy of allotment of industrial sites for the establishment of printing presses in Chandigarh has been called into question in the aforesaid writ petition. The printing presses are now scattered all over Chandigarh. They are situated either in residential premises or in small shops in different localities. The Chandigarh administration wanted them to be located in an industrial area. For that purpose, they earmarked forty three sites in the industrial area phase-II. The sites are comparatively of bigger dimensions. In 1975, the authorities invited applications for allotment of those sites. Several persons submitted applications. The appellants in Appeal No. 97 of 1981 were some of them. They applied with deposit of earnest money of Rs.1000 each. That would be ten per

cent of the premium payable for the site. All the applications were processed for final allotment. In the meantime, it is said that the appellants were called upon to deposit 25 per cent of the premium calculated at the rate of Rs. 15 per square yard. The appellants appear to have complied with that demand also. Since there were more applicants than the sites available, the authorities decided to draw the lots. In October 1977, the lots were drawn and the lady luck smiled at the appellants. But the authorities did not issue letters of allotment. The reason was obvious. The authorities had a second look at the scheme of allotment of sites for printing industries. The authorities wanted to accommodate as many applicants as possible. But they could not accommodate all those applicants for want of adequate number of sites in the industrial area phase II. The authorities were also of the view that for setting up the printing industry, larger sites such as those earmarked earlier, would not be necessary and smaller sites would meet the requirements. Consequently, the sites proposed in the industrial area phase II were given up and a lay out of smaller sites in the industrial area phase I was formed. There about 131 of sites were reserved for allotment to printing press owners.

The appellants and other like applicant were intimated by letters that the said sites would be allotted at the rate of RS.35 per square yard. They were also informed that the allotment would be made by draw of lots on October 3, 1979. The appellants however, did not participate in the proceedings. They moved the High Court with a petition under Art. 226 of the Constitution challenging the revised policy for allotment of smaller sites. It was contended inter alia that they had a right to take possession of bigger plots in respect of which the lots were earlier drawn in their favour. The High Court issued rule Nisi in the petition, but allowed the authorities to draw the lots as proposed. The High Court also permitted the appellants to deposit the premium demanded without prejudice to their rights in the writ petition.

That is all at the preliminary hearing of the writ petition. In the final hearing the High Court did not give substantial relief to the appellants. The High Court was of the view that there was nothing illegal in the revised policy adopted by the Chandigarh administration since the appellants did not acquire right to get bigger sites in the industrial area phase II. The High Court however, felt that the appellants would be liable to pay only at the rate of . Rs. 15 per square yard and not Rs.35 per square yard. Accordingly a direction was issued to the authorities.

It is against this judgment that the present appeals have been preferred. Civil appeal No. 97/81 is by the printing press owners. Civil Appeal No. 98/81 is by the Chandigarh administration. The Chandigarh administration is aggrieved by the direction issued by the High Court as to the premium to be recovered from the allottees.

We may first dispose of the appeal preferred by the Chandigarh administration. We do not find any substance in this appeal. If the applicants had been allotted sites as per the original proposal and as per the first draw in 1977, they would have been liable to pay only at the rate of Rs. 15 per square yard. In fact, the other entrepreneurs who were allotted sites from industrial area phase II paid the premium only at the rate of Rs. 15 per square yard. Why then there should be a higher rate payable by these persons. They did not ask for sites in the Industrial area phase I. Their applications for sites in the industrial area phase II were not rejected. The same applications appear to have been considered for sites in the industrial area phase I. Secondly, the applicants were not responsible for

the delay in the allotment of sites. The delay was entirely due to the change of policy adopted by the Chandigarh administration. Thirdly, there is no evidence that the Chandigarh administration had to incur more expenditure for forming new sites in phase I. It is, therefore, not proper that these applicants should be asked to pay the premium at a higher rate. The High Court, in our opinion, was justified in directing the authorities to recover only at rate of Rs. 15 per square yard.

Before considering the contentions urged in the appeal of printing press owners, we may briefly refer to the relevant provisions of the enactment bearing on the contentions. The disposal of building sites in Chandigarh has been regulated by the Capital of Punjab (Development and Regulation) Act, 1952 which may be termed as "The Act". The Chandigarh Lease Hold of Sites and Building Rules, 1973 are the relevant rules which may be referred to as "The Rules". Section 3 of the Act provides power to the authorities to sell, lease or otherwise transfer any land or building belonging to the Government. They could be disposed of by auction, allotment or otherwise. Rule 4 provides that Chandigarh Administration may demise sites and building on lease for 99 years. The procedure for allotment has been prescribed under rule 8. Rule 8 so far as it is material provides:

> "Rule 8. Lease by allotment-Procedure for-
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> (1)In case of allotment of site or building the intending lessee shall make an application to the Estate officer in Form 'A'.
>
> (2)No application under sub-rule (l) shall be valid unless it is accompanied by 10 per cent of the premium as earnest money in the prescribed form of payment.
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> (3)When 10 per cent of the premium has been so tendered the Estate officer, shall, subject to such directions as may be issued by the Chief Administrator in this behalf, allot a site of the size applied for or a building or which particulars are given in the application and shall intimate, by registered post the number, sector, approximate area, premium and the rent of the site or building allotted to the applicant.
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> (4)The applicant shall, unless he refuses to accept the allotment within 30 days of the date of the receipt of the allotment order, deposit within that period and in the prescribed mode of payment, further 15 per cent of the premium. The remaining 75 per cent of the premium shall be paid as provided in Rule 12."

The scheme provided under these Rules for allotment of sites is like this: Sub-rule (1) of Rule 8 provides for making an application to the Estate officer for allotment of site. The application shall be accompanied with 10 per cent of the premium as earnest money. That amount must be tendered to the Estate officer. The allotment of a site shall be intimated to the applicant by registered letter giving the particulars of number, sector, approximate area, premium and the rent of the site or building allotted to the applicant. It would be open to the applicant to accept the allotment or not. If he accepts the allotment he must deposit 15 per cent of the premium and the remaining 75 per cent of the premium shall be paid as provided under Rule.

12. Relying on these provisions, it was urged that the appellants had a right to obtain transfer of sites in respect of which the lots were first drawn in their favour. We are unable to accept this contention. Admittedly, at that stage, there was no intimation of allotment of sites to the appellants. There was no official communication to them as required under sub-rule (3) of Rule 8. Such intimation alone confers right on the appellants to obtain possession of the sites. The intimation must be sent by a registered letter giving particulars of the sites allotted and the premium payable in respect thereof. In the absence of any such communication, the appellants cannot be held to have the right to get transfer of sites in their favour.

The next step in the argument was that the Estate officer ought to have allotted the sites upon the receipt of applications of the appellants. The reliance was placed and emphasis was put on the word "shall" used in sub-rule (3) of Rule 8. Sub-rule (3) of Rule 8 provides that when 10 per cent of the premium has been tendered, the Estate officer shall, subject to such directions as may be issued by the Chief Administrator in that behalf, allot a site of the size applied for. We do not think that there is much force in this contention also. Generally the use of the word "shall" prima facie indicates that the particular provision is imperative. But that is not always so. The meaning to be given to a word depends upon the context in which it is used. The word takes the colour depending upon the context. We must ask what does the word mean in its context? We must examine why the Rule making authority has chosen that word. After examining the purpose and scope of the rule, we must give such meaning as to render the rule workable in a fair manner. We must give that meaning which would promote the purpose and object of the rule. When there is a choice of meanings, there is a presumption that one which produces an unjust or inconvenient result was not intended. Let us now take a brief look at Rule 8. If sub- rule (3) of Rule 8 is construed as mandatory, then every person who applies for a site with earnest money must be allotted a site. That means the administration must receive only equal number of applications as there are sites available for allotment. That would be impracticable. The administration cannot restrict the number of applications to be received when the public are notified. Secondly, the sites are required to be disposed by auction or allotment. If it is by allotment, it should be after considering all applications. The sites cannot be allotted by private arrangement. All the applications received must be considered and if there are more applications than the available sites, some reasonable procedure should be adopted for consideration and elimination. In our opinion, the right of every applicant under sub-rule (3) of Rule 8 is only the right to have his application considered. The acceptance of application does not create a right for allotment of a site. The word "shall" used in sub-rule (3) must, therefore, be considered as not mandatory. The imperative meaning would defeat the purpose of the rule.

It was next urged that the Chandigarh administration was estopped from revising the policy of allotment after taking several steps for allotment of sites. The steps taken like demanding 25 per cent of the premium payable and drawing the lots would lead to an assurance that they would be allotted bigger plots. It was stated that the appellants upon the assurance of getting bigger plots had placed orders for heavy machinaries for their printing presses. These averments were also made in the writ petition before the High Court. The High Court rejected the plea of estoppel on the ground that there was no evidence of heavy investment on machinaries. Mr. V.M. Tarkunde, learned counsel for the appellants urged that there is no need to produce any such evidence to invoke the

doctrine of equitable estoppel. The counsel is right in this aspect. The party invoking the doctrine of estoppel need not prove any detriment as such. It may be sufficient if he has relied upon the assurance made to him. This court in the Delhi Cloth & General Mills Ltd. v. Union of India, (Civil Appeal No. 223 of 1974 disposed of on October 8, 1987) to which one of us was a member, said:

> "It is true, that in the formative period, it was generally said that the doctrine of promissory estoppel cannot be invoked by the promisee unless he has suffered 'detriment' or 'prejudice'. It was often said simply, that the party asserting the estoppel must have been induced to act to his detriment. But this has now been explained in so many decisions all over. All that is now required is that the party asserting the estoppel must have acted upon the assurance given to him must have relied upon the representation made to him. It means, the party has changed or altered the position by relying on the assurance or the representation. The alteration of position by the party is the only indispensable requirement of the doctrine. It is not necessary to prove further any damage, detriment or prejudice to the party asserting the estoppel. The Court, however, would compel the opposite party to adhere to the representation acted upon or abstained from acting. The entire doctrine proceeds on the promise that it is reliance based and nothing more."

And said:

> "The concept of detriment as we now understand is whether it appears unjust, unreasonable or inequitable that the promisor should be allowed to resile from his assurance or representation having regard to what the promisee has done or refrained from doing in reliance on the assurance or representation."

It was further said:

> "It is however, quite fundamental that the doctrine of promissory estoppel, cannot be used to compel the public bodies or the Government to carry out the rep resentation or promise which is contrary to law or which is outside their authority of power."

In the first place, we do not know under what provision the authorities asked the appellants to pay 25 per cent of the premium payable in respect of the sites even before allotment. Apparently that procedure appears to be irregular with no statutory sanction. Secondly, we do not find any specific assurance or representation made by the authorities promising to allot the sites applied for. Thirdly, even if there was any such assurance, we do not think that it would give rise to the doctrine of promissory estoppel in the instance case. The authorities cannot give assurance contrary to the statutory rules. The sites are required to be disposed of by auction, allotment or sale as per the procedure prescribed. The authorities who are bound by the rules of procedure cannot make any representation or promise to allot particular sites to the applicants. Even if they make such promise or assurance, the doctrine of promissory estoppel cannot be invoked to compel them to carry out the promise or assurance which is contrary to law.

The next contention urged for the appellants related to the revised policy adopted by the Chandigarh administration for allotment of smaller sites. It was said that the sites in phase II ought to have been allotted when there were enough to go round the appellants. It was also said that the other entrepreneurs who had filed applications along with the appellants had been allotted sites in phase II and there was no good reason to exclude the appellants for being considered for smaller sites in phase I. The procedure followed by the authorities has been assailed as arbitrary and contrary to Art. 14 of the Constitution. Of course, if there were enough plots to accommodate all the applicants in the industrial area phase II, it would not be proper for the authorities to revise the policy and allot smaller sites in phase I. But no material has been placed before us to come to the conclusion that there were enough industrial plots to accommodate as far as possible all those applicants. It appears from the record that the authorities for want of plots in phase II formed another lay out in phrase I. The action of the authorities appears to be bona fide and we have no reason to doubt it.

This takes us to the question whether the revised policy adopted by the Chandigarh administration to allot smaller sites to these appellants was discriminatory and violative of Art. 14 of the Constitution. The true meaning and scope of Art. 14 has been stated and restated in a string of decisions of this Court. It is now well established that Art. 14 forbids class legislation, but does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that the differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis, namely, geographical or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. S.R. Oas, C.J. speaking for this Court in Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar & others, [1959] SCR 279 has formulated the various aspects of Art. 14 and out of them, we may refer to the following proposition:

> (a) Art. 14 condemns discrimination not only by substantive law but by a law of procedure,
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> (b) Art. 14 forbids class legislation but does not forbid classification,
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> (c) In permissible classification, mathematical nicety and perfect equality are not required,
>
> (d) The classification may be founded on different basis, namely, geographical or according to objects or occupations or the like,
>
> (e) If a law deals equally with members of a well defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to other persons, and

(f) Even a single individual may form a class by himself on account of some special circumstances or reason applicable to him and not applicable to others.

This Court speaking through Chandrachud, CJ. in Re The Special Courts Bill, 1978(19792 SCR 476) reformulated in detail the propositions on Art. 14. The following are relevant for the present case and may be extracted:

(i) The constitutional command to the State to afford equal protection of its law sets a goal not attainable by the invention and application of a precise formula. Therefore, classification need not be constituted by an exact or scientific exclusion or inclusion of persons or things. The Courts should not insist on delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case. Classification is justified if it is not palpably arbitrary.

(ii) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even a degree of evil, but the classification should never be arbitrary, artificial or evasive.

(iii) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation.

There is yet another facet of Art. 14. This Court speaking through Bhagwati, J. in E.P. Royappa v. State of Tamil Nadu, [1974] 2 SCR 348-AIR 1974 SC 555) and in Maneka Gandhi case (AIR 1978 SC 597) held that the basic principle which informs both Arts. 14 and 16 is equality and inhibition against discrimination. Equality and arbitrariness are sworn enemies, one belongs to the rule of law in a republic while the other to the whim and caprise of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Art. 14. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment. This, in our opinion, is more fundamental. Article 14 unlike other articles in Part III of the Constitution, is an injunction against the State that it shall not discriminate person to person unless the action is supported by well-known principles.

There is thus no doubt or dispute about the principles. The question is only the application of the principles to a given case. In the present case, however, we do not find that the revised policy of the Chandigarh administration suffers from any act of arbitrariness either in classifying the appellants as a separate group or in considering them for allotment of smaller sites in phase I. The appellants formed a separate class. All the persons who have applied for industrial sites for establishing printing presses were grouped together. They were considered together. They could not have been accommodated in phase II for want of enough sites. So another lay out was formed in phase I. We are told that most of the applicants have now been allotted sites and they have since taken possession. The appellants were also allotted sites in phase I. We are, therefore. Of the opinion that the grievance of the appellants about discrimination is not justified on the facts and circumstances

of the case.

In the result, both the appeals fail and are dismissed, but we make no order as to costs.

S.L. Appeals dismissed.