Estate Officer vs Charanjit Kaur on 7 September, 2021

Equivalent citations: AIR 2021 SUPREME COURT 4369, AIRONLINE 2021 SC 701

Author: Hemant Gupta

Bench: A.S. Bopanna, Hemant Gupta

REP

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4964 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5051 OF 2018)

ESTATE OFFICER AND ANR. .....A

VERSUS

CHARANJIT KAUR .....RES

WITH

CIVIL APPEAL NO. 4965 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 5082 OF 2018)

AND

CIVIL APPEAL NO. 4966 OF 2021
(ARISING OUT OF SLP (CIVIL) NO. 16740 OF 2018)

JUDGMENT

HEMANT GUPTA, J.

1. This order shall dispose of three appeals bearing Civil Appeal No. 4964 of 2021 - Estate Officer v. Charanjit Kaur, Civil Appeal No. 4965 of 2021 - Estate Officer v. Kamlesh and Civil Appeal No. 4966 of 2021 - Estate Officer v. D.K. Khanna raising identical questions of law.

2. In Civil Appeal No. 4964 of 2021, the order of the National Consumer Disputes Redressal Commission1 dated 24.05.2017 is the subject matter of challenge. By the aforesaid order, the NCDRC has dismissed the revision petition filed by the appellant against an order dated 16.05.2016 passed by the State Consumer Disputes Redressal Commission2 affirming the order of the District Consumer Disputes Redressal Forum3. The respondent had sought conversion of Plot No. 4059, Sector 46 D, Chandigarh, from leasehold to freehold site on acceptance of the requisite conversion fee. The learned District Forum directed the appellant to convert the said plot in question from leasehold to freehold site on acceptance of requisite conversion fee; to pay an amount of Rs. 10,000/- as compensation for mental agony and physical harassment; and to pay Rs.5,000/- as costs of litigation.

3. The learned NCDRC relied upon the judgment of this Court reported as Lucknow Development Authority v. M.K. Gupta4 to hold that the respondent would be considered to be a consumer as fee had been charged by the appellant for conversion. The NCDRC further held that the administrator had put a note on the file that he would not like to take any decision till he gets clear directions from the Central Government. It was held that the appellant had not produced any public notification suspending all conversions of plots from leasehold to freehold, at least on 28.03.2013 when the 1 For short the 'NCDRC' 2 For short the 'SCDRC' 3 For short the 'DCDRF' 4 (1994) 1 SCC 243 application was received in the office of Estate Officer.

4. In Civil Appeal No. 4965 of 2021, the impugned order was passed by NCDRC on 17.11.2017 relying upon the order passed in Charanjit Kaur. In the said case, the respondent was allotted a site under Chandigarh Milk Colony Allotment of Site Rules, 1975 5 on 08.08.1977 measuring 143 sq. yards on a leasehold basis for a period of 30 years for the purposes of cowshed cum dairy. The Chandigarh Conversion of Residential Leasehold Land Tenure into Freehold Land Tenure Rules, 19966 were extended to the sites allotted under the 1975 Rules. The lease period of 30 years was extended by four years so that 1996 Rules could be made applicable. The request of the respondent for conversion of leasehold to freehold was not accepted which led to filing of a complaint before the District Forum. The District Forum passed an order on the same lines as in Charanjit Kaur. The NCDRC also dismissed the revision filed by the appellant on 17.11.2017 relying upon Charanjit Kaur.

5. In the third appeal herein i.e., Civil Appeal No. 4966 of 2021, the order under challenge is that of the NCDRC passed on 21.03.2018 in respect of conversion of a residential site bearing no. 719, Sector-43A, Chandigarh, from leasehold to freehold. The order in Charanjit Kaur was followed in this matter as well.

6. Some of the statutory provisions need to be reproduced before examining the respective contentions of the parties. Section 3 of 5 For short '1975 Rules' 6 For short '1996 Rules' the Capital of Punjab (Development and Regulation) Act, 1952 7 reads as:-

> "3. Power of Central Government in respect of transfer of land and building in Chandigarh. – (1) [Subject to the provisions of this section, the Central Government may] sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the Government in Chandigarh on such terms and

> conditions as it may subject to any rules that may be made under this Act, think fit to impose.
>
> (2) The consideration money for any transfer under sub-

section (1) shall be paid to the [Central Government] in such manner and in such instalments and at such rate of interest as may be prescribed.

(3) Notwithstanding anything contained in any other law for the time being in force, until the entire consideration money together with interest or any other amount, if any, due to the Central Government on account of the transfer of any site or building, or both, under sub-action (12) is paid, such site or building, or both, as the case may be, shall continue to belong to the Central Government."

7. In terms of power conferred on the Central Government under Section 3, initially Chandigarh (Sale of Sites and Buildings) Rules, 19608 were published on 08.03.1960. Such rules contemplated sale of sites by auction or allotment. The Chandigarh Lease Hold of Sites and Building Rules, 19739 were thereafter published on 20.08.1973 authorizing Chandigarh Administration to demise sites and buildings at Chandigarh on lease for 99 years by allotment or by auction. Rule 13 mandates that in addition to the premium i.e., price paid or promised for the transfer of a right to enjoy an immovable property under 1973 Rules, an annual rent would be 7 For short '1952 Act' 8 For short '1960 Rules' 9 For short '1973 Rules' payable which shall be 2½% of the premium for 33 years which may be enhanced by the Chandigarh Administration to 3.75% for the next 33 years and 5% of the premium for the remaining period of lease. In terms of Rule 17, the property could be transferred on payment of unearned increase in terms of Rule 17. The relevant provisions of 1973 Rules read thus:

> "3. (1) Unless the context otherwise requires, the words and expressions used in these rules shall have the meaning assigned to them in the Capital of Punjab (Development and Regulation) Act, 1952 and the rules made thereunder.
>
> (2) "Premium" means the price paid or promised for the transfer of a right to enjoy immovable property under these rules.

["Prescribed mode of payment" means payment in cash or by demand draft drawn on any Scheduled Bank situated at Chandigarh in favour of the Estate Officer, Chandigarh Administration or in cash upto Rs.500/- or the amount paid in cash representing 25% of the premium at the time of auction].

13. Rent and consequences of non-payment- In addition to the premium, whether in respect of site or building, the lessee shall pay rent as under:

> (i) Annual rent shall be 2-½ % of the premium for the 33 years which may be enhanced by the Chandigarh Administration to 3-3/4% of the premium for the next 33 years and to 5% of the premium for the remaining period of the lease.

17. General Conditions of lease. – (1) Lease may be jointly taken by more than one person. The liability to pay the premium as well as the rent and any penalty imposed under these rules shall be joint and several:

> (10) The lessee will not be entitled to transfer the site or the building without the prior permission of the Estate Officer. Such permission shall not be given until the lessee has paid full premium and the rent due under the lease for the site, unless in the opinion of the Estate Officer exceptional circumstances exist for the grant of such permission. The lessee shall be liable to pay such transfer charges as are notified by the Chandigarh Administration from time to time." Provided that where the property was leased out by allotment, or at a reserve price or at any other concessional rate, or by hire-purchase, then transfer shall be allowed on payment of 1/3rd of the unearned increase in value. The unearned increase will be assessed by the Estate Officer by determining the difference between the current market value of the property and the present value of the premium paid for the property. The current market value of the property shall be assessed in view of the average of auction price over the last three financial years for property of the same category or such other evidence as the Estate Officer deems to be appropriate. The present value of the original premium shall be calculated by enhancing the premium by 9% per annum, compounded annually, from the date(s) of payment. The difference between these two values shall be the unearned increase. During assessment, notice shall be issued to the lessee and he shall be afforded an opportunity of being heard."
>
> 8. The Chandigarh Administration framed 1996 Rules permitting conversion of residential leasehold properties to freehold properties. Some of the conditions of the said Rules are as follows:
>
> "5. Land rates will be the rates as notified by the Chandigarh Administration from time to time.
>
> 6. Conversion charges to be paid shall be as provided in Annexure "A" annexed to these rules, from time to time.
>
> 8. The conversion shall also be allowed in the cases where the lessees/sub-lessees/allottees have parted with the possession of the property, provided that-

(a) The application for Conversion is made by a person holding registered and valid power of attorney and there is also an agreement to sell from the lessee to sub-lessee to alienate (sell/transfer) the property and proper linkage with the original allottee/lessee is established.

9. In all cases of Conversion, the Conveyance-deeds shall be got registered on payment of requisite Stamp Duty and Registration Charges. The Consideration amount for this purpose shall be the "Conversion Fee" and the "Surcharge" wherever applicable. However, in cases where lease deed has

not been executed, the Price/Premium of the site as reflected in the letter of allotment or last agreement for sale or the predetermined rate as prescribed by the Competent Authority on the date of allotment/transfer shall also be added for the purpose of calculation of Stamp Duty." ANNEXURE "A" Part – I STATEMENT SHOWING ONE TIME CONVERSION, CHARGES/FEE FOR VARIOUS SITES ALLOTTED BY THE ESTATE OFFICER, UNION TERRITORY, CHANDIGARH.

Site area in Sq. Metres	Conversion charges/fee to be calculated as under	Formula for calculating charges/conversion charges/fee
Upto 50	Nil	Nil

The land rate has been fixed at Rs.1710/- per Square Metre and the same shall be applicable for a period of one year from the date as notified by the Estate Officer, Union Territory, Chandigarh. The land rate applicable for calculating the Conversion Charges shall be notified from time to time by the Administrator, Union Territory, Chandigarh."

9. The grievance of the allottees was that conversion was allowed on pick and choose basis rather than on the basis of either the date of receipt of the application or the date of decision. Reference was made to the letter dated 10.5.2013 on behalf of the Finance Secretary to the Estate Officer. The said letter reads as: -

> "To The Estate Officer U.T. Chandigarh Memo No. 11/1/18-UTFI(2)-2013/3520 Dated: 10-5-2013 Subject: Re-fixation of rate for conversion of lease hold residential sites into free hold.
>
> Reference your memo No.7610/MA/Conversion Policy/2013 dated 4.3.13, on the subject cited above.
>
> The issue of revision of rate for conversion under the scheme "Chandigarh Conversion of residential lease hold land tenure into freehold land tenure, Rule 1996" is under consideration of the Administration.
>
> You are directed not to allow any conversion under the said scheme till further orders.
>
> Sd/-
>
> Joint Secretary (Estates) For Finance Secretary Chandigarh Administration"

10. Mr. Ankit Goel, learned counsel for the appellant argued that the title of leasehold property vests with the Central Government in terms of Section 3 of the Act and the Rules framed thereunder. The

Central Government had granted lease of residential plots for a period of 99 years under the 1973 Rules. The conversion fee fixed to convert leasehold property leased for 99 years to freehold property, if allowed, would absolve the allottees from payment of annual rent in terms of Rule 13 as well as the payment of unearned increase in the case of transfer of leasehold rights in terms of Rule 17(10) of the 1973 Rules. Thus, an un-encumbered title would pass on to the purchaser as against 99-year lease to an allottee under the 1973 Rules. Therefore, the findings recorded by the NCDRC that the respondents are consumers as charges have been paid for conversion are not tenable for the reason that the charges deposited were not for any services to be rendered but to grant complete title to the allottees. Such conversion fee was in fact part of the sale consideration to confer complete title to an allottee.

11. Still further, it was argued that the reliance on the judgment in M.K. Gupta was clearly erroneous inasmuch as that was a case wherein the allotment of flats was considered to be "service" within the meaning of Section 2(o) of the Consumer Protection Act, 198610. Some of the provisions from the Consumer Act as are relevant for the decision of the present case are as under:

> (c) "complaint" means any allegation in writing made by a complainant that-
>
> (i) xxx xxx xxx
>
> (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
>
> (d) "consumer" means any person who-
>
> xxx xxx xxx
>
> (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose;
>
> (g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;
>
> (o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement

> or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal 10 For short 'Consumer Act' service;

14. Finding of the District Forum.—(1) If, after the proceeding conducted under Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:

(a) xxx xxxx

(e) to remove the defects in goods or deficiencies in the services in question;

(f) xxx xxxx

12. In M.K. Gupta, the question posed was as to the word "service" extends to the deficiency in construction of a house or flat. It was held that such construction was for the benefit of person for whom it was to be constructed. The allottee may do so himself or hire services of a builder or contractor. When a statutory authority develops land or allots a site or constructs a house for the benefit of common man, it is a statutory service. But if such service is provided by a builder or contractor, it would be a contractual service. The Court held as under:

> "4. What is the meaning of the word 'service'? Does it extend to deficiency in the building of a house or flat? Can a complaint be filed under the Act against the statutory authority or a builder or contractor for any deficiency in respect of such property. The answer to all this shall depend on understanding of the word 'service'. The term has variety of meanings. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory etc. The concept of service thus is very wide. How it should be understood and what it means depends on the context in which it has been used in an enactment. Clause (o) of the definition section defines it as under:
>
> "'service' means ....." It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made available to potential users. The words 'any' and 'potential' are significant. Both are of wide amplitude. .....
>
> 6. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and other statutory service. If the service is defective or it is not

> what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in respect of immoveable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in sub-

clause (ii) of clause (r) of Section 2 as unfair trade practice. If a builder of a house uses substandard material in construction of a building or makes false or misleading representation about the condition of the house then it is denial of the facility or benefit of which a consumer is entitled to claim value under the Act. When the contractor or builder undertakes to erect a house or flat then it is inherent in it that he shall perform his obligation as agreed to. A flat with a leaking roof, or cracking wall or substandard floor is denial of service. Similarly when a statutory authority undertakes to develop land and frame housing scheme, it, while performing statutory duty renders service to the society in general and individual in particular. The entire approach of the learned counsel for the development authority in emphasising that power exercised under a statute could not be stretched to mean service proceeded on misconception. It is incorrect understanding of the statutory functions under a social legislation. A development authority while developing the land or framing a scheme for housing discharges statutory duty the purpose and objective of which is service to the citizens. As pointed out earlier the entire purpose of widening the definitions is to include in it not only day to day buying of goods by a common man but even such activities which are otherwise not commercial but professional or service-oriented in nature. The provisions in the Acts, namely, Lucknow Development Act, Delhi Development Act or Bangalore Development Act clearly provide for preparing plan, development of land, and framing of scheme etc. Therefore if such authority undertakes to construct building or allot houses or building sites to citizens of the State either as amenity or as benefit then it amounts to rendering of service and will be covered in the expression 'service made available to potential users'. A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression 'service of any description'. It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service except when it is free of charge or under a constraint of personal service is included in it. Since housing activity is a service it was covered in the clause as it stood before 1993."

13. The judgment in Ghaziabad Development Authority v. Balbir Singh11 was in the context of grant of interest at the rate of 18%. Such grant of interest was not interfered with. This Court approved the judgment in M.K. Gupta and held as under:

> "We are in full agreement with what is observed herein. Thus the law is that the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered

> by a citizen. The word compensation is of a very wide connotation. It may constitute actual loss or expected loss and may extend to compensation for physical, mental or even emotional suffering, insult or injury or loss."

14. In Chandigarh Housing Board v. Avtar Singh and Ors. 12, the 11 (2004) 5 SCC 65 12 (2010) 10 SCC 194 Cooperative Housing Societies submitted an application for allotment of plots advertised by Chandigarh Housing Board. The Societies collected 10% of the tentative price from their members and deposited the same in a bank specified in the scheme. If any member was to seek refund, then 10% out of the 25% of the earnest money was to be deducted. The dispute before the High Court was in respect of the direction of 10% of the amount. This Court held as under:

> "51. If the final order passed by the High Court is read in conjunction with the interim order dated 11-5-1992, it becomes clear that the Societies were to deposit the remaining amount with interest at the rate of 18% per annum only if they were to accept allotment of flats under the Scheme. Although, the writ petitions were filed by the Societies, the language of the interim order passed by the High Court shows that the learned Judges were thinking of imposing liability of 18% interest only on those members who were to accept allotment of flats to be constructed by the Societies. The members of the Societies did not get an opportunity to accept the allotment because even after deposit of full earnest money and 18% interest, the Board did not allot land to the Societies on which they could construct dwelling units/flats. The Finance Secretary misinterpreted the orders of the High Court and issued wholly arbitrary and unjust directive to the Board not to refund 18% interest to the members of the Societies who had applied for refund before allotment of land by the Board."
>
> 15. In fact, the precise issue as to whether the auction of sites under the 1973 Rules involves sale of goods or of rendering of service came up for consideration in UT Chandigarh Administration and Another v. Amarjeet Singh and Others13. This Court considered the judgments of this Court in M.K. Gupta and Balbir Singh. One of the arguments raised was as under-

13 (2009) 4 SCC 660 "When the auction of sites (for grant of a lease for 99 years) was in exercise of the power of the Government (the UT Chandigarh Administration) under the provisions of the Development Act in accordance with the Leasehold Rules, it involves neither sale of goods nor rendering of any service. The act of leasing plots by auction by the appellants therefore did not result in the successful bidder becoming a "consumer" or the appellants becoming "service providers". In the absence of hiring or availing of any service, the question of deficiency in service or unfair or restrictive trade practice with reference to a service, did not arise and the complaint under the Act was not maintainable."

16. In respect of the abovementioned question posed, it was held as under:

> "21. With reference to a public auction of existing sites (as contrasted from sites to be "formed"), the purchaser/lessee is not a consumer, the owner is not a "trader" or

> "service provider" and the grievance does not relate to any matter in regard to which a complaint can be filed. Therefore, any grievance by the purchaser/lessee will not give rise to a complaint or consumer dispute and the fora under the Act will not have jurisdiction to entertain or decide any complaint by the auction-purchaser/lessee against the owner holding the auction of sites."

17. The second question was in respect of lack of amenities i.e., roads, water supply lines, drainage system, rainwater drainage and electricity etc. This Court held that since the sites were put to public auction, therefore, no grievance regarding amenities could be entertained as the bidder had the opportunity to verify the sites before participating in the auction.

18. In the present case, the allotment of residential sites on lease hold basis for 99 years is not in issue. It has not come on record as to whether such sites were allotted in an auction or by inviting applications. Even if the site had been allotted after inviting applications, the fact remains that the respondents claim conversion of such lease hold sites to free hold sites on payment of the charges which are fixed by the Administration. Such conversion was sought in view of the fact that as against the limited right in the lease property for 99 years, the Administration has decided to grant freehold rights on satisfaction of certain conditions mentioned in the 1996 Rules. The fact is that the respondents had paid the premium amount as fixed under the 1973 Rules. Now, the claim is for purchase of remaining rights of the Central Government to convert the site into freehold. The Central Government continues to be owner of the land until the entire consideration money together with interest or any other amount is paid to the Central Government on account of transfer of any site or building or both as provided in Section 3 of the Act. Therefore, the owner i.e., the Central Government, cannot be said to be a trader or a service provider. The appellant is not charging any fee for conversion of leasehold property into freehold property except the amount in accordance with the 1996 Rules, which is part of the sale consideration. It is thus a case of sale of immovable property on the terms as were fixed in the 1996 Rules. The amount so fixed under the Rules would form part of the sale consideration and not a fee or charge levied for providing any kind of service.

19. In terms of Section 14(e) of the Consumer Act, the District Forum can inter-alia direct removal of deficiency in the services. The deficiency in service however does not include the transfer of title in favour of the allottee who was earlier granted leasehold rights.

As noted above, appellant is not providing any services within the meaning of Section 2(o) of the Consumer Act. The expression 'service' includes housing construction and not allotment of a site or a plot.

20. The Consumer fora had taken into consideration a noting in the ad-

ministrative file of the appellant. A noting is however a part of the decision-making process. Such noting does not fructify into an or- der unless the same is communicated to the affected person. The reference may be made to Bachhittar Singh v. State of Punjab14, wherein this Court held as under:-

"9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the 14 AIR 1963 SC 395 State, the Governor or Rajpramukh [Till the abolition of that office by the Amendment of the Constitution in 1956.], is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the "order" of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the State of Punjab v. Sodhi Sukhdev Singh [AIR (1961) SC 493, 512] :

"Mr Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent." Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be

regarded as anything more than provisional in character.

21. Therefore, the noting by itself cannot be pressed into service to return a finding of deficiency in service. However, the fact remains that in terms of 1996 Rules, an amount of Rs.1710/- per sq.mt. was fixed as conversion charges. The land rates were to be fixed by the Administration from time to time under Rule 5 of 1996 Rules. In Annexure-A, the land rate for conversion was fixed at Rs.1710/- per sq.mt. The same was to be applied for a period of one year. But as admitted at the Bar, the rates were revised only in 2017. The action of the appellant in rejecting the request for conversion is thus arbitrary and discriminatory. The request could not be kept pending when the statutory Rules were in force. The executive authority could not by an administrative order keep the matter pending, when there was no other reason not to accept the conversion except impending increase in the conversion charges.

22. It is the stand of the appellant that no conversion was allowed after a letter was issued on 10.05.2013. The Administration has however allowed conversion of leasehold properties into freehold even after the said letter dated 10.05.2013, as conversion of plots bearing file No. RPL 19565 and RPL 19601, was allowed on 04.12.2013 and 11.11.2013 respectively.

23. Mr. Goel has argued that there cannot be any negative equality as even if some sites have been converted in contravention of the decision communicated on 10.05.2013, it would not confer any enforceable right in favour of the allottees. Reference was made to Chandigarh Administration v. Jagjit Singh15. We do not find any merit in the argument of Mr. Goel. On the date when the letter was issued by the administration on 10.05.2013, the statutory 15 (1995) 1 SCC 745 1996 Rules were in force. Such Rules were kept in abeyance on the basis of communication on behalf of the Finance Secretary to the Estate Officer. Such communication cannot be countenanced. The statutory rules could not be put to hold because the issue of revision of rates of conversion was under consideration of the Administration. Even after the said letter the rates were fixed only in 2017. In the face of valid statutory Rules, an administrative decision cannot be sustained.

24. Since the respondents are already in possession of the sites as lessee on 99 years basis, it cannot be said that the appellant was deficient in providing any service, which even if used in a liberal sense would not include transfer of title in an immovable property. Thus, the consumer fora under the Act would not have jurisdiction to entertain the consumer complaints on the ground of deficiency in service related to transfer of title of the immovable property.

25. We find that it is not a case of the deficiency in service as contemplated by Consumer Act but definitely a case of exercise of jurisdiction in an arbitrary and discriminatory manner. In exercise of the power conferred on this Court under Article 142, we direct the Administration to decide the claim of conversion as on the date when consumer complaints were filed. Such action shall be taken within 3 months.

26. The difficulty in the Administration is that the senior officers in the Chandigarh Administration are on deputation from the States of ei- ther Punjab or Haryana. The officers revert to their parent cadre af-

ter completion of deputation period of approximately three years. However, the officials continue to work at the Estate Office. Though the Administration has done commendable work to maintain the character of Chandigarh as City Beautiful, but the Estate Office has underbelly, that is, the action of the officials cannot be said to be bona fide, as is apparent in the present case. It is a typical case of 'you show me face, I will show the Rule'. On the other hand, the officers are unable to take decisions which are citizen friendly. Even no attempt is made to remove the bottlenecks in the working of the Estate Office.

27. The Division Bench of the High Court of Punjab & Haryana in a judgment reported as Amritpal Singh v. Chandigarh Administration16, has set aside the requirement of no-objection certificate from the Chandigarh Administration before affecting sale of freehold properties. The Chandigarh Administration was directed to re-examine Rule 17(10) of the 1973 Rules contemplating unearned increase, as well the restriction to sell the properties before the expiry of specific years as the root-cause of malice of Power of Attorneys sales. Similar rule exists as Rule 7 of Chandi- garh Estate Rules, 2007. The High Court had issued the following directions:

> "(i) That the requirement of 'No Objection Certificate' from the Chandigarh Administration before effecting sale of the 16 2012 SCC OnLine P&H 9310 free hold properties is not supported by the Act or the Rules framed thereunder.

(ii) The Registering Authority is duty bound to examine; whether the Power of Attorneys are being executed for consideration. If the Authorities are satisfied that it is for consideration, the Power of Attorney shall not be registered unless the proper stamp duty is affixed thereon.

(iii) If the proper stamp duty is not paid on a Power of Attorney executed on and after 15.11.2007, the Registering Authority shall refuse to register the document on the basis of such attorney at any subsequent stage unless proper stamp duty is affixed thereon in accordance with law.

(iv) The Chandigarh Administration may re-examine Rule 17(10) of the 1973 Rules contemplating unearned increase, as well the restriction to sell the properties before the expiry of specific years, as the root-cause of malice of Power of Attorneys sales.

(v) The Chandigarh Administration to frame Rules to maintain and update the property records in the manner mutations are sanctioned in respect of non urban properties under the Punjab Land Revenue Act, 1887 or such other procedure, which is fair, reasonable and transparent."

28. The Full Bench of the High Court in Dheera Singh v. U.T. Chandigarh Admn. and Ors.17 noticed that the Executive has failed to live-up to the expectations of the residents as instead of approaching the concerned Ministry with a concrete proposal on data-based information for onward consideration of the Legislature to rejuvenate the 1952 Act and make it more vibrant and alive to the issues in presentia or in future, it has gone for ad-hoc solutions by taking refuge under Section 22 of the Act. The Court held as under:

> "102. Having held that, we cannot refrain from observing that the 1952 Act may need revamping and updation to meet the modern day challenges some of which are incidental to the steep hike in the value of real estate and an unprecedented pressure of population mounted on Chandigarh. We are cognizant of the fact that the issue 17 2012 SCC Online P&H 21473 whether or not the 1952 Act is in need of suitable amendments falls exclusively within the domain of law-

makers as the Courts would ordinarily expound the law and refrain from legislating except in a case of casus omissus. However, it cannot be overlooked that after enacting a bill the Legislature becomes functus officio so far as that particular Statute is concerned. The Legislature may not have a mechanism of its own to keep track of the deficiencies or difficulties faced by the executive who has been assigned the duty to give effect to the enactment and achieve the legislative object(s). It is the Executive, therefore, who has an onerous duty to apprise, suggest and put up before the Legislature a proposal along with facts and figures justifying the changes that may be brought into an enactment. Thereafter, it is the absolute and non-justiciable prerogative of the Legislature to take a decision on such proposal as per its wisdom.

103. The Executive has in the instant case, with reference to the 1952 Act, failed to live-up to the expectations of the residents as instead of approaching the Ministry concerned with a concrete proposal on data-based information for onward consideration of the Legislature to rejuvenate the 1952 Act and make it more vibrant and alive to the issues in prasentia or in future, it has gone for ad hoc solutions taking refuge under Section 22 of the Act. Strangely, the amount of penalty or fine fixed by the Legislature in the year 1952 (Sections 8, 13 & 15) has not been got revised even after the expiry of 60 years.

107. In the light of the interpretation given by us to some of the provisions of the 1952 Act in paragraphs 81, 82, 84 to 87, 102, 103 & 105 of this order, we also deem it appropriate to issue the following directions:

> (iii) The Union Territory of Chandigarh through its Administrator shall take steps as may be necessary for updation of the 1952 Act in the light of the observations made by us in paragraphs 102, 103 & 105 of this order before March 31, 2013."

> 29. But nothing appears to have been done either in terms of Amritpal Singh or Dheera Singh. Dheera Singh has laid down the process of exercising the power of resumption. However, many cases of alleged misuse have been initiated but not concluded by the Estate Office. The residents of Chandigarh are widely harassed while seeking no-objection certificate for sale of leasehold property as the procedure for grant of no-objection certificate and of deposit of unearned increase is interpreted in different manners by the different officials, which the officers of the Administration has failed to control. Another area of concern is the unreasonable procedure adopted by the Administration for affecting mutation after the demise of the leaseholder or the allottee and of completing other formalities at the offices of the appellant. The difficult and near impossible procedure leads to arbitrary and

discriminatory action by the officials of the Estate Office. Therefore, we direct Administration to constitute a Committee which may include a Member of Parliament; an architect; an advocate, who is or has represented Chandigarh Administration before the High Court; two representatives of the Municipal Corporation being representatives of the citizens of Chandigarh, apart from such officers which the Administration may think fit, so as to review and streamline the processes of sanction of mutation, grant of occupancy certificate, no-objection certificate and other citizen-centric requirements including calculation of unearned profit under the 1973 Rules or under 2007 Rules.

30. In view of the above, the present appeals are disposed of with the following directions:

a) The appeals are allowed and the orders passed by the DCDRF, SCDRC and the NCDRC are set aside. The Administration shall decide the claim of conversion of allottees as on the date when the consumer complaints were filed. Such action shall be taken within 3 months;

b) The Administration to give details of the notices for resumption on account of alleged misuse which are pending consideration.

Such details to include the date of serving of notice of the alleged misuse and the stage of proceedings pending before the different officers of Administration. A report to be submitted by the Administration thereafter in respect of the above directions within 4 months for perusal and the necessary action, if so warranted, after four months.

c) To constitute a Committee which may include inter-alia the Member of Parliament from Chandigarh, an architect, an advocate who is or had represented Chandigarh Administration before the High Court, two representatives of the Municipal Corporation and the officers of Administration.

d) Such abovementioned Committee shall submit report to the Administrator, Chandigarh Administration preferably within three months. We hope that the learned Administrator will take appropriate steps to implement the suggestions made by the Committee including forwarding of the proposed amendments in the Statute to the Ministry of Home Affairs, if any, suggested by the Committee.

31. List after 4 months for the Action Taken Report in respect of directions (b), (c) and (d).

.....J. (HEMANT GUPTA) .....J. (A.S. BOPANNA)
NEW DELHI;

SEPTEMBER 7, 2021.