Supreme Court of India
Chandigarh Housing Board vs Avtar Singh & Anr on 7 August, 1995
Equivalent citations: 1995 AIR 2470, 1995 SCC (5) 313
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
CHANDIGARH HOUSING BOARD

Vs.

RESPONDENT:
AVTAR SINGH & ANR.

DATE OF JUDGMENT07/08/1995

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
HANSARIA B.L. (J)

CITATION:
1995 AIR 2470 1995 SCC (5) 313
1995 SCALE (4)765

ACT:

HEADNOTE:

JUDGMENT:

O R D E R Leave granted.

This appeal by special leave arises from the order dated 22.7.1994 of the Division Bench of the Punjab & Haryana High Court in Writ Petition No. 3843/94. The admitted facts are that Regulation 6 of the Chandigarh Housing Board (Allotment,Management and Sale of Tenements) Regulations, 1979 (for short,`the Regulations') regulates, among other things, allotment of the buildings/ flats constructed by the appellant-Board. A wife/husband and the unmarried children or other members of the family, one, among them, alone is eligible for allotment of any building/flat. When the notification was published inviting applications for allotment of Category II flats, the 1st respondent as well as his wife, Mrs. Kuldip Kaur, separately applied for allotment of two houses. The allotments came to be made independently,but later on it was discovered that both of them being wife and husband, were not eligible . Consequently, the allotment made to the 1st respondent was cancelled and the amount paid by him was forfeited under the Regulations. When he filed the writ petition,

the High Court in the impugned order directed the appellant-Board to return the entire money paid by the 1st respondent or adjust the same towards the amount payable by his wife. Thus this appeal by special leave.

In the counter-affidavit filed by the 1st respondent, it is admitted that acceptance of allotment by both, the wife and husband was a mistake but there was no prohibition for making an application for allotment at the relevant time. Since the 1st respondent and his wife were estranged and were living separately, they came to make the applications separately and subsequently due to reconcilement they have been living together and that, therefore, there is no illegality in their making applications as none of them was then owing a house and that the High Court was right in directing to refund the amount.

Having considered the facts and circumstances, we find that when the Regulations prohibit allotment to wife/husband or dependants and if any one has got a house or a flat, by necessary implication both or all except one among the members of the unit are ineligible to make separate applications. There need not be any specific rule prohibiting making separate application in that behalf. So long as the couple are tied by marriage bond, both are bound by the Regulations for allotment. Therefore,the cancellation per se is not illegal. The question then is whether the entire amount should be forfeited. Obviously, the power of forfeiture was intended to prevent fraud and malpractice in allotment and in case of positive finding in that behalf, courts would be loath to interfere with the exercise of the power under Regulation 6 (2).

On the facts and circumstances in this case, we think that the appellant- Board would be justified in forfeiting half of the amount deposited by the 1st respondent and the balance amount may be adjusted towards the amount payable by his wife, if not already paid. This may not, however, be treated as a precedent.

The appeal is accordingly allowed. No costs.