Supreme Court of India
Chandigarh Administration & Anr vs Jagiit Singh & Anr.Etc on 10 January, 1995
Equivalent citations: 1995 AIR 705, 1995 SCC (1) 745
Author: B Jeevan Reddy
Bench: Jeevan Reddy, B.P. (J)

PETITIONER:
CHANDIGARH ADMINISTRATION & ANR.

Vs.

RESPONDENT:
JAGIIT SINGH & ANR.ETC

DATE OF JUDGMENT10/01/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
MANOHAR SUJATA V. (J)

CITATION:
1995 AIR 705 1995 SCC (1) 745
JT 1995 (1) 445 1995 SCALE (1)131

ACT:

HEADNOTE:

JUDGMENT:

B.P. JEEVAN REDDY, J.:

S.L.P.(C) 11609 of 1994:

1. Leave granted. Heard counsel for the parties.

2. This appeal is preferred against the judgment of the Punjab and Haryana High Court allowing the writ petition filed by the respondents, Jagjit Singh and Jaswant Singh. The facts leading to the filing of the writ petition are not in dispute and may be stated. Indeed, they speak for themselves.

3. An auction as held by the Chandigarh Administration on September 29, 1975 wherein the respondents were the highest bidders in respect of a plot admeasuring 338 sq.yrds. in Sector 31A, Chandigarh for a sum of Rs.34,500/- The right sold in auction was the lease-hold for ninety nine

years. An allotment letter was issued on November 27, 1975. The respondents deposited 25% of the money immediately. The balance consideration was payable in three equal instalments, the first of which fell due on September 27, 1976. The respondents defaulted in paying the same whereupon the Estate Officer issued a notice to show cause as to why the lease in their favour be not cancelled. After giving due opportunity to the respondents, the lease was cancelled, at the same time forfeiting a sum of Rs.3,450/- representing 10% of the premium. The respondents preferred an appeal to the Chief Administrator against the said action which was dismissed on May 2, 1978. The Chief Administrator, however, reduced the amount of forfeiture from 10% to 2 1/2%. A revision preferred against the Chief Administrator's order was dismissed by the Chief Commissioner on January 1, 1979. The respondents then applied to the Estate Officer for refund of the amount paid by them. After deducting the amount forfeited, the amount deposited by them was refunded in full on April 25, 1979.

4. Having obtained the refund of their amount, the respondents filed a review petition before the Chief Commissioner seeking review of his order dated January 1, 1979. It was dismissed on January 10, 1980. A second review petition, however, met with success. The Chief Commissioner directed that the plot shall be restored to the respondents provided they make the entire payment within sixty days from the date of his order, He directed that in default of such payment, the review petition shall stand dismissed, vide Chief Commissioner's order dated May 9, 1985. Instead of paying the amount within the time prescribed, the respondents queried how the amount of Rs. 1.02 lakhs (directed to be deposited by the Chief Com- missioner in his order dated May 9, 1985) was arrived at. Be that as it may, they failed to comply with the order of the Chief Commissioner, with the result that the second review petition filed by them also stood dismissed. The respondents then filed yet another petition, styling it as a mercy petition, before the advisor to the Administrator which too was dismissed.

5. On December 3, 1990, the respondents started yet another round by 'filing W.P.No. 15477 of 1990 in the High Court of Punjab and Haryana offering to pay the amount aforesaid with 12% interest. The High Court recorded the respondents' offer and directed them to bring a draft for the full amount on the next day of the hearing. The respondents produced a draft in a sum of Rs. 1,72,402.56p before the court on January 15, 1991 which was kept in safe custody of the Registrar. The writ petition was, however, dismissed on March 18, 1991 holding that since the respon- dents were persistent defaulters and also because the prices of plots have gone up steeply meanwhile, the plot cannot be restored to them, A review petition filed by the respondents was dismissed by the court on July 29, 1991.

6. Having failed in the High Court, the respondents approached the Estate Officer yet again to settle their case in the light of an alleged policy of the government to restore the plots to defaulters by charging forfeiture amount of 5%. This request was rejected by the Estate Officer on October 18, 1991. After all this, the respondents approached the High Court once again with W.P.(C) No.3394 of 1992 for a direction to the respondents to implement the alleged policy of the Chandigarh Administration to restore the plot by charging a forfeiture amount of 5%. They also challenged the cancellation of lease (effected in the year 1977) in this writ petition. They deposited a sum of Rupees two lakhs purporting to be under the orders of the High Court. The writ petition has been allowed by

the High Court on October 14, 1993 on the ground that inasmuch as in another case pertaining to Smt. Prakash Rani, the Administrator had restored the plot to her even after her writ petition was dismissed by the High Court, the respondents must also be restored the plot on the same terms. The High Court pointed out that Prakash Rani's matter was settled before the Lok Adalat and the Estate Officer agreed to waive the forfeiture by charging 5% of the premium amount by his orders dated September 4, 1991 but when the respondents' case was taken up by Estate Officer on October 1, 1989, he rejected the respondents' case, which, says the the High Court, amounts to discriminatory treatment. When it was pointed out by the counsel for the Administration that the case of Prakash Rani was different inasmuch as in that case the amount paid by the allottee was never returned to her as has been done in the case of respondents, the High Court merely brushed aside the argument and allowed the writ petition directing the appellants herein (respondent to the writ petition) to restore the site to the respondents (writ petitioners) inasmuch as they had already paid up the entire amount of auction money including penal interest. The court observed that if on taking an account, any further amount is found due, a demand can be raised against the respondents according to rules. It is this order which is questioned in this appeal.

7. In our opinion, the writ petition could not have been allowed by the High Court for more than one reason, viz., (1) on the default of the respondents to pay the first instalment on the prescribed date, the lease in their favour was cancelled after due notice and hearing as far back as 1977. They also took back the amount deposited by them minus the amount forfeited. This happened in 1978-79. Hav- ing taken back the amount, they could not have agitated their right to the plot by filing consecutive review petitions before the Chief Commissioner or by filing writ petition seeking restoration of the plot. Not only the lease was cancelled but they had acquiesced in it by taking back the money; (2) Be that as it may, when their second review petition was allowed by the Chief Commissioner permitting them to pay the entire amount within sixty days, the respondents failed to avail of the said concession. This happened in the year 1985; (3) Their writ petition filed in the year 1990 (W.P.No.15477 of 1990) seeking restoration of the plot was dismissed on the ground that they were persistent defaulters and also on the ground that because of the rise in prices, the plot cannot be restored to them. This happened in March, 1991. Even a review petition filed by the respondents was rejected by the High Court. The filing of W.P.(C) No.3394 of 1992 (from which this appeal arises) in the above circumstances was thus nothing but a desperate gamble. The only ostensible reason given for filing this second writ petition was the alleged policy of the Administration to restore the plots to defaulters on their paying 5% of the premium amount. It is, however, significant that the writ petition has not been allowed on the basis of the said policy, if any, but on a different ground altogether. It is this: inasmuch as in the case of Prakash Rani, the plot was restored to her on charging 5% of the premium amount notwithstanding the dis- missal of her writ petition by the High Court, the plot of the respondents should also be restored to them. Firstly, the judgment of the High Court does not show that the High Court has investigated the facts and circumstances of Prakash Rani's case nor has it recorded any finding that her case is identical in all respects to the respondents' case. The High Court does not also say that the point of distinction pointed out by the Administration's counsel, viz., that the said lady had never taken back her amount and that her amount was lying with the Administration, is not correct. And yet her case has been made the basis for allowing the respondents' writ petition upholding the plea of discrimination.

8. We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order infavour of the other person might be legal and valid or it might not be. that has to be investigated first before it can be directed to befollowed in the case of the petitioner. If the order in favour of the other person isfound to be contrary to laiv or not ivarranted in the facts and circumstances of his case, it is obvious that such illegal or uni,oarranted order cannot be made the basis of issuing a writ compelling ilie respondent-authority to repeat the illegality or to pass another unwarranted order. The extra-ordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/ unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if A can be done according to law indeed, wherever it is possible, the court should direct the appropriate authority to correct such wrong orders in accordance with law but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petioner before the court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course barring exceptional situations would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ ju- risdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world. (What is the position in the case of orders passed by authorities in exercise of their quasi-judicial power, we express no opinion. That can be dealt with when a proper case arises.)

9. Coming back to the facts of this case, if only the High Court had looked to the facts of this case instead of looking to the facts of some other case, we are sure, it would have dismissed the writ petition in view of the several facts stated hereinbefore. The High Court fell in grave error in allowing the writ petition on the said ground and in importing the theory of discrimination in such a

situation. Question of discrimination could have arisen only if two findings were recorded by the High Court, viz., (1) the order in favour of Prakash Rani was a legal and valid one and (2) the case of the writ petitioners was similar in material respects to the case of Prakash Rani but she has not been accorded the same treatment. No such find- ings have been recorded by the High Court in this case.

10. The appeal is accordingly allowed and the judgment under appeal set aside.The respondents shall pay the costs of the appellant, which are assessed at Rs. 10,000/-.

S.L.P.(C) No.15931 of 1994:

11. The facts of this case, if anything, are worse. The respondent was the highest bidder in respect of a plot in the auction held on July 13, 1974. She paid the first 25% amount but defaulted in paying the first instalment. A show cause notice was issued to her proposing to cancel the lease in her favour. Pursuant to the show cause notice, the respondent appeared and expressed her inability to pay the amount, whereupon the lease in her favour was cancelled and an amount of 10% of the premium amount forfeited. The respondent filed an appeal before the Chief Administrator contending only that the amount forfeited is high and that it should be reduced and the balance refunded to her. The Chief Administrator allowed her appeal and reduced the amount forfeited. The respondent accordingly took back her amount minus the forfeited amount, in December, 1976. Seventeen years later, she filed the writ petition in the Punjab and Haryana High Court, being CWP No.7760 of 1993, from which this appeal arises, challenging the order of cancellation dated March 30, 1971 The writ petition has been allowed by the High Court on the ground that the matter is covered by the High Court's carlier decision in jaswant Singh v. Chandigarh Administration (1 992 PLJ 522).

12. Inasmuch as the respondent's writ petition has been allowed on the only ground that it is covered by the decision in Jaswant Singh, it is necessary to notice whether the principle of the said decision governs the facts of this case. 'Mc two grounds urged by the writ petitioner in Jaswant Singh, as recorded in Para (3) of the judgment, are: "(1) the authorities under the Act have no jurisdiction to order forfeiture of 25% of the premium; (2) that when during the time allowed by the Chief Administrator to deposit the amount of forfeiture the review had been filed and the Chief Commissioner had ordered stay of the operation of the order, while disposing of the review petition, it was incumbent upon the Chief Administrator to grant time for deposit of the amount due." A perusal of the facts of the case stated in Paras (2) and (3) of the judgment clearly discloses that there is absolutely no similarity in the facts of that case and the present case. The facts of that case are altogether differ- ent It is in those facts and circumstances that that writ petition was allowed. We an: unable to see any relevance of the principle of the said decision to the case before us. By saying this, we may not be understood to say that the decision in Jaswant Singh is correct. We express no opinion thereon since it is not necessary Br us to do so in this case.

13.So far as the case,, before us is concerned, the fact remains that when the lease was cancelled on the respondent expressing her inability to pay the first or other instalments, the only contention raised by her in appeal was for reduction of the amount forfeited. She never questioned the cancellation of the lease. On the omount forfeited being reduced, she coolly took back the money and kept quiet for a period of seventeen years. It is only after the lapse of 17 years that she woke up

evidently in view of the rise in prices and approached the High Court more in the nature of a gamble than for vindicating her legitimate rights. The explanation given by her for her seventeen years' slumber was that she had filed a revision before the Administration and was awaiting its result. The respondents have denied the receipt of any such revision. The appellant is not able to substantiate her plea. Moreover, if indeed she had filed a revision, she has not explained why did she wait for seventeen years without making any enquiry about its progress and without making any efforts to have it disposed of It is evident that the said plea is a false one, invented for the purpose of the writ petition. It, therefore, follows that the High Court was in error in allowing this writ petition as well. Accordingly, this appeal too is allowed and the judgment under appeal set aside. The appellants shall be entitled to their costs from the respondent, quantified at Rs. 10,000/-.