Before G.S. Singhvi and Iqbal Singh, JJ DEVINDER CHEEMA.—Petitioner

versus

STATE OF PUNJAB AND ANOTHER,—Respondents CWP 9777 of 1996

The 7th October, 1998

Punjab Urban Estate (Sale of Sites) Rules, 1965—Rls. 2(aa), 4, 5, and 5-A—Allotment of plot on 'tentative price'—At the time of allotment no determination of price under rule 4 made or approved by the Government—Nature of demand made in notice not 'additional price' as contemplated under rule 2(aa) read with rule 5-A—'Tentative price' and 'additional price', distinction—Allottee liable to pay enhanced price for securing possession since demand represents sale price fixed by the Government—Notice of demand held intra vires the rules—Conditions of allotment agreed to by the allottee was for provisional price subject to final determination—Allottee cannot question legality of demand having agreed to the terms—Estoppel.

(D.S. Longia v. State of Punjab and others, AIR, 1993 P & H 54 - (D.B.) not followed)

Held that a conjoint reading of rules 2(aa), 2(e), 4 and 5-A of the Puniab Urban Estate (Sale of Sites) Rules, 1965 shows that the tentative price of the site is to be fixed by the Government in accordance with rule 4 and the additional price is to be determined by the State Government having regard to the amount of compensation as enhanced by the competent Court under section 18 of the Land Acquisition Act, 1894 and the amount of cost incurred by the State Government in respect of such reference. The liability of the transferee to pay the additional price emanates from Rule 5-A. However, the additional price can be demanded only on the basis of determination made in accordance with rule 2(aa) of the Rules and not otherwise. It is not possible to accept the submission that the impugned demand is ultra vires to the Rules. What is sought to be realised from the transferee is the price fixed by the Government in terms of rule 4 and not the additional price determined under Rule 2(aa). In our view, the very edifice of the challenge to the notice is based on an erroneous premise, namely, that what is being charged from the petitioner is the additional price whereas the demand raised by the competent authority represents the sale price fixed by the Government. Therefore, the notice cannot be declared ultra vires to the rules or without jurisdiction.

(Paras 8 and 9)

Further held, that the transferee had agreed to pay the price which was to be fixed by the Government after the allotment of plot. If he was to file a petition questioning the legality of the impugned demand, the Court would have non-suited him on the ground that he is estopped from challenging the demand raised by the respondents in accordance with the rates fixed by the Government.

(Para 11)

Further held, that the judgment of the Division Bench in D.S. Longia v. State of Punjab and others, AIR 1993, P & H 54, cannot be made basis for giving relief to the petitioner because:

- (a) the proposition laid down by the Division Bench can no longer be regarded as correct law in view of the pronouncement of the Apex Court in Preeta Singh's case;
- (b) the judgment of the learned Single Judge in Gian Jyoti Educational Society v. Estate Officer, Urban Estate, Punjab and others, AIR 1992 P & H 75, which was approved by the Division Bench did not have any bearing on the issue raised in D.S. Longia's case. A careful reading of the judgment of Gian Jyoti Educational Society's case shows that the demand which was impugned in that case represented the additional price and not the tentative price. The learned Single Judge held that after fixation of tentative price, the additional price can be charged only if the compensation payable to the land owners was increased on a reference made under Section 18 of the Land Acquisition Act, 1894.

(Para 18)

P.S. Patwalia, counsel for the petitioner.

Inderjit Malhotra, counsel for respondent No. 2.

JUDGMENT

G.S. Singhvi, J.

(1) The question that arises for adjudication in this case is whether the price fixation of the land allotted to the petitioner is ultra vires to the Punjab Urban Estate (Development and Regulations) Act, 1964 (for short 'the Act') and the Rules framed thereunder.

- (2) The facts relevant and germane to the decision of above mentioned question are that Surinder Sinigh Bajaj son of Prem Singh, resident of House No. 1205, Sector 43-B, Chandigarh was allotted residential plot no. 80/IX measuring 500 square yards, Sector 70, Urban Estate, SAS Nagar, Mohali. In the letter of allotment, Annexure P.1 dated 5th March, 1990 issued by the Estate Officer, Urban Estates, Punjab, it was made clear to the allottee that the rate of the land being allotted to him has not been finally approved and, therefore, the allotment is being made on the provisional price of Rs. 1,55,000. It was also made clear that the tentative price of the plot would be intimated after its approval by the Government. Later on, the Government approved the tentative price of the plot of the size of 500 square yards as Rs. 5,20,000. Accordingly, letter Annexure P.2 was sent to Shri Surinder Singh requiring him to pay the balance price amounting to Rs. 3,65,000 but he did not deposit the tentative price because he appears to have transferred the plot to one Smt. Igbal Kaur wife of Shri Igbal Singh, resident of House No. 154, Sector 16-A, Chandigarh by executing general power of attorney in her favour who, in turn, appears to have further transferred the property to the present petitioner by executing a sub power of attorney. This inference has been drawn by us from the material available on record which includes the representation dated 29th August, 1995 made by the petitioner to the Estate Officer for delivery of possession of the plot and representation dated 2nd January, 1996 made by her claiming relief in terms of the judgment of the High Court dated 28th September, 1992 in C.W.P. No. 13283 of 1991 D.S. Longia v. State of Punjab and others.
- (3) In the writ petition, the demand letter Annexure P.2 sent to Surinder Singh Bajaj requiring him to pay Rs. 3,65,000 as balance of the tentative price has been challenged on the ground that it is contrary to Rules 5 and 5-A read with Rule 2(aa) of the Punjab Urban Estate (Sale of Sites) Rules, 1965 (hereinafter referred to as the Rules). She has averred that the land owner has not been paid enhanced compensation on the basis of award made by the Reference Court under Section 18 of the Land Acquisition Act, 1894 and, therefore, the demand raised by the respondent no. 2 is liable to be declared as null and void.
- (4) In the written statement filed on behalf of the respondent no. 2, the petitioner's locus standi has been challenged on the ground that the unapproved transfer of plot in her favour in the garb of execution of sub power of attorney by Smt. Iqbal Kaur does not entitle the petitioner to challenge the demand of tentative price. It has been averred that the petitioner cannot challenge the impugned demand which has been made in accordance with the conditions of allotment.

The respondent no. 2 has also justified the demand of the tentative price on the basis of the judgments of the Supreme Court in *Preeta Singh etc.* v. *Haryana Urban Development Authority and others* (1) and of this Court in Gurcharan Singh v. State of Punjab, C.W.P. No. 14105 of 1992 decided on 21st November, 1996.

- (5) Shri P.S. Patwalia argued that the notice Annexure P.2 served upon the original allottee Surinder Singh Bajaj is liable to be declared ultra vires to Rule 2(aa) read with Rule 5-A of the Rules because there has been no enhancement of compensation payable to the land owners. Learned counsel argued that the respondent no. 2 cannot arbitrarily revise the price of the plot allotted to Surinder Singh Bajaj and compel him to pay the additional amount of Rs. 3,65,000. He strongly relied on the judgment of the Division Bench in D.S. Longia and others v. State of Punjab and others (2) and submitted that in view of the dismissal of the petition for Special Leave to Appeal filed by the State of Punjab against the judgment of this court should be treated as conclusive for the purpose of invalidation of the impugned demand. He submitted that the judgment of the Supreme Court in Preeta Singh's case (supra) does not have any bearing on the interpretation of the provisions which regulate the allotment of plots in the State of Punjab and the Division Bench has erroneously applied the ratio of that decision in Gurcharan Singh's case (supra). Shri Patwalia also relied on the affidavit of Shri R.S. Maan, the then Secretary to Government, Punjab, Department of Housing and Urban Development, which he filed before the Supreme Court in S.L.P. No. 21648 of 1993 State of Punjab v. Surinder Singh Sandhu and the letters Annexure P.10 and P.11 and argued that after having taken a conscious decision to drop the demand of enhanced price in cases of others, the respondent-P.U.D.A. cannot compel the petitioner to pay the additional price.
- (6) In reply, Shri Inderjit Malhotra argued that the notice issued by the Estate Officer requiring Surinder Singh Bajaj to pay the balance of the tentative price cannot be declared *ultra vires* to the Rules because the allotment of plot was made to him on the provisional price of Rs. 1,55,000 with a clear understanding that the tentative price of the plot would be intimated after its approval by the Government. Shri Malhotra submitted that the demand raised by the respondents represents the approved tentative price of the plot allotted to Surinder Singh Bajaj and not the additional price as contemplated by Rule 2(aa) read with Rule 5-A of the Rules. He further submitted that the decision in D.S. Longia's case (supra) should be treated as per incuriam because the

⁽¹⁾ J.T. 1996(5) S.C. 634

⁽²⁾ A.I.R. 1993 P & H 54

Division Bench proceeded on an erroneous assumption about the nature of demand and in any case, that decision cannot be regarded as laying down correct proposition of law in view of the later decision of the Supreme Court in *Preeta Singh's case* (supra). Learned counsel argued that the withdrawal of Special Leave petition filed by the State of Punjab against the judgment of the High Court in D.S. Longia's case (supra) was actuated by ulterior motive and, therefore, the judgment in that case cannot be treated as final and conclusive. Shri Malhotra relied on the observations made by the Apex Court in its order dated 18th February, 1994 in Special Leave Petition No. 21648 of 1991 and submitted that the exercise of filing affidavit before the Supreme Court to explain the rational of Government's decision to withdraw the Special Leave Petitions was intended to favour plot holders, a majority of whom were highly influential persons. He relied on the decisions of the Supreme Court in Preeta Singh's case (supra) and of this Court in Gurcharan Singh's case (supra) as well as the order passed in Ajaib Singh v. State of Punjab and others, C.W.P. No. 14927 of 1996 decided on 21st May, 1997.

(7) We have thoughtfully considered the respective submissions. Section 3(1) of the Act empowers the State Government to declare any area comprising land belonging to it or acquired by it whether situate within or out of the limits of a local authority to be an urban estate for the purpose of the Act. Sub-section (2) of Section 3 says that subject to the provisions of the Act, the State Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the State Government in an urban estate on such terms and conditions as it may, subject to any rules made under the Act, think fit to impose. Proviso to this sub-section says that the sale, lease or other transfer of any land in an urban estate shall not be made in contravention of the requirements of a lay out plan or zoning plan, if any, prepared in respect of such urban estate or part thereof and approved by the prescribed authority in accordance with the procedure laid down by the State Government from time to time. Section 23(1) contains an omnibus provision empowering the State Government to make rules for carrying out the purposes of the Act. Under Setion 23 (2) (a) and (b), the Government is competent to make rules to determine the terms and conditions on which any land or building may be transferred by the Government and the manner in which the consideration money for any transfer may be paid. In exercise of this power, the State Government framed the 1965 Rules. Rule 2(aa) and 2(e), Rule 4 and Rule 5-A of the Rules which have direct bearing on the questions raised in this petition read as under:

- "2(aa): 'additional price' means such sum of money as may be determined by the State Government, in respect of the sale of a site by allotment, having regard to the amount of compensation by which the compensation awarded by the Collector for the land acquired by the State Government of which the site sold forms a part, is enhanced by the Court on a reference made under Section 18 of the Land Acquisition Act, 1894, and the amount of cost incurred by the State Government in respect of such reference."
- 2(e): 'tentative price' means such sum of money as may be determined by the State Government from time to time, in respect of the sale of a site by allotment, having regard, among other matters, to the amount of compensation awarded by the Collector under Land Acquisition Act, 1894, for the land acquired by the State Government of which the site sold forms a part".
- 4. Sale Price.—In case of sale of a site by allotment the sale price shall be,—
 - (a) Where such site forms part of the land acquired by the State Government under the Land Acquisition Act, 1894, and—
 - (iii) no reference under S. 18 thereof is made against the award of the Collector or such reference having been made has failed, the tentative price;
 - (ii) on a reference made under S. 18 thereof the compensation awarded by the Collector is enhanced by the Court, the aggregate of the tentative price and the additional price:
 - (b) in any other case, such final price as may be determined by the State Government from time to time.
 - (2) In the case of sale of a site by auction, the sale price shall be such reserve price as may be determined by the State Government from time to time or any higher price determined as a result of bidding in an open auction.

"5-A. Liability to pay additional price.

- (1) In the case of sale of a site by allotment, the transferee shall be liable to pay to the State Government, in addition to the tentative price, the additional price, if any, determined in respect thereto under these rules.
- (2) The additional price shall be payable by the transferee within a period of thirty days of the date of demand made in this behalf by the State Officer:
- Provided that the Chief Administrator may, in a particular case, and for reasons to be recorded in writing allow the applicant to make payment of the said amount within a further period not exceeding thirty days."
- (8) A conjoint reading of the rules quoted above, shows that the tentative price of the site is to be fixed by the Government in accordance with Rule 4 and the additional price is to be determined by the State Government having regard to the amount of compensation as enhanced by the competent Court under Section 18 of the Land Acquisition Act, 1894 and the amount of cost incurred by the State Government in respect of such reference. The liability of the transferee to pay the additional price emanates from Rule 5-A. However, the additional price can be demanded only on the basis of determination made in accordance with Rule 2 (aa) of the Rules and not otherwise.
- (9) If the validity of the notice Annexure P.2 is tested in the light of the above analysis of the relevant rules, it is not possible to accept the submission of Shri Patwalia that the impugned demand is *ultra vires* to the Rules. What is sought to be realised from the transferee is the price fixed by the Government in terms of Rule 4 and not the additional price determined under Rule 2(aa). In our view, the very edifice of the challenge to the notice is based on an erroneous premise, namely, that what is being charged from the petitioner is the additional price whereas the demand raised by the competent authority represents the sale price fixed by the Government. Therefore, the notice Annexure P.2 cannot be declared *ultra vires* to the Rules or without jurisdiction.
- (10) The issue deserves consideration from another angle. While allotting plot to Surinder Singh Bajaj, the respondents had made it clear that the tentative price would be intimated to him after approval by the Government and that the allotment is subject to the provisions of the Act and the Rules as well as the policy framed thereunder. This

is clearly borne out from conditions No. 1 and 15 of the letter of allotment which are reproduced below:

1. Plot no. 80/IX measuring 500 Sq. Yds. in Sector 70, Urban Estate SAS Nagar has been allotted to you. Since the rate on which the allotment is to be made in this sector has not been finally approved, accordingly this allotment is being made on the provisional price of Rs. 1,55,000. The tentative price of the plot would be intimated to you after its having been approved by the Government.

XX XX XX

- 15. The allotment is subject to the provisions of the Punjab Urban Estates (Development and Regulation) Act, 1964 and rules and policy framed thereunder as amended from time to time and you shall have to accept and abid by the provisions of the Act/Rules/Policy."
- (11) Surinder Singh Bajaj accepted these conditions without raising any objection. It is, therefore, reasonable to take the view that the transferee had agreed to pay the price which was to be fixed by the government after the allotment of plot. If he was to file a petition questioning the legality of the impugned demand, the Court would have non-suited him on the ground that he is estopped from challenging the demand raised by the respondents in accordance with the rates fixed by the government. Therefore, the plea raised by the petitioner, who is sub-power of attorney of Surinder Singh Bajaj, is also liable to be negated on the same ground.
- (12) In any case, the fixation of price by the government and the consequential demand raised by respondent no. 2 cannot be declared illegal. This view of ours is fully supported by the judgments of the Supreme Court in Bareilly Development Authority and another v. Ajay Pal Singh and others, (3) and Preeta Singh v. Haryana Urban Development Authority and others (Supra) as well as the two judgments of this Court in Gurcharan Singh's case (supra) and Ajaib Singh's case (supra).
- (13) In Bareilly Development Authority and another's case (supra), a two Judges Bench of the Apex Court reversed the order of the Allahabad High Court quashing the demand of increased cost of dwelling

units. Rejecting the plea of estoppel raised on behalf of the allottees, their Lordships held:

- "The allottees after voluntarily accepting the conditions imposed by the BDA have entered into the realm of concluded contract pure and simple with the BDA and hence the allottees could only claim the right conferred upon them by the said contract and were bounded by the terms of the contract unless some statute steps in and confers some special statutory obligation on the part of the BDA in the contractual field."
- (14) In Preeta Singh's (supra), the Apex Court interpreted the provisions of the Punjab Urban Estate (Sale of Sites) Rules 1965 in the context of the challenge made by the appellant to the demand of additional amount raised by the Haryana Urban Development Authority and held as under:
 - "A conjoint reading of the above rules would clearly indicate that the allottee is liable to pay a sale price including the additional price and the cost incurred and also the cost of improvement of the sites. It is to be remembered that the respondent-HUDA is only a statutory body for catering to the housing requirement of the persons eligible to claim for allotment. They acquire the land, develop it and construct buildings and allot the buildings or the sistes, as the case may be. Under these circumstances, the entire expenditure incurred in connection with the acquisition of the land and development thereon is required to be borne by the allottees When the sites or the buildings sold after the development are offered on the date of the sale in accordance with the regulations and also conditions of sale."
- (15) In Gurcharan Singh's case (supra), the Division Bench consisting of M.S. Liberhan, J. (as his Lordship then was) and V.S. Aggarwal, J. referred to the decision of the Division Bench in D.S. Longia's case as well as that of the Supreme Court in Preeta Singh's case and observed that even though the situation created by the withdrawal of appeal is anomalous, the law laid down by the Supreme Court in Preeta Singh's case had to be followed.
- (16) In Ajaib Singh's case (supra), another Division Bench, of which one of us was a member, dealt with a case which is similar to the case in hand. A perusal of the order passed in that case shows that petitioner-Ajaib Singh challenged the demand of the balance price of the plot raised by the respondents on the ground of lack of jurisdiction

and arbitrariness. He relied on the judgment of the Division Bench in D.S. Longia's case. The respondents pleaded that the demand raised through the impugned notices represented the difference of price determined by the government and the provisional price already paid. They pleaded that the petitioner is bound to pay the difference between the provisional price and the sale price determined under Rule 4 of the Rules. This stand of the respondents is clearly borne out from the following extract of the order dated 21st May, 1997:

"The case set up by the respondents is that the petitioner had initially deposited the provisional price and by the impugned notices he has been called upon to pay the difference of the price determined by the government and the price already paid. The respondents have pleaded that the petitioner is bound to pay the difference between the provisional price and the sale price given in rule 4 of the Punjab Urban Estate (Sale of Sites) Rules, 1965. According to the respondents, the government has fixed the tentative price of the land at the rate of Rs. 520 per sq. yard and the allottees of 500 per sq. yards plots were required to pay the double rate of tentative price i.e. at the rate of Rs. 1040 per sq. yard. The respondents have relied on the judgment of the Division Bench of this Court in Gurcharan Singh v. State of Punbaj, C.W.P. No. 14105 of 1992 decided on 21st March, 1996.

(17) The Division Bench refused to quash the demand raised by the respondents and held:

"In our opinion, there is no reason why we should not follow the law laid down by the Supreme Court in Preeta Singh's case and by this Court in Gurcharan Singh's case. The withdrawal of the petition for Special Leave to Appeal filed against the judgment of the Division Bench in D.S. Longia's case (supra) cannot, in our opinion, be made a ground for not following the principles of law laid down in Preeta Singh's case. Thus, the first contention of the learned counsel for the petitioner is rejected.

We also do not find any merit in the submission of Shri Moudgil that the respondents have not disclosed the details of the method adopted by them for fixation of the price. In its judgment in D.S. Longia's case, the Division bench has quoted in extenso the mechanism evolved by the Government for fixation of the price and if the petitioner felt that there is any error in the formula adopted by the Government then he should have approached the Government by making a representation. Since that has not been done, he cannot be heard to say that the Government has erred in fixing the price."

- (18) The judgment of the Division bench in D.S. Longia's case cannot be made basis for giving relief to the petitioner bacause,
 - (a) the proposition laid down by the Division Bench can no longer be regarded as correct law in view of the pronouncement of the Apex Court in *Preeta Singh's case (supra)*;
 - (b) the judgment of the learned Single Judge in Gian Jyoti Educational Society V. Estate Officer, Urban Estate, Punjab and others (4) which was approved by the Division Bench did not have any bearing on the issue raised in D.S. Longia's case. A careful reading of the Judgment of Gian Jyoti Educational Society's case shows that the demand which was impugned in that case represented the additional price and not the tentative price. The learned Single Judge held that after fixation of tentative price, the additional price can be charged only if the compensation payable to the land owners was increased on a reference made under Section 18 of the Land Acquisition Act, 1894. This is clearly discernible from the following observations made by the learned Single Judge:

"Under Rule 2(aa) of the Rules, 1965, after the fixation of the tentative price the increase in the price could only be made in terms of additional price in a situation where the compensation awarded by the Collector with respect to the land was enhanced by the Court under a reference under S. 18 of the Land Acquisition Act, 1894 or in appeal before the Court. Where the land allotted to the petitioner had been acquired under the Land Acquisition Act and the tentative price had been fixed by the Government in terms of the rule, and the allottee was required to pay in addition to the tentative price only the additional price and there has been no increase or enhancement of the compensation which had become payable to the land owners on account of some award or judgment in appeal with respect to the land in question, there was no legal basis for making the quantum jump from Rs. 30 to Rs. 255 per square yard and the action of the authorities, therefore, in

increasing the rate of allotment is contrary to the provisions of the Act and the Rules and also arbitrary and could not be sustained."

- (19) As against this, the amount sought to be charged from the petitioners in D.S. Longia's case was not the additional price but the tentative price fixed in accordance with Rule 4 of the Rules. Therefore, the Division Bench was not right in applying the ratio of Gian Jyoti Educational Society's case (supra).
- (20) The argument of Shri Patwalia that the withdrawal of Special Leave Petition filed by the State Government against the judgment of this Court in D.S. Longia's case is sufficient to invalidate the notice Annexure P. 2 issued by the Estate Officer cannot be accepted for the following reasons:
 - (i) The withdrawal of Special Leave Petition was secured by the State Government ignoring the fact that in the order their Lordships of the Supreme Court had expressed doubts about the correctness of the impugned judgment by making the following observations:
 - "In the instant matter as also in the matters enumerated in the letter of Mr. G.K. Bansal, Advocate for the petitioners, dated January 25, 1994, seeking withdrawal of all these matters, we are constrained to remark that no reasons have been assigned as to why the State of Punjab is submitting to the impugned orders of the High Court which prima facie appear to us to be unsustainable. The direct result of the withdrawal would not only be compounding to an illegality but would otherwise cause tremendous loss to the State exchequer. We, therefore, direct that the reasons which impelled the State to seek withdrawal of these matters be placed before us in the form of an affidavit by the Chief Secretary, Punjab or the Secretary of the Department concerned justifying the step for seeking withdrawal."
 - (ii) In the affidavit filed by Shri R.S. Maan, the then Secretary of the Department, in the Apex Court in support of the government's plea for withdrawal of the petition for Special Leave to Appeal, a totally distorted version of the background in which the demand of price had been raised, was present before the Apex Court. It appears that he intentionally omitted to mention the fact that the allotments had been made to the

petitioners on provisional price while reserving the right to charge the price fixed by the government. Thus, Shri Malhotra appears to be right in his submission that withdrawal of the petition for Special Leave to Appeal was manipulated to help some influential persons and this should not be made a ground to invalidate the impugned notice, which is otherwise in accordance with law.

- (iii) Secondly, the withdrawal of petition for Special Leave to Appeal by the State Government cannot be made basis for granting similar relief to the petitioner because such withdrawal cannot preclude the respondents from projecting their case in a correct perspective.
- (21) The judgment of the Supreme Court in Haryana Urban Development Authority V. Ranjan Dhamina (5), relied upon by Shri Patwalia has no bearing on the facts of this case. A careful reading of that decision shows that the Apex Court was dealing with a case of demand of additional price and not the tentative price fixed by the government in terms of Rule 4 of 1965 Rules. Thus, that judgment cannot be of any assistance for deciding the question raised by the petitioner.
- (22) We also find considerable force in the submission of Shir Malhotra that the petitioner does not have the *locus standi* to challenge the notice sent to Surinder Singh Bajaj because she has not filed the copy of power of attorney executed in favour of Smt. Iqbal Kaur in order to show that the allottee had authorised her to execute a sub power of attorney.
 - (23) For the reasons mentioned above, the writ petition is dismissed.

R.N.R.

Before V.K. Bali & S.C. Malte, JJ
JAGJIT SINGH SANGWAN & OTHERS—Petitioners.

versus

STATE OF HARYANA & OTHERS—Respondents.

CWP 16098 of 1997

17th July, 1998

Constitution of India, 1950—Arts. 14 & 19—Haryana Co-operative Societies Act, 1984 (Amending Act No. 6 of 1995)—S. 28—Amendment