

the Act. No such thing has happened, and we are not called upon to answer academic questions which have not arisen. Nor has the vexed question posed by Mr. Bhup Singh any relevance to the precise question which has been referred to this Bench.

(16) For the foregoing reasons we answer the question referred to us in the affirmative. The case will now go back to the Bench which originally heard it (and referred it to us) for being decided in accordance with law.

R. S. Narula, C.J.—I agree.

Rajendra Nath Mittal, J.—I agree.

Man Mohan Singh Gujral, J.—I agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., Prem Chand Jain and S. C. Mittal, JJ.

SURJIT SINGH AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ No. 1713 of 1975.

July 31, 1978.

Punjab Urban Estates (Development and Regulation) Act (22 of 1964)—Section 3—Punjab Urban Estates (Sales of Sites) Rules 1965—Rule 5—Scheme for sale of plots in an Urban Estate advertised inviting applications—Applicants depositing ten per cent of sale price with their applications—Applications received in excess of the number of plots to be allotted—Allotment—Whether to be made on 'first come first served' basis—Rule 5—Whether excludes allotment by lots—Allotment to such applicants in subsequent schemes—Whether can be made at the enhanced rate.

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Held, that if the number of applications received are far more than the plots that are to be allotted under the scheme, the principle of 'first come first served' cannot be adhered to in the matter of allotment. The allotment under the scheme had to be made through the allotment committee constituted by the State Government. This committee found that the number of applications were far more than the plots to be allotted and in order to do justice to the applicants as well as to avoid any chance of favouritism, the allotment committee adopted the method of drawing lots which in the circumstances was the only just and proper method. Filing of the application with the deposit of the 10 per cent price of the plot as earnest money, could not give any right to the applicant to claim allotment of the plot on the basis of the principle of 'first come first served'. Sub rule (3) of rule 5 of Punjab Urban Estates (Sale of Sites) Rules 1965 only provides that when 10 per cent of the price had been tendered the State Government or such authority as it may appoint in this behalf may allot a site of the size applied for. But the language of the rule does not suggest that the principle of 'first come first served' has to be adopted, nor does it exclude the adoption of the method of drawing lots. The words 'may allot a site' cannot be read to mean 'shall allot a site' as that, in a given situation, can create such complications which may not be remediable. By filing an application in accordance with law, the applicant only gets a right of consideration of his application, but he does not get a vested right for allotment of the plot. The conditions laid down in the first scheme or the provisions of rule 5(3) do not give any right to the applicants to claim allotment of plots as a matter of right.

(Paras 10 and 11)

Held, that the price on which the plots were to be allotted under the first scheme ceased to be the price in respect of the plots which were to be allotted under the subsequent schemes. As the applicant wished that their names be retained for consideration at the time of subsequent allotment, they must pay the price which was increased later on taking into consideration the enhanced cost of acquisition of land and cost of development. The price fixed under the first scheme could not govern the subsequent allotments made by the State Government.

(Para 12)

Case referred by Hon'ble Mr. Justice M. R. Sharma, on 31st May, 1977 to a larger Bench for deciding a substantial question of law involved in the case. The Larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice S. C. Mital finally decided the case on 31st July, 1978.

Petition under Articles 226/227 of the Constitution of India praying that:—

- (a) *the records of the case may please be summoned for the proper disposal of the writ petition;*
- (b) *a writ of Certiorari quashing the impugned memorandum P/2 and proclamation be issued;*
- (c) *a writ of Mandamus or any other appropriate writ, direction or order be issued to respondents directing them to allot plots to the petitioners at Rs 20, Rs 19 and 18 per square yard as originally fixed in the scheme—vide annexure P/1;*
- (d) *any other suitable writ, order or direction which this Hon'ble Court may deem proper in the circumstances of the case be issued; and*
- (e) *cost of the petition be awarded.*

It is, further prayed that this writ petition may be accepted with costs and respondents directed to allot the plots to the petitioners at the original price as per their commitment—vide Annexure P/1.

It is further prayed that respondents may be restrained from allotting plots to other applicants as per announcement made in Annexure P/6 till the pendency of the writ.

G. S. Gandhi, Advocate, with Baldev Kapoor, Advocate, for the Petitioner.

Kuldip Singh, Advocate with R. S. Mongia, Advocate, for the Respondents.

JUDGMENT

Prem Chand Jain, J.

(1) This judgment of ours would dispose of C.W.P. No. 1713 of 1975, filed by Surjit Singh and others, C.W.P. No. 3136 of 1975 filed by B. N. Ganjoo and others; C.W.P. No. 4092 of 1976 filed by Hussan Lal and C.W.P. No. 4427 of 1976 filed by Ajit Singh Sually, as common question of law arises in all these petitions.

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(2) C.W.P. No. 1713 of 1975 filed by Surjit Singh and others came up for hearing before M. R. Sharma, J., on May 31, 1977. The learned Judge, after hearing the arguments, arrived at a conclusion that the case involved a substantial question of law and consequently referred the matter for decision to a larger Bench. That is how this petition, along with the other three petitions referred to above, has been placed before us.

(3) In order to appreciate the controversy, it is necessary to notice certain facts which are being narrated from C.W.P. No. 1713, of 1975 and read as under:—

(4) The Punjab Government notified a scheme on August 3, 1969, framed under the Punjab Urban Estates (Development and Regulation) Act, 1964 (hereinafter referred to as the Act) and the Punjab Urban Estates (Sale of Sites) Rules, 1965 (hereinafter referred to as the Rules), for setting up Urban Estates at various places in Punjab, including Mohali near Chandigarh. The petitioners, who were interested to purchase the plots in response to the said scheme which was widely advertised, applied within the time specified, i.e., by August 31, 1969, for purchase by allotment of plots measuring $7\frac{1}{2}$ Marlas to 1 Kanal in the Urban Estate, Mohali, and enclosed with their respective applications demand draft covering 10 per cent of the sale-price according to rule 5 of the Rules. After the submission of the applications, the petitioners waited for allotment of the plots, but did not hear anything from the Government. Thereafter, the petitioners learnt that arbitrary allotments had been made by drawing lots in favour of certain favourites of the respondents in contravention of the provisions of the scheme, the Act and the Rules, and in this manner, the principle of 'first come first served' had been completely ignored.

(5) It is further stated that the respondents instead of making allotments to the petitioners in accordance with the terms and conditions of the scheme earlier published, have been arbitrarily making fresh schemes with regard to the allotment of plots in Mohali, and under the new scheme the petitioners have now received a memorandum (copy Annexure P. 2 to the petition) from the Estate Officer, Urban Estates, Punjab, Chandigarh, calling upon the petitioners to remit the balance of the price of the land fixed

at Rs. 58 per square yard. The petitioners, through this writ petition, have called in question the scheme made by the respondents demanding an inflated rate of Rs. 58 per square yard from the petitioners, and also for drawing lots and allotting plots to the persons who had submitted applications after the date on which the applications were filed by the petitioners.

(6) In pursuance of the notice of motion issued to the respondents, written statement was filed by Gursewak Singh Sekhon, Estate Officer, Urban Estates, Punjab, Chandigarh, on behalf of respondents Nos. 1 to 3. Besides taking certain preliminary objections, the facts stated in the petition have been controverted. In the written statement, it has been averred that offers were invited for the sale (by allotment) of 636 plots, as advertised, in the Mohali Urban Estate along with plots in the various other Urban Estates in the State; that the tentative price fixed in the advertisement related only to 636 plots offered for sale by allotment; that the principle of 'first come first served' could not be adhered to as the number of applications received was more than the number of available plots; that in this situation, the method of drawing lots was adopted by the allotment committee in order to do justice to all the applicants and to avoid any misgiving in the public or chance of favouritism to anyone; that in the applications that were submitted by the petitioners, one of the stipulations accepted by them was that in the event of non-allotment of plots in the first phase their earnest money may be retained by placing the applicants names on the waiting list for allotment in the next phase; that the price of plots could be enhanced in respect of the allotments which were subsequently made due to the increased cost of acquisition of land and cost of development; that the rates advertised earlier were available only in the case of 636 plots offered for sale and in case the petitioners had been successful in the draw held for the allotment of those plots, they would have got the plots at the rate advertised; that subsequently, the plots were to be allotted to an applicant at the current rate to be fixed by the Government and that no change in the rates of plots had been made with retrospective effect.

(7) One of the main preliminary objections which has been raised, is that the petitioners could not invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India as no writ petition on the basis of a contract could be filed.

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(8) Replication was filed by the petitioners in which the allegations made in the written statement have been controverted and the stand taken in the petition has been reiterated.

(9) With the permission of the Court, the Estate Officer was allowed to file a rejoinder to the replication in which the averments made in the replication have been controverted and the stand taken in the written statement has been reiterated.

(10) The main arguments were addressed by Mr. Harnam Singh Wasu, Senior Advocate. His first contention was that lots were not contemplated in the scheme that was advertised by the respondents and that the rules contemplated that the allotment should have been made on the principle of 'first come first served'. After hearing the learned counsel for the parties, I am of the view that there is no merit in this contention of the learned counsel. There is no gain-saying that the number of applications was far more than the plots that were to be allotted under the first scheme (copy Annexure P. 1 to the petition). The contention of the learned counsel that the principle of 'first come first served' should have been adhered to, on the face of it, appears to be fallacious. The respondents had fixed a particular date by which the applications were to be filed after complying with all the formalities. In the advertisement (copy Annexure P. 1) conditions are given which had to be complied with while filing the application for allotment. In the scheme or in the Rules, it is nowhere stated that the allotments had to be made on the basis of the principle of 'first come first served'. Under clause 4 of the scheme, the allotment had to be made through the allotment committee constituted by the State Government. The allotment committee found the number of the applications far more than the plots to be allotted. In order to do justice to the applicants, as well as to avoid any chance of favouritism, the allotment committee adopted the method of drawing lots which, in the circumstances of the case was the only just and proper method. Filing of the application with the deposit of the 10 per cent price of the plot as earnest money, could not give any right to an applicant to claim allotment of the plot on the basis of the principle of 'first come first served'. During the course of arguments, a question was put to the learned counsel for the petitioners as to what would be the position of

allotment in a situation where 1,000 applicants file applications complete in all respects at one and the same time on one day, and that in such a situation, how would the principle of 'first come first served' be given effect to ? The learned counsel was unable to give any reply and rest contended by saying that was not the situation in the instant case.

(11) The learned counsel in support of his contention also drew our attention to sub-rule (3) of rule 5, which reads as under :—

“When 10 per cent of the price has been tendered the State Government or such authority as it may appoint in this behalf may allot a site of the size applied for. Intimation of such allotment shall be given to the applicant(s) by registered post giving the number, dimensions, area and sale price of the site allotted.”

What was sought to be argued by him was that the moment 10 per cent of the price was tendered, the authority was required to allot a site of the size applied for. It was on the strength of this sub-rule that the principle of 'first come first served' was pressed into service. I am afraid, I am unable to agree with the learned counsel. The sub-rule referred to above, only provides that when 10 per cent of the price had been tendered, the State Government or such authority as it may appoint in this behalf, may allot a site of the size applied for. But the language of the rule does not suggest that the principle of 'first come first served' has to be adopted, nor does it exclude the adoption of the method of drawing lots, as has been done in the instant case. The words 'may allot a site' cannot be read to mean 'shall allot a site' as that, in a given situation, can create such complications which may not be remediable. By filing an application in accordance with law, the applicant only gets a right of consideration of his application, but he does not get a vested right for allotment of the plot. The conditions laid down in the first scheme or the provisions of rule 5(3) do not give any right to the applicants to claim allotment of plots as a matter of right. There is nothing in the scheme or the Act or the Rules which requires the adoption of the principle of 'first come first served' at the time of allotment, or debars the Government from adopting the method of drawing lots. The petitioners have not been able to lay foundation for establishing

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their right which could legally be enforced and the petitioners have completely failed to make out a case for the exercise of our extraordinary jurisdiction under Article 226 of the Constitution of India.

(12) It was next contended by the learned counsel that the price could not be claimed by the respondents at enhanced rate as the price that was fixed under the first advertisement should have been the price for the plots to be allotted under the subsequent schemes. This contention of the learned counsel again is without any merit. The price on which the plots were to be allotted under the first scheme ceased to be the price in respect of the plots which were to be allotted under the subsequent schemes. In the instant case, as has been alleged in the written statement, the petitioners themselves in paragraph 8 of the application, agreed that in the event of non-allotment of plots in the first phase their earnest money be kept by placing their names on the waiting list for allotment in the next phase. I fail to understand as to how the same price could govern the allotment in the next phase. The price related to the allotment of 636 plots only and if the petitioners had been successful in getting the allotment of any plot in their favour, then they would have got the allotment of that plot on the basis of the price so advertised. But the petitioners cannot take benefit of that price in respect of the plots which were allotted on the basis of subsequent schemes. If they had not agreed for placing their names on the waiting list for the allotment of plots in the next phase, they even would not have been eligible to be considered for allotment later on. As they wished that their names be retained, for consideration at the time of subsequent allotment, they must pay the price which was increased later on taking into consideration the enhanced cost of acquisition of land and cost of development. The price fixed under the first advertisement could not govern the subsequent allotments made by the State Government. In this view of the matter, as earlier observed, the contention of the learned counsel is without any merit.

(13) No other point was urged.

(14) For the reasons recorded above, these writ petitions fail and are dismissed; but in the circumstances of the case, I make no order as to costs.

S. S. Sandhawalia, C.J.—I agree.

S. C. Mital, J.—I agree.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., S.C. Mital, D. B. Lal, Harbans Lal and S. P. Goyal, JJ.

LACHHMAN SINGH and others,—Appellants.

versus

GURMIT KAUR ETC.—Respondents.

Regular First Appeal No. 336 of 1964.

October 12, 1978.

Fatal Accidents Act (XII of 1855)—Sections 1-A and 2—Fatal accidents—Assessment of quantum of damages—Principles stated—Grant of solatium by way of compensation—Whether permissible—Method of multiplying annual dependency by suitable multiplier—Whether to be adopted—Suitable multiplier—Determination of—Interest theory—Whether a correct basis to determine compensation.

Held, that the following principles be observed and followed while assessing compensation in cases of fatal accidents:—

- (1) The compensation to be assessed is the pecuniary loss caused to the dependents by the death of the person concerned, and no compensation is to be assessed on any extraneous consideration like love, affection, mental agony or any such similar consideration. Solatium is alien to the concept of compensation.
- (2) For the purpose of calculating the just compensation, annual dependency of the dependents should be determined in terms of the annual loss accruing to them due to the