REPORTABLE

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. .....APPELLANT(S)

VERSUS

CHARANJIT KAUR .....RESPONDENT(S)

W I T H

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

A N D

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

J U D G M E N T

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

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, 1996[6] 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'

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

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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
1	2	3
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.

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(1)(o) of the Consumer Protection Act, 1986[10]. 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

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

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 Others***[13]. 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

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

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-

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

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: