

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1.

CWP-6054-2000(O&M)
Date of Decision: October 04, 2016
The Chandigarh Sector 34, Cooperative House Building Society
.....Petitioner

Versus

Chandigarh Administration and others
.....Respondents
2.

CWP-8675-2002 (O&M)
The R.C.S.Punjab Employees Cooperative House Building Society
.....Petitioner

Versus

Chandigarh Administration and others
.....Respondents
3.

CWP-9189-2002 (O&M)
Government Employees Cooperative House Building Society
.....Petitioner

Versus

Chandigarh Administration and others
.....Respondents
4.

CWP-11315-2002 (O&M)
The G.B.S.Workers Co-operative House Building Society
.....Petitioner

Versus

Chandigarh Administration and others
.....Respondents
5.

CWP-13758-2002
The Shantivan Co-operative House Building Society
.....Petitioner

Versus

Chandigarh Administration and others
.....Respondents
6.

CWP-15834-2002 (O&M)
The Chandigarh Saravhitakri Co-operative House Building Society
.....Petitioner

Versus

Chandigarh Administration and others
.....Respondents
7.

CWP-15949-2002 (O&M)
The Blossom Co-operative House Building Society
.....Petitioner

Versus

Chandigarh Administration and others
.....Respondents
- and

8.

CWP-7756-1999 (O&M)
Indian Express Employees Cooperative House Building Society
.....Petitioner

Versus

Chandigarh Administration and others
.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDIP AHLUWALIA**

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|----|---|---------|
| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |
| 4. | To be referred to the Reporters or not? | Yes/No |
| 5. | Whether the judgment should be reported in the Digest? | Yes/No. |

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Present: Mr.Surender Lamba, Advocate
Mr.I.S.Saggu, Advocate and
Mr.Gurmukh Singh, Advocate
for the petitioners.

Mr.Suvir Sehgal, Sr.Standing Counsel, UT, Chandigarh &
Mr.Jaiveer Chandail, Advocate,
Mr.Vikas Chatrath, Standing counsel and
Mr.Kamal K.Sharma, Addl.Standing counsel
for UT Chandigarh.

Ms.Deepali Puri, Advocate
for UT Chandigarh in CWP No.15834 and 15949 of 2002 and
for respondent-MC in CWP No.7756/1999, 9189/2002,
13758/2002 and 8675/2002 .

Ms.Bhawna Joshi, Advocate
for CHB in CWP No.7756/1999,
Mr.Indresh Goel, Advocate
CHB in CWP Nos.13758 and 11315 of 2002 and
Mr.Ashish Rawal, Advocate
for CHB.

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SURYA KANT, J.

[1] This order shall dispose of the above captioned writ petitions as the point in issue involved in all the cases is common in nature.

[2] The petitioners are Cooperative House Building Societies to whom land for construction of multi-storey residential apartments was allotted by Chandigarh Administration through Chandigarh Housing Board. The apartments constructed by these Societies are now occupied by their members.

[3] The question that arises for consideration in these cases is

whether the petitioner-Societies are liable to pay charges for installation of their respective Transformers or such Transformers are required to be installed at the expense of Chandigarh Administration (Electricity Department)/Housing Board? The allied issue to the same effect pertains to 'Internal Development Works' also, namely, whether the respondent-Housing Board is obligated to execute/complete such works in view of the fact that petitioner-societies are said to have paid Rs.250/- per square yard for completion of Development Works?

[4] For the correct appreciation of controversy, the facts are being extracted from CWP-6054-2000.

[5] Chandigarh Administration vide Notification dated 28.05.1991 (Annexure P2) notified its Scheme for regulating allotment of land to Co-operative House Building Societies in the Union Territory, Chandigarh. The scheme was known as 'Chandigarh Allotment of Land to Co-operative House Building Societies Scheme, 1991'. Para 4 of the Scheme contemplated that "the Chandigarh Administration shall allot land on chunk basis to the Chandigarh Housing Board for its further allotment to the eligible Co-operative House Building Societies.....". It further stipulated that "the land so allotted shall be planned in consultation with the Chief Architect and Secretary, Architecture Department, Union Territory, Chandigarh, and developed by the Engineering Department as usual. The proposed plan shall be got sanctioned from the Chief Administrator, Chandigarh, as per the provisions of the Punjab Capital (Development and Regulation) Building Rules, 1952 as amended to date."

[6] Thereafter the Chandigarh Administration vide Memo dated 16.08.1991 (Annexure P3) informed the Chandigarh Housing Board (In short,

`the Board') its decision to allot land @ Rs.500/- per square yard on chunk basis to the Board for its further allotment to eligible Cooperative House Building Societies. It was further stipulated that the Board will allot the land to eligible Cooperative House Building Societies @ Rs.750/- per square yard, which was fixed **“taking into account the land for the roads, services including 10% administrative charges by the Chandigarh Housing Board.”**

[7] Pursuant to these decisions, petitioner-Society was allotted plot No.4 in Sector 49-A, Chandigarh on 04.06.1993 (Annexure P10). The allotment was on 99 years lease hold basis and subject to the terms and conditions with respect to payment of premium as well as Annual Ground Rent for the first 33 years and then for subsequent years. The allotment price was tentative and subject to further revision in the event of enhancement of compensation for the land.

[8] Subsequently, Chandigarh Administration vide Memo dated 17.05.1994 (Annexure P14) conveyed the other terms and conditions which were required to be incorporated by the Board while making allotment of land to Cooperative House Building Societies. According to Clause 7 of that decision, the Internal Development Works **“within chunk of land”** were agreed to be carried out by Engineering Department on deposit of Rs.210/- per square yard by the Board for that purpose.

[9] The Board vide Memo dated 08.12.1994 (Annexure P17) revised some of the terms and conditions of allotment of the original allotment letter dated 04.06.1993 but Clause 12 of the original terms and conditions remained intact and it reads as follows:

“12. The provision of facilities and estate services within the land allotted to society shall be the responsibility of the society itself which shall also be responsible for the maintenance and upkeep of common areas/services as also for the collection and depositing of individual water, electricity dues etc. to the concerned authorities.”

[10] Even the modified terms and conditions, though not relevant here, were introduced, well before the start of construction or even approval of Building Plans.

[11] The Engineering Department of Chandigarh Administration issued a Notification dated 14.02.2000 (Annexure P-29) in purported exercise of powers conferred by Section 23 read with Section 51-A of the Indian Electricity Act, 1910 to introduce the Electricity Tariff rates. The Notification contains a separate Schedule of Tariff 'for Co-operative House Building Societies.' Clauses 1(a), (b), (c) and (d) of the afore-stated Notification are to the following effect:-

“(a) A single point connection shall be given to the Registered Cooperative House Building Societies and billing will be done at HM Metering System.

(b) The entire responsibility of installation, operation and maintenance of transformer(s), L.T. Distribution Network including individual metering billing and collection of revenue shall be that of Promoter/Society.

(c) Society/Promoter would be responsible for payment of bills so raised by CEO from time to time as per provisions of the tariff for such connections.

(d) The common services i.e. lifts, drinking water/sewerage pumps, street lighting etc. installed in the complex will be fed from the same connection.”

[Emphasis by us]

[12] It may be seen that the tariff schedule has put the responsibility of installation and maintenance of Transformer(s), L.T. Distribution Network

including individual metering etc. on the Cooperative House Building

Societies.

[13] It was in deference to the said Notification that the petitioner-Societies were asked to install the transformer(s) at their own expenses which prompted them to initiate these proceedings challenging the above-stated Notification dated 14.02.2000 (Annexure P-29) to the extent it obligates a Society to install its own transformer or other related equipments.

[14] The primary thrust on behalf of the petitioner-societies is that since electricity connections for domestic consumption throughout the Union Territory of Chandigarh are being provided at the door step of all the residents at the State expense without insisting for installation of individual or group transformer(s) at the private expenses, the action of the respondents in adopting a different yardstick qua the Group Housing Societies who have been asked to install their own transformer(s), is wholly discriminatory and cannot stand to the test of Article 14 of the Constitution. It is contended that residents of Group Housing residential Colonies developed by the Board get electricity supply at the expense of the Administration or the Board and none of such Colonies have been compelled to install their own transformers.

[15] The 2nd plea taken by the petitioners is that the allotment of site(s) was made much before the impugned Notification was issued and terms and conditions of such allotment expressly stipulate the execution of Development Works. The allotment being a binding contract, such terms and conditions cannot be unilaterally altered and that too with retrospective effect. It is also urged that the Notification would apply in respect of those societies only to whom land is allotted after 14.02.2000.

from the Societies towards 'development works' as is inferable from various clauses of the communications/Notifications, reproduced above, and the charges so levied are comprehensive enough to include supply of electricity at the door step of the Society.

[17] Learned senior standing counsel for UT Administration, on the other hand, maintains that the petitioner's claim is wholly misconceived and misdirected as there is no term or condition in the allotment letter or in any other subsequent communication to bind the Administration or the Board to provide electricity infrastructure to the Societies at the cost of the State. He submits that the impugned Notification has been issued in exercise of statutory powers and such powers are not subservient to any bilateral contract between the parties. He explains that since the Notification has been applied uniformly to all Group Housing Societies as a distinct class, the plea of discrimination has no legal or factual basis. Learned State counsel denies the claim of petitioner-Societies that Rs.250/- per square yard charged from them included the expenditure to be incurred on the power supply for domestic consumption.

[18] Having heard learned counsel for the parties at a considerable length and after going through the record with their able assistance, we do not find any merit in these writ petitions so far as the challenge to Notification dated 14.02.2000 (Annexure P29) is concerned. We say so for the reasons that there is no binding contract between the parties enforceable through a Court of law under which the respondents are obligated to provide power supply for domestic consumption at the State expense. A perusal of the allotment letter or the Notification issued prior thereto reveal that internal development works of the society are required to be carried out by the

Societies whereas external development works, namely, roads, water supply, electricity, sewerage connectivity are to be executed by State Agency on “**chunk basis**”, namely, for the entire area comprising Plots allotted/earmarked for Group Housing Societies and not for any individual Society.

[19] The decision dated 16.08.1991 (Annexure P3) whereby Chandigarh Administration allotted land @ Rs.500 per square yard to the Chandigarh Housing Board on chunk basis for further allotment to House Building Societies @ Rs.750/- per square yards, leaves no room to doubt that the real cause of difference in the allotment rate was that the Administration gave land to the Housing Board on “**chunk basis**” whereas the Societies were to be allotted land by carving out the ‘plots’. A substantial part of the land was bound to be utilized for construction of roads and public services like sewerage, water supply or electricity polls etc. due to which the cost of allotment got escalated and was fixed for Rs.750/- per square yard. No charges were levied on the societies towards facilities like infrastructure for the electricity supply or for any other such amenity. No inference can thus be drawn that the land was allotted to the Societies at a higher rate of Rs.750/- per square yard so as to compensate the Board for the costs to be incurred in providing the possible amenities free of cost.

[20] There is no other document, agreement or notification brought to our notice which might suggest that Chandigarh Administration or its Agency have charged the Societies for the purpose of installation of transformers or related electric equipments. The occasion to ask the Societies to install transformers for an uninterrupted supply arose only after the construction was complete and the apartments stood occupied. In the absence of any agreement

to the contrary, the petitioners cannot run away from their liability to install or pay for installation of the transformers and other electric equipments.

[21] Still further, the obligation to install transformers at their own cost has been created in exercise of statutory powers. Such powers under the Statute are independent of any bilateral agreement between petitioners and the Board. Therefore also, principle of estoppel etc. cannot be invoked against the respondent-authorities.

[22] In Hyderabad Engineering Industries Ltd. Vs A.P.State Electiriy Board (1988) 2 SCC 181, the Hon'ble Supreme Court upheld the unilateral change in tariff and conditions for the supply of electricity to Housing Societies, for the reasons like higher transmission loss etc. and the placing of onus on the consumers to purchase and maintain transformers in the case of bulk supply of power, was upheld.

[23] In Indian Aluminium Co.Ltd. Vs Karnataka Electricity Board(1992) 3 SCC 580, the Apex Court has held that there can be no estoppel on the State to provide electricity at a rate prescribed under an agreement, for the principle of promissory estoppel cannot be attracted in the sphere of statutory powers.

[24] The petitioner's claim that Rs.250/- per square yard were charged by the Board to provide any specified works is totally presumptuous and is a seriously debatable issue. There is no express clause to this effect which can be enforced through a writ Court.

[25] For the reasons afore-stated, we do not find any merit in these writ petitions and the same are accordingly dismissed. If the petitioner-

Societies have deposited any amount under the directions of this Court which

is lying in the FDR with State Bank of Patiala, High Court Branch, Chandigarh, the said amount is directed to be released in favour of the Executive Engineer, Operation Division No.III alongwith interest accrued thereupon. However, if the amount deposited by the petitioner-Societies or lying in the Bank is in excess to the actual expenditure incurred by the respondents in the installation of Transformers, such excess amount shall be reimbursed to the Societies within one month.

(SURYA KANT)
JUDGE

October 04, 2016
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