

CASE NO.:
Appeal (civil) 5834 of 1998

PETITIONER:
CHANDIGARH HOUSING BOARD AND ANOTHER

Vs.

RESPONDENT:
GURMIT SINGH

DATE OF JUDGMENT: 09/01/2002

BENCH:
V.N. Khare & B.N. Agrawal

JUDGMENT:

V.N. KHARE, J.

The appellant herein, the Chandigarh Housing Board (hereinafter referred to as 'the Board') is constituted and established under the provisions of the Haryana Housing Board Act (hereinafter referred to as 'the Act') as extended to the Union territory of Chandigarh. One of the functions, amongst others, assigned to the Board is to develop land and construct houses and flats and sell out them under a scheme to the general public. The Board in exercise of the power conferred by Section 74 of the Act has made Regulations known as "Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1976 (hereinafter referred to as the Regulations). In the year 1986, the Board floated a housing scheme for general public, for allotment of category I, II and III flats. The eligibility conditions as per terms and conditions laid down in the brochure were that the applicant should be either a domicile of Union Territory of Chandigarh or should have been a bona fide resident of Union Territory of Chandigarh for a period of at least 3 years on the date of submitting the application. On 3.3.87, the respondent herein, submitted an application to the Board for allotment of category I flat. It is alleged that in the said application form, the respondent did not furnish any information against the relevant column No. 13 regarding his being a bona fide resident of Chandigarh and his period of stay in Chandigarh. It is also alleged that in the sworn application form, the respondent did not state since when he was a bona fide resident of Chandigarh. However, in column No. 12 of the application form, the respondent stated that he is a domicile of Union Territory of Chandigarh. It is further alleged that on 20.10.1989 the Board on the premise that the respondent was a domicile of Union Territory of Chandigarh allotted a second floor in the category I flats. Subsequently, on 1.7.91, the Board asked the respondent to submit the domicile certificate or any other proof in that regard. In response to the said letter, the respondent, on 24.7.91 submitted a residential certificate dated 18.7.91. It is not disputed that the respondent did not furnish the certificate to the effect that he is a domicile of Union Territory of Chandigarh and, therefore, the Board, on 30.9.91 again asked the respondent to furnish the particulars to determine his eligibility for the allotment of a flat. The respondent, in response to the said letter furnished documents i.e. copy of certificate showing his having passed 10 + 2 examination from St. Columbus' School, New Delhi in 1982, copy of possession certificate dated 20.10.74 of an Industrial Plot No. 182/14, Industrial Area, Phase I, Chandigarh allotted to M/s. Freezing Industries Pvt. Ltd. wherein the respondent claimed to have shares and also various income tax assessment orders beginning for the financial years 1986-87 to

1990-91. It further appears that the Board was still not satisfied with the eligibility of the respondent for allotment of the flat and, therefore, the Board on 17.11.92 again wrote to the respondent to furnish further information and documents to satisfy his eligibility with regard to his residence. The respondent, in response to the said letter did not furnish any document to prove that he is a domicile of Union Territory of Chandigarh. Under such circumstances, the Board on 17.11.93 issued a show cause notice to the respondent calling upon him as to why the allotment of flat in his favour be not cancelled as he failed to satisfy the eligibility condition of being a domicile of Union Territory of Chandigarh. In between time, on 25.9.96, the respondent filed a writ petition under Article 226 of the Constitution before the Punjab & Haryana High Court for direction to the appellant Board to take a decision within three months about the handing over the possession of the flat in question to him. The High Court issued a direction as prayed for, and in compliance thereof, the Board after giving opportunity to the respondent, on 16.5.97, cancelled the allotment of the flat. The respondent, thereafter, filed another writ petition before the High Court challenging the order of cancellation of allotment of the flat. The appellants herein filed a counter affidavit/writ statement and contested the writ petition. The High Court was of the view that since the respondent has already furnished a residential certificate to the effect that he is a bonafide resident of Chandigarh for last more than three years, and further the respondent being an Indian citizen, is a domicile of Union Territory Chandigarh and, as such, the order passed by the Board canceling the allotment of the flat was erroneous. In that view of the matter, the writ petition was allowed and the order canceling the allotment of the flat was set aside. It is against the said judgment and order of the High Court the Board has preferred this appeal.

Shri L.K. Pandey, learned counsel appearing for the appellant Board, urged that once the respondent opted for an allotment of the flat on the eligibility criteria of being domicile of Union Territory Chandigarh in the application form submitted by him, it was not open to him to justify under the eligibility criteria that he is bonafide resident of Chandigarh for last three years and, therefore, the view taken by the High Court was erroneous. It was also urged that the decision of this Court in Dr. Pradeep Jain and ors. etc. vs. Union of India and ors. 1984 (3) SCC 654 has no application inasmuch as the said decision runs counter to the case of the respondent and, therefore, the view taken by the High Court was erroneous. However, Shri M.N. Rao, learned senior counsel appearing on behalf of the respondent made an effort to support the judgment of the High Court on the strength of the decision in Dr. Pradeep Jain's case (supra).

Coming to the first argument of learned counsel for the appellant, it is necessary to refer to certain Regulations which are relevant to the present controversy. Regulation 2 (15) defines eligible persons, which runs thus:

" 2(15) 'Eligible Person' means a person who is entitled to the purchase of property in accordance with the provisions of the scheme and these regulations."

Regulation 6 provide for eligibility of allotment, which runs thus:

" (1) A dwelling unit or flat in the Housing Estates of the Board shall be allotted only to such person who or his wife/her husband or any of his/her dependent relations including unmarried children does not own on free-hold or lease-hold or on here-purchase basis, a residential plot or house in the Union Territory of Chandigarh or in any of the Urban Estates of Mohali or Panchkula. Similarly persons who have acquired a house/residential site anywhere in India through Government/Semi-Government/Municipal Committee/Corporation/Improvement Trust at concessional rate in their

name or in the name of any dependent member of their family will not be eligible to apply to the Board for allotment of a dwelling unit or flat. Subject to the above provisions, the applicant should be a domicile of U.T. of Chandigarh or should have been a bona fide resident of U T of Chandigarh for a period of at least three years on the date of submitting the application.

(2) The applicant shall furnish an affidavit in the prescribed form with regard to his eligibility along with the application. In the event of the affidavit being found false at any stage, the Board shall be entitled to cancel the registration or the allotment of dwelling unit or flat as the case may be, and to forfeit the deposit received with the application and all the payments made to the Board thereafter.

(3) The Board shall have the right to impose any additional condition of eligibility as may be determined and notified from time to time."

The aforesaid Regulations show that any person who is either a domicile of Union Territory of Chandigarh or is a bona fide resident of Union Territory of Chandigarh for a period of at least three years on the date of submitting an application, is qualified to apply for allotment of flat under the scheme floated by the Board. Under sub-Regulation (2) of Regulation 6, an applicant for allotment of a flat is required to furnish an affidavit in the prescribed form with regard to his eligibility along with the application. The said Regulation further provides that in the event of the affidavit being found false at any stage, the Board is entitled to cancel the registration or cancellation of the dwelling unit of the flat, as the case may be, and to forfeit the money received with the application and all the payments made to the Board thereafter. Columns 12 and 13 of the application form of registration of intending purchasers of flats run as under:

" 12. Whether a domicile of Union Territory of Chandigarh. Yes.

13. Whether a bona fide resident of Chandigarh. If so, give period of stay in U.T. of Chandigarh i.e. from ..to .."

The respondent in Col. 12 stated 'yes', meaning thereby that he is a domicile of U.T. of Chandigarh. Whereas Col. 13 was left blank. In the affidavit/declaration, at the foot of the application form at column no.(iii), the respondent did not state as to since when he was a bona fide resident of U.T. of Chandigarh. On the other hand, he ticked col. (iv) indicating that he was a domicile of U.T. of Chandigarh. The aforesaid application form, as filled in by the respondent shows that he was claiming to be eligible for allotment of flat on the basis that he was a domicile of U.T. of Chandigarh. The Board repeatedly asked the respondent to furnish the certificate to the effect that he was a domicile of U.T. of Chandigarh which he failed to furnish. The only allegation made by him was that he has applied to the competent authority/Sub-Divisional Magistrate for issue of domicile certificate, but the same was not issued to him and, therefore, he relied upon the residential certificate issued by the Sub-Divisional Magistrate. The respondent having unequivocally claimed to be a domicile of U.T. of Chandigarh for satisfying the eligibility criteria, it was not open to him to fall back on the second eligibility criteria of being a bonafide resident of Chandigarh for last more than three years. The High Court fell in error in overlooking this aspect of the matter while setting aside the order passed by the Board canceling the allotment of the flat in favour of the respondent. We, therefore, find that the view taken by the High Court was erroneous.

So far as the second argument is concerned, the question that arises is what meaning is required to be assigned to the expression 'domicile' of U.T. of Chandigarh. In Whicker vs. Hume [(1859) 28 I.J. Ch. 396, 400] it was held thus:

"Domicile meant permanent home, and if that was not understood by itself no illustration could help to make it intelligible."

Dicey on Conflict of Laws, stated thus:

" The domicile of origin, though received at birth, need not be either the country in which the infant is born, or the country in which his parents are residing, or the country to which his father belongs by race or allegiance, or the country of the infant's nationality."

Udny vs. Udny [1869 L.R. 1 Sc.& Div.441, 457], it was held thus:

"The law of England, and of almost all civilised countries, ascribes to each individual at his birth two distinct legal statuses or conditions: one by virtue of which he becomes the subject of some particular country binding him by the tie of national allegiance, and which may be called his political status, another by virtue of which he has ascribed to him the character of a citizen of some particular country and as such is possessed of certain municipal rights, and subject to certain obligations, which latter character is the civil status or condition of the individual, and may be quite different from his political status. The political status may depend on different laws in different countries; one single principle, namely, that of domicile, which is the criterion established by law for the purpose of determining civil status. For it is on this basis that the personal rights of the party, that is to say, the law which determines his majority or minority, his marriage, succession, testacy or intestacy, must depend."

In D.P. Joshi vs. The State of Madhya Bharat and another 1955 (1) SCR 1215, it was held that the expression 'domicile of a person' meant his permanent home. In Dr. Pradeep Jain's case (supra), it was held that in view of Article 5 of the Constitution, every person who is a domicile in the union territory of India is a citizen of India and a citizen of India could be a domicile of any State forming part of India. However, this Court in Dr. Pradeep Jain's case (supra) brought a distinction between the technical meaning of the expression 'domicile' and the loose or popular meaning of the expression 'domicile' and in that context, this Court held that if a person is residing permanently or indefinitely in a particular state he would be domicile of that State in popular or loose sense.

A perusal of Regulation 6 shows that one of the eligibility criteria for submitting an application for allotment of flat is that the applicant should be domicile of union territory of Chandigarh. The expression 'domicile' employed in Regulation 6 has not been used in technical sense, as referred to in Article 5 of the Constitution or as stated by this Court in the context of Article 5 of the Constitution in Dr. Pradeep Jain's case (supra). The word 'domicile' in Regulation 6 has been employed in popular or loose sense in contradiction to the words "bonafide resident of Chandigarh for a period of

at least three years". The popular and loose meaning of the expression 'domicile' in regulation 6 is permanent home or intended to live permanently or indefinitely within the Union Territory of Chandigarh. We are, therefore, required to assign the meaning of the expression 'domicile' in regulation 6 not in technical sense in which it is used in private international law but what is understood in popular or loose sense. Applying the popular meaning of the expression 'Domicile' it means a person must be having permanent home in Chandigarh or he being there for years with the intention to live permanently or indefinitely.

We have already noticed that the respondent had applied for allotment of flat on the premise that he being a domicile of U.T. of Chandigarh, is eligible to apply for allotment of the flat and he failed to furnish such a certificate to the Board. The respondent did not apply for allotment under the eligibility criteria of being a bonafide resident of U.T. of Chandigarh for the last three years and, therefore, the respondent was not eligible for allotment of the flat and the Board, therefore, was justified in canceling the allotment of flat in his favour. The High Court fell in error in holding that in view of Dr. Pradeep Jain's case, the respondent being citizen of India is a domicile of Union Territory of Chandigarh.

For the aforesaid reasons, we are of the view that this appeal deserves to succeed.

Before we part with the case, we would like to observe that the respondent has alleged that he applied to the competent authority or the Sub-Divisional Magistrate for issue of domicile certificate, but the same was not issued to him and, therefore, he could not furnish the same before the Board. Under such circumstances we direct that if the respondent approaches the competent authority or the Sub-Divisional Magistrate for issue of a domicile certificate within one month from issue of certified copy of this judgment, the competent authority after due enquiry and also after hearing the Board shall consider the application of the respondent. If it is found that the respondent is a domicile of U.T. of Chandigarh, the concerned authority shall issue a domicile certificate to him. In the event the competent authority issues a domicile certificate to the respondent, the appellant Board shall re-consider the matter again.

For the aforesaid reasons, the judgment and order of the High Court under challenge is set aside. The appeal is allowed. No costs.

.J.
(V.N.Khare)

.J.
(B. N. Agrawal)

January 09, 2002