

CASE NO.:
Appeal (civil) 705-706 of 2006

PETITIONER:
Rajasthan Housing Board through its Chairman

RESPONDENT:
Shivraj Singh Bhandari

DATE OF JUDGMENT: 04/04/2006

BENCH:
B.P. Singh & Altamas Kabir

JUDGMENT:
J U D G M E N T

ALTAMAS KABIR, J.

These two appeals filed by the Rajasthan Housing Board (for short 'the Board') through its Chairman, are directed against the common judgment dated 31st January, 2005, passed by the Division Bench of the Rajasthan High Court at Jaipur, dismissing the two Special Appeals preferred by the Board against the order dated 21st April, 1994 passed by the learned Single Judge disposing of the two writ petitions filed by the Board.

On 27th September, 1973, the respondent herein got himself registered with the Board for allotment of a house in the Middle Income Group Category (for short 'the MIG') in the city of Jaipur. In 1979, the respondent requested the Board to alter his category from the Middle Income Group Category to the Higher Income Group Category (for short 'the HIG') and such change was duly allowed by the board. The respondent was informed accordingly by letter dated 25th May, 1979. The respondent was also requested to submit his option for the type of plot which he was interested in and pursuant thereto, the respondent submitted his option for a house measuring 40' x 90'. The claim of the respondent was considered in the lottery held on 18th June, 1979 but he was not amongst the successful candidates. His case was again considered in the lottery held in the year 1980-81 but again he proved to be unsuccessful.

On 17th March, 1982, the Board published a notice in the Rajasthan Patrika for auction of residential plots and shops. The same was challenged by the respondent by way of a Writ Petition, being No.401/1982. The respondent also questioned the policy of reservation made in favour of the employees of the Board, Members of Parliament and State Legislative Assembly by way of another Writ Petition, being No.606/1986. Both the writ petitions were duly contested by the Board and its policy of reservation of a certain percentage of the houses for its employees, apart from the houses available for allotment by lottery, was scrutinized. It was disclosed that under the HIG category, total number of registered applicants were 300 in the year 1973 and 1911 in the year 1979. Of the houses/flats constructed in the said category, 484 houses/flats were available and the same were allotted by holding lottery. It was also disclosed that in 1980-81, three flats of 30' x 60' size were also made available to the registered applicants of the HIG category. However, there were no applicants in the said category for these flats and, they were therefore, allotted to the MIG category.

During the course of the hearing, certain instances were

pointed out by which certain other persons registered in other categories were allowed to change over to the HIG category without any change in the year of registration, whereas in the case of the respondent, it was alleged that his registration was altered from 1973, when he had originally registered himself in the MIG category, to 1979, when he was allowed to change over to the HIG category.

On the basis of the materials available, the learned Single Judge came to the conclusion that the Board had acted arbitrarily and had discriminated against the respondent in the matter of allotment of a house to him and accordingly directed that he be provided with a house measuring 40' x 60' in Jawahar Nagar Scheme in Jaipur within a period of two months from the date of submission of the certified copy of the order passed by the court.

Aggrieved by the said order of the learned Single Judge, the Board preferred two Special Appeals, being Nos.879/1994 and 591/1994. The Division Bench concurred with the judgment of the learned Single Judge and the observations made therein. In addition, the Division Bench also took note of the list filed on behalf of the Board giving the names of 32 persons who were allotted 32 completed independent houses measuring 40' x 90' in the secret draw held on 30th June, 1979. The Division Bench noticed that in the said list, 8 persons had been included whose names did not find place in the eligibility list. Convinced that no fault could be found with the conclusions arrived at by the learned Single Judge in the impugned judgment, the Division Bench dismissed the two appeals with costs.

The Board is in appeal against the said common judgment of the Division Bench of the Rajasthan High Court at Jaipur, dismissing the two appeals.

On behalf of the appellant, it was contended that the entire process of allotment of the completed houses had been conducted fairly and in keeping with the rules where under some of the allotments were reserved for certain categories of persons. It was the respondent's misfortune that in two successive lotteries he proved to be unsuccessful which prompted him to move a writ application for a direction upon the appellant-Board to provide him with a housing plot of his chosen specification in the Jawahar Nagar Scheme and upon a misconstruction of the facts, the High Court came to the erroneous conclusion that persons who are not eligible had also been allowed to participate in the draw held on 30th June, 1979.

Mr. Calla, learned senior counsel, who appeared for the Board, emphasized the fact that after the allotments had been made in 1979, there were no other completed houses available for allotment in the Jawahar Nagar Scheme of the specifications opted for by the respondent. Some plots were, however, available in the Mansarovar Scheme, and if the respondent was willing, a plot could be allotted to him forthwith within the said Scheme. On being confronted with the admission made on behalf of the Board, that some of the completed houses had been kept apart for allotment to the employees of the Board and that some of them had also been given on rental basis to the Board's employees, Mr. Calla responded by submitting that such a decision was in keeping with the policy decision of the Board. It was pointed out that since all the completed houses in Jawahar Nagar Scheme had already been disposed of, the order of the High Court would have to be implemented by evicting one of the occupants and making over possession of such accommodation to the respondent. In the alternative, a plot of smaller dimension was still available in the Jawahar Nagar Scheme if the

respondent insisted on being provided a house within the said Scheme, but the other offer was open to provide the said respondent with a completed house according to the specifications opted for by him in the Mansarovar Scheme.

The stand taken on behalf of the appellant-Board was strongly opposed on behalf of the respondent, who insisted that as he was one of the earliest applicants for a completed house in the Jawahar Nagar Scheme, he should be provided with a completed house within the said Scheme as he was unwilling to go to the Mansarovar Scheme. The claim made on behalf of the Board that no completed house of the required specification in the Jawahar Nagar Scheme was available was denied on behalf of the respondent on the basis of a statement of the Board showing the position of the rental houses as on 27th February, 2004, made in Annexure R-8 to the counter-affidavit filed on behalf of the respondent. From the said statement, it was pointed out that one of the HIG houses which was segregated for letting out on rental was vacant and could be allotted to the respondent. In the alternative, one of the houses which had been rented out could be vacated by the Board and the displaced employee could be accommodated elsewhere.

From the facts as disclosed, it will be apparent that the High Court was convinced that the respondent had been treated unfairly, inasmuch as, persons who were allegedly ineligible were also included in the draw and were ultimately provided with houses to the exclusion of the respondent who was a legitimate claimant. On the basis of its conclusions, the High Court directed the Board to provide the respondent with a plot of the required specifications within the said Scheme giving rise to these appeals.

Admittedly, the respondent had applied for a completed house of the HIG in the Jawahar Nagar Scheme in Jaipur, though he was unsuccessful in two consecutive draws in which all the completed houses of the required specifications were said to have been allotted. The inclusion of 8 persons from the reserved category in the draw held on 30th June, 1979, cannot also be faulted since the same was in keeping with the policy of the Board. At the same time, the respondent's application entitles him to a completed house as per his registration.

As will be seen from the chart of the Board, there is still one house, namely, House No.4-RH-3 of the HIG, which is shown to be vacant. Apart from the above, some other HIG houses appear to have been let out on rental basis, one of which could be made available to the respondent so as not to defeat his claim. Having accepted the application of the respondent, the Board is under an obligation to provide him with a suitable accommodation in keeping with his registration and we see no reason to differ with the directions given by the High Court while disposing of the Special Appeals.

The appeals are accordingly dismissed with a direction upon the appellant-Board to provide the respondent with a completed house of the required specifications within the Jawahar Nagar Scheme and for the said purpose to have one of the houses vacated, if it becomes necessary to do so. Such exercise should be completed expeditiously, but preferably within six months from date. In the facts and circumstances of the case, we make no order as to costs.