

PETITIONER:
UNION TERRITORY, CHANDIGARH ADMN. & ORS.

Vs.

RESPONDENT:
MANAGING SOCIETY, GOSWAMI, GSDSC

DATE OF JUDGMENT: 14/02/1996

BENCH:
KULDIP SINGH (J)
BENCH:
KULDIP SINGH (J)
AHMAD SAGHIR S. (J)

CITATION:
1996 AIR 1759 1996 SCC (7) 665
1996 SCALE (2) 126

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

The Chandigarh Administration allotted 10.5 acres of land to the Managing Society, Goswami Ganesh Dutt Sanatan Dharam College, Chandigarh (The Society), respondent in the appeal herein, by the letter dated June 21, 1975. The Estate Officer, Chandigarh Administration, on March 15, 1991, directed the Society to pay a sum of Rs.1,74,690/-, the difference between the ground rent already paid by the Society and the one which was payable under the statutory rules. The Society challenged the notice by way of a writ petition before the Punjab and Haryana High Court. Writ Petition was allowed by the High Court and the demand notice was quashed. This appeal by the Chandigarh Administration is against the judgment of the High Court dated October 22, 1991.

The land was allotted to the society for a period of 99 years at the rate of Rs.10/- per square yard with ground rent at the rate of Rs.100/- per acre per annum. The allotment to the Society was subject to the provisions of the capital of Punjab (Development and Regulation) Act, 1952 (the Act) and the rules framed thereunder. The Chandigarh Lease-hold of Sites and Buildings Rules, 1973 (the rules), framed under the Act were enforced with effect from August 20, 1973. Rule 13 of the rules is as under :

"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 2-1/2% of the premium for the first 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.

ii) Rent shall be payable annually on the due date without any demand from the Estate Officer.

Provided that the Estate Officer may for good and sufficient reasons extend the time for payment of rent upto six months on the whole on further payment of 6% per annum interest from the due date upto the date of actual payment.

iii) If rent is not paid by the due date, the lessee shall be liable to pay a penalty not exceeding 100% of the amount due which may be imposed and recovered in the manner laid down in section 8 of the capital of Punjab (Development and Regulation) Act, 1952, as amended by Act No.11 of 1973".

It is obvious from Rule 13 reproduced above that in addition to the premium the lessee under the Act and the rules has to pay annual rent at the rate of 2-1/2% of the premium for the first 33 years. The fixation of the premium at the rate of Rs.100/- per acres in the case of the Society was in patent violation of the rules. There is no discretion under the rules with the Chandigarh Administration to fix annual rent at a rate lower than the one provided under the rules. It is stated by the Chandigarh Administration that while preparing comments to the complaint filed by one Dr. M.L. Saini, Chairman of the Chandigarh Recognised Schools Management Association before the Rajya Sabha Committee, it came to the notice of the administration that the fixation of annual rent, in respect of the land allotted to the Society and some other educational institution, was in violation of Rule 13 of the rules. It was under these circumstances that the mistake which was made in the year 1975 was sought to be corrected in the year 1991. The Society challenged the action before the High Court on the ground that there was no power of review under the Act and the rules and as such the Chandigarh Administration could not review its order after a period of 16 years. It was also contended that the Chandigarh Administration was estopped from passing an order prejudicial to the Society specially when the Society has constructed buildings etc. on the allotted land by incurring huge expenditure. The High Court did not go into the question of equitable estoppel and allowed the writ petition on the short ground that in the absence of any power of review under the Act and the rules the Chandigarh Administration could not have revised the annual rent fixed in the allotment letter dated June 21, 1975.

We are of the view that the High Court fell into patent error in quashing the demand and the notice based on the mandatory provisions of the rules. There is no question of review in the facts and the circumstances of this case. The Chandigarh Administration did not cancel the allotment. It only corrected a patent mistake which could not be permitted to subsist. There is nothing on the record to show that the Estate Officer or any other authority applied its mind and passed a conscious order fixing the annual rent at a rate lower than the one provided under Rule 13 of the rules. We have not been shown any power under the Act or the rules

permitting relaxation of the mandatory provisions of the rules. A contract in violation of the mandatory provisions of law can only be read and enforced in terms of the law and in no other way. The question of equitable estoppel does not arise in this case because there can be no estoppel against statute.

We, therefore, allow the appeal, set aside the impugned judgment of the High Court. The writ petition filed by the Society before the High Court shall stand dismissed. No costs.

JUDIS