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CHANDIGARH HOUSING BOARD

v.

AVTAR SINGH AND ANR.

AUGUST 7, 1995

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Housing

C

Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979.

D

Regulation 6—Allotment of building or flat—Only one among wife, husband or other members of family eligible—Husband and wife separately applied—Both allotted separately—Housing Board coming to know that they were husband and wife.—Forfeiting the amount deposited by husband—Board's action—Whether justified.

E

As per Regulation 6 of the Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979 (for short, 'the Regulations') among the wife/husband and the unmarried children or other members of the family, only one is eligible for allotment of any building/flat. When the notification was published inviting applications for allotment of Category II flats, the 1st respondent and his wife separately applied for allotment of two houses. The allotments came to be made independently. Later on it was discovered that both of them were wife and husband. Consequently the allotment made to the 1st respondent was cancelled and the amount paid by him was forfeited under the Regulations. He filed a writ petition and the High Court directed the appellant-Board to return the entire money paid by him or adjust the same towards the amount payable by his wife. Hence this appeal.

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Allowing the appeal, this Court

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HELD : 1.1. When the Regulations prohibit allotment to wife/husband or dependents and if any one has got a house or a flat, by necessary implication both or all except one among the members of the unit are ineligible to make separate applications. There need not be any specific rule prohibiting making separate application in that behalf. So long as the

couple are tied by marriage bond, both are bound by the Regulations for allotment. Therefore, the cancellation *per se* is not illegal. [562-D-E]

1.2. The power of forfeiture was intended to prevent fraud and malpractice in allotment and in case of positive finding in that behalf, courts would be loath to interfere with the exercise of the power under Regulation 6(2). [562-E-F]

1.3. However, in the facts and circumstances of the present case, the appellant-Board would be justified in forfeiting half of the amount deposited by the 1st respondent and the balance amount may be adjusted towards the amount payable by his wife, if not already paid. This may not, however, be treated as a precedent. [562-F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No.7284 of 1995.

From the Judgment and Order dated 22.7.94 of the Punjab and Haryana High Court in C.W.P.No. 3843 of 1994.

L.K. Pandey for the Appellant.

Mrs. Rekha Palli, Atul Sharma and Anant Palli for the Respondents.

The following Order of the Court was delivered :

Leave granted.

This appeal by special leave arises from the order dated 22.7.1994 of the Division Bench of the Punjab and Haryana High Court in Writ Petition No. 3843/94. The admitted facts are that Regulation 6 of the Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulations, 1979 (for short, 'the Regulations') regulates, among other things, allotment of the buildings/flats constructed by the appellant-Board. A wife/husband and the unmarried children or other members of the family, one, among them, along is eligible for allotment of any building/flat. When the notification was published inviting applications for allotment of Category II flats, the 1st respondent as well as his wife, Mrs. Kuldeep Kaur, separately applied for allotment of two houses. The allotments came to be made independently but later on it was discovered that both of them being wife and husband, were not eligible. Consequently, the allotment made to

A the 1st respondent was cancelled and the amount paid by him was forfeited under the Regulations. When he filed the writ petition, the High Court in the impugned order directed the appellant-Board to return the entire money paid by the 1st respondent or adjust the same towards the amount payable by his wife. Thus this appeal by special leave.

B In the counter-affidavit filed by the 1st respondent, it is admitted that acceptance of allotment by both, the wife and husband was a mistake but there was no prohibition for making an application for allotment at the relevant time. Since the 1st respondent and his wife were estranged and were living separately, they came to make the applications separately and subsequently due to reconciliation they have been living together and that, therefore, there is no illegality in their making applications as none of them was then *owing* a house and that the High Court was right in directing to refund the amount.

D Having considered the facts and circumstances, we find that when the Regulations prohibit allotment to wife/husband or dependants and if any one has got a house or a flat, by necessary implication both or all except one among the members of the unit are ineligible to make separate applications. There need not be any specific rule prohibiting making separate application in that behalf. So long as the couple are tied by marriage bond, both are bound by the Regulations for allotment. Therefore, the cancellation *per se* is not illegal. The question then is whether the entire amount should be forfeited. Obviously, the power of forfeiture was intended to prevent fraud and malpractice in allotment and in case of positive finding in that behalf, courts would be loath to interfere with the exercise of the power under Regulation 6(2).

F On the facts and circumstances in this case, we think that the appellant-Board would be justified in forfeiting half of the amount deposited by the 1st respondent and the balance amount may be adjusted towards the amount payable by his wife, if not already paid. This may not, however, be treated as a precedent.

G The appeal is accordingly allowed. No costs.

G.N.

Appeal allowed.