The Haryana Housing Board Act, 1971

(As extended to Chandigarh)

(See Chd. Admn. Gaz. Part I (Extra) dated 13-3-1975 page 34-35)

No. G.S.R. 7 (E)- In exercise of the powers conferred by section 87 of the Punjab Reorganisation Act, 1966 (31 of 1966), the Central Government hereby extends to the Union Territory of Chandigarh, the Haryana Housing Board Act, 1971 (Haryana Act 20 of 1971) as in force in the State of Haryana at the date of this notification, subject to the following modifications.

An Act to provide for measurers to be taken to deal with and satisfy the need of housing accommodation.

Be it enacted by the Legislature of the State of Haryana in the Twenty-second year of the Republic of India as follows :—

[1][Statement of Objects and Reasons

Next to food and clothing, housing is the basic necessity of mankind. The housing problem has become serious on account of the phenomenal increase in population. Rapid industrialisation has led to the congestions in urban areas. The concentration of almost all industries in urban areas and the comparative high wages paid to the factory workers coupled with the lack of sufficient opportunities in the rural areas have resulted in a large scale shift of population from villages. With the object of easing the housing problem by constructing more houses and raise standards in the types of houses, the State Government have been implementing various housing schemes sponsored by the Government of India. Under these schemes financial assistance in the shape of loans as well as grants is given to the employers, local bodies, individuals, and co-operative societies of individuals and industrial workers. The loan with interest at the rate payable to the Government of India plus 1/2 per centum as administrative charges is recovered in 15/25 annual equated instalments. Since the formation of the State of Haryana Rs. 1.57 crore have been so disbursed.

2. To tackle the stupendous problem of housing sufficient funds are required. The funds, which are being allocated each year in the plan and out of L.I.C. funds are very meager with the result that the problem continues. To meet the increasing demands for houses, Government resources alone are not sufficient. To supplement Government resources it was, therefore, imperative to mobilise additional resources by raising loans and debentures for housing schemes as well as to secure loans out of Central Revolving Fund, which is being created by the Government of India with Rs. 200 crores.

3. With a view to achieve the aforesaid object the matter was considered in the conference of ministers for Housing, Urban Development and Town Planing held at Bangalore from 18th to 20th June, 1969. The consensus of opinion was

1. See Haryana Govt. Gaz. (Extra) 1971 at Page 122

that the statutory State Housing Boards are the best agencies for tentative and speedy implementation of the housings programmes. Accordingly, it is proposed to constitute a Haryana State Housing Board. Hence the Haryana Housing Board Bill, 1971.]

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CHAPTER I
PRELIMINARY

1. ***Short title, extent and commencement.*** (1) This Act may be called the Haryana Housing Board Act, 1971 (as extended to Chandigarh).

(2) It extends to the whole of the *[Union Territory of Chandigarh].

(3) It shall come into force on such date as the *[Administrator] may by notification appoint in this behalf.

COMMENTARY

Excessive delegation - Notification - Extension of the Act to Chandigarh - The notification issued on 15.12.1986 by the Central Government under Section 87 of the Punjab Re-organisation Act, 1966 was challenged by a batch of appeals on the ground of excessive delegation and abdication or effacement legislative powers and concept of vacuum - After a detailed discussion on the various authorities on the subject and mainly relying upon Re Delhi Laws Act, 1951 SCR 747 it was held by the Hon'ble Supreme Court that the said provision of law is constitutionally valid and is not repugnant to existing law - Extension of Punjab Act, 1985 to Union Territory Chandigarh does not conflict with the existing law in the Union Territory - There being only one notification under Section 87 the question of successive notification does not arise - All the appeals dismissed, upholding the decision of Full Bench of Punjab and Haryana High Court in 1988 HRR 430 - *Ramesh Birch and others v. Union of India and others,* 1989 HRR 399 S.C.

Delegation of power - Once it is held that the delegation of a power to extent a present existing law is justified a power to extend future laws is a necessary corollary - *Ramesh Birch v. Union of India and others,* 1989 HRR 399 S.C.

Extension of laws - It was contended by the Appellant's counsel that extension of the laws of another State to Chandigarh is permissible so long as there is a vacuum of laws on any particular subject within the Union Territory and a transplantation of law from elsewhere is neither necessary nor valid - Repelling the contention of the learned counsel it was held that so long as the provisions of the extended law are not repugnant to an Act of Parliament in force in the Union Territory, there is no reason to construe the scope of Section 87 in the restricted manners suggested by counsel - *Ramesh Birch and others v. Union of India and others,* 1989 HRR 399 S.C.

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2. ***Definitions.***— In this Act, unless the context otherwise requires,—

(a) "adjoining area" means such area as may be specified to be an adjoining area under section 31;

[1][(aa) "Administrator" means the Administrator of the Union Territory of Chandigarh appointed by the President under Article 239 of the Constitution;]

(b) "Board" means the *[Housing Board, Chandigarh] established and constituted under section 3;

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* Subs. by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Inserted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

(c) "Board premises" means any premises belonging to or vesting in the Board or taken on lease by the Board or entrusted to the Board under this Act for management and use for the purposes of this Act;

(d) "building materials" means such commodities or articles as are specified by the *[Administrator] by notification to be building materials for the purposes of this Act;

(e) "bye-laws" means bye-laws made under section 75;

(f) "Chairman" means the Chairman of the Board;

[1][(ff) "Chief Executive Officer" means the Chief Executive Officer of the Board] ;

(g) "competent authority" means any person authorised by the *[Administrator], by notification, to perform the functions of the competent authority under chapter VI for such area as may be specified in the notification;

(h) "housing scheme" means a housing scheme made under this Act;

(i) "Land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth ;

(j) "local authority" means *[the Chief Administrator exercising powers of a Municipality or any functionary thereof under sub- section (2) of section 7-A of the Capital of Punjab (Development and Regulation) Act, 1952 (Punjab Act 27 of 1952) or a Gram Panchayat constituted under the Punjab Gram Panchayat Act, 1952 (Punjab Act 4 of 1953), or a Panchayat Samiti or a Zila Parishad constituted under the Punjab Panchayat Samities and Zila Parishads Act, 1961 (Punjab Act 3 of 1961), or an Improvement Trust constituted under the Punjab Town Improvement Act, 1922 (Punjab Act 4 of 1922) ;

(k) "Member" means a member of the Board and includes the [2][Chairman and Chief Executive Officer] ;

(l) "premises" means land, any building or part of a building and includes,—

(i) gardens, grounds and out-houses, if any, appertaining to such building or part of a building; and

(ii) any fitting affixed to such building or part of a building for the more beneficial enjoyment thereof;

(m) "prescribed" means prescribed by rules;

(n) "programme" means the annual housing programme prepared by the Board under section 23;

(o) "Regulations" means regulations made under section 74;

(p) "rent" means the amount payable to the Board in respect of the occupation of the Board's premises and includes the charges for water and electricity payable in respect of water and electricity used or consumed in the premises;

(q) "Secretary" means the Secretary of the Board;

(r) "Tribunal" means the Tribunal specified under section 46; and

(s) "year" means the year commencing on the 1st day of April and ending on the 31st day of March.

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* Subs. by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Inserted by Hr. Act 27 of 1980 as extended to Chd. vide Chd. Admn. Gaz. (extra) dated 2-4-1991

2. Subs. by Hr. Act 27 of 1980 as extended to Chd. vide Chd. Admn. Gaz. (extra) dated 2-4-1991

CHAPTER II
ESTABLISHMENT OF THE BOARD

3. ***Establishment and constitution of Board.*** - (1) With effect from such date, as the *[Administrator] may, by notification appoint in this behalf, there shall be established for carrying out the purposes of this Act a Board to be known as "the *[Housing Board, Chandigarh]", with headquarters at such place as the *[Administrator] may specify.

(2) The Board shall, by the name aforesaid, be a body corporate having perpetual succession and a common seal, and, subject to any restriction by or under this Act or the rules made thereunder, shall have the power to acquire, hold, administer and transfer property, movable or immovable, and to enter into contracts, and shall by the said name sue or be used and do all such things as are necessary for which it is constituted.

(3) For the purposes of this Act and the Land Acquisition Act, 1894 the Board shall be deemed to be a local authority.

Explanation.- The purpose of this Act referred to in sub-section (3) includes the management and use of lands and building belonging to or vesting in the Board under or for the purposes of this Act and the exercise of its rights over and with respect to such lands and buildings for the purposes of this Act.

[1][(4) The Board shall consist of a Chairman, a Chief Executive Officer and seven other members appointed by the Administrator].

(5) The [1][Chairman, the Chief Executive Officer] or a member may at any time resign his office by submitting his resignation to the *[Administrator] :

Provided that the resignation shall not take effect until it is accepted.

(6) Until the Board is established and constituted in accordance with the provisions of the preceding sub-sections, the *[Administrator] may constitute a Board consisting of one person, who shall be an *[officer employed in connection with the affairs of the Union Territory of Chandigarh], to be appointed by the *[Administrator], and a Board so constituted shall, as from the commencement of this Act [2][————————] be deemed to be the Board established and constituted for the purpose of carrying out all the provisions of this Act.

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4. ***Non-applicability of East Punjab Act 3 of 1949.*** - The East Punjab Urban Rent Restriction Act, 1949, shall not apply nor shall be deemed to have ever applied, to any land or building belonging to or vesting in the Board under or for the purposes of this Act, and as against the Board to any tenancies or other like relationship created by the Board in respect of such land or building but shall apply to any land or building let to the Board.

COMMENTS

Applicability of Rent Act - Allotment of houses made by Housing Board Authorities on Hire Purchase Basis - Provisions of Rent Control Act would be applicable to the allottee and his tenants or sub tenants - An allottee can induct a tenant in the allotted premises - Section 4 of the Act is no bar to the applicability of E.P. Rent Act - *Ajay Kashyap v. Smt. Mohini Nijhawan,* 2004 H.R.R. 387 F.B.

—Provisions of the Act are applicable to the houses allotted under Haryana Housing Board Act, 1971 (As applicable to Chandigarh) - It is apparent from the provisions of Section 4 of the Act read with Regulations 42, 44 and 45 of Chandigarh Housing Board (Allotment, Management and Sale of Tenements) Regulation, 1979

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* Subs. by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Subs. by Hr. Act 27 of 1980 as extended to Chd. vide Chd. Admn. Gaz. (extra) dt. 2-4-1991

2. Omitted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

- The relationship between the Board and the allottee would be that of an owner and its tenants - Allottee of Housing Board has a right to induct a sub-tenant and relationship between the allottee (tenant) and his sub-tenant would be governed by provisions of E. P. Rent Act - *M/s Bhatia Co-operative Housing Society Limited's case* A.I.R. 1953 S.C. 16 distinguished - *Damyanti Bhalla's case* 1999 H.R.R. 464 over-ruled - *Ajay Kashyap v. Smt. Mohini Nijhawan*, 2004 (1) H.R.R. 387 F.B.

Estoppel - Section 116 of the Evidence Act prohibits a tenant of an immovable property during his tenancy to deny the title of his landlord - Once the tenant is permitted to take up the plea of application of Section 4 of the Housing Board Act it would actually mean that he is permitted to deny the title of landlord which is not permissible under Section 116 of the Evidence Act unless possession is surrendered by tenant - *Vasudev's case* 2002 (2) S.C.C. 50 followed - *Ajay Kashyap v. Smt. Mohini Nijhawan*, 2004 (1) H.R.R. 387 F.B.

Non-payment of rent - The Rent Controller ordered tenant to be evicted for non-payment of rent - In appeal order was reversed with the plea that premises being allotment of Chandigarh Housing Board, Punjab, Rent Act was not applicable - The finding of Court below is not correct in view of Ajay Kashyap' case, 2004 H.R.R. 387 F.B. vide which judgment delivered in *Mrs. Damyanti Bhalla's case* 1999 H.R.R. 464 has been over-ruled - Impugned order cannot be sustained - Revision accepted - *Ruma Sharma v. Mehar Chand*, 2004(1) H.R.R. 599

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[1][5. *Leave of absence of Chairman and Chief Executive Officer.* - The Administrator may, from time to time, grant to the Chairman and the Chief Executive Officer such leave as may be admissible under the rules made under this Act and any person whom the Administrator appoints to act for the Chairman or the Chief Executive Officer during such absence on leave shall, while so acting, be deemed, for all purposes of this Act, to be the Chairman or the Chief Executive Officer or as the case may be.]

6. *Disqualifications.* - (1) A person shall be disqualified for being appointed or for continuing as the Chairman or member of the Board, if he, -

(a) holds any office or place of profit under the Board;
(b) is of unsound mind;
(c) is an undischarged insolvent;
(d) has directly or indirectly by himself or by any partner, any share or interest in any contract or employment with, by or on behalf of the Board ;
(e) is a Director or a Secretary, Manager or other salaried officer of any incorporated company which has any share or interest in any contract or employment with, by or on behalf of, the Board; or
(f) has been convicted of any offence involving moral turpitude.
[2][(g) in the opinion of the ' (Administrator) -
(i) has become incapable of acting; or
(ii) is otherwise unfit to continue as a member.]

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* Subs. by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35
1. Subs. by Hr. Act 27 of 1980 as extended to Chd. vide Chd. Admn. Gtz. (extra) dt. 2-4-1991
2. Inserted by Hr. Act No. 8 of 1973 published on 23-4-1973

(2) A person shall not be disqualified under clause (d) or clause (e) of sub-section (1) or be deemed to have any share or interest in any contract or employment within the meaning of the said clause, by reason only of his or the incorporated company of which he is a Director, Secretary, Manager or other salaried officer, having a share or interest in any newspaper in which any advertisement relating to the affairs of the Board is inserted.

(3) A person shall not also be disqualified under clause (d) or clause (e) of sub-section (1) or be deemed to have any share or interest in any incorporate company which has any share or interest in any contract or employment with, by or on behalf of, the Board, by reason only of his being a shareholder of such company:

Provided that such person discloses to the *[Administrator] the nature and extent of the shares held by him.

7. ***Terms of office and conditions of service.*** - (1) Every member shall hold office for a period of three years from the date of his appointment:

Provided that after the expiry of the period of his appointment, a person shall be eligible for reappointment as member.

(2) Every member shall receive such salary and allowances as may be prescribed.

(3) The salary and allowances to the member shall be paid from the fund of the Board and such salaries and allowances and other conditions of service shall be such as may be prescribed.

[1][7-A. [2]{***Chairman, Chief Executive Officer and other members***} to hold office during pleasure of Administrator. - Notwithstanding anything contained in section 3 or section 7 or any other provision of this Act the Chairman, Chief Executive Officer and other members of the Board, shall hold office during the pleasure of the Administrator].

8. ***Filling of vacancies.*** - (1) If a vacancy occurs in the office of [2][Chairman, Chief Executive Officer or other member] by death, resignation, removal, disqualification or otherwise, the vacancy shall be filled by the *[Administrator] by appointing a new [2][Chairman, Chief Executive Officer or other member] to that office.

(2) A [2][Chairman, a Chief Executive Officer or any other member] appointed to fill the vacancy shall, notwithstanding anything contained in section 7, hold office for the unexpired portion of the term of his predecessor.

9. ***Proceedings presumed to be good and valid.*** - No disqualification of, or defect in the appointment of, any person acting as a [2][Chairman, a Chief Executive Officer] or a member shall be deemed to vitiate any act or proceeding of the Board if such act or proceedings is otherwise in accordance with the provisions of this Act.

10. ***Temporary absence of members.*** - If any member of the Board other than the [2][Chairman and the Chief Executive Officer] is by infirmity or otherwise rendered temporarily incapable of performing his duties or is absent or on leave or on any other ground not resulting in the cessation of his membership, the *[Administrator] may appoint another person to officiate for him and perform his duties under this Act, or any rule or regulation made thereunder.

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* Subs. by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Inserted by Hr. Act 20 of 1979 as extended to Chd. vide Chd. Admn. Gaz. (extra) dt. 2-4-1991

2. Substituted by Hr. Act 27 of 1980 as extended to Chd. vide Chd. Admn. Gaz. (extra) dt. 2-4-1991 at page 333

11. ***Officers and servants of Board.*** - (1) The *[Administrator] may appoint a Secretary of the Board on such terms and conditions of service as it may deem fit.

(2) The Board may create such other posts and appoint such other officers and servants thereto as it may consider necessary for the efficient discharge of its duties:

[1] {Provided that the previous sanction of the Administrator shall be obtained for this purpose in respect of such categories of posts as may be specified by him from time to time, by notification.}

(3) Subject to the provision of sub-section (1), the conditions of service, functions and duties of the officers and servants of the Board shall be such as may be determined by regulations.

12. ***Provident Fund.*** - (1) The *[Administrator] shall establish a Contributory Provident Fund for the officers and servants of the Board and such Provident Fund (hereinafter called "the Fund") shall, notwithstanding anything contained in section 8 of the Provident Fund Act, 1925, be deemed to be a Government Provident Fund for the purposes of the said Act.

(2) The Board shall in respect of each of its employees who is a subscriber to the Fund, pay into the Fund such portion of the contribution in such manner as the *[Administrator] may, from time to time, determine.

13. ***General disqualifications of officers and servants.*** - No person who has directly, or indirectly, by himself or his partner or agent, any share or interest in any contract, by or on behalf of the Board, or in any employment under, by or on behalf of the Board, otherwise than as an officer or servant thereof, shall become or remain an officer or servant of the Board.

14. ***Appointment of Committees.*** - Subject to any rules made under this Act, the Board may, from time to time, and for any particular local area appoint one or more committees for the purpose of discharging such duties or performing such functions as it may delegate to them and any such committee may discharge such duties or perform such functions with due regard to the circumstances and requirements of that local area.

15. ***Meetings of the Board.*** - The Board shall meet and shall from time to time make such bye-laws with respect to the day, time, place, notice, management and adjournment of its meetings as it thinks fit, subject to the following provisions, namely: -

[2][(a) an ordinary meeting shall be held at least once in three months;]

(b) the Chairman may, whenever he thinks fit, call special meetings;

(c) Every meeting shall be presided over by the Chairman and in his absence by any member chosen by the members present at the meeting for the occasion;

(d) the quorum for every meeting shall be *[one-half] of the number of members actually serving for the time being;

(e) all questions at any meeting shall be decided by a majority of the members present and voting and in the case of equality of votes, the person presiding shall in addition to his vote as a member, have second or casting vote; and

(f) the minutes of the proceedings of each meeting shall be recorded in a book to be provided for the purpose and a copy of such minutes shall be forwarded to the *[Administrator] in the department concerned.

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* Subs. by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Subs. by Hr. Act 10 of 1989 as extended to Chd. vide Chd. Admn. Gaz. (extra) dt. 2-4-1991

2. Inserted by Hr. Act No. 8 of 1973 published on 23-4-1973

16. ***Association of persons with Board.*** - (1) The Board may associate with itself, any person whose assistance or advice it may deem fit for carrying into effect any of the provisions of this Act.

(2) A person associated with the Board under sub-section (1) for any purpose shall have the right to take part in the meetings of the Board relevant to that purpose, but shall not have the right to vote.

(3) The Administrator may, by order, depute its representatives to attend any meeting of the Board, on such items or subjects as the *[Administrator] may specify, but such representatives shall not have the right to vote.

17. ***Power to make contracts.*** - The Board may enter into and perform or require the performance of all such contracts as it may consider necessary or expedient for carrying out any of the purposes of this Act.

[1]{**18.** ***Execution of contracts.*** - (1) Every contract shall be made in the name of the Board by [2][the Chief Executive Officer] or such other officer of the Board as may be authorised by it :

Provided that no contract involving an expenditure of twenty lakhs rupees or more shall be made without the previous sanction of the *[Administrator].}

(2) Sub-section (1) shall apply to every variation or abandonment of a contract or estimate as well as to an original contract or estimate.

(3) Every contract [1][for and] on behalf of the Board shall, subject to the provisions of this section, be entered into, in such manner and form, as may be prescribed.

(4) A contract not made or executed as provided in this section and the rules made thereunder shall not be binding on the Board.

COMMENTARY

Appointment of Chairman - Where the appointment of the Chairman was for three years as mentioned in the notification under S. 3 of the Act. Subsequently the notification was withdrawn. It was held that the Chairman was working properly without suffering any disability during his tenure as such was entitled to complete the full tenure and an order to withdraw the notification was quashed - *S.S. Virdi v. Chandigarh Administration and others.* 1991 (1) Rev. L.R. 25

[3][**19.** (Omitted)

CHAPTER III
HOUSING SCHEME

20. ***Duty of Board to undertake Housing Schemes.*** - Subject to the provisions of this Act and subject to the control of the *[Administrator], the Board may incur expenditure and undertake works in any area for the framing and execution of such housing schemes as may consider necessary from time to time or as may be entrusted to it by the *[Administrator].

21. ***Matters to be provided for by Housing Scheme.*** - Notwithstanding any thing contained in any other law for the time being in force, a housing scheme may provide for all or any of the following matters, namely :-

(a) acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme;

(b) acquisition by purchase, exchange or otherwise of any land, division of the same into plots and the sale thereof after developing it or otherwise

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* Subs. by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Substituted by Hr. Act No. 9 of 1973

2. Subs. by Hr. Act 27 of 1980 as extended to Chd. vide Chd. Admn. Gaz. (extra) dt. 2-4-1991

3. Section 19 was omitted by Hr. Act No. 8 of 1973 published on 23-4-1973

to co-operative societies or other persons, in accordance with the scheme;

(c) laying or re-laying out of any land comprised in the scheme ;

(d) distribution or re-distribution of sites belonging to owners of property comprised in the scheme;

(e) the closure or demolition of dwellings or portions of dwellings unit for human habitation;

(f) demolition of obstructive buildings or portions of buildings;

(g) the construction and re-construction of buildings, their maintenance and preservation ;

(h) sale, letting or exchange of any property comprised in the scheme

(i) construction and alteration of streets and back lanes ;

(j) drainage, water-supply and lighting of the area included in the schemes;

(k) parks, playing-fields and open spaces for the benefit of any area comprised in the scheme and the enlargement of existing parks, playing fields, open spaces and approaches;

(l) sanitary arrangements required for the area comprised in the scheme, including the conservation and prevention of any injury or contamination to rivers or other sources and means of water supply ;

(m) accommodation for any class of inhabitants, industries, institutions, offices, local authorities, Co-operatives or Corporate bodies;

(n) advance of money for purpose of the scheme;

(o) facilities for communication and transport;

(p) collection of such information and statistics as may be necessary for the purpose of this Act ; and

(q) any other matter for which, in the opinion of the *[Administrator], it is expedient to make provision with a view to provide housing accommodation and, or, to the improvement or development of any area comprised in the scheme or any adjoining area or the general efficiency of the scheme.

Explanation. - For the purposes of this section the *[Administrator] may, on the recommendation of the Board, by notification, specify area surrounding or adjoining the area included in a housing scheme to be the adjoining area.

22. ***No housing scheme to be made for area included in improvement scheme or be inconsistent with town planning scheme.*** - (1) No housing scheme shall be made under this Act for any area for which an improvement scheme has been sanctioned by the *[Administrator] under the Punjab Town Improvement Act, 1922, or any other enactment for the time being in force, nor any housing scheme made under this Act shall contain any thing which is inconsistent with any of the matter included in a town planning scheme sanctioned by the *[Administrator], under [1][the Haryana Municipal Act, 1973] ; or any other enactment for the time being in force.

(2) If any dispute arises whether a housing scheme made under this Act includes any area included in an improvement scheme sanctioned under any enactment referred to in sub-section (1) or contains anything inconsistent with any matter included in a town planning scheme sanctioned under the [1][Haryana Mu-

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* Subs. by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Substituted by Hr. Act 27 of 1980 as extended to Chd.

nicipal Act, 1973] or any other enactment for the time being in force, the same shall be referred to the *[Administrator] whose decision shall be final.

23. *Preparation and submission of annual housing programme, budget and establishment schedule.*—(1) Before the first day of December in each year the Board shall prepare and forward to the *[Administrator] in such form as may by prescribed -

(i) a programme

(ii) a budget for the next year ; and

(iii) a schedule of the staff of officers and servants already employed and to be employed during the next year,

(2) The programme shall contain, —

(i) such particulars of housing schemes which the Board proposes to execute whether in part or whole during the next year as may be prescribed;

(ii) the particulars of any undertaking which the Board propose to organise or execute during the next year for the purpose of production of building materials; and

(iii) such other particulars as may be prescribed.

(3) The budget shall contain a statement showing the estimated receipts and expenditure on capital and revenue accounts for the next year.

24. *Sanction to programme, budget and establishment schedule.* - The *[Administrator] may sanction the programme, budget and the schedule of the staff of officers and servants forwarded to it with such modification as it deems fit.

25. *Publication of sanctioned programme.* - The *[Administrator] shall publish the programme sanctioned by it under section 24 in the *[Chandigarh Gazette.]

26. *Supplementary programme and budget.* - The Board may, at any time, during the year, in respect of which a programme has been sanctioned under section 24 submit a supplementary programme and budget and the additional schedule of the staff, if any, to the *[Administrator] and the provisions of sections 24 and 25 shall apply to such supplementary programme.

27. *Variation of programme by Board after it has been sanctioned.* - The Board may, at any time, vary any programme or any part thereof sanctioned by the *[Administrator] :

Provided that no such variation shall be made if it involves an expenditure in excess of ten per centum of the amount as originally sanctioned for the execution of any housing scheme included in such programme or affects its scope or purpose.

28. *Sanctioned housing scheme to be executed.* - After the programme has been sanctioned and published by the *[Administrator] under sections 24 and 25, the Board shall, subject to the provisions of section 27, proceed to execute the housing scheme included in the programme.

29. *Publication of housing scheme in the Official Gazette.* - (1) Before proceeding to execute any housing scheme under section 28, the Board shall by notification publish the scheme. The notification shall specify that the plan showing the area which is proposed to be included in the housing scheme and the surrounding lands shall be open to inspection of the public at all reasonable hours at the office of the Board.

(2) If within two weeks from the date of the publication of the housing scheme any person communicates in writing to the Board any suggestion or ob-

* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

jection relating to the scheme, the Board shall consider such suggestion or objection and may modify the scheme as it thinks fit.

(3) The Board shall then by notification publish the final scheme. The notification shall specify that the plan showing the area included in the final scheme and the surrounding lands and other particulars as may be prescribed shall be open to inspection of the public at all reasonable hours at the office of the Board.

(4) The publication of a notification under sub-section (3) shall be conclusive evidence that the said scheme has been duly framed.

30. ***Transfer to Board for purposes of housing scheme of land vested in a local authority.*** - (1) Whenever any street, square or other land, or any part thereof, situated in any area of a local authority and vested in the local authority, is required for the purpose of any housing scheme sanctioned by the *[Administrator], the Board shall give notice accordingly to the local authority.

(2) Where the local authority concurs, such street, square or other land, or part thereof, shall vest in the Board.

(3) Where there is any dispute the matter shall be referred to the *[Administrator]. The *[Administrator] shall, after hearing the parties, decide the matter. The decision of the *[Administrator] shall be final. If the *[Administrator] decides that such street, square or land shall vest in the Board, it shall vest accordingly.

(4) Nothing in this section shall affect the rights or powers of the local authority in or over any drain or water works in such street, square or land.

31. ***Compensation in respect of land vested in Board.*** - (1) Where any land vests in the Board under the provisions of section 30 and the Board makes a declaration that such land shall be retained by the Board only until it revests in the local authority as part of a street or an open space under section 34, no compensation shall be payable by the Board to the local authority in respect of that land.

(2) Where any land vests in the Board under section 30 and no declaration is made under sub-section (1) in respect of the land, the Board shall pay to the local authority as compensation a sum equal to the value of such land.

(3) If, in any case where the Board has made a declaration in respect of any land under sub-section (1), the Board retains or disposes of the land contrary to the terms of declaration so that the land does not re-vest in the local authority, the Board shall pay to the local authority compensation in respect of such land in accordance with the provisions of sub-section (2).

32. ***Power of Board to turn or close public street vested in it.*** - (1) The Board may turn, divert, discontinue the public use of, or permanently close, any public street vested in it or any part thereof.

(2) Whenever the Board discontinues the public use of, or permanently closes, any public street vested in it or any part thereof, it shall, as far as practicable, provide some other reasonable means of access to be substituted in lieu of the use, by those entitled, of the street or part thereof and pay reasonable compensation to every person who is entitled, otherwise than as a mere member of the public, to use such street or part as a means of access and has suffered damage from such discontinuance or closing.

(3) In determining the compensation payable to any person under sub-section (2), the Board shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other public street at or about the same time that the public street or part thereof, on account of which the compensation is paid, is discontinued or closed.

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

(4) When any public street vested in the Board is permanently closed under sub-section (1), the Board may sell or lease so much of the same as is no longer required.

33. ***Reference to Government in case of dispute under section 31 and 32.*** - If there is any dispute as to whether any compensation is payable under section 31 or section 32 or as to the amount of compensation payable under section 31 or section 32, as the case may be, the matter shall be referred to the Tribunal.

34. ***Vesting in the local authority of streets laid out or altered and open spaces provided by Board under housing scheme.*** - (1) Whenever the *[Administrator] is satisfied.-

(a) that any street laid out or altered by the Board has been duly levelled, paved, metalled, flagged, channeled, sewered and drained in the manner provided in the programme sanctioned by the *[Administrator] under section 24 or varied under section 27 or modified under section 29;

(b) that such lamps, lamps-posts and other apparatus as the local authority considers necessary for the lighting of such street and as ought to be provided by the Board have been so provided ; and

(c) that water and other sanitary conveniences have been duly provided in such street;

the *[Administrator] may declare the street to be a public street, and the street shall thereupon vest in the local authority and shall thenceforth be maintained, kept in repair, lighted and cleaned by the local authority.

(2) When any open space for the purposes of ventilation or recreation has been provided by the Board in executing any housing scheme, it shall on completion be transferred to the local authority concerned, by resolution of the Board, and shall thereupon vest in, and be maintained at the expense of, the local authority.

(3) If any difference of opinion arises between the Board and the local authority in respect of any matter referred to in the foregoing provisions of this section the matter shall be referred to the *[Administrator] whose decision shall be Final.

35. ***Other duties of Board.*** - It shall be the duty of the Board to take measures with a view to expediting and cheapening construction of buildings and the Board may for that purpose do all things for. -

(a) unification, simplification and standardisation of building materials;

(b) encouraging pre-fabrication and mass production of house components;

(c) organising or undertaking the production of building materials required for the housing scheme ;

(d) encouraging research for discovering cheap building materials and evolving new methods of economic construction;

(e) securing a steady and sufficient supply of workmen trained in the work of construction of buildings.

36. ***Board to assume management of requisitioned lands.*** - The Board shall, if the *[Administrator] so directs, and subject to the general control of the *[Administrator], assume management of all or any of the lands requisitioned by or under authority of the *[Administrator].

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

37. ***Reconstitution of plots.*** - A housing scheme may provide, —

(a) for the formation of a reconstituted plot by the alteration of the boundaries of an original plot ;

(b) with the consent of the owners that two or more original plots each of which is held in ownership in severalty or in joint ownership shall, with or without alteration of boundaries, be held in ownership in common as a reconstituted plot ;

(c) for the allotment of a plot of any owner dispossessed of land in furtherance of the housing scheme ; and

(d) for the transfer of ownership of plot from one person to another.

38. ***Schemes entrusted to Board by *[Administrator].*** - The provisions of section 21 and section 23 to 29 (both inclusive) shall not be applicable to any housing scheme entrusted to the Board by the *[Administrator] except to such extent and subject to such modifications as may be specified in any general or special order made by the *[Administrator] and every such order shall be published in the *[Chandigarh Gazette].

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CHAPTER IV
Acquisition and Disposal of Land

39. ***Power to purchase, lease or acquire land.*** - (1) The Board may enter into an agreement with any person or the *[Administrator] for the acquisition from him by purchase, lease or exchange, of any land which is needed for the purposes of a housing scheme or any interest in such land or for compensating the owners of any such right in respect of any deprivation thereof or interference therewith :

[1][Provided that the previous approval of the Administrator shall be obtained in case of purchase or exchange involving land worth more than fifty lakhs rupees or lease for more than five years.]

(2) The Board may, from such date as the *[Administrator] may appoint by notification in this behalf, also take steps for the compulsory acquisition of any land or any interest therein required for the execution of a housing scheme in the manner provided in the Land Acquisition Act, 1894, as modified by this Act; and the acquisition of any land or any interest therein for the purpose of this Act shall be deemed to be acquisition for a public purpose within the meaning of the Land Acquisition Act, 1894.

40. ***Betterment charges.*** - (1) When by the making of a housing scheme the value of any land in the area comprised in the scheme will, in the opinion of the Board, be increased, the Board in framing the scheme may declare that betterment charges shall be payable by the owner of the land or any person having an interest therein in respect of the increase in value of the land from the execution of the scheme.

(2) Such increase in value shall be the amount by which the value of the land on the completion of the execution of the scheme estimated as if the land were clear of the buildings exceeds the value of the land prior to the execution of the scheme estimated in like manner and the betterment charges shall be one - half of such increase in value.

(3) Such betterment charges shall also be leviable in respect of any land not comprised in the scheme but adjacent to the area comprised in the scheme.

(4) Notwithstanding anything contained in sub-section (1) and (3), in respect of any land used for agricultural purposes at the time of the execution of the

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Substituted by Hr. Act No. 10 of 1989 as extended to Chandigarh published on 2-4-1991

schemes the betterment charges shall be leviable by the Board in accordance with such procedure as may be prescribed, only after such land is used, or converted for use for non agricultural purposes.

41. *Notice to person liable for betterment charges.* - (1) The Board shall give notice in the prescribed form to any person, who is the owner of or has interest in the land in respect of which the betterment charges are to be levied and shall give such person an opportunity to be heard.

(2) After hearing such person or if such person is required to appear before the Board, the Board shall proceed to assess the amount of betterment charges.

(3) Where the assessment of betterment charges proposed by the Board is accepted by the person concerned within the period prescribed, the assessment shall be final.

(4) If the person concerned does not accept the assessment proposed by the Board, the matter shall be referred to the Tribunal.

(5) The Tribunal shall, after holding an enquiry and after hearing the person concerned assess the amount of the betterment charges payable by the person.

42. A*greement for payment of betterment charges.* - (1) Any person liable to pay betterment charges in respect of any land may at his option instead of paying the same to the Board, execute an agreement with the Board, to leave the payment outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at such rate as may be prescribed.

(2) Every payment due from any person in respect of betterment charges and every charge referred to in sub-section (1) shall, notwithstanding anything contained in any other enactment and notwithstanding the execution of any mortgage, or charge, created either before or after the commencement of this Act, be the first charge upon the interest of such person in such land.

43. *Recovery of betterment charges.* - All sums payable in respect of any land by any person in respect of betterment charges under section 40 or by any person under an agreement under section 42 shall be recoverable on behalf of the Board as arrears of land revenue.

44. *Power to dispose of land.* - Subject to any rules made by the *[Administrator] under this Act, the Board may retain, lease, sell, exchange or otherwise dispose of any land, building or other property vested in it and situate in the area comprised in any housing scheme sanctioned under this Act.

COMMENTARY

Allotment of houses - Escalation of price - It was stipulated in the brochure that price escalation if any, would not exceed 10% of the original price - Development Authority is bound by terms of agreement in view of provision of Section 10 of Contract Act 1872 - Authorities raised 4-½ times in price keeping aside the terms of agreement - Act of Authorities obviously is violative of Article 14 of the Constitution as well as provisions of Section 15 of Contract Act - Price cannot exceed the prescribed limits - In such case Authorities are required to satisfy the court that escalation in price is not done in arbitrary and erratic manner - *Prashant Kumar's case* (2000)1 S.C.C. 120 distinguished and *D.D.A.'s case* A.I.R. 1995 S.C. 1 followed *Kanpur Development Authority v. Smt. Sheela Devi*, 2004(1) H.R.R. 1 S.C.

Allotment of H.I.G. houses - Discrimination - The housing Board allotted houses in favour of some officers and ignored the petitioner who was similarly situated - Order wholly unjustified - *Shri L.R. Roojam v. Shri K. Banarji, Chief Commissioner*, 1985 H.R.R. 220.

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

Allotment - Revised policy of industrial sites for the establishment of printing presses called into question in writ petition - Revised Policy does not suffer form any act of arbitariness - Appellants formed a separate class - All persons who have applied for industrial sites for establishing printing presses were grouped together - No descrimination - Appeal dismissed - Constitution of India, Article 14 - *Paradish Printers v. Union Territory of Chandigarh,* 1988 H.R.R. 409 S.C.

—The petitioner was allotted a flat way back in 1987 when she was registered at Sr. No. 536 in the category of HIG (L) 1 houses but she was refused possession thereof on one pretext or another - The Board is debarred by its own conduct from raising baseless objection at such a belated stage when prices have gone sky rocketing - She cannot possibly apply for a plot of the same area for the prices prevalent in the year 1987 - Respondent directed to hand over the possession of the flat to the petitioner - *Inder Bir Kaur v. The Chairman Chandigarh Housing Boaid,* 1993 HRR 578.

Allotment - Incomplete construction - Respondent allottee had been informing the appellant Board, time and again, for making the flat residentiable by putting up fittings and fixtures without which the flat remains only in a skelton form - It was being used for storing cement by the Board - Respondent without completion of construction of flat cannot be compelled to execute the agreement to pay the revised rate of the flat with interest - Dismissing the appeal of Board it is directed to comply with the directions of the High Court issued vide its order dated 2.2.1993 - *Bihar State Housing Board v. Lalli Ram,* 1997 H.R.R. 243 S.C.

—The petitioner applied for the allotment of a Flat under a Scheme "for one and all" - She deposited a sum of Rs. 4,000/- and later on Rs. 50,000/- for allotment of House in Sector 45-A - She wrongly stated in her application that no member of her family was owning any residential house or plot in Chandigarh/ Panchkula or Mohali while her husband had already been allotted a house - She realizing her mistake, wrote to the Board to cancel her husband's house to enable her to have the second house in Sector 45-A allotted to her but no reply was given by the Board - After having been directed by the Hon'ble High Court to hear her in this respect, the Board cancelled her allotment of Sector 45-A and ordered Rs. 54,000/- to be forfeited under Regulation No. 6 (2) of Regulation 1979 - *Held,* the order of the Board cannot be sustained - The petitioner had acknowledged her mistake - She was not given any opportunity to explain her position by the authorities - Forfeiture of the entire amount of Rs. 54,000/- of a Class III employee is a heavy loss - However, forfeiture of Rs. 4,000/- deposited with the application would meet the ends of justice - The respondent is directed to refund Rs. 50,000 to the petitioner with interest at the rate of 12% per annum - *Smt. Ram Dulari v. Union Territory, Chandigarh,* 1994 HRR 67.

Allotment of flat - Appellants were allotted plots and were delivered possession of the same in the year 1988 by the respondent - Total payment was made by them as agreed - Demand made by Development Authority for additional payment from the appellants is not justified as they had paid the entire cost of the flat as agreed between the parties - Order of the High Court on the ground of limitation cannot be sustained as the objections in this regard were still pending before the Authority for consideration - *Sanjay Place Group Housing Association v. Agra Development Authority,* 1994 HRR 154 S.C.

Allotment of Government houses - Cancellation - On an inquiry it was found that the petitioners who were allotted government houses, had sublet the same and in consequence thereof their allotment was cancelled - *Held,* the mere fact that a cyclostyled order was passed, does not prove that there was no appli-

cation of mind by the authorities concerned - *Balwant Singh v. Chief Secretary Government Punjab* 1989 H.R.R. 620 D.B.

Allotment of house - The petitioner, an applicant for the allotment of a house, was at the 1st serial number in the waiting list for the allotment - Allegedly his seniority was ignored and respondent No. 4 was allotted the house as the later had an influence in the corridors of the Housing Board - It was found that respondent No. 4 had a preferential right whose claim was inadvertently ignored by the Housing Board - It would not be proper to nullify the allotment of numerous people who are not even party in the case - However, the respondent Board was directed to consider the petitioner's case sympathetically for allotment of another house - *Mritanjay Dosaj v. Haryana Housing Board and others* 1994 H.R.R. 265.

—Discretion - Petitioner deposited Rs. 1,000/- with an application invited by Housing Board for allotment of houses - Petitioner was unsuccessful for allotment in draw of lots - No objection was filed against the allotment through draw of lots All the allottees were not impleaded - No reply about the letter giving option of choice of plots was given by petitioner - Moreover, writ petition was filed after a delay of more than one year - There is no illegality in the allotment - *Shamir Singh v. Chandigarh Housing Board,* 1995 H.R.R. 499.

Allotment Rules - Violation - Respondent had applied for allotment of a plot in Patna under the Scheme of Allotment - An undertaking was given that in case there was any allotment in the name of any member of the family including himself he would inform the Allotment Authority in this respect - First allotment was made in his name within the Municipal limit of Patna with delivery of possession - Second allotment in the name of respondent was also made in the same vicinity No information was given to Authorities about first allotment violating terms of affidavit - Cancellation of second allotment by Authorities is legally valid - No citizen can be allowed to have second allotment within the same municipal area under the Allotment Rules - Order of High Court sustaining the allotment on equitable grounds quashed - Rules 2, 9 and 14 of the Rules for Settlement of Land Acquired and Developed by the State Govt. of Patna - *Bihar State Housing Board v. Satya Narayan Prasad,* 1998 H.R.R. 153 S.C.

Application of mind - Illiterate Chairman - Petitioners were allotted houses by respondent with a tentative price of Rs. 35,000/- which was deposited by petitioners in the year 1977 - Subsequently, it was in 1981 that fresh cost of construction was computed to the tune of Rs. 62,800/- - It was alleged that Chairman of the Board being an illiterate person had disposed of their case without applying his mind as he could not understand either Hindi or English - There is force in this contention - A quasi judicial Authority should apply its own mind and should not depend on the assistance of his staff - This kind of practice can neither be appreciated nor meets the ends of justice - Haryana Housing Board was directed to keep in mind what is being observed herein for future - *Parmanand v. Chairman, Housing Board Haryana,* 1996 H.R.R. 559.

Arbitrary act - Increase in price - Chandigarh Administration increasing the price of the allotted plots in any arbitrary and unreasonable manner - Interference in the arbitrary act of the Administration under Article 226 of the Constitution is amply justified - *Major General Ram Singh (Retd.) v. Chandigarh Housing Board,* 1991 HRR 375.

—Allotment - The petitioner deposited 10% cost of the house to be allotted to him under a Scheme of the Housing Board, Haryana in Sector 29, Faridabad - He was allotted registration No. 645 - Having remained unsuccessful in the allotment he was assured that his registration number would remain intact for allot-

ment in Sector 3 for the allotment of house - He deposited the additional price of the house as demanded by the Board - Again he was not allotted any house though there were 774 houses available while his registration No. was 645 - Petitioner was obviously entitled to allotment of a house in Sector 3 where the Board was allotted 40 acres of land for the construction of houses - Respondent- Board was directed to accept the demand of the petitioner and allot him a house in Sector 29 or 3 at the rate prevalent at the date of original application - *Surjit Singh's case* AIR 1980 P & H 65 distinguished - *Anil Kumar Chawla v. Housing Board Haryana* 1994 H.R.R. 267.

Cancellation of allotment – An LIG flat was allotted to petitioner on the basis of income category – Monthly income shown as Rs. 4712/- whereas he was drawing gross salary of Rs. 5715 - Maximum limit for allotment of LIG flat was fixed at Rs. 5500 - Show cause notice about cancellation of flat is not illegal as petitioner was not eligible for the allotment Petition dismissed - *Pawan Kumar v. State of Haryana,* 2009(2) Haryana Law Reporter 213 D.B.

Cancellation of plot - Automatic cancellation - Where the allottee neither conveyed acceptance nor paid the amount asked for within 30 days of the receipt of allotment letter, it was held, that allotment stands automatically cancelled under Regulation 5 (5) of the Regulation 1978 - *Smt. Aruna Luthra v. State of Haryana,* 1987 (2) PLR 124 = 1986 Rev. L.R. 324.

Cancellation of plots - Opportunity - In *S.R. Dass v. State of Haryana,* 1988 PLJ 123 D.B. where the allotments of plots were made to various persons out of the discretionary quota of the Government made by successive ministries and at the instance of Lok Dal ministry orders of cancellation of allotments of residential plots were made. These orders of cancellation were challenged before the Hon'ble Pb. & Hr. High Court - Whereupon the Division Bench made the following observations: That blanket order of cancellation is liable to be struck down (i) Where the Government did not apply its mind or acted arbitrarily or where no guide lines were laid for allotting plots carved out of green belts or areas reserved for public purposes (ii) Where allotee started construction after getting plans sanctioned (iii) where HUDA did not apply its mind at all before issuing letter of cancellation. (iv) Where no show cause notice was given for cancellation as post decisional hearing would not meet ends of justice (v) Where the bona fide purchaser for consideration from the original allottee was protected by Section 41 of Transfer of Property Act.

Held, further that Courts always have control over arbitrary acts of Executive authority. The executive authority is required to discharge its function in good faith and fairly and not in arbitrary way. Unchecked power is alien to rule of law - *S.R. Dass v. State of Haryana* 1988 PLJ 123 = 1988 (1) PLR 430 - 1988 R.R.R. 370.

Compound interest – As per terms of allotment letter respondent Housing Board was allowed to charge fair price of plot within 7 years of date of allotment – It included expenditure on construction of tenements and payment made towards enhanced compensation of land acquired alongwith 15% interest compounded quarterly on enhanced amount of compensation – It was never challenged by original allottee who went on depositing installments as per schedule – In the facts of the case, petitioners are not entitled to raise objection against charging of compound interest – Petition dismissed - *Hardev Singh v. Housing Board Haryana,* 2009(2) Haryana Law Reporter 627

Discrimination - A press corrspondent, subsidised in house rent by State Government - Chandigarh Administration cancelled the allotment, taking the view

that allottee was a mere licensee as the subsidy in rent was withdrawn by the State government - Held, such a stand on the public authority is not in consonance with the constitutional obligation of the Government and its functionaries - Order of the Chandigarh Administration held to be illigal - *Rajinder Kumar v. U.T Chandigarh,* 1983 H.R.R 410.

Enhancement of price - Petitioners were allotted houses at the rate of Rs. 1,20,700/- for ground floor and Rs. 1,15,700/- for the Ist floor - Additional price of Rs. 20,500/- and 19,600/- was demanded for increased cost of construction and Rs. 6265/- and Rs. 2906/- respectively on account of compensation of land - No justification was given for the enhancement of price and only justification was given that the work of construction by earlier contractor was not completed within time - The action of the Board enhancing the price cannot be sustained and is violative of Article 14 of the Constitution of India - *Krishan Lal v. Housing Board Haryana,* 1994 HRR 207.

—Petitioners were allotted multi-storoyed flats at Manimajra by the respondent Board - In category I tentative price of the flat was Rs. 4 Lacs and in category II it was Rs. 3 lacs - Subsequently the price was enhanced to Rs. 6.25 lacs and 4.75 lacs respectively, to be deposited by the petitioners - No reply was given to the representation made to the Board - Held, there is no justification for increasing the price arbitrarily - Notice of enhancement of price held liable to be quashed - However, it will be open to the Board to take further action in accordance with the terms and conditions of the contract in question - *Dalbir Singh Bhagat v. Chandigarh Administration,* 1993 H.R.R. 514 D.B.

—The Chandigarh Administration decided to allot some land for constructionn of ten shops to Chandigarh Housing Board at the rate of Rs. 500/- per sq. yard - The Board, thereafter invited application for allotment of these shops in the year 1983 and again in 1986 - The allottees were issued demand cum allocation letters demanding Rs. 3.5 lakh each plus balance amount of Rs. 1.5 lakh to be paid after the delivery of possession of the shop - It was in the year 1989 that the Board fixed and demanded Rs. 12,05,514/- against the tentative price of Rs. 5,00,000/- as advertised earlier - *Held*, the price as demanded by the Chandigarh Administration vide its letter dated 31.10.1989 is hereby quashed with the direction that the allottees may be given possession of the shops at the rate of land as advertised earlier - *Major General Ram Singh (Retd.) v. Chandigarh Housing Board,* 1991 HRR 375.

Escalation of price - In the instant case an LIG house was allotted at the cost was Rs. 45,000/- - Subsequently allottee was informed that escalation cost was raised to Rs. 2,08,000/- as final cost i.e. 4-1/2 times of original cost - As per terms of brochure price could be raised upto 10% only - Allotment authorities acted in an arbitrary manner not only in enhancing the price but also in delaying the possession - Order of High Court setting aside the escalation of price upheld - *Kanpur Development Authority v. Smt. Sheela Devi,* 2004(1) H.R.R. 1 S.C.

Instalment - Reduction in period - Petitioners were allotted houses by the respondent - Total amount was to be paid in instalments spread upto 10 years - Period of payment reduced from 10 years to 8 years - The action of respondent reducting the period is illegal and not binding on the petitioner - The order of reducing the period cannot be sustained - *Krishan Lal v. Housing Board Haryana,* 1994 H.R.R. 207.

Interest on deposit - Respondent, Housing Board Haryana agreed to complete the construction of allotted house within 2 years from the date of allotment -

Petitioners deposited the amount in the year 1980 and 1982 - Houses were allotted in the year 1989 - Petitioners held entitled to interest on their deposits at the rate which is paid by the Nationalized banks in Saving Bank Account - *Krishan Lal v. Housing Board Haryana*, 1994 HRR 207

Misuse of premises - Misuse of premises by allottee who raised unauthorised construction on allotted land - Though allottee became absolute owner of allotted plot still local authority has jurisdiction to regulate the violations or misuse of property by the allottee - Commissioner or any other officer authorized by Corporation has discretionary power to compound any offence u/s 383 of Haryana Municipal Corporation Act - But such power should be exercised with abundant caution by authority concerned - *Suresh Kumar v. Municipal Corporation, Faridabad*, 2006(2) HRR 306 D.B.

Power of resumption - Constitutional power - No constitutional invalidity can be imputed to power of resumption under the Act. The very concept of a planned urban development is now a well recognised social norm of a welfare State challenge to constitutionality of provisions of Act on the basis of principles enunciated on *Olga Tell's case* AIR 1986 S.C. 180 cannot be sustained - *Surat Shigh v. State of Haryana*, 1990 PLJ 126 D.B.

—Weapon of last resort - Where construction of building was to be started within two years as per condition of allotment letter. The allottee could not start construction within the stipulated period as the actual possession of the plot was not delivered to him by the authorities. *Held*, order of resumption on the ground of failure to construct the building within the said period is wholly arbitrary. Power of resumption must be used as a weapon of last resort with great caution by the authority under the Act - *D.N. Kajriwal v. State of Haryana*, 1987 PLJ 532.

Pricing - Petitioners were allotted houses at the tentative price of Rs. 35,000/- per house - Subsequent price was revised to Rs. 62,800/- due to rise in cost of building material, labour charges and other reasons - Petitioners had given their consent for such increase from time to time - There is no illegality in the demand of enhanced price by the Board - Moreover, Courts cannot go into the question of pricing of houses - Petition dismissed - *Parmanand v. Chairman, Housing Board Haryana*, 1996 H.R.R. 559.

Resumption and Natural justice - Where no notice was issued to guardian of the petitioner who was a minor, the resumption order was quashed - *Surat Singh v. State of Haryana*, 1990 PLJ 126 D.B.

Resumption and opportunity - Where the order of resumption was in respect of building in occupation of tenants along with the owner it was held that both owner as well as tenant are entitled to be heard before an order of resumption is passed. In the absence of any material to show the issuance of such notice, the order of resumption was quashed - *Surat Singh v. State of Haryana*, 1990 PLJ 126 D.B.

Transfer of plot - One Smt. Prem Lata was allotted an MIG House on hire purchase basis - Price of the dwelling unit was fully paid and all formalities were completed within the stipulated period - The provisional permission for the transfer of allotted plot in favour of the petitioner was granted by the Board - Transfer fee was deposited after the stipulated period within which the affidavit and indemnity bond was to be furnished - Delay in deposit of fee and other document not to stand in the way of transfer of the plot - The Board is directed to intimate the amount of conveyance deed charges to be deposited by the petitioner within 15 days and then to transfer the dwelling unit in the name of the petitioner - *Mrs. M. Bali v. Housing Board Haryana, Chandigarh*, 1994 HRR 88.

Unauthorized Construction - A dwelling unit was allotted to petitioner under the category of "Economically weaker section" at Maloya colony at Chandigarh who raised unauthorized construction on Government land - Allotment cancelled for violation of terms of allotment letter - Petitioner slept over his right for long period - No relief granted to him - Petition dismissed - *Suraj v. Union Territory, Chandigarh,* 2008(2) HRR 634 D.B.

Valid/invalid order of allotment - Mere reminding through a letter to take possession of a house which already is allotted to another person, cannot be termed as an order of allotment - *Sumer Chand Bhatt v. The Housing Board, Haryana,* 1984 H.R.R. 9.

Violations of conditions - Cancellation – Petitioner was allotted an HIG House under Self Financing Scheme – The main condition of allotment was that no family member of Allottee should be owning any house within the limits of Tricity i.e. Chandigarh, Mohali and Panchkula – But in the present case husband of petitioner was owning house in Panchkula and this fact was not disclosed by petitioner She had submitted a false affidavit in this regard – Petitioner can seek no relief from the Court in this regard as allotment was rightly cancelled by authority below – Petition dismissed - *Shashi Bala v. Chandigarh Housing Board,* 2014(2) Haryana Law Reporter 526 D.B.

Violation of legal provision – Encroachment – Show cause notice – Grievance of the petitioner is against a show cause notice by respondent for encroachment on government land and issuance of notice without any legal authority – The plea that issuance of notice under Punjab Capital Act and also under Housing Board Act is against law – Held, the objection is without any merit in view of decision rendered by this Court in Paramjeet Singh's case decided on 4.3.2012 (CWP No. 16970 of 2007) when it was held that Capital of Punjab Act, 1952 is applicable to urban as well as rural area of UT, Chandigarh as envisaged by section 4 of the Punjab Re-organisation Act, 1966 The objection is repelled – But as no opportunity of hearing after issuance of notice and passing of an order was given to the petitioner, the impugned order is not legally sustainable – Impugned Order quashed – Case remanded to pass an order after hearing the petitioner – Petition allowed - *P.S. Sawhney v. Chandigarh Housing Board,* 2012(1) Haryana Law Reporter 499 D.B.

CASES UNDER CONSUMER PROTECTION ACT, 1986

The Housing activities carried on by the Statutory Authorities or private builders come within the purview of the Consumer Protection Act, 1986 - as held in *Lucknow Development Authority v. M.K. Gupta's case* 1994 (1) CPC 1 S.C. - It has been observed in this case by the apex Court that when any statutory authority develops land or allots a site or construct a house for the benefit of common man, it is as much service as by the builder or a contractor - The cases dealing with the subject of plots, flats or houses decided under the Consumer Protection Act are being discussed below :-

Allotment – Allotment made by Housing Board to 235 members of the respondent/society – Society introduced 6 new members which delayed the allotment of additional land – Housing Board not liable for delay in allotment which was caused by Society itself – *Chandigarh Housing Board v. Krishan Kumar Goel,* 2009(2) CPC 390 N.C.

Allotment through lottery - Demand of extra charges for allotment of corner plot as per rules is not illegal even if it is a draw of allotment by lottery - *Estate Manager, M.P. Housing Board v. Rajesh Kumar Gupta,* 2010(1) CPC 376 S.C.

Conversion in freehold – N.O.C. - Petitioner/OP refused to issue NOC qua allotted house for conversion it in freehold on vague grounds – Fora below directed OP to issue NOC – Impugned order held to be justified – 2012(2) CPC 362 N.C.

Demand of inflated price - All the authorities below dismissed the plea of the petitioner who raised false demand against the allottees – Continuity of frivolous litigation should be discouraged - Petition dismissed with penal cost of Rs. 1 lac – 2013(1) CPC 630 S.C.

Extra charges for corner plot – Demand of extra charges for allotment of corner plot as per rules is not illegal even if it is a draw of allotment by lottery. lottery - *Estate Manager, M.P. Housing Board v. Rajesh Kumar Gupta,* 2010(1) CPC 376 S.C.

Housing allotment – Allotmont under Hire Purchase Agreement – Housing Board demanding enhanced price illegally Complainant not liable to pay enhanced price Deficiency in service proved – *Housing Board Haryana v. Lekh Raj,* 2009(3) CPC 686 Hr.

Housing Board - Allottee transferring plot to another person against terms of allotment - Not entitled to relief for delay in delivery of possession by Housing Board - *Chandigarh Housing Board v. Kapur Singh Grewal,* 2000(1) CPC 112 Chd.

—Allottees not entitled to raise the question of pricing of flats or plot under the Consumer Protection Act - *Punjab Housing Development Board v. All India Defence Personnel Welfare Association (Regd.),* 1995(1) CPC 310 N.C.

—Application for allotment of house in violation of Rules - Cancellation of allotment by Housing Board justified - *Preeti Ahluwalia v. Chandigarh Housing Board,* 1999(1) CPC 68 Chd.

—Authority of Housing Board in fixation of price of plot/flat is not open to challenge under Consumer Protection Act - *National Consumer Awareness Group (Regd.) Chandigarh v. The Housing Commissioner, Punjab Housing Development Board,* 1997(2) CPC 609 N.C.

—Board not bound to pay repair expenses unless proved by cogent evidence by allottee complainant - *Chairman, Tamil Nadu Housing Board v. N. Sivasailam,* 1996(2) CPC 337 N.C.

Cancellation of allotment of house due to violation of Regulation - Board is liable to refund after deducting 10% of deposited amount - *Chandigarh Housing Board v. Surinder Pall Soni,* 2004(1) CPC 413 N.C.

—Complainant taking possession of house without any protest - Claim for amount allegedly spent on house, cannot be accepted - *Sushil Kumar Gupta v. Housing Board Haryana and Another,* 1996(2) CPC 35 Chd.

—Complainant who had deposited Rs. 1,10,000/- for house allotment was not allotted the house for three years - Housing Board held liable to compensate the complainant - *U.P. Avas Evam Vikas Parishad (Housing and Development Board) v. C.P. Sharma and Others,* 1991 CPC 327 N.C.

—Complainant's house was reallotted to another person as he had failed to comply with the necessary condition - Housing Board not liable for deficient service - *Ramesh Chand v. Chandigarh Housing Board,* 1996(2) CPC 25 Chd.

—Complaint against charging of escalated price by Housing Board - Order of State Commission awarding escalation cost upto 20% and direction to remove the defects upheld - *Harendra v. M.P. Grih Nirman Mandal,* 2002(2) CPC 131 N.C.

—Complaint regarding allotment of defective house is maintainable under the Consumer Protection Act - *Dilbagh Rai v. Housing Board Haryana,* 1994(2) CPC 435 N.C.

—Cracks appeared in the walls of flat allotted to complainant - Housing Board held liable to pay Rs. 25,000/- to complainant - *Prof. R. Shanmugasundaram v. Tamil Nadu Housing Board,* 1997(2) CPC 384 N.C.

—Delay in allotment of house without sound reasons - Housing Board is guilty of deficiency in service - *Rajasthan Housing Board, Jaipur v. Dr. Veer Singh Mehta,* 1997(1) CPC 412 N.C.

—Delay in delivery of possession of flat due to non- supply of water and electricity - Housing Board not liable for delay - *P. Gopala Subramaniam v. Vice Chairman, A.P.H.H., Hyderabad,* 1995(2) CPC 223 N.C.

—Delay of 7 years in delivery of possession of allotted house - HUDA is liable to pay 18% on deposit starting from two years after date of deposit - *H.U.D.A. v. Devica Jaswal,* 2003(1) CPC 111 N.C.

—Demand of balance amount from allottee was made in 1992 by Housing Board - Payment was made in 1998 - Allottee directed to pay 12% interest for delayed period - *M.P. Housing Board v. Jagat Kishore Khare,* 2002(1) CPC 186 N.C.

—Directions can be issued to the Housing Board for removal of defect in the houses - Directions concerning schools or roads facilities cannot be issued - *Secretary, Orissa State Housing Board v. The Chandra Sekharpur Housing Board Colony Unnayan Samiti,* 1994(1) CPC 376 N.C.

—Housing Board cannot be burdened with a disproportionate compensation by consumer Fora - *Bihar State Housing Board v. Prio Ranjan Roy,* 1997(2) CPC 430 S.C.

—Housing Board charging higher price than 10% of the indicated price of plot and delaying the possession - Allottee entitled to refund of excessive price with 18% interest - *M.P. Housing Board v. Ashok Chandra Varshney,* 2003(2) CPC 7 N.C.

—Housing Board delayed possession of flat for three years after receiving payment - Directed to pay Rs. 22,000 as compensation - *Chandigarh Housing Board v. Daljit Singh,* 2001(2) CPC 133 Chd.

—Housing Board failed to complete construction of house within stipulated period - Held guilty of deficiency in service - *Rajasthan Housing Board v. R.C. Bhandari,* 1997(1) CPC 465 N.C.

—Housing Board failed to construct house in agreed time after payment - Directed to refund entire amount with interest after deducting 20% of initial deposits - *Bihar State Housing Board v. Gauri Shankar Singh,* 2003(2) CPC 262 N.C.

—Housing Board failed to construct the houses in time due to paucity of funds - Deficiency in service not proved - *Prem Lata (Mrs.) v. The Punjab Housing Development Board,* 1994(1) CPC 25 Pb.

—Housing Board misleading complainant about grant of loan from his employer cancelled allotment despite payment of initial price - Housing Board directed to refund the amount with 18% interest - *Allam Aslam v. The Chairman, Tamil Nadu Housing Board,* 2003(2) CPC 505 N.C.

—Housing Board though is statutory Body is not exempted from the provisions of the Consumer Act - Directed to make its Rules "fair and just" to the public - *Punjab Housing Development Board v. Shri Anil Sharma,* 1991 CPC 601 Chd.

—Housing Board, respondent not receiving the cheque though due to mistake of another statutory body - Respondent is not at fault - *Dr. Sunil Kumar Wadhwa v. U. P. Avas Evam Vikas Parishad,* 1991 CPC 523 N.C.

—MIG flat constructed by the Housing Board found in dilapidated condition - Board directed to refund entire price with 12% p.a. interest and costs - *Housing Board, Haryana through its Chief Administrator v. Shri Ramesh Kumar Goel,* 2002(2) CPC 362 Chd.

—No Objection Certificate denied to allottee who failed to raise construction - Order of cancellation of plot is unjustified - *Chairman, Tamil Nadu Housing Board v. Pitchaimuthammal,* 1996(2) CPC 339 N.C.

—Non delivery of possession of house despite payment of full amount - Housing Board directed to pay Rs. 50,000/- as costs - *Rajasthan Housing Board v. Prakash Chand Jain,* 2001(2) CPC 664 N.C.

—Pricing policy of Housing Board cannot be challenged under the Consumer Protection Act - *Housing Board Haryana v. Kartar Singh etc. etc.,* 1995(1) CPC 1 N.C.

—The MRTP Commission based it is finding on unfair trade practice against Housing Board on no evidence - Order of Commission set aside - *Rajasthan Housing Board v. Smt. Parvati Devi etc.,* 2000(2) CPC 499 S.C.

—Total price of flat paid - Delay of 7 months in possession - Housing Board directed to pay 12% interest on deposited amount - *Chandigarh Housing Board v. Shri Harjinder Singh,* 2002(2) CPC 516 Chd.

—Undue delay in sanction of zoning plan resulting in delayed possession of plot - Housing Board directed to pay 9% p.a. interest on deposited amount - *Krishan Kumar Goel, Advocate v. Chandigarh Housing Board,* 2003(1) CPC 396 Chd.

—Wife allotted a house - Hushand rightly declined allotment by Chandigarh Housing Board - *P.S. Sawhney v. Chandigarh Housing Board,* 1999(2) CPC 229 N.C.

Housing complex - No provision for providing lift in agreement - Complaint regarding lack of facilities of lift dismissed - *J. Parthasrthy v. M/s. Homefinders Housing Promoters Ltd.,* 2002(2) CPC 94 N.C.

Housing construction - Delay in construction of house by Development Authority within time due to factors beyond its control - Deficiency in service not proved - *Somasundara v. The Mysore Urban Development Authority,* 1994(2) CPC 414 N.C.

—Delay of seven years in delivery of possession of allotted house - Complainant held entitled to compensation - *Harbans Singh v. Lucknow Development Authority,* 1994(1) CPC 384 N.C.

Housing loan - Provisions of Bihar Coop. Society Act no bar to complaint against charging of higher interest on housing loan - *Ram Deo Singh @ Ram Dev Prasad Singh v. Bihar State Housing Coop. Federation Ltd.,* 2003(2) CPC 564 N.C.

Housing scheme - Complainant deposited Rs. 3000/- in 1989 as registration amount for allotment - Scheme abandoned in 1996 without reason - Complainant entitled to 18% interest on deposits - *Punjab Urban Development Authority v. Shri Inder Pal Singh,* 2002(1) CPC 389 N.C.

—House not allotted even after receipt of 55% price - Authorities directed to refund deposits with 18% interest - *George Thomas v. Ghaziabad Development Authority*, 1999(1) CPC 183 N.C.

Housing service - Delay in delivery of possession by six years - Opposite parties liable to pay 18% interest on deposited amount - *S.K. Jain v. H.U.D.A.*, 2004(1) CPC 33 N.C.

—Extra amount as alleged was not charged from complainant - OP not liable for deficiency in service - *Jugal Kishore Maheshwari v. Bhopal Development Authority*, 2002(1) CPC 191 N.C.

—Housing Board accepted request of allotee to accept the instalment as in case of hire purchase Board can not resile from its undertaking - Petition dismissed - *Raj. Housing Board v. Murali Lal Jaiman*, 2003(1) CPC 110 N.C.

—PUDA failed to deliver physical possession of allotted house - Directed to pay Rs. 500/- p.m. till date of delivery of possession along with Rs. 20,000/- - *Punjab Urban Planning & Development Authority v. Ram Murti*, 2002(1) CPC 559 N.C.

—Undue delay in delivery of possession of house - Award of interest @ 18% after two years upheld - *G.D.A. v. R.G. Saxena*, 2002(2) CPC 82 N.C.

—Undue delay in delivery of possession of house - OP directed to pay 16.5% interest on deposited amount - *Laxman Kumar Harwani v. M.P. State Co-op. Housing Complex*, 2003(1) CPC 229 N.C.

Judgement in rem – Judgement in rem is binding not only to parties but upon all the world – 2009(1) CPC 443 N.C.

Limitation - Cause of action arose in 1998 when possession was delivered – Complaint filed in 2002 without explaining delay is barred by limitation – *Chandigarh Housing Board v. Krishan Kumar Goel*, 2009(2) CPC 390 N.C.

Price of flat – Price re-determined in LPA whose complainant was not a party – LPA judgement not binding upon allottee complainant – 2009(1) CPC 443 N.C.

Rate of interest - District Forum allowing complaint directed OP to pay compensation and cost with 16% interest – Interest being on higher side reduced from 16% to 12% - Rest of the order left undisturbed - *Madhya Pradesh Housing Board v. G.S. Daheria*, 2009(3) CPC 678 N.C.

Review – An order passed by the Fora cannot be reviewed in the name of correction of typographical error - *M.P. Housing Board v. Jagdish Prasad Maheshwari*, 2010(2) CPC 451 N.C.

Typographical error - An order passed by the Fora cannot be reviewed in the name of correction of typographical error - *M.P. Housing Board v. Jagdish Prasad Maheshwari*, 2010(2) CPC 451 N.C.

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45. ***Disputes regarding re-constitution of plots.*** – (1) Where by the making of a housing scheme, any plots comprised in the area included in the scheme are reconstituted or any person is dispossessed, the Board shall after making such inquiry as it thinks fit award to the person affected by such re-constitution or dispossession such compensation as it deems reasonable. If the person is dissatisfied with the decision of the Board in the matter, he may inform the Board accordingly. The Board shall thereupon refer the matter to the Tribunal.

(2) The Tribunal shall then after making an inquiry determine the amount of compensation and direct the Board to pay the same to the person concerned.

CHAPTER V
Tribunal

46. ***Tribunal.*** - The Tribunal shall be the District Judge having jurisdiction in the area concerned.

47. ***Duties of Tribunal.*** - The Tribunal shall-

(a) decide whether any compensation is payable under section 31 ;

(b) decide the amount of compensation in matters referred to it under section 33 ;

(c) decide disputes relating to betterment charges referred to it under section 41 ;

(d) decide disputes and the amount of compensation to be awarded under section 45 ; and

(e) decide such other matters as may be prescribed by the rules made in this behalf.

48. Powers of and procedure before Tribunal. - (1) In making enquiries the Tribunal shall have and exercise as far as may be the same powers and follow the same procedure as under the Code of Civil Procedure, 1908.

(2) Every order made by the Tribunal for the payment of money and for the delivery of the possession or removal of any structure shall be enforced by the District Court as if it were the decree of the said Court.

(3) The proceedings before the Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code.

49. ***Decision of Tribunal to be final.*** - The decision of the Tribunal on any matter referred to it under this Act shall, subject to the provision of section 50, be final.

50. ***Appeal to the High Court.*** - The Board or any person aggrieved by a decision of the Tribunal may within three months from the date of the decision, or such further time as the High Court may for sufficient cause allow, appeal to the High Court and the High Court shall pass such orders on the appeal as it thinks fit.

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CHAPTER VI
Power to Evict Persons from Board Premises

51. ***Power to evict persons from Board Premises.*** - (1) If the competent authority is satisfied,—

(a) that the person authorised to occupy any Board premises has—

(i) not paid rent lawfully due from him in respect of such premises for a period of more than two months ; or

(ii) sublet, without the permission of the Board the whole or any part of such premises ; or

(iii) otherwise acted in contravention of any of the terms, expressed or implied, under which he is authorised to occupy such premises ; or

(b) that any person is in unauthorised occupation of any Board premises :

the competent authority may, notwithstanding anything contained in any law for the time being in force, by notice served by post or by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be prescribed, order that the person as well as any other person who may be in occupation of the whole or any part of the premises, shall vacate them within one month from the date of the service of the notice:

Provided that no such order shall be passed unless the person has been afforded an opportunity to show cause why such order should not be made.

(2) If any person refuses or fails to comply with an order made under sub-section (1), the competent authority may evict the person from, and take possession of the premises and may for that purpose use such force as may be necessary.

(3) If a person, who has been ordered to vacate any premises under sub clause (1) or sub-clause (iii) of clause (a) of sub-section (1), within thirty days of the date of service of the notice or such longer time as the competent authority may allow, pays to the Board the rent in arrears or carries out or otherwise complies with the terms contravened by him to the satisfaction of the competent authority, as the case may be, the competent authority shall, in lieu of evicting such person under sub-section (2), cancel its order made under sub-section (1) and thereupon such person shall hold the premises on the same terms on which he held them immediately before such notice was served on him.

COMMENTARY

Allotment - Housing Board - Eviction - Entire payment was made for allotment of house including interest - Prescribed date for payment was 30.3.1982 - Only minor amount (Rs. 800/- only) was deposited after the said date - Collector passed an order of eviction against petitioner under Section 51 of Haryana Housing Board Act for not depositing the entire amount before the prescribed date - Order of eviction not legally sustainable - Petitioner was neither in unauthorised possession nor he had defaulted in payment of rent etc. but he was an owner of the shop when order of ejectment was passed against her - Petition accepted - *Raj Kumar v. Housing Board Haryana*, 2004(1) H.R.R. 380

Cancellation of house allotment - Discretionary powers - Petitioner (original allottee) depositing Rs. 10,000/- within the stipulated period in pursuance of a letter issued by the Chairman of the Housing Board Haryana. Payment for additional amenities also agreed to be made - Acceptance thereof by the Board also made - Housing Board communicating a letter to the new allottee of the house in dispute informing him to take the possession thereof - No opportunity of the hearing given to the original allottee - Order of the Housing Board liable to be set aside - Order quashed - *Sumer Chand Bhatt v. The Housing Board Haryana* 1984 H.R.R. 9.

Misuser -The petitioner was allotted a dwelling unit in Maloya colony under Economical Weaker Section Scheme - He raised unauthorized construction in front of his house on Government land and started a Karyana shop therein - Authorities concerned cancelled the allotment and forfeited the deposited amount - Before cancellation of allotment many notices were served on him but the same weren't responded- to - Petitions filed by him were dismissed as time barred giving rise to present writ petition The order of eviction was passed in 2002 whereas petition was filed in 2007 - Moreover he did not make any attempt to remove the violation even during pendency of proceedings No relief can be given to petitioner for his callous attitude - Petition dismissed - *Suraj v. Union Territory, Chandigarh*, 2008(1) HRR 198 D.B.

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52. Power to recover [1][rent, loan] or damages as arrears of land revenue. - (1) Subject to any rules made by the [1][Administrator] in this behalf and without prejudice to the provisions of section 51, where any person is in arrears of rent payable in respect of any Board premises [2][or arrears of instalments payable in

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[1] Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35
1. Substituted by Hr. Act No. 10 of 1989 as extended to Chandigarh published on 2-4-1991
2. Inserted by Hr. Act No. 10 of 1989 as extended to Chandigarh published on 2-4-1991

respect of any loan advanced by the Board for construction, reconstruction or repair of a house] the competent authority may, by notice served by post or by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be prescribed, order that person to pay the same within such time not being less than thirty days as may be specified in the notice. If such person refuses or fails to pay the arrears of rent [2][or the arrears of instalment of loan] within the time specified in the notice, such arrears may be recovered as arrears of land revenue.

(2) Where any person is in unauthorised occupation of any Board premises, the competent authority may, in the prescribed manner, assess such damages on account of the use and occupation of the premises as it may deem fit, and may by notice served by posts, or by affixing a copy of it on the outer door or some other conspicuous part of such premises, or in such other manner as may be prescribed, order that person to pay the damages within such time not being less than thirty days as may be specified in the notice. If any person refuses or fails to pay the damages within the time specified in the notice, the damages may be recovered from him as arrears of land revenue.

COMMENTARY

Arrest and recovery of loan - Where the terms of agreements make it clear that the Government has first to proceed against the property mortgaged and sell the property in case the House Building Society loan is not paid by the loanee - It was held that the Government being bound by the terms of the agreement, has first to proceed against the mortgaged property - The amount could not be recovered by arrest of the members of the Society in the first instance - *State of Punjab v. Dharam Singh*, AIR 1985 S.C. 1751

Auction of the site – Deduction – Petitioner failed to deposit balance 60% amount and surrendered the plot – Housing Board refunded the deposited amount after deducting 10% amount as per terms of auction of site – Deduction is justified - *Hem Raj Housing Board Haryana*, 2014(1) H.L.R. 283 D.B.

Injunction against recovery - The order of fixing liability was passed in violation of principle of natural justice - The party affected was not provided proper opportunity of hearing before passing the impugned order - Order held to be void - Civil Court can grant injunction against the recovery - *M/s. K.K. Industries v. Union of India and others*, 1988 PLJ 588.

Recovery of arrears as land revenue - There are eight steps postulated under Section 67 of the Punjab Land Revenue Act, under sub-heads (a) to (h) and arrest and detention of the person of defaulter is one step - Where the petitioner's husband, obviously in arrears of House Building Society, was straightaway put to arrest and detention without resorting to other steps envisaged under Section 67 of the Act, the order of detention was set aside by the Division Bench of the Punjab and Haryana High Court - It was held that arrest and detention of a person, in such cases, should be the last resort and arrears should be recovered firstly by other means of recovery under the Punjab Land Revenue Act - *Gomti Devi v. Kalka Co-operative House Building Society*, 1988 P.L.J. 416 (D.B.) = 1989 (2) Rev. L.R. 296.

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53. ***Rent to be recovered by deduction from salary or wages in certain cases.*** - (1) Without prejudice to the provisions of section 51 any person, who is an employee of the *[Administrator] or a local authority and who has been allotted

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

any Board premises, may execute an agreement in favour of the *[Administrator] providing that the *[Administrator] or the local authority, as the case may be, under or by whom he is employed, shall be competent to deduct from the salary or wages payable to him such amount as may be specified in the agreement and to pay the amount so deducted to the Board in satisfaction of the rent due from him in respect of the Board premises allotted to him.

(2) On the execution of such agreement, the *[Administrator] or local authority, as the case may be, shall, if so required by the Board by requisition in writing make the deduction of the amount specified in the requisition from the salary or wages of the employees specified in the requisition in accordance with the agreement and pay the amount so deducted to the Board.

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[1][53-A. ***Penalty.*** - (1) If any amount due under the Act or the rules made there under is not paid by any person in compliance with the orders of the competent authority, such authority may, after giving such person an opportunity of being heard, impose upon him a penalty not exceeding twenty five per cent of the amount due, if it has reason to believe that the person liable to pay the amount has willfully failed to pay the same.

(2) If the penalty imposed under sub-section (1) is not paid within a period of thirty days the same shall be recoverable as arrears of land revenue].

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54. ***Appeal.*** - [2][(1) Any person aggrieved by an order of the competent authority may within thirty days from the date of—

(i) the service of notice under section 51 or section 52; or

(ii) the imposition of penalty under section 53-A prefer an appeal to the [3][District Judge of the District in which the premises of the Board are situated or such other Judicial Officer in that District as the *{Administrator) may, in consultation with the High Court, appoint in this behalf].

Provided that the appellate officer may entertain the appeal after the expiry of the said period of thirty days, if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time].

(2) Where an appeal is preferred under sub section (1), the appellate officer may stay the enforcement of the order of the competent authority for such period and on such conditions as he deems fit.

(3) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

COMMENTARY

APPEAL

Appeal is a continuation of original cause - An Appellate Authority is competent to correct an error committed by the lower Authority, without remanding the case back - The power of remand should be used with great circumspection - *Om Parkash and others v. Joint Director Panchayat Punjab* 1987 PLJ 273 - 1987 (1) PLR 674.

Creature of Statute - Legislature can impose conditions for exercise of such right - There is no reason why the legislature while granting the right of

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Inserted by Hr. Act No. 47 of 1974

2. See Hr. Act No. 47 of 1974

3. Substituted vide Chandigarh Administration Gaz. Notification dated 2-4-1991 at page 339

appeal cannot impose condition for the exercise of such right so long as the conditions are not so onerous as to amount to unreasonable restriction rendering the right almost illusory - *Seth Nand Lal and another v. State of Haryana and others* - AIR 1980 S.C. 2097.

Merger - Appellate hearing is a rehearing of the whole subject matter and when a decree is passed in appeal, the first decree merges in the appellate decree - *Sadhu Singh v Dharam Dev etc.* AIR 1980 S.C. 1654.

Power - An appellate Court has the same powers as conferred on the Courts of original jurisdiction - A decree passed by an Appellate Court is deemed to be a fresh decree - Once appeal is filed against the decree the Appellate court has seision of the whole matter - *Shrimati Gita Devi v. E.C. Haryana* 1987 PLJ 265.

Revision - A person who is not a party to an order is not entitled to file a revision against the impugned order - *State of Haryana v. Vinod Kumar,* 1986 (1) PLR 222 - 1986 PLJ 161 (F.B.). See also 1985 HRR 570.

Right of Appeal - It is vested right of litigants which accrues at the date of filing of suit - Right of appeal is governed by law prevailing at the date of institution of the suit and not at the date of filing of appeal - *Smt. Kurtar Kaur v. State of Haryana,* AIR 1986 (P & H) 99 - 1985 Rev. L.R. 137.

Right of an appeal is a substantive right - It is not a procedural matter - It cannot be restricted in the absence of an express provision to the contrary - Such provision should not be construed narrowly - *Kanshi Ram v. Subedar Shri Ram etc.* AIR 1980 (P&H) 145 : 1980 Rev. L. R. 225 : ILR (1980) 2 P&H 195.

Statutory right - Appeal is a Statutory right - Litigant cannot claim their right unless it is provided in the Statute - Absence of such right in Statute does not render it unconstitutional - *Subedar Munshi Ram and another v. State of Haryana* - 1979 PLJ (F.B.) 489.

Subsequent events - Appeal is a rehearing of the case - Appellate Court entitled to take into account subsequent event - *Santokh Singh v. Lajja Ram,* AIR 1986 (P & H) 346 = 1986 Rev. L.R. 444.

LIMITATION

Acknowledgement - Mortgagee's right - Where the receipts of consideration of mortgage money did not indicate that their makers intended to admit the substiting mortgages and that the right to redeem was subsisting those receipts will not amount to an acknowledgement within the meaning of S. 19 of the Limitation Act - *Bachint Kaur v. Gurnam Kaur* - 1991 H.R.R. 28.

Cause of action - Time starts from the date when the cause of action first accures - Successive deailas of plaintiff's right does not furnish fresh causes of action in view of Section 58 of Limitation Act - *Saudager Singh v. Harnam Kaur,* 1987 PLJ 248 = 1987 (1) PLR 591.

Condonation - It is not necessary that a written application u/s 5 of the Act should be necessarily made - Condonation of delay can be permitted on oral request of the party - *Partap Singh v. State of Haryana* 1979 PLJ 48 D.B.

Condonation of delay - Where the legal representatives of the deceased respondent has been brought on record earlier too, the appellant connot say that they had no knowledge that the LR's of the deceased appellant were to be brought on a record - Plea of lack of knowledge of period of limitation not accepted - Application for setting aside abatement proceedings after one year after the death of the deceased appellant was dismissed, being barred by time - *Jai Ram v. Jagat Ram* 1991 H.R.R. 102.

Extenstion of time - Presumption - Where the decree-holder was allowed to deposit the amount of security after the due date without extending the

time - It was held that extension of time is presumed to be allowed even if no application was filed in this regard - *Amar Nath Jain v. Ram Parkash Dhir* - 1988 H.R.R. 47.

—Where the grounds of condonation i.e. negligence of the counsel etc. were not proved - Held, applicant cannot get any relief - Application for condonation dismissed - *The United India Insurance Company v. Subhash Chander Gupta and others* - 1988 H.R.R. 297.

—Delay - Allotment of dwelling unit made in 1989 was cancelled against which writ petition was filed in 1999 - Petitioner had been making repeated representation regarding patent mistake committed by Housing Board but without any success - Board failed to pay any attention to the repeated requests of allottee and no decision was convyed - Objection regarding belated prayer for relief through writ petition cannot be objected to by Board and cannot be allowed to take advantage of its own mistake and inaction - *Smt. Shashi Bala v. Chandigarh Housing Board*, 2001 HRR 232 D.B.

Limitation - Courts are bound to look into the question of limitation even if no plea is taken by party in this regard - *Gammoni Anasuya v. Parvatini Amarendra Chowdhary*, 2008(1) HRR 476 S.C.

Mistake of Court - There is no time limit to correct Court's own mistake - Chaimant cannot be penalised for mistake of Court - *Kartar Singh v. State of Haryana* - 1986 PLJ 206.

Mistaken advise - Litigant bona fide pursuing his case in wrong court - Time should be excluded - *Badlu v. Shiv Charan*, 1980 PLJ 214 = See also 1987 HRR 28.

Redemption - Acknowledgement - The land, in dispute, was mortgaged by A in favour of B in the year 1921 who sold his mortgagee rights in favour of C in the year 1954 - The suit for the redemption was filed in 1973 - Limitation must be deemed to have started from the original mortgagee in the year 1921 and not in the year 1954 - *Mohan Singh v. Jogar Singh* 1991 H.R.R. 93.

Time spent for copy - Benefit of day on which judgment is pronounced and time spent for obtaining copy, should be given under Section 12 (1) and (2) of the Act - *Kushmir Singh v. M.C. Karnal* 1983 PLJ 22 - See also 1986 HRR 665.

Void order - Once an aggrieved party is dispossessed in view of a void order - Limitation will start from the date of dispossession and outer limitation is 3 years - *State of Punjab v. Gurnam Kaur* 1984 PLJ 389.

—When order is not void or without jurisdiction, Article 100 will apply - *Kalia and another v. Chandu Lal* - 1984 PLJ 360.

—Question of limitation does not arise where an order is void and without jurisdiction - Such orders can be ignored without getting them set aside - *Sarwan Kumar v. Shyam Mangla* 1989 H.R.R. 641.

Void or non set order - It is necessary to have such orders set aside - Such cases are governed by Art. 68 and not by Art. 100 of the Limitation Act - *Rajinder Singh v. Gur Charan Singh and others* - 1984 PLJ 360.

—Delay in depositing the security was caused because of the non holding of the Court by the Presiding Officer being on leave and not because of the judgement-debtor - Security was deemed to have been filed within time - Delay of four days is condoned - *Mukhtiar Singh v. M/s. Pakhar Singh Amir Singh and others* - 1988 H.R.R. 583.

—An action for enforcing a right filed within the period of limitation as fixed by law cannot be thrown out merely on the ground of delay - *Dr. M.K. Salpekar v. Sunil Kumar Shamsunder Chaudhari* - 1988 H.R.R. 533.

55. ***Finality of orders and bar of jurisdiction of Civil Courts.*** - (1) Save as otherwise expressly provided in this Act, every order made by a competent authority or an appellate officer under this chapter shall be final and shall not be called in question in any original suit, application or execution proceedings.

(2) No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter of which the cognizance can be taken of and disposed of by any authority, empowered by this Act or the rules made thereunder.

COMMENTARY

JURISDICTION

Jurisdiction - Allottee became absolute owner - Local authority under the Housing Board Act still has power to regulate the violations by allottee - *Suresh Kumar v. Municipal Corporation, Faridabad,* 2006(2) HRR 306 D.B.

Adjudication - Debt Settlement Officer to adjudicate upon the question whether a loan is a debt or a person is a debtor - In absence of any such decision Civil Court can go into the matter after giving proper opportunity to the parties - If the Civil Court comes to the conclusion that the matter is covered by the provisions of the Act - It must stay its hands - *Bhola Singh v. Lachhman Dass* 1980 PLJ 232 (D B) = 1980 RLR 546.

Consent - An order without jurisdiction is non-est - Consent does not make the order legal and cannot invest the Court with jurisdiction - *Saraswati Devi v. Sant Ram and others,* 1983 PLJ 249.

Interpretation - Is well accepted principle of interpretation of statutes that the scope of the provisions of an Act would firstly have to be determined per force of the language used or employed by the legislature in the legislation - The objects and reasons would be considered when the language of the Act is capable of two interpretations - Natural meaning of the language should be adhered to *Vijay Kumar Bhambari v. Ram Nath Bajaj* - 1990 H.R.R. 151.

—Unless there is anything repugnant in the subject or context - In view of this qualification, the court has not only to look at the words but also to examine the context and collocation in the light of the object of the Act and the purpose for which a particular provision was made by the legislature - *Smt. Pushpa Devi and others. v. Milkhi Ram* 1990 H.R.R. 123 (S.C.)

—The Central Government is empowered to extend to the Union territory not only the original enactment of the State Legislature but also the averments thereto made by the State Legislature - *Ramesh Brich etc. v. Union of India and others* - 1989 HRR 398 (S.C.) - 1988 HRR 433 (FB) upheld.

Lack of jurisdiction - Question of jurisdiction can be raised first time even at the times of second appeal where the original Court is lacking the jurisdiction - It can be raised even at the time of execution when the decree is a nullity - *Ajit Mohinder Singh v. Smt. Bhani and others.* AIR 1987 (P & H) 167 - 1986 Recent Laws 48.

Merger - The order of the Addl. Director C/H was affirmed by the Single Judge of the High Court and the same was maintained in L.P.A dismissing the Civil Writ Petition - Civil court cannot proceed into the matter on the doctrine of merger - *Darshan Singh v. Sub Judge Ist. Class, Hoshiarpur* - 1988 H.R.R. 483.

—Where the possibility of settlement, was more in the High Court than any elsewhere it was held that the High Court was proper Forum to dispose of the case - Order of the High Court remitting the case to the trial Court was set aside by the Supreme Court - *Abhey Singh Surana v. The Indian Rayon and Industrial Ltd.* - 1988 H.R.R 506.

Non set order - A person who was not a party to an order passed by a Tribunal against him can file a suit for declaration to the effect that the order is not binding upon him, and non est so for as he is concerned - Such person is not entitled to get such order declared void but can seek declaration that the order qua him is ineffective - *State of Haryana v. Vinod Kumar and others,* AIR 1986 (P & H) 407 F.B. – 1986 Rev. L.R. 331.

Pleadings - It is an established principle of law that for determining the jurisdiction of the court, pleas of the plaintiff in the plaint are to be taken into consideration - *Chief Secretary of Punjab v. Chawali,* 1980 PLJ 10.

—Question of jurisdiction can be decided by taking into consideration pleas in the plaint of the plaintiff - *Karnail Singh v. Jaggar Singh,* AIR 1984 (P & H) 294 - 1984 (2) LLR 143 - See also 1987 HRR 530.

—Question of jurisdiction can be determined from the case pleaded in the plaint - *Chandu Lal v. S.K. Chhiber* 1983 PLJ 559.

Preliminary issue - An issue does not cease to be an issue of law by the mere fact that it contains some conditions of purchase order based upon some facts - The issue should be treated as a preliminary issue as an issue of law - *M/s. United Vanaspati Ltd. v. M/s. Shri Vardhman Salvex Private Ltd.* - 1988 H.R.R. 641.

Concurrent jurisdiction - An Application for appointing an arbitrator was pending in one Court while another Court in the same matter proceeded to extend the time for the appointment of any arbitrator, it was held that the second court has no jurisdiction to proceed in the matter - *Nehru Ram Goel Engineers v. Haryana State,* 1989 H.R.R. 218.

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CHAPTER VII
Finance, Accounts and Audit

56. ***Board's Fund.*** **-** (1) The Board shall have a fund called the Housing Board Fund.

(2) The Board may accept grants, subventions, donation and gifts from the Central Government or [1][———] a local authority or any individual or body, whether incorporated or not, for all or any of the purposes of this Act.

(3) All moneys received by or on behalf of the Board by virtue of this Act, all proceeds of land or any other kind of property sold by the Board, all rents and all interest, profit and other money accruing to the Board, shall constitute the Housing Board Fund.

(4) Except as otherwise directed by the *[Administrator], all money and receipts specified in the foregoing provisions and forming part of the fund of the Board shall be deposited in the State Bank of India or in any Scheduled Bank or a Co-operative Bank or invested in such securities as may be approved by the *[Administrator].

(5) Such accounts shall be operated upon by such officers as may be authorised by the Board.

Explanation. **-** For the purposes of this section, a Scheduled Bank shall mean a Bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Omitted vide Chandigarh Administration Gaz. Notification dated 13-3-1975 at page 34-35

57. ***Application of the Housing Board Fund.*** - All property, the Housing Board Fund, and all other assets vesting in the Board shall be held and applied by it, subject to the provisions and for the purposes of this Act.

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58. ***Expenditure in case of urgency, etc.*** - (1) Where in the opinion of the Board circumstances of extreme urgency have arisen, it shall be lawful for the Board to make for the purpose of this Act in any year an expenditure of such amount as may be prescribed, notwithstanding the fact that such expenditure has not been included in its annual programme or supplementary programme sanctioned by the *[Administrator] or the variation of the programme made under section 28.

(2) Where any sum is expended under circumstances of extreme urgency as provided in sub-section (1), a report thereof indicating the source from which it is proposed to meet the expenditure shall be made by the Board as soon as practicable to the *[Administrator].

(3) The Board may, within the budget sanctioned by the *[Administrator], approve appropriation not exceeding such amount as may be prescribed from one head to another and from one minor head to another under the same major head and submit a statement of such reappropriation to the *[Administrator].

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59. ***Subventions and loans to Board*** - (1) The *[Administrator] may from time to time make subventions to the Board for the purposes of this Act on such terms and conditions as the *[Administrator] may determine.

(2) The *[Administrator] may from time to time advance loans to the Board on such terms and conditions not inconsistent with the provisions of this Act as the *[Administrator] may determine.

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60. ***Power of Board to borrow.*** - (1) The Board may from time to time, with the previous sanction of the *[Administrator] and subject to the provisions of this Act and to such conditions as may be prescribed in this behalf borrow any sum required for the purposes of this Act.

(2) The rules made by the *[Administrator] for the purposes of this section may empower the Board to borrow by the issue of debentures and to make arrangements with bankers.

(3) All debentures issued by the Board shall be in such form as the Board, with the sanction of *[Administrator], may from time to time, determine.

(4) Every debenture shall be signed by the [1][Chief Executive Officer] [2][———].

(5) Loans borrowed and debentures issued under this section may be guaranteed by the *[Central Government] as to the repayment of principal and the payment of interest at such rate as may be fixed by the *[Central Government].

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61. ***Accounts and Audit.*** - (1) The Board shall cause to be maintained proper books of accounts and such other books as the rules made under this Act may require and shall prepare in accordance with such rules as annual statement of accounts.

(2) The Board shall cause its accounts to be audited annually by such persons as the *[Administrator] may direct.

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Substituted by Hr. Act No. 27 of 1980 as extended to Chandigarh

2. Omitted vide Chandigarh Administration Gaz. Notification dated 13-3-1975 at page 34-35

(3) As soon as the accounts of the Board have been audited, the Board shall send a copy thereof together with a copy of the report of the auditor thereto to the *[Administrator]; and shall cause the accounts to be published in the prescribed manner and place copies thereof on sale at a reasonable price.

(4) The Board shall comply with such directions as the *[Administrator] may after perusal of the report of the auditor, think fit to issue.

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62. ***Concurrent and special audit of accounts.*** - (1) Notwithstanding anything contained in section 61, the *[Administrator] may order that there shall be concurrent audit of the accounts of the Board by such person as it thinks fit. The *[Administrator] may also direct a special audit to be made by such person as it thinks fit of the accounts of the Board relating to any particular transaction or a class or series of transactions or to a particular period.

(2) Where an order is made under sub-section (1), the Board shall present or cause to be presented for audit such accounts and shall furnish to the person appointed under sub-section (1), such information as he may require for the purpose of audit.

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63. ***Transfer of assets and liabilities.*** - (1) The *[Administrator] may transfer to the Board building, land or any other property, movable or immovable, for use and management by the Board on such conditions and limitations as the *[Administrator] may deem fit, for the purposes of this Act.

(2) The *[Administrator] may transfer to the Board such schemes or works in progress, with all their assets and liabilities as are run or managed by the *[Administrator], subject to such conditions and limitations as the *[Administrator] may deem fit to impose for the purposes of this Act.

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CHAPTER VIII
Miscellaneous

64. ***Report.*** - The Board shall, before such date and in such form and at such intervals as may be prescribed, submit to the *[Administrator] a report on such matters as may be prescribed, and the *[Administrator] shall cause such report to be published in the *[Chandigarh Gazette].

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65. ***Statements and returns.*** - The Board shall submit to the *[Administrator] such statistics, returns, particulars or statements in regard to any proposed or existing housing schemes at such times and in such form and manner as be prescribed or as the *[Administrator] may from time to time direct.

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66. ***Power to entry.*** - The 1[Chief Executive Officer] or any person either generally or specially authorised by the Chairman in this behalf may, with or without assistants or workmen, enter into or upon any land, in order—

(a) to make any inspection, survey, measurement, valuation or inquiry;
(b) to take levels ;
(c) to dig or bore into sub-soil ;
(d) to set boundaries and intended lines of work ;
(e) to make such levels, boundaries and lines of works and cutting trenches; or

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35
1. Substituted by Hr. Act No. 27 of 1980 as extended to Chandigarh dated 2-4-1991

(f) to do any other thing, whenever it is necessary to do so, for any of the purposes of this Act or any rules made or scheme sanctioned there under :

Provided that —

(i) no such entry shall be made between sunset and sunrise ;

(ii) no dwelling house and no public building which is used as a dwelling place, shall be so entered, except with the consent of the occupier thereof, and without giving the said occupier at least twenty-four hours previous written notice of the intention to make such entry ;

(iii) sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of any apartment occupied by women to remove themselves to some part of the premises where their privacy will not be disturbed ;

(iv) due regard shall always be had, so far as may be compatible with the exigencies of the purposes for which the entry is made, to be the social and religious usages of the occupants of the premises entered.

67. ***Notice of suit against Board.*** - No person shall institute any suit against the Board or against any officer or servant of the Board or any person acting under the orders of the Board, for anything done or purporting to have been done in pursuance of this Act, without giving to the Board, Officer or servant or person concerned two month's previous notice in writing of the intended suit and of the cause thereof, nor after six months from the date of the act complained of.

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68. ***Triennial valuations of asserts and liabilities of Board.*** - The Board shall triennially have a valuation of its assets and liabilities made by a valuer appointed with the approval of the *[Administrator] :

Provided that it shall be open to the *[Administrator] to direct evaluation to be made at any time it may consider necessary.

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1[**68-A** ***Delegation.*** - The Board may, by resolution, authorise that any power exercisable by it under this Act or the rules or regulations made thereunder, except the power to make regulations, may also be exercised by the Chief Executive Officer].

69. ***Member Officers and servants of Board to be public servants.*** - All members, officers and servants of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

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70. ***Indemnity.*** - No suit, prosecution or legal proceedings shall lie against any person for anything which is in good faith done or purported to be done under this Act.

71. ***Power of Government to give direction to Board.*** - The *[Administrator] may give the Board such directions as in its opinion are necessary or expedient for carrying out the purposes of this Act, after giving an opportunity to the Board to state its objections, if any, to such directions and after considering the said objections and it shall be the duty of the Board to comply with such directions.

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Inserted by Hr. Act No. 27 of 1980 as extended to Chandigarh published on 2-4-1991

[1][72. *Control of Administrator over Board.* - (1) The Administrator shall exercise superintendence and control over the Board and its officers and may call for such information as it may deem necessary and, in the event of his being satisfied that the Board is not functioning properly or is abusing its powers or is guilty of corruption or mismanagement, he may, by notification, suspend the Board:

Provided that the Board shall be reconstituted, within a period of one year from the date of its suspension in the prescribed manner.

(2) When the Board is suspended under sub-section (1), the following consequences shall ensue, namely :—

(a) all members of the Board and its committees, including the Chairman of the Board, shall, from the date of the notification, vacate their officers;

(b) all powers, duties and functions, which under the provisions of this Act or any regulation made thereunder, are to be exercised by the Board or any committee thereof or by the Chairman of the Board, or by any other officer of the Board, shall, during the period of suspension, be exercised and performed by such person (to be called the Special Officer) as may be appointed by the Administrator in this behalf :

Provided that the Special Officer may, subject to the approval of the Administrator, delegate any of his powers, duties or functions to such other person as he may think fit ;

(c) all properties, including the Board Fund, vested in the Board shall, until it is, re-constituted, vest in the Central Government].

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[2][72-A. *Appeal.* - (1) Save as otherwise expressly provided in any other provision of this Act, an appeal shall lie from an original or appellate order of any officer of the Board or the Chairman under this Act or any rule or regulation made thereunder —

(a) to the Chairman when the order is made by any officer of the Board ;

(b) to the Board when the order is made by the Chairman.

(2) Every such appeal shall be preferred within a period of thirty days of the date of communication of the order :

Provided that the Chairman or the Board as the case may be, may entertain the appeal after the expiry of the period of thirty days if it is considered that the appellant was prevented by sufficient cause from filing the appeal in time.]

COMMENTARY

Alternative remedy - Civil writ - The new allottee of the house obtaining an interim order restraining the allotment authorities from cancelling his allotment - The original allottee of the house not filing any appeal under section 72-A against the re-allotment of the house in the name of the new allottee - Plea of the allottee to the effect that the petitioner (original allottee) was not entitled to file a writ petition as an alternative remedy was available to him, is not tenable - *Summer Chand Batt v. The Housing Board Haryana,* 1984 H.R.R. 9.

Alternative remedy - Writ petition - It is settled law that an appeal against an order of Housing Board regarding cost of houses which is determined by the Board itself is not useful - It is only when an order is passed by the Chairman in his capacity as Chairman that the appeal lies to the Board - *Flt. Lt. A.K. Khosla's*

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1. Substituted by Hr. Act No. 20 of 1979 as extended to Chandigarh published on 2-4-1991 page 333

2. Inserted by Hr. Act No. 28 of 1976 as extended to Chandigarh published on 2-4-1991 page 335

case (CWP No. 1895 of 1984) followed - *Parmanand v. The Chairman, Housing Board Haryana,* 1996 HRR 559.

—The petitioner, an Army Officer, made necessary deposits and was registered for the allotment of house - Failed to deposit the amount within stipulated period as the letter of demand could not be received at his village address - Circumstances for delayed deposit fully explained - Non speaking and brief order of cancellation on technical grounds cannot be sustained - Housing Board directed to allot the house to petitioner within 3 months - Existence of alternative remedy is no bar to seek the justice under Art. 226 of the Constitution - *Jag Mohan Sharma v. State of Haryana,* 1993 HRR 378.

NATURAL JUSTICE

—Allotment - The provisions of Regulation 6 (2) of Chandigarh Housing Board Regulation, 1979 undoubtedly authorise the Board to forfeit the deposit or cancel the allotment in case the contents of the affidavit filed by the applicant are found to be false - However, it is an enabling provision - It is incumbent on the Board to examine the facts and circumstances of each case before passing any such order - Such an order cannot be passed mechanically - Where the petitioner was not given proper opportunity to explain her position about the alleged false statement, the order of cancellation and forfeiture was held not to be justified - *Smt. Ram Duluri v. Union Territory, Chandigarh,* 1994 HRR 67

—Before a person is black listed by an Authority, he must be given a notice - Order without any notice is against law and cannot be sustained - *Raghu Nath Thakur v. State of Bihar,* 1989 II.R.R. 46.

—The rule of natural justice will apply unless application thereof is specifically ruled out by the Statute - *State of Haryana v. Ram Kishan,* AIR 1988 S.C. 1301.

—Audi alteram partem - The Order, wherein Principle of audi altrem partem was not applied was held not maintainable - Order passed at the back of the affected person was set aside - *Bachan Singh v. State of Punjab,* 1988 PLJ 265.

—Principal of Nemo judex cause sua - (No one should be made a judge in his own cause) - A man cannot sit in appeal against his own order - *Gurcharan Singh v. State of Punjab,* 1988 PLJ 471 D.B. and *Sant Ram v. State of Himachal Paradesh,* AIR 1989 15 H.P.

—Rule of natural justice will apply where exercise of power under the Statute would result in civil consequences to citizen - Rules to be followed unless excluded by Statute itself - *Baldev Singh v. State of Punjab,* 1987 PLJ 240.

Opportunity - Allotment must be held illegal by the Authorities before cancelling the plot allotted to him - Allotment bad in law is no ground for denying the opportunity of hearing - *Shri Gurdash Ram v. State of Punjab,* 1980 PLJ 13 - Hearing to allottee is essential before cancellation of allotment - *Bir Singh v. State of Punjab,* 1982 PLJ 276.

Jurisdiction - Order passed at the back of an interested party is without jurisdiction and can be challenged in Civil Court - *Tejender Kaur v. M. C. Tarn Tarn,* 1983 PLJ 336.

Notice - A notice is must by the authorities before recovering the arrears of loan as arears of land revenue - Authorities not to be the Judges in their own cause - *Tirath Singh v. State of Punjab,* 1982 PLJ 305.

Order - Officer on original side should never seek approval of his proposed orders from his superior, Appellate or revisional Officers - *Tara Singh v. Mithu Singh and others* - 1987 PLJ 116.

[1][72-B. *Revision.* - The Administrator may either suo moto or on an application of a party, call for and examine the record of any proceedings or decision or order passed by the Board, Chairman, Chief Executive Officer or Officer of the Board for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and if in any case it shall appear to the Administrator that any such decision or order should be modified, annuled or revised, the Administrator may, after giving the persons affected thereby an opportunity of being heard, pass such order thereon as it may deem fit.]

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73. ***Power to make rules.*** - (1) The *[Administrator] may, by notification and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may be made for all or any of the following purposes, namely—

(a) the salary, allowances and conditions of service of members under section 7;

(b) the manner and form in which contracts shall be entered into under section 18;

(c) the form of annual housing programme, budget and schedule of staff officers and servants, particulars of housing schemes and other particulars to be contained in the programme under section 23;

(d) the form of notice under section 41 ;

(e) the rate of interest under section 42 ;

(f) the forms of notice under sections 51 and 52 and any other manner in which they may be served;

(g) the procedure to be followed in taking possession of any Board premises under section 51;

(h) the manner in which damages under section 52 may be assessed;

(i) the manner in which appeals may be preferred under section 54 and the procedure to be followed in such appeals;

(j) the conditions subject to which the Board may borrow any sum under section 60;

(k) the manner of preparation, maintenance and publication of accounts under section 61;

(l) the date before which, the form in which, the interval at which and the matter on which reports shall be submitted under section 64;

(m) the time at which and the form and manner in which statistics, returns, particulars and statement shall be submitted under section 65;

(n) the manner in which the Board shall be superseded and reconstituted under section 72;

(o) specifying the bye-laws contravention of any of which shall be an offence; and

(p) any other matter which is to be or may be prescribed under this Act.

(3) [2][———]

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Inserted by Hr. Act No. 10 of 1986 as extended to Chandigarh published on 2-4-1991

2. Omitted vide Chd. Admn. Gaz. (Extra) Notification dated 13-3-1975 at page 34-35

74. *Regulations.* - The Board may, from time to time with the previous sanction of the *[Administrator] by notification, make regulations consistent with this Act and with any rules made thereunder, -

(a) for the management and use of buildings constructed under any housing scheme;

(b) the principles to be followed in allotment of tenement and premises; and

(c) for regulating its procedure and the disposal of its business.

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75. *Power to make bye laws.* - (1) The Board may make bye-laws, not inconsistent with this Act and the rules and regulations made thereunder, which may be necessary or expedient for the purpose of carrying out its duties and functions under this Act.

(2) No bye-laws made by the Board shall come into force until it has been confirmed by the *[Administrator] with or without modification.

(3) All bye-laws made under this section shall be published in the *[Chandigarh Gazette].

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76. *Penalty for contravention of bye-laws.* - Whosoever contravenes a bye-law made under section 75 the contravention of which is prescribed as an offence shall, on conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees or with both.

77. *Penalty for obstructing etc.* - If any person -

(a) obstructs any person with whom the Board has entered into a contract, in the performance or execution by such person of his duty or of anything which he is empowered or required to do under this Act; or

(b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorised under this Act;

he shall, on conviction, be punished with imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees or with both.

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78. *Authority for prosecution.* - Unless otherwise provided, no court shall take cognizance of any offence punishable under this Act except on the complaint of, or upon information received from the Board or some person authorised by the Board, by general or special order, in this behalf.

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79. *Registration of documents executed on behalf of Board.* - (1) Notwithstanding anything contained in the Indian Registration Act, 1908 (Central Act XVI of 1908), it shall not be necessary for the Chairman to appear in person or by agent at any registration officer in any proceeding connected with registration of any instrument executed by him in his official capacity on behalf of the Board or to sign as provided in section 58 of that Act.

(2) Where any instrument is so executed, the registration officer to whom such instrument is presented for registration may, if he thinks fit, refer to the Chairman for information respecting the same, and on being satisfied of the execution thereof, shall register the instrument.

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

80. ***Dissolution of Board.*** - (1) The State Government may be notification declare that with effect from such date as may be specified in the notification, the Board shall be dissolved.

[1][———]

(2) With effect from the date specified in the notification under sub-section (1),—

(a) all properties, funds and dues which are vested in and realisable by the Board shall vest in and be realisable by the *[Central Government];

(b) all liabilities enforceable against the Board shall be enforceable against the *[Central Government] to the extent of the properties, funds and dues vested in and realised by the *[Central Government].

(3) Nothing in this section shall affect the liability of the *[Central Government] in respect of loans or debentures guaranteed under sub-section (5) of section 60.

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81. ***Removal of difficulties.*** - (1) If any difficulty arises in giving effect to the provisions of this Act, in consequence of the transition to the said provisions from the provisions of the Acts in force immediately before the commencement of this Act, the *[Administrator] may by notification make such provisions as appear to it to be necessary or expedient for removing the difficultly.

(2) If any difficulty arises in giving effect to the provisions of this Act otherwise than in relation to the transition from the provisions of the Acts in force before the commencement of this Act, the *[Administrator] may by notification make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty.

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* Substituted by Chd. Admn. Gaz. Notification dated 13-3-1975 at page 34-35

1. Omitted vide Chd. Admn. Gaz. (Extra) Notification dated 13-3-1975 at page 34-35