A HARSH DHINGRA

v.

STATE OF HARYANA AND ORS.

SEPTEMBER 28, 2001

B [S. RAJENDRA BABU, DORAISWAMY RAJU AND K.G. BALAKRISHNAN, JJ.]

Urban Development and Town Planning :

Haryana Urban Development Authority Act, 1988 : Section 30.

C *Allotment of plots—Discretionary quota—High Court formulated certain principles on which such allotments could be made with certain conditions—This decision held the field for nearly a decade—Subsequently, in another decision High Court set out new principles and refused to make the decision effective prospectively—Supreme Court upheld cancellation of allotment of* D *discretionary quota made after 31-10-1989—Discrimination between allottees subsequent to 31-10-1989—Avoiding of—Held : Subsequent decision of High Court made effective from the date of passing of interim order i.e. 23-4-1996—This course will iron out and smoothen the creases and avoid discrimination—Constitution of India, 1950, Articles, 141 and 226.*

E *Doctrine :*

"Doctrine of Prospective Overruling—Explained.

A Division Bench of the High Court in *S.R. Dass's* case, while examining the scope of Section 30 of the Haryana Urban Development Authority Act, F **1988 regarding allotment of plots under discretionary quota, formulated certain principles on which such allotments could be made with certain conditions. For nearly a decade the decisions were taken by the State Government in terms of the decision of this case.**

Subsequently, the High Court in *Anil Sabharwal's* case formulated G **certain new set of principles in the matter of making discretionary allotment. But the High Court refused to apply this decision prospectively. The appeal against this decision was dismissed by this Court with certain observations. This Court also upheld cancellation of the allotments out of the discretionary quota made after 31-10-1989. Hence this appeal.**

H **The following question arose before this Court :-**

In what manner discrimination between the allottees subsequent to 31-10-1989 can be avoided? A

Disposing of the appeal, the Court

HELD : 1. In the larger public interest and to avoid the discrimination between the allottees subsequent to 31-10-1989 the decision of the High Court in *Anil Sabharwal's* case should be made effective from a prospective date and in this case from the date on which interim order had been passed on 23-4-1996. If this course is adopted, various anomalies in respect of different parties will be ironed out and the creases smoothened so that discrimination is avoided. [452-G-H] B

Anil Sabharwal **v.** *State of Haryana*, **(1997) 2 PLR 7, overruled prospectively.** C

S.R. Dass **v.** *State of Haryana*, **(1988) PLJ 123, referred to.**

2. Prospective declaration of law is a device innovated by this Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of declaration are validated. This is done in larger public interest. Therefore, the subordinate forums, which are bound to apply the law declared by this Court, are also duty bound to apply such dictum to cases, which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation. [452-H; 453-A-B] D E F

Baburam **v.** *C.C. Jacob*, **[1999] 3 SCC 362 and** *Ashok Kumar Gupta* **v.** *State of U.P.*, **[1997] 5 SCC 201, relied on.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6840 of 2001.

From the Judgment and Order dated 5.2.98 of the Punjab and Haryana High Court in C.W.P. No. 5851 of 1996. G

WITH

C.A. Nos. 6841, 6842, 6843-44, 6845, 6846, 6847, 6848, 6849, 6850, 6851, 6852, 6853, 6854, 6855, 6856, 6857, 6858, 6859, 6860, 6861, 6862, H

A 6863, 6864, 6865, 6866, 6867, 6868, 6869, 6870, 6871, 6872, 6873, 6874, 6875, 6876, 6877, 6878, 6879, 6880, 6881, 6882, 6891, 6883, 6884, 6885, 6886, 6887, 6888, 6889, 6890 of 2001.

AND

B Writ Petition (C) No. 256 of 1998.

Under Article 32 of the Constitution of India.

WITH

W.P. (C) Nos. 267, 324, 364, 423, 419, 422, 420, 421/98, 205, 266, 204, C 230, 267, 220, 247, 261, 231, 221, 219, 275, 227, 240, 241, 245, 269, 260, 263, 270, 212, 210, 234, 273, 214, 254, 256, 271, 228, 229, 255,224, 239, 237, 232/2000, 481/98, 236, 252/2000, 492/98, 225, 238 268, 249, 250, 216, 209, 264, 208, 265, 211, 257, 207, 235, 222, 217, 233, 246, 258, 262, 251, 259, 215, 213, 223, 244, 243, 272, 242, 200, 277, 486, 484, 485, 652, 649, 641, 642, 640, 635, 636, 637, 638, 639, 643, 644, 645, 646, 647, 648, 650, 633, 634, 651/2000, D 62, 61, 63/2001, W.P. (C) No. D.13125, D.13126, D.13127, D.13128, D.1407, D.1483, D.1484/2001, D.17472/2000, D.13238, D.13544/2001, D.20885, D.20999/2000,2103/2001, D.21363, D.21364, D.21365/2000, D.2432, D.253, 3442, D.4459, D.6384, D.6388, D.6391, D.9219/2001, 457, 458, 459, 460, 461, 462, 463/2000, D.13434, D.13435, D.13543, D.13830, D.13930, D.14842, E D.15311, D.15312, D.15315, D.15314, D.13518, D.13839, D.15313, D.13415, D.15700, D.15548, D.15554, D.15782, D.13864 and D.15139 of 2001.

R.K. Jain, S.K. Bagga, S.B. Sanyal, Jagdeep Dhankar, P.C. Jain, Rakesh Dwivdi, S.S. Jawali, Haminder Lal, Ms. Varuna Thandari Gugnani, Ms. Sureshta Bagga, Manoj Goel, Ms. Abha R. Sharma, Rajesh Sharma, S. Pani, Vijay Singh F Charak, Rajesh K. Sharma, Ms. Shalu Sharma, Goodwill Indeevar, Naresh Kaushik, Lalitha Kaushik, N.K. Roy, Ms. Shilpa Chohan, Jinnander Mann, Ms. Manita Verma, M.S. Mollah, Devashish Bharuka, Surya Kant, Jasbir Singh Malik, S.K. Sabharwal, Hemantika Wahi, Manoj Swarup, Manish Khandewal, Ajay Gupta, Sanjay Goswami, Sanjay K. Visen, A.S. Bhasme, K.K. Mohan, G Pradeep Gupta, Naresh Bakshi, Ms. S. Janani, Gurdeep Singh, Dr. K.L. Sharma, Ashok K. Mahajan, Pramod Dayal, Ms. Lipika Sharma, R.K. Kapoor, B.R. Kapur, Anis Ahmad Khan, K.B. Rohatgi, Mahesh Kasana, Ms. Aparna Rohatgi Jain, Nidesh Gupta, Naveen Singh, Sumet Lal, Pradeep K. Bakshi, Girdhar G. Upadhyay, Syed Ali Ahmad, Syed Tanweer Ahmad, Vikas Bansal, A.K. Raina, R.D. Upadhyay, Anil Mittal, K.K. Gupta, Anant Vijay Palli, Atul Sharma, Ms. H Rekha Palli, D.B. Vohra, Ms. Neetu Sharma, Kamal Sharma, G.G. Singh,

Debasis Misra, Suresh C. Gupta, A Gureshwar Sharma, Sanjay Pal, Ms. Ranjana Dutta, Shankar Divate, N.M. Popli, Sanjeev Kumar, Ms. B. Sunita Rao, Anshul Tyagi, Vikrant Yadav, Praveen Swarup, Sanjay Sarin, Ashok Mathur, J.K. Srivastava, S.R. Setia, Maninder Singh, Ms. Pratibha M. Singh, Ms. Kavita Wadia, Sudhir Walia, M.S. Dahiya, Harishankar, Rohit Tandon, Anil Gupta, Hemant Batra, Mrs. Asha Batra, Ms. Manjula Gupta, Manohar Singh Bakshi, B.K. Satija, M.P. Jha, Ram Ekbal Roy, Anil K. Chopra, K.G. Bhagat, Vineet Bhagat, Nandlal, Ms. Suresh Kumari, Ajay Sharma, Krishan Pal Singh, Ravi Kapur, P.M. Anand, Bhag Singh Jindal, S.K. Rishi, L.N. Gupta, S.P. Khatri, Rajiv Khataria, Ms. S.S. Gurpriya, Ms. Kusum Choudhary, Punit Jindal, Anil Katiyal, Inderjit Sharma, S.C. Nagpal, A.P. Mohanty, Som Nath Saini, K.S. Dhaliwal, Sarwan Gupta, Daya Choudhary, Seeraj Bagga, Narender Nagar, Ashok Anand, M.A. Chinnasamy, Ms. Sheela Goel, Yogesh Putani, P.N. Puri, Prem Malhotra, Ms. Indu Malhotra, Ms. Neelam Sharma, Tara Chandra Sharma, K.S. Rana, Ms. Suruchi Aggarwal, A.D. Sikri, Sudhir Nandrajog, Ranbir Singh Yadav, T.N. Rao, Manmohan Singh, Ms. Bina Gupta, Ms. Vanita Bhargava, Rakhi Ray, Ms. Divya Roy, Ajay Majithia, Yash Pal Dhingra, R. Nedumaran, S. Srinivasan, Brijender Chahar, Jyoti Chahar, Vinay Garg, Kishan Datta, Uma Datta, Ravindra Bana, Jasbir S. Malik, Shashank Kumar, K.C. Dua, C.S. Ashri, P.P. Singh, Rao Ranjit, Jai Prakash Dhanda and K.P. Singh, Advs. with them for the appearing parties.

The Judgment of the Court was delivered by :

RAJENDRA BABU, J.

Leave granted in all SLPs.

These appeals are directed against an order made on 21st March, 1997 in a batch of cases wherein the scope of Section 30 of the Haryana Urban Development Authority Act, 1988 came up for consideration. The High Court of Punjab & Haryana held that the Government can make reservation of plots while making development of the urban estates but that power is not limited. However, the argument that the absolute power could vest in the Chief Minister in allotment of plots according to his discretion and choice and such discretion is immune from judicial scrutiny is rejected and the High Court stated that the distinguished and needy people in all walks of life can be granted land only on the basis of some guidelines and indicated that the Government of Haryana may frame appropriate policy for allotment of plots to specified class of persons and notify such policy and allotment under such policy should be made

by inviting applications through public notice from all those who belong to a particular class. However, in respect of certain allotments that had already been made the High Court indicated that certain class of persons such as those who are *bona fide* purchasers who had constructed houses and other buildings, original allottees who had constructed buildings after permission from HUDA, members of the armed forces, police personnel who fought against terrorism, civilians who were affected by the terrorists activities and allottees of plots to whom small extends have been granted and the High Court gave certain directions in that regard. This decision is reported in *Anil Sabharwal* v. *State of Haryana & Ors.*, (1987) 2 PLR 7.

On an earlier occasion, a Division Bench of the High Court of Punjab & Haryana in *S.R. Dass* v. *State of Haryana*, (1988) PLJ 123, examined an identical question and formulated certain principles on which such allotments could be made with certain conditions and that order was made on 20th January, 1988. For nearly a decade, the decisions were taken by the Government of Haryana in terms of the decision in *S.R.Dass's* case referred to above. An argument was submitted before the High Court that in view of this particular feature of this case that the matter had been earlier judicially considered and certain guidelines were given to the Government in the matter of making discretionary allotment to an extent of 5 per cent and that new principles have been set out in *Anil Sabharwal's* case and, therefore, that the decision should be made effective prospectively. The High Court, however, found no good reason to hold the allotments made by respondent No. 3 in the case under the discretionary quota should remain undisturbed. The High Court also stated that the doctrine of prospective overruling cannot be applied because such power can be invoked only by this Court and not by the High Court.

The matter was carried in appeal to this Court. This Court by an order made on 7.5.1997 dismissed the same subject to certain observations. Thereafter, the High Court took steps by directing issue of a public notice in regard to certain aspects of the case pursuant to the observations made by this Court. At that stage, the HUDA filed S.L.P.(C) No.11238 of 1997 and this Court, by an order made on 7.7.97, gave certain clarifications and stated that in addition it is also expedient that any remaining allotments of the kind which have been cancelled by the High Court should also be treated alike. Thereafter in C.A.No. 8637 of 1997 *(HUDA & Anr.* v. *Anil Sabharwal & Ors.)*, this Court made an order on 5.12.1997 to the following effect:

"Leave granted limited to the question indicated in our order dated

7.7.1997. A

The grievance of the appellants is that our order dated 7.5.97 in *Sanjay Jain* v. *Anil Sabharwal & Ors.*, [SLP(C) ...../97 (CC.4325 /97] has been misconstrued to mean that the legality of allotment of plots made under the discretionary quota even prior to 31.10.1989 has been directed by that order to be reopened and examined. It is submitted that such a misinterpretation results from a misconstruction of certain words in that order, namely: B

> We are constrained to observe that the accountability of the authorities who are responsible for making these arbitrary allotments which have been rightly cancelled by the High Court needs to be examined after their identity is fixed in an appropriate proceeding. In addition, it is also expedient that any remaining allotments of the kind which have been cancelled by the High Court should also be treated alike. This exercise has not been performed by the High Court in the present case. It is, therefore, expedient that as a follow up action, the High Court should proceed to complete the exercise.' C D

It is sufficient for us to clarify that by the above order dated 7.5.97 this Court upheld cancellation of the allotments out of the discretionary quota made after 31.10.89 and it was further said that any remaining allotments of the same kind should be treated alike to complete the exercise. In other words, our order dated 7.5.97 contained the direction to treat all allotments out of the discretionary quota made after 31.10.89 without any exception, in order to examine the accountability of the concerned authorities as also to *avoid any discrimination between allottees subsequent to 31.10.1989*. That order was, therefore, concerned entirely with the allotment made after 31.10.89 and did not refer to any allotment prior to that date. We consider it necessary to say so to avoid any possible misinterpretation by this Court's order dated 7.5.97. E F

We may, however, add that the only question for examination by this Court in *Sanjay Jain* v. *Anil Sabharwal's* case being all the allotments made subsequent to 31.10.89, our order is also not to be construed as inhibiting any separate/independent action in respect of allotments for any other period including period prior to 31.10.89. This appeal is disposed of with this clarification." [emphasis supplied] G H

A The question for consideration now is in what manner discrimination between the allottees subsequent to 31.10.89 can be avoided. In relation to classification made by the High Court, the grievances are made before us that the same does not take note of cases of (i) *bona fide* purchasers, who did not have sufficient funds with them to start the construction and who have acquired these plots without any profit motive; (ii) allottees to whom possession was not B handed over in time for them to commence construction who stand on the same footing as those in respect of whom exception is made, who have made construction on the plots in question; (iii) members of armed forces and Indian Administrative Officers who are also involved in an operation like 'Blue Star', the allotments could not be cancelled and the matters will have to be examined C in the light of the same principles as had been done with reference to those who were in the armed forces and fighting for the defence of the country; (iv) certain other classes still who are disabled either on account of serious ill health or such as blindness. These instances are taken by way of sample by us to indicate that the classification made by the High Court in respect of whom exception is made D will have to be reclassified or sub-classified or further classifications will have to be made. That would be carving out too many exceptions involving a very lengthy and treacherous exercise to be sucked in a quagmire from which to extricate oneself will be well nigh impossible.

Further when the decision of the High Court in *S.R. Dass's* case [supra] E had held the field for nearly a decade and the Government, the HUDA and the parties to whom the allotments have been made have acted upon and adjusted their affairs in terms of the said decision to disturb that state of affairs on the basis that now certain other rigorous principles are declared to be applied in *Anil Sabharwal's* case would be setting the rules of the game after the game is over, by which several parties have altered their position to their disadvantage. F Therefore, we think that in the larger public interest and to avoid the discrimination which this Court had noticed in the order dated 5.12.1997 the decision of the High Court in *Anil Sabharwal's* case should be made effective from a prospective date and in this case from the date on which interim order had been passed on 23.4.1996. Therefore, it would be appropriate to fix that G date as the date from which the judgment of the High Court would become effective. If this course is adopted, various anomalies pointed out in respect of different parties referred to above and other instances to which we have not adverted to will be ironed out and the creases smoothened so that discrimination is avoided.

H Prospective declaration of law is a device innovated by this Court to

avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law it is deemed that all actions taken contrary to the declaration of law, prior to the date of the declaration are validated. This is done in larger public interest. Therefore, the subordinate forums which are bound to apply law declared by this Court are also duty bound to apply such dictum to cases which would arise in future. Since it is indisputable that a court can overrule a decision there is no valid reason why it should not be restricted to the future and not to the past. Prospective overruling is not only a part of constitutional policy but also an extended facet of stare decisis and not judicial legislation. These principles are enunciated by this Court in *Baburam* v. *C.C. Jacob & Ors.*, [1999] 3 SCC 362, and *Ashok Kumar Gupta & Anr.* v. *State of U.P. & Ors.*, [1997] 5 SCC 201.

A B C

These appeals, therefore, stand allowed to the extent indicated above and declaring that the judgment of the High Court in *Anil Sabharwal* v. *State of Haryana & Ors.* [supra] shall be effective from 23.4.1996. In the event in any of the cases any allotment has been cancelled, the same shall be brought in conformity with the order made by us whether those allottees are parties in these proceedings or not. The declaration made by us will have a general application. It is also made clear that allotment orders made prior to 23.4.1996 can be cancelled if they are not made in conformity with the decision in *S.R. Dass* v. *State of Haryana* [supra], after following due procedure.

D E

The appeals are allowed accordingly modifying the order made by the High Court in the manner stated above.

W.P.(C) Nos. 256/98, 267/98, 324/98, 364/98, 423/98, 419/98, 422/98, 420/98, 421/98, 205/2000, 266/2000, 204/2000,230/2000, 267/2000, 220/2000, 247/2000, 261/2000, 231/2000, 221/2000, 219/2000, 275/2000, 227/2000, 240/2000, 241/2000, 245/2000, 269/2000, 260/2000, 263/2000, 270/2000, 212/2000, 210/2000, 234/2000, 273/2000, 214/2000, 254/2000, 256/2000, 271/2000, 228/2000, 229/2000, 255/2000, 224/2000, 239/2000, 237/2000, 232/2000, 481/98, 236/2000, 252/2000, 492/98, 225/2000, 238/2000, 268/2000, 249/2000, 250/2000, 216/2000, 209/2000, 264/2000, 208/2000, 265/2000, 211/2000, 257/2000, 207/2000, 235/2000, 222/2000, 217/2000, 233/2000, 246/2000, 258/2000, 262/2000, 251/2000, 259/2000, 215/2000, 213/2000, 223/2000, 244/2000, 243/2000, 272/2000, 242/2000, 200/2000, 277/2000, 486/2000, 484/2000, 485/2000, 652/2000, 649/2000, 641/2000, 642/2000, 640/2000, 635/2000, 636/2000, 637/2000, 638/2000, 639/2000, 643/2000, 644/

F G H

A 2000, 645/2000, 646/2000, 647/2000, 648/2000, 650/2000, 633/2000, 634/2000, 651/2000, 62/2001, 61/2001, 63/2001, W.P.(C) No. D13125/2001, D13126/2001, D13127/2001, D13128/2001, D1407/2001, D1483/2001, D1484/2001, D17472/2000, D13238, D13544/2001, D20885/2000, D20999/2000, D2103/2001, D21363/2000, D21364/2000, D21365/2000, D2432/2001, D253/2001, 3442/2001, D4459/2001, D6384/2001, 6388/2001, D6391/2001, D9219/2001, 457/2000, 458/2000, 459/2000, 460/2000, 461/2000, 462/2000, 463/2000, D13434/2001, D13435/2001, D13543/2001, D13838/2001, D13930/2001, D14842/2001, D15311/2001, D15312/2001, D15315/2001, D15314/2001, D13518/2001, D13839/2001, D15313/2001, D13415/2001, D15700/2001, D15548/2001, D15554/2001, D15782/2001, D13864/2001 & D15139/2001

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In the light of the order made by us in the above appeals, these writ petitions have become unnecessary as the authorities concerned are bound to bring their orders of cancellation of the allotments made or notices issued to them for cancellation of the allotments in conformity with the order made in the above appeals which we have disposed of just now. Therefore, these writ petitions have become unnecessary and shall stand disposed of accordingly. No costs.

D

V.S.S. Appeals allowed and Petitions dismissed of.