
(1992) 11 RAJ CK 0040

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1200, 2169 and 3169 of 1992

Avashan Mandal Parijat Uch Ayavargh Sangarsh Samiti

APPELLANT

Vs

Rajasthan Housiong Board and Others

RESPONDENT

Date of Decision : 16-11-1992

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 298

Citation : (1993) 3 WLC 391 : (1992) WLN 253

Hon'ble Judges : Jasraj Chopra, J

Bench : Single Bench

Judgement

Jasraj Chopra, J.—These three writ petitions have been filed by the allottees of the Raj. Housing Board by constituting separate Avashan Mandal Parijat Uch Ayavarg Sangarsh Samlties as regards demand notices Issued to them for allotment of Houses by the Rajasthan Housing Board in 17 Extension, Chopasani Housing Board, Jodhpur.

2. The Members of the petitioner-Samiti of Writ Petition No. 1200 of 1992 are the persons who got their applications initially filed in Kalpatru Scheme and later converted them into Parijat Scheme of second quarter of 1988. The members of the petitioner-Samlti of Writ Petition No. 2169 of 1992 are the persons who initially applied under Kalpatru Scheme and later got their applications converted into Parijat Scheme of third quarter of 1988 and the members of the petitioner-Samlti of writ Petition No. 3169 of 1992 are the persons, who initially applied under Kalpatru Scheme but later got their applications converted Into Parijat Scheme of four petitioner of 1988.

3. These three writ petitions raise common questions of law and facts and, therefore they were heard together and are being decided by a common Order/Judgment.

4. The facts necessary for the disposal of these three writ petitions briefly stated are that the members of these three petitioners-Samities Initially applied for

allotment of Houses from the Rajasthan Housing Board under the Kalpatru Scheme but later they got converted their applications Parijat Scheme of three different quarters in 1988. Initially, under the Kalpatru Scheme, they deposited a sum of Rs. 10,000/- each as Registration Amount but when the Parijat Scheme was floated by the Rajasthan Housing Board and the registered applicants in different schemes were given a choice to get their applications converted into Parijat Scheme, they applied for the same and were registered under the Parijat Scheme of three different quarters of 1988 and further deposited a sum of Rs. 20,000/- each as the first instalment of the Parijat Scheme.

5. It was submitted that in the notification issued for the Parijat Scheme, it was assured that complete Houses will be provided to such applicants within a period of three years if the applicants will make regular payments as per the demand of the Rajasthan Housing Board and the incomplete Houses {Skeleton Houses} will be provided almost in 50% time which is required for a complete House. It was further submitted that whatever amount against instalments of Parijat Scheme was demanded from the members of these petitioners-Samities, that was paid by them. It has not been disputed before us that any of these applicants has defaulted in making payment of instalments of Parijat Schemes in time.

6. Be that as it may, vide Notification dated 21.1.1991, it was notified that a list will be issued by 24.1.1991 of the persons who have deposited all instalments under Parijat Scheme. That list was published and was pasted on the notice Board on 24.1.1991. While publishing that list, objections, if any were invited by 15.1.1991. This list was published only of the persons who have deposited all of their instalments under Parijat Scheme of first and second quarter of 1988. Thereafter, the Rajasthan Housing Board proceeded to make allotment of Houses. The Houses were allotted to the applicants of first and second quarter of 1988 Parijat Scheme on 29.1.1991. The possession letters were issued to the applicants of first quarter of 1988 Parijat Scheme and the total cost of a Skeleton House conveyed to them was Rs. 1,60,354.34p. However, no possession letters were issued to the applicants of second, third and fourth quarters of 1988 Parijat Scheme, and, therefore, one Shri Anil Bhandari filed a writ petition before this Court for issuing possession letters to the applicants of second quarter of 1988 Parijat Scheme. It may be stated here that possession letters were issued to the applicants of first quarter of 1988 Parijat Scheme on 18.3.1991 and to the applicants of second quarter of 1988 Parijat Scheme on 9.12.1991 and the applicants of second quarter of 1988 Parijat Scheme were conveyed that the total cost, of the Skeleton Houses allotted to them will be Rs. 2,14,125.95p. and they were directed to take possession of their Houses by 9.3.1992 by depositing the remaining amount due against them.

7. It was submitted that Houses were allotted to the applicants of third and fourth quarter of 1988 of Parijat Scheme in the month of November, 1991 and possession letters were issued to them in the month of February 1992. It was conveyed to them that the total cost of their Skeleton Houses will be Rs.

2,40,544/- and they were asked to take possession of their houses by 9.5.1992 after depositing the remaining amount due against them.

8. The contention of the applicants of second quarter of 1988 Parijat Scheme is that their Houses were also ready when Houses were allotted to them alongwith the applicants of first quarter of 1988 Parijat Scheme i.e. on 29.1.1991. When their Houses were ready for delivery of possession on 29.1.1991 i.e. in the Financial Year 1990-91, the cost of the land as also the cost of construction made thereon should not have been differently charged from one, which has been charged from the applicants of first quarter of 1988 Parijat Scheme. It was submitted that a sum of Rs. 38,178/- was charged as cost of the land and Rs. 1,16,972/- and Rs. 5,204.34p. have been charged as cost of construction made thereon and other charges from the applicants of first quarter of 1988 Parijat Scheme but from the applicants of second quarter of 1988 Parijat Scheme, Rs. 72,765/- as cost of the land, Rs. 1,34,085/- as cost of construction made thereon and Rs. 7,275.95p. as other charges have been charged. It was further submitted that Rs. 72,765/- as cost of the land; Rs. 1,59,985/- as cost of construction made thereon and Rs. 7794/- as other charges have been charged from the applicants of third and fourth quarters of 1988 Parijat Scheme. It was contended on behalf of the applicants of third and fourth quarters of 1988 Parijat Scheme that their houses were also ready when houses were allotted to the applicants of first and second quarters of 1988 Parijat Scheme and, therefore, no extra charges as regards costs of land, construction made thereon and other charges can be recovered from them. According to the petitioners, such an increase was also made in the case of certain allottees of Udaipur District and that has been reduced. According to the petitioners, contract for construction of Skeleton Houses for the applicants of first and second quarters of 1981 Parijat Scheme was given to the same Contractor at the same rates i.e. 20% above the B.S.R. Rates of 1988 and therefore the cost of construction of each Skeleton House comes to Rs. 89,000/-. It was further submitted that the land for all the four applicants of first, second, third and fourth quarters of 1988 was purchased at the same rate, same time and in the same area and Houses of all kind of the applicants are situated in the same area i.e. almost in the same line, virtually adjacent to each other or in the back of each other and therefore, nothing more could have been charged from the applicants of second, third and fourth quarters of 1988 Parijat Scheme than what has been charged from the applicants of first quarter of 1988 Parijat Scheme. Certain figures regarding cost of the land pertaining to the years 1986-87 to 1991-92 have been furnished but they are immaterial because now the case of the petitioners is that the cost of their houses should be charged from them equivalent to one that has been recovered from the applicants of first quarter of 1988 Parijat Scheme because houses are constructed and allotted to the applicants by the Rajasthan Housing Board on the basis of no profit and no loss and when the contract for construction of houses has been given to the same contractor at the same rates and the land has been purchased in one lot. According to the petitioners, there is no justification for the

increase in the cost of the land, the cost of construction and other charges. According to the petitioners, Skeleton houses constructed for the applicants of second, third and fourth quarters of 1988 Parijat Scheme were also ready alongwith the houses constructed for the applicants of first quarter of 1988 Parijat Scheme and, therefore, the Rajasthan Housing Board cannot take any advantage of the delay that has been caused by them in delivery of possession of Skeleton Houses to these applicants.

9. According to the petitioners, the Brochure issued for Parijat Scheme clearly provides that possession of the complete Houses will be given within two years and possession of the Skeleton Houses will be given in 50% time meant for delivery of possession of complete Houses and if the possession is not delivered to the applicants within two years then the amount deposited by them will carry interest @ 6% p.a., which will be payable to the petitioners. Thus, it was contended that if there was any delay in the delivery of possession of Houses to the petitioners it was on the part of the Rajasthan Housing Board and, therefore, the Rajasthan Housing Board cannot take any advantage on account its own latches.

10. It was contended that according to the Brochure issued for Parijat Scheme, the price of the land can be increased by 12% every year whereas the price of the land has been Increased by 90% and, therefore, it deserves to be quashed by exercising powers under Article 226 of the Constitution. According to the petitioners, this action on the part of the respondents is arbitrary, unreasonable and penal in character.

11. It was further contended that in the year 1990, the respondents themselves have assessed the cost of Skeleton Houses at Rs. 1,60,000/-for the applicants, who will be allotted houses in the year 1992, as per the Brochure and, therefore, they cannot claim such an exorbitant price from the petitioners.

12. On behalf of the respondents, separate replies to the writ petitions have been filed, in which, it has been contended that the members of the petitioners Samities have entered into individual contracts and they have not formed any registered cooperative Societies and, therefore, these writ petitions are not maintainable. As regards payments of registration fees and other instalments of Parijat Scheme, it was submitted that the petitioners should be put to strict proof of them. It is unfortunate that though the respondents are in the knowledge of the fact that what amount has been paid by the petitioners and what is due from them and even lottery for allotment of houses has been drawn only in regard to the persons who have paid full instalments of Parijat Scheme and, therefore, it does not lie in the mouth of the respondents to say that the petitioners should be put to strict proof of the deposits that have been made by them. Such an attitude on the part of the institution like Rajasthan Housing Board needs to be deprecated and condemned.

13. Be that as it may, it was contended that if as per Clause 12(7) of the

Brochure issued for Parijat Scheme, if the delivery of possession is not made within a period of two years then the amount so deposited by the applicants will carry interest @ 6% p. a. but the respondents never gave an assurance to the petitioners that they will deliver possession of the Skeleton Houses within half of the period, the Complete Houses are to be delivered by them as per Clause 12(7) of the Brochure issued for Parijat Scheme. This also is a wrong plea which has been taken by the respondents, in view of the Advertisement Ex. 14 filed in Writ Petition No. 1200 of 1992, wherein they have specifically mentioned that construction of Skeleton Houses will take half of the time of a completed House. It is unfortunate that inspite of this advertisement, the Rajasthan Housing Board takes such a wrong plea.

14. It was contended that the rates of land differ from quarter to quarter and, therefore, from the applicants of first quarter of 1988 Parijat Scheme, the price of the land has been charged at Rs. 38,178/- whereas the cost of the land has been charged from the applicants of second, third and fourth quarters of 1988 Parijat Scheme at Rs. 72,765/-, although the delivery of possession of houses has been made at different times. It was further submitted that when houses were allotted to the applicants of second quarter of 1988, these Skeleton Houses were incomplete and, therefore, delivery of possession could not be given to these applicants. This assertion also appears to be false in view of the additional affidavit that was submitted by Shri R.C. Singhvi, Deputy Housing Commissioner, Rajasthan Housing Board, Jodhpur on 21.10.1992 wherein he has submitted that 7 houses constructed for the applicants of first quarter of 1988 were complete by June 1990 and 14 houses of the second quarter of 1988 of Parijat Scheme were also complete by the end of February, 1991. Thus, all these houses were complete before March 1991 when delivery of possession of houses was given to the applicants of first quarter of 1988 Parijat Scheme and, therefore, it does not lie in the mouth of the respondents to say that delivery of possession could not be given in March 1991 because houses were not complete by that time.

15. Be that as it may, it was contended that the increased cost of land amounting to Rs. 72765/- has been charged from the applicants of second, third and fourth quarters of 1988 Parijat Scheme on account of the delay in construction of Houses. It was further submitted that the cost of construction amounting to Rs. 1,34,085/- has been charged from the applicants of second quarter of 1988 Parijat Scheme and the cost of construction amounting to Rs. 1,59,985/- has been charged from the applicants of third and fourth quarters of 1988 of Parijat Scheme on account of the delay in construction of houses and this is in consonance with Condition No.6 of the Brochure issued for Parijat Scheme. It was, however, admitted that Skeleton Houses for the applicants of first and second quarters of 1988 of Parijat Scheme were got constructed @ 20% above the BSR Rates from the same Contractor but after making that payment, the matter was referred to the Head Quarters for final costing of the houses where actual costing was assessed after taking into consideration so many factors I.e. administrative charges, interest, equilibrium ratio, maintenance charges etc. and

then final cost was arrived at. It was, however, admitted that not only the same Contractor was employed for construction of Skeleton Houses for the applicants of first and second quarters of 1988 Parijat Scheme and was paid the same rates but even the allotment was made to both type of applicants on 29.1.1991. However, in para 9(b) of the reply, it has been contended that it is absolutely incorrect on the part of the petitioners to state that houses of the applicants of second quarter of 1988 Parijat Scheme were also ready at the time when possession of houses to the applicants of first quarter of 1988 of Parijat Scheme was handed over. This is nothing but a false contention, which has been made on behalf of Rajasthan Housing Board. The Deputy Housing Commissioner, Rajasthan Housing Board, Jodhpur in his additional affidavit has categorically stated that these Houses were complete by the end of February 1991 whereas the delivery of possession of houses to the applicants of first quarter of 1988 Parijat Scheme was issued by the end of March 1991, as has been claimed by Mr. Singhvi. Thus, when the delivery of the houses was made to the applicants of first quarter of 1988, the houses of the applicants of second quarter of 1988 were ready and could be delivered. Thus, to this extent, the assertion of the Rajasthan Housing Board is false.

16. In para 9(c) of the reply, it was contended that the final costing of the applicants of the second quarter of 1988 was done in the financial year 1991-92 and at that time, the average cost of the house has been assessed at Rs. 2,06,850/- and not Rs. 2,14,125/-. It is the total cost which has been assessed including other charges but the cost of the land and construction was assessed at Rs. 2,06,850/-.

17. It was contended that the rate of the land is increased every year and, therefore, the variation in the cost of the land was natural. In the open market, the cost of the land compared to 1986-87 has risen to a very considerable height but so far as Rajasthan Housing Board is concerned, within a period of 5 to 6 years, it has been increased from Rs. 100/- to Rs. 385/- only. In para 10(b) of the reply, it was further contended that so far as the rise in the prices in the land of the Housing Board is concerned, the Housing Board has to assess the cost of the land keeping in view the various factors, including the Development Charges etc. As for example, the Development charges for supplying the water-line, formerly in the year 1986, the water lines were installed @ Rs. 10/- per square meter but now in the year 1992, the cost of laying down the water lines has risen to Rs. 110/- per square meter and this amount has to be paid to the Public Health Engineering Department of the State of Rajasthan. Similarly, there is an increase in the cost of installation of electricity lines in the Housing Board Colonies but at the same time, it is true that the Rajasthan Housing Board is providing its services to the public at large on the principle of no profit and no loss basis.

18. It was further contended that it is incorrect to suggest that the rate of the land can be increased by 12% per year and not more than that. It was also

contended that in some cases relating to Udaipur, on account of some exceptional circumstances, the costs of the houses were revised but that cannot be generalised in the whole of Rajasthan. As regards final costing, it was claimed that no reasons have to be assigned by the Rajasthan Housing Board.

19. In the additional pleas, it was contended that firstly, the petitioners-Samities are not registered co-operative Societies and, therefore, this writ petition is not maintainable. It was further contended that this being a pure case of contractual obligations, constitutional provisions do not apply to such matters. In this respect, reliance has been placed on a decision of their lordships of the Supreme Court in Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, .

20. It was further contended that as regards of the applicants of third and fourth quarters of 1988 of Parijat Scheme, no list of eligible applicants for allotment of Houses was prepared and, therefore, one Shri Anil Bhandari had filed a writ petition before this Hon''ble Court but later when the Houses were allotted to the applicants of third and fourth quarters of 1988 Parijat Scheme, that writ petition was withdrawn. However, in that writ petition, this Hon''ble Court has been pleased to observe that since the allotment has already been made in favour of the petitioner, it is expected that the respondents will determine the price and fix the final cost of the house within a reasonable time and if it is possible by 31st March, 1992. With these observations the writ petition filed by Shri Anil Bhandari was dismissed. According to the respondents, initially, the list of the applicants of first and second quarters of 1988 of Parijat Scheme was Issued when Skeleton Houses for such applicants were either complete or were about to be completed in a short period but so far as the applicants of third and fourth quarters of 1988 of Parijat Scheme are concerned, no list was prepared because Skeleton Houses for such applicants were not constructed. It was further submitted that the general policy of the Rajasthan Housing Board is that for all the Houses in a particular Scheme whether they be Skeleton Houses or Complete Houses, final costing is done at the Head Quarters and letters regarding delivery of possession are issued only when all the Houses are ready for delivery of possession. It was also submitted that the possession letter were issued to the applicants of fourth quarter of 1988 Parijat Scheme in the month of 1992 after the final costing was done by the State Head Quarters. According to the respondents, as regards the Skeleton Houses constructed for the applicants of third quarter of 1988 are concerned, they were 23 in number. Tenders were invited well in time but in the first instance, tenders for construction of 9 Houses were accepted and for rest of the 14 Houses, the Contractors did not participate in construction of those houses. However, the construction of those 14 houses started in the month of June 1990 and completed only in the month of March 1991. Thereafter, final costing of those 23 houses was made taking all the 23 houses as one Unit and proportionate costing was made for each of those houses.

21. It was also contended that when the tenders for the houses of the applicants

of fourth quarter of 1988 of Parijat Scheme were accepted than the rate of contract was 33% above BSR of 1988 but when the tenders of remaining 14 Skeleton houses for the applicants of third quarter of 1988 were accepted, the cost of construction was 64.5% above 1988 BSR and this is how the costing of the houses belonging to 3rd and 4th quarters applicants differs and hence, the question of arbitrariness and discrimination does not arise.

22. It was submitted that it is wrong to contend that houses for the applicants of first quarter of 1988 and for the applicants of 3rd quarter of 1988 were built at the same time and allotments were also made at the same time. The allotments of houses of applicants of first and second quarters of 1988 had been made in the month of January 1991 whereas the allotment of houses of 3rd quarter of 1988 had been made in the month of November, 1991. The allotment of houses of the applicants of 4th quarter of 1988 was also made in the month of November, 1991. According to the respondents, it is incorrect to say that when the applicants of first and second quarters of 1988 Parijat Scheme were delivered possession of their houses, the houses of the applicants of 3rd and 4th quarters of 1988 were already ready.

23. It was contended on behalf of the petitioners that construction of houses for the applicants of fourth quarter of 1988 was made much earlier than the construction of houses for the applicants of third quarter of 1988 Parijat Scheme and this delay was almost an year. The amount which was recovered from the defaulting Contractors was spread in calculating the cost of houses belonging to the applicants of 3rd and 4th quarters of 1988 Parijat Scheme jointly whereas it should have been spread only for calculating the costs of the houses for the applicants of 3rd quarter of 1988 Parijat Scheme. It was further contended that it is wrong to contend that the houses were complete in the month of March 1991. Actually, they were completed much early. Even if, they were completed in the month of March 1991 then the possession should have been delivered to them soon after but it was not given to them till February, 1992 and, therefore, the respondents are guilty of delaying the delivery of houses for one year and so, no additional charges should be levied from them as compared to the applicants of first and second quarters of 1988 Parijat Scheme.

24. The letter Ex. 20 dated 19.2.1992 which has been written by the Dy. Housing Commissioner, Jodhpur to the Chairman, Rajasthan Housing Board, Jaipur and the copy of the proceedings of the meeting of the Rajasthan Housing Board dated 25.4.1992 (Annexure R.2) has been filed. The petitioners have also filed copy of the Advertisement issued by the Chief Estate Officer, Rajasthan Housing Board, Jaipur, which has been marked as Ex.21. The condition No.5 of this Advertisement (Ex.21) clearly says that the costs of the land shall be recovered by the Rajasthan Housing Board in the first instalment from the applicants and therefore, at the time of fixing the costs of the Houses, the applicants will be asked to pay the cost of the land, which has been deposited by the applicants in the first instalment.

25. In reply to the third stay petition filed in S.B. Civil Writ Petition No. 1200 of 1992, it has been claimed that the cost of the house has been reduced by about Rs. 12,000/- so far as the applicants of third and fourth quarters of 1988 Parijat Scheme are concerned. It was submitted that vide Ex.4, a sum of Rs. 93,314/- was demanded as due whereas that amount has now been reduced to Rs. 78,371/- so far as the applicants of third and fourth quarters of 1988 are concerned. It was further submitted that the cost of construction amounting to Rs. 1,34,085/- was demanded from the applicants of second quarter of 1988 Parijat Scheme and that has now been reduced to Rs. 1,22,685/-. Thus, almost relief of about Rs. 12,000/- has already been given to the applicants in regard to the cost of construction and other expenses.

26. I have heard Mr. N.M. Lodha, the learned Counsel appearing for the petitioners and Mr. R.R. Vyas, the learned Counsel appearing for the respondents and have carefully gone through the record of the case.

27. It was contended by Mr. R.R. Vyas, the learned Counsel appearing for the respondents that these three writ petitions, which have been filed on behalf of the applicants of second, third and fourth quarters of 1988 Parijat Scheme jointly are not maintainable. In this respect, he has placed reliance on a Division Bench decision of this Court reported in *Chandmal Nauratamal v. The State of Rajasthan* RLW 1967 144, wherein it has been observed as follows:

It is true that the petitioners are challenging the validity of the same law in the same manner and it may be assumed that they are affected in the same way. But all the same, this is not sufficient for holding that they have been same rights which are allegedly infringed by this law. In other words, the injury with which they are threatened or have already suffered cannot be said to be the same.

Thus, the injury suffered has not been held to be the same. However, it was held that a joint petition by such petitioners is not permissible.

28. To controvert this submission, Mr. N.M. Lodha, the learned Counsel appearing for the petitioners has also placed reliance on a Division Bench decision of this Court in *Jodhpur Vishav Vidhyalaya Denik Vetan Bhogi Karamchari Union v. University of Jodhpur* 1991 Raj. 7, wherein it has been held that a writ petition filed by unregistered and unrecognised Union of daily rated employees joining common causes is entertainable.

29. Mr. N.M. Lodha, the learned Counsel appearing for the petitioners has next placed reliance on a decision of their lordships of the Supreme Court in *A.N. Pathak and Others Vs. Secretary to the Government, Ministry of Defence and Another*, wherein it has been held that the joint petition was maintainable even if the dates of appointments, promotions, etc. were different. There was nothing to prevent the Court from modulating the relief and giving directions to the respondents to reconsider the offending lists with reference to each of the petitioners. Thus, keeping in view this latest legal petition, I am firmly of the

view that the writ petitions, which have been filed on behalf of the applicants of second, third and fourth quarters of 1988 Parijat Scheme jointly, are maintainable. In this view of the matter, the preliminary objection raised by Mr. R.R. Vyas, the learned Counsel appearing for the respondents cannot be sustained.

30. Mr. R.R. Vyas, the learned Counsel appearing for the respondents has contended that what has been sought to be challenged through these writ petitions is the method of calculation of the price that has been charged from the allottees of Houses of second, third and fourth quarters of 1988 Parijat Scheme and that has its roots according to Mr. Vyas, in a purely non-statutory contract; the constitutional provisions are not applicable and therefore, no writ petition can be entertained. In support of his submission, Mr. Vyas has placed reliance on a decision of their lordships of the Supreme Court in Bareilly Development Authority's case (supra), wherein it has been observed:

When the contract entered into by the State is non-statutory and purely contractual, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties into... In this sphere, the parties can only claim rights conferred upon them by the contract in the absence of any statutory obligations on the part of the authority in the said contractual field. It is also settled that no writ or order can be issued under Article 226 of the Constitution of India so as to compel the authorities to remedy a breach of contract pure and simple.

In that case, the Bareilly Development Authority with a view of easing the acute housing problem in the District undertook the construction of dwelling units for people belonging to different income groups. The BDA issued an advertisement offering to register names of intending applicants desirous of purchasing dwelling houses/flats in any one of the different income groups intended to be constructed by the BDA. A brochure was issued by BDA to the intending purchasers containing general terms and the estimated costs of dwelling houses. The note given in the said brochure clearly stated that cost shown therein is only estimated cost and it would increase or decrease according to the rise or fall in the price at the time of completion of houses/flats. Many persons got themselves registered for allotment of flats/houses. A notice was subsequently issued by the Development Authority increasing the price of houses, the amount of instalment and interest. The allottees were asked to send their written acceptance of the revised price/instalments to the Development Authority. Most of the allottees except few gave unequivocal and unconditional written consent. The allottees, however, challenged the revised terms and conditions of the BDA on the ground that the Development Authority was estopped from changing the conditions subject to which the allottees had applied for registration and deposited the initial payment; that the enhancement of cost of the house/flat amounting almost double of the estimated cost as shown in the brochure while inviting the applications and the increase of the monthly instalments are much beyond the

means of the allottees and that this arbitrary and unilateral stand of the petitioners is to the prejudice of the allottees. In those facts, their lordships of the Supreme Court have held:

that as all the persons who got themselves registered were educated it could be said that they have sent their applications for registration with initial payment only after having fully understood the terms and conditions of the brochure as per which the BDA has reserved its right to change, enhance or amend any of the terms and/or conditions as and when felt necessary, and also the right to relax any of the conditions at its discretion, and that the cost shown in the brochure was only estimated cost subject to increase or decrease according to the rise or fall in the price at the time of completion of the property. So, it could not be said that there was a misstatement or incorrect statement or any fraudulent concealment in the information supplied in the brochure published by the BDA on the strength of which all the applicants falling under the various categories applied and got their names registered. In such a circumstance the allottee could not be heard to say that the BDA has arbitrarily and unreasonably changed the terms and conditions of the brochure to their prejudice. Moreso, when the BDA did not compel anyone of the applicants to purchase the flat at the rates subsequently fixed by it and pay the increased monthly instalments. On the contrary, the option was left over only to the allottees.

It was further held as follows:

that the allottees after voluntarily accepting the conditions imposed by the BDA have entered into the realm of concluded contract pure and simple with the BDA and hence, the allottees could only claim the right conferred upon them by the said contract and were bound by the terms of the contract unless some statute steps in and confers some special statutory obligations on yhr the part of the BDA in the contractual field. The contract between the parties not being statutory, the find given by the High Court that there was arbitrariness on the part of the BDA in increasing the cost on the ground that the BDA was other authority under Article 12 of the Constitution was improper.

31. Reliance was also placed on a Division Bench decision of the Allahabad High Court in Sri. Tarun Kumar Chhabra Vs. U.P. Awas Evam Vikas Parishad, and others, , wherein it has been held that when a statutory Board prepared the Housing Scheme and invites applications for allotment of houses on the basis of the Brochure containing terms and conditions relating to the allotment of houses then the contract that comes into existence at the time of allotment is a non-statutory contract in character. If the price enhanced as well as additional interest imposed for default in payment of instalments as per terms of contract, they can well be challenged through a civil court. The writ petition is not maintainable.

32. In reply to this second preliminary objection raised by Mr. R.R. Vyas, the learned Counsel appearing for the respondent, Mr. N.M. Lodha, the learned

Counsel for the petitioners has placed reliance on a decision of their lordships of the Supreme Court in *Sanjay Place Group Housing Association and others Vs. Agra Development Authority and others*, It may be stated here that this decision has been rendered by three Hon''ble Judges of the Supreme Court whereas in *Bareilly Development Authority's case (supra)*, that was a decision rendered by two Hon''ble Judges of the Supreme Court. In that case, appellants No.2 to 55 were the allottees of flats constructed by the Agra Development Authority-respondent in Sanjay Place in the town of Agra under a self-financing housing scheme. The appellant No. 1 was an association registered under the Societies Act or which other appellants were members. The flats in question were on completion of the construction, allotted to the appellants during the period 1986-88. In accordance with the terms of agreement, the total cost of the flats were paid and thereupon, the possession was delivered to the appellants. In April and May, 1990, the Agra Development Authority respondent No. 1 made additional demands which the appellants challenged by a writ petition before the Allahabad High Court. By the impugned judgment, the writ petition has been dismissed holding that the application was made after an undue delay of 13 months and that a suit would be an appropriate remedy. The High Court also observed that since the matter requires accounting, the remedy by a suit would be more appropriate. In those facts, their lordships of the Supreme Court have held that, this approach against to our mind is not quite proper. What the appellants have been asking for is to determine the right of the respondent No. 1 to make fresh demands, and for deciding this issue one way or the other, it is not necessary to enter into accounting or arithmetical calculations.

33. Mr. Lodha, the learned Counsel appearing for the petitioners has next placed reliance on a decision of the Delhi Development Authority Vs. *Lala Amar Nath Educational and Human Society and another*, . In that case, the allotment of land could be made by the DDA to the educational bodies on the basis of no profit no loss. The allottees were asked to pay certain rate aprevalent for earlier two years and further to pay difference of cost of land as might be decided by the D.D.A. The difference in cost of land means increased cost of equation and other development charges. In those facts, the Delhi High Court has held that the basis of no profit and no loss cannot be changed. The Govt. is estopped from revising cost on the basis of market value. Thus, it is clear that the increased cost of land can be made on the basis of the increased cost of acquisition and other charges. The cost of the land cannot be increased on the basis of increase in its market value.

34. My attention was next drawn to a decision of their lordships of the Supreme Court in *Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*, , wherein it has been observed as follows:

The State acts in its executive power under Article 298 of the Constitution in entering or not enteriling in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercise of power. Therefore, the action

of the State organ can be checked under Article 14 Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, it should meet the test of Article 14 of the Constitution.

In *Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others*, their lordships of the Supreme Court have observed that It cannot be said that the appointment of District Government Counsel by the State Govt. is only a professional engagement like that between a private client and his lawyer, or that it is purely contractual with no public element attaching to it, which may be terminated at any time at the sweet will of the Govt. excluding judicial review. The presence of public element attached to the Office of post of "District Govt. Counsel" is sufficient to attract Article 14 of the Constitution and bring the question of validity of impugned circular terminating appointment of all District Govt. Counsel in State of U.P. within the scope of judicial review. It was further observed as under:

that para 7.06 of Legal Remembrancer has to be read not in isolation but in the context in which it appears and alongwith the connection provisions. The expression "professional engagement" is used therein to distinguish it from "appointment to a post under the Govt." in the strict sense. This however, does not necessarily mean that a person who is not a Govt. servant holding a post under the Govt. does not hold any public office and the engagement is purely private with no public element attaching to it. This part of Clause (3) of para 7.06 means only this and no more. The other part of Clause (3) enables the Govt. to terminate the appointment "at any time without assigning any cause". The expression "at any time" merely means that the termination may be made even during the subsistence of the term of appointment and without assigning any cause" means without communicating any cause to the appointee whose appointment is terminated. However "without assigning any cause" is not to be equated with "without existence of any cause. It merely means that the reason for which the termination is made need not to be assigned or communicated to the appointee.

It was further observed that the non-assigning of reasons or the non-communication thereof may be based on public policy, but termination of an appointee without the existence of any cogent reason in furtherance of the object for which the power is given would be arbitrary and, therefore, and, therefore, against public policy. Clause 3 of para 7.06 must, therefore, be understood to mean that the appointment of a District Government Counsel is not to be equated with appointment to a post under the Government in the strict sense, which does not necessarily mean that it results in denuding the office of its public character; and that the appointment may be terminated even during currency of the terms by only communicating the decision of termination without communicating the reasons which led to the termination. It does not mean that the appointment is at the sweet will of the Govt. which can be terminated at any

time, even without the existence of any cogent reasons during the subsistence of the term. Their lordships of the Supreme Court have further observed as follow:

Even part from the premise that the "office" or "post" of D.G.C.S. has a public element which alone is sufficient to attract the power of Judicial review for testing validity of the impugned circular on the anvil of Article 14, this power is available even without that element on the premise that after the initial appointment, the matter is purely contractual. The personality of the State requiring regulation of its conduct in all spheres by requirements of Article 14 does not undergo such a radical change after the making of a contract merely because some contractual rights accrue to the other party in addition. It is not as if the requirements of Article 14 and contractual obligations are alien concepts, which cannot co-exist. The Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. Exclusions of Article 14 in contractual matters is not permissible in Constitutional scheme. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusions. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Art, 14 and permit, judicial review, it can be said that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. Therefore, it would be difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.

It is often quoted rule of principle of equality which governs Article 14 of the Constitution that the persons equally situated cannot be treated as unequals and persons unequally situated cannot be treated as equals because in both cases, the actions will be arbitrary and unreasonable and hence, violative of Article 14 of the Constitution.

35. It is true that when the terms of a concluded contract, which has been reduced into writing of" may be oral, have to be interpreted then of course, the matter will be governed by the provisions of the Contract Act and not by the Constitutional provisions but if certain Rules have been framed by an authority which is a State as regards the calculation of the amount to be recovered as the cost of land then that Authority cannot wriggle out of those Rules by saying that they are only administrative Rules and therefore, a party cannot seek any relief through the writ petition.

36. In this respect, I may place reliance on a decision of this Court in Shaliendar and Another Vs. The University of Jodhpur, That, was a case where the University of Jodhpur framed certain Rules for Re-evaluation of Answer-Books. Those Rules were only administrative in nature and were not statutory Rules. This Court has held that if the University has framed the rules for re-evaluation in exercise of its

executive powers, then it is not open to the University to say that it can refuse re-evaluation at its sweet will or to say that it would not abide by the rules for re-evaluation. Breach of rules for re-evaluation whereby any candidate or examinee suffers from any grievance, then the examinee or candidate cannot be denied the remedy to get the rules enforced and, therefore, the rules regarding re-evaluation being exceptional in nature were held to be justiciable under Article 226 of the Constitution.

37. It was contended by Mr. N.M. Lodha, the learned Counsel appearing for the petitioners that in this case, certain Rules have been framed by the Rajasthan Housing Board vide its Notification dated 9.1.1988. These Rules have been made effective from 1.4.1988 and the costing for the houses allotted after 1.4.1988 or for the houses allotted before 1.4.1988 but for which costing had not been finalised is to be finalised on the basis of these Rules in the shape of Costing Principles. Rule 4 of these Rules provides that the basic cost of the houses shall consist of the following: (i) Land cost; (ii) Development Cost; (iii) Cost of construction; (iv) other direct charges-such as expenditure on work-charged establishment; (v) T & P charges Expenditure on quality control equipments; and (vi) Laboratory Management-Other than the establishment charges for regular staff deputed for quality control. Thus, it is clear that the Land Cost, Development Cost, Cost of Construction Other Direct charges, T & P charges and Laboratory Management are the heads of expenditures which are independent to each other. Rule 4.1 pertains to the cost of underdeveloped land.

R.4.1.1 reads as under:

4.1.1 Total cost of undeveloped land shall consist of:

- (i) Compensation against the cost of land;
- (ii) compensation paid against any structure such as building works, trees etc.
- (iii) Any other compensation paid for acquisition of land including the payment of interest etc.
- (iv) Cost of removal of any structure, trees etc.
- (v) On the cost of undeveloped land as under (i) to (iv) above 30% extra shall, be added, to cover up later legal obligations in connection with the acquisition of land.

Rule 4.1.2 reads as under:

4.1.2. Land rate to be charged from the allottee shall be determined on the basis of the saleable area available in the colony.

SALEABLE AREA : The saleable area shall include the following areas, available in the layout plan:

- (i) Residential area.

(ii) 1/2 of the total area left for the following:

- (a) Primary Schools;
- (b) Higher Secondary Schools;
- (c) Hospitals;
- (d) Dispensary;
- (e) Community Centres;
- (f) Other amenities like post Offices, police stations etc.
- (g) Land left for other facilities like Cremation/burial grounds.

(iii) 2/3rd of the area under commercial spaces; considering 1/3rd of spaces shall be utilised for shops and other commercial establishment, whole the rest will go for circulation and parking.

NOTE; In every colony, the Board will provide buildings for basic amenities like Primary School, Higher Secondary School, Dispensary and Community Centres as per the norms decided in 137th Meeting of the Board. The land for these minimum facilities shall be considered to be free of cost and shall not be accounted for saleable area. Rule 4.1.3 provides that the cost/sqm. against the element of undeveloped land shall be determined as under:

TOTAL LAND COST (as in 4.1.1.1)

Total saleable area.

Thus, the cost of the land will only include the components mentioned in Rule 4.1.1 and no other components. The development of charges form a different head and they cannot form part of the land cost.

38. Rule 4.1.4 provides that for the first time, immediately after the land is acquired, the land cost shall be determined after adding interest @ 12% per year from the date of payment of compensation to the end of that particular year. The period of interest shall be counted from the 1st of the month on which the land was acquired to the last of the month of the particular financial year for which the land cost is being finalised. Rule 4.1.5 further provides that after the land cost is finalised initially, land cost for the next year and the subsequent years shall be computed after adding 12% interest per annum. The interest shall be compounded annually. Thus, this is the only formula, on the basis of which the land cost can be increased but it cannot be increased on the basis of the market value of the land.

39. In reply to the writ petition, it was contended on behalf of the non-petitioners that on account of the heavy increase in the market price of the land, the rate of land which was being charged by them in the year 1986-87 @ 100/- per sq. Mtr. has been increased to Rs. 385/- per sq.mtr. in the year 1991-92. As stated

above, the rate of land cannot be increased on the basis of the rise in the market price of the land. The cost of the land can only be computed on the basis of the Rules, which have been framed in the shape of Costing Principles vide Notification dated 9.1.1988. As has been held in Shaliendar's case (supra), though these Rules are administrative in nature and are not statutory Rules but when the Rajasthan Housing Board has framed these Rules in the shape of Costing Principles, it is not open to the Rajasthan Housing Board to say that it would not abide by these Rules and the petitioners cannot compel the respondents to compute the cost of the land on the basis of these Rules. The land which has been utilised for construction of Houses for the applicants of all the four quarters of 1988 Parijat Scheme, has been utilised prior to 31.3.1992, when possessions were given to the applicants of first and second quarters of 1988 Parijat Scheme, may be with a little variation of time so far as each quarter of 1988 is concerned. In para 18 of the reply to the writ petition, it has been contended on behalf of the respondents that tenders for the houses of complete nature of fourth quarter of 1988 Parijat Scheme were invited but they were completed within the stipulated period, but the difficulty only arose for the houses of third quarter of 1988, Parijat Scheme allottees, which required construction of 23 Skeleton houses. Tenders were invited well in time but tenders of only 9 houses in the first instance were accepted and for the rest 14 houses, the Contractors backed out and, therefore, fresh tenders were invited and for those 14 houses, the tenders were accepted at the rate of 64.5% above BSR whereas houses for the applicants of fourth quarter of 1988 Parijat Scheme were constructed at the rate of 33% above the BSR of 1988 but this much is clear from the para 18 of the reply filed in writ petition No. 2169/92 that even those 14 houses were also completed near about, the month of March 1991. Thus, it is clear that houses for the applicants of all the four quarters of 1988 Parijat Scheme were ready by March 1991, may be that they were completed at different periods within the year 1990-91 and, therefore, the land cost cannot be charged at such a great difference from all of these applicants of first, second, third and fourth quarters of 1988 Parijat Scheme because persons almost similarly situated cannot be treated much differently. As stated above, the applicants of first quarter of 1988 Parijat Scheme were delivered possession of houses in the March 1991 and when the houses of all the four quarters of 1988 Parijat Scheme applicants were ready by March 1991 then there could not have been any variation so far as the cost of the land is concerned, because as per the Rules which have been framed by the Rajasthan Housing Board in the shape of Costing Principles vide Notification dated 9.1.1988, once the initial cost is finalised as per Rule 4.1.1 to 4.1.4 then the land cost for the next year and the subsequent years shall be computed after adding 12% interest p.a. and the interest shall be compounded annually. As stated above the land was utilised for construction of houses for all the four types of applicants of 1988 Parijat Scheme prior to 31.3.1991, then no different cost of land could have been charged from the applicants of all the four quarters of 1988 Parijat Scheme.

40. In this respect, I may place reliance on a decision of their lordships of the Supreme Court in *Sangara Singh v. State of Punjab* AIR 1984 SC 1499. Of course, that was a case pertaining to the dismissal of several members of Police Force for participation in agitation. Out of a large number of police personnel, who were dismissed, most of them were reinstated and others were not and therefore, in those circumstances, their lordships of the Supreme Court have held that the order of the High Court dismissing the petitions was liable to be quashed. Logically, the petitioners must receive the same benefit which those reinstated received in the absence of any distinguishing feature in their cases and, therefore, the petitioners were allowed to be reinstated in service. As stated above, this case does not pertain to service but the ratio of this decision will apply to this case. In this case, the houses were delivered to the applicants of first quarter of 1988 Parijat Scheme before 31.3.1991 and so, the land was utilised for construction of their houses prior to 31.3.1991 and similarly, the land for construction of houses for the applicants of second; third and fourth quarters of 1988 Parijat Scheme was also utilised prior to 31.3.1991 and, therefore, the land cost could not have been varied by the respondents and if it can be varied, it can only be varied keeping in view the costing principles laid down by the Rajasthan Housing Board vide its Notification dated 9.1.1988.

41. It may be stated here that even the Deputy Housing Commissioner, Rajasthan Housing Board, Jodhpur vide his letter dated 19.2.1992 has recommended that the land cost should be charged @ Rs. 202/- per sq.mtr. from the applicants of second quarter of 1988 Parijat Scheme because their houses were also ready before 31.3.1991. Thus, it is clear that the basis of this recommendation made by the Deputy Housing Commissioner, Rajasthan Housing Board, Jodhpur was that the land has been utilised at the same time. It may further be stated here that Condition No. 5 of the Advertisement (Ex.21) clearly provides that the Rajasthan Housing Board shall recover the cost of the land in the first instalment and therefore, at the time of finalising the cost of the house, the cost of the land shall be charged, which was prevalent on the date, the applicant has deposited his first instalment. In this case, the first instalment has been paid by all the applicants of first, second, third and fourth quarters of 1988 Parijat Scheme in the year 1988 and, therefore, the cost of the land could not have been varied as regards the applicants of second, third and fourth quarters of 1988 Parijat Scheme from the one that has been charged from the applicants of first quarter of 1988 Parijat Scheme.

42. Mr. R.R. Vyas, the learned Counsel appearing for the respondents, has invited my attention to Condition No. 6 of the Parijat Scheme Book-let, which provides that although the registration under this Scheme will be open for whole of the year but the cost of the houses shall be determined quarterly. The cost of the house shall be charged from applicants, which shall be determined for the quarter, in which, they got their registration under this Scheme, because the cost of construction material and labour charges are increasing day by day and, therefore, it is not possible to determine the cost of the houses for the whole of

the year. This Condition does not relate to the cost of the land but it relates to the cost of the houses, which may be varied from time to time keeping in view the increase in the cost of construction material and labour charges etc.

43. Condition No. 11 of the Parijat Scheme Book-let deals with payment of cost and condition No. 12 pertains to other conditions. Condition No. 12.4 provides that before making delivery of the house, the final cost of the house will have to be determined and the remaining amount, if any will have to be deposited by the applicants, for which, possession letter will be issued by the Rajasthan Housing Board. The allottee will have to deposit this remaining amount within one month from the receipt of the possession letter. Condition No. 12.7 further provides that if the applicant has not defaulted in making payment of instalments, the possession of the house shall be delivered to the applicant within two years. In case, the Rajasthan Housing Board fails to deliver possession of the House within two years, then 6% interest shall be paid to the applicant on the whole amount so deposited by him till the possession of the house is delivered to him. Condition No. 12.8 provides that if the cost of construction is increased; then that increased cost will carry interest @ 15% to 16%. Thus, it is clear that the cost of the land is governed by the Costing Principles, which have been laid down vide Notification dated 9.1.1988. As stated above, the land for construction of the houses for the applicants of second, third and fourth quarters of 1988 Parijat Scheme was also utilised at the time when the houses for the applicants of first quarter of 1988 Parijat Scheme were constructed and, therefore, the land cost could not have been varied for the applicants of second, third and fourth quarters of 1988 Parijat Scheme from the one which has been charged from the applicants of first quarter of 1988 Parijat Scheme.

44. Shri R.C. Singhvi, the Deputy Housing Commissioner, Rajasthan Housing Board, Jodhpur in his affidavit has submitted that the houses for the applicants of first quarter of 1988 Parijat Scheme were completed by June 1990 and the houses for the second quarter of 1988 Parijat Scheme were also completed by the end of February. Thus, there may be some difference of time in utilization of land for construction of houses for the applicants of all the four quarters of 1988 Parijat Scheme but the cost of the land in their respect can only be varied keeping in view the Rules framed by the Rajasthan Housing Board vide its Notification dated 9.1.1988 and not otherwise. It may, however, be mentioned here that the lottery for the applicants of first and second quarters of 1988 Parijat Scheme was drawn on 29.1.1991 and the possession-letters to the applicants of first and second quarters were issued in the months of March 1991 and December, 1991 respectively and, therefore, there could have been some variation in the cost of construction of these houses. Likewise, there could have been variation in the cost of construction of houses for the applicants of third and fourth quarters of 1988 Parijat Scheme as per Condition No.6 of the Parijat Scheme Book-let and so, that cannot be challenged by the petitioners because it has been specifically mentioned in the Parijat Scheme Book let that the cost of the houses may vary keeping in view the increase in the cost of materials and

labour-charges and other administrative charges. Thus, it is clear that when the petitioners got themselves registered under Parijat Scheme, it was very much in their knowledge that the cost of the houses may vary from time to time keeping in view the increase in the cost materials, labour charges and other administrative and development charges and, therefore, the petitioners cannot make any grievance about it but so far as the cost of the land is concerned, as stated above, the land has been utilised for construction of houses for the applicants of all the four quarters of 1988 Parijat Scheme prior to March 1991 and, therefore, there could not have been any variation in the cost of the land.

45. In this view of the matter, I am firmly of the view, that the petitioners cannot challenge the variation in the cost of construction and other administrative charges through these writ petitions because these involve accounting and for that, the writ is not a proper forum. The accounting of cost of construction and other administrative charges raise a number of disputed questions of facts and for that, the civil suit is the proper remedy. However, as regards, the land cost, certain rules are in existence, they may be administrative in nature and not statutory in nature and, therefore, keeping in view the decision of this Court in *Shaliendar's* case (supra), the respondents will have to abide by these Rules. The cost of the land can only be determined on the basis of these Rules and not on the basis of any other method. If the cost of the land for the applicants of second, third and fourth quarters of 1988 Parijat Scheme varies from the cost of the land which has been charged from the applicants of first quarter of 1988 Parijat Scheme, it can only be varied on the basis of these Rules. It simply cannot be allowed to be increased arbitrarily from Rs. 38,178/- to Rs. 72,765/-. It is pertinent to mention here that houses were allotted to the applicants of second, third and fourth quarters of 1988 Parijat Scheme at different times and still, the cost of the land that has been charged from these applicants is the same. Thus, the contention of Mr. Vyas that the cost of the land changes with the time when the allotment is made cannot be sustained because houses were allotted to the applicants of third and fourth quarters at different times but still, the same cost of land has been charged from them. As stated above, the cost of the land could have been increased only in accordance with the costing principles laid down by the Rajasthan Housing Board vide its Notification dated 9.1.1988 and the cost of the land does not include development charges because that is a separate component of the cost of the house as has been laid down in the costing principles.

46. It was next contended by Mr. N.M. Lodha, the learned Counsel appearing for the petitioner that as per the Annexure R. 2, only 2.5% of the cost of the land can be charged as lease money every year whereas the lease money has been charged at the rate of 3% of the cost of the land from the petitioners. Mr. R.R. Vyas, the learned Counsel appearing for the respondents submits that only 2.5% of the cost of the land shall be charged as lease money from the petitioners per year and if any more amount has been charged, that will be reduced by the Rajasthan Housing Board accordingly.

47. From the perusal of the Annexure-R.2, it is clear that for construction of Houses, the Housing Board has to invest a large amount and thereby, it has to pay Interest to different financial Institutions ranging between 21.75% to 24.75%. It may be stated here that while issuing show cause notices to the respondents, this Court vide its Order dated 29.6.1992 passed in the second stay petition has stayed the recovery of the penalty from the petitioners on account of filing of these writ petitions for non-payment of the amount demanded by the Rajasthan Housing Board vide its possession-letters issued to the petitioners but now, In view of the conclusion arrived at by the hereinabove, revised possession letters will have to be issued to the petitioners and in those revised possession letters, the cost of the land shall be reduced keeping in view the Rules framed by the Rajasthan Housing Board In the shape of Costing Principles vide its Notification dated 9.1.1988. The lease-money shall also be reduced to 2.5% of the cost of the land per year in stead of 3% of the cost of the land as has been charged by the Rajasthan Housing Board. However, the respondents shall be free to charge interest on the late payment as per condition No. 12.8 of the Parijat Scheme Book-let.

48. It was contended by Mr. R.R. Vyas, the learned Counsel appearing for the respondents that one Shri Anil Bhandari earlier filed a writ petition before this Court and he has withdrawn that writ petition. However, while withdrawing the writ petition, he gave out an undertaking that he will pay the amount which may be fixed by the Rajasthan Housing Board. That submission made by him in that writ petition which was filed earlier does not have a binding force on all other petitioners. Moreover, when the land was utilised almost at the same time for construction of houses, different land cost cannot be charged from the petitioners with the one which has been charged from the applicants of first quarter of 1988 Parijat Scheme unless it is permitted by the Rules framed by the Rajasthan Housing Board In the shape of Costing Principles vide its Notification dated 9.1.1988 and, therefore, the undertaking given by Shri Anil bhandari will not confer any jurisdiction on the Rajasthan Housing Board to charge more cost of land from the petitioners because it is not a case of concluded contract. The possession of the houses has not yet been delivered to the petitioners and the petitioners have filed these writ petitions prior to the delivery of houses to them by the Rajasthan Housing Board.

49. In view of what has been discussed hereinabove, I am firmly of the view that these writ petitions filed jointly by the applicants of second, third and fourth quarters of 1988 Parijat Scheme are entertainable sofaras their challenge to the fixing of cost of the land and the lease money is concerned because it involves no accounting. The petitioners have only sought the relief regarding enforcement of Rules framed by the Rajasthan Housing Board in the shape of Costing Principles issued and notified vide its Notification dated 9.1.1988. So far as their challenged to the increase in the cost of construction and other charges in concerned, that cannot be entertained because they are governed by the conditions of the Parijat by the Conditions of the Parijat Scheme Book-let and they involve accounting and

disputed questions of facts.

50. In the result, these writ petitions are allowed in part. The petitioners cannot claim any change in the cost of construction and other charges through these writ petitions because that will require certain amount of accounting calculations and moreover, they relate to non-statutory conditions of the contract. However, sofaras the cost of the land is concerned, about that Rules in the Shape of the Costing Principles are there, which have been published vide Notification dated 9.1.1988. The respondents cannot depart from those. Rules. The increased cost of the land can only be charged by the Rajasthan Housing Board from these allottees of second, third and fourth quarters of 1988 Parijat Scheme is over and above the one which has been charged from the applications of the first quarter of 1988 Parijat Scheme on the basis of the aforesaid Notification dated 9.1.1988, keeping in view the year of utilisation of land for construction of houses for the applicants of second, third and fourth quarters of 1988 Parijat Scheme. The cost of the land cannot arbitrarily be allowed to be increased from Rs. 38,178/- to Rs. 72,765/-. The respondents are, therefore, directed to issue revised possession-letters to the petitioners by changing the cost of the land keeping in view the land utilisation made by them for construction of houses for the applicants of second, third and fourth quarters of 1988 Parijat Scheme, in accordance with the Rules framed by it in the shape of Costing Principles vide its Notification dated 9.1.1988 and the lease money @ 2.5% of the cost of the land be changed from the petitioners instead of 3%. However, they will be free to charge interest from the petitioners for late payment of the amount keeping in view Condition No. 12.8 of the Parijat Scheme Book-let. The revised possession-letters be issued within a period of two months from today keeping in view the aforesaid directions and delivery of possession of the houses be ensured to all the applicants of second, third and fourth quarters of 1988 Parijat Scheme within one month of the payment of the amount remaining unpaid on the basis of the revised-possession letters issued by it in accordance with the directions of this Court.

51. In the facts and circumstances of the case, the parties are left to bear their own costs of these writ petitions.