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**(2011) 06 MP CK 0032**

**In the Madhya Pradesh High Court**

**Case No : W.A. No. 14 of 2011 (Gwalior)**

C.M. Vyas and Others

APPELLANT

Vs

M.P. Housing Board and Others

RESPONDENT

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**Date of Decision :** 30-06-2011

**Acts Referred:**

**Citation :** (2011) ILR (MP) 1838

**Hon'ble Judges :** S.N Aggarwal, J;Brij Kishore Dubey, J

**Bench :** Division Bench

**Advocate :** T.C. Singhal, Yogesh Singhal, D.S. Chauhan and R.K. Goyal, for the Appellant; K.N. Gupta and Sweta Bothra, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

S.N. Aggarwal, J.—These are 13 appeals. All these 13 appeals are directed against common order of the writ court dated 24th November 2010 in a bunch of writ petitions filed by the allottees of HIG and MIG flats allotted by the Madhya Pradesh Housing Board in "Shrimant Madhavrao Scindia Enclave" Darpan Colony, Gwalior Impugned order of the writ court has been assailed both by the M.P. Housing Board as well as by the allottees.

2. Madhya Pradesh Housing Board had constructed 32 HIG and 32 MIG flats in second phase in "Shrimant Madhavrao Scindia Enclave" Darpan Colony, Gwalior. An advertisement was issued by the Housing Board in 2005 for inviting applications from the intended buyers of the flats for their registration for HIG/ MIG flats. The tentative cost of HIG flat declared in the broucher was Rs. 10.50 lacs and the tentative cost of the MIG flats declared in the broucher was Rs. 8.50 lacs. It was mentioned in the broucher that the price of the flats declared therein could be enhanced subsequently on the basis of actual cost. M.P. Housing Board vide its letter dt. 11th July 2007 addressed to the allottees informed them that the cost of the flat, for which they were registered was likely to be enhanced by 15-20% and they were asked to give their consent whether they were willing to pay the enhanced cost by 15-20% over and above what was declared in the

broucher. The allottees consented to the said enhancement and this is not disputed by the learned Counsel appearing on behalf of the allottees. When the construction of the flats was at advanced state, M.P. Housing Board on 12th August 2008 made a demand of increased cost by increasing the cost of the flats by 20% over and above the price declared in the broucher and this increased demand made from allottees stood paid and this is not disputed by Shri K.N. Gupta, learned senior counsel appearing on behalf of the Housing Board. However, when the construction of the flats in question was completed, the Housing Board made a final demand vide their letter dated 17th July 2009/26th July 2009 from the allottees of HIG and MIG flats and called upon them to make an additional payment of Rs. 3,39,175/- and Rs. 2,13,219/- respectively by the allottees of the flats. The allottees were aggrieved by the said additional demand made from them by the Housing Board for which they lodged their protest with the Housing Board and thereafter filed several writ petitions to dispute the additional demand made from them by the Housing Board. It is on these writ petitions of the allottees, the impugned order has been passed by the learned Writ Court. Vide its impugned order, learned Writ Court has struck down the demand made by the Housing Board from the allottees on account of parking fee and land premium. However, the other miscellaneous payments like lease rent, maintenance charges, etc. demanded by the Housing Board from the allottees is kept intact.

3. We have gone through the impugned order and have also heard the learned Counsel for the parties. Upon going through the impugned order of the writ court, we find that no reasoning has been given by the writ court except referring to a judgment of the Hon''ble Supreme Court in Nihalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd., in support of its conclusion justifying demand on account of miscellaneous charges like lease rent, maintenance charges etc. and in holding demand on account of parking fee and land premium to be illegal. We as appellate court can not scrutinize the correctness of the view taken by the writ court in the impugned judgment unless we know the mind of the writ court as to for what reasons a particular demand was held legal and the other demand was held illegal. Though broad reasons were not required to be given but at least some reasons should have been given in the impugned order as to how the judgment of apex court referred therein applies to the facts of the case in hand. We have also gone through the judgment of the Hon''ble Apex Court in Nihalchand''s case (supra) referred by the writ court in the impugned order and we find that the said judgment of the Hon''ble apex court in Nihalchand''s case (supra) is based upon review of the previous precedents on the subject regarding justifiability of the allotting authority to make an additional demand over and above what was declared in the broucher. The court while dealing with the facts of a particular case has to see which particular judgment referred as a precedent in the judgment of the apex court in Nihalchand''s case (supra) will apply to the facts of the case in hand. Since the writ court has not given any reason in support of its conclusion in the impugned

order, we deem it appropriate and expedient to remand the case back to the writ court for passing a fresh order on the basis of law applicable to the facts of the case in hand.

4. At this stage, Shri T.C. Singhal, learned Counsel appearing on behalf of the allottees has brought to our notice that the Housing Board has not handed over the possession of the flats in question to the allottees despite they have made entire payment as per first increase i.e. the cost of the flat declared in the broucher including 20% increase on the said cost demanded by the Housing Board vide its letter dated 12th August 2008. The learned Counsel appearing on behalf of the allottees submits that the Housing Board may be directed to hand over the possession of the flats in question to the allottees as they are suffering a great prejudice in not enjoying the fruits of the flats, for which they have already paid. The learned Counsel appearing on behalf of the allottees further submits that the allottees are ready and willing to give an undertaking to the court that in the event or their losing court case in regard to additional demand under challenge, they shall indemnify the Housing Board by making such payment as may be directed by the court at the time of final disposal without any protest or demur. Shri K.N. Gupta, learned senior counsel appearing on behalf of the Housing Board says that in case such an undertaking is given by the allottees, the Housing Board has no objection in handing over of possession of flats to the allottees. De-hors this concession given by the learned senior counsel for the Housing Board, we are otherwise of the view that since the allottees have already made payment of the cost of the flats to the Housing Board in terms of their demand letter dated 12th August 2008, the Housing Board can not withheld the handing over of possession of the flats to the allottees only on the ground that there exists a dispute between the allottees and the Housing Board regarding additional demand made under challenge vide letter dated 17th July 2009/26th July 2009.

5. The counsel on both the sides i.e. counsel for the allottees and the learned senior counsel for the Housing Board have at this stage agreed for passing of a consent order and therefore we dispose of all these appeals by a consent order in terms of consent given by the learned Counsel for the parties in the following manner:

(i) The orders of the writ court impugned in these appeals are hereby set aside. The cases are remanded back to the writ court for fresh decision in accordance with law. The parties shall appear before the writ court for directions on 20th July 2011.

(ii) The allottees of HIG and flats shall file an undertaking in the court by way of their affidavits within four weeks from today that in the event of dismissal of their challenge to the additional demand they shall indemnify the Housing Board by making such additional payment as may be finally directed by the court within such time as may be given to them at the time of final decision of the case. The allottees shall also mention in their undertaking that they shall make additional

payment in terms of the court order without any protest or demur. A copy of the said undertaking shall also be supplied by the allottees to the Housing Board or its counsel.

(iii) Upon an undertaking in terms of Clause ii herein is filed by the allottees, the Housing Board shall hand over possession of the flats in question to the allottees within four weeks of receipt of copy of undertaking by it.

(iv) In case any payment is found outstanding against any of the allottee in terms of demand letter of the Housing Board dated 12th August 2008, such an allottee shall not be entitled to possession of the flat unless the payment in terms of said demand is first made by him.

All these appeals stand disposed of in terms referred above. A copy of this order be kept in the files of all the appeals which have been disposed of by this common order.

Appeal disposed of.