
(1986) 09 RAJ CK 0111
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7 of 1981

Dr. M.B.L. Saxena

APPELLANT

Vs

Rajasthan Housing Board and Others

RESPONDENT

Date of Decision : 19-09-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1986) WLN 544

Hon'ble Judges : A.K. Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Mathur, J.—The petitioner, by this writ petition, has prayed that the respondents may be restrained from demanding the petitioner an additional amount as communicated by the order dated 30th September, 1980 (Ex. 7) amounting to Rs. 15,888/-. He has also prayed that respondents should be restrained from cancelling the allotment in favour of the petitioner.

2. The Rajasthan Government constituted the Rajasthan House Board, Jaipur, u/s 4 of the Rajasthan Housing Board Act. The Rajasthan Housing Board has framed Regulations in exercise of the power u/s 53 of the Act with the previous sanction of the State Government. The Regulation has been named as "Rajasthan Housing Board (Disposal of Property) Regulation, 1970". The Rajasthan Housing Board issued Schemes for the allotment of constructed houses in the various cities of Rajasthan including Jodhpur. The Rajasthan Housing Board published general Registration Scheme, 1978. The petitioner applied for registration under the said Scheme by depositing Rs. 7,000/- on 31st January, 1979 for the allotment of a house in Higher Income Group, under item No. 2.7 of the Scheme. The Rajasthan Housing Board published Housing Allotment Scheme 1980 after April 1979 for the allotment of the houses to the persons registered under 1979 Registration Scheme at Jodhpur. Petitioner came to know that Board has some houses available for allotment of two Scheme at Jodhpur. namely, Pratapnagar

and Chopasani Scheme. But in none of the two Schemes any house of the Higher Income Group was not available for allotment. Since no Higher Income Group houses was mentioned in the scheme for the allotment, the petitioner wrote a letter to the Chairman & the Secretary of the Rajasthan Housing Board, Jaipur, requesting them to allot him M-2 category house at Chopasani Scheme, Jodhpur. Petitioner thereafter, contacted the Chairman, Rajasthan Housing Board personally and requested him to permit the petitioner to contest the lottery for the allotment of the house of M-2 type house 60" x 60" at Chopasani Scheme. The Chairman acceded to the request of the petitioner. Consequently, the petitioner filled up the option allotment form for Housing Scheme. Petitioner submits that he was informed by the Housing Board that the house constructed on an area of 40" x 60" on a plot of 60" x 60" House No. 1 ka-9 in Chopasani Scheme, has been allotted to him on cash payment basis. A provisional letter of allotment was issued to the petitioner on 27th March, 1980, which is on record (Ex. 3). A sum of Rs. 47,927/- was demanded from the petitioner as the price of the house within four months after adjusting Rs. 7,000/- and the interest thereon was to be paid by the petitioner at the time of registration. A certificate was issued on 27th March, 1980, certifying that the petitioner has been allotted House No. 1-Ka-9 in Chopasani Scheme at Jodhpur on out-right sale; also certifying that the possession will be given on receiving the disposal price amounting to Rs. 54,683/-. Petitioner submitted that he entered the possession and applied for water and electric connections. Petitioner, thereafter, requested the Housing Board to send a letter of possession and to complete the sale-deed of the house in his favour. Petitioner was informed by the Housing Board Officer by the communication dated 30th August, 1980 (Ex. 7) calling upon the petitioner to deposit Rs. 15,888/- more towards the price of the house allotted to him by the allotment order dated 10th December, 1979. Petitioner made a representation to the Chairman requesting him to correct the demand, but without any result. Ultimately, petitioner served a Demand Notice and, thereafter, approached this Court by filing present writ petition and challenging the demand raised by the Housing Board. Thereafter, a reply was filed by the respondents and so far as the allotment of house in question is concerned, it is not disputed. However, it is submitted that on 27th March, 1980, petitioner made a request before the respondents that a provisional demand notice may be issued so that he may get a loan sanctioned on 31st March, 1980. He made further declaration that petitioner shall be responsible for paying any difference of the amount after final costing of the house in dispute. The request of the petitioner has been placed on record as Annexure-4/1. Petitioner was allotted house provisionally so as to enable him to obtain loan, but it was clearly understood that the final decision about the amount will be communicated to the petitioner later on. It is further submitted that no letter of possession was served to the petitioner but petitioner took the possession on his own and started living in that house, The additional pleas were also taken by the respondent in the reply and it was submitted in the additional pleas that the petitioner is guilty of concealing the material facts, that calculation of the cost of construction is an

administrative matter of the Housing Board, so this Court should not interfere under Article 226 of the Constitution of India. It is also submitted that the method of calculating cost of construction as well as the regulations is not justiciable. That since the petitioner has given clear undertaking that he will pay the differences on the final costing of the house in dispute to the Housing Board, therefore, he should not be allowed to resile back from his own undertaking. After filing reply, the arguments were heard on various occasions by this Court and on the direction of the Court, various documents have been filed on record. On the basis of various documents on the record, Mr. Purohit has challenged the two items before me, namely, the charging of the interest from April to the period of allotment amounting to Rs. 14,516/- and contingency and equalisation reserve at the rate of 5% on 64,142/- amounting to Rs. 3,203/-. The large number of documents have been placed on record in pursuance of the order of the Court and the pleadings have not been strictly adhered to by both the parties. After perusing all the documents, Mr. Purohit has challenged only these two items, which have been charged by the Housing Board and as a result of which, a demand of Rs. 15,888/- has been raised against the petitioner.

3. Now, the first and foremost question before me is that whether the Respondents have correctly charged interest on these tenements from April 1977. Mr. Purohit submits that there is no resolution of the Board for charging this amount on the present tenement from April, 1977. As against this. Mr. Vyas, learned Counsel for the respondents, has invited my attention to the Minutes of the Costing Committee. Annexure R/9, these are the minutes of the 6th Meeting of the Costing Committee of Rajasthan Housing Board held at Jaipur on 26th April, 1976 at 11.00 a.m. This Committee decided to increase the cost of the houses proposed to be released in April, 1976 draw. The agenda item reads as under:

The agenda item and the sale price of each type of in each scheme shown in the Annexure "A" were considered and it was decided that the costing may be revised on the following lines:

(1) In case of surplus houses, the sale price adopted for the houses for the draw in which it remained surplus may be increased by adding interest for the surplus period (from month of draw in which it-remained surplus to 4/76) at the rate at which interest for construction period has been charged during surplus period.

(2) Other direct charges may be charged 2% of construction cost in place of 3% in the case of new houses as well as in surplus houses.

(3) In case of house where new as well as surplus are available the sale price of such houses may be calculated as per weighted average after considering the item Nos. 1 and 2 above.

(4) The cost of 5 surplus houses of 20 x 50 size and 7 new houses of 20 x 37 size in Hiran Magri Scheme, Udaipur may be worked out by weighted average system. The principle to be adopted in all cases of similar type of house in a town

so the cost of land is same.

This Resolution was placed for consideration before the 7th Meeting of the Costing Committee held at Jaipur on 18th July, 1977 and this Costing Committee approved the following procedure:

The cost worked-out for the houses to be included in April 77 draw was approved with the following conditions:

(a) The cost approved for lottery of April may be adopted for April 77 lottery also; even where the cost of similar houses comes little less than the cost of April 76 Draw, unless the difference is due to change of specifications.

(b) In the cases where the costs are abnormally high in comparison to April 76 lottery such cases will be referred to the Board for its approval with reasons of variations.

(c) Revised procedure for interest for surplus period was approved broadly; however, it may be examined if the total interest worked-out for surplus period may be apportioned over different category of houses according to the rate of interest chargeable on total cost of such houses, in place of uniform rate of 3% worked out. In difference is not very much marked, the former method of apportionment of interest may be approved as suggested by one of the members of inter subsidy basis of differential interest. The figures may thereafter be rounded to closest approximate.

4. This resolution of the Costing Committee of the Board was placed before the 8th Meeting of the Costing Committee held on 23-1-1979 Item No. 1 relates to confirmation of the minutes of 7th meeting of the Costing Committee which reads as under:

Item No. 1; Confirmation of the minutes of 7th meeting of the Costing Committee: The member expressed the views that as one of them was present in the 7th meeting held on 18-7-1977 they could not vouchsafe the accuracy and the spirit of the decisions. The convener, Shri D. R. Jain, C A.O. who is the Secretary of this Committee and who was also present in the 7th meeting, however, reported that the minutes were as per decisions taken. It was also brought to the notice of the members that the decisions have already been implemented and accordingly the minutes were confirmed.

5. Thereafter, all these minutes of the Costing Committee were placed before the Housing Board and the Housing Board in its meeting held 20-8-1979 affirmed the minutes of the Costing Committee's meeting at Item No. 79.13 which reads as under:

79-13 e.M+y dh lwpuKfKZ ,oa vuqeksukFkZ %

e.M+y us fnukad 29&6&1979 dks gqbZ lEifRr vkoaVu lfeRr] fnukad 28&5&1979 ,oa 5&7&1979 dh 33 oh o 34 oh izkstsDV desVh] fnukad 23&1&1979 dks lEiUu gqbZ 8oh dksfLVx desVh] fnukad 18&7&1979 dks gqbZ lEifRr vkoaVu

lfefr ds fu.kZ;ks o ekg twu 1979 rd dh HkkSfrd izxfr ds fooj.k dk vkoyksdu dj vuqeksnu fd;k A

vU; fo"k; % v/;{k egksn; dh vuqefr ls A

6. The resultant position is that the Costing Committee has met from time to time to evaluate the prices of the houses constructed by the Housing Board and the Costing Committee laid down the procedure of declaration of the house as surplus and charging of interest. The minutes of three meetings of the Costing Committee i.e. 6th, 7th and 8th meetings were affirmed by the Housing Board as aforesaid. In the 6th meeting of the Costing Committee it was resolved that surplus houses mean houses which have not been knocked out in any draw and remained unallotted then interest on such surplus houses has to be included in the cost of the houses. This resolution of the 6th meeting was also adopted in the 7th meeting of the Costing Committee. The minutes of the 7th meeting were confirmed in the 8th meeting and thereafter the Housing Board affirmed all the minutes finally in its 79th meeting held on 20-8-1979.

7. Mr. Purohit, learned Counsel for the petitioner submitted that in the 6th meeting of the Costing Committee the method for declaring the houses surplus and imposing of interest only related to the list of houses shown in Annex. A and the house of the petitioner was not included in the meeting held on 26-4-1976. Thus, this procedure is not applicable in the case of the petitioner. This submission of the learned Counsel does not appear to be well found.

8. I have already quoted all the three resolutions of the Costing Committee and the criteria laid down in the 6th meeting of the Costing Committee was accepted and approved in the 7th meeting and it was clearly resolved in clause (c) that revised procedure for interest for surplus period was approved broadly. This shows that the minutes of the 6th meeting of the Costing Committee has been adopted in the 7th meeting of the Costing Committee and the draw which was scheduled to be held in April 1977 shall include the interest in the cost on the surplus house. The petitioner's house was sent for draw in 1977 but the same could not be allotted and thereafter this was allotted to the petitioner on his undertaking that the house may be allotted to him and he undertook to make the entire payment finally worked out by the Housing Board.

9. The basic idea behind imposing of interest is that the Housing Board constructs the houses and invest the money may be out of loans advanced by HUDCO or from their own sources. When the houses are ready and it is not being allotted then the Housing Board which has already invested the money have to pay interest on the loans or it is entitled for interest on the investment made by it in the construction of the houses. Thus when the houses are allotted to the incumbents the Housing Board can legitimately be entitled to interest on the investments made by it. In this back ground I think that the criteria adopted by the Housing Board for imposing interest on the surplus houses is justified. The Housing Board works on no profit no loss basis.

10. The next question which arises for consideration whether the petitioner's house was ready or not and was sent for draw in April, 1977 or not. Mr. Purohit, learned Counsel for the petitioner has drawn my attention to the documents filed subsequently and specially to Ex. Rule 23 dated 17-6-1979 to show that the house was never sent for draw in April 1977. As against this. Mr. Vyas has drawn my attention to the communication dated 26-3-1980 in which it was clearly mentioned that the house in question of the petitioner was included in April 1977 draw but it remained unallotted since then. He has also drawn my attention to the fact that the house was ready in April 1977. Mr. Vyas has also drawn my attention to document Annex R. 16 dated 10-1-1978 wherein it has been shown that the house was ready. Likewise, he has also drawn my attention to Annexes Rule 17, and Rule 18 to show that the house was ready and it could not be allotted. But in the mean time the petitioner moved an application before the Chairman, Housing Board that this house in question may be allotted to him. On the request of the petitioner the Chairman, Housing Board allotted this house to the petitioner on the clear undertaking given by the petitioner that he will make payment of the difference of amount after costing. Mr. Vyas, invited my attention to Annex. R. 1 dated 27-3-1980 and further to the communication Annex. Rule 2 dated 19-7-1980 and Annex Rule 3 to show that the petitioner was insisting on the allotment of the house as he wanted loan, which the petitioner has applied before the Government, the loan could not be released to him unless a letter allotment was given to him. Thus, he undertook that he will pay the difference of cost. In these circumstances, a provisional allotment letter was issued to the petitioner. The petitioner without any reservation undertook to abide by the undertaking given by him. In this back-ground the question now arises for consideration is whether the house was ready in 1977 or not for draw. I think that from these documents it clearly transpires that the house was ready in 1977 and it was sent for draw, but the same could not be allotted and it became surplus. Thereafter, on the insistence of the petitioner it was allotted to him with a clear stipulation and undertaking that he will make the difference good. The rate of interest has been fixed by the Housing Board is 13% on HIC house vide Annex. Rule 10 dated 28-1-1976. When the house was available for allotment and the respondent Housing Board is entitled to charge interest on the house in question to the extent of Rs. 14,516/-.

11. The next question that arises is whether the respondent Housing Board is entitled to charge contingency and equalisation reserve at the rate of 5% or not. For this item also the Board has decided in its 79th meeting that 6% additional element on MIG and HIG houses may be charged so as to create a reserve fund and this may be named and styled "Contingency and Equalisation Reserve. This was also resolved by the Board and the petitioner has given an undertaking that he will make the difference good and in view of the fact that the Board has passed a resolution that this item shall be included in the final cost of the house and in view of the undertaking given by the petitioner, the petitioner is bound to pay this amount of contingency and equalisation reserve. Thus, this contention of

the learned Counsel for the petitioner is also not well founded. The Board is entitled to claim this amount as well.

12. Next, Mr. Purohit submitted that some of the houses which are adjacent to the house of the petitioner have been charged interest as having been charged from the petitioner, This ground of discrimination is also not well founded. So far as this ground of discrimination is concerned, I have gone through the record and I do not find that the petitioner has been discriminate. Same type of house No. 1 Ka 10 was allotted to Smt. Gulab Devi and she was also asked to pay the same rate of interest and contingency and equalisation amount as was charged from the petitioner. Thus, the grievance of the petitioner that he has been discriminated qua others does not appear to be well founded.

13. Thus, in the result, I do not find any merit in this writ petition and the same is dismissed.

14. The parties are left to bear their own costs.