(1992) 09 P&H CK 0066

In the Punjab And Haryana At Chandigarh

Case No : C.M.P. No. 13283 of 1991

D.S. Laungia and others — APPELLANT

Vs

State of Punjab and others — RESPONDENT

Date of Decision : 28-09-1992

Acts Referred:

Constitution of India, 1950 — Article 14
Land Acquisition Act, 1894 — Section 18
Punjab Urban Estates (Development and Regulation) Act, 1964 — Section 23, 23(1), 23(2), 3, 3(1)
Punjab Urban Estates (Development and Regulation) Rules, 1965 — Rule 2, 5A

Citation : AIR 1993 P&H 54

Hon'ble Judges : G.R. Majithia, J;A.S. Nehra, J

Bench : Division Bench

Advocate : Mr. Jagdish Singh, Mr. Sanjeev Sharma and Mr. M.S. Sohal, for the Appellant; Mr. Gulshan Sharma, D.A.G., for the Respondent

Judgement

G.R. Majithia, J.—Since common questions of law arise for decision in this Civil Writ Petition No. 13283 of 1991 and six other connected writ petitions, i.e. C.W.Ps. Nos. 13260, 13546, 16209, 19140, 9078 of 1991 and 1329 of 1992, these are being disposed of by this judgment. In all these petitions challenge is to the validity of notice dated July 19, 1991 calling upon the petitioners to pay the revised sale price of plots allotted to them.

2. Reference to relevant facts has been made from the pleadings of C.W.P. No. 13283 of 1991.

3. Darshan Singh Longia and Miss Ravneet Kaur were allotted residential plots Nos. 700 and 693-C, respectively, measuring 400 Sq. Yds. in Sector 70, Urban Estate, SAS Nagar and Dr. Manmohan Singh was allotted residential plot No. 683 measuring 500 sq. yds. in Sector 70, Urban Estate, SAS Nagar vide allotment letters Annexures P-1, P-2 and P-3 by the Estate Officer, Urban Estates, Punjab, Chandigarh. The terms and conditions of allotment are identical. In the allotment letter of Darshan Singh Longia it was stated that the allotment was being made

on the provisional price of Rs. 93,000/ - since the rate on which the allotment had to be made in Sector 70 had not been finally approved and that the tentative price of the plot would be intimated to him after the approval by the Government. The allotment letter provides that the allotment is subject to the provision of the Punjab Urban Estates (Development and Regulation) Act, 1964 (for short, the Act) and the rules and policy framed thereunder as amended from time to time. In the notice under challenge, Darshan Singh Longia was informed that allotment of the plot had been made to him on provisional basis; that the price of the plot had been fixed by the State Government at Rs.3,12,000/-. Payment of the sale price of the plot was rescheduled. Challenge to this enhanced price is on the ground that it is not warranted under the provisions of the Act and Punjab Urban Estates ()Sale of Sites) Rules, 1965 (for short, the Rules).

4. Written statement has been filed by the Estate Officer, Urban Estates, Punjab, Chandigarh on behalf of the respondents. The defence to the enhancement of the price of the plots is enfolded in para I of the preliminary objections and the same reads thus :--

"That the additional amount has been demanded from the petitioners on account of difference between the provisional rate and the tentative price fixed by the Government in terms of condition No. 1 of the allotment letters (Annexures P/1 to P/3) wherein it was categorically mentioned that since the rate on which the allotment is to be made in the sector has not been finally approved, accordingly this allotment is being made on the provisional price and that the tentative price of the plot would be intimated to you after its having been approved by the Government. The petitioners were allotted plots out of discretionary quota and they accepted the allotment subject to the aforesaid condition and as such they estopped from denying their commitment to pay the amount in question. It is submitted that at the time of making allotment of plots to the petitioners the tenantive price of residential plots of Sector 70, Urban Estate, SAS Nagar had not been fixed by the Government as required under R. 2(e) of the Punjab Urban Estates (Sale of Sites) Rules, 1965. Therefore, Government vide their letter No.3/ 413/86-2 Hgl/2597, dated 25-2-87 decided to make the allotment on provisional rate of Rs. 155/- per sq. yd. for plots measuring up to 200 sq. yds. and Rs. 232.50 per sq. yds for plots above 200 sq. yds. but up to 400 sq. yds. (i.e. 11/2 times of provisional price) and Rs. 310/- for plots measuring 500 sq. yds. (i.e. double the provisional price). A true copy of letter dt. 25-2-87 is attached as Annexures R-1 and R-1/T are their true English translation. Accordingly, the petitioners Nos. 1 and 2 were allotted plots measuring 400 sq. yds. each at the provisional rate of Rs. 232.50 per sq. yd. and petitioner No. 3 was allotted plot measuring 500 sq. yd. at the provisional rate of Rs. 310/- per sq. yd. vide Annexures P-I and P-3. In condition No. 1, it was categorically stipulated that the rates of plots in Sector 70 had not been Finally approved and that the allotment was being made on provisional pricee of Rs. 1,55,000/-. It was further mentioned that the tentative price of the plot would be intimated to the petitioner after it is approved by the Govt. The tentative price of various sizes of residential plots of Sector-70, Urban Estate, SAS Nagar has now been fixed by the Government as under :--

a)

Tentative price.

: Rs,520/- per sq. yd.

b)

100 sq. yards.

: 10% less than the reserved price.

c)

ISO, 200 and 250sq. yds.

: Reserve price.

d)

300 and 400sq. yds.

: 50% above the reserve price.

e)

500 sq. yds.

: 100% above the reserve price.

Thus the tentative price for plots measuring 500 sq. yds. has been fixed at the rate of Rs. 1040/-per square yard. At this rate, the tentative price of plot measuring 400 sq. yds. comes to Rs. 3,12,000,''- while the tentative price of plot measuring 500 sq. yds. comes to Rs. 5,20,000/-. The petitioners have been accordingly asked to deposit the balance amount of the tentative price fixed by the Govt.

It is submitted that the tentative price of the plots of Sector-70 Urban Estate, S AS Nagar has been fixed by the Government as per the following formula :--

COST OF LAND:

1.

Cost of land per acre of Sector-70, SAS Nagar.

Rs.

90,000/-

2.

Soratium charges @ 30%.

Rs.

27,000/-

3.

Interest charges from the date of Notification till the

Rs.

43,000/-

4.

date of award @ 12% from 1980 to 1984 for 4 years. Interesest charge 15% from 1984 to 1990 for 6 years on the cost ofland.

Rs.

1,44,180/-

Rs.

3,04,380/-

COST OF INTERNAL AND EXTERNAL DEVELOPMENT

i)

Water supply @ Rs. 1.35 lacs.

Rs.

1,35,000/-

ii)

Sewerage @ Rs. 59,000.

Rs.

59,000/-

iii)

Storm water @ Rs. 1,32,000/-

Rs

I,32,000/-

iv)

Roads @ Rs. 55,000/- per acre.

Rs.

55.000/-

v)

Bridges and others @ Rs. 11,000/- per acre.

Rs.

11,000;-

vi)

Horticulture @ Rs. 36,000 per acre.

Rs.

36,ooo/-

vii)

Street lighting @ Rs. 15,000 per acre.

Rs.

15,000/-

viii)

Electrification @ Rs. 15,000 per acre.

Rs.

15,000/-

ix)

Conservancy charges @ Rs. 9,000 per acre.

Rs.

9,000/-

x)

Utility services @ Rs. 20,000 per acre.

Rs.

20,000/-

xi)

Maintenance and resurfacing of roads for 5 years @ Rs. 63,000 per acre.

Rs.

63.000/-

xii)

Maintenance of Public Health Service @ Rs. 39,000 per acre.

Rs.

39,000/-

xiii)

Maintenance and Re-surfacing of roads beyond 5 years @ Rs. 45,000 per acre.

Rs.

45,000/-

xiv)

Diversion of H.T. Lines @ Rs. 7000/- per acre.

Rs.

7,000/-

XV)

Earth filling @ Rs. 10,000 per acre.

Rs.

10,000/-

Rs.

6,51,000/-

C. i)

Establishment charges @ 14% + 3% on cost of land.

Rs.

51,745/-

ii)

Interest charges @ 1% for plotable area (55%).

Rs.

2,662/-

in)

Interest charges for 3 years @ 10% each year on deve-ment charges.

Rs.

1,51,200/-

IV)

Unforeseen charges as well as escalation charges@ 10%.

Rs.

1,16,098/-

Total expenditure per acre.

Rs.

12,77,064/-

Total expenditure of 306.59 acres land acquired for Sector-70 SAS Nagar.

Rs.

39,15,34,824/-

Saleable area 6,74,233 sq. yds. Rate per sq. yd. 39,15,34,824/- =Rs. 580/-

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It is, however, submitted that plots measuring 100 sq. yds. are to be allotted at subsidized rate of 10% less than the reserve price while plots measuring 150, 200 and 260 sq. yds. are to be allotted at the reserve price. The plots 300 and 400 sq. yds. area are allotted at 11/2 times of the tentative price and plots measuring 500 sq. yds. are allotted at double the tentative price. Taking the overall position into account, the Government have fixed the tentative price at Rs. 500/- per sq. yd.

It is further submitted that as detailed above the total estimated expenditure for Sector-70 comes to Rs. 39,15,34,824/- as against this, the anticipated receipt from the sale of plots of this Sector conies to Rs. 40,19,44,600 as per the details given in Annexure R/2. Thus there will be surplus receipt of Rs. 1,04,09,776, which will be utilized for providing more facilities to the allottees. It may be mentioned here that these estimates do not include the cost of external development services like outfall sewer and treatment plant, some major roads common to more than one sectors, major bridges, major hospitals, colleges, major community buildings like clubs performing art and cultural theatres, museums, fire station, central library, cremation grounds, sports stadia, etc. The cost of these major works can be met out of any profits made by sale of plots in different sectors. It is also relevant to state here that the price of plots in sectors sold earlier was kept very low and the total income did not cover the cost of even the services within the sector.

From the above acts, it is evident that the price fixed by the Govt. is perfectly justified and the said has been demanded from the petitioners in accordance with the condition of a binding contract. Therefore, the writ petition is not maintainable and it deserves to be dismissed."

5. Section 3(1) of the Act empowers the State Government to declare any area

comprising land belonging to it or acquired by it whether situate within or without the limits of a local authority to be an urban estate for the purpose of the Act. Sub-section (2) of S. 3 says that subject to the provisions of the Act, the State Government may sell, lease or otherwise transfer, whether by auction, allotment or otherwise, any land or building belonging to the State Government in an urban estate on such terms and conditions as it may, subject to any rule made under the Act, think fit to impose. Proviso to this subsection says the sale, lease or other transfer of any land in an urban estate shall not be made in contravention of the requirements of a lay out plan or zoning plan, if any, prepared in respect of such urban estate or part thereof and approved by the prescribed authority in accordance with the procedure laid down by the State Government from time to time. Sub-S. (1) of S. 23 of the Act says that the State Government may by notification make rules for carrying out the purposes of the Act. Subsection (2) of S. 23 says that without prejudiced to the generality of the rule-making power under sub-sec. (1) of S. 23, such rules may provide for all or any of the foliowing matters enumerated in clauses (a) to (!) of sub-sec. (2). Clause (a) of sub-sec. (2) of S. 23 provides that rules may be framed laying down the terms and conditions on which any land or building may be transferred by the State Government under the Act. In exercise of the powers conferred by S.23(2)(a), the Rules were framed. Rule 2 deals with definitions. Clause (aa) of Rule 2 defines ''additional price'' as meaning such sum of money as may be determined by the State Government in respect of the sale of a site by allotment, having regard to the amount of compensation awarded by the Collector for the land acquired by the State Government of which the site sold forms a part, is enhanced by the Court on a reference made under S. 18 of the Land Acquisition Act, 1894, and the amount of cost incurred by the State Government in respect of such reference. Rule 4 defines the term "sale price" as under :--

"4. Sale Price.-- In the case of sale of a site by allotment the sale price shall be,--

(a) where such site forms part of the land acquired by the State Government under the Land Acquisition Act, 1894, and-

(i) no reference under S. 18 thereof is made against the award of the Collector or such reference having been made has failed, the tentative price;

(ii) onareferencemadeunderS. 18 thereof the compensation awarded by the Collector is enhanced by the Court, the aggregate of the tentative price and the additional price;

(b) in any other case, such final price as may be determined by the State Government from time to time.

(2) In the case of sale of a site by auction, the sale price shall be such reserve price as may be determined by the State Government from time to time or any higher price determined as a result of bidding in an open auction."

Explanation added to clause (aa) of S. 2 says that for the purposes of this clause and sub-rule (1) of R.4, the expression "the court" means the court as defined in clause (d) of S. 3 of the Land Acquisition Act, 1894, and where an appeal is filed, the appellate Court. Rule 5 deals with the procedure for sale of plots by allotment. Rule 5-A provides for payment of additional price by the transferee and it reads thus :--

"5-A. Liability to pay additional price.

(1) In the case of sale of a site by allotment, the transferee shall be liable to pay to the State Government, in addition to the tentative price, the additional price, if any, determined in respect thereto under these rules.

(2) The additional price shall be payable by the Transferee within a period of thirty days of the date of demand made in this behalf by the Estate Officer,

Provided that the Chief Administrator may, in a particular case, and for reasons to be recorded in writing allow the applicant to make payment of the said amount within a further period not exceeding thirty days."

6. Keeping in view the mandatory nature of these Rules, the allotment letter provided that the allotment had been made subject to the provisions of the Act and the Rules and policy framed thereunder. These provisions eliminate arbitrariness by the functionaries in the matter of sale of plots by allotment or otherwise or covered under the Act and the Rules framed thereunder.

7. A conjoint reading of Rr. 4, 5-A and 2(aa) of the Rules establishes that the tenata-ive price of a plot is determined in conformity with R. 4 and the additional price is confined to enhancement of compensation on reference under S. 18 of the Land Acquisition Act made by the Collector to the Land Acquisi-tion Court and further enhancement on appeal, if any, against the award of the Land Acquisition Court rendered on a reference under S. 18. The respondents do not say that the additional price is claimed because of the enhancement of compensation by the Land Acquisition Court or by the appellate Court, on appeal, against the award of the Land Acquisition Court. The enhancement is sought to be justified on the ground that the estimated receipts and expenditure from the sale of plots were not sufficient to meet the cost of external development services like outfall sewer and treatment plant, some major roads common to more than one Sectors, major bridges, major hospitals, colleges, major community buildings like Clubs performing art and cultural theatres, museums, fire station, central library, cremation grounds, sports stadium, etc. A perusal of the written statement indicates that the anticipated receipts from the sale of plots in Sector 70, S.A.S. Nagar would fetch the State Government approximately Rs. 40,19,44,600/- and as against this the estimated expenditure would come Rs. 39,15,34,824/- and the surplus receipts of Rs. 1,04,09,776/- were to be utilized for providing more facilities to the allottees. The receipts by sale of plots, which obviously included the development charges are much more than the estimated costs. If external development services had to be provided to the allottees as is being mentioned in the written statement and correspondingly price of the plot has to be

increased, then the same can only be done by making suitable amendment in the Rules and not otherwise. The Rules do not provide for claiming any additional price other than the one mentioned in Clause (aa) of S. 2. The justification offered by the respondents for the additional price is dehors the Rules.

8. In Gian Jyoti Educational Society Vs. Estate Officer, Urban Estate, Punjab and others, , after considering Rules 2(aa), 4 and 5 of the Rules, a learned Judge of this Court held thus (at p. 79) :--

"It would be clear from a reading of Rr. 4 and 5A that the respondents were entitled to charge at the most the tentative plus additional price, mathematically calculated in terms of Rr. 2(aa) and 2(ee), and there was no legal basis for making the quantum jump from Rs. 30/- to Rs. 255/- per square yard."

The view taken by the learned Judge, on correct reading of these Rules, is affirmed.

9. Arbitrariness has to be excluded in State actions even regarding contractual matters. In Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, , the apex Court in para 21 of the judgment observed as under :

"The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social, economic and political; and Equality of status and opportunity. Every State action must be aimed at achieveing this goal. Pan IV of the Constitution contains ''Directive Principles of State Policy'' which are fundamental in the governance of the country and are aimed at securing social and economic freedom by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realise the vision of the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Art. 14 --non-arbitrariness which is basic to rule of law -- from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in the State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the Constitutional Scheme to accept the argument of exclusion of Art. 14 in contractual matters. 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 exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals."

In the light of this, the claim of the respondents for the enhanced price cannot be justified at law.

10. For the reasons stated above, the petitions succeed. The claim for the enhanced price as is mentioned in the notice addressed to Sh. D. Longia is set

aside. Separate orders need not be passed in other cases are almost in identical terms. The State Government is free to re-determine the price of the plots in the light of the statutory Rules and the observations made above. There will be no order as to costs.

11. Petition allowed.

