

(1993) 03 BOM CK 0066
In the Bombay High Court
Case No : Writ Petition No. 929 of 1989

Dyaneshwari Co-operative Housing Society Ltd. and Another	APPELLANT
Vs	
Maharashtra Housing and Area Development Authority and Others	RESPONDENT

Date of Decision : 04-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 BomCR 143

Hon'ble Judges : B.P. Saraf, J

Bench : Single Bench

Advocate : Mihir Desai, for the Appellant; B.N. Shroff, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Saraf, J.—This petition has been filed by the petitioner Dyaneshwari Co-operative Housing Society Limited on behalf of its 40 members who are allottees of tenements in a building situated at Sewri-Wadala, Bombay and known as D-2, Dyaneshwar Nagar. The tenements were allotted to the members of the petitioner society by the Maharashtra Housing and Area Development Authority. The grievances of the petitioners are set out in para 3 of the writ petition which reads as follows :

(a) The price fixation of the Housing Board tenements occupied by the allottees. The said price has no relation with the actual cost of construction and the respondents have forced this price upon the residents by going back on its promise.

(b) The refusal of the respondents to carry out even essential repairs and to provide basic amenities for the tenements despite repeated requests, and the extremely dilapidated state of the said tenements.

2. Before dealing with these grievances, it may be expedient to mention that the petitioners had approached this Court on earlier occasion also challenging the

fixation of price of these tenements by the Board on the ground that the Housing Board Authority was entitled to fix the price only on the basis of no profit and no loss, which they have not done. This Court directed the authority to furnish the break-up of the cost to the petitioners to enable them to verify the same. Break-up was, accordingly, furnished. The petitioners, by this present petition, now seek to challenge the adequacy as well as the correctness of the accounts provided by the respondents (see para 16 of the writ petition). It is not the case of the petitioners that any profit has been made by the respondents in fixing the price. The grievance of the petitioners is that it is because of inefficiency of the respondents that there was delay in the completion of the construction which resulted in the higher cost and, as such, they should not be allowed to recover such enhanced cost from the petitioners.

3. I have considered the submissions of the counsel for the petitioners. So far as the grievance made in para 3(b) in regard to the refusal of the respondents to carry out the essential repairs is concerned, the stand of the respondents is that once the tenements are handed over to the allottees, the respondents are under no obligation to carry out any repairs thereafter. As such, the grievance of the petitioners on this count is misconceived. I find force in this submission. Accordingly, this grievance of the petitioners is not tenable and the same is, therefore, rejected.

4. So far as the grievance regarding the fixation of price of the tenements by the Housing Board is concerned, the case of the petitioners is that the said price has no relation to the actual cost of construction. This contention does not appear to be factually correct. The learned Counsel for the respondents pointed out that earlier also the petitioners had come to this Court making this very same grievance and this Court had directed the respondents to give break-up of the cost-components to the petitioners to enable them to see whether the fixation of the price had any relation with the actual cost of construction or not. Accordingly, break-up was given to the petitioners which shows clear connection between the cost of construction and the price fixed by the Board. The petitioners now seek to challenge the adequacy as well as the correctness of the accounts or break-up furnished by the respondents. This, I am afraid, is not permissible in a writ petition because it is not possible for a writ Court to go into such factual controversy, if any.

5. The counsel for the petitioner referred to a decision of this Court in Writ Petition No. 1431 of 1983 wherein this Court had gone into the cost-components to find out the adequacy of the price fixed by the Board. As against this, the counsel for the respondents referred to a decision of the Supreme Court in Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, , wherein it was held that in cases where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual, the rights are governed only by the terms of the contract and no writ or order can be issued under Article 226 so as to compel the authorities to remedy a breach of

contract pure and simple.

6. In the above case before the Supreme Court also, the determination of the price of the houses/flats constructed by the Bareilly Development Authority was sought to be challenged. It was held by the Supreme Court that while determining the price of the house/flats constructed by the Development Authority and the rate of monthly instalments to be paid, the "Authority" or its agent, after entering into the field of ordinary contract, acts purely in its executive capacity and the relations in such cases are governed not by the constitutional provisions but by the legally valid contract which determines the rights and obligations of the parties inter se. It was further observed that in this sphere, they 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.

7. Relying on this decision, the counsel for the respondents submits that the ratio of the above decision squarely applies to the facts of the present case and the controversy sought to be raised by the petitioners cannot be adjudicated in a writ petition. So far as the judgment of this Court is concerned, the counsel pointed out that the said judgment has no application to the facts of this case in as much as the respondents have furnished full particulars of the cost of construction to the petitioners to show that, in fact, they had fixed the price of the flats strictly following the principle of no profit no loss.

8. I have carefully considered the rival submissions. The petitioners in this case are not able to satisfy this Court that the price of the tenements fixed by the Board had no relation with the actual cost of construction as alleged in the writ petition. On the other hand, such relation is clearly established by the break-up furnished by the respondents to the petitioners in pursuance of the direction of this Court given on earlier occasion. In that view of the matter, the grievance of the petitioners does not survive.

9. Considering all the factual aspects stated above and the decision of the Supreme Court in *B.D.A. v. Ajay Pal Singh*, (supra), I do not find any merit in this writ petition and the same is, therefore, dismissed. The rule is discharged.

10. Under the facts and circumstances of the case, I make no order as to costs.