
(2006) 06 KL CK 0083
In the High Court Of Kerala
Case No : W.A. No. 2481 of 2005

Grace Joseph

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 22-06-2006

Acts Referred:

Land Acquisition Act, 1894 — Section 23(1A)

Citation : (2006) 2 KLJ 577

Hon'ble Judges : V.K.Bali, J;P.R. Raman, J

Bench : Division Bench

Advocate : Bechu Kurian Thomas, for the Appellant; Noorji Noushad, Govt. Pleader and P.C. Iype, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—In the context of the facts of the present case, one of the questions that needs adjudication is as to whether when there is no dispute on facts and on such undisputed facts there may be an argument leading to an irresistible conclusion one way or the other, should the parties even in the matter of contract, be relegated to vindicate their stand by a civil suit. Before we might comment upon and determine the question framed above, it would be useful to extract a resume of facts leading to the filing of this writ appeal by the Appellant, who was the Petitioner in the original lis, and by the impugned judgment passed by the learned Single Judge has indeed been asked to substantiate her stand before a civil court.

2. Grace Joseph, the Appellant herein, it appears, could scarcely collect funds enough to buy a small dwelling house only when she retired as the Headmistress of Kendriya Vidyalaya in the year 1991. She made an application for allotment of a plot of land with building on it offered by the Kerala State Housing Board, arrayed as second Respondent in the writ petition under the Gandhi Nagar Housing Scheme. The plot was selected on the basis of the repaying capacity of the Petitioner. She was allotted plot No. A5-94 with A-5 type of building and an

agreement for sale was entered into between the Petitioner and the second Respondent on 8-4-1992 detailing various stipulations. Acopy of the agreement has been placed on record as Ext. P-2. The cost details of the property purchased by her from the 2nd Respondent, as per agreement, Ext. P-2 are as follows:

Cost of building Rs. 86,992 Cost of land Rs. 31,260 Total Rs. 1,18,252 Extent of land 132.405 M2 Cost per M2 Rs. 239.09 (Approx.9443.75 per cent).

The amount of Rs. 1,18,252 was paid by the Petitioner in 24 instalments and by 6-7-1994, the entire payments were completed and even as per the ledger maintained by the Respondent, no amounts were outstanding from her. Despite the fact that the Petitioner had made payments of every penny due to the second Respondent by way of instalments, the second Respondent failed to transfer ownership of the property and the building in the name of the Petitioner. She was, however, orally informed that the claims of the original landowners from whom land was acquired for the said scheme under which the Petitioner was allotted plot have preferred appeals and hence there would be an increase in the land-value, which would be determined only after the final disposal of the above cases. The Petitioner was, in the manner aforesaid, under the bona fide belief that the second Respondent has informed her about the correct position of the litigation initiated by the landowners. To the dismay of the Petitioner, however, she later learnt that the stand of the second Respondent with regard to the pending cases relating to enhancement of compensation by the landowners was totally a falsehood and that the second Respondent was fully aware as to what was the compensation to be paid by the second Respondent far before when Ext. P-2 agreement was executed. It is the positive case of the Petitioner that in the year 2003 she came to know that the second Respondent was taking everybody for a ride since not even a single landowner has filed any appeal for enhancement of compensation and further that the cost of land had become final as on 5-12-1999, i.e., the date of last judgment in various LAR cases. In the meantime, when the Respondents failed to execute sale deed, Petitioner requested them to execute the same. The reminders and representations made by the Petitioner fell on deaf ears. The second Respondent neither informed the Petitioner about the outcome of the appeals filed for enhancement of compensation by landowners nor executed a sale deed in favour of the Petitioner. Even though, therefore, the land-value of the plot purchased by the Petitioner was fixed as on the date of agreement, the second Respondent kept postponing fixation of land-value taking cover under the term "tentative land cost" mentioned in Ext. P-2. The Petitioner approached the Lok Ayukta seeking to redress her grievance and after several interim orders, Lok Ayukta disposed of the case for the reason that, by interim order, the second Respondent had finalised the land-value. A true copy of the interim order dated 27-6-2003 has been placed on record as Ext. P-3. The land value was finalised by the second Respondent only after repeated commands by the Lok Ayukta, but for such commands, the Respondents would have not fixed the value at all. Petitioner anxiously waited to hear from the Respondents regarding the land value and it is

only by March, 2004 that she was served with a letter dated 7-1-2004 stating that an amount of Rs. 1,74,227 which would be more than the original price paid shall have to be remitted and it is only then the Board would execute the sale deed in her favour. The Petitioner avers in the writ petition that Gandhi Nagar Housing Scheme was mooted by the second Respondent pursuant to which land acquisition proceedings were initiated on 9-6-1979. An extent of 95 Acres of land in Sy. No. 124/2, 2.80 Ares in Sy. No. 124/2-1, 19.91 Ares in Sy. No. 124/1A-4, 1 Are in Sy. No. 124/2-3 and 11.20 Ares in Sy. No. 124/1A-2 of Perumbaikad Village were acquired for the purpose of the Scheme. The Land Acquisition Officer passed the award as early as on 28-11-1981 fixing Rs. 1,800 per cent for land in Sy. No. 124/1A-4, Rs. 1,650 per cent for land in Sy. No. 124/2-1 and Sy. No. 124/1A-2. The properties were taken possession by the Respondents on 9-12-1981. Inasmuch as the landowners were not satisfied with the award of the Land Acquisition Officer, the matter was referred to the Additional Sub Judge, Kottayam as LAR No. 72 of 1985 and connected matters. By 5-9-1989 all the above LAR cases were decided by the concerned court and land value of Rs. 4367 was fixed by the reference court. A copy of the order passed by the reference cou; ; as been placed on record as Ext. P-5. Even though, the claimants have not pre red any appeal, the first Respondent however preferred appeals against the law. cases mentioned above, which were disposed of by the court by judgments and the last one of such appeal was disposed of on 27-11-1996. The appeals preferred by the first Respondent were partly allowed, inasmuch as, the court had set aside the interest granted on solatium as well as the additional amount granted u/s 23(1-A) of the Land Acquisition Act (hereinafter referred to as "the Act"). The additional demand as evidenced from Ext. P-4 comes under two heads, viz., balance of difference in building cost and additional land value. The total additional cost under the two heads mentioned above would be Rs. 1,77,227. It is the case of the Petitioner that at the time of application, Petitioner was asked to select the plot and building commensurate with the repaying capacity. No additional cost what soever, was incurred on account of the building that was provided to the Petitioner, and on the other hand, due to the dilapidated condition of the building, Petitioner had to incur more than Rs. 10,000 as cost of repairs to make the building habitable. The tentative cost of the building was in fact finalised by the 2nd Respondent by reducing Rs. 2,000 from the original price, whereas it is seen from Ext. P-4 that now an additional cost of Rs. 13,406 is demanded even for the building when the cost of the building has already been finalised. On the pleadings already mentioned above, the Petitioner urged that Ext. P-4 demand notice was wholly unreasonable and against the principles of natural justice. Once the Petitioner has completed her part of the contractual obligation as early as in 1994, there could not be any occasion to deny transfer of ownership and that the Petitioner would not be burdened with any additional cost of land or interest subsequent to 1992. It was further urged by her that the additional land value would not be applicable to the Petitioner as it determined cost of land as on 2003 and that the Petitioner had repaid all dues as early as on 1994 and therefore, any addition in

cost subsequent to that date would not be attributable to her.

3. Pursuant to the notice, Respondents 1 to 3 entered appearance and contested the cause of the Petitioner by filing a joint written statement wherein it has been inter alia pleaded that demand of Rs. 13,406 was for the balance amount of building cost with interest and Rs. 1,63,821 being the amount apportioned to the Petitioner based on LAR payment along with 15% interest as on 13-11 -2003. The demand was being made on the basis of the provisions of Ext. P-2 agreement. Admitting that the Petitioner who was a retired headmistress had paid the tentative price of the land i.e. Rs. 31,260 and the tentative price of the building was fixed at Rs. 86,992, it is further pleaded that the Board is entitled to refix the final price considering the payment of enhanced amount as per the LAR cases as well as the cost incurred by the Board for conducting the LAR cases and the Petitioner would get conveyance of the property only on payment of all amounts due to the Board. Admitting that the State had preferred appeals against the LAR cases, wherein challenge was to enhancement awarded by the reference court as well as to delete interest on solatium and the additional amount granted u/s 23(1-A) of the Act. It is further mentioned that, the Board has finalised the land value at Rs. 11,01,767 and that the decree certificate in all LAR cases are not yet received and therefore, additional amount to be remitted for satisfaction of the decree-holders are not definite. It is then mentioned that the Board had not acted in a mala fide or arbitrary manner and that in the meeting of the Board held on 11 -4-2003 it was decided that in view of LAR enhanced compensation, the price was fixed at Rs. 1,010.87 per square metre as on 28-2-2003. The basic pleadings made in the petition with regard to the crucial dates on which the Land Acquisition Officer had given the award or the date when the enhancement was made in the LAR cases filed by the claimants for enhancement of compensation and further that the appeal was filed by the State and not by the landowners have not been controverted. The case has been exclusively defended relying upon the various clauses of the agreement, Ext. P-2.

4. Before we may proceed any further, it will be appropriate to reproduce the clauses of the agreement relied upon by the Petitioner and the Respondent Board. Clauses 4, 10, 11 and 12 of the agreement, Ext. P-2 are reproduced below:

4. The tentative land value for the property including the tentative service charges for providing amenities is fixed at Rs. 31,260. The cost of structure of the building and the cost of all finishing works of the building such as flooring, providing shutter to doors and windows, cupboards, kitchen hearth, weather proof course water supply and sanitary installations, electrification is fixed at Rs. 86,992.

10. It is agreed that the Kerala State Housing Board shall be entitled to refix the final price of the land and service charges thereon taking into account inter alia the enhanced compensation awarded by Courts and Tribunals. The cost incurred by the Board or and its predecessors in interest for prosecuting such proceedings

in Courts and Tribunals and also the increased cost of development works and amenities undertaken with respect to the Scheme after a final settlement of accounts in connection therewith.

It is agreed that the decision of the Board in fixing the revised price of the land and service charges shall be conclusive and final.

11. It is expressly agreed between the parties hereto that after the finalisation of the price of the land and service charges by the Board, the party of the second part shall pay to the Board together with interest at 15.5% and 13% per annum, the difference between the tentative price fixed therefore and the price finally fixed for both the land and service charges by the Board, within thirty days of the date of a registered notice demanding the payment thereof or in such instalments such rate of interest to be determined by the Board.

12. It is agreed that the party of the second part shall be entitled to get a registered sale deed for conveyance of the property and the building thereon after payment of all the amounts due under this indenture to the Board in full and after satisfying all the terms and conditions contained in this indenture and the provisions of the Kerala State Housing Board Act, 1971.

5. A perusal of Clause 4 of the agreement reproduced above, no doubt, would clearly suggest that price of the land fixed at Rs. 31,260 was tentative. Whereas the cost of the construction of the building and the cost of the finishing works of the building such as flooring, providing shutters to the doors and windows, cupboards, kitchen hearth, weather proof course water and sanitary installation and electrification was fixed at Rs 86,992 and this price was not tentative and was final. Actually, this price had to be final as agreement, Ext. P-2, came into being after the construction of the building and the Petitioner was handed over the property after the building had been constructed. As per Clause 10 reproduced above, the Respondent Board was entitled to re-fix final price of the land and the service charges thereon taking into account inter alia the payment of enhanced compensation awarded by the courts and tribunals. It could also make a demand with regard to the cost incurred by it for prosecuting such proceedings in courts and tribunals. It could also demand increased cost of development work and amenities undertaken with respect to the Scheme after the final settlement of the account in connection therewith. It is also true that after the finalisation of the price of the land and the service charges, the allottee was obliged to pay to the Board together with interest at 15.5% and 13% p.a. the difference between the tentative price fixed and the price finally fixed for both the land and the service charges by the Board, within 30 days of the registered notice demanding payment and the payment thereof. The question, however, in the facts and circumstances of the case is as to whether the Board could demand any price towards escalation of land cost caused to the Board due to enhancement of compensation and other payments. It is not disputed that the agreement, Ext. P-2, was on a pro forma. That being so, whether the terms of allotment of the plot mentioned in the agreement, Ext. P-2 are applicable to the

scheme is the question. Some of the pertinent clauses relied on by the Board and in particular, referred to above, were wholly inapplicable to the facts of the present case. It is the conceded position that Gandhi Nagar Housing Scheme was mooted by the second Respondent pursuant to which the land acquisition proceedings were initiated in 1979 and that the Land Acquisition Officer passed the award as early as on 25-11-1981 fixing the price as mentioned in the earlier part of the judgment. The property was taken possession by the 2nd Respondent on 9-12-1981. The claimants filed cases for enhancement of compensation and the matter was referred to the Additional Sub Judge, Kottayam and by 5-12-1989 all the land acquisition references were decided and the land value of Rs. 4,367 per cent was fixed by the court. A copy of the judgment dated 5-12-1989 as mentioned has been placed on record as Ext. P-5. It is again not disputed that the claimants did not file any appeal asking for further enhancement of the compensation. In fact, the Government filed appeals which were partly allowed to the extent as mentioned above. The interest on solatium and the additional amount granted u/s 23(1-A) of the Act vide orders passed by the Land Acquisition Officer were set aside which obviously would have resulted in reduction of cost of land to the Board. There was no enhancement of price of land at least from 5-12-1989 by which date, all references made by the land owners stood determined. The agreement, Ext. P-2, between the parties came into being on 8-4-1992, i.e. after about 27 years. By the time Ext. P-2 came into being, the cost of the land was known to the Respondent Board. It was also known by the time aforesaid that there is no scope for further enhancement of compensation and indeed, if at all there was to be variation in the cost of land, it could only be in reduction thereof and not an increase. During the course of arguments we specifically put a question to the counsel appearing for the Board as to whether it is their case that the tentative price fixed in the agreement, Ext. P-2, was without considering the enhancement made by the court, evidenced by the judgment dated 5-12-1989, Ext. P-5. learned Counsel halfheartedly stated that it was so. But, when asked to point out this particular fact from the counter-affidavit filed by it, reference has been made to paragraph 11 which reads as follows:

Petitioner is liable to pay additional land-value. Interest added along with the enhanced rates are just, reasonable and liable to be apportioned among the allottees. As per the Clauses 10, 11 and 12 of the Exhibit P-2 agreement the Kerala State Housing Board is competent to re-fix the final price. Since a transaction was made upon a specific agreement, the Petitioner has no right to question the implementation of the same by a Writ Petition.

This Court takes the firm view that the averments contained in paragraph 11 of the counter-affidavit would not even remotely suggest that the Board while fixing the tentative price in Ext. P-2 had not taken into consideration the enhancement made in the judgment, Ext. P-5 dated 5-12-1989. Even though not argued, while preparing the judgment we have applied our mind to paragraph 16 of the counter-affidavit, wherein it has been mentioned that the Board in the meeting

held on 11-4-2003 has fixed the LAR enhancement amount at the rate of Rs. 1010-87 per square metre as on 28-2-2003. From the averments made in paragraph 16 as well, it cannot be inferred that the enhanced compensation amount at the rate of Rs. 1010-87 per sq.m. was fixed by not taking into consideration the enhancement made by the court by judgment dated 5-12-1989 or that the Board had fixed the tentative price without taking into consideration the said enhancement. All that can perhaps be gathered from paragraph 16 is that the Respondent Board calculated the price of the land far after the decision made in the appeal preferred by it. Be that as it may, once it is not the case of the Board that while fixing the tentative price of the land, at the time when Ext. P-2 agreement was executed, the enhancement made by Ext. P-5 judgment was not taken into consideration and the appeals preferred by the State were partly allowed, it has to be concluded that the Board while fixing the tentative price has indeed taken into consideration, as it ought to have, the enhancement made by the court by Ext. P-5 judgment. It is in this scenario that we have observed which we repeat and reiterate that the clauses reproduced above with regard to enhancement of compensation and fixing the land price after the decision of the LAR cases is wholly inapplicable in this case. Before we may part with the case, we may mention that, if perhaps, it would have been the case of the Respondent Board that the enhanced compensation towards land acquisition as evidenced by Ext. P-5 was not taken into consideration and the tentative price was fixed on the basis of the award of the land acquisition officer, we would have only examined the question of making a demand at such a belated stage and in that case, the justification of the Board in demanding interest, but, as mentioned above, Respondent Board has nowhere stated that the tentative price was worked out on the basis of the compensation awarded by the Land Acquisition Officer. In so far as the cost of structures of the building and the cost of finishing work is concerned, the price was fixed at Rs. 86,992 and there was no scope for increase of the said price in future. On that account, there could not be any extra demand of money by the Respondent Board. In the facts and circumstances of the case, the Respondent Board could ask for the increased cost of development work and amenities undertaken with respect to the scheme

after the final settlement of accounts in connection therewith only as made out from the later part of Clause 10 of the agreement, Ext. P-2. That being so, the Respondent Board was not entitled to demand any extra amount towards cost of building and finishing work as well. In order to demand any extra money with regard to enhanced compensation, the clause pertaining to enhanced compensation and the right of the Board to demand the same, as mentioned above was not applicable to the facts of the case.

6. In the context of the facts and circumstances of the case as mentioned above, where rights of the parties even though may be dependent upon various clauses of the agreement, but when the facts that may be necessary to decide their rights based upon such clauses of the agreement may be uncontroverted, the parties need not be relegated to vindicate their stand before the civil court. We

further hold that if such facts as may be required to determine the rights of parties may be proved by way of pleadings or unimpeachable documents, then again the parties may not be asked to knock at the doors of the civil court. Every endeavour should be made that citizens of this country are not dragged on to long drawn and endless litigation. Therefore, when on available materials it may not at all be necessary to record evidence and there may not be any hotly disputed facts, which alone require recording of evidence for determination, the parties cannot be forced to seek the desired relief from the civil court. The learned Single Judge it may be recalled even though, *prima facie*, did not find the accounts submitted by the Respondent Board to be showing a clear picture, but without examining the details of the accounts and the basis on which it was prepared, the Petitioner was asked to get the matter settled from the civil court. In our considered view, the present case is not the one where the Petitioner should have been asked to have another round of litigation which may, in the ordinary course, only end with her life. The question which is posed at the very outset of the judgment is thus answered as above.

7. In view of the above discussion, the writ appeal is allowed. The judgment passed by the learned Single Judge is set aside and so would be the fate of notice, Ext. P-4, making the demand from the Petitioner of an amount which is more than the original price. We may, however, leave it open to the Board, to issue fresh demand which may pertain to increased cost of development work and amenities undertaken with respect to the Scheme after the final settlement of the account in connection therewith as envisaged in the latter part of Clause 10 of the agreement, Ext. P-2. We also direct that the Respondent Board would issue title deeds for conveyance of the property to the Petitioner forthwith on an undertaking that she will pay the amount due towards increased cost of development work and amenities undertaken with respect to the Scheme after the final settlement of the account in connection therewith. In view of the fluctuating fate of the parties, there shall be no order as to costs.