

(1997) 01 KAR CK 0051

In the Karnataka High Court

Case No : Writ Petition No. 35528 of 1992 connected with Writ Petition Nos. 22885 and 24279 to 24300 of 1993

K.S. Panchapakesan and Others

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 17-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Housing Board (Allotment) Regulations, 1983 — Regulation 11, 2(M)
Karnataka Housing Board Act, 1962 — Section 84

Citation : (1998) 4 KarLJ 676

Hon'ble Judges : A. J. Sadashiva, J

Judgement

1. That, in view of the question of fact and law and, the reliefs being similar in all these petitions, they are heard together and disposed off by this common order.

2. Whether the petitioners are liable to pay the revised sums of money to the 2nd respondent Housing Board towards the price of the houses allotted to them, in excess of the price mentioned in the letter of allotment? is the question that falls for consideration in all these petitions.

3. The 2nd respondent is a statutory body established under the provisions of the Karnataka Housing Board Act, 1962, hereinafter referred to as "the Act", to implement various housing schemes. The petitioners are the allottees of houses of varying groups constructed at Yelahanka I Stage and Koramangala Layout, pursuant to the applications filed by them in response to the notification issued by the 2nd respondent. The petitioners were communicated of allotment of houses in their favour by separate letters of intimation of allotment of varying dates. One of such intimation of allotment reads as follows:

INTIMATION OF ALLOTMENT

The House constructed on Site No. 175 at Yelahanka I Stage Extension, Bangalore, measuring 35" x 50" is provisionally allotted to him/her on outright sale basis subject to the following conditions.-

1. He/She should deposit with this Office a sum of Rs. 17,500=00 by means of a Demand Draft on any Scheduled Bank in Bangalore, in favour of the Housing Commissioner, Karnataka Housing Board within one month from the date of receipt of this intimation as initial deposit as per the details noted below.-

"Part payment will not be accepted.

(i) Value of the Site/Shop site/House Rs. 33,338=00

(ii) Deposit to be paid as initial deposit Rs. 22,000=00

(iii) Less: Registration fee paid along with application Rs. 4,500=00

(iv) Balance to be paid Rs. 17,500=00

(v) Balance of cost of the house to be paid in 5 Annual equated instalments Rs. 11,338=00

2. He/She should give an affidavit in the form enclosed".

Clause 4 of letter of intimation of allotment reads as follows.-

"4. After payment of the balance of Initial Deposit you should execute a lease-cum-sale agreement at your cost within a month from the date of receipt of this intimation or within 15 days from the date of payment of Initial Deposit whichever is later in the form which will be furnished to you, failing which the allotment will be cancelled and 50% of E.M.D. will be forfeited".

4. Pursuant to the communication, the petitioners have complied with the terms of intimation of allotment, executed lease-cum-sale agreements and secured possession of the houses allotted in their favour. In view of the terms and conditions of the lease-cum-sale agreement, that the allottees should be treated as lessees for a period of ten years and the title in the house would not be transferred in his/her favour until the expiry of ten years from the date of possession or earlier to that period as mentioned in the allotment regulations. After the expiry of ten years from the date of lease-cum-sale agreement the petitioners made representations to the 2nd respondent Housing Board to convey title in their favour in respect of the house allotted to them by executing and registering a sale deed. The 2nd respondent, in reply to the representation, issued a notice demanding payment of certain sums of money from the petitioners. The contents of one of such notices is extracted as under.-

"Sir,

Sub: Clearance of arrears in respect of House No. 564 of I Phase, SST for final discharge - Regarding.

The cost intimated to you at the time of allotment of House No. 564, Rs. 33,253-00 was only provisional. Now as per completion report of the Executive Engineer Metro No. 1, Yelahanka, the cost fixed at Rs. 54,257-00 is final. Thereby the enhanced cost of Rs. 21,004-00 together with other charges shown

below comes to Rs. 23,166-00.

Hence you are requested to make payments of Rs. 23,166-00 to K.H.B. on or before dated: 8-2-1992.

1. Repayment of loan due: Rs. -
 2. Lease rent for 3 years: Rs. 130-00
 3. Final cost difference: Rs. 21,004-00
 4. Service Charges: Rs. -
 5. Stationery charges Rs. 10-00
 6. Augmentation levy on water cess as per Circular No. HUD 42 UWS 88, dated 25-10-1989 Rs. 1,022-00
 7. Development charges Rs. 1,000-00
 8. Conversion fine, since the minimum lease period of 10 years not yet complete. Rs. -
- Total -

-----Rs. 23,166-00-----

Yours faithfully, Sd/-Additional Accounts Officer-II, Karnataka Housing Board, Bangalore".

5. Being aggrieved by the said demand notices, the petitioners have filed these petitions to quash, the demand notice dated 21-1-1991 produced at Annexure-O in W.P. No. 35528 of 1992, the Demand notice dated 23-1-1991 produced at Annexure-H in W.P. No. 22885 of 1993, and the demand notices as produced by petitioners 5, 6, 7, 8, 9, 13, 15, 17, 18 and 20 at Annexures-K1 to K10 in W.P. Nos. 22479 to 24300 of 1993 by a writ of certiorari and, for a further writ in the nature of mandamus directing the respondent 2-Housing Board to execute and register the absolute sale deeds in their favour, without demanding or insisting for any further payments towards the price of the house or development charges or escalation charges or final report charges as mentioned in the demand notice.

6. It is contended by Sri A.K. Lakshmanan, learned Counsel appearing for the petitioners that, the Housing Board allotted houses of varying dimension in favour of the petitioners for outright prices as mentioned in the intimation of allotment. Some of the allotments are on outright basis and some others are on lease-cum-sale basis; The petitioners have paid the monies payable by them towards the value of the house allotted in their favour as prescribed in the intimation of allotment; no further sum is payable by them to the Housing Board; The Housing Board is liable to execute an absolute sale deed in view of the completion of lease period of ten years; It is further contended by Sri A.K. Lakshmanan that, the Housing Board is a statutory body established under the

Karnataka Housing Board Act, 1962, in order to take measures, to make schemes and to carry out works as are necessary for the purpose of dealing with and satisfy the need of the Housing accommodation and in that process to construct and allot houses on no-loss no-profit basis; The demand made by the housing Board under the impugned notice is arbitrary, unreasonable and without any basis and, it defeats the very object of allotment of houses by extracting huge profits in excess of the cost of construction; The petitioners are not liable to pay such sum of money as the Government by its orders similar to order dated April 6, 1978 granted by way of concessions to the allottees after the determination of final cost of construction. He has further contended that, the demand raised by the Housing Board in respect of augmentation levy of water cess and development charges are without authority of law. Sri A.K. Lakshmanan further contends that, after the petitioners filed these petitions, the Housing Board has passed a resolution to demand certain sum of money towards the sinking fund established by the Housing Board. The said resolution is invalid and inoperative as not authorised by law.

7. The Housing Board has filed its statement of objection inter alia contending that, the allotment is provisional and value of the houses mentioned in the intimation of allotment is also provisional; The houses were delivered to the possession of the allottees in accordance with the terms of the lease-cum-sale agreement. It is contended by Sri R.S. Hegde, learned Counsel appearing for the Housing Board that, the lease-cum-sale agreement clearly indicates that the value mentioned therein is only provisional and the petitioner has undertaken to pay the balance found to be due after the determination of final cost of construction of the houses in the layout. The Karnataka Housing Board after the execution of the scheme and in order to determine the final cost, has taken into account the cost of acquisition, cost of development, cost of construction, the administration charges, the supervision charges, interest payable to HUDCO on the amount borrowed from HUDCO for investment over the scheme, etc.

8. It is further contended by Sri R.S. Hegde, that after taking into account all the aforesaid items and such other items as incurred by the Housing Board, the final cost of each house was determined and, in view of there being variation between the cost mentioned in the intimation of allotment and the final cost of construction, the impugned notices are issued demanding the difference in cost of construction; In view of the provision of the Karnataka Housing Board Act and the Housing Board (Amendment) Regulations, 1983 and the terms mentioned in the lease-cum-sale agreement, the Housing Board was well within its power to issue impugned demand notices. Sri R.S. Hegde, further contends that the petitioners having been bound by the terms and conditions of the lease-cum-sale agreement to pay the revised cost of each house found to be due after determination of the final cost, they are estopped from contending that they are not liable to pay the revised cost; Even if there is any variation and if such variations are not permitted by law, it is contended by Sri R.S. Hegde, that the same being in the realm of contract the petitioners cannot maintain the petitions

under Article 226 of the Constitution of India and, the only remedy that may be available to them is by way of a suit for specific performance of contract. Sri Hegde, further states that in view of the Circular dated October 25, 1989 issued by the State Government directing all the local authorities including the Housing Board to add 21/2% of the value of the site or house towards augmentation levy on water cess, the same is being charged towards the cost of construction and similarly in view of the direction to the Board to pay certain sum of money to the Corporation, development charges are levied at Rs. 1,000/- per house under LIGH and at Rs. 2,000/- per house under MIGH.

9. In view of the aforesaid contentions, the following points would arise for consideration.-

(i) Whether the writ petitions are maintainable for redressal of grievance of this nature?

(ii) Whether this Court could go into the question of correctness or otherwise of the final cost?

(iii) Whether the Housing Board is entitled to augmentation levy towards water cess and development charges as mentioned in the impugned notification?

10. That, in exercise of the powers conferred by Section 76 of the Karnataka Housing Board Act, 1962, and in supersession of all existing regulations on the subject, the 2nd respondent, with the previous sanction of the first respondent made, the Karnataka Housing Board (Allotment) Regulations, 1983, herein after referred to as the "Regulations". Clause (m) of Rule 2 defines the "price of the site" and "price of the house". Regulations 12 and 13 deals with the allotment of house on lease-cum-sale basis and on outright sale basis. Regulation 15 provides for the conditions on the compliance of which the sale deed to be executed. The definition of "price of the house" states as follows:

"Price of the House" means the value of the house together with the site on which it is built which term shall also include all incidental charges that are incurred for construction of the said house. It also includes the administration and service charges or such other charges that may be incurred by the Board".

It is well-settled that the price of the land, building material, labour charges and cost of transport, quality and availability of land, supervision and management charges, are all variable factors that enter into price fixation. It is also well-settled that the cost varies periodwise, placewise and availability of landwise.

11. Regulation 12 deals with the conditions of allotment on lease-cum-sale basis which reads as follows:

"12. Conditions of allotment on lease-cum-sale basis.-

(1) The allottee shall pay as Initial Deposit to the Board, the difference between the cost of the house as provisionally determined by the Board less registration fee paid, and the loan admissible, in four equal instalments. The first instalment

is payable within 30 days from the date of receipt of the provisional intimation of allotment and the subsequent 3 instalments on or before the date indicated in it.

(2) The allottee shall pay in one lump sum the difference between the cost of the house as provisionally determined and the revised price of the house, within 30 days from the date of receipt of final intimation of allotment, which will be issued after the house is completed and is ready for occupation.

(3) The period permitted in clauses (1) and (2) above for payment of Initial Deposit/revised price, of the house may be extended at the discretion of the Housing Commissioner by another 30 days, subject to payment of penalty equal to 25% of the Registration fee/Earnest Money Deposit.

(4) If no payment of Initial Deposit/Revised price of the house is made within the time stipulated in clause (1) or extended under clause (2) above, the allottee shall lose his right to claim the allotment of house/site and the allotment shall be deemed to have been cancelled and 25% of the Earnest Money Deposit/Registration Fee made by him shall be forfeited to the Board.

(5) After payment of the revised price of the house, the allottee shall execute an agreement in the form prescribed by the Board within such period as may be fixed by the Board. If the lease-cum-sale agreement is not executed within the period specified by the Board, 50% of the Earnest Money Deposit/Registration Fee deposited by the allottee shall be forfeited:

Provided that the Housing Commissioner, may extend the period already allowed, for valid reasons by another month, to execute the lease-cum-sale agreement without insisting on forfeiture of 50% of the Earnest Money Deposit/Registration fee. If the lease-cum-sale agreement is not executed even during the extended period, the allotment of the house should be deemed to have been cancelled.

(11) The allottee shall abide by and comply with all the terms and conditions stipulated in the agreement executed by him and the provisions of the Act, Rules and the Regulations of the Board in force from time to time".

Regulation 12(6) to 12(10) are not extracted as they are unnecessary for the purpose of this case.

Regulation 13 states that,

13. Allotment of houses on outright sale basis.-

Wherever, the Board has notified houses/sites for allotment on outright sale basis, the allottee shall pay the entire cost of the house as determined by the Board before executing the lease-cum-sale agreement. The conditions in Regulation 12(1) to (5) will apply mutatis mutandis to these allottees also".

Regulation 15 mandates that,

"15. No sale deed shall be executed in favour of an allottee in respect of site/house allotted until the entire cost of the site/house together with interest

thereon has been paid in full, and a minimum lease period of 10 years is completed".

(The proviso to Regulation 15 is not material.)

Regulation 11 provides for revision of price and it reads thus:-

11. Revision of price.-The Board is competent to revise the price of site/house at any time, for any reason which discloses that the price fixed provisionally is less than what it should be. The decision of the Board in this behalf is final".

By virtue of clauses (4), (5) and (11) of Regulation 12, the allottee shall execute an agreement in the form prescribed by the Board within such period as may be fixed by the Board and if the lease-cum-sale agreement is not executed within the period specified by the Board, 50% of the Earnest Money Deposit/Registration Fee deposited by the allottee shall be forfeited; and, where the lease-cum-sale agreement is executed the allottee shall abide by and comply with the terms and conditions stipulated in the agreement and the provisions of the Act, Rules or Regulations of the Board in force from time to time. These conditions are also applicable to the allotment of houses on outright basis in view of Regulation 13.

12. Sri R.S. Hegde, learned Counsel appearing for respondent 2 contends that the petitioners have executed a lease-cum-sale agreement in favour of the Board agreeing to abide by and comply with all the terms and conditions specified thereunder. When once there is an agreement between the parties, they enter the realm of contract and any dispute arising under the terms of the contract cannot be the subject-matter of a writ petition under Article 226 of the Constitution of India. He further contends that, even if the writ petitions are maintainable, the price of the house mentioned in the intimation of allotment was only a provisional price and the actual price of the house would be determined after the determination of the final cost and that after completion of the scheme, the Housing Board determined the final cost of each house taking into consideration the cost of acquisition, the cost of development of the land, the cost of construction, the cost of maintenance, administrative and surcharges, etc., along with the interest payable on the loan borrowed from HUDCO to complete the scheme. Along with the written statement the respondent has also produced the details of the cost of construction and how the Board has arrived at the figure. In this context he contends that the price determination will have to be done by an expert and if the experts have adopted a fair procedure to determine the prices, this Court would not go into the correctness or otherwise of the determination as it is outside the jurisdiction of this Court under Article 226 of the Constitution of India.

13. That, where the contract entered into between the State and the persons aggrieved is non-statutory and purely contractual and the rights are governed by the terms of the contract, no writ or order can be issued under Article 226 of the Constitution of India, so as to compel the authorities to remedy a breach of

contract pure and simple. In *Bareilly Development Authority and Another v Ajai Pal Singh and Others*, (1989)2 SCC 116, the Supreme Court has held as follows:

"23. In view of the authoritative judicial pronouncements of this Court in the series of cases dealing with the scope of interference of a High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India in cases of non-statutory concluded contracts like the one in hand, we are constrained to hold that the High Court in the present case has gone wrong in its finding that there is arbitrariness and unreasonableness on the part of the appellants herein in increasing the cost of the houses/flats and the rate of monthly instalments and giving directions in the writ petitions as prayed for".

14. In *Premji Bhai Parmar and Others v Delhi Development Authority and Others*, AIR 1980 SC 738, the Supreme Court has held that,

"Price of property is in the realm of contract between a seller and buyer. There is no obligation on the purchaser to purchase the flat at the price offered. Even after registration the registered applicant may opt for other schemes. His right to enter into other scheme opting out of present offer is not thereby jeopardised or negated and applicants so outnumbered the available flats that lots had to be drawn. With this background the petitioners now contend that the Authority has collected surcharge as component of price which the Authority was not authorised or entitled to collect. Even if there may be any merit in this contention, though there is none, such a relief of refund cannot be the subject-matter of a petition under Article 32. And Article 14 cannot camouflage the real bone of contention. Conceding for this submission that the Authority has the trappings of a State or would be comprehended in "other authority" for the purpose of Article 12, while determining price of flats constructed by it, it acts purely in its executive capacity and "is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in the exercise of its constitutional powers. But after the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field, perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract". See *Radhakrishna Agarwal v State of Bihar*, (1977)3 SCR 249".

In the said decision it is further held that,

"..... Cost price of a property offered for sale is determined according to the volition of the owner who has constructed the property unless it is shown that he is under any statutory obligation to determine cost price according to certain statutory formula".

15. Learned Counsel for the petitioner relying on the observation of the Supreme Court as aforesaid has contended that, the question in controversy has not arisen only from the contract but on the failure of the authority to perform the statutory function which has been part and parcel of the contract. In support of their contention the petitioners place reliance on the definition of the expression "price of the site" and Regulation 12 of the Regulations under which the lease-cum-sale agreement has been executed. It is contended by the learned Counsel for the petitioners that the Housing Board will have to determine the price of the houses on the basis of the price of the site on which the house is built including all incidental charges that are incurred by the Board; The final cost determined by the Board has no bearing with respect to the actual expenditure incurred by the Board; The petitioners are not entitled to pay interest and they are not liable to pay the augmentation levy on water cess and the development charges as such charges are already been included in the development cost of the site.

16. The petitioners did not contend that they are not bound by the terms and conditions of the lease-cum-sale agreement. Their contention is that the Government by its order dated April 6, 1978 and similar orders granted certain concessions to the allottees of houses at Yelahanka and Koramangala. Such concession was granted only after the determination of final cost of construction. In view of the statement that "the final cost of the house has now been communicated by the Board will remain unaltered", the revision of prices of houses by the second respondent as mentioned in the impugned order is illegal and unenforceable.

17. Per contra Sri R.S. Hegde, learned Counsel for respondent 2 has contended that as on April 6, 1978, no intimation of allotment was issued to the petitioners nor was there any lease-cum-sale agreement between the petitioners and the respondent-Board; The Government order is, therefore, inapplicable. He further contends that, even otherwise the Government Order does not indicate as to what is the final cost. On the other hand, it states that the difference between the final cost (after deduction of the amounts mentioned in (a) above and deposit already made) and the loan sanctioned to the Housing Board by HUDCO in respect of each house will be treated as a loan to the allottees and the period of repayment of loan by economically weaker sections of the Society, Low Income Group and Middle Income Group allottees will be 20 years, 15 years and 12 years respectively as usual. No final cost was determined as on the date of the order. The petitioners have produced the intimation of allotment at Annexures-B1 to B29. Except the intimation of allotment at Annexures-B13, B18, B21, B23 and B26 all other intimation of allotment were issued subsequent to April 6, 1978 and all the lease-cum-sale agreements are made subsequent to the aforesaid G.O. Even in the aforesaid intimation of allotment, the allottee was required to execute a lease-cum-sale agreement in respect of the houses allotted and the allottee shall be bound by the Karnataka Housing Board Act, Rules and Regulations thereunder for the time being in force. Clauses 6, 7 and 8 of the lease-cum-sale agreements deals with the cost of the property allotted and the

final cost and of execution of the sale deed. They read as under:

"(6) Cost of the property as now fixed provisionally is Rs. 34,453.00. This Cost is liable for variation in which case the Lessee/Purchaser binds himself to accept such variation.

(7) The final cost of the property shall be as fixed by the Board based on the completion report.

(8) Until such time the Lessor/Vendor conveys the property by execution of a sale deed, the Lessee/Purchaser shall occupy the property as a lessee under those terms".

In view of the regulations and conditions in lease-cum-sale agreement, it is contended by Sri. Hegde, that the respondent Board is empowered by law to revise the cost of the house only after receipt of final report from the experts in relation to final cost of construction and respondent 1 has taken, the value of the site, the cost of construction such as the value of the building material and the expenditure incurred for such construction and other expenditure incurred, the interest payable on the amount borrowed from HUDCO, administrative and such other charges, etc., into account to determine the final cost of construction of each house. It is further contended by the learned Counsel appearing for respondent 2 that the price fixation is within the powers of the Board on the basis of the aforesaid expenditure incurred and the Board has taken all these factors into account in determining the cost of each house. As the procedure adopted by the Board being just and fair this Court would refuse to examine the correctness of such determination.

18. Again in *Parmer's* case the Supreme Court has held that,

"In price fixation executive has a wide discretion and is only answerable provided there is any statutory control over its policy of price fixation and it is not the function of the Court to sit in judgment over such matters of economic policy as must be necessarily left to the Government of the day to decide. The experts alone can work out the mechanics of price determination; Court can certainly not be expected to decide without the assistance of the experts (see *Prag Ice and Oil Mills v Union of India*, (1978)3 SCR 293). In the leading judgment it has been observed that mechanics of price fixation have necessarily to be left to the executive and unless it is patent that there is hostile discrimination against a class, the processual basis of price fixation has to be accepted in the generality of cases as valid".

19. It is, therefore, well-settled that the decision making process and the decisions of the authorities taken thereupon are certainly open to judicial review but what is material is the extent of judicial review. The distinction has to be drawn between the appellate authority, the Appellate Court and the Courts exercising such powers under writ jurisdiction. If the basis of the decisions are apparently unreasonable, wholly irrational, unfair, arbitrary or erratic, the Courts

would interfere in such process and consequently interfere in the action taken pursuant thereto; but once a proper and satisfactory explanation is tendered then it may not be permissible for the Court to go into the niceties of accountancy and minute details of accounts in such cases. In the instant case, it is stated by the respondents that,

"12. It may be seen that the demand of final price as shown in the demand notices contain mainly the following heads namely lease rent, (b) Balance of final cost, (c) Miscellaneous expenses, (d) Water augmentation charge, (e) Development charge. The said demand is based on the completion report worked out and prepared for each of the house and the Government order issued for collection of water augmentation charges and the official memorandum of the respondent Board for collection of tentative amount towards development expenditure incurred by the 2nd respondent Board. The 2nd respondent herein produces the copy of demand notice dated 9-1-1992 issued to Sri M. Mohan Raj, House No. 4, MIG (Petitioner 17), along with final cost statement and the completion report, which are marked as Annexures-R3, R4 and R5. The 2nd respondent further produce the copy of working out of the balance amount payable by the allottee towards final price of the house in respect of house No. 194 LIG relating Sri H.M. Chandrashekaraiah (petitioner No. 9) and the completion report which are marked as Annexures-R6 and R7".

From Annexure-R6, it is clear that the final cost is based on the basis of expenditure incurred on the following heads:-

Value of the site, cost of construction, simple interest upto the date of lease-cum-sale agreement, simple interest from the date of lease-cum-sale agreement till the date of the bill, miscellaneous charges, supervision charges, centage, loan allowed, initial deposit to be paid, initial deposit already paid, etc.

20. It is contended by Sri A.K. Lakshmanan, learned Counsel appearing for the petitioners that the second respondent Board should execute the sale deed and allot the houses on "no loss no profit basis". The figures in the revision of the price of the house has resulted in huge profit to the Housing Board for which the Housing Board is not entitled as it is a public utility undertaking and not supposed to make profits at the cost of the allottees. The Supreme Court again in *Parmer's* case has held that,

"... The argument proceeds on the assumption that the principle of "no profit no loss" implies that in respect of each flat the cost of its construction must be worked out and that alone can be the disposal price of each flat. Principle of "no profit no loss" has been explained by the respondents. It is said that in the overall working, planning and execution of projects which the authority undertakes as part of development of Delhi, the integral part of it being construction of flats for different income groups the motives and working of it would not be profit oriented but would work on "no profit no loss" economic doctrine. This would not for a moment suggest that the principle of "no profit no

loss" should apply either to every flat or to every scheme or to every piece of land developed by the authority. It would be impossible for the authority to function on such fragmented basis and such a policy statement has not been made by the Authority".

21. In *Kerala State Electricity Board v S.N. Govinda Prabhu and Brothers and Others*, 1986(3) SCR 628, the Supreme Court has held that

"... It is a public utility monopoly undertaking which may not be driven by pure profit motive not that profit is to be shunned but that service and not profit should inform its actions. It is not the function of the Board to so manage its affairs as to earn the maximum profit even as a private corporate body may be inspired to earn huge profits with a view to paying large dividends to its shareholders. But it does not follow that the Board may not and need not earn profits for the purpose of performing its duties and discharging its obligations under the statute. It stands to common sense that the Board must manage its affairs on sound economic principles. Having ventured into the field of commerce, no public service undertaking can afford to say it will ignore business principles which are as essential to public service undertakings as to Commercial ventures".

In the light of the aforesaid ruling, it is clear that the respondent-Board should involve itself in the direction of public service though it is entitled to charge its consumers in respect of all the expenses likely to be incurred, in completion of a project. It is not contended by the petitioners that they are not liable to pay interest that may be charged on the loan borrowed by the respondent-Housing Board. It is further not contended by the petitioners that they are not liable to pay the revised value as may be determined as per final cost. It is also not their contention that the Board is precluded from revising the value of the house allotted to them. Their only contention is that the State Government in the order dated April 6, 1978 has said that the final cost communicated to the petitioners remain unaltered and therefore the amount mentioned in the intimation of allotment must be treated to be final cost of construction. In view of the intimation of allotment having been sent to many of the petitioners long after the aforesaid date and the conditions in the lease-cum-sale agreement to which they undertook to bind themselves, it is not possible to accept the contention of the petitioners that the amount mentioned in the intimation of allotment is the final cost of construction of each house. No material of whatsoever nature is produced by the petitioners to dispute the correctness or otherwise of the mode of calculation or determination of the final cost of construction by the Housing Board.

22. The respondent Board by the impugned notice has raised the demand against the petitioners for payment of augmentation levy of water cess, development charges. It is contended by Sri R.S. Hegde, learned Counsel appearing for respondent that in view of the Circular dated 25-10-1989 issued by the Government directing the respondent-Board to levy surcharge @ 21/2% of

the selling price of the houses as a capital water supply charge and collect the same from the allottees as part of the overall sale price before execution of transfer documents, the same is being charged as final price of the house. The Housing Board did not place reliance on any statutory provisions, but places reliance only on the Circular issued by the Government. The respondent is unable to point out under what provision the said Circular is issued by the Government. It is no doubt true that all the consumers of water are liable to pay such charges as may be fixed by the authorities concerned for supply of water. This augmentation levy on water cess is contemplated neither under any of the provisions of the Act nor is there any agreement between the parties to pay such charges. The augmentation levy of water cess, in view of the definition of the "Price of the house" as defined in clause (m) of Regulation 2 of the Regulations cannot be an item for being included to determine the price of the house nor is there any agreement between the parties to pay all the demands raised pursuant to any direction issued by the Government. It is contended by Sri R.S. Hegde, learned Counsel appearing for respondent 2 that in view of Section 84 of the Act, the State Government has power to issue such directions to the Board as in its opinion are necessary or expedient for carrying out the purposes of the Act and it shall be the duty of the Board to comply with such directions and therefore, the directions issued by the Government as per Circular dated October 25, 1989, is well within its powers. It is true that Section 84 empowers the Government to issue directions to the Board which are necessary or expedient for carrying out the purposes of this Act. But such directions must be, as prescribed by the Act, for the purpose of compliance with the provisions of the Act. The object of the Act is to take such projects, to acquire land, construct houses to satisfy the needs of the general public. The Board is also empowered to collect the price of the house but such prices shall be fixed on the basis of the expenditure incurred. Augmentation levy is not the expenditure incurred by the Housing Board in respect of the construction of the houses in question. Even otherwise, these houses were constructed long prior to the date of Circular and have been allotted and put in possession of the various allottees. Just because the Sale Deed is not executed in their favour it does not mean that they became liable to pay the augmentation levy even if the Government is entitled to impose such levy. The demand for augmentation levy and water cess is not supported by any statutory provisions nor is there any agreement between the parties. The demand is therefore illegal and inoperative.

23. It is next contended by Sri A.K. Lakshmanan, the learned Counsel appearing for the petitioners that the second respondent-Board did not have a legal authority to add the development charges at the rate of Rs. 1,000/- in respect of LIG Houses and Rs. 2,000/- in respect of MIG Houses into the cost of construction. Sri R.S. Hegde, the learned Counsel for the Housing Board states that the respondent will have to maintain the houses even after delivery of the possession of the same to the petitioners without collecting house tax; The expenditure incurred by the Board for maintenance of the housing colony will

have to be added to the developmental charges. The levy of Rs. 1,000/- and Rs. 2,000/- in respect of the houses coming under LIG and MIG respectively as development charges is therefore permissible in law.

24. From the working sheet produced by the second respondent to determine the final cost of construction, it is seen that the development charges were collected both at the stage of determining the sital value and also at the time of construction of the houses. There is no provision either under the Act or under the Regulation empowering the Housing Board to collect the maintenance charge as development charges. Even otherwise, in the working sheet produced by the respondent, no particulars are mentioned as regards the maintenance charges. The levy of development charges at the rate of Rs. 1,000/- and Rs. 2,000/- in respect of LIG and MIG houses respectively is therefore without authority of law and the same is liable to be declared illegal and inoperative.

25. That, the provisions of Section 54-A and 54-B deals with Sinking Fund. Section 54-A deals with mode of repaying loan and Section 54-B deals with the establishment of Sinking Fund. They read as under:-

"54-A. Mode of repaying loan.-Every loan obtained by the Board shall be repaid within the period and in the manner agreed upon by the Board, (a) from a sinking fund established for the purpose under Section 54-B; or (b) from money borrowed for the purpose; or

(c) partly from the sinking fund established under Section 54-B and partly from the money borrowed for the purpose.

54-B. Establishment of a sinking fund.-

(1) The Board may establish a sinking fund for the purpose of repayment of loans borrowed by it.

(2) The amounts to be paid into the sinking fund and the mode of payment shall be as may be prescribed.

(3) All moneys paid into the sinking fund shall be invested in Government securities or fixed deposits with Scheduled Bank".

The word "prescribed" is defined as prescribed by Rules. There is no provision under the rules which deals with the establishment of Sinking Fund and the amounts to be paid into the said fund. In the absence of the procedure prescribed by rules relating to the amounts to be paid into the Sinking Fund, it is not open to the Housing Board to levy and collect any sum against the petitioners towards the Sinking Fund. Though the establishment of Sinking Fund is provided, the source and the mode of payment into the sinking fund is not prescribed. What is not prescribed by rules cannot be prescribed by resolution of the Board when the Acts specifically states it shall be prescribed by rules. Even otherwise, no amount can be charged against the petitioners in respect of a Sinking Fund as the establishment of Sinking Fund was added by Amendment Act

of 1988 and they were not in force during the allotment of the houses in favour of the petitioners.

26. In the result, these petitions are partly allowed. The impugned demand notices are hereby quashed only in so far as they relate to imposition of augmentation levy and water cess and development charges and the rest of the demand notices is retained intact. It is further declared that the second respondent has no legal authority to collect any sum from the petitioners in respect of the Sinking Fund. These petitions are disposed off accordingly.

It is made clear that the petitioners are liable to pay interest on the amount payable by them at the rate agreed between them in the lease-cum-sale agreement.

The second respondent-Housing Board is directed to execute the absolute Sale Deed as soon as the petitioners pay or deposit such sums of money demanded by the Housing Board in the impugned notices less the augmentation levy of water cess, development charges and the amount payable for the Sinking Fund, if there is any.

27. In the circumstances of the case, there is no order as to costs.

28. Sri M. Siddagangaiah, learned High Court Government Pleader is permitted to file memo of appearance for respondent 1 within four weeks.