

(2014) 07 RAJ CK 0093

In the Rajasthan High Court

Case No : Civil Writ Petition No. 11366 of 2011

Mangat Ram Taneja

APPELLANT

Vs

Rajasthan Housing Board

RESPONDENT

Date of Decision : 14-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2014) 4 RLW 3556

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : J.S. Bhaleria, Advocate for the Appellant; Vikram Singh Rathore for Manish Shishodia, Advocate for the Respondent

Judgement

Pratap Krishna Lohra, J.—In all these writ petitions common question of law and fact is involved, therefore, all these petitions are heard together and disposed of by a common order. For convenience, the facts as narrated in S.B. Civil Writ Petition No. 11366 of 2011 are mentioned hereinafter.

2. The petitioner, in response to the Special Registration Scheme 2008, which was a housing scheme for Hanumangarh and Suratgrah towns floated by the Rajasthan Housing Board (for short, "the Board"), submitted his application for allotment of a Higher Income Group house measuring 236.25 sq. mtrs. As per SRS Scheme, applications were invited for various income groups on hire-purchase basis with a clear stipulation that allotment of houses shall be made on "No Profit, No Loss" basis and the sale price of the house shall be determined by the Board. For allotment of houses, it was clarified that same shall be made on priority basis. In the month of 2010, a Registration Letter was issued to the petitioner and he was asked to deposit three installments of Rs. 1,00,000/- each, which the petitioner deposited in stipulated period. As per draw, which was held on 26th of August 2010, House No. 8/09 situated at Rajasthan Housing Board, Hanumangarh colony was allotted to him. The contractor completed the house in the month of June 2011 but allotment-cum-demand letter was not issued to him.

On 13th of October 2011, a letter was issued by the Board, whereby the land price was determined as Rs. 3760/- per sq. mtr. and the petitioner was asked to deposit Rs. 8,88,300/- for 236.25 sq. mtrs. land, and for extra land measuring 21 sq. mtrs. a sum of Rs. 5,640/- per sq. mtr. was charged from him. The petitioner was asked to deposit the requisites amount before taking possession of the house. The cost of construction was also demanded from the petitioner to the tune of Rs. 12,51,600/-. Precisely, in the writ petition the petitioner has assailed the escalated land price by categorizing the same as arbitrary and unreasonable in clear violation of Article 14. In ground (d) of the writ petition, petitioner has specifically pleaded that similar controversy came up before this Court in 1992 and while allowing the writ petition the Court has granted relief to the allottees. The averments contained in group (d) are reproduced as under:

"(d) That similar controversy came up before this Court in the year 1992, at that time similar kind of Scheme of the Board was launched for the HIG Group and while making the allotment of the house, the Board charged and High Price for the second, third and fourth questions, this Hon"ble Court allowed the writ petition of those persons while taking into consideration the costing principles Rules issued vide notification dated 9.1.1988. The Hon"ble Court held that as per Rule 4 of that Rule, the Board cannot increase the price of land arbitrarily and can only charge the price of land for the year in which the land is utilized for construction of the houses and it was held that the Board can charge the High Price of Land only by adding 12% of the price of earlier year. But in the present case the Board has charged the different price of land for the same year for the similar persons without any basis. The demand raised by the Board by increasing the price of the land as per Annex. P/3 is contrary to the judgment of this Hon"ble Court reported in WLC (Raj) 1993 (3) Page 391. Hence the action of the respondent deserves to be quashed on this ground alone."

3. In relief sub-clause (iii) also, the petitioner has prayed for under-mentioned relief:

iii. That the Board may kindly be directed to make the calculation as per the judgment of this Hon"ble Court in case of Avashan Mandal Parijat Uch Ayavargh Sangarsh Samiti Vs. Rajasthan Housing Board and Others, within reasonable period.

4. After issuance of notice, reply was submitted on behalf of respondent No. 3. In the reply, a preliminary objection was raised regarding maintainability of the writ petition by asserting that the writ petition involves disputed questions of facts which cannot be gone into in summary proceedings under Article 226 of the Constitution of India. Joining issue with the petitioner, the respondent has pleaded in the reply that the judgment of this Court reported in Avashan Mandal Parijat Uch Ayavargh Sangarsh Samiti Vs. Rajasthan Housing Board and Others, is not holding the field and the same has been reversed by the Division Bench of this Court in Rajasthan Housing Board and Others etc. Vs. Awasan Mandal Parijat Uncha Aywarg Sangarsh Samiti, . It is also averred in the reply that the said

verdict of the Division Bench has been upheld by the Hon"ble Apex Court by dismissing the SLP preferred by the consumers. While advertng to the merits of the case, it is averred in the reply that construction of the house was completed in August 2011, and thereafter process of determination of final costing for houses of Higher Income Group was sanctioned from Headquarter on 14.9.2011 and the requisite sanction was conveyed on 14.9.2011 and accordingly allotment was made on 13.10.2011. The positive assertion of the petitioner that house was completed in the month of June 2011 was denied. On the issue of cost of land, it is pleaded that for the year 2011-12 rate of Rs. 3,760/- per sq. mtr. was fixed by the Headquarter. It is also submitted in the reply that as per the principle of final costing of the Board for the year 2010, the cost of additional developed land was worked out by adding 50% extra to the basic developed land cost, and ancillary service charges are recovered in one instalment before handing over possession at the rate of 3% for MIG-A, MIG-B, HIG and SFS houses. In the return, it is submitted by the respondent that allotment letter was issued to the petitioner on 13th of October 2011 and final costing was made on 14th September 2011 at the rate prevailing for the year 2011-12 whereas the houses of the Scheme at Hanumangarh and Suratgarh where were completed and allotment letters were issued to the allottees before commencement of July 2011 and the prevailing rates of the year 2011-12 were applied as per the principle of costing of the Board. While referring to the brochure of SRS 2008, it is averred in the reply that price of land is determined as per the brochure inasmuch as the same was determined at the time of allotment and therefore in terms of brochure any objection in this behalf at the behest of allottee is not entertainable. Defending the action of the Board, it is also submitted in the reply that in determining the rates of land, following expenditures are also included:

- (i) Leveling, dressing of the ground,
- (ii) Construction of bitumous roads,
- (iii) Construction of drains and culverts,
- (iv) Cost of water supply lines and electricity lines,
- (v) Cost of street lights,
- (vi) Cost of sever lines,
- (vii) Cost of plantation and arboriculture and park, and
- (viii) Construction of school buildings and dispensary/health centres etc.

5. The respondent has also pleaded that approximately 50% land is left for the facilities of general public and construction work is carried only upon approximately 50% of the land. The allegation of the petitioner that the Board has charged high price of land is specifically denied.

6. Learned counsel for the petitioner has argued that the respondents have arbitrary charged exorbitant price for land from petitioner in clear violation of

SRS 2008 and therefore a direction is required to be issued for issuance of revised possession letter after recalculating the cost of extra land by re-assessing cost of premium and extra land, or in the alternative it is liable to be set aside. In the alternative, the learned counsel has argued that for extra land the same rate per square meter is to be applied which is given in the original allotment letter.

7. Per contra, learned counsel for the respondent has submitted that there is no infirmity in the cost of premium and extra land and as such no interference in the present petition is warranted. Learned counsel for the respondent has urged that in view of clear stipulation in Clause 20 of the Brochure, grievance of the petitioner is not entertainable inasmuch as it is mentioned in the said clause with clarity and precision that cost shall be determined by the Board at the time of allotment and no grievance of the allottee in this behalf shall be entertained.

8. Learned counsel for the respondent has also submitted that the entire edifice of the writ petition is based on judgment of this Court reported in 1993 (3) WLC (Raj) 391, and as the same has been reversed by the Division Bench and subsequently affirmed by the Hon"ble Apex Court, therefore, petition is liable to be rejected.

9. I have heard teamed counsel for the parties and perused the materials available on record.

10. Cause of grievance of the petitioners in the present petitions relates to premium of land and cost of extra land and for quashment of the allotment letter dated 13th of October 2011 (Annex. 3) to that extent. The petitioners have also craved for recalculating the cost of extra land at par for which the house is to be allotted. A direction is also sought to calculate the cost of land in terms of judgment of this Court reported in WLC (Raj) 1993 (3) Page 391 (Avashan Mandal Parijat Uch Ayavargh Sangarsh Samiti & Anr. vs. Rajasthan Housing Board & Ors.).

11. Upon close scrutiny of the matter, in the considered opinion of this Court, the entire grievance of the petitioner is essentially founded on the judgment rendered in Avashan Mandal Parijat Uch Ayavargh Sangarsh Samiti's case (supra), wherein the writ petitions were allowed in part with the following directions:

51. In the result, these writ petitions are allowed in part. The petitioners cannot claim any change in the cost of construction and other charges through these writ petitions because that will require certain amount of accounting, calculations and moreover, they relate to non-statutory conditions of the contract. However, sofaras the cost of the land is concerned, about that Rules in the Shape of the Costing Principles are there, which have been published vide Notification dated 9.1.1988. The respondents cannot depart from those Rules. The increased cost of the land can only be charged by the Rajasthan Housing Board from these allottees of second, third and fourth quarters of 1988 Parijat Scheme is over and

above the one which has been charged from the applicants of the first quarter of 1988 Parijat Scheme on the basis-of the aforesaid Notification dated 9.1.1988, keeping in view the year of Utilisation of land for construction of houses for the applicants of second, third and fourth quarters of 1988 Parijat Scheme. The cost of the land cannot arbitrarily be allowed to be increased from Rs. 38,178/- to Rs. 72,765/-. The respondents are, therefore, directed to issue revised possession letters to the petitioners by changing" the cost of the land keeping in view the land utilisation made by them for construction of houses for the applicants of second, third and fourth quarters of 1988 Parijat Scheme, in accordance with the Rules framed by it in the shape of Costing Principles vide its Notification dated 9.1.1988 and the lease money @ 2.5% of the cost of the land be charged from the petitioners instead of 3%. However, they will be free to charge interest from the petitioners for late payment of the amount keeping in view Condition, No. 12.8 of the Parijat Scheme Book-let. The revised possession-letters be issued within a period of two months from today keeping in view the aforesaid directions and delivery of possession of the houses be ensured to all the applicants of second, third and fourth quarters of 1988 Parijat Scheme within one month of the payment of the amount remaining unpaid on the basis of the revised-possession letters issued by it in accordance with the directions of this Court.

12. The aforesaid judgment was assailed by the respondent Board before the Division Bench of this Court and the Division Bench was pleased to allow the intra-Court appeal by its judgment dated 8th of August 1995 reported in AIR 1996 Rajasthan 47 (Rajasthan Housing Board & Ors. etc. vs. Awasan Mandal Parijat Uncha Aywarg Sangarsh Samiti. While allowing the intra-Court appeal, Division Bench held as under:

45. We are further of the opinion that the costing principles could not be made a matter of interference under Article 226 of the Constitution of India. Again, the writ petition could not be filed by the self styled Society jointly as there was a different cause of action to each of the allottees and the petitioner neither being a registered Society nor a juristic person, the petition filed by it was thus incompetent and not maintainable.

46. The jurisdiction vested in the High Court under Article 226 of the Constitution of India is to be used only sparingly and that too only in exceptional cases where there is a violation or infringement of rights of the citizens and further where there is no other adequate, alternate or specific remedy. No case of infringement of any right of the petitioner has been made out.

47. The matter can be viewed from another angle. How would a writ lie in respect of non-statutory contract. The Scheme containing the terms and conditions was too well known to the allottees before they put in the applications for the purpose of registration. It was indicated sufficiently well that the price that was being fixed tentative and approximate and that the final costing would be made at the completion of the houses and the increased amount would be

charged from the allottees.

48. We are of the view that the writ petition in the present case was neither maintainable nor competent. We further hold that the petitioner had no locus standi to challenge the action of the Board. We also find that highly disputed questions of fact and accounting were involved in the matter, which just could not have been permitted to be raised in the extraordinary writ jurisdiction of this Court. We also hold that since it was pure and simple a non-statutory contract, the parties to the lis are governed by the terms and conditions laid down in the Scheme. The same could not form a subject matter for interference under Article 226 of the Constitution of India. It is also held that no writ of mandamus could be issued to the Board to allot a particular house to an allottee at a given price or to reduce the price that was being asked for.

49. The writ petitions in our view could be dismissed on these grounds alone without entering into other questions. But since the learned single Judge entertained these petitions and proceeded to examine the matter on merits and partly allowed the petitions, we had to deal with the merits of the case to negative the conclusion drawn on merits by the learned single Judge. Arguments before us were also raised on merits by the learned counsel appearing for the parties and therefore in all fairness we have dealt with their submissions.

50. In view of what has been said above, the judgment and order passed by the Learned Single Judge is set aside. The Special Appeals filed by the Board are allowed and the Special Appeals filed on behalf of the allottees are dismissed. Consequently, the Writ Petitions are ordered to be dismissed.

13. The aforesaid verdict of the Division Bench was further challenged before the Hon"ble Apex Court and Hon"ble Apex Court by its verdict dated 20th of March 1997, while upholding the judgment rendered by the Division Bench, held as under:

"After going through the pleadings of the parties in his behalf, we are of the opinion that the land cost which was determined of the Housing Board is in consonance with the brochure and the costing principles reflected in paragraphs 4.1 to 4.1.5, 4.2.1, 4.2.3, 4.2.5 and 4.2.6. It was urged on behalf of the appellants that although construction of the houses of the first and second quarter was completed when the possession of the houses was allotted to the allotted of first quarter and therefore, there was no justification in not issuing the letters of allotment to the allotted of second quarter. This contention has no merit because the development work was yet to be completed and, consequently the possession thereof was delayed by about nine months. Since the allotment letters of the houses of second quarter fell during the financial year 1990-91, the land cost stood enhanced in view of the costing principles. The same was true in respect of third and fourth quarter houses as the letters of allotment were issued in the financial year 1991-92 on different dated i.e. 9.12.1991 and 5.2.1992 respectively. The construction of the construction of the houses in respect of

second and third quarters was delayed beyond the control of the Housing Board. Consequently, the land cost was required to be re-determined on the basis of costing principles. All these factors were very much known to the Rajasthan Housing Board and they were fully aware of the terms and conditions set out in the brochure and other relevant Rules and Regulations. We have carefully considered the contentions raised on behalf of the parties in this behalf and we find that the Rajasthan Housing Board had committed an error while determining the land cost differently in respect of second, third and fourth quarter based on the costing principles. It also needs to be stated that the Rajasthan Housing Board had borrowed huge sums from various financial institutions for which it was required to pay the interest thereon. The appellants are unable to demonstrate that the land cost determined by the Rajasthan Housing Board was in violation of any of the terms and conditions mentioned in the brochure and/or Rules or Regulations or it had deviated from the Board's policy of providing houses on profit or loss basis.

14. In view of the reversal of the judgment rendered in *Avashan Mandal Parijat Uch Ayavargh Sangarsh Samiti & Anr. vs. Rajasthan Housing Board & Ors.* (WLC (Raj) 1993 (3) Page 391) by the Division Bench of this Court, which is affirmed by the Hon'ble Apex Court, in my considered opinion, the so called grievances of the petitioner are wholly unfounded and cannot be sustained.

15. Even on examining the afflictions of the petitioners on the touchstone of settled legal proposition that disputed questions of fact are not liable to be adjudicated in writ jurisdiction, I am not persuaded to interfere in the matter. There is nothing on record to show that the respondent Board has acted arbitrarily while assessing the land cost as the pleadings in the writ petitions in this behalf are conspicuously silent.

16. One more redeeming fact is that the brochure, which was issued by the Board while floating the Scheme of 2008, clearly envisages that no complaint of the allottee with respect to land cost shall be entertained and the cost determined by the Board at the time of allotment shall be final. The Board has also asserted in the said clause that Board would make endeavor to keep the price of the house moderate but any escalation in the construction cost for unforeseen reason, which is beyond the control of the Board, shall be borne by the respective allottee. The complete text of the clause is reproduced as under:

17. From the averments contained in the reply, while reading those averments in conjunction with the aforesaid clause, in the considered opinion of this Court, the respondent Board has not committed any illegality in assessing the premium of the land and cost of extra land and as such I am not persuaded to interfere with the impugned allotment letters to the extent same relate to premium of land and cost of extra land, as calculated and determined by the respondent Board.

18. Resultantly, all these writ petitions lack merit and are accordingly dismissed. A copy of this order be placed in each file.