(2000) 09 P&H CK 0156

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1410 of 1998

Nirvans Cooperative Housing Building Society Ltd. APPELLANT

Vs

Union Territory of Chandigarh RESPONDENT

Date of Decision : 07-09-2000

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2001) 1 RCR(Civil) 759

Hon'ble Judges : K.S. Garewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. D.V. Sharma, for the Appellant; Mr. Subhash Goyal and Mr. R.N. Raina, for the Respondent

Judgement

Jawahar Lal Gupta, J.—The three petitions involve a common question - Have the respondents erred in rejecting the claim of the petitioners for (he allotment of flats on the ground that they had not made a deposit of 25% of the tentative value by the due date while submitting their applications ? Counsel for the parties have referred to the facts as averred in C.W.P. No. 1410 of 1998. These may be briefly noticed.

2. On May 28, 1991 the Chandigarh Administration made a scheme for the allotment of land to Cooperative House Building Societies. In para 3 it was inter alia provided that the administration "may conduct survey to assess the demand by inviting applications on prescribed forms available from the Chief Executive Officer, Chandigarh Housing Board alongwith 25% of the premium of land to be applied for as earnest money and proof that the Society has sufficient funds and resources to pay the balance of the premium of land and to undertake construction work on the land if allotted to them through the ...... Board". It was also provided that the survey shall not be construed as a commitment for allotment of land. The two petitioner Societies submitted their applications. However, in respect of some of the members the deposit was made only to the extent of 10% and not 25%. As a result, only the names of persons who had

paid 25% were included in the survey and those who had not made the complete deposit were excluded. The petitioners have now approached this Court with the grievance that the members of the Societies were wrongly excluded. It is alleged that the scheme framed by the Administration had been challenged through C.W.P. No, 1454 of 1992. In this petition it had been inter alia directed that the candidature be considered on deposit of 10% of the sale consideration subject to the condition that in the event of the dismissal of the writ petition the applicants would be liable to pay "the balance 15% of the amount so as to make it 25%.... with a further interest at the rate of 18% per annum". According to the petitioners the members who had not paid 25% at the time of the initial submission of application should also be permitted to now pay the remaining 15% along with interest at the rate of 18%. Their request having not been accepted by the respondents, they have approached this Court through the present writ petitions. The petitioners maintain that the action of the respondents in refusing to accept this request is violative of Article 14 of the Constitution. Thus, they pray for the issue of a writ in the nature of Mandamus to accept the remaining amount along with interest.

3. Separate written statements have been filed on behalf of respondent Nos. 3 and 4. It has been inter alia averred that the terms of the scheme are clear and categorical. The applicants were required to deposit 25%. Those who have not made the deposit were rightly excluded from consideration. They cannot now complain of discrimination. Thus, the respondents pray that the writ petition should be dismissed.

4. Counsel for the parties have been heard.

5. The solitary contention raised on behalf of the petitioners is that there is no distinction between the applicants who had approached the Court and others who had not done so. Resultantly, the action of the respondents in treating the two differently suffers from the vice of discrimination. On the other hand, the counsel for the respondents have contended that they have treated all ''equals'' equally. There has been no discrimination. It is only in obedience to the directions of the Court that a limited relief has been granted to persons who had obtained an interim order in their favour. In the process no discrimination has occurred.

6. A perusal of the scheme clearly indicates that the Societies had to deposit 25% of the tentative value. The deposit was an essential pre-condition to the consideration of the application. The purpose of the deposit was to ensure that the applicant was financially sound. It had the resources to pay atleast part of the construction money. The members would be in a position to contribute and undertake construction on the allotment of land. It was with this object that the requirement of 25% deposit had been made. The petitioners have admittedly failed to comply with this condition in respect of some of the members. In this situation, the respondents have confined the allotment of land etc. in respect of the members who had made the deposit and excluded those who had failed to do so.

7. It is true that some Societies had approached this Court to challenge the stipulation in the scheme. However, the challenge was negatived. It was held that the stipulation in the scheme was legal and valid. Once the claim of the Societies with regard to the validity of the condition was rejected, the respondents have implemented the provisions of the scheme uniformly qua all the'' Societies. In doing so they have acted in conformity with the scheme and not in violation thereof.

8. Mr. Dharam Vir Sharma has contended that an exception having been made in the case of some of the applicants, the concession should have been granted to all the other members of the Societies also. We are unable to accept this contention. The respondents have made the exception only in the case of such members/Societies who had got interim direction in their favour. Those who did not approach the Court and got no direction had to comply with the stipulation in the advertisement. They having failed to do so, it cannot be said that equals have been treated unequally. In fact, the administration has stood by the terms of the scheme and has applied it uniformly to all. In this context it deserves notice that with the passing of time the value of property has risen at a considerable rate. If the claim of the petitioners is upheld they would be entitled to claim allotment at the rate of Rs. 750/- per square yard. While in fact the current rate is Rs. 2500/-per square yard. The acceptance of the claim of the petitioners would open flood gates for all and result in substantial financial implications. In the circumstances we do not feel satisfied that the Administration should be put to any loss. It may also be mentioned that if the members of the petitioner-Societies are allowed to make up the deficiency of 15%, there may be many more persons who may be willing to come forward to pay 25%. It would be a never ending affair. Thus, we are not persuaded to accept the contention raised on behalf of the petitioners.

9. Mr. Dharam Vir contends that the respondents have retained the deposit of 10% deposited by the members of the petitioner-Societies for a considerable length of time. It is, undoubtedly, so. However, we have no doubt that if the petitioners ask for refund, the Administration shall do not needful without any loss of time.

10. No other point has been raised.

11. In view of the above, we find no merit in these petitions. These are, consequently, dismissed. However, in the circumstances of the case, we make no order as to costs.

12. Petitions dismissed.

