

(1985) 07 RAJ CK 0058

In the Rajasthan High Court

Case No : Civil Special Appeal No. 135 of 1985

Om Prakash Gaur

APPELLANT

Vs

Rajasthan Housing Board and Others

RESPONDENT

Date of Decision : 22-07-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) WLN 266

Hon'ble Judges : S.M. Jain, J;S.K. Mal Lodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.K. Mal Lodha, J.—By this appeal u/s 18 of the Rajasthan High Court Ordinance, 1949, the unsuccessful petitioner questions the correctness of the order dated April 4, 1985 of the learned single Judge by which his petition under Article 226 of the Constitution of India was dismissed. The petitioner-appellant applied for registration under the General Registration Scheme, 1979 issued by the Rajasthan Housing Board, Jaipur by depositing a sum of Rs. 4,600/- on January 13, 1980 for allotment of house in the category of Middle Income-Group II under Item No. 2-7 of the Scheme. The registration certificate dated December 15, 1980 was issued by the Rajasthan Housing Board ("Board here in") under Rule 20(ii) of the General Registration Scheme, 1979. The Board again invited option through Lottery No. 4 in the year 1980-81 for allotment of house including the M.I.G.-II category. The petitioner-appellant submitted his option application form keeping in view the cost of the house mentioned in the General Registration Scheme, 1979. The house reserved in Lottery No. 4 held on January 19, 1982 was allotted to the petitioner on October 9, 1982. After the reservation of the house, the petitioner-appellant was asked vide Ex. 2 to deposit a sum of Rs. 8800/- in two equal instalments vide letter dated January 21, 1982. The petitioner-appellant deposited the instalments. The Housing Officer, Rajasthan Housing Board, Jaipur issued an allotment-cum-possession letter Ex. 5 dated July

28, 1983 containing inter-alia, the cost of the house as well. The petitioner-appellant filed the writ petition on May, 1984 seeking to quash the letter Ex. 5 dated July 28, 1983 to the extent a sum in excess of Rs. 42,000/- was demanded from him. A show cause notice was issued and the respondents contested the writ petition controverting the grounds on which the petitioner-appellant claimed the reliefs in the writ petition. The learned single Judge repelled the following three contentions that were raised before him:

- (1) that the Housing Board was not competent to increase the price and compel the petitioner-appellant to make payment of the increased price,
- (2) that the letter Ex. 5 was issued by the Housing Officer who had no jurisdiction to do so, as the Board has not increased the price of the house allotted to the petitioner-appellant,
- (3) that the respondents were estopped from increasing the price.

2. We have heard Mr. P.P. Choudhary, learned counsel for the appellant at some length. He has reiterated the very same three contentions which were raised before the learned single Judge. Section 34 of the Rajasthan Housing Board Act, 1970 is not attracted in this case, for, it deals with the variation of Housing Schemes and it is provided therein that if any Scheme is varied, then the variation shall not be made if it involves an expenditure in excess of 10% of the amount as included in the budget approved by the State Government for the execution of any such Housing Scheme or if it affects the scope or purpose of such Scheme. Here, by means of the letter Ex. 5, the petitioner was informed regarding the cost of the house which was allotted to him. There is no question of variation of the Scheme. By Condition No. 1.12 of the General Terms and Conditions for Registration and Disposal of Property, the Board has been authorised to fix the price of the house built by it, whether disposed on outright or hire purchase basis and its decision regarding the fixing of the price has been made final. The other important condition relevant for the present purpose is 1.18 which is as under:

1.18. Although all efforts are made to keep the sale costs of houses within the ceiling fixed by the Board and those of the loaning agencies such as HUDCO, there can be situations when the costs increase such ceilings. Because of the Board having no funds of its own, such increased cost has to be borne by allottees themselves. In such cases so as to alleviate the hardship to hire purchase allottees which shall result if the extra costs beyond the ceiling limits are taken from allottees in one instalment only, the recovery thereof shall be made in the number of instalments as mentioned in table below, each instalment being recovered quarterly and after levying the necessary interest charges applicable to that particular income category.

3. A perusal of the aforesaid condition shows that the Board is competent to increase the price beyond the ceiling under certain circumstances, and one is increase in the cost of construction. In the face of Condition No. 1.18 there

cannot be any room for debate that the Board is competent to increase the price which it has done in the case of the petitioner-appellant. The increase in this case, is clear from Ex. 5, is on account of the increase in the cost of construction. The learned single Judge was, therefore, right in holding that the Board was competent to increase the price by way of revision.

4. As regards the second contention, that the Housing Officer was not competent to issue the letter Ex. 5 pertaining to the increased price, suffice it to mention that no specific plea in the writ petition has been taken that the Board did not authorise the Housing Officer to issue the letter Ex. 5 to the petitioner-appellant. It also needs to be mentioned that learned counsel for the appellant could not successfully show that in writ petition an averment has been made to the effect that the Board has not increased the price. The learned single Judge was right when he observed that the Housing Officer has merely issued the letter Ex 5 acting as an executive authority of the Board. It is the Board which has to determine the increased costs and, therefore, in the normal course until and unless a contrary is shown, the Housing Officer has merely communicated to the petitioner-appellant about the increased cost of the house by the letter Ex. 5.

5. An argument of estoppel has also been raised before us, but we regret, we have not been able to follow it. When the aforesaid Condition No. 1.18 empowers the Board to increase the price of the house allotted to the petitioner-appellant, how the doctrine of estoppel can be attracted. It was also rightly rejected by the learned single Judge.

6. Learned counsel for the appellant invited our attention to a decision reported in *Gujrat State Financial Corporation v. Lotus Hotels Pvt. Ltd.*. It may be mentioned that it is beside the point.

7. No other point survives for our consideration.

8. The appeal is dismissed summarily.