
(2003) 03 KL CK 0133
In the High Court Of Kerala
Case No : O.P. No. 18758 of 2002 (G)

P.C. Kuttan

APPELLANT

Vs

The Secretary and Another

RESPONDENT

Date of Decision : 21-03-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Contract Act, 1872 — Section 23

Citation : (2004) 1 KLJ 721

Hon'ble Judges : Kurian Joseph, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : P.C. Kuttan, for the Appellant; T.R. Harikumar, SC, KSHB, for the Respondent

Final Decision : Dismissed

Judgement

Kurian Joseph, J.—The Kerala State Housing Board, hereinafter referred to as the. Housing Board, undertook a housing project - Tririkkakkara Housing Scheme - in 1982. The allotment was made fixing only a tentative price since Land Acquisition Reference were pending. On finalising the proceedings, additional demands were made. Allottees attribute lapses and laches on the part of the Housing Board. This is essentially the subject matter in all these cases. O.R No. 12610/1991 leading to Writ Appeal No. 37 of 1998 at the instance of the petitioner is filed by the allottees association and the other two cases by individual allottees. Apart from the common cause the petitioner in O.R No. 18758/2002 has an individual grievance which we shall deal with separately.

2. The petitioner are mainly aggrieved because of the demand by the Housing Board for the payment of the enhanced compensation in respect of the acquired land. The main prayer in O.R No. 12610/1991 filed by the association is for a direction to the Housing Board to bear proportionately, if not completely, the burden of the compensation determined by the civil courts in respect of lands acquired by the Housing Board for housing schemes. In the Thrikkakkara

Satellite Township, Thrikkakara, Cochin-30".

3. The petitioner in O.R No. 12243/1993 has made a prayer "to declare that the clause 6,9,10,13,15,18,20 and 25 of Ext.P2 indenture are against public policy and are not enforceable". The declaration is also sought on the ground of violation of Article 14 of the Constitution of India. The petitioner in O.R No. 18758/2002 has made a prayer for refund of the excess amounts collected.

4. The Housing Board allotted the buildings from 1982 onwards. Ext. P2 in O.R No. 12243/1993 is the standard form agreement for the deal. In the introductory paragraph to Ext. P2 agreement it is made clear that the value fixed at the time of the allotment is tentative and is liable to be revised on settlement of the land value and also on settlement of the entire accounts. The relevant portion reads as follows :-

AND WHEREAS the compensation payable for acquisition of lands for the aforesaid scheme under the provisions of the Land Acquisition Act, remains uncertain as the erstwhile owners of the said lands are pursuing the matter for payment of increased compensation for such lands in Land Acquisition References pending before courts and they are also likely to file appeals against the decree passed thereon where for the land value, service charges for providing amenities fixed hereunder is purely tentative and provisional and are bound to be revised at a later stage in accordance with the decision of Courts referred to above and also on the final settlement of accounts for the development works and the works for providing amenities undertaken with respect to the scheme.

AND WHEREAS the land value, service charges for providing amenities fixed hereunder is purely tentative and provisional and is bound to be revised at later stage taking into account the enhanced compensation awarded by Courts and Tribunals, the costs incurred by the Board 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 and the party of the second part has agreed to pay the revised rates to be fixed by the Board and agreed to purchase the property in the manner hereinafter appearing.

Clause 3 of the agreement reads as follows :-

3. The land value, service charges, for providing amenities as fixed in this deed is tentative and provisional for the reasons described in the preamble to this deed and the party of the second part thereby specifically agrees that the price so fixed is subject to revision by the Board.

Clause 9 reads as follows :-

9. 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 Land Board or / and its predecessor in interest for prosecuting such proceedings in Courts and Tribunals and 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

5. Sri. S. Radhakrishnan, learned counsel appearing for the petitioners in the former two cases vehemently contends that the Housing Board did not show due diligence in prosecuting the Land Acquisition Reference Cases. Still further, it is contended that there was culpable delay on the part of the Housing Board in depositing the amounts in court and consequently there is burden of heavy interest. Learned counsel submits that the Housing Board should have got itself impleaded as an interested person in the Reference Cases. On these counts it is submitted that the allottees cannot be made liable for the enhanced compensation.

6. Sri. Harikumar, learned counsel appearing for the Housing Board submits that the allottees are bound by the agreements executed by them. It is submitted that demands are made only in terms of the agreement. Still further, it is contended that the Housing Board had taken all steps in properly prosecuting the Land Acquisition Reference Cases. It is also submitted that the allottees being fully aware of the pendency of the Land Acquisition Reference Cases could have got themselves impleaded, being interested parties in the Reference Cases.

7. Learned single Judge by judgment dated 08-10-1997 in O.P. No. 12610/ 1991 though came down heavily on the lethargy on the part of the Housing Board, declined to interfere in the matter. However, the learned single Judge directed the Housing Board to pursue the cases vigorously even by filing review petitions. Learned counsel for the Housing Board submits that accordingly review petitions had been filed and proper action was taken.

8. Be that as it may, allottees have executed the agreements at the time of allotment in the year 1982, 03-07-1982 in the case of, the petitioner in O.P. No. 12243/1993. As seen from the portions extracted from the agreement, the allottees were put to notice that the land value is liable to be revised based on the decisions in the pending Land Acquisition Reference Cases. Still further, the parties agreed that the value is liable to be revised taking into account "the increased cost of development works and amenities undertaken with respect to the scheme". True it is a standard form agreement. All the same, going by the terms of the agreement as observed above, it cannot be said that they are in any way unreasonable. In the factual situation, such terms were inevitable in the interests of both the Housing Board and the allottees.

9. That apart, the agreements have been executed by the allottees in the year 1982. The original petition challenging the terms of the agreement as unreasonable and against public policy is filed only in 1993. It will not be proper for this court under Article 226 of the Constitution of India to go into the terms of

the agreement executed between the parties and make a declaration as to whether a particular clause in the agreement is in violation of section 23 of the Contract Act, on the ground of a contract against the public policy. Those are matters for the parties to approach the civil court and seek appropriate reliefs.

10. Once a transaction is governed by an agreement, the parties to the transaction are bound by the terms of the agreement. In case of a grievance regarding either violation of the terms of the agreement or delayed performance of the respective obligations, it is for the aggrieved party to establish such a case before the civil court and seek appropriate remedies. Writ jurisdiction under Article 226 cannot be invoked in such circumstances.

11. Regarding the contention of alleged lapses on the part of the Housing Board in prosecuting the Land Acquisition Reference Cases and on the alleged delay on the part of the Housing Board in depositing the amounts, it is for the parties to seek remedy, if any, before the appropriate forum. The parties executed the agreement in the year 1982. The terms of the agreement specifically provided for the contingencies with regard to the revision of rates. Admittedly the allottees did not take any steps to follow up the matter before the courts where the Land Acquisition Reference Cases have been pending. It will not be proper for this court under Article 226 of the Constitution of India in such circumstances to invoke its extraordinary jurisdiction and grant any relief to the petitioners.

12. Corning to the facts of the petitioner in O.R No. 18758/2002, it can be seen that the petitioner has various disputes With regard to mainly the accounts. In fact the petitioner himself has stated that he had approached the Consumer Disputes Redressal Commission in O.R No. 129/1991. Further, it is submitted that he had approached the Lok Ayukta by complaint No. 9/2002. Still further, it is stated in the original petition that he had also approached the Commission for Protection of Human Rights as per Complaint No. 1515/2001. Admittedly all these forums have been approached in respect of the very same dispute raised in this original petition. For that only reason this court wll not be justified in further investigating the matter under Article 226 of the Constitution of India. If the petitioner still disputes the accounts it rs for him to approach the civil court in a suit for rendition of accounts where in alone the petitioner could properly and effectively adjudicate the factual disputes raised in this original petition. We do not find any infirmity in the view taken by the learned single Judge in the judgment in O.R No. 12610/1991. Therefore, Writ Appeal No. 37 of 1998 is dismissed: O.P. Nos. 12243/1993 and O.P No. 18758 of 2002 are also dismissed on the grounds already stated above. No costs.