
(2014) 01 AHC CK 0130
In the Allahabad High Court
Case No : C.M.W.P. No. 5529 of 2014

Rajveer Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Citation : (2014) 104 ALR 361 : (2014) 123 RD 522 : (2014) 2 UPLBEC 1494

Hon'ble Judges : Anil Kumar Agarwal, J; Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : Pankaj Dubey, Advocate for the Appellant

Final Decision : Dismissed

Judgement

A.P. Sahi and Anil Kumar Agarwal, JJ.—Heard Sri Pankaj Dubey, learned Counsel for the petitioners. The challenge raised in this petition is with regard to demand raised by Respondent No. 3 on the ground that firstly the respondents ought to have put the petitioners to notice and secondly they had no authority to realise any such enhanced amount. The submission is based on the judgment in the case of Ishwar Dass Nassa and Others Vs. State of Haryana and Others, . Sri Dubey submits that as per paragraph No. 12 of the said judgment, the impugned realisation cannot be made even accepting the terms and conditions of final costing of the respondents. He further contends that had the respondent - authority put the petitioners to notice then even assuming though not admitting that such an amount could be realized, the quantum ought to have been fixed as it is a financial liability that could be saddled only after putting the petitioners to notice. The contention, therefore, in the alternative is that the demand raised deserves to be set aside.

2. On the other hand, Sri Nishith Yadav has invited the attention of the Court to a similar matter having been dismissed by this Court in the case of Jai Prakash and others v. State of U.P. and others, Writ Petition No. 2714 of 2014, decided on 17.1.2014, and to the decision in the case of Shimla Development Authority Vs.

Asha Rani, , to urge that the authority is entitled to realise the enhanced amount which in the present case is on account of a third factor of judicial intervention by virtue of the Full Bench decision in the case of 972110--> .

3. Having considered the submissions raised, the final costing of the house or accommodation is as per Clause A-4, extracted herein below:

A-4. Final Cost of House

The premium/cost of house as indicated in the brochure is tentative. The final cost of a unit will be derived after complete construction of the unit and may vary as per the actual dimensions of the house and cost of acquisition, development and construction which shall be acceptable to the allottee. However, if the actual cost comes out more than 20% of the tentative cost, the allottee will have the right to take the refund of his/her entire deposit without any interest and surrender the allotment. It is proposed to provide electronic security service for the houses. Charges and terms and conditions for such service shall be intimated at the time of execution of lease deed. The connection charges of all services shall be payable separately at the time of execution of lease deed.

4. In the instant case, as per the aforesaid clause pointed out by Sri Dubey himself, there is no bar of a time period except for the fact that the calculation has to be made on the rates payable separately at the time of execution of the lease-deed. The last sentence of the said clause, therefore, is not a clause of limitation as was existing in the case of *Ishwar Dass Nassa* (supra) on which reliance has been placed. In that case, the Supreme Court interpreted a particular clause which prohibited such realisation after a period of 7 years. Thus, the terms and conditions therein were entirely different and accordingly the ratio of the judgment in the case of *Ishwar Dass Nassa* (supra) does not get attracted on the facts of the present case.

5. To the contrary as submitted by Sri Yadav, the judgment in the case of *Shimla Development Authority* (supra), paragraph No. 4 recites as under:

Under those circumstances, this Court had held that unless otherwise provided in the scheme, the allottee is liable to make payment of the price as on the date of the communication of the letter of allotment. The ratio therein is inapplicable to the facts in this case. As held earlier, the allottee is to bear the burden of not only the escalation in construction costs but also of the escalation of the value of the land when the Court enhanced the compensation under provisions of the Land Acquisition Act at various stages.

6. A perusal thereof would indicate that the escalation of price of land can also be a ground at the time of final costing to call upon the allottee to make such enhanced payment. This has also been indicated in the judgment of *Gajraj* (supra).

7. So far as question of quantum is concerned, we have already taken a view that the petitioners should have first approach the authority itself under the

Right to Information Act seeking information with regard to details of such costing and then in the event, if any, such wrong fixation is pointed out by the petitioners, they may have a cause of action to approach the competent forum thereafter.

8. Consequently, for the reasons aforesaid, we are not inclined to interfere at this stage. With the aforesaid observations, the writ petition is dismissed.