
(1985) 05 MP CK 0003
In the Madhya Pradesh High Court
Case No : M.P. No. 83 of 1985

Sadhna Agrawal and Others	Vs	APPELLANT
Indore Development Authority and Others		RESPONDENT

Date of Decision : 01-05-1985

Acts Referred:

Madhya Pradesh Nagar Tatha Gramin Nivesh Adhiniyam, 1973 — Section 38, 39, 49

Citation : (1986) J LJ 94

Hon'ble Judges : R.K. Varma, J; P.D. Mulye, J

Bench : Division Bench

Advocate : M.K. Karpe, for the Appellant; S.R. Jain, Deputy Government Advocate for Respondents No. 2, for the Respondent

Final Decision : Allowed

Judgement

R.K. Varma, J.—This is a petition under Article 226 of the Constitution of India filed by the petitioners who have made a grievance against the arbitrary dealings of the Indore Development Authority vis-a-vis the petitioners and others who are the prospective purchasers of flat in Nav-lakhe Complex constructed by the Indore Development Authority in its Scheme No. 31.

2. The petitioners have stated in the opening paragraph of their petition that they have filed this petition not only in their personal capacity as aggrieved parties but also in the capacity of representatives of over 100 other persons aggrieved by the very same conduct/decision/orders of Indore Development Authority, who attended and participated in meetings of such persons as per list Appendix "A" appended to the petition and have desired to file and support the petition and also in the capacity of responsible citizens agitating against wrongs by a public body and authority, in the public interest. The petitioners have prayed that this petition be treated as a public interest petition for protection of interests of the public and of a large class of persons, besides being a personal petition. The petitioners aver that they have the Constitutional right to ensure, that the State and other public authorities function in accordance with law and do not

transgress the Constitutional provisions and function within the sphere and in the manner determined by law.

3. Before coming to the contentions raised by the petitioners it would be proper to set out the statutory background of the Indore Development Authority and the relevant facts of this case.

4. The Indore Development Authority (Respondent No. I) has been constituted under the provisions of M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 (hereinafter referred to as "the Adhiniyam"). The objects of the Adhiniyam are stated as under :-

An Act to make provision for planning and development and use of land, to make better provision for the preparation of development plans and zoning plans with a view to ensuring town planning scheme are made in a proper manner and their execution is made effective, to constitute Town and Country Planning Authority for proper implementation of town and country development plan, to provide for the development plans and administration of special areas through special Area Development Authority to make provision for the compulsory acquisition of land required for the purposes of the development plans and for purposes concerted with the matters aforesaid.

5. The establishment and incorporation of Town and Country Development Authority and the nature of town development schemes with which such authority is concerned are provided under Sections 38, 39 and 49 of the Adhiniyam and it would be pertinent to reproduce these provisions at the outset asunder ; -

38. Establishment of Town and Country Development Authority :-

(1) The State Government, may, by notification establish a Town and Country Development Authority by such name and for such area as may be specified in the notification.

(2) The duty of implementing the proposal in the development plan, preparing one or more town development schemes and acquisition and development of land for the purpose of expansion or improvement of the area specified in the notification under subsection (1) shall, subject to the provisions of this Act vest in the Town and Country Development Authority established for the said area.

39. Incorporation of Town and Country Development Authority-

Every Town and Country Development Authority shall be a body corporate by the name specified in the notification u/s 38, and shall have perpetual succession and a common seal, with power to acquire and hold property, both moveable and immoveable and subject to the provisions of this Act or any rules made thereunder, to transfer any property held by it, to contract and to do all other things necessary for the purposes of this Act and any sue and be sued in its corporate name.

49 Town development schemes-

A town development scheme may make provision for any of the following matters :-

- (i) acquisition, development and sale or leasing of land for the purpose of town expansion;
- (ii) acquisition, relaying out of rebuilding, or relocating areas which have been badly laid out or which has developed or degenerated into a slum;
- (iii) acquisition and development of land for public purposes such as housing development, development of shopping centers, cultural centers, administrative centers;
- (iv) acquisition and development of area for commercial and industrial purposes;
- (v) undertaking of such building or construction work as may be necessary to provide housing, shopping, commercial or other facilities;
- (vi) acquisition of land and its development for the purpose of laying out or remodeling of road and street patterns;
- (vii) acquisition and development of land for playground, parks, recreation centers and stadium;
- (viii) reconstruction of plots for the purposes of buildings, roads, drains, sewage lines and other similar amenities;
- (ix) any other work of nature such as would bring about environmental improvements which may be taken up by the authority with the prior approval of the State Government.

X X X X

6. The Indore Development Authority (hereinafter referred to as "the I. D. A") has been established at Indore and its activities of development operation extend to the town Development Scheme prepared by it under the Adhiniyam. As provided in Section 49 of the Adhiniyam, the I.D.A. has power to acquire and hold property, subject to the provisions of the Adhiniyam or any rules made thereunder, to transfer any property held by it, to contract and to do all things necessary for the purposes of the Adhiniyam.

7. The Town Development Scheme u/s 49 of the Adhiniyam envisages, inter alia, acquisition and development of land for housing development, development of shopping centers and undertaking of such building or construction work as may be necessary to provide housing, shopping, commercial and other facilities. Section 58 of Adhiniyam provides for disposal of land, houses, buildings and other development works and reads as under-

Subject to such rules as may be made by the State Government in this behalf,

the Town and Country Development Authority shall, by regulation, determine the procedure for the disposal of developed lands, houses, buildings and other structures.

8. The rules framed by the State Government u/s 58 read with Section 85 of the Adhiniyam and called as the Madhya Pradesh Nagar Tatha Gram Nivesh Vikasit Bhoomiyon, Grihon, Bhavanon Tatha Anya San-rachanaon Ka Vyavan Niyam, 1975 were published in the M.P. Gazette dated 16th December, 1977. These rules contemplated disposal of developed plots of the Town and Country Development Authority like the Indore Development Authority. These rules provide for construction of the building by the purchaser of plots within a period of 2 years and the construction of the building and the use of the plots shall be regulated by the Building Regulations and Zoning Regulations of the Authority. These rules do not envisage disposal of constructed houses or flats by the authority.

9. However, the Indore Development Authority, in exercise of the powers conferred by Section 58 read with Section 86 of the Adhiniyam, has framed regulations in February, 1984 which have been published in local daily newspaper "Vishwa-Bhraman" of 25th February, 1984. These regulations are called "the regulations for disposal of houses, flats, buildings and other structures, 1984" and it extends to the whole of the planning area under activity of the Indore Development Authority, Indore. These regulations, being made subsequent to the completion of Navlakha Scheme, would not be in terms applicable to the said Scheme. However, the definitions of L.I.G. and E. W. S. and the provisions of regulations 21 and 22 may be of some significance while appreciating the contention of the petitioners and as such they are reproduced hereunder :-

2. Definitions-

(f) "E.W.S." means the economically weaker sections whose annual income from all sources does not exceed Rs. 4,200/-;

(g) "L.I.G." means the low income group whose income from all sources is not less than Rs. 4,200/-and not more than Rs. 7.200/-,

Regulation 21 :

The categorisation of houses, flats, shops, etc. as HIG or MIG or on a carpet area basis indicates only the size and cost of the property and the allotment shall not be confined strictly to any particular income group. However, the LIG & EWS category of property shall be allotted only to the income group for which it is meant and this shall be clearly specified in the advertisement.

Regulation 22 :

The cost of the house, flat, shop, etc. to be constructed by the Authority under its self financing scheme shall be approximate and may vary depending on the fluctuation in the market and the contract rates. If the cost exceeds by more than 20% over the estimated cost indicated in the scheme then the Authority shall

intimate the allottee about the expected escalation in the cost. In such a contingency the allottee shall have the option to withdraw from the scheme and the full amount of registration fee and instalments paid shall be refunded to him without any deduction.

x x x x

10. The I.D.A undertook construction of a housing complex known as Navlakha Complex in its Scheme No. 31 in Indore. It proposed to construct shops and office accommodations (on rent) and multi-storied residential flats for sale on hire purchase basis to the prospective hire-purchasers. As is apparent from the memorandum issued by the I.D.A. in the year 1977, which is Annexure "P-I" to the petition, the applications were invited from the persons interested to acquire shop or office accommodation as well as from intending purchasers of multi-storied flats on hire-purchase basis. The last date for getting the applications registered in respect of the Navalakha Scheme was notified to be 31-3-1977.

11. As per the memorandum (Annexure "P-I") a deposit of Rs. 5,000/-for registration of application in respect of shop and office and a deposit of Rs. 1,000/- for a Lower Income Group (hereinafter referred to as "the L. I. O.") residential flat and a deposit of Rs. 2,000/- for Middle Income Group (hereinafter referred in as "the M. I G.") residential flat was a compulsory requirement of the registration of the application. In the Navlakha Complex Scheme No. 31, the plinth area of construction was stated to be 805 sq. ft. for a M.I.G. flat and 500 sq.ft. for a L.I.G. flat. The advance deposit of Rs. 1,000/-for the L.I.G. flat and of Rs. 2,000/- for the M.I.G. flat made at the time of registration was to be adjusted towards the price of flat later and it was provided that at the time of allotment of the flats a deposit of Rs. 11,110/- was to be made by the hire-purchaser of the M.I.G. flat and similarly a deposit of Rs. 7,500/- was to be made by the hire-purchaser of the L.I.G. flat at the time of allotment of flat and delivery of possession.

12. The hire-purchase payment plans for the M.I.G. and the L.I.G. flats aforesaid were stated as under :-

13. It was stated in the note at the foot of the hire-purchase payment plan that the cost of the flats aforesaid was based on estimate and that the definite cost would be intimated at the time of allotment. It was also stated that the estimated period for completion of the Navalakha Scheme was 2 years.

14. In response to the scheme offering hire-purchase of M.I.G. and L.I.G. flats with the assurance about area of construction, estimated cost and estimated period of construction and hire-purchase payment plan as given out by the I. D. A., the petitioners and others got their applications registered as prospective hire-purchasers and made the prescribed deposits for the purpose.

15. After a lapse of two years, the I.D.A. (Respondent No, 1) by its letter dated 5-11-1979 (Annexure "P 2" to the petition) intimated that according to the plan

approved for advance of loan by HVDCO (a financing institution) 162 M. 1. G. flats of plinth area 750 sq. ft. each, and 12 L.I.G. flats of plinth area 500 sq. ft. each would be constructed in the four blocks from 3rd floor to 7th floor of the building in Navlakha Scheme with the provision of a lift. It was also first time intimated that 50 M. J. G. and 4 L.I.G. flats would be allotted on the basis of lump-sum cash payment of full cost and it was provided that the persons desirous of purchasing en cash payment at once would be given priority over the hire-purchasers and they would also be given the privilege of choice of the flats according to the order of their registration. It was also stipulated that the allotment of flats to the registered hire- purchasers would be made in order of their registration i. e. on first come first served basis. A new condition of annual lease-rent of Rs. 150/-and Rs. 100/- to be paid by 1st June every year by the purchaser of M.I.G. and L.I.G. flats was also added in the aforesaid letter. The hire-purchase payment plan and the lump-sum payment plan for payment of the price of M.I.G. and L.I.G. flats were revised in this letter and the same were stated as under:-

16. From the above it would be seen on a comparison of the initial payment plan as intimated in August 1977 and as intimated subsequently in November 1979, that the registration fee to be deposited by the prospective purchaser was revised as Rs. 5,000/- and Rs. 3,000/- in place of Rs. 2,000/-and Rs. 1,000/-as given out originally in respect of M.I.G. and L I. G. flats in 1977. The estimated price of M.I.G. and L. I, G. flats was revised as Rs. 70,000/- and Rs. 45,000/- on the basis of outright cash payment. The cost of flat for hire purchasers, as worked out from the instalments payable within a period of 10 years, was also substantially raised as revised in the letter of November, 1979 (Annexure "P-2") as compared to the initial intimation of August, 1977. It was also made a compulsory condition for continuance of registration of the applicant purchasers that the increased registration amount of Rs. 5,000/- and Rs. 3,000/- must be paid before 30-11-1979 other-wise their registration would be cancelled.

17. After intimation of escalated costs of the flats in November, 1979 as aforesaid, the I. D A. (Respondent No. 1) once again by letters issued in October, 1980 (Annexure "P-3" to the petition) intimated to the petitioners and others a further substantial increase in the estimated cost of M.I.G. and L.I.G. flats from Rs. 70,000/- to Rs. 95,000/- and from Rs 45,000/- to Rs. 60,000/-respectively for the two types of the flats on account of rising market price in past years. The estimates were said to be revised on the basis of the prevailing market rates of the construction material. The flat of 805 sq. ft. plinth area which was described as M. I. G flat by the I.D.A. ever since 1977 (vide Annexure "P-1") appears wrongly referred to as H. I. G. flat in the letter of 1980 (.Annexure "P-3").

18. The petitioners have made a grievance that in the circumstances they were placed they had no other alternative but to concede to the arbitrary and unilateral demand of the Indore Development Authority for fear of placing their flats, deposits and dreams in jeopardy. The payments were made as demanded

in the new payment plan as intimated in Annexure "P-3".

19. The Indore Development Authority (Respondent No. 1) by its letter dated 26-12-1984 (Annexure "P-4" to the petition) again intimated to the petitioners a further hike in the cost of flats raising it to Rs. 1,30,000/- for M.I.G. and Rs. 1,16,000/- for L.I.G. flats respectively. This heavy increase in the cost once again without any proper justification has been the immediate cause of filing the present petition by the petitioners. The said letter also intimated for the first time an increase in the area of constructed flats. The area of a M.I.G. flats has been stated to be 808 sq. ft in this letter of 26-12-1984., as against 805 sq. ft. as promised initially in 1977 (Annexure "PI") and subsequently modified as 750 sq. ft. as stated in letter of November 1979 (Annexure "P-2"). Similarly the area of construction of an L.I.G. as already constructed, has been stated to be 714.94 in place of 508 sq, ft. as initially intimated at all earlier stages since 1977.

20. It was, however, not explained in the letter of December, 1984 (Annexure "P-4") as to whether the difference in the area has come about on account of faulty measurement during construction or because of any unilateral decision by the Indore Development Authority at any time before the actual construction. The petitioners attribute the alleged increase to be a juggling of figures by including in the measurement what was not liable to be included as per the initial plan or on account of some new mode of measurement different from what must have been adopted at the time of starting the construction because at no stage there was any intimation of changing the area of the flat since the letter of November 1979 issued by the Indore Development Authority (Annexure "P-2"). It appears that the construction of the building had been completed in 1982 and the flats were ready for allotment but the allotment with possession could not be made in respect of the petitioners. The I. D. A., it appears, could not allot and give possession of the flats to the petitioners in 1982 because of challenge made in a writ petition to the irregular allotment of un-allotted 56 flats and non framing of rules.

21. The letter of December, 1984 (Annexure "P-4") mainly assigns two reasons for the further hike in the cost of construction since October 1982. One reason alleged is that the area of the flat has been increased and another reason stated is that during the intervening period the price of construction material had increased. It has not been made clear as to what was the intervening period and it appears that the price rate of the construction material as ruling in December, 1984 the date of Annexure "P-4" has been taken into account although the construction had been completed in the year 1982. The letter Annexure "P-4" which demanded the payment of this colossal increase from the Middle Income Group applicants and Lower income Group applicants informed that if the amounts demanded were not paid before 31-1-1985 the registration of the petitioners for allotment would be cancelled and 20% of the total deposit will be forfeited.

22. It is submitted by the petitioners that the increase in cost of the flats

intimated by the Indore Development Authority is unexplained, misleading, incompetent, unauthorised and totally divorced from the price structure prevailing in the relevant initial period of two years or even thereafter. The petitioners have also alleged that the respondent No. 1-I. D. A. seems to have secretly reached the high figures of the costs by some private accounting method of including the un-includible like the price hike due to its own faults and also for the period after completion of the construction of the flats in 1982 upto the date of impugned letter of December, 1984 (Annexure "P-4") and adding un-agreed heavy interest and compounding it, even for the period during which possession was not delivered. The petitioners further allege that the Indore Development Authority has failed to furnish details even after demand made on behalf of the petitioners and other applicants/allottees. The grievance has also been made in the petition that the Indore Development Authority seeks to convert the originally promised tenure of flats from freehold to leasehold and that the Indore Development Authority seeks to practice discrimination by wrongfully classifying allottees into outright purchasers and hire-purchasers against its original promise.

23. In support of their allegation that there has been no real increase in the area of the flats constructed by the Indore Development Authority for M.I.G. or L.I.G. applicants, the petitioners have filed a copy of the respondent's own publication, a monthly paper entitled PRADHIKARAN SAMACHAR (Annexure "P-8" to the petition). This is a monthly newspaper of the Indore Development Authority, dated 7th December, 1984 which states that 162 flats of area 750 sq. ft each and 12 flats of area 500 sq. ft. each have all been registered for sale on hire-purchase basis in the Navlakha Complex Building. It appears that it was only after 7th December, 1984 that the Indore Development Authority either discovered the area of the flats to be more than what it had been declaring throughout since 1977 or that as a result of some changed mode of measurement an increase in the area of the construction has been announced. The petitioners submit that any change in the area as a result of new mode of measurement cannot justify increase of cost on that basis because the cost of flats is dependant on the cost of construction of Navlakha Building as a whole which is constructed on columns and no error of measurement has even been asserted by the Indore Development Authority.

24. The petitioners have alleged that the respondent Indore Development Authority has handed over possession of 20 choice flats without turn in a highly partial and discriminatory manner, so much so that it has parted with possession of common community area, as originally reserved for flat-holders, in favour of a single party.

25. In short the grievance of the petitioners is that the Indore Development Authority has unilaterally and arbitrarily increased the costs of the flats from time to time in a fanciful manner, requiring peremptory deposits of increased amounts on each every occasion and there has been failure on the part of the Indore Development Authority in explaining or supplying the details of accounts to

justify their action of increasing the costs at each occasion. The Indore Development Authority cannot propose categorisation and preferential treatment of persons paying lump-sum price to the disadvantage of the petitioners who got themselves previously registered for allotment of flats on hire-purchase basis which was the only basis for disposal of flats as originally announced by the Indore Development Authority. The conversion of freehold rights, as originally promised to leasehold rights now, with provisions of recovery of site lease rent, is also arbitrary. The removal of common community area from prospective flat-folders and allotting it to one single allottee is again arbitrary and unjustified.

26. Although the petitioners have alleged the facts to demonstrate the arbitrary dealing of the Indore Development Authority vis-vis the petitioners and other allottees, the real controversy between the petitioners and the Indore Development Authority arises out of the demand by the Indore Development Authority from each of the petitioners and other allottees for payment as cost of the flat, an amount much in excess of the estimated cost indicated at earlier stages. The Indore Development Authority at the outset had invited applications from the petitioners and others intending to purchase on hire-purchase basis M. I. G. flats in Navlakha Scheme by 31-8-1977 and offered to construct the flats at estimated costs which apparently were reasonable and the petitioners and others came forward to get themselves registered as applicants/allottees in the Navlakha Scheme. The Indore Development Authority had at that time also given out the estimated period for completion of the Navlakha Scheme as 2 years But 2 years elapsed and the scheme was not completed. Then in November, 1979 the Indore Development Authority revised and raised the estimated price of M.I.G. and L I. G. flats as Rs. 70,000/- and Rs. 45,000/- respectively, as lump-sum price. Thereafter in October, 1980 once again the Indore Development Authority substantially increased the estimated costs of M.I.G. and L.I.G. flats from Rs. 70,000/- to Rs. 95,000/- and from Rs. 45,000/- to Rs. 60,000/- respectively. The flats were constructed by 1982 and awaited allotment with delivery of possession to the petitioners and other applicants. Finally in December, 1984 the Indore Development Authority announced a further hike in the costs of the flats raising it to Rs. 1,30,000/- for M.I.G. and Rs. 1,16,000/- for L.I.G. flats respectively.

27. The petitioners and other applicants who had got themselves registered with deposit of necessary fees abided by the direction of increased deposit of registration fee at each stage though not without demur. But when finally the Indore Development Corporation announced the increase in the costs for the 3rd time in December, 1984 once again in a big way, the petitioners and others felt constrained to challenge by this writ petition this unilateral increase of cost by the Indore Development Authority as arbitrary being far in excess of the original estimates, and not justified even by the appreciation of the price of the material during the period of construction. Although the Indore Development Authority has been announcing the cost increase on the ground of appreciation of price of material of construction at every stage, it has failed to indicate as to how the cost increase of the flats is commensurate with the appreciation of price of

construction materials. The petitioners having registered themselves in the year 1977 in the hope of getting their M.I.G. and L.I.G. flats at moderate and reasonable price after 2 years as initially announced by the Indore Development Authority waited in the hope of fulfilling their need and ambition of owning flats on completion of the Navlakha Scheme. The Indore Development Authority took inordinate time in completing the Scheme which was actually completed in the year 1982. In the meanwhile, the Indore Development Authority intimated to the petitioners increase in the cost of the flats in November, 1979, and October, 1980 and December, 1984 and announced the hike in the cost of M.I. G. flat as Rs. 70,000/-, then Rs. 95,000/- and finally Rs. 1,30,000/-. Similarly for L.I.G. flats the increasing spiral of cost was announced as Rs. 45,000/-, then Rs. 60,000/-, and finally Rs. 1,16,000/-. It is the contention of the petitioners that such a colossal increase of cost over the initially estimated cost given out by the Indore Development Authority is arbitrary and cannot be comprehended since it is disproportionately high in relation to the price rise of the construction material which has been the declared reason for increasing the cost of the flat. The Indore Development Authority has never disclosed in spite of demand made by the petitioners as to how the figures of cost-increase over the originally estimated costs have been arrived at on different occasions. It is, therefore, the arguments of the petitioners that the Indore Development Authority has inflated the price by making unreasonable additions to the original estimated costs by arbitrarily including the un-includible in the cost structure of the flats. Learned counsel appearing for the petitioners contended that the flats should have been constructed in a period of 2 years as announced by the Indore Development Authority in August, 1977 and the flats should have been ready for allotment, in November, 1979 when the revised estimated cost of M.I.G. and L. I. G. was first announced as Rs. 70,000/- and Rs. 45,000 respectively. Further increase in the costs as announced in October, 1980 from Rs. 70,000/- and Rs. 95,000/- for M.I.G. flat and from Rs. 45,000/- and 60,000/- for L.I.G. flat was not justified on the ground of rising market price because it was the Indore Development Authority which was responsible for the unreasonable delay in construction which provided scope for rise in market price.

28. The learned counsel for the petitioners contended that the Indore Development Authority by arbitrarily inflating the cost of M. J. G. and L.I.G. flats has brought about an unfair competition between the originally registered hire-purchasers of M.I.G. and L. I. G flats and the other more affluent purchasers coming forward to purchase for lump-sum price. By delaying construction and repeatedly revising the estimated cost and thereby escalating the cost by leaps and bounds, the Indore Development Authority has in effect pressurised and also induced the petitioners and other registered applicants to withdraw from the scheme and get their registration cancelled leaving a free hand to the Indore Development Corporation to have fresh dealings with new more affluent customers for purchases of the flats meant for the applicants originally registered.

29. The regulations made by the Indore Development Authority in February,

1984 in exercise of powers u/s 58 read with Sec. 86 of the Adhiniyam aforesaid make it clear that the L.I.G. flats as required by regulation 21, has to be allotted only to a person belonging to lower income group (L. I. G.). As per the definition of L. I G. provided in clause (o) of regulation 2 of the Regulations aforesaid "L. I. G." means the low income group whose income from all sources is not less than Rs. 4,200/- and not more than Rs. 7,200/-. The cost of the L.I.G. flat in August, 1977 was reasonably within the means of the low income group. After the Indore Development Authority revised the estimated cost of L.I.G. in November, 1979 for the first time its cost became Rs. 45,000/- On second revision of the estimated cost by the Indore Development Authority in October, 1980 the cost of the L.I.G. flat escalated to Rs. 60,000/. and finally the actual cost intimated in December, 1981 has gone up to Rs. 1,16,00 /- which is obviously prohibitive cost for L.I.G. purchaser whose annual income from all sources does not exceed Rs. 7,200/-. The object of disposal of house and flats meant for L. I. O-as defined in the regulation cannot obviously be achieved in favour of L.I.G. applicants if the cost price is increased by more than one hundred per cent as in the instant case. In the light of the provisions of the regulations, therefore, the escalation in the estimated cost of the L.I.G. flat is patently unreasonable and the fixation of cost appears to be arbitrary.

30. Even in case of M.I.G, flat it would be reasonable to assume that such categorisation of flat by reference to income of applicant is not without significance. The escalated cost of Rs. 1,30,000/-after the first revised estimated cost of Rs. 70,000/- in November, 1979 prima facie seems arbitrary unless satisfactorily explained by the Indore Development Authority.

31. The Indore Development Authority has in Annexure "R-1" to return given a work out of the cost of construction of Navlakha Complex, Indore. This shows payments made and estimated amounts of payment to be made in respect of pending bills of various miscellaneous work got done departmentally from time to time, payment made to M. P E. B, extra cost of cement even though cement has been issued departmentally at the cost of Rs. 29-00per bag. Among the other items adding to the cost of construction as per Annexure "R-I" are Bank; guarantee and Bank commission charges for the Bank guarantees given to HUDCO, supervision and administrative charges of the Indore Development Authority interest paid to HUDCO till 31-12-1984 to the tune of over fifteen lacs and balance liability payable to HUDCO loan instalment still due and interest thereon totaling over fifteen lacs and consultancy charges.

32. The total of the amounts against various items shown to be the components of cost of Navlakha Complex in Annexure "R-I" is given as four Crores fifty lacs and odd The total built up area (excluding service area) is shown to be a little more than 2.5 lacs sq. ft. and the construction cost is worked out to be Rs. 183,22 per sq. ft.

33. On the basis of the rate of cost of construction of Rs. 183 22 per sq. ft. the cost of what is stated to be "A" type flat of area 808.12 sq. ft. has been

evaluated as Rs. 1,48,063.74 and the cost of what is stated to be "B" type flat of area 715 sq. ft. has been evaluated as Rs. 1,31,002.30. But these figures are again a modification over those mentioned in the Indore Development Authority's letter dated 26-12-1984 (Annexure "P-4") which has been sought to be quashed by this petition.

34. The structural consultant Shri Sudhakar Kale of the I.D.A. in the Navlakha Complex in Scheme No. 31 has sworn an affidavit describing the two type of flats numbering 162 and 12 respectively, as H. 1. G. and M.I.G. flats whereas those are in fact M.I.G. and L.I.G. flats as originally planned and constructed. There appears no declared reason necessitating the change of name of these flats and it may well be that the Indore Development Authority may have felt it necessary because of more than hundred percent hike of cost claimed by the Indore Development Authority.

35. The work out of cost shown in Annexure "R-1" is cryptic and ambiguous and cannot be compared with any clarity as to how the original estimated costs have been exceeded by more than hundred percent. The petitioners have all along complained that the escalation of cost has been arbitrary and they have particularly questioned the excessive rise of cost in October, 1984 and December, 1984. But the Indore Development Authority in their return have not tried to explain the escalation with reference to the estimated cost of November, 1979.

36. On the contrary when the learned counsel for the Indore Development Authority during the course of hearing was given the suggestion to file the documents detailing out enhancement of cost as estimated on different occasions so as to satisfactorily explain more than 100% hike in the cost of the M.I.G. and L.I.G. flats since 1977, the learned counsel categorically stated that he did not feel the necessity of filing those documents detailing out the estimates and that he relied on Annexure "R-1" only as it works out the actual costs. As noticed earlier the documents Annexure "R-1" does not give any clear picture about the increase in cost and is insufficient to meet the allegation of the petitioners that the alleged increase in cost is unexplained, misleading, incompetent, unauthorised and totally divorced from price structure prevailing in the relevant initial period of two years or even thereafter and that the Indore Development Authority seems to have (secretly) reached it by some private accounting method of including the un-includible, like price hike due to its own fault in such a long delay, calculation of un-agreed heavy interest and compounding it, even for the period during which possession was not delivered.

37. It is admitted position that the residential flats of the Navlakha Complex had been constructed by 1982. The Indore Development Authority is, therefore, not justified in taking into account the period subsequent to the completion of the construction in 1982 upto 31-12-1984 for the purpose of working out the cost with reference to market price after 1982 or including other items of cost which could not have entered in determining the cost of the flats if it had been worked out in 1982 itself. The Annexure "R-1" is, therefore, of no value for

determining the actual cost of the residential flats.

38. The allegation of the petitioners that the area of the residential flats till completion of construction did not get enlarged and it was by some different mode of measurement adopted by the Indore Development Authority that the actual area is now being shown increased long after its construction, appears to be substantially true. Even in the Indore Development Authority's bulletin Pradhikaran Samachar dated 7-12-1984 filed an Annexure "P-8" to the petition, the area of the 162 flats is stated to be 750 sq. ft. and of the 12 flats is stated to be 500 sq. ft. The letter of the Indore Development Authority dated 26-12-1984 (Annexure "P-4") quashing of which has been sought in this writ petition, also negatives the correctness of the improved measurements now given out by the Indore Development Authority in Annexure "R-1" an undated document, which appears to have been prepared only for the purpose of filing with the return.

39. Respondent No. 1, the Indore Development Authority has raised a preliminary objection to the maintainability of the petition on the ground that it seeks enforcement of contractual rights and involves disputed question of fact. According to the respondent No. 1, the only question which is required to be determined in the case is the extent of escalation in the cost of flats constructed by the Indore Development Authority and for deciding this question a writ petition is not the proper remedy. Learned counsel submitted that the remedy of the petitioners can only be by way of a suit for specific performance or otherwise and not by way of a writ petition.

40. In support of his preliminary objection as stated above, learned Counsel for the Respondent No. 1 has cited before us the following cases of the Supreme Court, viz., Smt. Gunwant Kaur and Others Vs. Municipal Committee, Bhatinda and Others, , Kulchinder Singh and Others Vs. Hardayal Singh Brar and Others, , Radhakrishna Agarwal and Others Vs. State of Bihar and Others, , Premchand Jain and Others v. The State of Madhya Pradesh and Another (AIR 1973 MP 173), Anant Ram Manocha Vs. S. Prasad and Others, and Jasjit Films (P) Ltd. and Another Vs. Delhi Development Authority and Others, . But the aforesaid decisions in our opinion, are not applicable to the facts and the circumstances of the present case.

41. The learned counsel for the petitioners has cited decision of the High Court of Delhi in P. N. Varma and Others v. Union of India and Others (C. W. 190/81 and dated December 13, 1984) which is an appropriate authority in the matter of arbitrary dealings of an Authority (DDA) like the Indore Development Authority. Having gone through this decision of Delhi High Court, we are of opinion, that this case appropriately applies to the present case and squarely answers the objection raised on behalf of the Indore Development Authority as stated above. We therefore, propose to quote in extenso from this judgment but before doing so, we would like to cite the following observations in the case of Mangatram v. Delhi Development Authority (AIR 1984 SC 246), with which we are in respectful agreement.

It cannot be said that there are no circumstances at all in which a contract entered into on behalf of the Government would be amenable to interference under Article 226 of the Constitution. This branch of the law is still in a process of evolution. The proliferation of statutory authorities and public corporations has brought into existence a huge contractual field in which the terms and conditions of the contract and practically dictated by the monopolistic limbs of State or other public authority and the other party to the contract has very little say in regard to the terms and conditions to which he is supposed to have agreed. In this State of things situations are likely to arise which may justify interference under Article 226 even in such cases. There are two situations where such interference can be made. The first covers cases where, after entering into a contract the Government purports to exercise certain rights under the contract but, in reality, the Government is exercising its executive power in an arbitrary and unreasonable manner, so as to violate the common law. In such cases, though the Government is ostensibly acting under the terms of a contract, it can be said, in reality, to be an exercise of the executive power of the State that is being challenged. The second situation involves an extension of the above principle. This is of cases where a term of a contract "imposed" by the State or authority on the citizen is contrary to law and, thus, non est. An action of State, insisting on the observance of such a term of the contract would, in substance, be an act in the exercise of its executive or statutory power rather than as a contracting party simpliciter.

42. We now next extract hereunder certain relevant portions from the decision of the Delhi High Court of P.N. Varma and Others v. Union of India (supra) which have a bearing on the question of the preliminary objection : The principles of decided cases :

The parameters of interference by Courts in exercise of their writ jurisdiction in cases where the domain of private contracts and statutory or public duties interests have been enunciated by the Supreme Court in the trilogy of cases: Radhakrishna Agarwal and Others Vs. State of Bihar and Others, ; Premji Bhai Parmar and Others Vs. Delhi Development Authority and Others, and Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., .

These cases have laid down in no uncertain terms that what is basically a claim to enforce a contract, seek damages for its breach, challenge some action taken on its clear terms or to claim a refund of amounts paid voluntarily thereunder cannot be disguised under a camouflage of statutory Constitutional obligations so as to be made the subject matter of writ petition. Indeed, this Court has had occasion to reiterate the same principals in Jasjeet Films P. Ltd. v. D.D.A. (supra), Satya Prakash v. N.D.M.C. (AIR 1983 Del. 478) and very recently in Mangauam v. D.D.A. (supra), the last being a decision of this very Bench. It is, therefore, not necessary to discuss the principles over again except to refer to certain reservations. We voiced in the last mentioned case while dismissing the writ petitions by applying the principles enunciated in the three decisions of Supreme

Court above referred to. We observed:

We do not wish, however, to be understood as saving that there are no circumstances at all in which a contract entered into on behalf of the Government would be amenable to interference under Article 226 of the Constitution. This branch of law is still in a process of evolution, The proliferation of statutory authorities and Public Corporations has brought into existence a huge contractual field in which the terms and conditions of the contract are practically dictated by the monopolistic limbs of State or other public authority and the other party to the contract has very little say in regard to the terms and conditions to which he is supposed to have agreed. In this state of things situations are likely to arise which may justify interference under Article 226 even in such case. We may indicate two situations, in which it seems to us, an exception can be made to the general rule outlined in Radhakrishna Agrawal case (supra) and the other cases referred to above. The first covers cases where, after entering into a contract, the Government purports to exercise certain rights under the contract but, in reality, the Government is exercising its executive power in an arbitrary and unreasonable manner, so as to violate the common law. In such cases, though the Government is ostensibly acting under the terms of a contract it can be said, in reality to be an executive power of the State that is being challenged. This may be a way of looking at the decision in Gujarat State Financial Corporation Vs. Lotus Hotels Pvt. Ltd., In that case, as already discussed, the agreement itself envisaged the possibility of a re-finance not being available and provided that in contingency, the corporation's loan would carry interest at 13% p. a. Despite the specific provision to this effect in the contract the public Corporation, which was a State Authority, acted arbitrarily so as to cause harm and injury flowing from its unreasonable conduct to the respondent. The conduct of the State Corporation did not at all flow out of any of the terms of the contract. Though in form, it appeared to be a case where the Corporation was refusing to perform its obligations under the contract, in truth and fact it was a case where the Corporation was acting arbitrarily and outside the terms of the contract. It was a case of colourable exercise of a power available purportedly under the contract but which was in truth not available and which was explicable only as a highhanded and arbitrary conduct of a statutory authority. The decision in Jumna Devi's case, referred to earlier, can also be explained on this principal. The second situation which comes to mind perhaps involves an extension of the same principle. This is of cases where a term of a contract "Imposed" by the State or authority on the citizen is contrary to IJW and, thus, non est. An action of the State, insisting on the observance of such a uniform of the contract would, in substance, be an act in the exercise of its executive or statutory power rather than as a contracting party simpliciter. "We shall proceed now to consider the applicability of the above principles to the situation before us. But, for doing that, we should first try to see what exactly it is that is happening here- The DDA is a public Authority which is entrusted, inter alia, with the responsibility of providing houses to the citizens of Delhi. The statute and the regulations lay down the

modalities by which the DDA can dispose of properties by way of sale or hire. The drawing up of schemes, the modes of registration and allotment, the fixation of a price and the mode of its payment, the execution of a deed and the conditions of transfer are all provided for in these regulations. There is nothing in the regulations that compels the DDA to provide houses free of cost or at concessional rates or even at the cost of construction. It is open to the DDA to fix such price for the flats as it may deem fit. In doing so, it can keep a margin of profit for itself, take into consideration its overall working, consider the picture of town planning as a whole and offset deficits in one scheme while completing another and so on. In short, it is as free in fixing the price of flats as any private contractor will be, except only for the limitations of fair play and the need to avoid arbitrariness and discrimination that fetter the hands of a public authority which is amenable to Article 226. So long as it conforms to the regulations, its actions cannot be challenged. But once some regulation is infringed or any arbitrariness or invidious discrimination creeps in, its action is liable to challenge under Article 226. For example, if the DDA does not fix a price or the principles for its determination or if properties are sought to be allotted otherwise than the lots when there are more claimants for houses or plots or there is arbitrariness in allotment, the action of the DDA can be challenged in a writ petition. Perhaps, even, where the price is fixed arbitrarily and without any basis for it, it can be challenged in writ proceedings. This is a pre-contractual statutory stage. Thereafter, when the DDA announced a scheme in conformity with these regulations and applications are received and allotments are made and accepted, the general public scheme yields place to individual contracts between the DDA and each allottee. Now we reach the contractual stage in the domain of private law. It replaces the earlier stage of statutory obligations which was in the domain of public law. Here, any action by any one or more of the allottees to enforce the terms of the contract or to complain of their breach on the part of the DDA will lie at general law, by way of suit and not by way of writ petition. To put it in other words, any complaint or grievance pertaining to the pre-contractual statutory stage aired under Article 226 but any complaint or grievance pertaining to the contractual stage can be agitated only in a civil suit. "The DDA has already announced the basis on which it was fixing the price of the flats (viz. actual cost) but it is not claiming that it can give this principle or basis to a body and fix the price at any level and in any manner it chooses to. This we think means a revision of the policy of price fixation which is a pre-contractual stage if the stand of the DDA is that the price they demand is only on the same formula as was announced and that the increased price demanded is only due to escalation in cost of construction and fluctuation in other cost factors, then the issue will only be whether the fixation of price is in accordance with the contract and that can be gone into, both by reason of principle and because it will involve implicated factual investigations, only in a suit. This is the alternative stand of the DDA which we shall discuss later. But if the DDA says whatever we may have said earlier, we can fix the price on any basis and that cannot be questioned at all because it is a contractual matter." The argument is fallacious because this stand

of the DDA means going behind the contract and revising the earlier formula of price fixation which means traveling back to the pre contractual statutory stage.

The contract does not permit the DDA to unilaterally raise the price on altogether different lines from those contemplated earlier and in doing so it is acting in the exercise of its executive power as public authority and not in exercise of a power under the contract. So long as the authority is acting bona fide and purportedly under the terms of the contract the Court will not interfere but where the authority out steps the contractual rights and wields its executive power it becomes amenable to writ jurisdiction and, if the exercise of the power, is high handed or arbitrary or otherwise vitiated, a writ can be issued to regulate the same. The decision of the Supreme Court in *Gujrat Financial Corporation v. Lotus Hotels Pvt. Ltd.* is the best illustration of this proposition.

Promissory Estoppel

The next question to consider is whether the action of the DDA in refusing the price of the flats on different criteria for the purpose of this argument also we shall assume this to be the position is liable to be struck down, for any reason. The answer is in the affirmative and the grounds for striking down the revision of price are the doctrine of promissory estoppel and the doctrine of arbitrariness. The contours of the doctrine of promissory estoppel have been well delineated in the decisions of the Supreme Court in the *Indo-Afghan case* (AIR 1968 SC 718), the *Weston Electronics and Another Vs. State of Maharashtra and Another* , *Jit Ramshiv Kumar v. State* (AIR 1981 SC 1285) and *Gujrat State Financial Corporation v. Lotus Hotels Pvt. Ltd.* and examined in detail by a Full Bench of this Court in *Bansal Exports Pvt. Ltd. v. Union of India* (AIR 1983 SC 445).The rule that arbitrary action of the State in exercise of its executive power would violate Article 14 of the Constitution is now well entrenched in our law by the rulings in *Mrs. Maneka Gandhi Vs. Union of India* (UOI) and *Another* , *Babu Ram Gupta Vs. Sudhir Bhasin and Another* ,.It is, there fore, unnecessary to discuss these principles in detail. Suffice it to extract the head notes in *Gujrat State Financial Corporation v. Lotus Hotels P. Ltd.*, which is not only the latest pronouncement of the Supreme Court but also one rendered on facts closest to the present case.

It is too late in the day to contend that the instrumentality of the State which would be "other authority" under Article 12 of the Constitution can common breach of a solemn undertaking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract. It was disputed that the *Gujrat State Financial Corporation* which is set up u/s 3 is an instrumentality of the State and would be "other authority" under Article 12 of the Constitution. By its letter of offer and the subsequent agreement the appellant Corporation entered into a solemn agreement in performance of its statutory duty cast on the Corporation by the Statute under which it was created and set up. On its solemn promise evidence by the aforementioned two documents, the respondent

incurred expenses, suffered liabilities to set up a hotel, presumably, if the loan was not forthcoming, the respondent may not have undertaken such a huge project. Acting on the promise of the appellant evidenced by documents, the respondent proceeded to suffer further liabilities to implement and execute the project. In the backdrop of this incontrovertible fact situation, the principle of promissory estoppel would come into play.

Thus, the principle of promissory estoppel would certainly stop the Corporation from backing out of its obligation arising from a solemn promise made by it to the respondent. The respondent acting upon the solemn promise made by the appellant incurred huge expenditure and if the appellant is held to its promise, the respondent would be put in a very disadvantageous position and therefore also the principle of promissory estoppel can be invoked in this case.

Further, the rule inhibiting arbitrary action by the Government would equally apply where such Corporation dealing with the public whether by way of giving jobs or entering into contracts or otherwise and it cannot act arbitrarily and its action must be in conformity with some principle which meets the test of reason and relevance.

43. The Indore Development Authority is an instrumentality of the State Government which is constituted, established and incorporated under the Adhiniyam of 1973 for Town and Country Development. It has power of acquisition, development and sale or lease of land for the purpose of town expansion as has been provided under the provisions of the Adhiniyam which have been reproduced at the outset. The Indore Development Authority has power to prepare development scheme and to acquire and develop areas for commercial and industrial purposes as also to undertake such building or construction work as may be necessary to provide housing, shopping, commercial and other facilities.

44. Section 58 of the Adhiniyam gives power to the Indore Development Authority to determine by regulations the procedure for the disposal of developed lands, houses and buildings and other structures. The regulations 21 and 22 framed by the I.D.A. in February 1984 provide for categorization of houses and flats including M.I.G. on the basis of cost of the property and cost of houses and flats constructed by the Authority which is estimated by the Authority.

45. In the instant case, the regulations are in the process of being framed. However, at the time of inviting applications from the prospective purchasers of flats in Navlakha Complex which has been constructed by the I.D.A. in its Scheme No. 31, the I.D.A. declared the estimated costs of construction and the scheme of payment on instalments by the prospective hire purchasers/allottees. The subsequent revised estimates of cost of the flats as contained in the letters of November, 1979 and October, 1980 (Annexure "P 2" and P.3) referred to estimated cost (ANUMANIT LAGAT). It is thus, clear that that the flits were made available at cost price without charging profits. However, in the return filed by

the I.D.A. it has been denied that the flats were offered on a no profit and no loss basis.

46. the I.D.A. obviously acts in the statutory background and exercises powers in determination of the costs of the flats. There is, however, no concluded contract between the I. D. A. and the prospective hire purchaser including the petitioners. The dealings of the I.D.A. including fixation of cost from time to time have been in the pre-contractual stage. As such an arbitrary fixation of cost would be amenable to interference in the writ jurisdiction under Article 226 of the Constitution.

47. The petitioners having got themselves registered as applicant hire-purchasers of flats in the Navlakha Scheme of the I.D.A. and having paid the requisite deposit have also abided by the subsequent demands by the I.D.A. for further deposits on revision of estimated cost in 1979 and then in 1980. As already discussed hereinbefore the escalation of the cost of flats intimated by the I.D.A. on revision of estimates has exceeded more than 100% of the initially estimated cost of the L.I.G. and M. I. U. flats. The I.D.A. have failed to explain this colossal increase in the cost of construction of the said two types of flats. The petitioners and others, who got themselves registered as far back as 1977 to 1979 have been continuing their registration but because of repeated and unexplained increase of the cost of flats intimated by the I.D.A. they are placed disadvantageously in a peculiar condition of helplessness. If they are now asked to withdraw their registration and take back their respective deposits as suggested by the I.D.A. the petitioners stand to suffer seriously because now they cannot be put back in the position in which they were in 1977 when they could have exercised an option to acquire flats elsewhere at reasonable cost. The I.D.A. by unreasonably delaying the construction has put the interest of the petitioners in jeopardy.

48. The escalated cost announced on the basis of market rates prevailing at the year end of 1984, while the construction of the flats had admittedly been completed in the year 1982, is unreasonable and arbitrary. Apart from this, Annexure "R-T filed by the I.D.A. in support of the escalated cost intimated by the I.D.A. is a document which has apparently been prepared for purpose of filing with the return and is of no value as has been demonstrated hereinbefore. This document even does not include the item of land while it includes unexplained arbitrary figures.

49. A public authority like the I. D. A has to act in a reasonable and open manner in its dealings with the citizens who come forward in response to its invitation of applications for allotment of flats. The prospective purchasers from the I.D.A. are entitled to seek satisfaction on the score of escalation of cost whenever announced by the I.D.A. Also the I.D.A has to show awareness of its binding effect of its announcement of estimates and it is not open to the I. D. A as public authority to act unilaterally without taking into confidence the citizens with whom it is dealing and for whom it constructs.

50. From what has been discussed on the factual aspect of the case earlier it is apparent that the I. D. A. in the instant case has been dealing with the petitioners and others in an arbitrary and dictatorial manner and the escalation of cost at different stages amounting to more than 100% has not been explained to any degree of satisfaction either to the petitioners or other purchasers or even in Court before us. The allottees for whom the I.D.A. constructs are the real and ultimate owners of the property and as such the I DA. necessarily is held responsible for any act or omission on its part which adversely affects the interests of the prospective purchaser allottees. It is reasonable to expect a fair degree of Information by the I.D.A. sufficient to satisfy the allottees about the reason and the extent of escalation of cost of residential flats or else it would give rise to a reasonable suspicion of inefficiency, arbitrariness and corruption creeping into the escalation of costs.

51. The learned counsel for the respondent I D. A. has during the course of his arguments insisted that the petitioners are liable to be directed to go to Civil Court and file Civil Suits against the I.D.A. If the hundreds of purchasers allottees aggrieved by the arbitrary dealings and highhandedness of a public authority where to be driven to file suits, the object of having a responsible public authority like the I.D.A. for orderly development of the township would be frustrated and would result in widespread discontent and chaos with the growth of development activities in the town-

52 In view of the aforesaid discussion, the preliminary objection of the respondent as to the maintainability of the petition is overruled. The letter Annexure "P-4" dated 26-12-84 issued by the I.D.A. informing a colossal price increase is held to be an arbitrary demand and is hereby quashed.

53. Learned counsel for the petitioners have made grievance also as against the demand of estimated cost in letter of October 1980 (Annexure "P-3") issued by the I.D.A. But realising that there would be no reasonable figure of estimated cost in existence to which the I.D.A. could be pinned down if Annexure P-3 were also to be quashed, the learned counsel contended that the petitioners would agree to pay the cost as estimated in Annexure "P-3" even though it may be a higher figure than actual cost chargeable from the petitioners.

54. It is directed that the I.D.A. shall deliver possession of the flats to the petitioners and other applicants allottees on the original basis of first come first served, within one month from the date of this order, It is further directed that the I.D.A. shall grant reasonable time to the petitioners and other applicants to make necessary deposits to make good the deficiency if any having regard to the scheme of payment plan contained in Annexure "P-3" of October, 1982 to which estimates of cost the I.D.A. shall remain bound under the peculiar circumstances of this case.

55. The conversion of the freehold rights into leasehold rights as intimated to the petitioners much after the initial registration is unilateral and unauthorised and

the same is, therefore, also quashed.

56. In the result this petition is allowed. Counsels' fees Rs. 500/-. The outstanding security amount deposit, if any, shall be refunded to the petitioners after verification.